

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 9 January 2002
(Morning)

Session 1

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TRANSPORT AND THE ENVIRONMENT COMMITTEE

1st Meeting 2002, Session 1

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

Nora Radcliffe (Gordon) (LD)

COMMITTEE MEMBERS

*Robin Harper (Lothians) (Green)

*Angus MacKay (Edinburgh South) (Lab)

*Mr Adam Ingram (South of Scotland) (SNP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Fiona McLeod (West of Scotland) (SNP)

*Des McNulty (Clydebank and Milngavie) (Lab)

*John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Bruce Crawford (Mid Scotland and Fife) (SNP)

Dr Sylvia Jackson (Stirling) (Lab)

Tavish Scott (Shetland) (LD)

WITNESSES

Jinny Hutchison (Scottish Executive Environment and Rural Affairs Department)

Michael Kellet (Scottish Executive Environment and Rural Affairs Department)

Allan Wilson (Deputy Minister for Environment and Rural Development)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Tracey Haw e

ASSISTANT CLERK

Alastair Macfie

LOCATION

Committee Room 1

Scottish Parliament

Transport and the Environment Committee

Wednesday 9 January 2002

(Morning)

[THE CONVENER opened the meeting in private at 09:35]

09:43

Meeting continued in public.

The Convener (Bristow Muldoon): Good morning. I welcome members of the press and the public to the first meeting in 2002 of the Transport and the Environment Committee. I also welcome Bruce Crawford, who has joined us for consideration of the Water Industry (Scotland) Bill.

I have apologies from Nora Radcliffe. Robin Harper has indicated that, depending on the length of the meeting, he may have to leave early to attend another engagement. We also have an indication that Sylvia Jackson intends to attend part of the consideration of the Water Industry (Scotland) Bill.

Scottish Water (Proposed Board)

The Convener: Item 2 is consideration of a response from the Minister for Environment and Rural Development, Ross Finnie, to a letter that I sent at the request of the committee following our previous meeting. Our letter concerned the appointment of members of the board of Scottish Water. At that meeting, committee members expressed concern about the late notification of those appointments and the fact that the appointments were made prior to the Transport and the Environment Committee's stage 2 consideration of the relevant section of the bill.

Members have a copy of the letter from the minister, which expresses regret that the letter of 18 December was late in reaching us. The minister acknowledges that more notice should have been given of the intention to appoint. His letter indicates that the Executive made its decisions out of a desire to make the transition to Scottish Water as smooth as possible. The minister also indicates that he believes that he tried to respond to the Transport and the Environment Committee's recommendations that a majority of non-executives be appointed to the new board. He also recognises that the committee or the Parliament may wish to enshrine in statute that non-executive majority. Later today, we will be considering amendments that may well put such a provision into the bill.

The letter sets out the minister's response. He indicates regret at the way in which the information was given to the committee. I expect that we will not have similar problems in future. Members may make brief comments if they wish to do so, but I would not like us to get too deeply involved in the issue, because many of the issues in the letter will be discussed in our debate on the bill.

09:45

Fiona McLeod (West of Scotland) (SNP): I reiterate the point that the announcement should never have happened as it did. Some of the arguments that the minister has put forward to explain why he did what he did do not stand up. He says:

"Crucially, for Scottish Water's top management team to be in place ... a number of the external recruits announced on the 19 December needed to give notice to their current employers in December."

He goes on to say that it was reasonable to announce the full board membership at that stage, but he did not have to do so, as the recruits whom he mentions are employees, not board members. He could have held off until our debate today.

In the third-last paragraph, the minister talks about using his judgment and says that he hopes

he has got it right. I hope that the message from the committee is that he must wait upon the consideration of the committee on matters such as this, rather than using his judgment and hoping that he gets it right.

John Scott (Ayr) (Con): To a large extent, I agree with what Fiona McLeod says. Although I accept the minister's reasons for making a pre-emptive strike, as it were, the reasons for the letter of 18 December reaching us late were entirely foreseeable, given that he was in Brussels. We know that people tend to get back late from such meetings and that letters do not get delivered on time, despite everyone's best intentions. As a general principle, Ross Finnie, other ministers and their civil servants might wish to ensure that such foreseeable problems are dealt with and that important letters such as this one are delivered timeously to committees.

Des McNulty (Clydebank and Milngavie) (Lab): I commend you, convener, for the letter that you sent. It expressed the committee's views clearly. The committee was annoyed. There are two important issues. One is the issue of discourtesy to the committee, which is partly to do with the lateness of the letter's arrival. Whatever excuses the minister makes, the way in which the matter has been handled is a discourtesy to the committee.

There is also an issue of principle. Making appointments before a bill has been considered is a bad principle. I hope that ministers will recognise in future that that bad principle should not be upheld. Ministers should not make appointments to boards before the legislation is in place to create those boards. Even by waiting a couple of weeks, that situation could have been avoided, as we would have got through the stage 2 process. There has been a level of pre-emption in this case that goes beyond discourtesy. It is bad practice, and we should identify it as bad practice that should not be repeated.

John Scott: I agree entirely.

The Convener: I do not think that we want to labour the issue any further. Many of those points will be covered again during the debate on several of the amendments that we will be considering today.

Water Industry (Scotland) Bill: Stage 2

The Convener: Item 3 is consideration of the Water Industry (Scotland) Bill. We will start with section 20 and progress no further than the end of section 27, but I may decide to conclude our consideration before that, depending on how much progress we make. We also have to take another major piece of evidence from the minister in our aquaculture inquiry. We will see how it goes.

I welcome to the meeting the Deputy Minister for Environment and Rural Development, Allan Wilson, and his team of officials from the Scottish Executive.

Bruce Crawford has told me that he wishes to distribute supporting papers for one of the amendments that he will move. I am comfortable with Bruce asking one of the clerks to distribute those papers to members.

Bruce Crawford (Mid Scotland and Fife) (SNP): I have one other handout for a later amendment, but I would rather hold it back so that members do not get mixed up about what I am talking about. Is that okay?

The Convener: Yes.

Bruce Crawford: Thank you. I am grateful to you.

Section 20—Scottish Water

The Convener: Amendment 35 is grouped with amendments 36 and 25.

John Scott: Amendment 35 is a technical amendment. Perhaps I am incorrect, but it would be more correct for the bill to say, "There is to be a body corporate". That is self-evident.

I move amendment 35.

Bruce Crawford: Folks, if I start coughing and spluttering halfway through, forgive me, but I have a wee bit of a snuffle.

It will come as no surprise to members that I am returning to the theme of how best we can ensure that Scottish Water is maintained wholly within the public sector. Of course, we have received assurances from Ross Finnie—in evidence to the committee at the pre-legislative inquiry stage and in the stage 1 debate—that Scottish Water will remain in the public sector. However, it is vital that we separate out the rhetoric and intent and examine closely the wording of the bill.

The rhetoric from Ross Finnie during the stage 1 debate was:

"Does Mr Crawford accept that the basic thrust of the bill is that Scottish Water is a company"—

Freudian slip or not—

“—I mean, not a company, but a public corporation and that the powers vest from that?”—[*Official Report*, 6 December 2001; c 4547.]

Ross Finnie is relying on the description “body corporate”, as laid out in section 20(1). In his letter of 12 November to the former convener of the Transport and the Environment Committee, Ross Finnie said:

“Section 20 and schedule 3 establish Scottish Water as a body corporate”.

He went on to describe why that body will remain in the public sector.

The question is whether the rhetoric matches the reality in terms of the meaning of the word “corporate”. Does the bill as it stands provide enough of a guarantee that in future under this Administration or any future Administration, Scottish Water will remain as a parent body wholly within the public sector? Clearly, as I have said previously, Unison does not think so. That view is clear from Unison’s most recent written submission to the Transport and the Environment Committee on 24 October:

“The powers of Scottish Water ... are very widely drawn ... The whole structure of the industry ... could be changed with no democratic approval.”

In his evidence to the Transport and the Environment Committee on 24 October 2001, Dr John Sawkins of Heriot-Watt University said:

“However, as I understand the bill, if they wanted Scottish Water to become a ... limited company, it could become one. That is the bottom line. If the chief executive and chairman change, the new people will be able to do anything they want.”—[*Official Report, Transport and the Environment Committee*, 24 October 2001; c 2150.]

I accept that advice and guidance that will try to put a stricture on that will be given by ministers, but I am talking about what is in the bill. At best, the bill is confusing with regard to what Scottish Water can or cannot become. At worst, there is a dirty great gaping hole in the way that the legislation has been drawn. Much hinges on the definition of “corporate”. I want to give members a definition of what that word means. My definition is not an SNP definition but comes from the Oxford dictionary, 10th edition.

The Convener: Is that the “Oxford English Dictionary”?

Bruce Crawford: Indeed.

The dictionary defines “corporate” as

“of or relating to a large company or group.”

In effect, that shows that “body corporate” makes no distinction between whether that body is private or public. Indeed, it could be either.

Amendment 36, which would introduce the

words “a public body”, is designed to remove any dubiety and confusion. It would leave no one in any doubt about the Executive’s intention. If the Executive is intent on ensuring that Scottish Water as a parent body is to remain within the public sector, the minister should have no difficulty in accepting my amendment. On the other hand, refusal to accept amendment 36 will provide the clearest of signposts that the Executive’s longer-term aim is the back-door privatisation of Scottish water. The choice is clear. The choice is the minister’s.

The Convener: Before I invite the minister to speak, we will hear from Maureen Macmillan, Angus MacKay and Des McNulty.

Maureen Macmillan (Highlands and Islands)

(Lab): To be brief, I think that this is a non-problem. I am surprised that Bruce Crawford has not tried to define “body” as well. We have been over this ground before and we know what Bruce Crawford’s agenda is. He has made such points before, which have been rebutted very satisfactorily. I will not support amendment 36.

Angus MacKay (Edinburgh South) (Lab): Like Maureen Macmillan, I do not support amendment 36. Bruce Crawford has chosen to pursue his point in a slightly curious way, although I am sure that providing the committee with a photocopy of an excerpt from the “Oxford English Dictionary” is entirely legal, proper and permissible.

As Maureen Macmillan mentioned, the only part of the “Oxford English Dictionary” that Bruce Crawford has highlighted is “corporate”. There is no reference to the term “body corporate”, which I suspect has an entirely different meaning from the word “corporate”.

Using this excerpt from the dictionary, Bruce Crawford puts an interesting interpretation on the word “corporate”. I note that the definition of “corporate” is

“relating to a large company or group”,

from which Bruce Crawford infers that we are talking about a private, or potentially private, enterprise. Equally, however, the same page defines “coronation chicken” as

“a cold dish of cooked chicken served in a sauce flavoured with apricots and curry powder.”

I have certainly eaten coronation chicken that did not contain apricots, but that did not somehow make it not coronation chicken. The page also defines the word “corpse” as

“a dead body, especially of a human.”

Well, of course it is human. What other kind of corpse is there? One could have a non-human corpse, I suppose, but a corpse is a corpse is a corpse.

The point that I want to make is that we could pass an amendment calling Bruce Crawford an elephant, but that would not make Bruce Crawford an elephant. What makes an elephant an elephant is its elephantineness. What makes Scottish Water a public body is its public bodiness, not a spurious amendment such as amendment 36. I do not support Bruce Crawford's position.

Des McNulty: I have nothing to add to that.

The Deputy Minister for Environment and Rural Development (Allan Wilson): I am sorry to tell John Scott that amendment 35 is unhelpful—although I may often say that to him today. To amend section 20 to read “There is to be a body corporate to be known as Scottish Water” would lose the idea, which is provided for by the current drafting, that section 20 is the section that establishes Scottish Water. I recommend that the committee should stick with the term “established” and reject amendment 35.

When Bruce Crawford spoke to amendment 36, he was not only wrong but, I think, deliberately misleading. He asked for ministerial assurance, which I am happy to repeat yet again, that there is no agenda of back-door privatisation. As I said in the stage 1 debate, even if I had such an intent, I could not do that without the enactment of primary legislation, which would require the approval of the committee and of the Parliament.

As Scottish Water is a body corporate, to be established by primary legislation, with statutory functions that clearly have public purposes, it is self-evident that Scottish Water is a public body. Amendment 36 is therefore unnecessary, quite superfluous and should be resisted. Apart from any other considerations, the amendment has—as Angus MacKay clearly demonstrated—no legal effect.

10:00

Part 3 establishes Scottish Water as a statutory body with clear public functions. It is as clear as it can be that Scottish Water is a public body. It cannot be mistaken for anything else—an elephant or otherwise. Attempts to repeat, at various points in the bill, what is demonstrably a fact are therefore superfluous—and contrary to good drafting. Amendment 36 should be rejected.

John Scott: I accept what the minister said. I confess that I meant, with my amendment, to insert the words “to be established” rather than to leave out the word “established”. It was my mistake not to pick that up.

The Convener: Am I correct in thinking that you wish to withdraw the amendment?

John Scott: Yes—unless the minister wishes to consider my real intention, which was to insert the

words “to be established”. If he does not, I quite understand—

The Convener: You can only press the amendment as lodged.

John Scott: In that case, I would like to withdraw the amendment.

Amendment 35, by agreement, withdrawn.

Amendment 36 moved—[Bruce Crawford].

The Convener: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ingram, Mr Adam (South of Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Scott, John (Ayr) (Con)

ABSTENTIONS

Harper, Robin (Lothians) (Green)

The Convener: The result of the division is: For 2, Against 5, Abstentions 1.

Amendment 36 disagreed to.

Section 20 agreed to.

Schedule 3

SCOTTISH WATER: STATUS, CONSTITUTION, PROCEEDINGS
ETC

The Convener: Amendment 37 is grouped with amendments 38, 39, 40, 41, 42, 43 and 45. If amendment 37 is agreed to, I will not call amendments 38 or 39, as they will have been pre-empted.

Bruce Crawford: It is a pity about that ruling on pre-emption, but I understand it. The amendments that we submitted initially separated the issue of there being seven non-executive members of the board from the issue of three of them being elected members of local authorities. It might have led to a more concise debate had the initial amendments been allowed to stand. However, I understand the technical reasons why that did not happen.

At our previous meeting, there was understandable criticism of the role of the minister—criticism that we have heard again this morning—in appointing the board before this part of the process had been undertaken. The series of amendments that have now been lodged is a perfect example of why the minister's actions were

premature. Those actions make it difficult for committee members to act freely and without restrictions and in effect they make the amendments less likely to succeed. I do not think that that is good for democracy.

At stage 1, I signalled my intent to introduce an amendment that would ensure that there was a process whereby, by right, elected members of local authorities were guaranteed a place on the board of Scottish Water. Bearing in mind the job that it has to do, it is important to ensure that the board is formed as democratically as possible.

I submit to the committee that democratic accountability would be enhanced considerably if elected people were to form part of the board membership. Obviously, it would not be proper for MSPs to be members of the board, as they and the committees will be involved in the scrutiny of the organisation. However, it would be sensible and practicable to reserve three spaces on the board for elected councillors.

Reserving such spaces for elected local authority members—[*Interruption.*] That is interesting: it is the theme tune to “The Sting”. I assure the committee that I am not involved in a sting today.

Reserving such spaces for elected authority members would recognise the democratic legitimacy of local authorities and would bring Scottish Water and Scottish local government closer in terms of strategic direction and infrastructure spending. That would be important for this vital utility. If the Executive is serious about the community planning powers that it intends to vest in local authorities, it should accept amendment 37. Involving elected councillors in the process would bring strength to the board of Scottish Water, as they are the people who are having to deal with the difficulties that the existing water authorities face, regarding infrastructure spends in certain parts of Scotland. They would be able to voice the real concerns of communities on the ground.

Reserving spaces on the board for elected councillors would be a very worthwhile exercise for both Scottish Water and local government. It would strengthen the board and recognise the democratic legitimacy of local government. I suggest that the committee should take on those ideas.

I move amendment 37.

Des McNulty: The intention of amendments 38, 39 and 41 is to ensure that non-executive members form the majority of the board of Scottish Water. Members will recall that there was much discussion about that at stage 1. During a public hearing, the committee heard from the chairman designate of Scottish Water, Professor Alexander,

who said that it would be in the public interest to have a majority of non-executive directors on the board. The committee agreed with that view. The object of these amendments is to make that a reality.

The committee’s stage 1 report commented:

“The wording of Schedule 3 does not appear to guarantee such an in-built majority of non-executive directors and we strongly recommend that the Bill be amended to ensure that there is, in fact, a substantial majority of non-executive directors on the board.”

It is vital that a model is instituted that delivers a properly accountable organisation. Accountability requires a capacity for non-executive members to scrutinise the activities of the full-time employees of the organisation. A majority of two non-executive directors is necessary to avoid a situation in which the chair plus the executive directors would be in the majority.

Amendment 43 is intended to ensure that a staff representative is appointed to the board. The benefit of such an appointment would be that the staff would have a voice at the highest levels of management. I am reasonably flexible concerning how that could be achieved, as it could be done in a variety of ways. One could consider the worker-director model that operates in Germany, whereby a member of staff is elected directly to the board. One could also consider trade union representation of the members or alternative models. The drafting of amendment 43 is intended to be flexible from that point of view. I am interested in the principle of instituting a mechanism of representation that would enhance significantly accountability and the information that comes to the board and that would send a good signal to the employees of Scottish Water, which is to be a public company.

The Convener: I invite John Scott to speak to amendments 40, 42 and 45.

John Scott: My views are similar to those that have been expressed by Des McNulty. Amendment 40 proposes an arithmetical way of achieving what he suggested. Members will note that I have supported amendment 38, which is in the name of Des McNulty. Amendment 40 would reduce from five to four the maximum number of executive members of the board of Scottish Water. By a process of simple arithmetic, that would guarantee the outcome that Des McNulty and I—along with, I believe, other members of the committee—seek to achieve. It would mean that there could never be a preponderance of executive members on the board.

I believe that it is important to leave out the words “appear to them to” from paragraph 2(2) of schedule 3 of the bill. The people who are appointed to these positions should have the

required knowledge and a proven track record, and it should be possible to establish that during the interviewing process. To include the words "appear to them to" is a cop out, which is why amendment 42 proposes that those words be removed from the bill. There is no need for them.

I do not have a hard and fast position on amendment 45. I do not know whether executive members are required to be appointed from within the ranks of a company. It might be that an executive member of any board must, by definition, be appointed from within the ranks of the company concerned. I will take guidance from the minister on that point. Even if no such requirement exists, amendment 45 would not preclude Scottish Water from making appointments from within its ranks if it so wished. However, amendment 45 would give the body corporate a wider field from which to choose. That is why I lodged the amendment.

Robin Harper (Lothians) (Green): Scottish Water will be one of our most important public bodies. Under the current proposals, Scottish Water would be controlled from above. Bruce Crawford's amendment 37 would ensure an element of local representation. That can best be achieved by including democratically elected councillors as members of the board of Scottish Water. I strongly support amendment 37. It is essential to ensure that the board is constituted in the interests of the public and of local people.

Fiona McLeod: When speaking to his amendments, Des McNulty talked about the principle of ensuring that non-executive members are always in the majority on the board of Scottish Water. I support that principle and amendment 37 would ensure that it was realised.

It would also go further by ensuring that three elected members of local authorities were represented on the board. When he spoke to amendment 43, Des McNulty talked about sending out signals to employees. If we agree to amendment 37, that would send out the right signals from the committee to elected members of local authorities. Scottish Water will be the biggest quango in Scotland, but it will also be one of the biggest service providers in Scotland. It will provide a service that used to be provided by local authorities and in which, historically, local authorities have expertise. The signal that amendment 37 would send out would be that we believe in the democratic accountability of Scottish Water, both through Parliament and through the non-executive membership of Scottish Water's board. Reservation of three places for elected members of local authorities would ensure that that happens.

10:15

I also say to Des McNulty that amendment 37 would not preclude amendment 43. In fact, agreeing to both amendments would send out a powerful signal from the committee that we expect Scottish Water—which will be the public water authority of Scotland—to represent local authorities and the interests of Scottish Water's workers. In addition, when we deal with later amendments, we can show that we expect Scottish Water to ensure that its customers have a clear voice within the company. I urge members to support amendments 37 and 43.

Angus MacKay: I have some sympathy with Des McNulty's amendments 38, 39, 40 and 41, and with John Scott's amendments 40 and 42, which are on the numbers of executive and non-executive members on Scottish Water's board. I am interested to hear what the minister will say about that before I form a final view. I am much attracted by the idea of non-executive members comprising a majority on the board. Again, I am interested to hear what the minister will say about that.

I must say that John Scott changed my mind about one of the amendments—amendment 42—during the course of his speaking. I was sympathetic to the idea of taking out the words "appear to them to", in relation to judging who should be non-executive members of Scottish Water's board. I thought that that would allow the ministers to make a judgment that, for example, John Scott appears to be appropriate, not necessarily because he has the appropriate experience, but perhaps because he—or Bristow Muldoon or I—would be the sort of person who would not rock the boat.

John Scott's description, however, seemed to suggest the opposite of that, which is that the words "appear to them to" should be taken out because ministers might go in the other direction. One can envisage circumstances in which it might be desirable to have on the board either executive or non-executive directors who might not have direct experience of running a water industry, but who might bring other related, important skills to bear. Their skills might even be unrelated, because ministers might choose to have a consumer interest represented. I am now a bit uneasy about John Scott's amendment 42, although I supported it before he spoke. I do not mean to be offensive to John Scott, but he has changed my mind in the wrong direction, I am afraid.

Regarding the proposal in amendment 37 to include three councillors among the non-executive members of Scottish Water's board, we discussed that point—I think—during our first day's discussion of the bill. The proposal seems to me to

be entirely a hangover from a previous position on Scottish Water's future and the generation of democratic control of it. If we were talking in the context of returning provision of water and sewerage services to local authorities on the old regional model or some other form of local authority model, the proposal to include councillors on the board might be attractive.

I thought that Bruce Crawford's and Fiona McLeod's arguments on the matter were extremely weak. They overreached themselves in trying to justify a position that is no longer tenable. I do not think that including three councillors on the board of Scottish Water will make a jot of difference to democratic accountability, openness, or scrutiny. I can envisage many difficulties that might be caused if that were done. Which local authorities would have the right to be represented and which would not? How would we achieve a balance between rural authorities, remote authorities, city authorities, non-city urban authorities, Labour-led authorities, Liberal Democrat-led authorities and even SNP-led authorities? There would be all sorts of difficulties in getting that to work in practice.

Apart from the difficulties of getting it to work in practice, it seems to me to be a meaningless proposal. Why choose only local authorities and councillors to be represented on the board? Why not choose members of Parliament? Bruce Crawford made an argument about the inclusion of MSPs. One could also make an argument for the inclusion of MPs, never mind MSPs. What about members of the European Parliament? At least they cover the whole of Scotland as a constituency.

Bruce Crawford's position on the matter is completely inconsistent. I am not unsympathetic to the roots of amendment 37's proposal. However, within the time frame in which we are operating and having gone well down the path from where the argument first started, the proposal looks to me to be meaningless as a genuine attempt to have proper democratic accountability and scrutiny. I am afraid that I cannot support amendment 37.

Maureen Macmillan: I want to echo what Angus MacKay said about Bruce Crawford's amendment 37. If it is to do with democratic accountability, then the democratic accountability of Scottish Water will be to the Parliament. Democratic scrutiny will come from the Parliament and not from the inclusion of three councillors on the board of Scottish Water. I agree with what Angus MacKay said about the difficulties—if we go down that road—of choosing which councillors to include. I can imagine the rows about which council was being represented and which was not.

I am interested in and supportive of Des McNulty's amendment 43 because it would be a good idea to consider the possibility of having trade union representation on the board. That representation need not necessarily represent the workers. I realise that amendment 43 is a probing amendment and I would be interested in hearing the minister's thoughts on the matter. I do not necessarily support the amendment, but I support the principles that lie behind it.

The Convener: Des McNulty and John Scott have indicated that they want to speak to amendments in the group other than those that are in their names. I should have made it clear earlier that, when speaking to an amendment in their names, members are entitled to address other amendments as well.

Des McNulty: On amendment 37, I should say that in the days of Strathclyde Regional Council I was a great advocate of local authority-run water authorities. That was not because that was necessarily a good idea in itself, but because it was a way in which local government could operate strategic services and provide democratic accountability. The fact is that the local government reorganisation that took place in 1996—which split the regional councils into 32 local authorities—removed the basis of strategic control from local government and also removed a lot of the arguments about democratic accountability being operated through local government. I opposed that move at the time and I still think that it was the wrong thing to do, but the fact remains that it was done.

Even if councillors from the three most populous local authority areas were appointed to the board of Scottish Water, three quarters of the population of Scotland would have no direct focus on the councillors who were selected. The inclusion of councillors on the board—particularly if, as Angus MacKay suggested, they were recruited through the Convention of Scottish Local Authorities—would not provide the kind of accountability that existed until 1996. With Scottish Water, accountability is being delivered through the Scottish Parliament and by parliamentary scrutiny of ministers. It would not be helpful to bolt on to that a mechanism relating to local government, which would not deliver the levels of accountability that we want and which existed previously. That would confuse the issue rather than add anything to the process. The principle that Bruce Crawford wants to uphold would not be upheld by amendment 37.

In an amendment that we will deal with later, I have raised an issue relating to ways in which local interests could be dealt with through the operation of Scottish Water. However, I do not think that placing councillors on the board would

be a way in which to do that and I cannot therefore support Bruce Crawford's amendment.

I accept that John Scott's amendment 40 is trying to achieve the same as my amendment 41 is trying to achieve. My approach—that of adding a person—partly reflects the fact that I have in mind a particular category of people whom I would like to add to the board. There is an argument for having fewer than five executive members on the board, but I would be reluctant to un-appoint people now that they have been identified.

John Scott: They have not been identified yet.

Des McNulty: Actually, I think that they have.

The point is that there are alternative mechanisms that we should consider. We need to identify the best way in which to balance the board, bearing in mind the principle that amendment 41 in my name tries to set out.

John Scott: On amendment 37, the issue is not necessarily to do with delivering a representational board; it is to do with delivering a well-equipped board that has the experience that is required to produce good clean water for Scottish water consumers. I question whether local authority representatives are the best people—MSPs would be no different—to do that. The board should comprise specialists, regardless of whether they are executive or non-executive members. I say that in response to Angus MacKay's point. My thinking behind the issue is that the board should comprise people who are entirely relevant. I cannot see any need for the board to include a representational element.

Scottish Water is not a privatised company. It seems that Bruce Crawford is forgetting that the water industry commissioner exists to provide—in conjunction with the panels—another tier of representational input to board decisions. I cannot support amendment 37.

Allan Wilson: I want to address Bruce Crawford's comments on amendment 37 and link it to the interim situation, which I know was the subject of previous discussions. There are understandable concerns about the timing of the process. However, I say for the record that—as Mr Finnie's letter made clear—we have merely identified successful candidates. Those individuals will not become board members until or unless the bill is enacted. Clearly, that is subject to the will of the Parliament. The fact that we are having the debate and that we are able to make further amendments—I will come to that in a minute—means that that process has not prevented deliberation on the composition of the board.

As Angus MacKay pointed out lucidly, we have always stated clearly our intention to create Scottish Water as a public sector business. It will

be more commercial, but it will also be more accountable and responsive to its customers. Therefore, the board's structure reflects that more business-like approach. The non-executive members should be selected on their ability to lead a large-scale public utility business in the interests of its customers. They will not be there as political representatives—as has been pointed out. Even supposing that there was a mechanism through which to do that, it would not be a desirable objective.

Robin Harper and other members raised the question of public accountability. We propose a public body that is accountable, through ministers, to the Parliament. We feel that amendment 37, which seeks to dilute that public accountability, is unacceptable.

However, we have sympathy with the sentiments that are expressed by Des McNulty and other members in relation to amendment 43, which proposes an alteration to the composition of the board. It is an important point. Amendment 43 proposes that there should be a board member to represent employee interests. However, as drafted, amendment 43 raises difficult legal issues. In all organisations board members are appointed with a common set of duties. If one member is appointed with a separate duty, or that member's status is different, there would—in the event of any conflict between general board duties and their specific duty—be a question as to which duty should prevail.

10:30

With the agreement of the committee, we propose to take the principle that has been suggested and to return at stage 3 with an amendment that will provide what the committee desires, which is a legally sustainable means of realising that objective. Having accepted the principle, I hope that the committee will accept that work requires to be done to deliver the agreed objective.

As ought to be self-evident, amendment 43 is linked to amendments 38 and 39, which relate to the balance of executive and non-executive board members. As we have accepted the principle that lies behind amendment 43, we have no difficulty in accepting amendments 38 and 39. Until we have examined a process that would meet the aims of amendment 43, we do not wish to move away from the balance that has been proposed for the board. In response to some questions that have been raised, I say that we certainly do not wish to reduce the number of executive members, which amendment 40 suggests we should.

Of the executive members of the board, the function of the chief executive is fairly self-evident.

There will be an executive member who is responsible for assets and for running the vital investment programme that we will rely on to improve water quality. There will be executive members who will have responsibility for finance, for customer service and for raising standards. Those are also important appointments. The member who will have responsibility for the commercial operation of the company will work on contracts and preparation for the onset of competition. Each of the proposed executive members will have a clear function, so we would not wish to reduce their number at the same time as increasing the balance of non-executive members through the addition of an employee representative.

We have some sympathy with the wish to enshrine a clear majority of non-executive members, which amendment 41 seeks to do. However, the problem with that amendment is the word “normally”. The amendment says:

“The number of non-executive members shall normally exceed the number of executive members by at least two.”

Again, we ask for the committee’s forbearance and assure members that we will return with a set of amendments that provide that secure majority and which meet the desire to allow employee interest to be accounted for in board appointments. As the word “normally” gives us some difficulty, we will revisit the subject of amendment 41.

On amendment 45, executive board members must by definition be employees of Scottish Water. That does not preclude external appointments, but board members who were appointed in that way would become employees first and would succeed thereafter to appointment to the board. As we think that there is no rationale for agreeing to amendment 45, we ask members to reject it.

Bruce Crawford: I will start with the same point with which I began the debate. If the SNP’s amendments had been separated out in the way that we had wished, that would probably have helped to deliver a lot of the amendments that the minister is trying to get to. The arithmetic process that amendment 37 would produce offers exactly what Des McNulty and John Scott desire—and is a lot simpler, to boot.

Amendment 37 would ensure a clear majority of non-executive board members by removing the words

“not fewer than 4, nor more than”,

which would leave seven non-executive members and a maximum of only five executive members. Amendment 37 would achieve that split.

Angus MacKay tried to create problems that do not exist—the problems exist in his mind and in his

attempts to fabricate a story about why the Executive’s position must be supported, rather than in reality. I can expose that quite easily. Two councillors, whom the Executive appointed, are in charge of two of the water authorities at the moment. They lead large organisations that do what will be Scottish Water’s job. There is no reason on earth why the Executive could not in future appoint councillors to deliver something similar. The water authorities might be different in size, scale and operation, but those two councillors lead large organisations in the same way in which council leaders lead large organisations that have millions of pounds of spend under their budgets. There is no reason relating to councillor’s competence why councillors could not be included on Scottish Water’s board.

The removal of strategic overview was also referred to. That is a key point in defence of amendment 37, because local government and councillors have been removed from some of the strategic overview. If we are serious about community planning—which is about a strategic overview—and about embedding councils and all that they do in the life and body of Scotland, there must be a flow between non-departmental public bodies and councils. Amendment 37 would help to achieve that.

John Scott wondered whether councillors are the people who are best equipped to see the problems that exist. Councillors are the people on the ground who see daily where investment is not being made and the problems that that creates for growth in the economy. If councillors are not equipped to see what is happening, I do not know who is.

John Scott also made a point about groups of people being represented. The board as proposed—as the minister rightly said—will include strong representation of the business perspective. The board will and should always include representatives of different sectors. All I am suggesting is that local government should have its voice and that councillors should also be included on the board.

To create problems by suggesting that there could be a big fall-out between the Convention of Scottish Local Authorities and the Executive, or that there would be fights between councillors throughout Scotland about who should be on the board, is to fabricate nonsense. The Executive already appoints councillors to boards. As was said, the conveners of the North of Scotland Water Authority and East of Scotland Water are both councillors. If we go through the process that we suggest in an amendment that will be dealt with later, by which Parliament would approve the appointments, that would remove potential areas for difficulties in transparency and openness.

It was interesting to hear the minister contradict almost entirely what Des McNulty said about his view of the appointment process and how it should not have been handled in the way that it was. I will leave that as it stands.

I urge Des McNulty to move his amendments, because the Executive should lodge an amendment at stage 3 rather than having him not move his amendments at this stage. If the Executive amendment was going to be lodged, it should have been lodged by now.

The Convener: Do you wish to press amendment 37, Mr Crawford?

Bruce Crawford: Yes—indeed I do.

The Convener: The minister is indicating that he forgot to speak to an amendment.

Allan Wilson: I neglected to mention amendment 42. We ask that that amendment be disagreed to as it would restrict our freedom to assess who would be an appropriate appointee by removing the qualification that an appointee would have to appear to Scottish ministers to have the necessary knowledge. That point was omitted from my contribution.

The Convener: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harper, Robin (Lothians) (Green)
Ingram, Mr Adam (South of Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Scott, John (Ayr) (Con)

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

Amendment 37 disagreed to.

The Convener: We have debated amendment 38. Does Des McNulty wish to move the amendment?

Des McNulty: The minister indicated that amendment 38 was acceptable to him, so I am happy to move it.

Amendments 38 and 39 moved—[Des McNulty]—and agreed to.

The Convener: Does John Scott wish to move amendment 40?

John Scott: Given the minister's assurance that he will lodge amendments at stage 3 to guarantee

that non-executive members will have a majority on the board, I am happy not to move my amendment.

Amendment 40 not moved.

The Convener: Does Des McNulty wish to move amendment 41?

Des McNulty: The minister said that the amendment's wording, and particularly the word "normally", caused a problem—I thought that the wording was helpful. If the minister suggests that the Executive wants to give effect to the principle behind the amendment and that it will lodge at stage 3 an amendment with better wording, I am happy not to move amendment 41.

Fiona McLeod: In that case, I move amendment 41.

The Convener: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harper, Robin (Lothians) (Green)
Ingram, Mr Adam (South of Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Scott, John (Ayr) (Con)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)

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

The vote is tied. I will use my casting vote against the amendment.

Amendment 41 disagreed to.

Fiona McLeod: On a point of order, convener. Will you explain why you think that a casting vote should go against an amendment from the committee of which you are a member? I understood that a convener should use a casting vote to vote with the committee's intention, as expressed by an amendment, rather than with the Executive's intention.

The Convener: I used my casting vote in the way that I did because the minister recognised the committee's intention and will deal with it. An explanation has been given for why the amendment's wording is unsuitable. I am comfortable that the committee's intention will be addressed in due course at stage 3.

Angus MacKay: Further to that point of order. I will ask about the same point in a different way. As a relatively new committee member, I want to understand what conventions or procedures apply

to the use of a casting vote. That would allow us to understand what informs the use by you or any other convener of a casting vote.

The Convener: I do not think that a hard-and-fast written convention applies to casting votes. I would normally use a casting vote to maintain the status quo. In this case, the bill broadly represents the status quo. I recognise the committee's views on the issue and I am aware that the minister said that the Executive will respond to the committee's views. That is why I am comfortable with the manner in which I cast my vote.

Fiona McLeod: On a point of order, convener. You explained that a convener's casting vote is used to vote for the status quo, but you said that you voted in the way that you did because the minister said that he would address the issue in due course. The status quo is the amendment that the committee proposed and not anything that the minister might do in due course.

The Convener: An amendment that has been moved only is not an amendment that has been agreed to. Unless an amendment has been agreed to, it does not represent the status quo. I explained the position and I would like to move on to the next amendment.

Amendment 42 moved—[John Scott].

The Convener: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scott, John (Ayr) (Con)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)

ABSTENTIONS

Harper, Robin (Lothians) (Green)
Ingram, Mr Adam (South of Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)

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

Amendment 42 disagreed to.

10:45

The Convener: Amendment 43, in the name of Des McNulty, has been debated with amendment 37. Do you wish to move the amendment, Des?

Des McNulty: On the basis of the minister's assurances, I am happy not to move amendment 43. The minister has committed himself to lodging an amendment at stage 3 to give effect to its provisions.

Fiona McLeod: I wish to move amendment 43.

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ingram, Mr Adam (South of Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Scott, John (Ayr) (Con)

ABSTENTIONS

Harper, Robin (Lothians) (Green)

The Convener: The result of the division is: For 2, Against 5, Abstentions 1.

Amendment 43 disagreed to.

The Convener: Before we move to the next group of amendments, I welcome Tavish Scott to the meeting. He is attending to move an amendment later on in the marshalled list. Unfortunately, Tavish will have to wait a while yet before we reach it.

John Scott: On a point of order, convener.

The Convener: Is it a point of order, John?

John Scott: I am not sure. I wish to ask for clarification on the workings of the committee. Two amendments have been lodged by Des McNulty in good faith, but he has voted against both of them.

The Convener: I do not think that that is a point of order. If a member wishes to move an amendment that has been lodged, but then not moved, by another member, that is in order. How members vote is a matter for their judgment. In this case, Des McNulty made it clear that he was accepting the minister's assurances regarding the two amendments in question. I think that that explains why he voted against his own amendments. It is a matter of individual decision how members vote on any amendment.

Let us move on. Amendment 44 is grouped with amendment 48.

Bruce Crawford: Amendments 44 and 48 seek to achieve the same thing, although amendment 44 directly concerns the Scottish Water board members, while amendment 48 is about the convenership of the board. I signal to the committee that, if amendment 44 is not passed, I still intend to move amendment 48.

We have been on this ground before, and I guess that we will return to it. I do not wish to draw out this discussion any more than necessary, but

an important point of principle is at stake. Scottish Water will be Scotland's largest quango, with about 5,000 employees and an annual spend of close to £1 billion. It will be a hugely important organisation in Scottish life.

We contend that, in order to establish accountability and restore faith in the public appointments system, it is not enough simply to say that all appointments will be subjected to the code of practice, which does not in itself provide a sufficiently rigorous test of accountability, transparency, fairness or effectiveness. The code of practice process can be strengthened, however, to ensure that the very best person for the job is seen to secure it and that Parliament is provided with the opportunity to confirm appointments.

Interestingly, Alex Neil has already secured the support of many members for his Public Appointments (Parliamentary Approval) (Scotland) Bill, including Nora Radcliffe—I wish she had been able to attend this meeting. It is also interesting to note that Liberal party policy states:

“select committees should have power to scrutinise appointments to senior public sector posts”.

We should also consider something said recently by the Conservatives at Westminster. In a debate towards the end of last year, Tim Collins, the shadow Minister for the Cabinet Office, said, on the subject of quangos:

“there are a number of principles that it would be helpful to establish in relation to their running and the way they are organised. The first is greater openness about who is appointed to run them, how those people are appointed, and what and when decisions are taken.”—[*Official Report, House of Commons*, 16 November 2001; Vol 374, c 1086.]

Mr Collins went on to ask the parliamentary secretary to the Cabinet Office about his view on the Public Administration Committee's recommendation that there should be select committee involvement in the public appointment process. It will be interesting to see what happens today as far as the Conservatives are concerned. I cited Westminster because Westminster created the Office of the Commissioner for Public Appointments.

I recognise that there is a commitment, certainly from the First Minister, for us to have a separate Scottish commission. However, the Parliament's confirmation of appointments to the Scottish Water board will provide the front-line scrutiny that the OCPA could never deliver. Given that the existing commissioner, Dame Rennie Fritchie, has only a part-time contract and that her appointment, at the moment, covers the whole of the United Kingdom, it would be almost impossible for her to undertake proper scrutiny of the public appointments process.

On that basis, I propose that the Scottish

Parliament approve appointments to the board of Scottish Water. That approval should, if necessary, extend to the appointment of the chairperson.

I move amendment 44.

The Convener: Thank you. Do other members wish to contribute to the debate on amendments 44 and 48?

Angus MacKay: I welcome the tone in which Bruce Crawford moved amendment 44 and spoke to amendment 48. His tone is different from that which he used last time. I will therefore be brief. Bruce Crawford has prayed in aid today the “Oxford English Dictionary”, Tim Collins—a UK Tory shadow spokesperson—and the Westminster Parliament. That shows that he is moving in an interesting direction. Amendment 44 is bad and it is wrong. We should not accept it.

The Convener: Thank you. That was very concise.

Maureen Macmillan: If Bruce Crawford thinks that Dame Rennie Fritchie could not cope, it is clear that he has not met her.

Allan Wilson: Amendments 44 and 48 propose that the Scottish Parliament should approve the appointment of Scottish Water's chair and non-executive board members. As Angus MacKay and Bruce Crawford have said, amendments 44 and 48 are similar to amendments lodged previously that related to the appointments procedure for the convenership of the customer panels and the water industry commissioner. The committee debated and rejected those amendments before Christmas.

As I said at that time, ministers are accountable directly to Parliament for such appointments. There has been no change in policy since that time. If amendments 44 and 48 were accepted, responsibility would be passed to the Parliament. It is difficult to see how Parliament could hold ministers to account for an appointment in which it had a significant say.

In addition to points that were made previously and those that have been made today, an important point of principle is involved as to the respective roles and functions of the Scottish Parliament and of the Scottish Executive. It is our view that the proposition that is contained in the amendments would place the appointments system firmly in the political arena. That is something that we wish to avoid. The amendments would also undermine much of what has been achieved since the introduction of the Nolan rules for public appointments.

Bruce Crawford: It was interesting to hear committee members' fulsome arguments against amendments 44 and 48. Nevertheless, they were

short and concise. There is no doubt about Dame Rennie Fritchie's capacity but, at the present time, she has to look after 10,000 appointments to quangos in Scotland. That is a lot of people to look after. Although Maureen Macmillan tried to make a quick point about Dame Rennie Fritchie, it was rather off the mark.

On the OCPA, I will widen the argument from simply talking about Westminster and the views of the Liberal Democrat party. The Democratic Audit, the Joseph Rowntree Charitable Trust and Professor Stuart Weir have all criticised the OCPA's lack of power. The organisation was set up in the light of the Nolan committee's inquiry into standards in public life, but did not fulfil the Nolan recommendations. The Joseph Rowntree Charitable Trust has recognised that there are failings in the way in which the organisation is structured—it cannot do the job that it was expected to do. Amendments 44 and 48 will help to strengthen the appointments process and make it much fairer, more open and effective.

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harper, Robin (Lothians) (Green)
Ingram, Mr Adam (South of Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Scott, John (Ayr) (Con)

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

Amendment 44 disagreed to.

Amendment 45 not moved.

The Convener: I welcome Sylvia Jackson to the committee. I believe that she intends to speak to an amendment that we will debate later.

Amendment 46 is grouped with amendments 47, 49 and 55.

John Scott: Amendment 46 seeks to place a time limit on appointments to the board of Scottish Water. Although not essential, it is wise to provide for board members to be changed, so that fresh ideas can be brought in on a regular basis. My limited experience of board structures suggests that new ideas are always a good idea. If people are left on boards indefinitely, that is not necessarily to the benefit of the company.

I would be happy to hear what the minister has

to say about the amendment. He may reasonably propose a different figure to the one that I have suggested. Nevertheless, I believe that there should be a time limit on all board appointments. If that is exceeded, there should be a procedure for re-election. However, the fact that members of the board of Scottish Water will not be elected in the normal way but will be appointed creates a difficulty. I would like the minister to say more about that matter.

I do not believe that paragraph 3(5) of schedule 3 reads very well. There may be a technical reason for the language of the amendment being so cumbersome, but I would like it to be framed in tidier English. That is why I lodged amendment 47. I do not mean that unkindly, and I hope that it is not taken as such.

What were the other amendments in the group?

The Convener: Amendments 49 and 55. You are not obliged to say anything about those amendments.

John Scott: Amendment 49 also seeks to tidy up the language of the bill, as I could not understand the English as drafted. I felt that a word—either “must” or “will”—needed to be inserted at line 31 on page 35 of the bill. I would be happy to receive clarification on the point, as I would be the first to admit that I am a novice at this process. However, it seemed to me that the insertion of the word “must” would make paragraph 4(2) of schedule 3 read more reasonably. We want bills to be written in language that the public can understand.

I move amendment 46.

Angus MacKay: I am not sure about amendment 46, which would insert the words “not exceeding 3 years” in paragraph 3(1)(a) of schedule 3 of the bill. Does that mean that we could automatically lose board members after three years? I can think of a number of other circumstances in which it would be considered quite valuable either to extend the original appointment or to have the capacity to renew it for, say, another three years. At the end of that period, we could take the view that six years is long enough to hold any one position and that we want a reasonable turnover.

I am sympathetic to the intent of amendment 46, but I feel that three years is probably too short a period. I would be interested in hearing what the minister has to say about considering that suggestion and perhaps proposing an amendment that would put some kind of cap on the length of an appointment or on sequential reappointments. We should establish that principle, but we should not do so to the extent that it damages the experience available to Scottish Water.

11:00

Turning to amendment 47, I read paragraph 3(5) of schedule 3 on page 35 differently from John Scott. It states:

"A person who ceases to be an executive member does not, by reason only of that, cease to be an employee of Scottish Water."

I read that as meaning that, if someone is no longer an executive member, that does not mean that they lose their job with Scottish Water. If amendment 47 were agreed to, that subparagraph would read:

"A person who ceases to be an executive member does not, for that reason alone, cease to be an employee of Scottish Water."

In other words, they definitely cease to be an employee, not only for the reason that they are no longer an executive member, but because some other reasons would be found. We should be very careful about amendment 47. It proposes even looser language than we have at the moment. I think that the bill as it is drafted is quite clear.

On amendment 49, I am inclined to agree with John Scott that the word "must" would be helpful. However, I am happy to be corrected by the minister on that point.

I do not support amendment 55. There is a potential conflict of interest that must be addressed. If we were to accept amendment 55, we would be saying that

"if, in their opinion, the member is unable to discharge the duties of the office held in a fit and proper manner",

ministers may dismiss them from office. What happens if someone is perfectly capable of discharging their duties in a fit and proper manner but ministers feel that, for some other reason, they should not hold the office? For example, there may be a board member who is competent and perfectly able to do the job in a fit and proper manner, but who takes up share options or a position with another company that is in conflict with their position on the board of Scottish Water. They might also somehow slip through the appointment net and be appointed to the board of another quango.

It seems that amendment 55 unnecessarily narrows the grounds on which ministers might be able to act to require a member of the board to demit office. Amendment 55 would tie ministerial hands in a way that the committee would find undesirable. We want ministers to be able to take a wider view of the reasons for which they might require a board member to demit office.

Bruce Crawford: It would be interesting to hear from the minister whether, during the current appointment process, the candidates were asked whether they had shares in any of the existing water companies.

Allan Wilson: Ministers can see little merit in any of the amendments in this group.

Let me begin with amendment 46. For a board member to make a lasting or valuable contribution to any organisation, he or she would need some time to become fully engaged and give value back to that organisation. Our current view is that four years is an appropriate period. We propose to appoint half the initial non-executive members for four years and half for three years. That has the effect of staggering the turnover of members in future, which is important for continuity on the board. As I am sure Angus MacKay is aware, that complies with the Nolan recommendations on such matters. Mr MacKay made a point about the tenure of executive members, which must be allied to their period of employment. That will vary from case to case. A single specified limit would therefore not be appropriate, so I urge the committee to reject amendment 46.

Whether it is bad English or not, we cannot see how the drafting change proposed by amendment 47 provides any benefit. It would have no legal effect, so that amendment should also be rejected.

Amendment 49 fails to recognise that paragraph 4(2) of schedule 3 is a statement of legal fact and not a statement of duty. The subparagraph refers to the chair and deputy chair of the board of Scottish Water holding office in accordance with the terms of their appointments. Inserting the word "must" before the word "hold" would make it seem like a duty, but that would be incorrect. The subparagraph sets out the legal fact that those people will hold office in accordance with the terms of their appointments. Amendment 49 should be rejected.

I am indebted to Mr MacKay, with whom I discussed whether we could think of any reason, other than that specified in amendment 55, for removing board members during the short time in question. We ask committee members to reject amendment 55. It would be an unnecessary fetter on ministers' actions, for which they will be responsible ultimately to Parliament.

The Convener: John, do you wish to respond?

John Scott: Would you like me to move my amendments?

The Convener: You may respond to the debate and then confirm whether you wish to press amendment 46.

John Scott: I will press amendment 46, because the minister has not said that he will introduce anything in its place. He spoke about intention, but I would like him to tell the committee that he will introduce an amendment to the effect that the period of appointments of board members will be between three and four years. Were he to

assure me that he would introduce such an amendment at stage 3, I would be happy to withdraw amendment 46.

I am happy not to move amendment 47, but I will move amendment 49.

The Convener: We will deal those later, John. The only thing that you should confirm at the moment is whether you wish to press amendment 46.

John Scott: I wish to press amendment 46.

Angus MacKay: Convener, I am not clear about the position. Did the minister say that he would consider the spirit of amendment 46 and come back to us?

Allan Wilson: I said that the issue is governed by Nolan and that it is probably better left that way. We intend to appoint half the members for four years and half for three years, to ensure continuity and turnover in accordance with the Nolan procedures.

The Convener: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scott, John (Ayr) (Con)

AGAINST

Harper, Robin (Lothians) (Green)
Ingram, Mr Adam (South of Scotland) (SNP)
MacKay, Angus (Edinburgh South) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 46 disagreed to.

Amendment 47 not moved.

Amendment 48 moved—[Bruce Crawford].

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harper, Robin (Lothians) (Green)
Ingram, Mr Adam (South of Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Scott, John (Ayr) (Con)

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

Amendment 48 disagreed to.

Amendment 49 moved—[John Scott].

The Convener: The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harper, Robin (Lothians) (Green)
Scott, John (Ayr) (Con)

AGAINST

Ingram, Mr Adam (South of Scotland) (SNP)
MacKay, Angus (Edinburgh South) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 49 disagreed to.

The Convener: Before we move to amendment 50, I point out to members that I intend to allow another 20 minutes or so for consideration of amendments. I then intend to move on to deal with aquaculture issues. The amendments that remain will be considered next week.

Amendment 50 is grouped with amendment 51.

John Scott: Amendments 50 and 51 are entirely self-explanatory. I believe that remuneration should be appropriate. The word “appropriate” is used elsewhere in the bill, for example, in paragraph 5(4) of schedule 3, so it should be used in paragraphs 5(1) and 5(2) as well.

I move amendment 50.

Allan Wilson: I do not see what amendments 50 and 51 would achieve. The amendments would not alter the responsibility of ministers to determine the remuneration and expenses under paragraph 5 of schedule 3. As in any matter for which ministers are responsible, ministers will act in a manner that is reasonable, which they consider to be appropriate and which they are able to defend to Parliament. It follows that whatever amounts are determined will ipso facto be amounts that ministers consider to be appropriate. As amendments 50 and 51 would have no practical or legal effect, I suggest that they are not desirable additions to the bill. On that basis, the amendments should be rejected.

Amendment 50, by agreement, withdrawn.

Amendment 51 not moved.

The Convener: Amendment 52 is grouped with amendment 57.

Mr Adam Ingram (South of Scotland) (SNP): Members have suggested this morning that signals need to be sent to employees of the existing water authorities that the new authority will take employees' views and interests into account. Amendments 52 and 57 are concerned with protecting the rights of existing employees so that there is no ambiguity or doubt about where those employees stand.

Amendment 52 concerns the protection of pension rights. Although the minister has intimated that he will introduce regulations on pension rights, I would prefer to see the matter dealt with on the face of the bill. That would reinforce our appreciation of the sensitivity of the issue and, I hope, reassure employees that they will not find themselves in situations such as those that were experienced by staff who were transferred under the trunk roads maintenance contracts.

Amendment 57 is modelled somewhat on the staff transfer regime that was adopted during local government reorganisation. The amendment would flesh out section 23 in a manner that would ensure maximum levels of direct staff transfers, which would probably encompass staff functions. Amendment 57 would reduce to a minimum the possibility that the new authority would cherry-pick staff from the existing authorities. The amendment would help to ensure transparency in the transfer process.

I commend both amendments to the committee, and I move amendment 52.

Allan Wilson: I refer members to my colleague Ross Finnie's full and explicit letter, which set out the Executive's intentions on this matter. From the outset, the Executive has recognised that the staff of the existing authorities have a reasonable and legitimate interest in issues such as how staff will transfer from their current employers to Scottish Water and how their pension rights will transfer as a consequence of that. That is why section 23 provides explicitly for the Transfer of Undertakings (Protection of Employment) Regulations to apply to the transfer. It is also why we are keen to put on record—I refer members to Mr Finnie's letter—exactly how pension rights on transfer are to be dealt with.

Amendment 52 would make provision for pensions that we are already committed to delivering through the regulations that were referred to, which come into effect on 1 April. Those regulations will ensure that staff pension rights and entitlements will be transferred as though they were covered by TUPE. On that basis, I ask the committee to accept that amendment 52 is unnecessary and I ask the

committee to reject the amendment.

11:15

The order-making power that is contained in proposed subsection (1) of amendment 57 is also unnecessary. It is a duplication of a power that is already provided in section 24(3), which gives ministers all the powers that are necessary to effect transfers as part of the creation of Scottish Water. The requirement in proposed subsection (2) to draw up a staff transfer scheme is equally unnecessary. A scheme would be useful or sensible only where there was doubt as to the destination of some groups of staff.

I understand the rationale for such a scheme in the reference that Adam Ingram made to the previous process. I remember well the scheme that was provided for in the Local Government etc (Scotland) Act 1994, in relation to the creation of the current authorities. In our view, that was a manifestly more complex transfer than the current proposal, because staff from across 12 councils were being allocated to three different authorities. I hope that Adam Ingram will accept that the current arrangement is much simpler, because all three authorities in their entirety will become Scottish Water. In our view, a scheme such as the one that was introduced in 1994 is unnecessary in 2002. It is clear that all staff who are employed by the three water authorities will transfer to Scottish Water under the TUPE undertakings. In those circumstances, there would be no purpose in going to the trouble of preparing a scheme such as the one that was necessary to meet the different circumstances in 1994.

I hope that Adam Ingram will withdraw amendment 52 and decide not to move amendment 57, given the assurances that I have made today and those that have been made previously. If he does not do so, I ask the committee to reject the amendments.

Mr Ingram: I welcome the minister's intentions and the reassurances that he has given in respect of staff transfer. However, I believe that amendments 52 and 57 would strengthen the bill and give reassurance to employees of the current water authorities, who are going through a difficult process. I am subject to the unfortunate track record on pension rights, so I want to press the amendments.

The Convener: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ingram, Mr Adam (South of Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Scott, John (Ayr) (Con)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Muldoon, Bristow (Livingston) (Lab)

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

Amendment 52 disagreed to.

The Convener: Amendment 53 is in a group on its own.

Bruce Crawford: I hope that the purpose of amendment 53 is self-evident. That purpose is simply to ensure that the board of Scottish Water cannot meet or consider any pertinent business without the number of non-executive members who are present being greater than the number of executive members who are present. I cannot envisage any circumstances in which it would be appropriate for the board to meet when the executive members would hold the majority. The issue relates to some of our earlier discussions. It is a simple amendment that tries to achieve a simple aim, and I hope that it finds support.

I move amendment 53.

Allan Wilson: We see no merit in amendment 53, the main purpose of which appears to be to prevent the board of Scottish Water from meeting without a majority of non-executive members present. It is obviously more appropriate to ensure that there is a majority of non-executive members on the board, as we have discussed already—and we are going to do that—than to prevent the board of Scottish Water, at a future date and in unforeseen circumstances, from holding what would otherwise be a valid meeting. Such circumstances would normally be covered by the standing orders of the board.

Paragraph 8 of schedule 3 provides for Scottish Water to determine the arrangements for its meetings. Given the composition of the board, which we have discussed, it seems appropriate for us to leave it to the board's members to establish and agree those arrangements. However, should it be thought appropriate to restrict the board as Mr Crawford's amendment proposes, that could be achieved through the power to direct Scottish Water under section 49, similarly to the proposed corporate governance direction. I do not foresee the necessity of doing so; nevertheless, if that was what the committee wanted, that would be the way in which to do it.

I ask Mr Crawford to withdraw amendment 53 on the basis of that argument. If he will not do so, I urge the committee to oppose it.

Bruce Crawford: I understand the point that the minister is trying to make. However, directions come ultimately from ministers and they can

always change—what cannot change is what is in the bill. An important principle is at stake here: the non-executive people should always be in charge of the organisation. I foresee unforeseen circumstances—that sounds slightly Irish.

The Convener: You must be Mystic Meg.

Bruce Crawford: That is the first time that I have been called Mystic Meg. Thank you.

I foresee the possibility of circumstances in which conflict will arise between the executive and non-executive members of the board, concerning the way in which the company—to use the minister's word—is being run. For example, if some non-executive members were ill or absent, the executive board members could have control of a board meeting and their position would win. For the sake of democracy, in all circumstances the executive board members should not be in the position of winning—it should always be the non-executive members who are in that position, regardless of the directions that are given by ministers. For that reason, I will press amendment 53.

The Convener: The question is, that amendment 53 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ingram, Mr Adam (South of Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Scott, John (Ayr) (Con)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Muldoon, Bristow (Livingston) (Lab)

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

Amendment 53 disagreed to.

The Convener: Amendment 54 is grouped with amendments 33 and 34.

John Scott: The point of leaving out paragraph 10(b) of schedule 3 is that it is up to the board and the Government to ensure that the appointment of members is done correctly. Decisions about the company should not be taken by people who are incorrectly appointed. It is not in any way complicated: if people have been defectively or inappropriately appointed, they should not have a decision-making capability.

I move amendment 54.

Allan Wilson: In the context of speaking to amendments 33 and 34, it is helpful to deal with amendment 54. The amendments in the group are connected by their effect on the validity of Scottish

Water's actions where there has been either a defect in a board appointment or non-compliance by Scottish Water with a direction to which it is subject.

To allow Scottish Water to operate successfully, it is important that the third parties with whom it deals have confidence in those dealings, and that those third parties are not less secure than they would be if they dealt with a private company. That, principally, is why we ask John Scott to withdraw amendment 54. Obviously, a defect in an appointment would be a problem that would have to be rectified. However, such a defect, which may be due to a technicality and may have arisen in good faith, should not be allowed to call into question the validity of Scottish Water's other dealings, which is what amendment 54 proposes.

Amendments 33 and 34 in my name address that issue. It is important that Scottish Water has a clear remit to enter into contracts with third parties on the same legal basis as any private sector utility company. Amendments 33 and 34 do not in any way reduce Scottish Water's duty to comply with directions or any other duty under part 3 of the bill, or its accountability to ministers or the Parliament. It is a question of reassuring third parties that Scottish Water's actions in relation to them will not be invalid as a result of Scottish Water failing to comply with any duty under part 3 of the bill. That also means that neither Scottish Water nor a third party can use failure to comply with such a duty as a basis for backing out of a contract. For all those reasons, I ask members to support amendments 33 and 34, and ask John Scott to withdraw amendment 54.

The Convener: Do any other members wish to speak to this group of amendments? If not, I invite John Scott to wind up and to indicate whether he wishes to press amendment 54.

John Scott: I am happy to accept the minister's view on this matter, and to withdraw amendment 54.

Amendment 54, by agreement, withdrawn.

Amendment 55 moved—[John Scott].

The Convener: The question is, that amendment 55 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scott, John (Ayr) (Con)

AGAINST

Ingram, Mr Adam (South of Scotland) (SNP)

MacKay, Angus (Edinburgh South) (Lab)

McLeod, Fiona (West of Scotland) (SNP)

Macmillan, Maureen (Highlands and Islands) (Lab)

McNulty, Des (Clydebank and Milngavie) (Lab)

Muldoon, Bristow (Livingston) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 55 disagreed to.

The Convener: We will conclude today's consideration of the Water Industry (Scotland) Bill after we have dealt with amendment 56, in the name of Tavish Scott, and after I have put the questions on the schedule and sections.

11:30

Tavish Scott (Shetland) (LD): I apologise to colleagues for keeping them all here. I hope that you have not kept going just because I have been sitting here. It is nice to be back in the Transport and the Environment Committee, although Des McNulty and Robin Harper are the only members present today who were here the last time that I attended this august gathering.

The purpose of amendment 56 is to make the case for devolved and effective local management, particularly of engineering services, on the basis that it would save Scottish Water money. Management that is close to its customers understands local needs and can react more quickly and efficiently to problems that emerge in the delivery of water and waste water services.

The case for devolved engineering management in my constituency of Shetland is perhaps one of the more extreme cases, but I suggest that the principle could be applied elsewhere in Scotland. An engineer in Shetland, who is aware of local construction costs, local conditions and the existing water schemes, is far better placed to run the system efficiently and to design cost-effective extensions than an engineer working in Edinburgh or elsewhere would be. A key feature of successful engineering and construction management is continuity through design and construction. If a problem arises on a Shetland site, a Lerwick-based design engineer can be on site to deal with the problem within a few hours, whereas if the functions were centralised elsewhere, there would be delays before the appropriate staff arrived from outside the island and considerable extra cost thereafter. Devolved engineering management can save money and therefore can help the bill to deliver its goals.

It is regrettable that many large bodies tend to suck power into the centre as part of the clear tendency to create empires. That characteristic needs to be opposed. Amendment 56 would in no way guarantee the continued devolved management of water, but it would set a presumption that that should be provided unless it can be clearly demonstrated that centralisation saves money. The checks that the amendment proposes are clear, in that the commissioner would play an integral part in an assessment of an

indication by Scottish Water that it wished to close a local office and centralise those functions in another place. That would provide a clear check on the costs of that exercise. In so doing, the commissioner would have regard to the appropriate water customer consultation panel and to trade unions representing staff in relation to the proposed transfer of staff in that area. Again, that is an important check in ensuring that staff concerns are taken into account.

The local feedback that I have had has been that, in terms of the current operations, local staff have not been kept up to date with the process of change in their industry. The amendment seeks to improve those circumstances.

I move amendment 56.

Robin Harper: I spent a day at NOSWA's Watten plant, and learned from that visit that involving local communities ensures excellent provision and that the best way of involving communities is to have a high degree of local management. That is why I strongly support amendment 56. Particularly in outlying areas, it is important to ensure the close involvement of community councils, schools and so on in the provision of water services. It is very important for people to feel, where possible, that they have ownership of the provision of those services.

Maureen Macmillan: I have a great deal of sympathy for Tavish Scott's amendment, because I, too, have an interest in preserving services in remote rural areas. If, as Tavish says, it is more efficient for services to be delivered at a local level, I am sure that Scottish Water will recognise that, without its needing to be specified in the bill. Scottish Water and the water industry commissioner, whose role is to examine the efficiency of the service, will not centralise services if that would be inefficient.

I have concerns about the terms of the amendment. Although at first reading it seems to be good for remote rural areas, it may have the effect of disempowering Scottish Water completely and making it extremely inefficient. If things need to be done speedily to get Scottish Water up and running, the consultation process proposed in the amendment will not help that. The amendment might also have undesirable effects in other areas of Scotland.

I will not support amendment 56, although I sympathise with the intention behind it.

Bruce Crawford: Maureen Macmillan spoke about what Scottish Water might or might not do. That will depend on the direction and guidance that it is given in future by ministers and members of the board. We cannot crystal-ball-gaze about what Scottish Water may do.

At the moment, local offices are being closed by a Government department. Offices of the Scottish Executive environment and rural affairs department are being closed in places such as Stirling, for which Sylvia Jackson is the constituency member. Many arguments are being made to the department about efficiency and effectiveness and the need to keep the service in the Stirling area, but it has ignored those and is pressing on with the closure of the Stirling office. The fact that an organisation happens to be in the public sector does not mean that it will necessarily act in the best way to secure an effective and efficient service and to serve local customers and communities.

I refer Maureen Macmillan to section 25(3)(a) of the bill, which allows Scottish Water to set up private companies to run organisations and deliver services. We will deal with that matter at our next meeting. Services delivered by a private company could include planning, as Tavish Scott mentioned. We already have experience of difficulties with Amey and BEAR Scotland Ltd and have seen the closure of local depots. Tavish Scott's amendment 56 would give local offices considerable security and provide for closure only where it can be proved that that is effective and efficient. It would act as a brake on any private company delivering the services in future and would prevent it from closing local offices. I think that the amendment is a damned good idea.

Dr Sylvia Jackson (Stirling) (Lab): As my name has been mentioned, I should say something. In the light of the closure of the SEERAD offices, which has caused great concern, I support what lies behind Tavish Scott's amendment. If there is a move to centralise services, we must first consider carefully what local offices are doing. I take on board what Maureen Macmillan said about the need to set up Scottish Water as speedily as possible, but I am concerned that there should be consultation about the process. Another issue in my constituency, involving Loch Katrine and West of Scotland Water, has made me very aware of the need for adequate consultation and the difficulties caused by a lack of consultation. As was mentioned earlier, consultation is closely linked to the objectives of Scottish Water. We will deal with that matter next week in further amendments.

The Convener: I invite the minister to speak to amendment 56.

Allan Wilson: Without going into the objectives of Scottish Water, which are a matter for another day.

The Convener: That issue will be dealt with next week.

Allan Wilson: I agree with much of what Tavish

Scott said. The problem is that Tavish Scott was not, in large part, directing his comments to the substance of amendment 56, but to a process that he thought would be valid in protecting the interests of the consumer and the rural service. Ministers would support that aim. However, I would counter that if that process is the most effective method of delivering the service, management ought to deploy it in the interests of cost-effectiveness and efficiency, as well as the rural interest.

My colleague Ross Finnie is on record about the centralisation of service. He said that we desired a small headquarters and the dispersal of the remainder of staff and employees to provide the service as close as possible to the communities that receive it. That argument is as valid in an urban environment as it is in a rural environment.

The problem with amendment 56 is that it is seriously flawed. It cuts right across the hitherto agreed approach of creating a commercially effective water authority that is responsive to the customers' needs, as they have been defined. It would require Scottish Water to obtain the commissioner's consent for what I would describe as normal organisational change. That would involve unnecessary delay and uncertainty in the running of Scottish Water. Most problematic, it would give the commissioner a role that is inconsistent with his other regulatory functions. Day-to-day business involvement in the affairs of Scottish Water would make it difficult for him to maintain the detachment necessary to take an overview of Scottish Water performance—it would unnecessarily prejudice his existing functions.

It is also unrealistic to require Scottish Water to clear with the commissioner any change that it might consider necessary to the organisational structure that it inherits. We have talked about the delivery of service as close as possible to the communities that receive it. However, such a lengthy process would tie up the management and the commissioner, diverting resources, time and effort from the real purpose of the business, which—as I am sure that Mr Scott would subscribe—is the delivery of improved services at costs that customers can afford.

It is incumbent on us all not to hamper unnecessarily that process. Although I accept that Mr Scott refers to the necessary process of consultation that inevitably follows change, we must not prevent Scottish Water from being able to manage change as effectively as possible in the interest of the consumer in the long run. Whether the customer is a rural, an urban or a semi-rural dweller, the point of the exercise is to provide the most effective customer delivery service, which should be as close as possible to the community that it serves.

With those assurances, I ask Tavish Scott to withdraw amendment 56. Alternatively, I ask the committee to reject the amendment, which does not address some of the concerns that Mr Scott expressed.

Tavish Scott: I take the minister's point about unnecessarily hampering effective management. Certainly, I might have got the working practice wrong and I would be happy to examine that again. If the argument of the minister—which I think is also Maureen Macmillan's argument—is that it will follow that Scottish Water will look for the most effective mechanism, which is the local delivery of services, there should be nothing to fear from amendment 56. I accept that there might be drafting errors—there probably are—but I do not understand what is wrong with the principle of my argument and therefore of the amendment.

I sought to make the important point that Robin Harper made about the effectiveness of local communities and the importance of a degree of ownership of what is going on locally.

There is a presumption, or an inference, behind Maureen Macmillan's approach, which suggests—as the minister did—that Scottish Water would lose the freedom to close offices or make changes. We would then get into exactly the difficulties that Sylvia Jackson described. That is why I tried to write into amendment 56 a point about consultation and the need effectively to ensure that that connection is in place.

11:45

My other point concerns the commissioner. As I understand the terms in which the office and remit of the commissioner have been described, there is a clear role for the commissioner in the cost of the service and, by definition, the cost to customers—you and me and the businesses that the new company will serve. I cannot really see why the commissioner should not play a role in that element of the new organisation. I do not believe that there is any need to fear anything from amendment 56, or to make presumptions about the most effective way to deliver services. The amendment would do no harm. It may be wrong, and I would be happy to reconsider it, but I do not think that it would harm the bill.

The Convener: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Harper, Robin (Lothians) (Green)

Ingram, Mr Adam (South of Scotland) (SNP)

McLeod, Fiona (West of Scotland) (SNP)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Muldoon, Bristow (Livingston) (Lab)

ABSTENTIONS

Scott, John (Ayr) (Con)

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

Amendment 56 disagreed to.

Schedule 3, as amended, agreed to.

Sections 21 and 22 agreed to.

Section 23—Transfer of Staff

Amendment 57 moved—[Mr Adam Ingram].

The Convener: The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harper, Robin (Lothians) (Green)
 Ingram, Mr Adam (South of Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Scott, John (Ayr) (Con)

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

Amendment 57 disagreed to.

Sections 23 and 24 agreed to.

The Convener: The rest of the amendments on today's marshalled list will be carried forward to next week's meeting. Tomorrow's business bulletin will include a further target for the progress that we expect to make at the next meeting.

I thank members for participating in today's meeting. I apologise to Sylvia Jackson for our not managing to reach the part of the bill that she wanted to address. I also thank the minister and his team for their contribution to today's proceedings.

I propose that we adjourn for five minutes before we deal with the aquaculture inquiry. I ask members to return promptly so that we can continue as soon as possible.

11:48

Meeting adjourned.

11:56

On resuming—

Aquaculture Inquiry

The Convener: Agenda item 4 is our continuing aquaculture inquiry. I am pleased to welcome the Deputy Minister for Environment and Rural Development, Allan Wilson, whom some may remember from earlier this morning—I am glad that he is here for our evidence taking. With him are Gillian Moynihan, Jinny Hutchison and Michael Kellet from the Scottish Executive, whom I also welcome. Before I give members the opportunity to put questions to the minister, I ask him whether he wishes to give a general introduction or whether he would like us to proceed straight to questions.

Allan Wilson: If you do not mind, convener, I will give a brief introduction. I am glad to have the opportunity to discuss how we develop—jointly, I hope—the conclusions of the review of the regulations that govern aquaculture in Scotland. I apologise for being unable to appear at the meeting that was initially scheduled.

As members know, to assist the discussions, I set out my proposals fully in my letter of 5 December. At that time, some play was made of the fact that I did not refer to the proposals at a commitment that I inherited from my predecessor to speak to the industry. It was also said that I should afford the Parliament the opportunity to ask what was going on. I am here today to do that. I did not elaborate on the regulations last month because I expected to speak to the committee. In case it is inferred that I intended to slight anyone or to abuse procedures when I made that speech, I say that, on that day, the details of the proposals were sent to the committee and published on the web and in a news release. There was no secret about them. There has been wide-ranging consultation on them since the beginning of last year.

One thing that I have learned in the few weeks since I took up ministerial responsibility for the environment again is that a copious amount of work has been done by the committee and by officials from the Executive's freshwater fisheries and environmental protection units to get to this stage of the consultation exercise. The committee was involved in that through its work on the consultation paper.

12:00

I understand that there is significant support for what I propose. It is our objective to ensure that our proposals allow the industry to develop on a sustainable basis. We will try to achieve

consensus wherever we can in the interests of the parties who are involved in the process. I hope that that will reassure those critics who want the focus of the regulations to be sharpened.

I thank the committee for giving me the opportunity to put the proposals in context. Gillian Moynihan, Jinny Hutchison and Michael Kellet, who have been much more intricately involved in getting us to where we are, are here to assist. My job is to take my predecessor's task on to the next stage, in consultation with—and I hope in the same general direction as—the committee.

The Convener: Thank you, minister, for those introductory remarks. I reassure you that the committee is sympathetic about the reasons for the initial cancellation. I am sure that everyone recognises the difficult personal circumstances that caused that.

I want now to initiate the questions. We will undertake questioning about a series of areas in aquaculture. I invite Robin Harper to ask the first series of questions.

Robin Harper: First, I apologise to the minister for the fact that I will have to leave immediately after I ask my questions. I have a commitment as convener of the cross-party group on consumer issues that unfortunately I was unable to devolve to anyone else.

We are pleased that your announcement recognises the importance of assessing the environmental carrying capacity of Scottish coastal waters. Can you give us a clear indication of the work that you believe still needs to be undertaken to assess carrying capacity?

Allan Wilson: I cannot yet do so. The work will have to be scoped effectively. The officials in the freshwater fisheries unit have applied jointly to the Crown Estate commissioner for research funding, which would enable an exercise to be conducted in the year ahead to tell us how that work on assessing carrying capacity might be developed. We would expect announcements about that throughout the next year. That is the best that I can offer about the current state of play.

Robin Harper: Thank you. That is still helpful in that it clarifies the position. We know where we are.

How will you ensure that wider aspects of carrying capacity, such as landscape and natural heritage considerations, are taken into account when the potential expansion of the industry is considered?

Allan Wilson: That is important. All aspects of the carrying capacity, and not just those to which you referred, should be taken into account to build the consensus that I mentioned. However, I am sure that stakeholders such as Scottish Natural

Heritage, VisitScotland and others with an interest will want to make comments on those issues—we will encourage them to do so—during the consultation on developing the strategy for aquaculture. I envisage those bodies and other interested parties making such comments.

Robin Harper: We can presume that assessments of carrying capacity will include assessments of sea lice.

Allan Wilson: Yes.

Maureen Macmillan: I have a couple of questions about sea lice. I refer the minister to what he wrote about sea lice control in his letter to Nora Radcliffe. In that letter, minister, you refer to the scope of the proposed water environment and water services bill. You say that

“it is clear that direct control of sea lice would be outwith its scope”.

Not everyone agrees that that is the case. It has been pointed out to me that the main focus of the bill is the control of anthropogenic impacts. However, if sea lice are at plague proportions, is that not anthropogenic? Could you not use the bill to legislate in that area? The issue is which legislative vehicles you intend to use to tackle the problem. You say that there is no legislative vehicle that we could use in relation to area management agreements and sea lice control but that you propose to take advantage of the limited opportunity provided by the water environment and water services bill. Could you clarify your proposals?

Allan Wilson: It would be best to pass over to Mike Kellet, who has been working on those aspects of the proposed bill. Perhaps he will be able to bring members up to date on our thinking and will be able to address the specific point about sea lice.

Michael Kellet (Scottish Executive Environment and Rural Affairs Department): My responsibility in the environment protection unit is for the water environment and water services bill. I will be leading the team that will take the bill through the Parliament, although I do not have responsibility for everything that the bill will cover.

Our problem with sea lice is that, because they are a naturally occurring parasite, their environmental impact is not simply controlled—we do not think that we can easily control them and the Scottish Environment Protection Agency is of the same view. That is because the way in which to deal most effectively with sea lice is to treat them with chemical therapeutants. Those therapeutants are, to a significant extent, dangerous chemicals, which are regulated under some fairly stringent pieces of European legislation. Until now, SEPA's focus has been to

regulate the effect of those chemicals on the wider environment, obviously while taking into account their impact on sea lice.

We do not think that it would be appropriate for SEPA to be designated under the water environment and water services bill as the body to regulate problems with sea lice. That would involve a conflict of interests, given its duty to regulate the amount of those potentially dangerous chemical therapeutants to be introduced into the environment. That presents a difficulty.

My colleagues may have something more to say on this, but the sea lice problem has been considered as a fish health issue. The Executive's perspective is that sea lice may more appropriately be dealt with under fish health legislation and that the water environment and water services bill does not offer the most appropriate means specifically to control sea lice. The bill will, however, improve the effectiveness of the regulation of the aquaculture industry from an environmental perspective. That will—we hope and are fairly sure—have a positive impact on the prevalence of sea lice. However, we do not think that regulation of sea lice per se is appropriate for inclusion in the water environment and water services bill.

Allan Wilson: The bill is still being drafted and will be subject to consultation and to the committee's consideration. A number of ideas are being considered, including the power to apply general, binding rules to aquaculture consents, which will enforce good environmental practice, and a discretionary power to allow SEPA to grant consents for the use of chemical therapeutants for a whole loch, rather than for a single discharge, where the environmental and operational circumstances permit. The general thrust of the legislation that we are working up is to extend good management practice. The bill will, in turn, address some of the problems associated with sea lice.

Robin Harper: There has been considerable discussion about the possibility of a moratorium on the issuing of new consents for salmon farming. Other witnesses have suggested that, until carrying capacity can be established, there should be a moratorium, although they believed that that should not prevent relocation of farms for sound environmental reasons. The evidence that we have received so far suggests that the argument has moved from the question of whether there should be a moratorium to that of whether there should be local moratoriums or one general moratorium. What is your view on that, minister?

Allan Wilson: I agree that a moratorium would freeze current problems. However I would like to explore the idea of relocation with the industry, the

regulators and all the other stakeholders in the tripartite working group. As part of the development of the strategy to which I referred, I would also like to explore the idea of relocation with members of the Transport and the Environment Committee.

Robin Harper: You have not yet said whether you are considering moratoriums—or, to be picky, moratoria. SEPA expressed a view that it would like guidance on whether to impose local moratoria.

Allan Wilson: I hope that Robin Harper appreciates from what I am saying that I agree that a moratorium would freeze current problems. However, in so far as all new farm proposals are subject to environmental impact assessments, appropriate safeguards are in place to protect the environment. Processes that have a disproportionate impact on the environment should not proceed. The direct response to Robin Harper's question is that I accept the point that, in certain locations, a moratorium freezes problems.

Robin Harper: Is that as far as I am going to get, minister?

Allan Wilson: The process is developing and the question of a moratorium is something to which we wish to return.

John Scott: In an attempt to press the minister further on the point, may I ask how the Executive intends to deal with relocation of fish farms that are known to be in inappropriate locations? How does the minister intend to encourage the industry to be proactive about that?

Allan Wilson: It is clear that it is in the industry's interest to site farms where they can best function. I understand that Scottish Quality Salmon has indicated a willingness to consider the issue. We encourage all industry groups to do likewise. I am sure that John Scott appreciates that relocation is a major undertaking for the affected company. It requires the full co-operation of the regulatory bodies and possibly of public sector investment.

Jinny Hutchison (Scottish Executive Environment and Rural Affairs Department): The minister has summed up the situation accurately. Relocation is something that we are beginning to think about. We know that countries, including Norway, are taking preliminary decisions about the relocation of fish farms. As yet, we have not considered the matter in detail.

In the coming years, as part of the minister's work to develop a strategic framework for aquaculture, the whole business of the location of fish farms needs to be reviewed. One of the mechanisms that will assist us, as it will take place in parallel with the development of the strategic framework, is the review of the locational

guidelines. The guidelines have been in existence for a couple of years and we expect, quite shortly, to embark on consultation on their content. People will be able to tell us whether they are limited, deficient or defective. In principle, the industry would be up for relocation, as would the regulators, but we should not minimise the scale of the undertaking—it is huge and would require a huge injection of money.

John Scott: I think that you should not underestimate the scale of the problem for the wild salmon fisheries. Relocation may not be something we can take our time over and come to a decision about in three or five years. Some of the rivers are going out of existence as we speak. Unless the problems are addressed as a matter of urgency, the Executive must shoulder the responsibility for the cost of relocation.

Jinny Hutchison: You are absolutely right about that. I mean no disrespect to our predecessors, but the decisions that were taken—let us not say cavalierly—20 or 30 years ago are probably not the decisions that we would take today. We know that. We are not suggesting that we will drag our heels. The minister is well seized of the problem and we are aware that we have to get on with it. However, even if we were to decide today to let relocation be our policy, it would take time and money because of the scale of the problem. Your point is well made and well taken.

12:15

Robin Harper: John Scott mentioned the effects on wild salmon. Has the minister received representations recently on the effects of netting on wild salmon?

Jinny Hutchison: The current deputy minister has not received representations; his predecessor did. I see that there was another great flurry in the press over the Christmas and new year period because the Irish are being pulled into Orri Vigfusson's grasp—I was going to say "net", but that would have been unfortunate. There were pointed remarks, saying that the situation would leave Scotland as the one country that has not banned drift-net fishing. The item in the press did not, of course, say that the legal situation in Scotland is entirely different. On the back of the Irish initiative, I would expect the minister to receive renewed appeals from the North Atlantic Salmon Fund to reconsider the situation. We are aware of the difficulties.

Allan Wilson: I want to respond in general terms to Robin Harper's question. As I was poring over the detail of the matter at 3 o'clock this morning, I was acutely conscious of the fact that I am yet to receive all sorts of representations from various parties about many aspects of it. I intend

to consult the interested parties. The door will be open to those who want to make representations to me on how we proceed.

Jinny Hutchison: As a footnote to that, our colleagues in England have been faced with a particular embarrassment. Having agreed to outlaw drift-net fishing and buy out the drift-net fisherman, they invited proposals. The proposals have come flooding in, to the tune of many millions more than the Department of Environment, Food and Rural Affairs thought it would have to spend. That is a precedent that we do not want to follow in Scotland, even if the legal situation were parallel, which it is not.

John Scott: I note Jinny Hutchison's comments with regard to spending money to address the problem. Nonetheless, I welcome the fact that the Executive has said that it is prepared to address the problems of the salmon rivers, which are facing extinction at the moment, as a matter of urgency—albeit that the Executive has financial constraints.

Is it perhaps necessary to take a more holistic approach to the monitoring and control of coastal enrichment, instead of treating aquaculture in isolation? Have you any ideas on how best that might be achieved?

Michael Kellet: The basic answer to the question is that an holistic approach is necessary. We are adopting that approach in Scotland, mainly by playing a full part in helping to deliver the UK's commitments under the Convention for the Protection of the Marine Environment of the North-East Atlantic—the OSPAR convention. The terms of the convention require us to undertake assessments of coastal water quality, taking into account all nutrient sources, not just aquaculture. Our reporting to the OSPAR commission on that will be concluded later this year. I think that we are due to report by the end of the summer.

As part of the assessment, we have commissioned modelling work that will consider how to improve our standing across the range of contributions to nutrient enrichment and other impacts on the marine environment. The report, when submitted to the OSPAR commission, will be made public.

John Scott: What changes do you anticipate making to the regulation of aquaculture in the water environment and water services bill?

Allan Wilson: We pre-empted that question a wee bit with Michael Kellet's response to Robin Harper's question. We are trying to ensure that SEPA, by enforcing good management practices such as the measures to which I referred—for example, compulsory co-ordinated fallowing—will, rather than being concerned solely with the quality of water in the cages, extend its interest from

discharge consent to process consent. Is that a fair comment?

Michael Kellet: It is. The idea of giving SEPA more flexibility in its regulatory powers is general and will apply to all impacts in the marine environment and inland fresh waters. We think that that will have particular value in the regulation of aquaculture by changing the focus of regulation. At the moment, that focus, which is on discharge, is quite artificial because of the terms of the Control of Pollution Act 1974. The bill will change that, to adopt a more appropriate focus on the process, which will allow more holistic control of the environmental impact. We think that the impact will be positive.

Maureen Macmillan: I will address the transfer of planning powers to local authorities. Will the minister outline briefly what benefits he thinks will flow from the proposed transfer of planning powers to local authorities? Will the transfer be included in the water environment and water services bill?

Allan Wilson: I accept that we were given notice that the committee wanted to discuss planning but, as members are aware, responsibility for planning lies outwith my sphere of responsibility. It lies with my colleague Iain Gray. I will try, without going into detail and in more general terms than members might wish, to answer some of the questions. Iain Gray will make himself available to answer in detail any points on planning that I do not cover.

As I understand the situation, planning controls will provide a statutory framework for taking decisions about where fish farms should be located. Decisions will consequently be taken closer to the communities that are affected by the developments and in a more open and transparent way than has hitherto been the case. Planning controls would not seek to duplicate existing controls that deal with pollution, disease or navigation. The impact on the landscape or the effects on other users, such as those that have been referred to, would obviously be considered as part of the process.

Maureen Macmillan: So planning powers will not be in the bill. Will they be in separate regulations?

Allan Wilson: The bill may not be appropriate for that. To add planning controls to the bill would add considerably to its size and would potentially increase its scope.

Michael Kellet: The focus of planning controls is different from that of pollution controls. The focus of planning controls is on amenity and other issues rather than exclusively on environmental impact. That is why we think that there would be problems with scope were planning controls to be

included in the bill.

We are concerned that the substantial nature of the changes to the planning regime would significantly add to the time scale and delay the delivery of the water environment and water services bill. Obviously, we are required by Europe to have the bill in place by a certain time to fully transpose the water framework directive.

Allan Wilson: I passed that issue to Michael Kellet because he is dealing with the water environment and water services bill. We think that the best place for the proposed planning controls that we envisage would be in a planning bill.

The Convener: We recognise that there has been a change in ministerial portfolios recently and that planning is dealt with by another minister. It might be useful for us to write to the Minister for Social Justice, Iain Gray, to ask him our planning questions. Iain Gray could then respond formally. I will allow members to ask general questions about planning but, if the minister feels that it would be inappropriate for him to comment on specific issues, we will deal with them in correspondence with Iain Gray.

Allan Wilson: I am happy with that. I was talking to Iain Gray about the subject last night and am aware that the situation is a work in progress. Nothing is hard and fast.

Maureen Macmillan: Do you envisage that once the planning regime is in place—whatever it might be—it will be retrospective? How would existing fish farms be brought within the framework? I do not know whether you can answer that. We might have to write to Iain Gray or have him come before the committee.

Allan Wilson: Our understanding is that the arrangements would be retrospective. I suggest that you clarify the situation with Iain Gray, but I can say that any controls would require primary legislation.

Maureen Macmillan: I will not pursue the matter any further.

Des McNulty: Obviously, the minister will liaise with Iain Gray on how the implementation of a planning regime would affect his responsibilities. Does he have any views on how to achieve the appropriate balance between national guidance and local issues?

Allan Wilson: In planning terms?

Des McNulty: I mean more in relation to coastal zone management in general. I know that you have spoken to national bodies and local people, so you might be able to suggest ways in which we can balance local concerns with the national framework.

Allan Wilson: I do not think that it is possible at

this stage to confirm how proposed planning controls would relate to integrated coastal zone management. It is important that the proposed controls form an element of the sustainable management of our coastline.

Des McNulty: Your department is doing a lot of research into local requirements and local situations in parts of Scotland. Will you be able to feed that into your consideration of how to deal with coastal zone management? Might information about local requirements help you to blend local concerns with the national framework?

Allan Wilson: The answer is yes.

Des McNulty: Okay.

The Convener: We will pursue most of the planning issues through correspondence with Iain Gray. We will send a letter as soon as possible, to inform the continuing inquiry.

Fiona McLeod: The way in which the question-and-answer session on planning has progressed and the fact that planning has moved from the minister's department to another is interesting. Will that affect the ability to deliver the aquaculture strategy?

Allan Wilson: That question is fair. Planning did not move to its new department from my department. It moved from elsewhere. I intend to work closely with planning officials and ministers to ensure that the change in responsibilities does not affect our plans for coastal zone management or other matters on which we intend to legislate. We hope that planning will complement what we seek to do. I have appreciated that even in the short time in which I have done my job.

12:30

Fiona McLeod: I have been struck by the legislative timetable, which places the water environment and water services bill later this year. That may raise planning issues, but there is no prospect of a planning bill in this session of Parliament.

Allan Wilson: That is one problem that we are discussing with the planning minister. The committee might want to raise that among the questions that it asks him. I acknowledge the problem.

The Convener: We will ask the Minister for Social Justice what time scales he envisages for progress.

Allan Wilson: Action can be taken without primary legislation. We do not have to await legislation in every instance.

The Convener: We will move on to area management agreements.

John Scott: We have heard evidence on the pluses and minuses of area management agreements. What have they and the tripartite working group achieved since they were established? Scottish Environment LINK has suggested that AMAs should be replaced by regional management groups that have a wider membership and can discuss wider environmental issues. Do you agree? If not, do you think that AMAs should be encouraged to be more transparent and to adopt a wider role?

Jinny Hutchison: That is quite a package of questions. What are the benefits of AMAs? Put simply, they represent a process of dialogue, which did not previously include the different interests that operate locally. That sounds like an obvious and small thing, but my colleagues who work with an industry representative and with the secretary to the Association of Salmon Fishery Boards have gone hither and thither across the country and have brought people together in dialogue, to create a better understanding of one another's difficulties and points of view. That is the great advantage of the AMA process.

John Scott asked whether AMAs should be replaced by regional management groups with a wider membership. AMAs involve those who deal with the issues at the sharp end. I presume that all kinds of local fora could operate, but AMAs mean that the people with a direct interest in fish farming and its impacts are in dialogue. That is not to say that AMAs should replace other arrangements, but we are quite strongly wedded to the idea of AMAs. Even if Scottish Environment LINK's proposal was followed through, we envisage that it would happen separately and would not replace the AMA process.

John Scott: What can be done to improve the transparency of the AMA process?

Jinny Hutchison: That is a good point. One needs to understand that the background out of which the AMAs are developing has been characterised by lack of trust, mutual suspicion and little desire to share information. That cannot be overturned suddenly so that people not only talk to each other but share commercial titbits of information, hold public meetings and so on.

We will work to encourage the AMA process to develop. We hope to prevail upon the different participants to become more open and transparent in their dealings. However, we are talking about a process; the AMAs did not exist a year or two ago. We will get there and there will be greater openness because it is in everybody's interests to be open.

Allan Wilson: I think that John Scott is making the point that more could be done—I agree. We have recently agreed to appoint a full-time national

development officer whose job will be, among other things, to make progress on that issue. As we made clear in the letter, we are interested in making AMAs more open and transparent.

Maureen Macmillan: Will the new transparency also apply to the Executive? I ask because commercial interests are not the only ones that are accused of not being transparent. I have heard stories about the Fisheries Research Service in Aberdeen asking river proprietors to electrofish monitor for infectious salmon anaemia when the FRS was actually looking for infectious pancreatic necrosis. If the minister wants details, I can perhaps talk to him later. There is a perception that SEERAD is not always as transparent as it should be about fish diseases other than sea lice.

The Convener: That is a controversial proposition for the minister.

Allan Wilson: The very idea that a Government department should be anything other than open and transparent! It is certainly not in ministers' interests that the Executive should be secretive nor, I hasten to add, is that our intention. Perhaps Jinny Hutchison will respond to Maureen Macmillan's point.

Jinny Hutchison: I do not have a background in the matter that Maureen Macmillan raised, but if she will give us chapter and verse, we will follow through on that. What she said goes to the heart of something that I was thinking about and discussing with colleagues while we were waiting to meet the committee. I cannot speak for the Executive but, in my tiny corner of the empire, we have no interest in being anything other than transparent. Maureen Macmillan will know that because, as one of the committee's reporters, she can sit down with us at any time to discuss matters.

There is no point in our trying to improve the situation while seeking to keep information from members. As I see it, the Parliament and the Executive are in this together—we are trying to effect improvements, although we might approach that from different perspectives. If at any stage any member of the committee or any member of the Parliament found that his or her attempts to get information were blocked, thwarted or frustrated, I would want to know because—believe me—we have no interest in doing that.

There are various ways in which Parliament can get information, such as parliamentary questions. That is fine, but it depends on what members are trying to achieve. Meetings like this are fine, but why not cut to the chase? Why not just pick up the phone and say, "Look, there's a whole bunch of stuff we'd like to discuss. Will you come and talk to us about it?" That need not be done formally. I promise the committee that there is no desire on

our part to be anything other than transparent. We need all the good ideas that we can get to progress matters.

Maureen Macmillan: I appreciate what you say.

The Convener: That is a clear assurance that there are no Sir Humphreys in the Scottish Executive.

Maureen Macmillan: Angus MacKay has just whispered in my ear something about dialogue not always equalling transparency, but I do not want to be facetious.

Allan Wilson: Angus MacKay put it more eloquently than I could, it must be said, but there is no ministerial interest in being anything other than transparent.

Maureen Macmillan: I am not talking about transparency between the committee and the Executive. I am talking about what happens down the line in river management, when arms of the Executive are not always up-front about what is happening.

Allan Wilson: I am trying to say that, if one wants to build consensus, that is not the way to go about it. It is not our intention to be anything other than transparent, up the line and down it.

The Convener: Let us get back on track. Maureen Macmillan might want to supply the information about areas of concern.

Maureen Macmillan: I certainly shall.

John Scott: How is it possible to ensure that the industry complies with its codes of practice, such as those that have been set up by Scottish Quality Salmon? What carrots and sticks should be used to encourage compliance throughout the industry? Previous witnesses have suggested that the codes could—perhaps should—be underpinned by regulation. What are your views?

Allan Wilson: From our perspective, it is clearly in the industry's best interests to adhere to its own codes of practice and to establish consumer confidence in its products. Retailers obviously look for compliance for their own purposes. The industry must police its own codes rigorously, but if voluntary agreements prove not to work we could legislate, although we are not currently persuaded so to do. In any event, there is no space in the parliamentary timetable to enable us to do that, as Fiona McLeod said.

John Scott: So you are essentially proposing to encourage the development of voluntary codes with, as it were, the threat that, if that is not done voluntarily, you will legislate to ensure that it is done.

Allan Wilson: I would not say "threat". We are saying that if voluntary codes of practice proved to

be ineffective—which is not in the industry's interests—for whatever reason, we would legislate.

John Scott: Previous witnesses have suggested that, instead of a discharge consent, the Scottish Environment Protection Agency should apply an environmental consent, which would include conditions on site management and husbandry best practice. What are your views on those proposals?

Michael Kellet: The water environment and water services bill will give SEPA the power to examine matters in the round, rather than focus on discharges. I am not saying that SEPA would be able to examine all that John Scott mentioned, but we anticipate that, under the new system, it would be able to examine in the round some fish farming processes. We want SEPA to promote good practice in fish farming, rather than concentrate on the end product. It is difficult to get a grip on the end product of cage fish farming in terms of discharges to the environment.

Excuse me for using an acronym, but we want fish farmers to use BATNEEC, an environmental term that stands for best available technology not entailing excessive cost. We want SEPA to be able to promote BATNEEC in the aquaculture industry. The term already has a place in environmental licensing, in integrated pollution prevention and control and in other areas. We hope that we can help to promote it in the aquaculture industry and—more broadly—in regulation of the water environment.

Allan Wilson: BATNEEC is one of the many acronyms that we have had to become familiar with. It is consistent to adopt the same approach to aquaculture as is adopted throughout the environmental agenda. That is a basic point.

Angus MacKay: I am stunned by BATNEEC. I must write down that acronym.

I have three questions. The first relates to the attempt to encourage the industry to move sites further offshore in order to avoid more sensitive inshore locations and to try to balance that with the potentially high risk of escapes of fish due to rough weather and different wave and weather conditions in more exposed sites. What approach could be taken to reduce or eliminate escapees? In saying that I see an irresistible image of Steve McQueen on a motorbike.

The Convener: We all know what you were doing on Christmas day.

Angus MacKay: Indeed.

How can the high risk of escapes be minimised in the exploitation of offshore sites?

12:45

Allan Wilson: I am informed that containment technology is improving all the time, but that the industry will not move offshore until it can satisfy itself and the regulators on the matter of escapees. I understand that it is critical for the industry's insurers to know that the technology is right. The industry is engaged in a process that is technologically driven and in which the industry's insurers have a pivotal role to play.

Angus MacKay: Where do you see the crossover between the role of industry in trying to exploit, encourage, support and cheapen new technology and its availability, and the role of Government in trying to promote and engage with the industry?

Allan Wilson: We are engaged in developing environmental considerations in what is an embryonic industry. The Government and the regulators would engage at two levels in that process.

Angus MacKay: That touches on the point that was made earlier about openness and transparency and how that is engaged in by you, by officials, by the committee and by those further downstream. I am happy to leave that point and to move on to my next question.

The Convener: John Scott wants to come in.

John Scott: On a point of clarification, is it your policy to drive the industry offshore as soon as the escapee problem can be dealt with and the insurance problems sorted out?

Allan Wilson: We will develop those issues as part of the strategic framework for the industry to which I referred earlier. That is not a yes or a no—it is a maybe.

John Scott: I thought that the point of asking a question was to get an answer.

Angus MacKay: Maureen Macmillan is pouring more "The Great Escape" analogies into my ear—vaulting salmon and such stuff, which is not helpful.

We have seen in writing and heard evidence about the need to examine the regulation of sea lice to try to ensure that the regulation of medicines and the treatment of lice are joined together more. We have also heard the view that regulators should seek to set maximum lice burdens. Do you agree with those views?

Allan Wilson: Michael Kellet may wish to correct me, but I understand that Norway sets maximum lice burdens, although there is an issue about the amount of medicine that can be used. As Angus MacKay will be aware, Norway is not bound by the European Union directive that restricts the use of hazardous substances. As

good members of the European Union, we are bound by that directive. Does that answer the question?

Angus MacKay: John Scott may come in with a supplementary, but I want to revisit the question whether regulators should set maximum lice burdens.

Michael Kellet: I shall try to answer that question, although my response might not be completely satisfactory. Maximum lice burdens have been set in Norway, but there is not yet any evidence to show whether that is successful. It depends on using—to be blunt—fairly liberal amounts of quite dangerous chemicals to control sea lice. That is not an option that is open to us in Scotland, nor is it one that ministers would want us to pursue. As I explained, we see another difficulty related to that—if, by the regulator, you mean SEPA—in that there is a conflict of interests for SEPA between setting maximum lice limits and being able to control the input of those potentially dangerous chemical therapeutants. Evidence does not exist to show whether that would be a good approach, and we would want to keep an eye on it.

Angus MacKay: Your last point about the conflict of interests is fair. I also think that it is not unreasonable to say that whether the Executive imposes maximum burdens will depend on what the control method will be. That is a reasonable point, and I wanted to hear that clearly.

John Scott: The lice burden will depend on factors other than the medication with which the lice are treated; it will also depend on the stocking density of the cages and their situation. Would not it therefore be more reasonable to set targets for lice control that may not be exceeded while leaving it up to fish farmers to decide how best to achieve those targets? Medicine is only one of the tools that are available to them in the management of their stocks of fish.

Allan Wilson: We will examine that.

Michael Kellet: The point of the new environmental regulation is to enable us to control things such as stocking density and other general areas of management.

Allan Wilson: That is what is envisaged in the water environment and water services framework bill that we are putting together.

Fiona McLeod: I am a bit surprised by the hesitancy in the answer to that question, given the number of initiatives that the Executive has going under the heading of sea cage fish farming.

The minister said that in Norway the sea lice burden has been set, but that there seems to be an increase in the use of medication. However, you also said that fish farmers in Norway are not

governed by coastal regulations, whereas they are here. I hope that some of the Executive's advisory committees are examining that holistically in addressing the environment and the care of fish. Because we have strict controls over the medication that we can put into the water, in considering a maximum sea lice burden we should be asking in what other ways the lice could be controlled. We could be a bit more imaginative.

Allan Wilson: If we are hesitant, it is because we are talking about work that is in progress. We do not want to pre-empt whatever it is that we will say subsequently. We are aware of the factors to which you refer, regarding Mike Kellet's answer on the situation in Norway—in its Scottish context—and we are not being hesitant to disguise or mislead. The work is in progress.

Michael Kellet: That is a fair comment. I do not know whether Jinny Hutchison has anything to add. Evidence does not exist that shows that setting maximum lice limits is the best way of controlling them. We must keep an eye on that and see whether the science develops. If it does, I am sure that ministers will want to look at it.

John Scott: Let me reiterate the point. Is not it conceptually better to say "These are the targets that we hope—or insist—you will achieve", and then leave it up to individual site managers to achieve those targets, than it is to try to regulate in every imaginable way how people achieve those targets? Two different approaches are open to us.

Allan Wilson: I understand that point. Jinny Hutchison wants to respond to it.

Jinny Hutchison: I have a couple of points to make. As the minister suggested, the whole area will be considered when the strategic framework for aquaculture is being developed. In the meantime, we have the mechanism of the area management agreements, which suggest lice levels. However, we must be careful. If we set a limit for the lice burden and that limit is exceeded, what then? We have not yet got as far as that, but if we do, will we kill the fish or close the farms? What will we do?

All those matters will have to be hashed out in discussion with the different players when the minister embarks next week on his series of bilateral discussions.

Allan Wilson: What is the point in setting targets that one expects will be exceeded?

John Scott: My point is that if targets are set then it should be up to individual farms or companies to decide how they achieve them, rather than our saying that they shall not use more than a certain amount of a chemical or whatever.

Allan Wilson: My question was probably unfair. I am not supposed to be asking the questions.

John Scott: You will note that I am not answering the question.

The Convener: Do you want to be a minister?

John Scott: If you think that I have the qualifications, I thank you for that endorsement.

Angus MacKay: I want to move away from the joys of lice to the broader area of all diseases and parasites, and to consider particularly what John Scott said about setting targets and then leaving people to get on with it.

Most of the evidence that we have had before us suggests that synchronised management might be the best way of dealing with the control of disease and parasites generally. It is self-evident that that will be more difficult for small operators who, for example, might control only one site. What steps is the Executive taking, or considering taking, to support small operators who want to move towards participating in such best practice?

Allan Wilson: In the short time that I have been in my post it has been made abundantly plain to me that there are difficulties for small operators in relation to the types of synchronised management to which Angus MacKay referred. Our initial, but perhaps not final, response to that has been to seek to encourage the small operators to consider entering into co-operative arrangements with their neighbours and others that would enable them to undertake synchronised management more cost-effectively than they could independently.

Angus MacKay: I am tempted to ask a supplementary question but I will not because of the time.

Allan Wilson: Feel free to do so.

Angus MacKay: Since you say that—okay.

I can understand the logic and the sense of encouraging small operators to act with others, because that might present economies of scale that would otherwise not exist. However, from the Executive's perspective that is not much more than just encouragement. What might the Executive contribute that is more tangible? I do not necessarily mean cash. As the minister knows, I am not one for spending lots of money. However, I wonder whether the Executive is considering anything.

Allan Wilson: That is something that we are prepared to consider. As I said, the difficulties that small operators have in employing synchronised management techniques have been made plain to me. If those techniques are identified as the optimum means of controlling disease and pests and so on, I can see where logically that argument will take one.

Angus MacKay: That is as much as I could hope for—I think.

The Convener: I intimate to John Scott that I want to progress from this area, because there are a couple of other areas to explore and we are getting far on in time.

Fiona McLeod: The minister will be aware from some of my earlier questions that I am greatly interested in regulation. The Executive took evidence on the need for a single regulatory body for the aquaculture industry. I note from the minister's letter of reply to Nora Radcliffe that the views for and against a single regulatory body were finely balanced, but the Executive chose to reject that proposal. However, the latter also said that the Executive has taken on board some of the views and will pursue the possibility of a one-stop shop and attempt a better alignment of the application process.

Will you explain why, given the finely balanced nature of the replies that you received, you went for voluntary, rather than statutory, alignment of the application process? How will that be achieved and what will be the time scale?

13:00

Allan Wilson: I will deal with some of that, although as the consultative process preceded my appointment as minister, others might want to come in.

We consider that it was no more appropriate to establish a new body to oversee the industry than it was to establish a body to regulate terrestrial farming in all its dimensions. A number of distinct types of control are required. Fish health has been referred to and we have discussed environmental and industrial development considerations. Therefore, each of the regulators has distinct statutory powers that could not be exercised on their behalf by some new body, unless that body was created by statute or by amending primary legislation. As we have discussed, in the short term there is little chance of delivering the primary legislation that the creation of such a new body would require.

The obvious conclusion is that the main problem is not necessarily the number of regulators per se, but the lack of co-ordination between them, which was a feature of the response to the consultation exercise. As I understand it, the duplication of effort, the length of time that it takes to make decisions and the transparency of the process drove the conclusions of the consultation. Jinny Hutchison might want to add to that.

Jinny Hutchison: I cannot add much beyond what the minister said. In the absence of any possibility of a legislative slot, we are driven to consider what we can do administratively. In that respect, there is probably scope to take measures to render the process more transparent and to

reduce, through parallel submission of applications and so on, the time that is taken in the application process.

However, we are at an early stage—I think we were still receiving responses to the consultation exercise in the middle of October. The change of minister and the discussion with the Transport and the Environment Committee means that we are still at the beginning of the process of sorting out our thinking on how we will render the process more transparent, more streamlined and so on. That is where the Transport and the Environment Committee comes in—if the committee has ideas that it wants to feed in, we will accept them gladly.

Allan Wilson: I will supplement that in the spirit in which the question on the mooted one-stop shop approach was posed. It could be the role of a co-ordinating unit within one of the existing regulators—perhaps the Executive or SEPA—to oversee and co-ordinate applications. However, as has been said, our thinking is at an early stage.

There is a position of principle that says that all the regulators cannot be brought together in a single body because they each have different tasks and responsibilities. The creation of jobs is not necessarily viewed as being at odds with environmental considerations, but those are two different functions, which are performed by different bodies for different reasons.

Fiona McLeod: That answer clarified the Executive's thinking. I move on to one of the major regulators in the industry, which—as the minister just mentioned—is SEPA. Do you think that the current environmental protection arrangements are working effectively? On SEPA specifically, you have already commented several times that you will make it a competent authority and that you hope to move it from policing discharges to considering the whole process. Will shifting SEPA's role in that way and giving it a focus as a competent authority make the current arrangements for auditing and managing sites more effective and robust? I must also ask whether you will ensure that SEPA gets the additional resources that it will obviously need when it takes on those additional duties.

Allan Wilson: That is a fair question. I will answer your first question and your last question. Perhaps Michael Kellet can provide some of the detail.

My response is; yes, I suppose that we are effective. The arbiters of European Union law and of the OSPAR convention have taken no proceedings against us and we are not in contravention of them. Both of them pay close attention to such issues. Monitoring, audit and enforcement are designed by SEPA to withstand rigorous scrutiny against internationally accepted

standards.

Additional funding and resources were made available to SEPA during the previous comprehensive spending review to enable it to fulfil its functions and its obligations to implement the water framework directive. Any other subsequent obligations that might be imposed on the agency, or requirements for additional resources beyond those that were previously identified in the existing CSR would have to be part of a submission in the next CSR.

Fiona McLeod: Does the funding that is available to SEPA take into consideration the proposal that SEPA be made a competent authority when the water environment and water services bill, which will be introduced later this year, is enacted?

Michael Kellet: In the current CSR three-year period, we have allocated extra resources to SEPA because of the work that it needs to do to implement the water framework directive. It is not possible to say that we looked further ahead than those three years, so we might need to reconsider the issue in the next round of the comprehensive spending review. However, additional resources were certainly made available for the implementation of the water framework directive in the current period.

Fiona McLeod: Did that include SEPA's becoming a competent authority?

Michael Kellet: The first consultation paper that we published in June last year envisaged SEPA as a competent authority. That was our thinking when we allocated the extra resources at the beginning of that period.

The Convener: That draws us to the close of the questions that we wish to put to the minister today. There are a couple of other issues that we wish to pursue further in writing with Allan Wilson's department and there are a couple of issues that we wish to address with Iain Gray. If we manage to get those questions to Allan Wilson promptly, the committee would appreciate his endeavouring to reply promptly so that we can make progress in finalising our report.

Allan Wilson: That is a fair comment. In the interests of transparency and openness, to which reference was made earlier, we shall try to respond as quickly as possible.

The Convener: I thank the minister, Jinny Hutchison and Michael Kellet for their evidence today, as well as the various Executive officials who have been sitting behind them and ably supporting them.

Before the end of the month, the committee hopes to draw together a paper that will outline the evidence that we have received so far. We will do

that with a view to producing, prior to the February recess, a report on this phase of our inquiry. That is the timetable that we are trying to work to, so I ask the minister to bear that in mind when the Executive is responding.

Allan Wilson: We shall do our best to comply with all the committee's timetabling requirements.

Michael Kellet: Given that time scale, it might be valuable to let the committee know that we plan to publish a second consultation paper on our proposals for the water environment and water services bill by the end of this month. That might help the committee's timing.

The Convener: Thank you very much. That brings us to the end of today's agenda.

Item in Private

The Convener: Before closing the meeting, I advise members that at our next meeting we hope to consider a draft committee report on the issues surrounding the petition from the Blairingone and Saline Action Group, on which Andy Kerr reported prior to Christmas. Given the fact that that will be a draft committee report, do I have the committee's agreement to discuss that item in private at the next meeting?

Members *indicated agreement.*

The Convener: I thank you all for your attendance.

Meeting closed at 13:09.

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