

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 30 January 2002
(Morning)

Session 1

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TRANSPORT AND THE ENVIRONMENT COMMITTEE

4th 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:

Bruce Crawford (Mid Scotland and Fife) (SNP)

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 2

Scottish Parliament

Transport and the Environment Committee

Wednesday 30 January 2002

(Morning)

[THE CONVENER opened the meeting at 09:37]

Water Industry (Scotland) Bill: Stage 2

The Convener (Bristow Muldoon): I welcome members of the press and public to the fourth meeting in 2002 of the Transport and the Environment Committee. I have received apologies from Nora Radcliffe.

I also welcome the Deputy Minister for Environment and Rural Development, Allan Wilson. I also welcome Bruce Crawford, who has lodged several amendments. After last week's marathon effort, I expect us to conclude our stage 2 deliberation of the bill today.

Section 49—Directions

The Convener: Amendment 104 is grouped with amendment 109.

The Deputy Minister for Environment and Rural Development (Allan Wilson): Amendment 104 is a technical amendment. It expands the power of Scottish ministers to give directions under section 49 of the bill. Amendment 104 makes it clear that the directions can allow for appropriate reference to decisions, for example approvals of particular activities, by third parties, so as to ensure the flexibility that is required.

We consider Bruce Crawford's amendment 109 to be an unhelpful addition to section 49. It is clear that contracting out is, in any case, one of the many activities on which Scottish ministers may direct Scottish Water. Amendment 109 adds nothing useful; it merely adds an inappropriate level of detail. It singles out only one operational issue among many and defines the provisions too narrowly. Under the governance framework that is being established, Scottish Water will not be able to make any significant changes to the way it delivers its services to customers without seeking ministers' agreement. The general powers and corporate governance directions—copies of which we have given to the committee—indicate the level of control that ministers wish to apply. I ask the committee to reject amendment 109.

I move amendment 104.

Bruce Crawford (Mid Scotland and Fife) (SNP): I hope that we manage to finish stage 2, otherwise the business programme that is about to arrive on our desks may not be achievable. We should try to keep this as short as we can.

On the corporate governance issue that the minister raised, I am at a disadvantage compared with members of the committee, because I do not recall having seen the directions. Perhaps only committee members received them. The convener may be able to confirm that. It would be useful if I had a copy of them.

The Convener: My understanding is that the minister distributed the directions in a letter to committee members before Christmas. A copy should be available.

Bruce Crawford: That is fine. I shall get a copy.

The minister raised the general powers and what Scottish Water can and cannot do, but it was made plain by the minister last week that, under section 25(3)(a), Scottish Water will be able to form joint venture companies with the private sector. In those circumstances, Scottish Water would be able to deliver an element of its services with the private sector. The minister established the position clearly last week, and I understand why the provision exists.

I am attempting to give the minister the power, if he wishes to do so, to curtail the overall percentage of work that may end up in private sector hands. A joint venture company might, for example, deliver 10 per cent of services but could end up, under the rules as they are drawn, doing 80 per cent of Scottish Water's work. If I was a minister, I would like to have a power in the bill—and not just in the guidance that is provided by memorandum—that enabled me to say to Scottish Water, "Okay, I understand that, for flexibility, you will deliver a particular service in a particular way by involving the private sector, but I think that, for the overall integrity of the business, you are going too far." Amendment 109 seeks to apply a brake, if the minister so desires, on the level of private sector involvement in Scottish Water and its activities.

Robin Harper (Lothians) (Green): I support what Bruce Crawford said. There is still considerable disquiet about the protection that the bill affords against creeping privatisation. The clear intention of amendment 109 is to give ministers the flexibility to relieve the water industry of undue pressures from outside and to do so in a proper manner. It would allow ministers to say, "Right, that is far enough." I cannot see that amendment 109 would add unnecessary detail. I would say that it adds necessary flexibility.

Allan Wilson: Bruce Crawford said that amendment 109 would provide powers that

ministers want to have. In fact, the powers are already provided for in section 49(2)(b). As I said, we have issued to the committee the general powers and corporate governance directions, which make it clear that contracting out is one of the many activities on which Scottish ministers may direct Scottish Water. Amendment 109 adds nothing useful, as the directions would be legally binding on Scottish Water even if the bill were passed without the amendment. Ministerial approval is required under the directions. I ask Bruce Crawford not to move amendment 109.

The Convener: The question is, that amendment 104 be agreed to. Are we agreed?

Members: No

The Convener: There will be a division.

FOR

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

ABSTENTIONS

Harper, Robin (Lothians) (Green)
McLeod, Fiona (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 0, Abstentions 2.

Amendment 104 agreed to.

Bruce Crawford: I will move amendment 109 because, whereas the minister wants to include the provision in regulations, I want to include it in the bill, which is the appropriate place for it.

I move amendment 109.

The Convener: The question is, that amendment 109 be agreed to. Are we agreed?

Members: No

The Convener: There will be a division.

FOR

Harper, Robin (Lothians) (Green)
McLeod, Fiona (West of Scotland) (SNP)

AGAINST

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

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 109 disagreed to.

Amendment 33 moved—[Allan Wilson]—and agreed to.

Section 49, as amended, agreed to.

After section 49

The Convener: Amendment 114 is in a group on its own.

09:45

Des McNulty (Clydebank and Milngavie) (Lab): Amendment 114 is a probing amendment. I think that the minister previously agreed that there should be a code of practice for Scottish Water in relation to consultations connected with significant capital construction, renovation or upgrading. The amendment sets out not only to identify the need for such a code of practice, but to indicate the principal elements that the code should include. It sets constraints on what Scottish Water can do without the specific consent of ministers. It also deals with consultation and the water customer panels. I am pleased that the minister has accepted the principle of a code of practice and I am anxious that the particular elements that I have identified in the amendment be included.

I will give an illustration of the need for a code of practice. For the past 12 months or so, I have been chasing West of Scotland Water in relation to a problem of sewage smells in my constituency. Following the upgrading of Dalmuir sewage works, West of Scotland Water has repeatedly failed to honour its promises to organise a technical solution to the problem of the smells. West of Scotland Water is now shipping processed sludge out of Dalmuir by road. The sludge is treated with lime, which causes a chemical reaction, and is then dragged out by road, through my constituency, in vehicles that trail in their wake a stench of rotten fish, which affects houses and businesses in the locality. I have received a number of complaints, particularly from businesses, about the impact that the smell is having on them.

That is an example of a company that is not being properly accountable. Whatever I do to West of Scotland Water, it does not seem to be able to solve the problem on behalf of the local community. The code of practice is needed to ensure that bodies do what they say they will do and that there is redress against them when they fail to do so.

I was going to talk about the Milngavie water treatment works, but I am sure that I can discuss that with the minister later.

I move amendment 114.

The Convener: Thank you. Judging from the reactions of members, I think that you were giving us too much detail about the smells in any case.

Maureen Macmillan (Highlands and Islands) (Lab): Property prices in Milngavie have fallen by about £10,000 a house.

Fiona McLeod (West of Scotland) (SNP): I hope that Des McNulty will press amendment 114, because it is at the core of what the Parliament expects in the way in which we go about our business and the way in which we expect other organisations to go about their business. As Scottish Water will be the largest public organisation in Scotland, it must have codes of practice governing the way in which it consults the public.

Des McNulty mentioned Milngavie reservoir, which is a prime example of the need for such a code. Again, West of Scotland Water was to blame. There was a meeting of 300 local residents, followed by great public outcry. The residents were saying to Scottish Water, "You've got a plan. It's a huge plan and you're not telling us anything about it." The residents could not make an informed judgment on what West of Scotland Water was planning to do at Milngavie reservoir. At the end of the public meeting—which was not a happy one—I spoke to one of the directors of West of Scotland Water, who admitted that the information had not been provided. Slowly but surely, we have now dragged the information out of West of Scotland Water, as a result of continued meetings between Des McNulty and I and West of Scotland Water.

The public should not have to drag information out of a public authority. If a public authority is going to do something that affects the public, all the information should be publicly available. Des McNulty's proposed code of practice on consultation is essential to ensure that, in all its dealings with the public, Scottish Water is clear, up front and transparent. More important, the public should understand Scottish Water's obligation to them, so that they can ensure that Scottish Water meets its obligations regarding consultation and so that MSPs do not have to knock continually at Scottish Water's door to drag the information out—if members will excuse the pun—drip by drip.

I hope that Des McNulty will press his amendment.

The Convener: I am sorry, but we cannot excuse such an appalling pun.

Robin Harper: Several amendments have attempted to strengthen community representation at all levels in the running of Scottish Water. Not all those attempts have been successful. This amendment is important, as it is the backstop. It is important that we incorporate it in the bill. I agree with everything that Des McNulty and Fiona MacLeod have said.

John Scott (Ayr) (Con): I believe that this is a worthwhile amendment. I agree with everything that Fiona MacLeod said; there is no point in my

going over the points again.

Allan Wilson: We discussed the principle behind the amendment when we discussed Des McNulty's amendment on the objectives. I am on record as saying that we propose to create a duty on Scottish Water to prepare and act in accordance with a code of practice on how it consults local communities. An outstanding direction is 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 and, in particular, by Des McNulty. I have been at pains to pick up on those concerns and to work with the committee—and particularly with Mr McNulty—to ensure that the provisions are made. I have taken on board all the representations that have been made to me.

A key theme of the bill is improving the water industry's accountability and responsiveness. As I have said, I agree that Scottish Water should be required to prepare and to act in accordance with a code of practice on how it consults local communities. I am happy to place that commitment on the record again.

Unfortunately, although Des McNulty's amendment 114 is helpful in identifying the issues that will need to be addressed, we cannot recommend its acceptance. For example, defining

"relevant individuals or community groups"

would be difficult. That would need to be clearer. Proposed subsection (2)(b) contemplates a fixed time scale for every consultation, which might prove too rigid in practice, if consultation were needed urgently.

I repeat that we will produce a code of practice that will deal with the issues that Des McNulty has raised. It will cover all the points at which consultation is required, such as before large projects are decided on, and will require such consultation to take place to a reasonable time scale and to be accompanied by proper information. Scottish ministers and customer panels will be involved in approving the code, which will be published and readily available. Scottish Water will account for performance against the code, probably in its annual report.

In the light of that and repeated assurances, I hope that Des McNulty will be happy to withdraw amendment 114 and that the committee will not press the amendment.

Des McNulty: I am pleased that the committee has reached consensus and that the minister has accepted that a code of practice should be established. Since I drafted amendment 114, I have decided that I would like the provisions to be strengthened. A couple of matters have been left

out, such as a provision to enforce adherence to the code of practice. As Fiona McLeod and I said, water companies have at times not abided by their commitments. We need a mechanism for ensuring that a company adheres to the code of practice.

The form of consultation raises issues. Fiona McLeod was right to say that the Milngavie reservoir consultation had defects, because people could not obtain information from the water company. An attempt was made to establish a consultative process, but genuine dialogue did not take place. I do not want a water company or any other agency to follow the form of a consultation but not give people relevant information at the right time. It is hard to write a provision on that into a bill. A code of practice could take account of such issues if it went into sufficient detail.

Disruption has adverse effects. In Dalmeir, major work continues to have an adverse effect. The effect did not occur in advance, so consultation in advance would not necessarily have identified it. In Milngavie, one issue is whether the option that West of Scotland Water proposes will have more significant adverse effects—relating to closed roads, pipe laying and other matters—than alternatives would on the community of Milngavie. That is a big issue that has not been part of any consultation process so far and which is of major concern to the people who live in the community that I represent.

At stage 3, I want the minister to strengthen the provisions that I have drafted in amendment 114. The minister has accepted the principle of my amendment. I am prepared to accept that the wording of the amendment may not be entirely adequate for its purpose. The minister has given a clear commitment to establish a meaningful and rigorous code of practice that people can use as a mechanism to ensure that Scottish Water behaves in a reasonable and accountable way. As that principle has been established, I am happy to withdraw amendment 114. I do so on the understanding that the minister will lodge an amendment that does the job more effectively.

10:00

The Convener: Des McNulty has indicated that he wishes to withdraw amendment 114. Does anyone else want to press the amendment?

Fiona McLeod: I wish to press amendment 114.

The Convener: The question is, that amendment 114 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harper, Robin (Lothians) (Green)

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

AGAINST

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

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

The vote is tied. I cast my vote against the amendment.

Amendment 114 disagreed to.

Section 50—Information and reports

Amendments 29 and 30 moved—[Allan Wilson]—and agreed to.

Amendment 115 moved—[John Scott]—and agreed to.

Amendment 74 not moved.

Section 50, as amended, agreed to.

Section 51 agreed to.

After section 51

Amendment 34 moved—[Allan Wilson]—and agreed to.

Section 52—Private legislation

The Convener: Amendment 110 is in a group of its own. I invite Bruce Crawford to speak to and move his amendment.

Bruce Crawford: Oh, goody! That gives me the chance to sum up if I want to.

Amendment 110 is a probing amendment. As other provisions allow Scottish Water to support private legislation if it thinks fit, there may be no need for the addition of the words “or support”, but it seems unusual that Scottish Water should be able to

“oppose private legislation in the Parliament of the United Kingdom or the Scottish Parliament”,

but could not support such legislation. It seems to me that Scottish Water is being asked to fight with one hand tied behind its back—if that is the appropriate phrase—whenever it is lobbying on the discharge of its core functions. If there is a good reason why amendment 110 is not required, I shall withdraw it; otherwise, I will press the amendment.

I move amendment 110.

John Scott: I agree with Bruce Crawford. Amendment 110 is quite a neat way of highlighting the doubts that I also had but did not press further.

I am keen to hear why Scottish Water apparently cannot promote private legislation in the UK Parliament. Amendment 110, which would insert the words “or support”, is a neat way of allowing Scottish Water to do both things.

Allan Wilson: Two issues are involved. Amendment 110 is inappropriate. Existing legislation at Westminster makes provision for the procedures that are to be followed in promoting private legislation in the UK Parliament. That is the point that was made by John Scott. The standing orders of the Scottish Parliament provide equivalent procedures for the Scottish Parliament.

It would appear that amendment 110 seeks to ensure that Scottish Water could support private legislation, either in the Scottish Parliament or the UK Parliament. However, that is unnecessary; an express power is not required to do that, either at Holyrood or at Westminster. Bruce Crawford made that point. Scottish Water's general powers enable it to promote private legislation if the legislation is incidental to its other functions.

It is also difficult to see why it would be desirable for Scottish Water to be able to promote private legislation at Westminster. Scottish Water's functions are exclusively devolved and a private bill, promoted by Scottish Water, would come before the Scottish Parliament. Under the Private Legislation Procedure (Scotland) Act 1936, as amended by the Scotland Act 1998, if the relevant powers are wholly within the competence of the Scottish Parliament, the private legislation procedure cannot be used at Westminster.

Scottish Water can make representations through the trade body Water UK or through ministers to support or oppose legislation. It would be exceptional to promote private legislation. We do not see the need for a requirement to support the proposition to promote or oppose legislation. It would be exceptional to promote private legislation, either at Holyrood or Westminster. However, should exceptional circumstances—those that we cannot at present think of—arise, provision would be there so to do.

Bruce Crawford: I am trying to understand what the minister is saying. In his evidence, he kept using the word “promote”, but that is a different concept to using the word “support”. He asks me to withdraw amendment 110, but that is difficult for me to do. I make the distinction that if someone promotes something, they are involved actively in pushing their own particular idea. However, if someone supports something, they could be involved actively in supporting someone else's idea.

I am concerned also that, in its general powers, Scottish Water has the power to support or propose private legislation. Does Scottish Water

also have the power to oppose private legislation? If it has that general power, is it in the bill? If so, should not “support” also be included?

Allan Wilson: Is Bruce Crawford not confusing support with promote?

Bruce Crawford: I am not.

Allan Wilson: As I indicated, the general power to support is in the bill. Scottish Water's general powers will enable it to do that.

Bruce Crawford: Does Scottish Water also have the general power to oppose?

Allan Wilson: To support—

Bruce Crawford: No, is there also a general power to oppose?

Allan Wilson: No, its specific powers are to promote or oppose.

Bruce Crawford: If it has general powers to oppose—

Allan Wilson: As I said, is Bruce Crawford not confusing support with promote?

The Convener: You should stop talking over each other.

Bruce Crawford: I apologise.

The Convener: Right. Minister?

Allan Wilson: No, I think—

Bruce Crawford: The minister said that Scottish Water has the general power to oppose. I will ask the minister the question directly through you, convener. Does the general power exist for Scottish Water to oppose?

Allan Wilson: Section 52(1)(b) of the bill—

Bruce Crawford: No. I am talking about the general powers that the minister spoke of earlier, when he talked about support.

Allan Wilson: Scottish Water's general powers enable it to support private legislation, but that is the purpose of amendment 110.

Bruce Crawford: In that case, does its general powers allow it to oppose? I am talking not only about the bill. The minister is talking about something else when he talks about general powers.

Allan Wilson: The bill gives Scottish Water specific power to oppose private legislation. It gives Scottish Water general power to support and specific power, with the consent of Scottish ministers, to promote private legislation in the Scottish Parliament. That is where one would expect a body whose powers are exclusively devolved to promote private legislation.

Bruce Crawford: Will you help me one more

time? Where does the bill give Scottish Water general power to support private legislation?

Allan Wilson: That would be an exercise of Scottish Water's ordinary function, under the general powers provision.

Bruce Crawford: Under that provision, does Scottish Water have the same power to oppose private legislation?

Allan Wilson: I have answered that question three times.

Bruce Crawford: Is the answer to my question yes or no?

Allan Wilson: Scottish Water has a specific power to oppose.

Bruce Crawford: You have not yet answered the question.

The Convener: That is only answer that Bruce Crawford is going to get.

Bruce Crawford: My question has not been answered.

The Convener: I invite Bruce Crawford to indicate whether he wishes to press his amendment.

Bruce Crawford: I am trying to be helpful. The minister has told us several times that a general power to support exists, although that does not appear on the face of the bill. However, a general power to oppose does not exist, because the power to oppose is written into section 52(1)(b) of the bill. I do not understand why the power to support and the power to oppose are being treated differently. I have not received a satisfactory explanation for that from the minister, so I will press my amendment.

Allan Wilson: Does Bruce Crawford understand the difference between promoting, opposing and supporting private legislation?

Bruce Crawford: Yes. That is why I lodged my amendment.

The Convener: The question is, that amendment 110 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

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

Amendment 110 disagreed to.

Section 52 agreed to.

Sections 53 and 54 agreed to.

Section 55—Register of trade effluents: confidential information

The Convener: Amendment 116 is in a group of its own.

John Scott: This is a probing amendment that seeks to establish why such a short time scale—of 14 days—has been put in place for a determination to be made. I believe that that is unreasonably short, given that key people reasonably take holidays of 14 days or longer. I look forward to hearing the minister's reasons for making the time scale so short.

I move amendment 116.

Allan Wilson: I am inclined to agree with John Scott that 21 days is more reasonable than 14 days as the period within which Scottish Water must respond to applications under new section 37C of the Sewerage (Scotland) Act 1968 that is inserted under section 55 of the bill. I recommend that the committee agree to amendment 116 in the name of John Scott.

John Scott: I thank the minister for that.

Amendment 116 agreed to.

Section 55, as amended, agreed to.

After section 55

The Convener: Amendment 117 is grouped with amendments 105 and 106.

John Scott: I will concentrate on amendment 117, as I have not yet thought about the other amendments in the group.

I begin by declaring an interest, as a member of the National Farmers Union of Scotland. I have distributed to members of the committee a letter that I have received from the NFU on the issue to which my amendment relates. I have lodged amendment 117 in an attempt to clear up what is widely acknowledged as a running sore, setting owners of land against water companies.

Amendment 117 would amend the Water (Scotland) Act 1980 and establish quite clearly that a deed of servitude must be granted by the person who has title to the land before Scottish Water can carry out work on land other than its own. The resulting process would be more time consuming for Scottish Water but would be a more reasonable way for it to gain access to land. That would not be intended in any way to constrain

emergency access, but would be a more reasonable way for Scottish Water to go about its business.

I move amendment 117.

10:15

Allan Wilson: I cannot support amendment 117. It would appear to be intended to require agreement with a landowner on such matters as consideration for the use of their land. That would unnecessarily frustrate the current provisions, which allow infrastructure to be laid quickly. I am confident that the existing provisions are fair and work well in practice, for example, compensation must take account of disadvantages to landowners such as loss of proven development value. The provisions allow a procedure for an owner or occupier to make objections to proposals and for those to be heard by a sheriff.

The amendment would also appear to be intended to provide an extended right to compensation on the part of owners or occupiers. The Executive sees no reason to change the existing procedures in that regard. It is appropriate to have a different statutory framework for water, since the provision of a water main or sewer can considerably enhance the value of land, for example, making it easier to obtain planning permission for development. Such a benefit would not be derived from an electricity transmission system or trunk gas mains. To put the amendment into context, it would mainly affect connections to remoter areas. Far from being a commercial opportunity for Scottish Water, it would often be quite the reverse. We do not wish the company's objective of laying the necessary infrastructure to be frustrated.

Amendments 105 and 106 are minor Executive amendments to clear up existing problems that the water authorities experience when laying water mains. Amendment 105 clarifies that Scottish ministers may authorise Scottish Water to survey land in, on or over which it proposes to lay a water main. Amendment 106 provides the procedure to allow for the service of a notice of intention to lay water mains where the address of the owner or occupier of the land cannot be ascertained.

Maureen Macmillan: I considered amendment 117 with interest. I live in a farming area and appreciate farmers' concerns. However, I must come down on the other side of the issue. I would be worried that if the amendment were successful it would hold up developments in rural areas. For example, I know rural areas that are in desperate need of improved water mains and sewerage services. I would not like those developments to be held up because one particular farmer was reluctant to allow water mains or sewerage services to cross his land. We have to consider

the balance of public good. I am sorry, John, but I cannot support amendment 117.

John Scott: I hear what the minister and Maureen Macmillan say, but this is part of the necessary consultative process. We all support the principle of public consultation, but it is as important to consult owners and occupiers of land about new developments. Landowners have a right to be properly consulted too. I do not accept Maureen Macmillan's argument about holding up developments, as compulsory powers exist. We have already debated at some length the compulsory powers that Scottish Water will have. I would have thought that compulsory powers could be used, but perhaps they are not adequate.

The bill could be amended so that deeds of servitude should not be unreasonably withheld. If they are unreasonably withheld, compulsory powers could be used. Nonetheless, it would be tidier in law if a servitude existed for the laying of mains to take place. I am convinced of that, whatever the minister says. I know that the operation of gas pipelines works well in rural communities. Amendment 117 would help the perception of Scottish Water in rural areas. I will press amendment 117.

The Convener: The question is, that amendment 117 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

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

Amendment 117 disagreed to.

Sections 56 and 57 agreed to.

Section 58—Orders and regulations

The Convener: I invite Fiona McLeod to move amendment 24.

Fiona McLeod: Given that amendment 24 was consequential on an earlier amendment that I lost, I will not move amendment 24.

Amendment 24 not moved.

Section 58 agreed to.

Sections 59 to 61 agreed to.

Schedule 5 agreed to.

Schedule 6

MODIFICATIONS OF WATER (SCOTLAND) ACT 1980

Amendments 105 and 106 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 80 is in a group of its own.

Allan Wilson: Amendment 80 is a minor consequential amendment that will amend the Water (Scotland) Act 1980. Section 50 of that act sets out the premises to which water authorities can be required to supply water only by meter. Amendment 80 seeks to add an order-making power to allow the description of additional premises to which Scottish Water can be required to supply water only by meter. That power could be used in cases of uncertainty over whether the requirement applies to a particular premise or type of premises, principally domestic premises that are used for non-domestic purposes.

I move amendment 80.

Fiona McLeod: Why does the minister think that it is necessary to go to the length of giving himself powers to specify in orders domestic premises that must be metered? He is giving himself the power to insist that Scottish Water meters all domestic premises, but we have not debated that yet. I met representatives of Scottish Water yesterday, and they understand that it does not require a change in the law for Scottish Water to put meters in commercial premises, so if a domestic premise is being used for non-domestic purposes, Scottish Water has the ability to put a meter in as it stands.

Allan Wilson: I asked precisely the same point in relation to the proposition. The problem only arises in a small minority of instances. It is best described as Chinese restaurant syndrome, whereby a domestic premises may be used for commercial purposes. In our view, it is not clear that the existing powers provide for the meterage of those premises. Argument may ensue over the exact nature of the premises. We would be happy to delineate domestic and non-domestic premises for the purposes of section 50 of the Water (Scotland) Act 1980, but there is no intent on our part or that of the company to extend meterage to domestic premises, as Fiona McLeod infers. In the light of that assurance, perhaps she will accept the amendment.

The Convener: I think that Fiona McLeod wishes to probe you further.

Allan Wilson: I have made inquiries along those lines.

Fiona McLeod: I do not doubt your intent, but the point is that proposed new section 50(1)(e) of

the Water (Scotland) Act 1980 gives you the ability to tell Scottish Water to meter domestic premises without the Parliament debating it. It is subject to negative procedure and is therefore not debated; the Parliament can only say no to the instrument. Although you say that that is not your intention, amendment 80 gives you that ability.

I do not understand the example that you gave. If I converted my house into a restaurant, I would have to apply for planning permission. It would no longer be my house, it would be non-domestic premises and Scottish Water could therefore put a meter in it.

My third point is, if we agree to amendment 80, how will you delineate domestic and non-domestic premises? Surely it is better that we disagree the amendment and you lodge a better-worded and more clearly signposted amendment at stage 3.

The Convener: Before the minister replies, I will clarify the matter of the statutory instrument. If a member moved a motion to annul a negative statutory instrument, it would be debated in the chamber. The difference between a negative instrument and an affirmative instrument is that the latter is required to be approved by the chamber. A negative instrument only goes to the chamber if someone moves to annul it. It would therefore be possible to have a debate if a motion to annul were lodged by a member.

Fiona McLeod: My problem with that, as we have discussed before, is that a member can only say no to the whole instrument. We can have a debate about not having it, rather than about amending it. We cannot amend it.

The Convener: That is correct. We could not amend it; we could only reject it.

Allan Wilson: I had previously directed attention to the point that Fiona McLeod has raised. The premises in question could be designated both domestic and non-domestic and we would require the power to meter the non-domestic premises accordingly. That is the reason for amendment 80.

The Convener: The question is, that amendment 80 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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 5, Against 3, Abstentions 0.

Amendment 80 agreed to.

The Convener: Amendment 81 is grouped with amendment 82.

Allan Wilson: Amendments 81 and 82 are minor amendments to ensure that the drinking water quality regulator is informed of water quality problems about which the local authorities notify Scottish Water and that the drinking water quality regulator is informed when local authorities notify Scottish ministers that Scottish Water has not remedied a water quality issue satisfactorily. I ask the committee to support the amendments.

I move amendment 81.

Amendment 81 agreed to.

Amendment 82 moved—[Allan Wilson]—and agreed to.

Schedule 6, as amended, agreed to.

Schedule 7 agreed to.

Section 62 agreed to.

Long Title

Amendment 25 moved—[Fiona McLeod].

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

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

Amendment 25 disagreed to.

Long title agreed to.

The Convener: To the relief and pleasure, I am sure, of all members present, we are at the end of stage 2 consideration of the bill. I thank all those who have participated, including the minister and the Executive team that has supported him.

An announcement will be made in tomorrow's business bulletin on the timetable for lodging amendments for stage 3. We look forward to stage 3 in a couple of weeks' time.

Subordinate Legislation

Scotland Act 1998 (Agency Arrangements) (Specification) Order 2001 (SI 2001/3917)

10:30

The Convener: Item 2 is consideration of SI 2001/3917, which is a negative instrument that was laid before Parliament on 7 January 2002. We have been designated as the lead committee for consideration of this instrument. The time limit for parliamentary action expires on 15 February 2002.

The Subordinate Legislation Committee considered the instrument at its meeting on 15 January 2002 and determined that the attention of the Parliament need not be drawn to the instrument. The committee is invited to agree its report on the instrument.

Fiona McLeod: I was a bit surprised that the Subordinate Legislation Committee said that there was nothing to draw to our attention. The Executive note that accompanies the instrument states that it comes into place on 15 February to cover regulations that were supposed to come in last year but did not. When the regulations that were supposed to come in last year do come in, the instrument will have to be revoked and replaced with a new one. I do not understand why we are doing that. Do we have time to write and ask for an explanation of why we have to pass an instrument that we will almost immediately revoke? If we do not have time, ignore me.

The Convener: I am advised that we have sufficient time to do that if we wish. I understand your puzzlement. My understanding is that the instrument as passed would have no legal effect. Given that we have time, it would be appropriate for us to seek clarification. Are members comfortable with that?

Members indicated agreement.

The Convener: I advise the members of the press and public who are still here that we now intend to move into private to consider the possible contents of a report on our aquaculture inquiry and to consider our work programme. As soon as the work programme has been finalised, it will be made public.

I thank the press and public for their interest in today's meeting.

10:32

Meeting continued in private until 12:52.

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