

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 16 January 2002
(Morning)

Session 1

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TRANSPORT AND THE ENVIRONMENT COMMITTEE 2nd Meeting 2002, Session 1

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Nora Radcliffe (Gordon) (LD)

COMMITTEE MEMBERS

*Robin Harper (Lothians) (Green)

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

*Angus MacKay (Edinburgh South) (Lab)

*Fiona McLeod (West of Scotland) (SNP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Des McNulty (Clydebank and Milngavie) (Lab)

*John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO ATTENDED :

Jackie Baillie (Dumbarton) (Lab)

Bruce Crawford (Mid Scotland and Fife) (SNP)

Dr Sylvia Jackson (Stirling) (Lab)

Tommy Sheridan (Glasgow) (SSP)

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 16 January 2002

(Morning)

[THE CONVENER opened the meeting at 09:49]

The Convener (Bristow Muldoon): I welcome the press and public to this meeting of the Transport and the Environment Committee. I have received no apologies. In addition to the committee members and to Dr Sylvia Jackson and Bruce Crawford, who are both present, I understand that several other MSPs intend to join us at various points in our proceedings on the Water Industry (Scotland) Bill.

Item in Private

The Convener: Before we deal with the Water Industry (Scotland) Bill, item 1 on the agenda is to ask members to agree that we take item 4 in private. That will allow us to consider the practicalities of meeting outwith Edinburgh as part of our aquaculture inquiry. Is it agreed that we take that item in private?

Members indicated agreement.

Water Industry (Scotland) Bill: Stage 2

The Convener: Agenda item 2 is the third day of our consideration of the Water Industry (Scotland) Bill at stage 2. All members should have received a copy of a letter from the Deputy Minister for Environment and Rural Development, which was distributed yesterday afternoon. The letter sets out the Executive's position on charitable reliefs; it may be relevant today if we make sufficient progress to be able to deal with amendments on that issue. Have all members received a copy of the letter?

Members indicated agreement.

The Convener: I believe that we will be joined by Tommy Sheridan MSP, Richard Lochhead MSP and Jackie Baillie MSP, in addition to the members whom I mentioned earlier. We are also joined by the deputy minister, Allan Wilson, and his team of Scottish Executive officials, who are present to assist us in making progress on the bill. I believe that amendment 96, which is in the name of Jackie Baillie, is supported by Maureen Macmillan—I suspect that that information has been missed off the published marshalled list.

After section 24

The Convener: We proceed to consideration of amendments. Amendment 58 is grouped with amendments 71 and 74.

Des McNulty (Clydebank and Milngavie) (Lab): The intention behind amendment 58 is to establish clearly the objectives for which Scottish Water would be responsible as it undertakes its water supply and sewerage activities. The amendment contains four objectives. The first two are probably implicit in the bill, but my intention is to make them explicit.

The first objective is that water and sewerage services should be provided

“in a cost-effective and efficient manner”.

Scottish Water is to undertake a large capital programme and it is important that those works are undertaken efficiently and effectively. It is also important that services are delivered at an affordable cost to customers. Amendment 58 would establish those aims as an objective for Scottish Water.

Amendment 58 would also oblige Scottish Water

“to protect public health by supplying its customers with safe drinking water”.

West of Scotland Water intends to invest £100 million in upgrading the water supply system for the greater Glasgow area, which includes my constituency, to ensure that the system complies

with European directives. Although West of Scotland Water could certainly take action to improve its relationship with local people, one must applaud its determination to ensure that it can continue to supply high-quality drinking water. The fact that that is an issue underlines the importance of making the supply of safe drinking water an objective for Scottish Water.

The final two objectives in amendment 58 are the most distinctive. The third objective is for Scottish Water

“to protect the environment by conducting its operations”

in compliance not only with

“relevant environmental legislation”,

which is made explicit elsewhere in the bill, but with the

“principle of sustainable development”,

which is a particularly important point. When the committee examined the bill at stage 1 and when we conducted our earlier inquiry into water and the water industry, members generally held the view that we wanted the bill to contain an explicit commitment to the principles of sustainable development. That is precisely what I wish to achieve through the objectives in amendment 58. In lodging the amendment, I have sought to make the bill's reference to sustainable development in section 47, which is rather loosely worded, into a much more explicit commitment, which would put an obligation on Scottish Water. At present, responsibility for environmental issues lies with the minister. I want to frame the bill so that it requires Scottish Water to deal with those issues.

At stage 1, the committee noted that the bill sets the context for the development of the water services industry in Scotland. We will have cleaner beaches, a reduction in the incidence of flooding and an improvement in water quality.

The other amendments in the group are consequential on amendment 58 and are intended to ensure that Scottish Water's achievements in meeting the objectives are cited in its reports to ministers and to Parliament.

Scottish Water should be required to have due regard to the interests of the communities in which it operates. In handling several constituency issues in relation to West of Scotland Water, I have felt that the water company did not respond properly to local communities' interests. Those issues range from the way in which the company carried out consultation and sited its water treatment plant in Milngavie to the way in which it dealt with the dreadful odour that hangs over the Dalmeir area of Clydebanks.

The water company sometimes considers its responsibilities to be to customers generically and

does not consider adequately its responsibilities to local communities. In setting objectives, I made it explicit that Scottish Water should have responsibilities to communities. The amendment would require Scottish Water to report on those objectives. In that sense, accountability would improve and increase.

Amendment 58 may not be the best way of achieving what I set out to do. I do not know—I will be interested to hear the minister. The bottom line for me is ensuring that Scottish Water is more accountable and recognises the interests of communities as opposed to simply those of customers and that the principles of sustainable development are recognised more explicitly and appropriately in the bill and not purely in section 47. I also want to ensure that Scottish Water is accountable in its reporting and that the basis on which it reports is explicit, so that it does not report only on economic or environmental regulation issues. It should deal with the issues that I have listed.

I move amendment 58.

Robin Harper (Lothians) (Green): I support Des McNulty's amendment 58, which sets out a focused and neat mission statement. That is important and should be included in the bill, given the huge responsibilities that the new water authority will have not only for the landmass of Scotland, but for our surrounding coastal waters. Paragraph (c) of amendment 58, on protecting the environment, is important. The amendment is good and necessary.

Dr Sylvia Jackson (Stirling) (Lab): I support what Robin Harper says about amendment 58. The objectives should be laid out clearly. I will talk a little about the principles of sustainable development and social responsibility. As most committee members will know, West of Scotland Water, like the other water authorities, is pulling out of its non-core business. While it does that, it is making leases and contracting out joint ventures. It looks as though it will remain in charge of or own the land areas involved and will make arrangements for them. That process will continue as the water authorities become Scottish Water.

The situation at Loch Katrine has not been good, but it is improving. The board of West of Scotland Water decided to remove sheep from the local hills. That decision was neither discussed nor explained to the local community council of Strathard. Concerns were also growing about the continuing sailing of the SS Sir Walter Scott. The environmental, economic and social effects of West of Scotland Water's decisions were not being discussed with the local communities—there was no social responsibility.

It took not only my intervention, but that of the

Minister for Environment and Rural Development, Ross Finnie, to arrange a high-level meeting with Strathard community council, other community councils and West of Scotland Water. At that meeting, the authority explained the decisions that it had made and the future plans for Loch Katrine, which is described as the jewel in the crown of the Trossachs part of the proposed Loch Lomond and Trossachs national park. In the National Parks (Scotland) Act 2000, sustainable development, one aspect of which is social, is a key objective for national parks.

West of Scotland Water has given a commitment to consult local communities. Social responsibility and sustainable development should be a key aspect of the Water Industry (Scotland) Bill so that our bad experience, which is getting a little better, will not recur.

10:00

Fiona McLeod (West of Scotland) (SNP): I am delighted that amendment 58 is before us today, given that I pursued the issue during the stage 1 inquiry on the bill. As members know, one of my major concerns is that section 47(5) is a get-out clause for Scottish Water and Scottish ministers and will allow them to put environmental and social responsibilities at the bottom of the heap, if not to ignore them completely.

The objectives in amendment 58, especially those in paragraphs (c) and (d), would ensure that Scottish Water's decisions and, crucially, directions that ministers give to Scottish Water—which will be our biggest quango and possibly one of the biggest bodies that affect the environment—must take into account sustainable development and must comply with environmental legislation. As Sylvia Jackson said, they must also give due regard to local communities. Like Des McNulty, I have not always had a happy relationship with West of Scotland Water, which often carries out responsible and necessary work on its infrastructure, but does not always prosecute that work in a socially responsible manner. I am delighted with amendment 58 and I will support it.

Angus MacKay (Edinburgh South) (Lab): I support amendment 58's intent, but I have a difficulty with it. Objectives (a), (b) and (c) are clear and it is easily understandable how one might measure performance against them. The difficulty with objective (d) is that, although we can all sign up to and support its intent, I am not entirely sure, given its wording, how we would measure Scottish Water's performance. Fiona McLeod is shaking her head, but the wording might allow Scottish Water to make all sorts of nebulous arguments that it is in compliance with objective (d). Those arguments might not satisfy members or the wider Scottish public. We should

retain the intent of objective (d), but with a more precise form of words that allows us to have some leverage on how we measure Scottish Water's performance against the intent of the objective. We should have an objective with the same intent, but tighter wording.

The Deputy Minister for Environment and Rural Development (Allan Wilson): Des McNulty has raised a number of interesting and important points with amendment 58. At stage 3, the Executive intends to lodge amendments that will tackle the concerns on which Des McNulty elaborated and which other members obviously share. In addition, those stage 3 amendments will deal with the consequential requirements of amendments 71 and 74, which would require Scottish Water to report on the progress that it has made towards achieving objectives and the action that it has taken in pursuance of them.

I will say something about our plans for that in a moment, but I want to comment on a significant problem that amendment 58 throws up. Scottish Water has been established to assume responsibility for a range of long-standing and specific water and sewerage functions. The most significant of those touch on public health and environmental protection, to which Des McNulty referred. Added to those are a number of high-level objectives, many of which also touch on issues of public health and the environment. That is bound to create a tension between the authority's functions and its objectives and could cause uncertainty over the relationship between the objectives and certain functions. Angus MacKay has referred to some of those difficulties and I am sure that the committee would agree that that situation would be best avoided.

It makes more sense to distinguish between the water and sewerage functions that have been transferred to Scottish Water and the way in which it carries out those functions. That is the real point behind what Des McNulty and other members have said in support of amendment 58. We propose to lodge amendments that would place duties on Scottish Water in relation to how it could act in the following contexts, which have been raised by amendment 58.

First, we propose a duty for Scottish Water to have regard to economy, efficiency and effectiveness in the discharge of its functions. On sustainable development, which is a critical factor, we recognise that the provision in section 47(4) is unsatisfactory, as it places sustainable development solely in the context of environmental protection and ignores the social and economic dimensions of the principle to which Sylvia Jackson and others referred. We propose that there should be a free-standing section that will ensure that Scottish Water has regard to

sustainable development in the full meaning of the term. Finally, we propose to create a duty for Scottish Water to prepare and act in accordance with a code of practice on the way in which it consults local communities. An outstanding direction is already in place, but the proposed duty will require Scottish Water to produce a more detailed code of practice on community consultation, to address the concerns that have been expressed by the committee.

I hope that those firm assurances will satisfy the concerns that have been raised by Des McNulty and others, as well as the wider concerns, which I share, about the treatment of sustainable development in the bill. I ask Des McNulty to withdraw amendment 58 on the basis of those assurances and not to move amendments 71 and 74, which are wholly or partially consequential to amendment 58.

Des McNulty: I welcome the minister's positive response. The committee has pushed hard for a commitment to a section on sustainable development and I am pleased that that is what we are going to get. I phrased amendment 58 in terms of the principles of sustainable development; the application of those principles will be especially important in the way in which Scottish Water will operate. The minister's assurances are welcome.

The introduction of a code of practice for consulting local communities is a positive step. That will be welcomed by people up and down the country where changes are proposed by Scottish Water. I hope that, in placing those duties in the bill, the minister will also take account of the need for Scottish Water to have regard to that code in its reporting process. I hope that, as an explicit requirement of its annual reporting mechanism, we will be able to see how it takes those issues forward. Angus MacKay is right: perhaps this is not the best place to determine the precise nature of the performance indicators. However, in framing the duties, the minister should think about how the reporting process should be developed to ensure that those duties are carried out.

On the basis of the assurances that the minister has given and of his stated intent to introduce amendments to meet my objectives, I am happy to withdraw amendment 58. I look forward to seeing the text of the Executive's amendments in due course.

The Convener: Des McNulty has indicated that he wishes to withdraw amendment 58. Is that agreed?

Fiona McLeod: No.

The Convener: Do you wish to press the amendment?

Fiona McLeod: Yes.

Angus MacKay: Convener, if a member wants further clarification from the minister or to continue the discussion a little further so that they are clear about what is being proposed, is it possible for them to come back into the debate?

The Convener: Yes. That is possible.

Angus MacKay: That is what I hoped to do.

The Convener: Okay. Before allowing Fiona McLeod to press amendment 58, I shall allow Angus MacKay to come in again.

Angus MacKay: I just want to check a couple of points with the minister. First, I understood him to say that he intended to introduce a code of practice. When might that be? Alternatively, is he proposing that Scottish Water would introduce a code of practice? I know that, because of time constraints, we have not had the opportunity when making other legislation to see what a skeleton code of practice might look like before concluding stage 3. I am thinking particularly about a bill with which I was involved in the justice department.

Secondly, does the minister intend that something should be put in the bill to say that Scottish Water is obliged to comply with such a code of practice? That would give some comfort to committee members.

The Convener: John Scott has also indicated that he would like to comment. Let me make it clear that, when we come to future groups of amendments, I would prefer members to indicate that they would like to comment before the member who moved the amendment winds up the debate. That is my guidance to members, but it does not matter for the group of amendments that we are debating now.

John Scott (Ayr) (Con): When the minister introduces his proposals, will he give us some idea of how much of an extra burden he thinks they will place on Scottish Water? None of those elements—admirable as they are—has been discussed by any of the people who have given evidence to the committee. We are into a completely new area when it comes to the aims and duties of, and the burdens on, Scottish Water.

Bruce Crawford (Mid Scotland and Fife) (SNP): My comment relates to something that John Scott said. The bill already contains a commitment that sustainability will be one of the measures on which Scottish Water will be examined. That includes the environmental, social and other issues that we have been discussing.

Angus MacKay talked about measuring social responsibility. The minister has already said that that is part of sustainable development but, as Angus MacKay said, it is difficult to measure. On

the sustainability element, which includes social issues, will the Executive be thinking about ways of measuring the social responsibility of the new water organisation?

Allan Wilson: I shall answer those points in the order that they were fired at me.

In answer to Angus MacKay's question, the onus would be on Scottish Water to produce the code of practice. Ipso facto, it could not be produced until Scottish Water is in being. That limits the timetable for the production of the code of practice.

On John Scott's proposition, I do not think of the guidance that we already issue on the code of practice for community consultation and sustainable development as a burden. In fact, I believe that it is a boon, as it seeks to develop best practice. It is in the interests of the water companies and of communities that community relations are good and that the water companies have regard to the principles of sustainable development in its widest context, including social and economic dimensions.

We intend to identify that good practice and produce guidance in accordance with the directions that we already issue on community consultation. Section 47(6) says that Scottish Water must, with regard to certain of its activities,

"have regard to any guidance for the time being issued by the Scottish Ministers."

Those points are all covered in my proposition, which I hope has allayed any fears that members might have.

10:15

The Convener: Does Des McNulty still wish to withdraw amendment 58?

Des McNulty: Yes. I am content that the minister will lodge amendments to do what I set out to do.

Dr Jackson: I would like to ask a question. I tried to get in before the minister started speaking. Would it be possible for me to ask a question at this point?

The Convener: I would prefer to move on. I have been quite liberal about allowing people to come back into the discussion after Des McNulty wound up. Does Fiona McLeod still want to press the amendment?

Fiona McLeod: I do. The minister has offered a code of practice rather than saying that he would include provisions in the bill to ensure that what Des McNulty is seeking happens.

The Convener: The question is, that amendment 58 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)
Radcliffe, Nora (Gordon) (LD)
Scott, John (Ayr) (Con)

ABSTENTIONS

Harper, Robin (Lothians) (Green)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 58 disagreed to.

Section 25—General powers

The Convener: I welcome Tommy Sheridan to the committee. Tommy is here to move some amendments later on in the agenda and is welcome to take part in other debates as well.

Amendment 59 is grouped with amendments 60, 61, 26, 62 and 86.

John Scott: Amendment 59 suggests that the word "delivery" would be more appropriate than the word "exercise" in section 25(1), which reads:

"Scottish Water may engage in any activity which it considers is not inconsistent with the economic, efficient and effective exercise of its core functions (within the meaning of section 60(2))."

It is not a big deal, but I believe that it would be worth doing.

Amendment 62 is self-explanatory. It attempts to give a further definition of the word "person". It is necessary to make it plain that the term might also be taken as referring to an organisation or a body politic.

Do you want me to speak to the other amendments?

The Convener: You are entitled to speak to the other amendments, but you do not have to.

John Scott: I am not sure what other amendments in this group are in my name.

The Convener: If you are not prepared, John, we could allow other members to speak. I will allow you to speak again after they have done so.

John Scott: Thank you. I move amendment 59.

Fiona McLeod: I thought that I would be withdrawing amendment 60 at this stage as I was convinced that amendment 58 would be agreed to. In the light of the vote that we have just had and the comments that the minister made, I intend to

move this amendment when it is time to do so. It is now even more important that, when considering the general powers of Scottish Water, which are covered by section 25, we ensure that Scottish Water exercises those powers in an environmentally and socially responsible manner.

I return to an argument made not only by committee members but by organisations that gave evidence at stage 1: the environmental concerns around the setting-up of this enormous quango must be firmly dealt with in the bill, especially in the section on general powers.

The minister's first remarks on amendment 58 were interesting. He said that he would be doing what I propose in my amendment 60. I therefore assume that the minister will accept amendment 60. The minister said that he considered it important that Scottish Water should carry out its functions in an environmentally and socially responsible manner. It is now more important that amendment 60 be accepted by the committee. The amendment chimes with evidence that we have heard and with our stage 1 report.

I turn to amendment 86, which would affect section 32, on the commissioner's advice on charges. It is most important that the commissioner gives due regard to environmental and social issues. The notes that I wrote to myself on this amendment began with:

"This makes sure that the 'new' objectives"—

that I had thought we would have just agreed to—

"will be given due regard."

However, we did not accept amendment 58. I therefore believe that amendment 86 must now be accepted to ensure that the commissioner, as well as Scottish Water, gives due regard to the issues.

The Convener: Bruce Crawford will speak to his amendment 61 and to any other amendments in the group.

Bruce Crawford: Thank you, convener, and thank you also for allowing the clerk to circulate another of my supplementary pieces of evidence to the committee. I will come to that in just a moment.

Although it is true that I had real and, I think, understandable concerns about the capacity of Scottish Water, as a parent body, to remain in the public sector, it is equally true that I have worries about section 25, on general powers. I am not the only one to have worries about it: Unison and the Transport and General Workers Union have submitted evidence on the section.

As section 25 stands, it could allow large elements of Scottish Water's work that are currently undertaken by the public sector to be discharged by the private sector. Even if Scottish

Water, as a parent body, were to remain in the public sector, the power referred to in section 25(3) in relation to the Companies Act 1985 could enable Scottish Water to become simply an enabling authority while all of the actual service delivery was discharged by the private sector.

It may be that Scottish Water's powers can be curtailed by ministerial regulation and direction. That is understandable and Ross Finnie has already said that that would happen. However, this committee is trying to ensure that any legislation is robust and can stand the test of time. As the bill stands, any future Administration could allow Scottish Water to transform itself into an enabling authority with service delivery largely undertaken by the private sector. That could be done without the consent of Parliament.

I do not believe that that is what the Scottish people want and I certainly do not think that that is what the committee wants. The purpose of amendment 61 is to continue to give Scottish Water the flexibility it needs to be successful, but to retain its delivery capacity within the public sector.

As members can see in section 25(3), Scottish Water is provided with the power to

"form or promote ... companies (within the meaning of the Companies Act 1985 (c 6))".

The clerk has circulated my handout containing an extract from the Companies Act 1985. Finding out exactly what that power means is illuminating. Under section 3(1) of the act, it is clear that Scottish Water will be able to form subsidiaries in a range of ways from

"(a) a public company, being a company limited by shares"

to

"(f) an unlimited company having a share capital".

Such an organisation could float itself on the stock market. That is what the Companies Act 1985 means.

Under those circumstances, members will understand why I have real concerns. The purpose of amendment 61 is to restrict the capacity of Scottish Water to form and promote public companies. That would not allow private companies to become involved in the discharge of service delivery to a subsidiary formed or promoted by Scottish Water on behalf of the parent body. The amendment involves a restriction to

"a public company, being a company limited by shares",

under section 3(1)(a) of 1985 Companies Act, and

"a public company, being a company limited by guarantee and having a share capital",

under section 3(1)(b) of the act. In that way, such

companies are held in the public sector and cannot be private sector companies, as described in paragraphs (c), (d), (e) and (f) of section 3(1) of the act.

That is my case for amendment 61, which I intend to move.

Allan Wilson: Before speaking to amendment 26, in my name, I will deal with John Scott's amendment 59. I assume that it is a probing amendment, and that is a perfectly legitimate tactic to employ. Given its drafting, it would not make any sense to pass it: services are delivered, whereas functions are exercised, not delivered. That is true for Scottish Water as for any statutory body, so I ask John Scott to withdraw amendment 59.

We believe that Fiona McLeod's amendment 60 is too vague to be effective. Fundamentally, it confuses the difference between general powers and duties as specified under the bill. This goes back to our previous discussion, in that there appears to be a fundamental misunderstanding in Fiona McLeod's position vis-à-vis what I said.

As the committee knows, I have added detailed provision on sustainable development to the already detailed provisions on the environment and national heritage, which are contained among the general duties imposed under sections 46, on interests of customers, 47, on environmental matters, and 48, on protection of natural heritage, and section 49, which comes under miscellaneous items. I have added a general additional duty on the company, as we discussed before in relation to sustainable development.

Ministers can, where appropriate—and, as I explained, do—provide specific directions on social matters in the light of circumstances. In response to the amendments in Des McNulty's name that we have already debated, I have indicated my intention to provide such directions, specifically in relation to sustainable development, in addition to the already exhaustive provisions on the environment and natural heritage. That will better address the concerns that Fiona McLeod was discussing. Her means of addressing them do not impose any additional duties other than a vague reference to a general power. Amendment 60 is less effective in protecting social and environmental responsibilities than our proposals.

10:30

I do not understand the purpose of Bruce Crawford's amendment 61. Its effect, as I understand it, is to allow Scottish Water to form public, but not private, companies. That would constitute a restriction compared to the current situation. Bruce Crawford may be equating a public company with a public body; if so, that is a

fundamental confusion. The distinction between a public and private company in this context relates to the statutory regime under which it operates rather than to whether it is in the public or private sector.

We could go into details on the differences between public and private companies, but a company must be a public company to trade on the stock market. The top FTSE 100 companies are public companies. The distinction between public and private companies as defined in the Companies Act 1985 relates principally to the tradeability of shares and the minimum share capital required. That both types of company are subject to the statutory regime that I described and subject to control under the Companies Act 1985 is important.

Scottish Water is, critically, much more likely to wish to form private companies than public companies that trade on the stock exchange. Forming a joint venture with another organisation to bid for a specific contract could only sensibly be done through a private company. In the case of BP Grangemouth, for example, a current water authority has formed a joint venture in a bid to win business for the public company. That has been done through a private company to secure additional business for the public body. There is a joint venture with a private company to bid for work in a given sector.

The distinction that Bruce Crawford seeks to draw between public and private companies is completely fatuous. The public water authority would be much more likely to enter into an agreement with a private company rather than restrict itself to a company that is listed in the top FTSE 100 companies whose shares are by definition tradeable. I therefore ask Bruce Crawford not to move amendment 61 as it would prevent Scottish Water from utilising the commercial freedom that we intend to give it in a sensible way to compete in the markets in which it will need to compete to secure important industrial contracts and sustain its base.

Amendment 26 is a minor Executive amendment that is intended to enable Scottish Water to offer non-financial guarantees such as an undertaking to perform certain activities in certain circumstances. It will give Scottish Water greater flexibility in its relations with third parties and will assist it in commercial ventures to which I referred. I ask the committee to agree to the amendment.

Amendment 62 is unnecessary. It is another probing amendment, which is fair enough. The matter is one of statutory interpretation. The term "person" already extends to the types of body that John Scott has in mind. The amendment is superfluous and I ask John Scott not to move it.

Amendment 86 touches on matters to which I have referred, albeit in a different context. The amendment requires the commissioner to make social and environmental judgments as part of his preparation of advice on strategic charges. That would fundamentally alter his relatively narrow role of providing objective economic advice and put in its place a duty to balance economic, social and environmental considerations. As we have discussed, the latter two are properly matters for ministers to determine and set directions. It is for ministers to account to Parliament for objectives and progress towards meeting those objectives—particularly those relating to sustainable development, to which I referred. Involving the commissioner in that would make it difficult, if not impossible, for him to provide the robust and objective advice on economic considerations that he will be asked to provide and agree with Scottish Water. Amendment 86 would substantially weaken the system of regulation. That would not be in the customer interest, which we are all trying to protect. We ask members to reject amendment 86.

The Convener: Will members who wish to speak on this group of amendments please indicate. As Sylvia Jackson and Des McNulty have not contributed yet, I will allow them to do so before letting Bruce Crawford back in.

Dr Jackson: To be honest, the positioning of amendment 60 is ineffective. One difficulty is that we need more clarity on the distinction between core functions—which section 25 on general powers is about—and the duties, which most of us no doubt welcome. Within the duties, there is a distinction between the effects on a community, including the social, economic and environmental impact, and social responsibility, which is quite different from that. Social responsibility relates to the consultation process and so on. Although I think that amendment 60 is ineffective, when we consider the amendments on duties, we must be careful that that distinction is brought out.

Des McNulty: I echo the point that Sylvia Jackson made. I looked for a variety of ways of getting sustainable economic development into the bill and came up with the objectives approach. I considered amending section 25(1) as a way of doing that, but rejected it on the basis that, because of the way in which it is framed, that subsection, which deals with powers, would end up being too convoluted. As the minister suggests, the issue is better dealt with in the context of duties, so that the imposition is placed on Scottish Water to accord with the principles of sustainable economic development and social responsibility.

One of the deficiencies of amendment 60 is that it does not link back to reporting, which I commented on earlier. If it is said only that something should be done

“in an environmentally and socially responsible manner,”

there will be no mechanism for enforcing a reporting responsibility on Scottish Water. It is particularly important that there is some mechanism or requirement for reporting on the way that Scottish Water conducts itself on sustainable development and social responsibility. That is easier to achieve through a duties framework than through a powers mechanism, which amendment 60 seeks.

On amendment 61, I understand what Bruce Crawford intends, but I think that in the attempt he has got hold of the wrong end of the stick. Effectively, Scottish Water is a public company that will be set up under the bill that we put in place. Scottish Water is a body that is ultimately accountable to us. The mechanism of accountability will operate through ministers to the Scottish Parliament. That is quite different from the framework that Bruce Crawford seeks to establish in the way that he wants to apply his definition of a public company. I cannot appreciate the logic of what Mr Crawford seeks to achieve.

It is crucial that in any ventures that are mounted under the general powers in section 25(3) there is an appropriate mechanism for transparency, so that we can see what Scottish Water is doing. An appropriate accountability regime should be put in place. Transparency, rather than a definition, will resolve the matter.

The Convener: I will take Robin Harper before Bruce Crawford, because he has not been in yet.

Robin Harper: I will speak to amendment 60. Because of the assurances that the minister gave on amendment 58, I abstained on the vote on that. I still feel that we should revisit those issues if necessary. The minister gave as a reason for rejecting amendment 60 that

“in an environmentally and socially responsible manner”

is too vague. However, we have reasonably precise definitions of what is environmentally responsible and socially responsible. Amendment 60 cannot be rejected simply along the lines that the minister gave. I am not sure whether I will vote if Fiona McLeod moves amendment 60, but I do not consider the reasons given for rejecting it to be valid.

Bruce Crawford: I am grateful to the convener for allowing me back in. I realise that that is slightly out of the normal order, but a number of comments have been made about amendment 61.

As far as I am concerned, the cat is out the bag. The minister said, “Scottish Water will wish to form private companies.” That means that a greater percentage of the service delivery will be carried out by the private sector. That endangers health and safety in the industry. My case has been proved.

The crucial difference between a private and public company is that the public company remains under the control of the public sector. It is also vital in terms of section 3(1)(f) of the Companies Act 1985. If an unlimited company having a share capital in the private sector goes to the market in that way, it can be bought over, sold and moved on in the same way as any other company. If it remained in the public sector, in which there are control mechanisms back to that public sector area, that would be much less likely to happen.

We will see a creeping process of more and more Scottish water being delivered by the private sector. That is against the wishes of the Scottish people.

John Scott: I do not intend to press my amendments in the light of the minister's response.

Amendment 59, by agreement, withdrawn.

The Convener: Amendment 60 has already been debated with amendment 59.

Fiona McLeod: I believe that duties come from powers and that one reports on the exercise of one's powers. Therefore, section 25 is the right place for the provisions of amendment 60.

I move amendment 60.

The Convener: The question is, that amendment 60 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)
Radcliffe, Nora (Gordon) (LD)
Scott, John (Ayr) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 60 disagreed to.

Amendment 61 moved—[Bruce Crawford].

The Convener: The question is, that amendment 61 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)
Radcliffe, Nora (Gordon) (LD)
Scott, John (Ayr) (Con)

ABSTENTIONS

Harper, Robin (Lothians) (Green)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 61 disagreed to.

Amendment 26 moved—[Allan Wilson]—and agreed to.

Amendment 62 not moved.

The Convener: Amendment 63 is grouped with amendments 64, 97 and 88.

John Scott: I lodged amendments 63 and 64 because it is important that Scottish Water be able to borrow money in any way that it sees fit. Because section 25(6)(b) seems to restrict the company's ability to raise money in any way that it sees fit, I have lodged amendment 63, which would remove paragraph (b). Amendment 64 would, I hope, allow the company to raise capital more freely wherever it saw fit and would require that that was done at rates that were economic.

I move amendment 63.

10:45

Bruce Crawford: Amendment 88 is a probing amendment, although some of the details may have come out in the previous discussion. I would like an explanation from the minister, so that we can understand what a subsidiary of Scottish Water might look like and the type of activities that it might undertake.

The Convener: Do any other members wish to speak to the amendments in this group?

John Scott: May I speak to amendment 97 at this time?

The Convener: You were supposed to speak to that amendment before, but—

John Scott: I shall leave it then.

Angus MacKay: Like Bruce Crawford, I also seek clarification from the minister. Would amendment 63 have an effect on the relationship between the borrowing levels of Scottish Water and the impact that those might have on the public sector borrowing requirement? My suspicion is that agreeing to amendment 63 would drive a coach and horses through that. I am not entirely sure about that, and some clarification would be useful.

On amendment 88, what might the subsidiary activities of Scottish Water be? I am curious to know whether there are any substructures within or outwith the present water authorities for the purpose of carrying out various activities. It is not inconceivable that a slightly different type of management unit might be desirable for a specialist function that is carried out in co-operation with some other private sector or public sector supplier. I am curious to know a little more about that.

Allan Wilson: I will answer Angus MacKay's question first. Amendments 63 and 64 would give Scottish Water new and unfettered borrowing powers that would be based solely on section 25.

Amendment 63 would remove paragraph 25(6)(b), which provides a restriction against raising money in any way other than that which is authorised under section 25. At this juncture, it is desirable to make it clear that section 25 does not enable Scottish Water to raise money in any manner other than that which is specifically authorised. As Angus MacKay pointed out, pound for pound, the money would count against the PSBR.

Amendment 64, which would empower Scottish Water to borrow in any way it desired as long as the rate of interest was as low as could reasonably be obtained, could allow unlimited borrowing and could be used to cut across all normal public expenditure controls. I am sure that the Conservative amendment does not intend to produce that effect.

Section 25 is drafted to find a careful balance between allowing Scottish Water to act commercially and providing the appropriate restrictions and controls that a responsible Executive must introduce. Amendments 63 and 64 would remove those vital controls, so I urge John Scott not to press them.

Amendment 97 would require Scottish ministers to consult the water industry commissioner before making a determination on a financial duty under section 38. That determination is very specific and will have very limited use, such as for imposing financial constraints that may result from the policy changes to the treatment of public expenditure that I referred to. In the cases to which John Scott refers, I cannot see that ministers would gain added benefit from consulting the commissioner. I urge John Scott not to move amendment 97.

Bruce Crawford described amendment 88 as a probing amendment. That is fair enough, but it should be rejected. As we discussed previously, it would significantly limit Scottish Water's ability to defend itself against existing or future competitive threats, which is one of our longer-term objectives. It would also limit the authority's ability to seek the

new business opportunities that we expect it to pursue.

The right vehicle to deliver some of the contracts that have already been secured would be a subsidiary. The contract might require the liabilities of that subsidiary to be guaranteed. Without that provision, Scottish Water would effectively be barred from competing for some major water and waste management contracts. That would produce the situation that Bruce Crawford is seeking to prevent, with those contracts being left to the private sector. That would be to the long-term disadvantage of the public authority and of the Scottish consumer.

The existing public companies have been successful in securing contracts to provide services, but if amendment 88 were agreed to Scottish Water would miss out on other major contracts for the delivery of water services and waste management, including Ministry of Defence contracts and contracts with the private sector. By establishing Scottish Water under the bill, we are seeking to preserve and maintain the public sector interest in the delivery of the public water supply and of waste management. Amendment 88, if agreed to, would frustrate our achieving that objective and facilitate the privatisation of the contracts to which I have referred. I am sure that that is not Bruce Crawford's intention.

To succeed, Scottish Water will need to be able to operate effectively and to compete effectively with the private sector. Amendment 88 would prevent it from doing that. I urge the committee to reject amendment 88.

The Convener: I invite John Scott to wind up and to indicate whether he wishes to press his amendment.

John Scott: I intend to press both amendment 63 and amendment 64, in the knowledge that one is a substitute for the other. It is my intention that Scottish Water should have the ability to raise money wherever it sees fit in an unfettered way. That is why I lodged amendment 63.

The Convener: The question is, that amendment 63 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)

Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 63 disagreed to.

Amendment 64 moved—[John Scott].

The Convener: The question is, that amendment 64 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)

Radcliffe, Nora (Gordon) (LD)

ABSTENTIONS

Harper, Robin (Lothians) (Green)

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

Amendment 64 disagreed to.

Section 25, as amended, agreed to.

Section 26 agreed to.

The Convener: I welcome Jackie Baillie MSP to the proceedings today. She is here to move and speak to an amendment in her name. I caution you, Jackie, that it is likely to be some time before we get to your amendment, so it is open to you to conduct any other business just now, although you are welcome to stay.

Jackie Baillie (Dumbarton) (Lab): Convener, I am enjoying myself so much that I will stay.

Section 27—Approval of code of practice

The Convener: Amendment 65 is grouped with amendments 66, 67, 68, 84, 85, 69 and 70.

Fiona McLeod: With such a large group of amendments the easiest way to proceed is to go through it amendment by amendment. I shall be as quick as possible on each one.

Amendments 65 and 66 are on Scottish Water's code of practice. The code of practice that Scottish Water will issue will be fundamental to its relationship with its customers. Section 26(1)(a), refers to:

"standards of performance in providing services to ... customers".

Section 26(1)(b) refers to:

"procedures for dealing with complaints by ... customers".

I am sure that all MSPs would welcome a robust code of practice on that procedure. Section 26(1)(c) refers to circumstances in which Scottish Water will pay compensation to its customers. We need a clear code of practice on that also. But it is not just about having a clear code of practice in those areas; it is about involving the customers in the production of that code of practice. There is no point in Scottish Water, the water industry commissioner or the Minister for Environment and Rural Development saying, "The best way to deal with customer complaints and pay compensation to customers is our way and we know best." If we are serious about the role of the water customer consultation panels, their role in producing a code of practice to deal with customers is fundamental.

We have been told that the water industry commissioner is to be not the customers' champion, but an economic regulator. The minister reiterated that point in response to my amendment 60. That goes against the grain of the evidence that we took at stage 1 and in our earlier water inquiry. It has been stated more than once that Scotland's water industry commissioner will not be Scot Ofwat, but it has become increasingly clear throughout the process that he has become Scot Ofwat. He will be an economic regulator who is interested in econometric modelling. If Scottish Water has to refer to the water industry commissioner for guidance on a code of practice, but not to the water customer consultation panels, we are talking about going to the wrong person. Amendment 65 is essential to ensure that the customer's voice is heard and is part of the process of producing the code of practice.

Section 27(4) allows Scottish ministers to approve a code of practice where Scottish Water and the water industry commissioner fail to reach agreement. My arguments for amendment 66 are the same as those for amendment 65; perhaps they are even more crucial. If the water industry commissioner or ministers or Scottish Water for some reason get into a dispute over what should or should not be in a code of practice, the most sane voice in that debate would be that of the customer for whom that code of practice was being produced. The voice of the customer, we hope, will come from the water customer consultation panels. The idea behind amendments 65 and 66 is to ensure that the customer's voice is heard on a crucial aspect for customers.

Before moving on to amendments 84 and 85, I want to comment on amendments 67 and 68, in the name of Des McNulty. I hope that Des will move his amendments, because we will be agreeing to them. As section 27(4) comes into play in the event of any dispute, it is not sensible for the Scottish ministers to consult only one party. Amendment 67 strengthens the whole process in that respect.

11:00

Amendment 68 is necessary for section 27, because I believe that section 26(6) is too weak. The full code of practice must be published to ensure that customers have full access. I say that as an ex-librarian, not just as an MSP. If we cannot get full access to the code of practice, we cannot help our customers if some sort of hidden agenda emerges. Any information scientist knows that if the information is not put into the public domain, the public do not have full access to it. I should also point out in passing that if we do not agree to amendment 68, the code of practice will simply end up like one of those great mission statements that no one reads or understands but that are put on brass plaques and placed in the foyers of organisational headquarters.

Amendments 84 and 85 concern the approval of charges schemes. I said that the code of practice was fundamental to the needs of Scottish Water's customers; I would have thought that any customer's fundamental concern would be the charges scheme. It is therefore absolutely necessary to involve the customers and the water customer consultation panels in the approval of those schemes as it would strengthen the customers' voice.

Amendment 85 addresses the issue of disputes that might arise over the approval of charges schemes. It is even more important to involve and consult the customer through the water customer consultation panels to lend authority to any ministerial approval that is given in a dispute resolution. If we involve—what is the phrase?—the “key stakeholders”, the ministerial decision will surely have much more authority. In this case, the key stakeholders must be the customers. The only way that Scottish Water's customers will get their voices heard is through the consultation panels. I hope that the committee will agree that the amendments in my name and in Des McNulty's name ensure that Scottish Water's customers are recognised and given their place on the panels.

I move amendment 65.

Des McNulty: The intention behind amendment 67 is to ensure that the water industry commissioner will be able to provide advice to Scottish ministers concerning any modifications to the code of practice. Where the commissioner and Scottish Water do not agree to modifications to the code, it is appropriate for both to put their case to Scottish ministers. Amendment 68 is intended to ensure that whatever mechanism or code of practice is arrived at, is actually published. Such a measure is fundamental.

Amendment 69 runs parallel to amendment 67 and ensures that the water industry commissioner is able to provide advice to Scottish ministers

concerning any modifications to a charging scheme. Again, where the commissioner and Scottish Water do not agree to such modifications, it is appropriate for both groups to make their case to ministers to allow ministers to reach their decision. Similarly, amendment 70 runs parallel to amendment 68, as its intention is to ensure that the charging scheme is published. The distribution of the charging scheme throughout Scottish Water's area of operation will allow customers to find out the level of charges and how they are arrived at.

Although I see the intention behind Fiona McLeod's amendments, they are a bit cumbersome, particularly as section 2 of the bill says:

“In exercising functions in relation to Scottish Water, the Commissioner must have regard to—

(a) any representations made to the Commissioner by a Customer Panel”.

That mechanism applies right across the board, and the issue is whether we need to create a series of additional mechanisms to achieve that. I would take it for granted that the commissioner would consult the customer panels and formulate advice for ministers on that basis rather than—as amendment 85 would have it—require ministers to consult the customer panels again before coming to their decisions. The issue is one of simplicity, and some of the amendments in Fiona McLeod's name seem unnecessarily complex, given the fact that section 2 makes that consultation a requirement. That is the rationale behind the amendments in my name.

Robin Harper: As I see it, this group of amendments is designed to entrench an ethos of full accountability, consultation and transparency. I support all the amendments on that basis—especially those in the name of Fiona McLeod.

Angus MacKay: I do not think that they are life-or-death amendments; however, they point out the need for the new body to have a pretty clear approach to openness and accountability and for the establishment of a degree of consistency across the board. I await what the minister has to say in detail on amendment 68, about publishing a code of practice and making it available. Des McNulty's request is that that should be done either by the commissioner or by Scottish ministers. However, there is a question mark over even amendment 68. It is one thing to publish a code of practice; it is quite another to circulate it, to make it fully available or to establish it directly in the public consciousness. If the amendment is not agreed to, I would like to hear some strong reassurances about what the minister proposes instead. Given the discussions that we have had, it is not unreasonable to think that members of the public should be able to rely on the code of

practice with some degree of faith and to be familiar with it, should they want to be.

My only other comment is that only a Scot nat could come up with the phrase “not be Scot O’wat” in the course of a debate.

Nora Radcliffe (Gordon) (LD): I support the group of amendments. In the earlier debate on the way in which water customer panels should be set up, I was concerned that the panels were not going to be rooted deeply enough in their communities. The customer panels are an important part of the whole set-up and we must be certain that they are treated as an integral part of it. The amendments in the group, which would strengthen the panels’ role and make it explicit, are important. Consultation with customers should be at the heart of everything that any public body does, but that is especially important for Scottish Water.

Bruce Crawford: I hope that the committee will support all the amendments in the group. Bearing in mind what Angus MacKay has said, I am interested to hear what the minister has to say.

To Des McNulty I say that consultation panels’ right to make representations to Scottish ministers, the commissioner or whoever, does not differ from the right that I have, as a member of the public, to make representations. However, having a right to be consulted is a different issue entirely. Having the right to representation is not the same as having the right to be consulted. If the bill cannot give customers rights to express their viewpoints, some of the central ethos of what we are trying to achieve will be washed away. The inclusion of representation is not strong enough; a requirement for public consultation should be included in the bill. The issue is about having proper consultation and real dialogue between the customers and the various organisations in the water industry. Representation does not provide that right and does not guarantee a dialogue, whereas consultation should.

Allan Wilson: I shall be brief, given the number of amendments in the group. I am conscious that we want to make progress.

Prior to agreeing to amendment 65, I say in response to Fiona McLeod’s comments that it is a misrepresentation to say that the water commissioner will be solely an economic regulator. The commissioner will also be a regulator of the interests of customers. In fact, section 1(2) of the bill says of the primary duty of the commissioner that

“The Commissioner has the general function of promoting the interests of customers of Scottish Water.”

Therefore, the issue is already covered by that provision. I say that having already accepted

amendment 65, because I agree that it is right that the commissioner should consult the customer consultation panels before he agrees to Scottish Water’s code of practice. There you are.

I also agree that it makes sense to provide for the commissioner to be consulted when the task of determining the codes of practice or charges schemes falls to ministers. In that context, I recommend that the committee agree to amendment 65, which is in the name of Fiona McLeod, and amendments 67 and 69, which are in the name of Des McNulty.

However, I am not persuaded that ministers should be required to consult the customer consultation panels before they make a determination on a code of practice. On the rare occasions on which that task will fall to ministers, the commissioner will have already consulted the panels as a result of amendment 65, which I accept should be agreed to. Ministers will have received the views of customer consultation panels, as expressed to the commissioner, because we expect that those views will be made known to ministers in order to inform their decisions. Therefore, the proposition is superfluous.

I am also not persuaded that it is for ministers or for the commissioner to publish codes of practice or charges schemes—I think that Angus MacKay raised that point. Scottish Water is statutorily responsible for such matters, as reflected in the publication provision at section 26(6), which states:

“Scottish Water must take reasonable steps to inform customers and potential or former customers of the contents for the time being of its approved code of practice.”

That subsection imposes a more rigorous duty on Scottish Water than simply saying that it should stick the code of practice on its website, which would leave it up to individuals to read it. The statutory imposition in section 26(6) requires Scottish Water to take the steps that are necessary

“to inform customers and potential or former customers of the contents ... of its code of practice.”

Section 33 of the bill deals with charges and imposes a statutory obligation on Scottish Water to publish the summary of a charges scheme. That is the best way in which to handle publication of information and, in this instance, does not mean simply sticking a document on a website. As Angus MacKay sees it, the bill says that Scottish Water must take practical steps to distribute and disseminate that information. Given that those statutory obligations are imposed in sections 26 and 33, I hope that Fiona McLeod will not move amendment 66 and that Des McNulty will not

move amendments 68 and 70.

Amendments 84 and 85—particularly amendment 85—seek to provide customer consultation panels with a new role in connection with the approval of charges schemes. Amendment 85 would make charges schemes unworkable, which would be inappropriate. At this juncture, it is important that I note the danger of unnecessarily weighing down customer consultation panels with additional duties and obligations that would divert them from their principal function, which is to represent the views and interests of customers at local level.

The commissioner's role is to take an objective view of the effect of charges schemes on all customers. To involve or consult customer panels at that point would not assist the commissioner in performing that role. Panels will represent mostly domestic and small business customers and will provide local accountability, rather than a view on national charges. To give panels the role that has been described at that juncture would make it impossible for the existing charges scheme to work effectively.

With the addition of amendment 65—which is important and which I accept—the bill would strike the right balance in the role of customer panels. If panels were involved in charges schemes, they would go beyond their intended role and make representations that they are not required to make. That role, particularly as envisaged in amendment 85, would make the commissioner's task more difficult. On that basis, and given that I have accepted amendment 65, I urge Fiona McLeod not to make the charges scheme unworkable and not to move amendments 84 and 85. That would strike the right balance.

11:15

Fiona McLeod: I am delighted that the minister accepts my reasoning on amendment 65 and Des McNulty's reasoning on amendment 67. I do not wish to appear churlish, but if he accepts that the water industry commissioner should be consulted on disputes before ministers issue the code of practice, as he did in accepting amendment 67, it is equally and perhaps more valid that the water customer consultation panels should have the role that amendment 66 would give them.

The title "water customer consultation panel" makes it clear that each panel will allow customers to have their voices heard and to be consulted. A panel can be involved in consultation in both directions; it can consult customers with the aim of reaching consensus and the minister can consult it to ensure that he is being correctly informed of customers' wishes.

On amendments 84 and 85, the minister

referred me to section 2(3), which establishes the water customer consultation panels and says:

"Each Customer Panel is to have the general function of representing the views and interests of the customers".

I maintain that one of the most fundamental interests of any customer will be the charges scheme that will be imposed.

I am delighted that the minister has accepted some amendments. I hope that I do not appear churlish, but I believe that the rest of the amendments in my name would, through the consultation panels, strengthen customers' role and voice in what will happen to them. The minister's consulting of panels will validate any decisions that he makes.

Amendment 65 agreed to.

The Convener: I congratulate Fiona McLeod on her success.

Amendment 66 moved—[Fiona McLeod].

The Convener: The question is, that amendment 66 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)
Radcliffe, Nora (Gordon) (LD)
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 5, Against 4, Abstentions 0.

Amendment 66 agreed to.

The Convener: Fiona McLeod has had a double success.

Amendment 67 moved—[Des McNulty]—and agreed to.

The Convener: Does Des McNulty wish to move amendment 68?

Des McNulty: In his response to amendment 68, the minister said that he interpreted section 26(6) as requiring that the code of practice be published. That is not exactly what that section says; it does not use the word "published" throughout. I am happy not to press the amendment at this point, but the Executive might want to introduce amendments on the matter at stage 3.

Amendment 68 not moved.

Section 27, as amended, agreed to.

Section 28—Charges for goods and services

The Convener: Amendment 92 is grouped with amendments 93 and 95.

I apologise to Tommy Sheridan for keeping him so long while we have been going through all the other amendments. Thank you for your patience. I invite you to move amendment 92 and to speak to the other amendments in the group.

Tommy Sheridan (Glasgow) (SSP): This morning's deliberations have been suitably detailed and I commend the committee for the manner in which it is studying this important bill.

The current water charging system, as everyone here is aware, is based on the council tax charging system. The council tax system is unfair and increasingly discredited. Even according to such illustrious bodies as the Institute for Fiscal Studies, the council tax is regressive. Even with the council tax rebate scheme, low-income families pay a higher proportion of their income in council tax than higher-income families pay.

As the water rates system is based on that charging scheme, the water rates system is similarly unfair, with the added burden that there is no rebate scheme. In my own city of Glasgow, we currently have about 57,000 pensioners who are entitled to either full or partial council tax rebates, but are not entitled to any water rebate. The Executive's proposed scheme would not in any way rectify that injustice. The Convention of Scottish Local Authorities has admitted that one million of the poorest households in Scotland will be excluded from the Executive's rebate scheme.

Amendment 92 tries to tackle what I think is a crucial element of the water and sewerage industry in Scotland: how it is paid for and whether charges are fair, progressive, transparent and efficient. When one considers the fact that water charges for domestic customers in Scotland have increased by 105 per cent since 1996, one realises that there has been nowhere near a similar increase either in benefits or in the wages of low-income families. One then realises how much of an increased burden paying for water charges has been, particularly for those who are on benefits, for pensioners and for low-paid people.

My proposed scheme is designed to replace the discredited and unfair charging scheme with a personal-income based scheme that is progressive and therefore fair. It is drawn from an academic study that was commissioned by the University of Paisley's business faculty. I thank the clerks for their assistance in constructing amendment 93. However, I ask members to note at the outset that the percentages that are referred

to in the amendment relate to marginal tax rates and not to the percentage of gross incomes. That is an important element and one on which other members may want to comment.

The new charging scheme would deliver a charge that is based on the personal income of citizens in Scotland, with an exemption for all citizens who have an income below £10,000 a year. I am sure that each and every member of the committee is as shocked as I am by the fact that 882,000 Scottish citizens have an income of less than £10,000 a year. That is a shameful statistic. Agreement to amendment 92 would ensure that those people were exempt from the charges. Thereafter, charges would be imposed progressively so that the highest earners in our country would pay the highest contributions toward water rates and the lowest earners in our country would pay less toward water rates.

The charging scheme would deliver an average water charge of £121 per person in Scotland. Based on an average income of £17,500 per person in a two-person household, that would result in a charge of £242 per household.

That charge is lower than any charge that is made by the three current water authorities. It therefore produces an average water charge that is less than the current average. The charging system would also—this is crucial—be redistributive. The burden of paying for water and sewerage services—which I hope everyone considers to be essential services and not commodities to be purchased at will—would move from the shoulders of pensioners, low-paid people and those who are on benefits onto those of the well-paid and the wealthy. We members all come into the well-paid bracket and some may come into the last category.

The charging scheme is designed to try to enhance the idea of fairness, social justice and redistribution of income in Scotland. What is also crucial is that, based on the most up-to-date income figures for 1998-99, the charging scheme would deliver £201 million more for water and sewerage services in Scotland. The scheme would be fairer, more transparent and redistributive. It would also raise more money for what are essential services.

I move amendment 92.

Maureen Macmillan (Highlands and Islands)

(Lab): We are all aware that we must examine how we support domestic users who have low incomes. However, amendment 93 might be ultra vires, because it involves social security issues. In considering going down the road that Tommy Sheridan has set out, I say that the basis of charging per person might not be the best route—a better basis might be household income.

Tommy Sheridan's cut-off point in amendment 93 is £10,000. If four people share a house and each earns £9,000, that gives a household income of £36,000. Next door, there might be a single parent on £15,000 who has three kids. It would seem that there is unfairness even in Tommy's proposal. The matter is difficult and must be addressed, but not necessarily through the bill.

Des McNulty: Considerable collection costs would be involved in moving to the system that Tommy Sheridan proposes. Those of us who went through the set of problems that were associated with the introduction of the poll tax are aware of the complexities and difficulties that are attached to payments being made on an individual basis. Another serious issue is whether it is appropriate to use the taxation system as the basis for collecting payments for Scottish Water.

I also want to raise questions about the impact of the proposals. I understand that, in Glasgow, West of Scotland Water's annual water charge for an average family, on an average income, paying council tax in valuation band D amounts to £266 or £270. According to my arithmetic, under Mr Sheridan's proposal, such a family—on average UK weekly earnings—would pay £534, which is almost double the amount. That would mean that quite a lot of ordinary families, including those who are on the UK average income, could end up paying substantially more under the proposed charging system. There are a number of questions about how the scheme would work and about the collection procedures that would be involved.

11:30

Mr Adam Ingram (South of Scotland) (SNP): Tommy Sheridan is to be congratulated on this proposal. His amendments would put in place a more progressive system than the one that we have at the moment. The Scottish National Party is very much in favour of progressive taxation.

Having said that, we would like clarification of some details, particularly the points that have been made already about costs of administration. Des McNulty and Maureen Macmillan made a point about the charges that will be made to households. There could be a substantial rise in charges for people on relatively modest earnings, and that issue must be addressed. On balance, we would like to have a bit more information about the scheme. However, we welcome the fact that Tommy Sheridan has proposed it.

Angus MacKay: Adam Ingram is finding that fences are quite spiky to sit on. What I took from his comments was that he likes the idea, but that he cannot quite bring himself to support it because the necessary information is not available.

I fear that these amendments would be the

fastest route to privatisation of the Scottish water industry that we have heard about so far. I am unclear about many of the issues that Tommy Sheridan's proposal raises. Perhaps he can enlighten us. We need to know how Scottish Water would determine what people's incomes are. In practical terms, how would it compel individuals to declare their incomes? Unless Scottish Water has that information, it will not be able to predict what its revenue stream will be, in order to make investment decisions or to be confident about delivering services. In those circumstances, the only people who will benefit are the private sector competitors that the bill is designed to help Scottish Water to compete against and to displace from the Scottish water market.

I assume that anyone who falls within the terms of the amendment would, from the moment that the legislation is passed, be liable to pay towards the cost of delivery of services by Scottish Water. That means everybody, in every household, who is not exempted by paragraphs (a), (b) or (c) of subsection (2) of the new section that amendment 93 would insert in the bill. That will be a revelation to many people in Scotland. Pensioners are not specifically named among those excluded, so I assume that any pensioner with a gross annual income in excess of £10,000 would have to make a contribution. Tommy Sheridan is nodding, and I am sure that he will deal with that point later. People with a disability are not specifically mentioned, but the intention may be to include them in some other context.

Tommy Sheridan's set of amendments is completely unworkable. As I said earlier, his proposal is more likely than anything that we have come across thus far to bring about the privatisation of the Scottish water industry.

Bruce Crawford: I would like to respond to the points that Angus MacKay has made. Information is vital if the committee is to come to the right conclusions. In those circumstances, anyone who asks questions is to be applauded.

It is also important to state principles. The minister has already agreed to give further consideration to proposals that have been made around the table today in relation to points of principle that the committee supported. Not all members may like the technical aspects of Tommy Sheridan's proposal, which need to be explored further; but if the committee were to say—as Maureen Macmillan has, in effect, said—that progressive taxation is a good idea, that would put pressure on the minister to come up with a scheme that could be applied, that would work and that would satisfy everybody. That is an important starting point.

I have questions for Tommy Sheridan. I need to

understand more about what is behind the proposed scheme. I realise that he is trying to produce a progressive scheme, but it is stepped rather than tapered, which might lead to anomalies when people move from one bracket to another. A penny difference in salary might mean a large increase in expenditure going to Scottish Water. Given that the scheme is stepped, is the relationship between income and charges as tight as it should be? If the scheme were tapered, it might be tighter.

What would be the costs of administering the scheme? How often would income changes be reflected in the charges that are applied? Would it be once a year or every time an individual's salary or income changed? I genuinely do not know what impact the scheme would have on benefit and on individuals who receive benefit. If, as a result of the scheme, such individuals' income became greater, would that impact on benefits? I am sure that Tommy Sheridan knows the answer to that.

I also have a question for the minister. I understand that COSLA wrote to the minister on the issue of water relief or rebate and that discussions are continuing with the Department for Work and Pensions—which is an incredible name from the 18th century. What discussions have there been with that department to ensure that if we cannot have a progressive taxation system for water, the benefits system will reflect the issues that Tommy Sheridan raised about the level of rebate available to those on low incomes?

Robin Harper: I can feel the sharp points of the fence sticking into my nether regions. I do not reject outright Tommy Sheridan's proposals, because I accept that there should be a progressive element in the way in which water charges are levied. An element of progressive charging exists already. The problem is that it is not progressive enough, and that is what Tommy Sheridan's amendments attempt to address.

We must do more work on the matter, including having further conversation with the Executive to try to get a fairer system by relating water charges to people's means and income. I do not have a suggestion at the moment. Tommy Sheridan suggested a solution that involved income tax, which would be absolutely fair, but the committee cannot deal with that because it is not within its powers or the remit of the bill. We must do more work on the matter.

Allan Wilson: Tommy Sheridan's amendments raise important issues about taxation and redistribution of wealth, which are for debate elsewhere and at another time. The amendments do not include an issue that is more pertinent to today's business and which has been mentioned by Angus MacKay and others: a feasible means by which Scottish Water would charge its

customers. The effect of the amendments would be that, by 1 April, Scottish Water would have no means of collecting revenue, which would leave it distinctly vulnerable to the vagaries of the market. The situation would be not unlike the one that Angus MacKay described. Tommy Sheridan's amendments would effectively scrap the current arrangement by which local authorities collect water and sewerage charges and replace it with a requirement on Scottish Water to establish each customer's income and take a specified proportion of it as a payment for the services that are provided.

Water charges are not a tax; they are a contribution towards the cost of the utility—the service provided. As we all appreciate, with the possible exception of Tommy Sheridan himself, the approach that he outlined would be incredibly cumbersome. It would require a great deal of time and effort as well as expense to set up. In response to what members have said about that, our estimate is that it would cost about £200 million to administer the proposal. That is at or near the value of the additional revenue that would be raised if a 200 to 300 per cent increase were to be imposed on individuals' water charges, which is what Tommy Sheridan's amendments would bring about. As I said in the stage 1 debate, I can think of a great many better ways to spend £200 million.

Tommy Sheridan's proposal also lacks the advantage offered by the current link to council tax bands. Once established, those bandings remain constant. Instead, a constant revision of a customer income database would be required, which would incur an unproductive level of cost and effort. Without entering into an ideological debate, I simply cannot see how that approach would work on purely practical grounds.

No less significantly, Tommy Sheridan's amendments would require Scottish Water to act in a highly intrusive manner towards its customers, but without giving it the power to obtain the information that it would need. That raises serious questions, which arose in relation to the poll tax for example, about individuals' right to privacy on such matters as their level of income. For those reasons, particularly on the grounds of practicality, I urge the committee to reject amendments 92, 93 and 95.

I share the view expressed by several members about the fairness of the current arrangements. The transitional scheme that we introduced helps those on low incomes, who are most affected by increases in charges, and is targeted towards groups of people who are not benefiting from the link between levels of charge and council tax bands.

Because of the link between council tax and water, charges are more progressive, or at least

less regressive, compared with other utility charges. One of the primary functions of the bill is to improve the efficiency of service delivery, to keep charges down and to promote affordability. I am concerned that there should be a realistic link between affordability and water charge imposition. We have asked the water industry commissioner to examine the issue of affordability, so that ministers can address in detail the successor arrangements to the current transitional scheme, which aim to assist low-paid water consumers.

The Convener: I invite Tommy Sheridan to respond.

Bruce Crawford: Convener, I think that you said that members could ask other questions before a member's summing-up, if something came up.

The Convener: I will allow you to do so if you wish, Bruce.

Bruce Crawford: The minister has just said something important about the Executive's intention. I think that he said that the Executive was considering how to make water charges much more reflective of people's income. If that is the case, and if work on that is under way, it is important for the committee to know what the time scale for that is. It is an important matter for the future. If we know the proposed time scale for that, we will know when to expect a proposal and some detail to be presented.

Allan Wilson: I thought that this was already in the public domain. The current arrangements run to 2003-04, and we will have to take a view on what, if anything, succeeds them.

Des McNulty: If Tommy Sheridan's amendments were approved, what would be the implication for charging procedures and for the introduction of Scottish Water? Could we proceed with the establishment of Scottish Water? What would the potential delay be should the amendments be agreed to?

The Convener: Before the minister answers, we should clear up a related procedural issue. Some people have asked whether the amendment would be within the vires of the Scotland Act 1998. If the amendment were passed and subsequently remained in the bill when it reached the end of stage 3, the Advocate General would have to decide whether the provision was ultra vires. If it were thought to be, the bill could be referred to the Privy Council and back to the Scottish Parliament. That could delay the introduction of Scottish Water.

11:45

Allan Wilson: I will not comment on whether the measure is ultra vires. I will restrict myself to the

practicality of the measure. I thought that I had made clear earlier that Scottish Water cannot be set up on 1 April with this provision in the bill as, at that date, it would have no way of collecting revenue.

Tommy Sheridan: I will try to answer each of the points that have been made, as they all deserve a response.

In reply to the minister's final comments and Maureen Macmillan's first point, I point out that the issue of the bill being ultra vires is crucial. Schedule 5 of the Scotland Act 1998 makes clear the fact that

"Fiscal, economic and monetary policy, including the issue and circulation of money, taxes and excise duties"

are reserved to Westminster. However, it states that an exception to the reserved matters is the issue of

"Local taxes to fund local authority expenditure (for example, council tax and non-domestic rates)."

That is important because the matter that we are discussing is to do with having the Inland Revenue act as the collecting agent for Scottish Water. Once that is realised, I am sure that some of the other questions that have been raised in the course of the debate will become much clearer. If we were to employ the Inland Revenue to collect the charges on behalf of Scottish Water, the estimated cost would be £20 million, rather than the £200 million that the minister suggested it would be. That figure compares well with the £45 million that the three water boards spend on having the local authorities collect the charges.

The Inland Revenue has already carried out the identification exercise that would be needed to allow this charge to be included in its charging facility. Every domiciled taxpayer in Scotland has been identified in anticipation of a decision by the Scottish Parliament to use its tax-varying powers. Given that fact, it is clear that the arguments about the lack of practicality of the proposal are red herrings. If the political will were there, the proposal could be delivered.

Maureen Macmillan's second point, on anomalies, was important. No system that could be manufactured would be without anomalies, but we have to try to get the best possible system. It is important to understand that Scotland's demographic trend is moving towards a situation in which 5 per cent of households will have more than three working adults. In other words, the trend is towards smaller households. Maureen Macmillan talked about a household comprising four employed adults and Des McNulty talked about a household made up of adults on average wages, but the fact is that the number of households with more than two working adults is now approaching 5 per cent of the Scottish

population—it is the exception rather than the rule.

Des McNulty made points about the cost of collection and the costs of the system. I hope that it has been made clearer now that Scottish Water would employ the Inland Revenue to collect that money on its behalf and would pay the Inland Revenue for that service.

Des McNulty also gave examples of individuals on average incomes. My example was of an average Glasgow household in which both adults were earning £17,249 per annum. Again, that is unusual because one adult would normally earn the average income and the other would earn less. Using that worst-case scenario to examine the bill, the water charge for that household of two adults who earned those wages would be £242. That contrasts with the £266 charge that they would currently pay. It is clear that the overwhelming majority of taxpayers in Scotland would pay less under my proposed charging system. Almost 2 million people would pay less. Most of the extra payment would be concentrated on the 300,000 top earners in Scotland.

Adam Ingram made a point about being in favour of progressive taxation. Amendment 92 is trying to deliver that. I hope that the issue of administration costs has been dealt with in my explanation about the Inland Revenue. On the issue of charges for households, it would have to be clear that the charge would be an individual one. As I said in relation to Maureen Macmillan's point, undoubtedly there will be exceptions involving a number of adults who are all earners. For instance, four hospital porters who earn less, unfortunately, than £10,000 could live in one house and would make no contribution because their individual income would be less than £10,000. On the other hand, next door might be a single MSP who earns £42,500 and who would pay a considerable sum.

That issue is more to do with the problem of low income. The beauty of my proposed scheme is that it would be in everyone's interest to improve people's incomes. If incomes rise—they rise between 4 and 5 per cent on average per annum—then the amount of revenue will rise as well.

Bruce Crawford made a point about the need for information. I hope that the extra information that I have given has been of assistance. University of Paisley staff will produce a full academic report within two months. That will be available for him as well. He also asked about changes in charges. The scheme's charge would be annual. Individuals who, at the beginning of the financial year, were on a particular income would pay the same charge for the remainder of that year. If their income were to change in the course of that year, there would be no change in the charge. An annual charge

would be simple and efficient.

Bruce Crawford also questioned my reference to an increase in income and asked whether that would affect an individual's benefits. It is important to bear in mind that I am talking about an increase in an individual's disposable income. This scheme would have absolutely no effect on an individual's benefits. It would allow individuals to retain more of their benefits to spend on what is most essential in their lives.

Unfortunately, Ofwat in England and Wales—which was earlier referred to—recently estimated that, by the year 2003-04, single pensioner households will pay 14 per cent of their income on water charges. The problem for people on a low income is that that charge represents a much larger proportion of their actual weekly budget.

Robin Harper is absolutely right that more work should be done on my proposed scheme. I welcome scrutiny of amendment 92 and I will welcome scrutiny of the full academic paper when the University of Paisley produces it. However, I reject the idea that the scheme is impractical.

That brings me to the minister's points. He gave an estimated cost of £200 million to set up this scheme. I do not know what that figure is based on. It would be interesting to see in black and white what that is based on. Perhaps he could do that by letter to avoid opening up the debate again. As I explained, the charge would not require constant revision because of change of income, as it is clear that it would be an annual charge. I hope that the minister is listening to representative bodies, such as anti-poverty campaigns and the Convention of Scottish Local Authorities, which say loud and clear that the Executive's current transitional scheme is a sham. It misses out 1 million of the poorest households in Scotland. It does not offer the protection that the minister talked about.

The proposed scheme would offer protection to the lowest-income households and individuals and would effect a redistribution of income across Scotland. The minister hinted that that subject was not for this committee but for another place. The problem is that we keep leaving discussions of redistribution of income to others. Every piece of our legislation should be about social justice and that will contain an element of redistribution. In forming legislation to do with paying for a service as essential as water, we have an opportunity to create a progressive and redistributive system rather than the regressive and unfair system that we have at the moment.

The Convener: The question is, that amendment 92 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harper, Robin (Lothians) (Green)

AGAINST

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

ABSTENTIONS

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

The Convener: The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 92 disagreed to.

Section 28 agreed to.

Sections 29 and 30 agreed to.

The Convener: Before we consider the next amendment, I advise Jackie Baillie and members of the public that there is now no likelihood of our reaching the amendments on charitable relief today. I apologise to those who came specifically for discussions on that issue. It will be discussed early next week.

After section 30

Amendment 93 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 93 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

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

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 0, Against 6, Abstentions 3.

Amendment 93 disagreed to.

Section 31—Approval of charges schemes

Amendment 84 moved—[Fiona McLeod].

The Convener: The question is, that amendment 84 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)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 84 disagreed to.

Amendment 85 not moved.

Amendment 69 moved—[Des McNulty]—and agreed to.

The Convener: Des, do you wish to move amendment 70?

Des McNulty: The minister indicated that information on the charges scheme would be disseminated. Section 33 is about publication of a summary of the charges scheme. I can understand that a summary should be made widely available, but will the minister assure us that the scheme itself will be published in some form?

12:00

Allan Wilson: I will take that away for further consideration. There are limitations on the dissemination of information. We would have to consider the costs and other obligations that amendment 70 would impose on Scottish Water. We are sympathetic to the objective that you propose, but we would have to work out quite how we would achieve it.

Des McNulty: The minister says that he will reconsider section 33. If that is so, I am happy not to move amendment 70. However, the charges scheme should be published.

Fiona McLeod: I move amendment 70. We have to do so for public information.

The Convener: The question is, that amendment 70 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)
 Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 70 disagreed to.

Section 31, as amended, agreed to.

Section 32—Commissioner's advice on charges

Amendment 86 moved—[Fiona McLeod].

The Convener: The question is, that amendment 86 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)
 Radcliffe, Nora (Gordon) (LD)
 Scott, John (Ayr) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 86 disagreed to.

Amendment 71 not moved.

The Convener: Amendment 72 is grouped with amendments 73, 87 and 23.

Des McNulty: Amendments 72 and 73 are relatively minor amendments that are intended to improve the clarity of section 32. Amendment 72 clarifies that the core functions that are referred to in subsections (3) and (4) are the same core functions that are identified elsewhere in the bill.

Section 32(3) requires the water industry commissioner to consider directions that Scottish ministers issue under section 49 on how Scottish Water's affairs are managed and conducted. However, section 41 enables Scottish ministers to issue a direction on payment and investment. It is appropriate that directions that are issued under section 41, as well as those issued under section 49, be taken into consideration. Amendment 73 places that requirement on the water industry commissioner.

I move amendment 72.

Fiona McLeod: Because of the time, I will speak to amendment 87 only. The amendment relates to section 32, which is headed "Commissioner's advice on charges". I have used

the same arguments before. I would like to pre-empt the minister, as I am sure that he will refer us to section 2(5), which says:

"In exercising functions in relation to Scottish Water, the Commissioner must have regard to—

- (a) any representations made to the Commissioner by a Customer Panel".

However, when the water industry commissioner is preparing advice on the charges that he is going to set, he should not be told to have regard to everything and everyone except the customers. Charges are fundamental to customers and the customer consultation panel is the customers' voice, so it must be heard. It seems nonsensical to have a long list of those to whom the commissioner has to have regard if that list excludes the customers.

John Scott: I shall be brief, too. The issue is about putting in the public domain information on how and why decisions are reached. The point of amendment 23 is to make the decision-making process more transparent.

Allan Wilson: Amendment 72 adds the word "core" before the reference to functions in section 32(3)(b). However, as the core functions are defined in subsection (4), we do not think that the extra definition is necessary. The point is covered and I hope that Des McNulty will withdraw amendment 72.

As Des McNulty points out, amendment 73 is another drafting change. It requires the commissioner to have regard to directions to Scottish Water regarding the use of sums that are not required for the exercise of its functions. That is a sensible suggestion and I am happy to recommend that the committee accept that amendment.

Amendment 23 would be a backward step from the current arrangements, whereby all the relevant papers in a charges review—including ministerial correspondence—are published in their entirety when the process has been completed. That is provided for in section 32(7). I am confident that that is the best way in which to ensure a full understanding of the outcome of those deliberations. The proposed fragmentation of the publications would remove the benefit of that wider dissemination of the information on the process. With those assurances, I ask John Scott not to move amendment 23.

Amendment 87 proposes to give the consultation panel a role that I would argue is really for the commissioner alone. The purpose of section 32 is to confirm the commissioner as the economic regulator of Scottish Water. We have had that discussion. That role must be performed objectively, drawing on all the relevant expertise. In short, the commissioner is required to come up

with a number—in this case, one that represents the lowest amount that is required by Scottish Water to deliver effectively according to the obligations that we place on it. Ministers set out those obligations in the quality and standards process, in which Parliament, the Scottish Environment Protection Agency, the commissioner and the public are all consulted.

At that stage of the process, the panels can offer a view and comment on the priorities, standards and quality process that we impose on Scottish Water as well as on the outputs. It is hard to see how, once the outputs are set and the consultation process has been completed, the panels could offer views that the commissioner could reasonably have regard to. I urge the committee to reject amendment 87. We have struck the appropriate balance in relation to the input of the customer consultation panels at the appropriate point in the process. The consumer interest is protected by the ministerial—indeed, wider parliamentary—role thereafter.

Des McNulty: I am happy to withdraw amendment 72 on the basis of the minister's assurances. I am pleased that the minister is recommending that we accept amendment 73, which I will be happy to move.

Amendment 72, by agreement, withdrawn.

Amendment 73 moved—[Des McNulty]—and agreed to.

Amendment 87 moved—[Fiona McLeod].

The Convener: The question is, that amendment 87 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)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 87 disagreed to.

Amendment 23 moved—[John Scott].

The Convener: The question is, that amendment 23 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)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 23 disagreed to.

Section 32, as amended, agreed to.

Section 33 agreed to.

The Convener: For the committee's information, I intend to reach the end of section 34 today. I will also try to take amendment 76, in the name of the minister, which means that, next week, we will start with section 35.

Section 34—Liability of occupiers etc for charges

The Convener: Amendment 75 is grouped with amendment 76.

Allan Wilson: Amendments 75 and 76 are minor amendments that, by defining more clearly the word "occupier", clarify beyond any doubt in the legislation who should be billed for water charges. They make it clear that the occupiers of premises that are exempt from council tax are still liable for water charges. The order-making power to specify who should be treated as an occupier for the purpose of liability for charges for water and sewerage services would allow Scottish ministers to provide clarity in future as to who should be liable for those charges. In that respect, it is effectively a tidying-up amendment.

I move amendment 75.

Amendment 75 agreed to.

Section 34, as amended, agreed to.

After section 34

Amendment 76 moved—[Allan Wilson]—and agreed to.

The Convener: That ends this session of our stage 2 consideration of the Water Industry (Scotland) Bill. Next week, we will start with amendments to section 35. I thank the minister, his officials and other members for their participation in today's proceedings.

As that agenda item was quite lengthy, I suggest that we have a five-minute break.

12:13

Meeting adjourned.

12:22

On resuming—

Aquaculture Research Contract

The Convener: Agenda item 3 is on our inquiry into aquaculture and the proposed tendering arrangements for a research contract. The committee reporters have prepared a paper, which was distributed with members' papers for today's meeting.

As the Scottish Executive intends to proceed with its own research contract at this stage, the paper proposes that the committee reporters monitor the progress of the Executive's contract with a view to making a bid for funding for external research later in 2002 to examine any gaps between the Executive's research and other research that the committee believes is worth while. I invite Maureen Macmillan to comment, as she is the only reporter present. Robin Harper will have an opportunity to comment if he reappears.

Maureen Macmillan: I am extremely pleased with the developments that are taking place in the Executive on aquaculture. The issues that the Executive will research are those into which the committee wants research to be conducted. When we can identify gaps in scientific knowledge, we will be able to make progress on our own research. That means that we do not have to rush to prepare a proposal for the conveners liaison group—we can wait to see the results of the Executive's research before deciding how to supplement that research. Do members wish to ask Robin Harper or me any questions on our paper? I think that I am right to say that both Robin and I are happy with the situation that has developed.

Robin Harper: Yes, absolutely.

Maureen Macmillan: The Executive will not take forward its work on its own, as the committee will be closely involved through Robin and me.

The Convener: Robin, is there anything that you would like to add to what the paper says?

Robin Harper: Not really. I am perfectly content with the situation, which is a good way forward. We have spent a fair amount of time considering the issues.

The Convener: Do members wish to express any views or ask the reporters any questions?

Des McNulty: I do not want to ask the reporters a question, but I think that we should bear in mind the issue of principle that I have raised two or

three times in relation to committees funding fundamental research. We should flag up that principle and get it into the system through the conveners liaison group and the Scottish Parliamentary Corporate Body at an early stage. We could do that before we submit a bid; the principle is worth flagging up so that we do not have to deal with both the bid and the principle at the same time.

The Convener: Both Des McNulty and I can raise that issue at the conveners liaison group as a general principle. If the committee proceeds in line with the timetable that has been outlined, we may well submit a bid before the next deadline, which is the end of March.

Are members content to agree the reporters' recommendations?

Members indicated agreement.

Robin Harper: It would be appropriate for us to thank Tracey Hawe for the help that she gave us.

The Convener: We pay due thanks to Tracey Hawe for her stalwart role in our continuing inquiry. She will be the world expert in aquaculture by the time we have finished.

I advise that the committee will now move into private session, and I thank members of the public for their attendance.

12:26

Meeting continued in private until 12:50.

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