

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 11 September 2002
(*Morning*)

Session 1

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TRANSPORT AND THE ENVIRONMENT COMMITTEE

24th 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)

COMMITTEE SUBSTITUTES

Bruce Crawford (Mid Scotland and Fife) (SNP)

David Mundell (South of Scotland) (Con)

Iain Smith (North-East Fife) (LD)

*attended

THE FOLLOWING ALSO ATTENDED :

Mr Jamie McGrigor (Highlands and Islands) (Con)

WITNESSES

Richard Broadhurst (Forestry Commission)

Caroline Davies (Scottish Environment LINK)

Lewis Macdonald (Deputy Minister for Enterprise, Transport and Lifelong Learning)

Quentin McLaren (Tweed Forum)

Sandy McNeil (Scottish Executive Legal and Parliamentary Services Department)

Lisa Schneidau (Scottish Environment LINK)

Andrew Wallace (Association of Salmon Fishery Boards)

Captain Antony Wilks (Scottish Coastal Forum)

Dr Rebecca Wills (Scottish Environment LINK)

CLERK TO THE COMMITTEE

Callum Thomson

ACTING SENIOR ASSISTANT CLERK

Alastair Macfie

ACTING ASSISTANT CLERK

Rosalind Wheeler

LOCATION

Committee Room 1

Scottish Parliament

Transport and the Environment Committee

Wednesday 11 September 2002

(Morning)

[THE CONVENER opened the meeting at 09:36]

Items in Private

The Convener (Bristow Muldoon): Good morning. I welcome members to today's meeting of the Transport and the Environment Committee. Agenda item 1 is to decide whether we take items 3 and 6 in private. Agenda item 3 is our consideration of lines of questioning for witnesses. Agenda item 6 is on our draft paper on the rail industry in Scotland. Is it agreed that we take those two items in private?

Members indicated agreement.

09:37

Meeting continued in private.

09:45

Meeting continued in public.

Water Environment and Water Services (Scotland) Bill: Stage 1

The Convener: The Transport and the Environment Committee is now back in public session. I welcome our first panel of witnesses on the Water Environment and Water Services (Scotland) Bill. We have with us Caroline Davies from RSPB Scotland, Dr Rebecca Wills from WWF Scotland, Lisa Schneidau from the Scottish Wildlife Trust and Richard Broadhurst from the Forestry Commission.

I also welcome members of the press and public to the meeting. I omitted to record earlier that Angus MacKay, John Scott and Adam Ingram are unable to be with us today.

I understand that Scottish Environment LINK and the Forestry Commission would like to make opening statements. I invite one of the witnesses from Scottish Environment LINK to open.

Dr Rebecca Wills (Scottish Environment LINK): Good morning, everyone. I am Rebecca Wills from WWF Scotland and I am convener of the LINK freshwater task force. I would like to thank Parliament for giving LINK the opportunity to give evidence to the Transport and the Environment Committee on the Water Environment and Water Services (Scotland) Bill.

As members will know, Scottish Environment LINK is the liaison body for Scotland's major non-governmental organisations that are united by their common interest in the natural environment. LINK's members are supported by around half a million people. Our involvement in the years up to the publication of the bill was extensive and we held events ranging from a seminar series co-hosted with the Scottish Executive to a seminar for interested MSPs. There are also continuing briefings on key topics.

LINK believes strongly that the bill is an historic step forward not just for water management but for sustainable development in Scotland. It has been easy in Scotland to take water for granted—that is perhaps understandable in view of the wet summer that we have just experienced—but we can no longer afford to do so. The floods that have ravaged our towns, the toxins such as cryptosporidium that have entered our water supplies and our notoriously polluted bathing waters are all a symptom of our failure to treat rivers as whole living systems from mountain to sea. The taxpayer often bears the cost, amounting to millions of pounds annually, of that fragmented approach.

Implementing the water framework directive fully and designing a framework for the sustainable management and protection of the water environment gives us a unique chance to treat rivers, coasts and seas as whole living systems. It can enable us to tackle the root causes of problems rather than taking the usual sticking-plaster approach. That could secure the future for a healthy water environment and for broader social and economic benefits. We all know how much Scotland's key industries and social fabric depend on water. Executive research estimates that more holistic water management will bring economic benefits of as much as £1.5 billion to business and society.

LINK believes that the bill should have no half-measures. That is crucial. As the First Minister made clear during the recent earth summit, doing the maximum, not the minimum, is the only way of reaping social and economic benefits that have their basis firmly in a health environment.

LINK believes that, to make the bill work for Scotland, we need to make links: we need to make links between land uses, such as agriculture and forestry, and the waters on which they impact. For example, the time is ripe, with the pending mid-term review of the common agricultural policy, for adapting agricultural policies to secure a healthy water environment. We need to make links between the river and its natural flood plain, restoring and enhancing wetland areas to provide sustainable, low-cost flood management and pollution control as well as to support wildlife. That would mean, for example, ensuring that the bill actively supports sustainable flood management. We need to make links between people and their water resource, establishing structures to support devolved decision making, environmental justice and active involvement. The proposed measures in the bill hardly wet the glass.

We believe that failure to make such links is not an option that Scotland can take without storing up great and costly problems for the future. As members know, LINK and the organisations represented on this panel have submitted written evidence. We hope that our responses to the committee's questions will help to clarify the detail of those submissions.

Richard Broadhurst (Forestry Commission): Good morning. I work as the policy officer for the Forestry Commission's national office for Scotland. In Scotland, the Forestry Commission serves as the Executive's forestry department and is responsible to Scottish ministers.

About 17 per cent of Scotland's land area is afforested. The Forestry Commission manage the national forests of Scotland, amounting to 0.5 million hectares or about 5 per cent of Scotland's land area. That is done on behalf of ministers through Forest Enterprise.

The Executive published the Scottish forestry strategy in 2000, setting out the Executive's forestry policy, strategic directions and priorities. Sustainability is the overarching principle behind the strategy. The others are integration, positive value, community support and diversity and local distinctiveness. The policy is reflected locally through indicative forestry strategies that are drawn up by local authorities working closely with the Forestry Commission.

The Forestry Commission regulates and encourages good forestry practice to the UK forestry standard, which is supported by a series of environmental guidelines, including the "Forests and Water Guidelines". Those guidelines were prepared with the co-operation of a wide range of interests. They are now in their third edition, with a fourth in draft.

The Convener: Our first questions will be addressed to all witnesses, so please indicate if you wish to contribute.

Robin Harper (Lothians) (Green): Good morning. You have already indicated that you have some criticisms of the bill as drafted. Can the bill be integrated with other policies, such as the UK biodiversity action plan, the Scottish forestry strategy, the forward strategy for agriculture and the developing aquaculture strategy, which we might have received today but have not?

Dr Wills: I will ask Lisa Schneidau to respond to that.

Lisa Schneidau (Scottish Environment LINK): We acknowledge that the Water Environment and Water Services (Scotland) Bill is primary enabling legislation, yet we feel strongly that triggers are needed, even in this broad legislation, to ensure policy integration. At the moment, the water framework directive addresses some problems that are a direct result of particular land uses in Scotland, but we feel that we will not be able to achieve the aims of the directive unless we tackle some of the conflicts within and between those land-use policies.

There are three main reasons why policy integration is needed. One is that, currently, policies are in conflict. The second is that those conflicting policies can create too much bureaucracy. LINK feels that the bill, as drafted, is too regulatory. Such an approach will not be received well by farmers and other land users. A more integrated approach would be far better received.

The third reason is that conflicting policies will waste taxpayers' money. A good example of that is seen in current agricultural policy. We have welcomed the forward strategy for agriculture and the recommendations that were made in "Custodians of Change: Report of Agriculture and

Environment Working Group". At the moment, it is largely considered that agriculture touches the water framework directive only with respect to diffuse pollution, but there is a much larger role for farmers. Farmers manage more than 75 per cent of Scotland's land and so have major impacts on water bodies right the way through from pollution to engineering works and drainage. Many of the policies that drive what farmers do conflict with the aims of the directive. For example, farmers can cultivate right up to the edge of a watercourse.

Farmers have a major role in implementing the directive. At the moment, £440 million of subsidy a year goes into those damaging policies. Taxpayers' money would be far better used if some of that subsidy were used to tackle things in a more integrated way. There should be a trigger in the bill to make that happen and to allow the development of the common agricultural policy to run alongside the water framework directive, which is such an important directive.

Robin Harper: Will you enlarge on that? What do you mean when you say that the bill should contain a trigger?

Lisa Schneidau: There should be a specific duty on ministers and on all public bodies that are involved in land use, both inside and outside the Executive, to demonstrate how they will achieve that aim.

It would also be useful if the bill provided for two other things. The first is a national river basin forum to get all the stakeholders round the table to discuss the aims of the directive. That is a simple idea that would allow all the stakeholders to talk about the different aims. That would be useful in the river basin planning process.

Secondly, triggers are needed to enable working smarter. That ties in with sub-basin planning at the local level and with other strategies, such as the biodiversity action plans and the aquaculture strategy, which was mentioned earlier. The bill should flag up those things. The Executive has given commitments to integrate biodiversity objectives into all legislation. We believe that the bill is a great opportunity to do that. As well as enabling working smarter, such integration would save money.

Richard Broadhurst: The Forestry Commission has worked with colleagues in the Executive and, in the lead-up to the bill, we took part in the useful seminars provided for the Executive by Scottish Environment LINK, the Scottish Environment Protection Agency and others. We were encouraged by the open and transparent debate that accompanied those seminars. However, we do not have quite the same view of the bill. We believe that the bill should be an enabling bill and should not constrain approaches for integrating policies.

The committee should be reminded that the "Forests and Water Guidelines" were first issued in 1986, following a debate held by people who had come together from the water and forestry interests. From those full and frank exchanges, we developed a basis on which we could move forward—the guidelines are now into their fourth draft. Making the bill prescriptive is not necessarily the only way forward. There is a great deal of room for flexibility, which the bill does not rule out.

Robin Harper: The next question follows on from what Lisa Schneidau said about river basins. The bill does not specify the number of river basin districts. Should it do so? Should there be an explicit duty on SEPA to establish sub-basin plans? Do you envisage all areas having sub-basin plans? Have you any suggestions on the criteria that should be used for establishing a sub-basin plan? I am afraid that that is a rather detailed question.

Lisa Schneidau: Scottish Environment LINK believes that the bill should provide a specific duty to identify river basin plans. The sub-basin planning process and the identification of a network of sub-basin plans are essential to making the bill work.

The issue is largely common sense. If we have a big national river basin plan—whether that be one plan or one plan with two cross-border elements—we will need some way of dividing it up if we are to achieve true catchment-level management of water bodies. The alternative, which is bureaucratic and reductionist in its approach, is to identify a lot of isolated water bodies, which go up to one big national plan. That does not seem to be workable, with respect to issues such as resource allocation, achieving management on the ground and getting local stakeholders involved.

There are two ways in which sub-basin plans could work. A sectoral sub-basin plan could examine diffuse pollution or there could be a spatial sub-basin plan at the catchment management level. We think that that is the way in which to go. A lot of research is needed to identify how those plans could work. The existing catchment management plans are good, but they are purely voluntary. They do not have teeth and do not have the resources allocated to them that they deserve. Sub-basin plans are therefore an essential element and there should be stronger provision for them in the bill.

10:00

Richard Broadhurst: Catchment plans are not always the same as sub-basin plans, as they often relate to management objectives that are not concerned solely with the quality of water. We therefore recognise a distinction between the two.

There is a correlation in the way in which forestry is planned. At the national level, we have the Scottish forestry strategy, which belongs to everyone in Scotland; at the local authority level, we have the indicative forestry strategies; and, where there are specific issues to be explored—for instance, in the two national park areas—we are considering local forestry frameworks, in which more detailed work is involved.

It seems sensible to examine things in greater detail where there is perceived to be a specific issue, but it might not be the best use of public resources to look at every drop of water in the same way. We recognise the importance of considering sub-basin plans and looking at certain areas in greater detail. However, if the entire network were examined in such detail, we might lose some of the muscle.

Robin Harper: My final question is about the impetus for the development of the plans and the involvement of people in that process. Are you concerned that, if river basin plans are drawn up before the advisory groups are formed, that could lessen people's sense of involvement? Are you concerned that there could be too much centralisation of decision-making powers with SEPA before the advisory groups get going at a local level?

Dr Wills: That is quite a complex question. SEPA's roles as the policy maker and the regulator could be perceived as conflicting. We are concerned about that dual remit and we feel that it is important that the structures are set out in the primary legislation to ensure that there is a transparent decision-making process, so that stakeholders are aware of the social-environmental justice of the decisions as they are made. We feel strongly that people should be involved in the process before the river basin plan is written—in fact, I think that that is an obligation under the European Union water framework directive. For SEPA to impose a completed plan on the populace is not an option. There are many reasons why such a plan would not be enforceable, not the least of which is that it would be difficult to work without employing stakeholder expertise. The whole social-environmental justice element would be lacking.

Richard Broadhurst: We work closely with SEPA and have no concerns about centralisation. We recognise that national priorities must be balanced with local concerns and issues. We have found advisory groups to be useful in the work of the Forestry Commission. Such groups do not all have to be statutory; there are many ways in which we can engage with the community and that is an important aspect of reaching solutions that are going to stick.

Robin Harper: The answer from both sides is clear. You are saying that it is important to get all

the stakeholders on board from the beginning—farmers, local authorities and community councils. Are there any additions to that list?

Dr Wills: It is quite current. We had an e-mail from a community councillor yesterday protesting that they had not been involved and expressing their concerns. There should be a stakeholder analysis and a participation strategy from the outset. We take on board SEPA's leading role—we are not opposed to that and see such leadership as important. One of SEPA's roles will be to set up a transparent process that involves people. Every stakeholder should be aware of the bill—it affects everyone. There should be ways in which to raise public awareness.

Participation is often taken as asking everyone's opinion but filtering out the answers that we do not want to hear. That is not how it is. We have common implementation strategy guidance and 30 inspiring examples of how participation has worked in the UK and the rest of Europe. It is horses for courses—we need appropriate involvement and scales. We need a strategy into which that can be fitted.

Robin Harper: Thank you, that was a useful additional answer.

Fiona McLeod (West of Scotland) (SNP): You alluded to a possible conflict in SEPA's role as the lead authority for the implementation of the bill and as the environmental regulator that polices what we do. You also questioned whether SEPA has the ability to set up transparent structures that involve everyone in meaningful participation. Can you elaborate on why you think that there is a conflict? I do not see that there is a conflict.

Dr Wills: Scottish Environment LINK works constructively with SEPA and we have a lot of respect for the involvement process that SEPA has initiated. In my past life as a Scottish Natural Heritage area officer, I experienced a perception problem with Government agencies. People on the ground need to be involved appropriately in order to get them on side. There might be a perception problem for SEPA and the answer is transparency. We would like to see mixed representative groups—at national and sub-basin level—to provide advice as part of devolved decision making. SEPA should have a duty to pay attention to that advice so that there is a transparent decision-making process that involves stakeholders at the appropriate level. That would help to make the process appear fair and just.

Fiona McLeod: The other part of the argument is about SEPA being the policeman but also deciding the policy. Is that appropriate and, if not, why not?

Dr Wills: I do not see another option. The issue is a difficult one. SEPA has been given a complex

range of duties. I see a possibility for a wide range of other bodies to be involved both in the policing and the proactive work. It would be a shame if the bill became so regulatory and simply about ticking the appropriate boxes that it did not put energy into proactive work, codes of practice and building up partnerships. SEPA could have a duty to work in partnership through various different forums. We do not want forum fatigue, but there are other bodies that can work together—other bodies could play a strong part in fulfilling such roles on behalf of SEPA.

Fiona McLeod: Should the bill mention other responsible authorities, rather than referring simply to SEPA as the lead body?

Dr Wills: Yes.

Fiona McLeod: Should the bill explicitly state that SEPA, which is an environmental regulator, should also take economic and social factors into consideration when it decides policy?

Dr Wills: We view the bill as a sustainable development bill. Therefore, somewhere in the equation, the bill must integrate environmental, economic and social factors. We read the written evidence that was submitted by other participants in the consultation process and we know that concerns were raised about SEPA's skill set. However, I do not think that Scottish Environment LINK is the right body to answer your question about the economic and social elements, as we do not have expertise in those areas. The three legs of the stool need to be united in some way. For example, SEPA does not have skills in participatory practices or economic analysis, which are requirements of the directive. It must draw in those skills from the bodies that have expertise in those areas.

Richard Broadhurst: The Forestry Commission works closely with SEPA on the development of appropriate practice and on the regulation of what happens on the ground. SEPA advises ministers, and ministers set the policy.

In SEPA's recent written consultation exercise, it demonstrated considerable skill in getting complex messages across and in engaging with the community. From what we have seen in the run-up to the introduction of the bill, everyone seems to be willing to take on board the idea of engaging with the community and participatory techniques.

Ministers receive advice from many quarters and will seek to balance concerns about the natural, social and economic aspects of the environment. We do not think that the division is as distinct as it is being painted. The water framework directive makes it clear that both environmental and socioeconomic issues must be taken into account.

Fiona McLeod: To sum up, are you saying that

the nomination of SEPA as the lead body is probably appropriate but that we must ensure that the bill includes other bodies? Also, there are concerns that SEPA may not have all the skills that it needs. Does that lead you to say that we may need to consider the way in which SEPA is resourced?

Richard Broadhurst: Yes.

Dr Wills: Yes.

Nora Radcliffe (Gordon) (LD): I want to develop that theme. The conflict between policy setting and policing is removed if people are able to participate actively in the former. Last week, we heard evidence from industrial users of water, who seem to be focusing their attention on defending themselves against the policing aspects of the bill, without having fully taken on board the fact that they could have considerable input in setting policy. Has enough been done to emphasise that active participation, which is one of the strengths of the water framework directive? People from all quarters have not yet got their heads around that concept, although non-governmental organisations, communities, local authorities and community councils probably have. The industrial sector is not on board—it is not as convinced as other sectors are by the idea that it should participate actively in the policy-setting stage.

Dr Wills: Yes, we believe that more could be done. The problem is partly to do with an entrenched feeling on the part of the industrial sector that industry will be threatened by anything environmental. We would like that approach to change to one that acknowledges that a healthy environment boosts our society and our economy. There is great potential for a public awareness campaign around that concept. We regret that there was no draft bill and that more time was not made available so that people could get their heads around those quite complex issues. There is much work still to be done to bring industry round to that approach.

Nora Radcliffe: I believe that Richard Broadhurst might have some experience of bringing on board the industrial community.

Richard Broadhurst: We have included the different forestry sectors in the Scottish forestry forum, which is being set up in November. The steering group for that forum includes representatives from industry, environmental organisations, community groups and government agencies, who discuss issues and examine the implementation of the strategy.

10:15

Lisa Schneidau: There is a perception that European directives are purely regulatory and that, therefore, they must be implemented as carefully

as possible and have no gold plating and that their implementation must be left as long as possible. The UK has quite a bad reputation in that regard. However, we would be missing a trick if we took that approach to the directive as that would mean continuing with our divided, sectoral approach instead of the integrated way in which the directive requires us to manage matters.

The policy integration argument is important. The Forestry Commission has gone a long way down that road already but not all the agencies and land-use sectors are so advanced. It is important that they be brought together as soon as possible.

Maureen Macmillan (Highlands and Islands (Lab)): What balance do you envisage between the national forum and local flexibility? I note that you want to have a strong national forum but you also talk about local advice being given to SEPA. Many people have told us that they want the system to be flexible.

Dr Wills: The water framework directive needs to be complied with and the principles to ensure that that happens need to be set at a national level. We feel that there would be much greater motivation to be involved at the sub-basin level if there were a product-oriented approach.

There is scope for having decision-making or planning powers at the sub-basin level or at whatever appropriate level is decided on. That would enable stakeholders to feel that they had a role to play. We would go so far as to say that the sub-basins, at a regional level, could write their own plans, which could be compiled in the national river basin plan, which is what happens in some parts of Europe. That would still enable compliance with the water framework directive. We would like there to be devolved decision making in relation to planning but I stress that we are talking not about quangos but about stakeholder groups that function properly and have a concrete product.

Maureen Macmillan: You want there to be participation, not just consultation.

Dr Wills: That is right.

Maureen Macmillan: You have already highlighted the fact that forestry and agriculture are not within the development planning process. Are you happy that the bill sets out a clear relationship between the development planning process, the community-planning process and the river basin management plans?

Lisa Schneidau: The bill is getting there. It flags up the development planning process and the proposed changes to that process and identifies the fact that those have to work closely with the aims of the water framework directive.

However, people are wary that there are so many plans with varying borders and responsibilities that everything could get tremendously complicated.

We need to develop the right kind of toolkit for Scotland. That brings us back to the sub-basin planning idea, which could bring in many of the current development planning issues. That idea needs to be in the primary legislation, but much work is still necessary to formulate it in as simple and unbureaucratic a way as possible.

Richard Broadhurst: As the proposals for secondary legislation are developed, the relationship between the different types of planning may become clearer. Similarly, the development and integration of geographic information system-based plans will surely help over time. As you point out, forestry is not subject to development planning control, but it is integrated into strategic planning through the indicative forestry strategies that I mentioned. Whenever an application is made for establishing a woodland or for felling, the proposals are entered on a public register and a process of public consultation is undertaken. There are many ways of going about things.

Maureen Macmillan: I will deal with flooding and water quality. Flooding can directly affect water quality. How could the use of natural systems help to buffer flooding and water quality and is the bill strong enough in advocating the use of such systems? BP has said that flooding at its Grangemouth site cannot be stopped by a bill. Do you agree with that?

Dr Wills: That is a very good question, which I will let Caroline Davies deal with.

Caroline Davies (Scottish Environment LINK): There are major opportunities for us to address Scotland's fragmented and ad hoc system of flood management. It is unfortunate that although mitigating the effects of floods is a purpose of the water framework directive, the bill does not address flooding in any way.

We want to ensure that a much more sustainable system of flood management is put in place in Scotland. Such a system is needed. The issue is topical—we are still being caught up in floods. Recent Scottish Executive research shows that 170,000 homes are at risk from coastal and inland flooding. That figure is set to increase vastly because of the effects of climate change, such as the rise in sea level.

The whole system of flood management needs to be overhauled. The system is fragmented and SEPA must take a much greater lead in establishing an overview and playing a co-ordinating role. That should be in the bill. There should be a duty on SEPA and other responsible

authorities to have regard to sustainable flood management. Natural systems and habitats such as coastal wetlands and flood plains can be used to help in flood management. Insh marshes in Strathspey are a flood plain that protects areas such as Aviemore from flooding. Such systems should be replicated around the country. We need energy, resources and policies to help us to do that.

The Convener: Des McNulty has a question, but we will hear Richard Broadhurst first.

Richard Broadhurst: Forestry has not been greatly involved in flood and coastal management, but we have a little experience to draw on. We are interested in the potential role for forestry. As climate change increases the risk of flooding, flood-plain forestry might mitigate some of the effects in certain areas of Scotland. Flood-plain woodland harmlessly holds the excess water until the flooding subsides.

Colleagues in our research agency are examining which salt-tolerant tree species it might be suitable to plant in areas that are currently freshwater systems, but which could become brackish when the sea level rises.

Des McNulty (Clydebank and Milngavie) (Lab): I am interested in an issue that is closely related to the use of coastal plains—sustainable urban drainage and the separation of run-off water from waste water. Scotland has moved down that track a wee bit. What do you think about the relationship between the current planning regime and developments in sustainable urban drainage? There is uncertainty about who bears the maintenance costs for such schemes. What do your organisations think is the route forward? Does the bill need to be amended in view of the importance of sustainable urban drainage systems?

Caroline Davies: The idea of SUDS has been tackled well in Scotland—Scotland is leading the way in many respects.

The bill makes progress. I think that I am right to say that SUDS will become a mandatory element of all new developments, which, in the urban context, is a good thing. We need to ensure that we build on that work, so that the natural system approach is adopted elsewhere in rural areas. Coastal realignment—that is, managed realignment of the coast—will mean that we will not have to use hard sea defences and will be able to use salt marshes and mudflats to absorb wave energy. We must move more quickly towards that way of thinking.

The fact that the bill does not do that means that we are missing a huge opportunity. We must jump out of the regulatory box that the bill focuses on and move closer towards the complementary,

integrated approaches that Lisa Schneidau and Becky Wills have been talking about.

Maureen Macmillan: I went to the Insh marshes and was bitten by a horrible, nasty fly. Apart from that, it was a good experience.

Do you have an idea about where those wetlands should be? Do other organisations? Have you a secret map ready to bring out? I suspect that the Forestry Commission probably has a good idea of where it could use woodland for that purpose.

There is a strong link between land that is used for agriculture and wetlands. How do you envisage working with the farmers to create the kind of flood plains that you want?

Caroline Davies: Rivers throughout Scotland have flood plains, many of which have been damaged and developed in the past. There are always opportunities to allow rivers to use their own space to absorb floodwater and to maintain water storage areas. You could point to any river and see the opportunities to use its flood plain naturally.

In the same way, the RSPB has done work on the coast to identify areas that may be suitable for managed realignment. We could point to areas around the soft coasts of Scotland where there are opportunities for flood management and enhancing biodiversity.

The point that Maureen Macmillan made about the link with agriculture is important because the right triggers must be in place for agri-environment schemes to encourage sustainable management. The rural stewardship scheme could be enhanced, as it does not include an option for managed realignment. The fact that only limited numbers of people are involved in agri-environment schemes must be addressed.

Lisa Schneidau: Some farmers are doing great work on integrating nature conservation objectives into their farms. Farmers should be moving towards the principle of managing their farms on behalf of the taxpayer in order to meet environmental, social and economic objectives. At present, policy drives farmers towards meeting only economic objectives. We must start to consider paying farmers for managing the environment. In England, consideration is being given to the idea of paying farmers to set aside areas of flood plain for flood storage areas. Such ideas must be discussed now.

The major issue that faces farmers—even if they want to start to do more environmental work—is the lack of resources. That must be addressed in the resourcing of the bill and across the board. We are stuck in sticking-plaster mode. We must get away from that.

Maureen Macmillan: A culture change will be needed. Farmers want to have sheep and cattle, not reedbeds and willow.

Lisa Schneidau: The willingness exists for change. There is a mismatch between many farmers' willingness for change and the resources and political will for change.

10:30

Caroline Davies: Natural habitats such as flood plains need farmers to manage them. They need to be grazed and to have the synergy between environmental and agricultural interests. Farmers are essential.

Richard Broadhurst: I do not have the details with me, but a relevant project, which is something of a pilot, is being undertaken on the River Enrick. I can give the committee information on that. I do not have the details locked in my skull.

The Convener: That information would be useful.

Maureen Macmillan: Do you support SNH's argument that, from as early in the process as possible, no deterioration should be allowed in the water environment?

Caroline Davies: Yes, definitely. It would be folly and against the spirit of the water framework directive for us not to support that line. We should allow no further deterioration in our water environment. We should protect it. That resource should be for everyone. The requirement for no deterioration should kick in as soon as possible, but definitely when the bill receives royal assent.

Richard Broadhurst: Some effects take a long time to come through the pipeline. Much work has been undertaken since the mid-1970s, when some of the potential problems of acidification and diffuse pollution as a result of forestry operations were recognised before we developed the "Forests and Water Guidelines". Some problems take time to have effect.

Acidification is not a problem of forestry. Acidification results from the burning of fuels and from the release of sulphur and nitrogen-based emissions, which are captured by the leaves and needles of trees and passed into water. What happens in the water is a result of the emissions. Many of those emissions are being reduced, but we must acknowledge that some effects may take time to come through the system.

Maureen Macmillan: Do you agree that SEPA should apply the precautionary principle when it has insufficient data to make informed decisions about abstractions and discharges? Where should the cost of data provision lie?

Lisa Schneidau: The answer to your first question is yes. The precautionary principle should

be used. There is a basic lack of data. The effects of many of the issues that involve water are often delayed, which makes the precautionary principle even more important.

The responsibility for the costs of data provision should be borne by the people who use the land, as well as the public purse. The polluter-pays principle should come into play.

Richard Broadhurst: Compared with some areas, little information has been collected about the quality and quantity of water in Scotland, because generally, water is good here and there is no shortage of it. In a few areas, the precautionary principle might be put into bat but, usually, a balance of science, judgment and consensus is needed when that principle is applied. Many rules apply according to the precautionary principle. If one looks in an index in University of Edinburgh's library under precautionary principle, one is bombarded by books and articles. The situation is not as simple as the question suggested.

Maureen Macmillan: So common sense is needed.

Richard Broadhurst: It helps a great deal.

Des McNulty: On the commonsense principle, at a European level, the water framework directive is often thought of in the context of water shortages and water problems that Scotland does not have. Our water problems are probably different from those that other people face. Bearing in mind what has been said about regulation and the fact that we do not have the problems with water shortages or water management that the European legislation seeks to tackle, are there any areas in that legislation in which we might not need to go fully down the track that it is taking us?

Dr Wills: You are going down a dangerous route. The whole point of the bill is to implement a level playing field across Europe. We need a monitoring system to enable us to identify where problems lie. If abstraction, for example, does not prove to be such a problem in certain areas, we will identify that. However, it is important that we set up a process for consideration of all problems, impacts and pressures before reaching such conclusions. I do not think that we can do that at this stage.

Des McNulty: Are you saying that if abstraction is not such a problem in certain parts of Scotland as it might be elsewhere, you might be willing to consider a less rigorous regulatory regime in respect of the mechanisms for looking at abstractions than might be appropriate in other contexts?

Dr Wills: The bottom line is that we must be confident that the environment is not deteriorating.

If we do not think that it is deteriorating, we are in compliance with the directive. We have to cut our measures to fit our cloth.

Des McNulty: So relevance is the key criterion.

Dr Wills: Yes.

Nora Radcliffe: A national river basin forum was mentioned. Will you expand on the difficulties involved in establishing national standards, as water is so site specific? How will flexibility, which is the water framework directive's whole point, be retained?

Dr Wills: We briefly discussed the balance of powers and the need for local flexibility. We thought that a river basin forum would serve as a strategy-setting body as well as a body that simply writes the river basin plan. There are models in other sectors. For example, it is useful to consider the Scottish forestry forum, where there is local flexibility within the principles set by the strategy. Does that answer your question?

Nora Radcliffe: That is fine—I was simply seeking clarification.

You have said that you would welcome the early development of secondary legislation. How does that square with the long-term implementation of the water framework directive, which allows for technological improvements and improved monitoring that might help us to develop better secondary legislation?

Lisa Schneidau: It is important that the water framework directive process and the timetable that has been set out for every European country involve rigorous review, revaluation and resetting of objectives. On monitoring and improved performance of secondary legislation, we need to consider not only what the directive requires, but what we currently have. One example that I can give in that context is that Scottish Environment LINK considers that sites of special scientific interest should be on the protected areas register, as that would mean the best use of resources and that SSSIs would benefit from the monitoring of protected areas. We do not think that that would necessarily add any cost, regulatory or reporting burdens in respect of Europe, but it would mean working in a smarter way.

If we find seven or eight years down the line that the situation with SSSIs has changed and that they are all up to scratch and have favourable status, we might need to consider the matter again. Although there is a case for reviewing secondary legislation, we should also examine the rest of the toolkit if we have the time.

Nora Radcliffe: Very large areas of forest and woodland are in private hands. What role could the Forestry Commission play in influencing the private sector to meet the water framework directive's requirements?

Richard Broadhurst: Through its woodland grants scheme and its proposed Scottish forestry grants scheme, the Forestry Commission encourages forestry practice across the whole industry, both in relation to private forests and other forests. I should point out that many of what are called private forests are actually run by public organisations or non-governmental organisations. Woodland management and planting are carried out to levels that are set by the UK forestry standard, which is supported by a suite of environmental guidelines, including the "Forests and Water Guidelines". Forestry in the private sector is also carried out in accordance with those guidelines—people do not receive any money unless that is the case, and people want money when they plant forests to return social and environmental benefits. Moreover, the new Scottish forestry grants scheme includes a proposal for establishing riparian woodland, which will also help.

The Convener: That brings us to the end of our questions. I thank the witnesses from Scottish Environment LINK and the Forestry Commission for their oral evidence and written submissions. I should also say that the field trip to the Insh marshes that Scottish Environment LINK organised was very useful for members and some of the committee's researchers.

Dr Wills: Thank you. We have enjoyed the experience very much.

The Convener: I welcome the second panel of witnesses who will give evidence on the Water Environment and Water Services (Scotland) Bill. We are joined by Captain Antony Wilks from the Scottish Coastal Forum; Andrew Wallace from the Association of Salmon Fishery Boards; and Quentin McLaren from the Tweed Forum. We look forward to your evidence. I understand that the three of you wish to make opening statements.

Captain Antony Wilks (Scottish Coastal Forum): Good morning. My statement is very brief and simply outlines the Scottish Coastal Forum's terms of reference to allow the committee to understand where I am coming from. We seek to encourage a voluntary, sustainable and holistic approach to the management of Scotland's coasts through the formation of local coastal forums to act as the national focus for coastal issues; to co-ordinate the dissemination of advice on best practice; to reflect the views and aspirations of local forums for the coast of Scotland; to guide a national policy framework within which local initiatives can operate and to advise Government on the development of coastal policies for Scotland.

The Scottish Coastal Forum was set up in 1996 by the then Secretary of State for Scotland and has continued under the present Administration.

The forum is under independent chairmanship and I have held that position since 1997.

10:45

Andrew Wallace (Association of Salmon Fishery Boards): The Association of Salmon Fishery Boards represents 50 fishery boards, which cover most of the catchments in Scotland. The boards are statutory bodies that are principally responsible for the management of salmon fisheries. Inevitably, the quality of the fisheries depends on the quality of the freshwater environment. Increasingly, we take an interest in the quality of the catchments that surround the rivers. We welcome the bill and have been involved in the progress towards the implementation of the water framework directive.

Quentin McLaren (Tweed Forum): I am the manager of Tweed Forum, which is 12 years old and has 28 members who participate in a number of issues and opportunities in the Tweed catchment. Tweed Forum has been a company for four years; it is also a charity and we have registered as an environmental body under the landfill tax regulations. The company is based at Drygrange, near Melrose. Our seven staff are engaged in a number of projects in the Tweed catchment. I have given the clerk an information pack, should members wish to take a copy.

Our largest project is the Tweed rivers heritage project, which is funded by the Heritage Lottery Fund. We are spending about £9 million in the Tweed catchment on 50 projects, which involve interpretation, access, information and conservation. Our major strategic initiative is a catchment management plan for the Tweed. That is a £70,000 project, which includes money from Europe through the European Rivers Network, money from English Nature—it is always encouraging to receive money from our English counterparts—and money from Scottish organisations such as Scottish Water, Scottish Natural Heritage, the Scottish Borders Council landfill tax and the Scottish Environment Protection Agency. That two-year project dovetails well with the purposes of the water framework directive and the bill. It involves river works, abstraction, diffuse pollution, flood plain management and water impoundment. We are keen to move toward integrated catchment management through the catchment management planning process. Other waters in Scotland, such as the Dee, the Spey and the Annan, and Loch Lomond, are following a similar route.

We welcome the water framework directive. Our submission contains comments on the details of the bill. I will be pleased to answer any questions.

The Convener: We will move to general questions, to which any member of the panel may

respond. It is not necessary for all three of you to respond to each question.

Robin Harper: My question is general and wide ranging. Will the bill integrate with other policies such as the UK biodiversity action plan, the Scottish forestry strategy, the forward strategy for Scottish agriculture and the development of our aquaculture strategy? Is the bill sufficiently joined-up to reduce the regulatory burden on coastal activities?

Quentin McLaren: The bill will integrate with other policy areas. In working on the catchment management plan for the Tweed, we have already been involved with the agriculture and environment review. We are content that our purposes in the catchment management planning process reflect the purposes of that review. The local biodiversity action plan is part of our catchment management planning process, which dovetails nicely with the purposes of the water framework directive. At local level, there is a willingness to work in partnership, but it might be more difficult to make partnerships work at the strategic national level.

Andrew Wallace: I share those views largely, although I appreciate some of the previous panel's concerns about the potential difficulties of integration. I want to stress what might be described as forum and consultation fatigue. At present I am involved in aquaculture, which includes work on the development of the tripartite working group, area management agreements and the minister's working group. In a week, one might have an area management agreement meeting, a sea loch framework planning meeting, an integrated coastal zone management meeting and a local biodiversity action plan meeting, all before going to one's day job.

I feel that there is an opportunity to try to bring some of those areas together. The demands on people's time are very high in thinly populated rural areas in which there are relatively few active members of the community. Equally, the demands on the time of public sector agencies and local authorities are high. The great utopian vision of consultation and involvement that exists is very difficult to bring about in practice. I would like some of those areas to be integrated physically so that one does not have to spend one's time driving around Scotland contributing to global warming.

Maureen Macmillan: Is cloning environmentally friendly?

Andrew Wallace: I would suggest not.

Robin Harper: Do you think that the bill is sufficiently joined up to reduce the regulatory burden on coastal activities, given the huge number of bodies that are involved in the regulation of our coastal environment?

Captain Wilks: Dare I answer that question, Robin?

Robin Harper: Yes.

Captain Wilks: The matter takes us into deep water and I speak only for myself, because the Scottish Coastal Forum, with which members are familiar, is a consensus organisation in the voluntary sector and I cannot therefore speak for each of my colleagues. My response is that the eventual act will undoubtedly be seen as adding to the regulatory burden in the early part of the post-act period. We cannot escape that—life becomes more and more complicated. However, as we seek increasingly to take a partnership approach—which I support fully—if the bill does what it should do, it will reduce the regulatory burden. It might be necessary to consider how we can rationalise in future.

The bill will bring about something for Scotland which, in fairness, has never been necessary before. That is not to say that we have a reason to be apathetic. We have been blessed with a wonderful natural resource and we are now going to have to look after it in a way that takes us a lot further along the route of regulation than has previously been considered necessary. Although any law will, by its regulatory nature, make life more complicated and burdensome to begin with, in the long run—five to 10 years after the act is passed—the regulatory burden will be reduced.

Des McNulty: That is a probably a realistic appraisal, but it is also a bit pessimistic. I sit on the Finance Committee, which has considered the financial aspects of the bill and has heard the Scottish Environment Protection Agency and Scottish Natural Heritage talk about the additional resources that they would have to make available to deal with the bill.

You talked about the burden on voluntary organisations. Do you think that it is possible to establish in the bill a mechanism that would force people to reduce or refine the number of bodies and their purposes or, at the very least, to establish a monitoring framework that would ensure that the number of bodies and obligations would not get out of hand? Given that we know what is coming over the horizon, do you think that there is a way in which we might be able to reduce the overlap that you highlighted as a potential difficulty, which might be associated with individuals' burning out?

The Convener: I invite Captain Wilks to respond to Des McNulty's question. I will come back to the two other panel members.

Captain Wilks: We cannot avoid the expectation that the burden will be increased, at least initially. However, there is scope for making better use of our resources in the voluntary sector.

We should do that instead of creating more or new organisations to deal with the bill's provisions. However, I believe that it is idealistic to think that the bill will simplify things to begin with. That is why—perhaps we will come to this later—I believe implicitly that the simpler the administration that is set up under the eventual act, the better that will be for Scotland. If we seek constantly to keep matters administratively simple, despite the complexities with which we are dealing, we might see some light at the end of the tunnel.

Quentin McLaren: We are doing two things at the local level. First, we want all the organisations in the voluntary sector to be smarter in working together electronically and physically. We want those organisations to deliver similar environmental and other benefits to the local community. We want to find out whether there is a way in which we can make organisations work better together. During our catchment management planning process, probably the top issue for the people to whom we spoke was the confusion and complication of environmental organisations.

The big black hole for us will be 2006, when European funding and Heritage Lottery funding will end. Unless we get our house in order and have been seen to be talking to each other much more sensibly, the funding agencies will ask why they should pump more money into all the different organisations. In the Tweed catchment, we are looking seriously at how organisations can work smarter together physically, electronically and administratively.

Secondly, we can add value. Organisations such as Tweed Forum can deliver objectives of the bill that SEPA is perhaps not skilled in or which it lacks the experience to do. That is real added value. We can, from 28 organisations, bring to the table expertise that SEPA could not possibly buy, train or acquire through normal resources. Organisations such as ours can work smarter with others, but we can also bring so much more to the table in terms of implementing the bill's provisions.

Andrew Wallace: I endorse Antony Wilks's view that the simpler things are, the better. However, I do not feel competent to suggest mechanisms by which the bill might achieve that goal. Perhaps the committee could consider how the bill could demand simplicity, bring about harmonisation and integrate with other current initiatives in Scotland.

Another aspect perhaps slightly contradicts what I said earlier, which is that improving things obviously requires more work. There is no gain without pain. That pain might mean such things as more meetings and more travelling.

On the question of aquaculture, the problem is perhaps not that there is not enough regulation,

but that the regulation is not good enough. Again, refinement of existing regulation rather than the creation of more regulation would help. In pursuit of that, we see great promise in the bill through the creation of general binding rules and suchlike. It is, perhaps, important to appreciate the fact that we might have to do more work to make things better.

Robin Harper: That—with what Quentin McLaren said—leads nicely to my next question. Should the bill specify the number of river basin districts? If not all areas are to have sub-basin plans, how would those who live in areas without them be able to engage fully in the process? Is the bill—particularly in relation to your organisations—specifically designed to support the existing fora that deliver the water framework directive's aims?

Quentin McLaren: It would be helpful to specify the number of river-basin districts. The number, whether one or more than 20, has been the subject of much debate. I agree that it is clear that the best position is the simpler, the better.

However, we will have eventually to come up with a figure. There are similarities among the eastern seaboard rivers, so we may want to consider those as a basin. We would argue that the Tweed is special because it is a cross-border river and has its own forum. There are a range of issues that are unique to the Tweed basin, so we may want to consider it separately. Parliament must reach a conclusion to give guidance on the job specification over the coming years to the expectant fora that already exist and to the agencies.

What was your second question?

11:00

Robin Harper: Do you think that the provisions of the bill are sufficient to support the existing fora that are delivering on the water framework directive?

Quentin McLaren: We were immensely encouraged when the process started a year or so ago. We were delighted to be involved in it with the Scottish Executive, SEPA and other players. We welcome the bill. Its introduction has reassured the Tweed Forum that someone up there thinks that there is merit in what we are doing. A statutory framework is to be put in place that will allow us to develop a catchment management plan. Clearly there are differences between basin catchment management plans and catchment management plans, but there is also a great deal of common ground. We must grasp this opportunity with both hands and use the statutory framework to deliver the things that we cannot currently deliver. We are a voluntary organisation, so we do not have the teeth to deliver those things on our own. However, in combination with SEPA,

Scottish Natural Heritage, the local authority and the bill we will be better able to look after our watercourse.

Captain Wilks: Quentin McLaren has touched on a very sensitive nerve—the business of empowerment. At the moment, voluntary organisations try to produce for Scotland in areas where they are neither funded nor authorised to do so. Once the bill has been passed it will be necessary to ensure that, where expectations of existing voluntary groups are implied or mentioned, the funding and authority that are needed for such useful work are in place.

Andrew Wallace: We were grateful that the Executive responded to the call by many organisations for a strategic river basin management plan for most of Scotland, rather than the proposed three areas. However, a trick may have been missed at the sub-basin catchment management level. In Scotland we would refer to a sub-basin catchment as a river catchment or, on the west coast, a group of catchments. The problem is that the origins of the directive are largely in mainland Europe, where there are massive cross-border systems such as the Rhine and the Danube. In this country we have a different set of problems and solutions.

In our work we have found that a river catchment has great geographical and cultural integrity. The Tweed is an extremely good example of that. The directive as presented, with its slightly ambiguous reference to the need for sub-basin management plans, is a bit of a cop-out. There should be greater commitment to sub-basin or catchment management planning at a local level. In my experience, that is where improvements are made.

Robin Harper: I have a supplementary question for Tony Wilks. I have been very impressed by the work of the Scottish Coastal Forum. Do you think that you have been listened to so far on managed retreat? Are there opportunities in the bill for integrating river management plans with the work of the Scottish Coastal Forum?

Captain Wilks: There is a great deal of scope for doing that. It would be very good if a common approach could be spelled out in the amended bill, although I do not know whether it is reasonable to expect that. Such an approach would focus attention on the areas where it needs to be focused and make it more likely that funding and authority will be established. For 10 years we have operated through the system of local fora. The most important thing that we have learned in that time is that we can do only so much without proper funding to provide continuity, and without formalising the process so that we have the authority to act where we are expected to do useful work.

Mr Jamie McGrigor (Highlands and Islands)

(Con): I have a brief question on general binding rules for aquaculture, which you mention in your submission. Scottish Quality Salmon has a code of practice that does not cover the whole industry. Is that code of practice adequate and should the whole industry be bound by it?

Andrew Wallace: The code of practice is good, but there is always room for improvement. Much of the industry believes that it is essential that the whole industry, not just SQS members, be required to comply with the code. The promise of general binding rules is that they will attach conditions to operations and will underpin, in a regulatory sense, codes of practice that will avoid the free-rider problems that we have, whereby one person can mess it up for everybody else. My only concern is that the bill is enabling legislation and it is a little unclear precisely how the general binding rules will be implemented and the secondary legislation drawn.

I detect a certain vagueness in various quarters regarding how muscular the regulations will be. Some reference was made in the policy guidance to an example of a general binding rule—the Salmon (Fish Passes and Screens) (Scotland) Regulations 1994. We have had tremendous trouble with that regulation, because it is one of those pieces of legislation that does everything except what we want it to do, especially retrospectively. That is not a particularly encouraging example of a general binding rule. Unfortunately, there is not much that we can do about it at this stage; however, when the secondary legislation is passed, we must be careful that we pick up the problems to which you refer.

Robin Harper: Before we move on, would you like to make any other observation on the development of the aquaculture strategy and the bill?

Andrew Wallace: One other issue is of concern to me: you would not expect me to come here and not mention sea lice, but SEPA is keen to duck the issue. Section 20(6)(b) of the bill contains a reference to pollutive “substances”. SEPA has made it clear that it is unwilling to accept the fact that pathogens and parasites that are produced by aquaculture installations are defined as “substances”. There is no definition of “substance” in the bill or in the supporting literature. That needs to be corrected.

The argument that is presented to us is that sea lice are naturally occurring creatures. That is true. However, our argument is that aquaculture, as it is currently practised in Scotland, is carried out on an industrial scale—it is an industrial production process—and there is no way on earth that one could reasonably describe the by-products of that

industry, whether waste, disease or parasites, as natural products. We are keen that some form of control of that output should be introduced.

We were told that that would be better left to fish health legislation, but we have been given no clear indication of when or how that legislation would be implemented. I find that worrying because once again the critical issue of sea lice—it is accepted across the board as being so—might be left to slip through the regulatory net. It could be picked up in other ways, such as through the management of the process of salmon farming. The statutory underpinning of codes of conduct will also assist that, but it is rather alarming that this nasty little creature is a problem that is left hanging between two stools.

Nora Radcliffe: What arrangements should be made for cross-border river basins, particularly given that the nautical limit for river basin management plans has not yet been established in England and Wales?

Quentin McLaren: Thank you for that question. Cross-border catchments have their own special difficulties. In a sense, the two parties have been forced apart for hundreds of years by various bits of legislation. It would be refreshing if the bill took cognisance of the fact that rivers such as the Tweed are special cases. The sensible working of the whole catchment can happen only if the legislation is truly joined up. It would be a great shame if the Tweed were divided into two river basin districts and we had to operate a catchment management plan between the basins, working on English and Scottish systems. In part, that is inevitable, but it would be refreshing if the bill could allow for the fact that the Tweed is a special case and particular regard must be taken to ensure that the catchment is managed holistically.

Nora Radcliffe: The obvious question is about who cedes authority. Should the north cede to the south or the south cede to the north?

Quentin McLaren: The forum has been working hard over the past 10 years to bring the two parties together. Through the catchment management plan, moneys have come from the English side of the border. I suspect that that was creative accounting. However, receiving grant aid from our partner across the border for a catchment-wide project is very encouraging and it would be good if that situation were echoed in the machinations of the bill.

Nora Radcliffe: How does Andrew Wallace envisage district salmon fishery boards working with regard to river basin planning? You will have had experience of working with river catchment management programmes. What have you learned from that experience?

Andrew Wallace: In the past, there has been a problem because fishery boards have been salmocentric—they have been very focused on that fishery. However, through the development of fisheries trusts and associated research programmes, we are now seeing a much more catchment-wide approach to issues. There are some good precedents. I have just been sent the draft catchment management plan for the Spey. That is a partnership between the local authority, SNH, SEPA and the fishery board. There are other precedents, such as the arrangements for the Tweed; the Dee also has a good catchment plan. Those are good models for how we might resolve some of the crossovers that I referred to earlier and they are very far advanced. If the framework directive could take those on to another level it would be immensely helpful. The fishery board network is being encouraged to get into partnership arrangements with key organisations and has a useful part to play.

We have a tremendous resource in the form of our research and monitoring capability. We have the Scottish fisheries co-ordination centre, which collects data throughout Scotland to a common standard. We began negotiating with SEPA at an early stage to encourage it to use the information that we provide. The only issue is that we are a bit reluctant to give SEPA the information for nothing. We would like to reach a service level agreement with SEPA so that we would make the data available to it, but we would collect them for much less than it would cost SEPA to collect them. The bill is an ambitious plan for the next 13 or 14 years, but the one thing that seems to be absent from it is any reference to how much it will cost, and that must be examined.

11:15

The Convener: Fiona McLeod has a question about SEPA's role.

Fiona McLeod: Before I ask about SEPA, I have a supplementary to Nora Radcliffe's question. Will Tweed Forum provide the committee with examples of how other cross-border river catchment management is carried out on the continent?

Quentin McLaren: We shall certainly do that.

Fiona McLeod: Thank you.

Quite a few witnesses have said in their submissions that they are concerned that SEPA may have a conflicting role. The bill puts SEPA forward as the lead authority, but it will be the policy maker and the regulator. If you have concerns about that, will you elaborate on them? Is there an alternative? That conflict may not arise if the public participation elements of the bill are truly about participation and not simply about consultation.

Quentin McLaren: Let me give a practical example. In our catchment management planning participation process, many of the people whom we talked to were concerned that SEPA was perhaps not as transparent as it could be as a regulator. There was also a feeling that when SEPA said something, it was because SEPA thought so rather than because it was true. I have worked for Tweed Forum for the past 10 years. As long as organisations such as SEPA are part of the partnership and contribute financially and in terms of personnel and experience, I see no difficulty in their being regulators as well as being involved in such things as the catchment management planning process, because that process is transparent. We have made the concerns that were raised when we asked people about various issues on the Tweed quite clear to SEPA. The catchment management planning process is based on the management planning process. I am not saying that there will not be conflicts, but the situation can be managed, because we work in partnership with SEPA and others. We have consensus on the way forward for managing the Tweed, so I have fewer concerns than other people might have.

Andrew Wallace: I absolutely agree with that.

Fiona McLeod: Should the part played in the partnership by the other responsible authorities be made clearer in the bill, so that SEPA does not say, "I'm the lead body. I've got the bigger voice"?

The witness alluded to another issue. SEPA is a regulator, not a policy maker. Does it have the ability to become the policy maker in partnership, or should we examine how we resource SEPA and how it resources itself in order to acquire that expertise?

Quentin McLaren: Policy is created by consensus, through the partnership. SEPA is part of that decision-making and policy-making process. At Tweed Forum level, we are comfortable that SEPA works with us for the future of the Tweed. The things that we discuss are fed up through SEPA and through the Scottish Executive. Although SEPA is the competent authority, which drives the process forward, it sees itself very much as part of the partnership. I would like to think that the consensus approach to catchment management planning creates and shapes the policies, with SEPA as one of the enablers.

Maureen Macmillan: My question is about planning regime integration. Are you happy that the bill sets out clearly the relationship between the development planning process, the community planning process and river basin management plans? Should the bill include provisions to bring aquaculture under the control of development planning?

Quentin McLaren: I shall kick off on the first part of that question, and I am sure that other witnesses will answer the second part. There are a lot of plans around, as has been mentioned. Perhaps one could argue that integrated catchment management—another label—is the way forward for bringing all the plans together. Some might argue that the community plan is the way to bring all the plans together. It would be a miracle if the bill were to give us an answer to that problem, but the issue is there. All we can do is be aware that the plans exist and include them in the planning process. At the national and strategic levels, the bill could be more explicit and helpful.

Andrew Wallace: On the question of aquaculture, the minister's working group has experienced some confusion about the division between what one might describe as planning consent and operational consent. There has been a considerable call for a single regulatory authority for aquaculture, which the bill could achieve, to an extent, but it seems that there is a reluctance to accept that. With the likelihood of a single regulatory authority for aquaculture not being put in place, the relationship between operational consent and planning consent will have to be thought through very carefully, and good dovetailing, overlap and integration of decisions will have to be implicit. On balance, I am reasonably happy that that will happen, but I accept that it is an area of concern.

Maureen Macmillan: On flooding and water quality issues, Tweed Forum has worked closely with Scottish Borders Council flood management. What are the advantages and disadvantages of local authorities retaining responsibility for flood control?

Quentin McLaren: They have a major responsibility, but not the only responsibility. We are working with Scottish Borders Council flood appraisal group and we are trying to encourage debate about not stopping development but ensuring that flood plains get the respect that they deserve. Talking about SUDS is fine, but before that we should be asking whether there should be developments on flood plains at all. If so, what are the criteria? What are the flood plains and how are they defined? What sort of development, if any, should be allowed?

The issue also relates to agriculture. The fact that the rural stewardship scheme is a competitive bidding system and that there is not enough money has confounded many applicants and led them to not think about flood plain management at all.

The flood plain management picture is a wide one. It involves many stakeholders, such as landowners, local authorities and our forum and we are working hard on the issue. We are

delighted that the bill addresses the long-term management of flood plains in this country.

Maureen Macmillan: Do you believe that agriculture needs to be more integrated into the process?

Quentin McLaren: Very much so.

Maureen Macmillan: Does the Scottish Coastal Forum want to say anything about flooding?

Captain Wilks: No. I do not think that I can add substantially to what has been said, which I support.

Maureen Macmillan: Thank you.

Do all three witnesses agree that SEPA should apply a precautionary principle where it has insufficient data to make informed decisions on abstractions and discharges? Where should the costs of data provision lie?

Quentin McLaren: It is easy to say "precautionary principle" and incredibly difficult to deliver it. However, the principle is right. If there are no data, it is a matter of trying to argue the precautionary principle with the applicant, the developer or the organisation with which one is dealing.

Sometimes information exists but people do not know about it. It might be in the wrong place or in the wrong format or it might be confidential. I am not always convinced that the information is not available. On the Tweed, we believe that information availability is a big issue. The precautionary principle can be tempered by information. It is a matter of debate and negotiation about how strongly each party feels about each part of the process.

Maureen Macmillan: Why is information not available? Is it because of commercial confidentiality or just because it has been lost?

Quentin McLaren: We have had various instances of information being collected confidentially. For example, Scottish Natural Heritage might collect information for the special area of conservation designation. SNH also has a huge database of ownerships of the Tweed to which we have no access because the information was given in confidence. The Scottish Executive environment and rural affairs department has information about landholdings that we cannot gain access to because it is confidential.

The whole debate about information and GIS has to come into the equation. If we do not have information, the application of the precautionary principle becomes a bit of a false hope. With the correct information available, the process is so much easier. Tweed Forum is working on finding out where the information is and how it exists. Is it in electronic form? Is it accessible? What are the

confidentiality rules? There is a lot of information out there.

The Convener: I draw the session to a close. We have further questions to ask each organisation but time constraints have prevented us from asking them today. We will write to each organisation with specific questions and it would be useful if they could respond in writing.

I thank Captain Antony Wilks, Andrew Wallace and Quentin McLaren for the contributions that they have made today, which have been useful.

11:25

Meeting suspended.

11:29

On resuming—

Highlands and Islands Ferry Services

The Convener: I welcome for the item on Highlands and Islands ferry services Lewis Macdonald MSP, the Deputy Minister for Enterprise, Transport and Lifelong Learning, and a number of officials from the Scottish Executive: Sandy McNeil, David Hart, Fiona Harrison and Claire Mollison. I understand that the minister wishes to make a brief introductory statement, following which we will move to questions. Jamie McGrigor MSP is interested in this issue and joins us today. I officially welcome him to the meeting

The Deputy Minister for Enterprise, Transport and Lifelong Learning (Lewis Macdonald): I thank the committee for inviting me to give evidence today. I have a brief introductory statement to make, and I look forward to answering the committee's questions afterwards.

I will begin with the background. As members know, we have been required to undertake competitive tendering to meet European Commission regulations on competition for subsidised services and on the provision of state aids to maritime transport. Following a period of wide consultation last year, we submitted proposals to the Commission, including a strong case for a single bundle and for the inclusion of two mainland-to-mainland routes. The Commission responded in November last year, making it clear that it would not oppose our proposals to tender the network as a whole, which was a welcome development.

On 27 June this year, I published for consultation the draft invitation to tender service specification, which outlines our proposals for taking forward the tendering process. The document explains the principles that we have adopted and seeks views on the options that are open to us. It is a substantial document, as members will all now be aware, but people will be reassured to see the degree of detail to which we are determined to specify the service. We have been keen to give as many people as possible the widest possible opportunity to comment on the document.

We propose to tender the network as a whole, or as a single bundle, which reflects the overwhelming preference of those who responded to our initial consultation paper. That will maximise the economies of scale and will, we believe, maximise service reliability. It will also help to deliver our overriding aim of integrated transport.

We hope that it brings the further advantage of addressing the potential cherry picking of routes. It is likely to provide the optimum value for public money.

Following last year's discussions with the European Commission, we concluded that it would not oppose our inclusion of both mainland-to-mainland routes—Tarbert to Portavadie and Gourock to Dunoon—in the undertaking. It was equally clear that the Commission would not support a vehicle ferry subsidy on the Gourock to Dunoon route given the operation of a non-subsidised commercial company on the same route. Despite that, we believe that a robust case can be made for a service that would allow a direct connection for foot passengers between the bus station at Dunoon and the railhead at Gourock as part of an overall integrated transport strategy.

We would have preferred to continue the present provision of a passenger subsidy to a service that also carries vehicles but, following discussion with the Commission, we concluded that we should instead propose a passenger-only service as part of the single bundle.

With that one exception, we have been able to make proposals in the draft service specification to protect existing fare and service levels throughout the network. I was pleased to propose in our consultation paper a number of new and enhanced services, including the Mallaig to Armadale and Tarbert to Portavadie winter services; a new service across the Sound of Barra; an enhanced service across the Sound of Harris; the winter passenger service between Kilchoan and Tobermory; and enhanced services from Oban. Some of those improvements are scheduled to commence prior to the estimated date for the contract handover, and we are confident that they will be widely welcomed.

We have set out plans for a vessel-owning company, which will own Caledonian MacBrayne's vessels, piers and harbours.

I remind the committee of the proposed timetable to which we are working. The consultation period is due to close on 27 September. There has already been a strong response, and I expect more comments to arrive over the next couple of weeks. All of them will be considered fully, and they will help us to make decisions about the final invitation to tender. A prior information notice was issued to potential bidders over the summer to bring the consultation to their attention and to allow them to take part. We hope to commence the tendering process early in 2003, with the anticipated contract handover planned for late 2004.

I emphasise the fact that this is a consultation process. We have developed a draft of what we

believe will best deliver a stable and expanding west coast ferry service over the next few years. We will, of course, take the views of the committee and of respondents to the consultation into account.

The Convener: Thank you for your introductory remarks. We have a number of areas of questioning on the specification and on your introductory remarks.

You recognise that there is considerable interest in the Gourock to Dunoon proposals. That is the first area to which we will turn. Maureen Macmillan, who has been one of the committee's reporters on Highlands and Islands ferries, will open the questioning.

Maureen Macmillan: Des McNulty and I spent time in the summer going around the Western Isles and Argyll, gauging opinion on the draft proposals. Although the draft proposals were welcomed on the whole, some areas of concern were expressed. I want to discuss first the Gourock to Dunoon service.

The minister explained the reasoning behind the decision to restrict the Gourock to Dunoon ferry service to a passenger-only service. He told us that, after discussions with the Commission, it was felt that it had to be a passenger-only service because of the lack of transparency about cross-subsidy. However, there is a feeling in Dunoon that the situation has not been properly explained to the Commission. The vehicle service is not subsidised—it is profitable—and people feel that, if it was enhanced rather than abandoned, it could be even more profitable, meaning that less of a subsidy would be needed. People feel that the Commission should have taken that into account and that it would be only sensible to produce a solution that would require less of a subsidy.

There is also a fear that the proposals will result in the creation of a private monopoly on the Dunoon run across the Clyde. Has that been put to the Commission? Would that have any effect on the Commission's advice?

Lewis Macdonald: You raise several important points. The discussions that we have had with the European Commission have focused on the options for the service from Gourock to Dunoon. As committee members know, the current subsidy—the public service obligation support that is provided by the Government—is for the passenger service only. As I said in my introductory remarks, we had first to convince the European Commission to permit a mainland-to-mainland service. Having made that argument, we had to address the question of what kind of service between the two mainland points would be likely to be acceptable to the Commission.

The fundamental difficulty, which became clear following our discussions with the Commission, is the one that Maureen Macmillan has identified—the Commission's view of the question of subsidy. At the moment, we provide a subsidy for passengers only, but on a vessel that also carries vehicles. The Commission was not satisfied that the subsidy could be shown to subsidise only the passenger service and not the vehicle service. Had we been able to produce a proposal for the subsidy that demonstrably did not bring benefits to the vehicle side of the operation, we would be in a different position today. We explained in detail the history and nature of the service, and we ran through the options with the Commission.

You asked whether the vehicle service could run profitably. That is close to the heart of the issue. The fact that a profitable commercial vehicle service also operates on the route means that a subsidised vehicle service is not possible. Our difficulty was making that case. We wanted to demonstrate that there was a way of providing a subsidy for the passenger service that would not feed through to the vehicle side. However, we were unable to come up with a mechanism—an accounting system, if you like—that provided the reassurance that the Commission sought.

You wondered what the Commission was likely to look for. Although it has an overall responsibility to enforce European regulations and guidelines, it is not concerned with the level of public subsidy. The key judgment that it makes is not whether proposed service A costs the public purse more than proposed service B. Instead, the competition aspect and the question whether a subsidy will undermine the existing competitive position are fundamental to its considerations.

I was also asked whether the Commission would be interested in running a private monopoly on the service. The answer is no, because if no subsidy is involved, it is a matter for the marketplace. For example, bus operators provide other transport services for which there is no competition. The Commission would not require a public sector participant to enter the market in order to compete. *[Interruption.]*

The Convener: I suggest that, before we go on, Maureen Macmillan switches her pager to silent.

I have a supplementary question. Is it not possible for the specification to tender out a subsidised passenger service and then for the successful operator to make a commercial decision to operate above the level stipulated in the specification? For example, if a car service turned out to be profitable, would the proposed set-up restrict commercial developments that would enhance the service? Does not the fact that the current private operator on the crossing is able to bid for the franchise influence the competitive

side of things?

Just to move things forward, I ask Jamie McGrigor and Fiona McLeod to put their questions to the minister, who will then be able to answer them in bulk.

Fiona McLeod: You said that the decision was made following discussions with the European Commission. Are you prepared to make those discussions available publicly to allow us to find out what you said to the Commission and how it responded? I am still puzzled by your comment that the Executive was unable to propose to the Commission a transparent accounting system that showed that the PSO was not subsidising vessels. You were able to satisfy the Commission about the NorthLink contract, which contains both a PSO element and an element of commercial gain against a private operator. It would be interesting to see what questions you were asked and the answers that you gave.

The Convener: I ask the minister to respond to those two substantive questions before I bring in Jamie McGrigor.

Lewis Macdonald: On additional services, I should make it clear that our draft service specification mentions a passenger-only service between Gourock and Dunoon. Nothing in the draft service specification or in European law would prevent an operator from providing a vehicle service at their own risk as a commercial undertaking. However, although one could provide an additional service over and beyond the subsidy, the difficulty lies with the vessel that carries the subsidised service.

11:45

In other words, if the vessel is a passenger vessel that is carrying passengers only, there is no difficulty in showing that the subsidy is being used only for the purpose for which it is intended. If subsidy is provided for passengers on a vessel that can do other things, perhaps commercially for a profit, it is not possible to show in the same way that the subsidy is ring fenced. There is nothing to prevent an operator from providing a vehicle service, but it cannot be the same vehicle service that uses public subsidy for passengers.

The convener asked whether Western Ferries, which is the private operator on the route to Dunoon, would be free to bid for the subsidised service and, if it were able to do so, whether that would make a difference to the question about fair or unfair competition. Part of the answer to that question lies in the approach that we have taken, on the basis of our earlier consultation, to pursue a single bundle. Under the bidding process, it will be open to any shipping operator to apply for all 26 or—as it will be—27 routes. Operators cannot

apply for individual routes. I understand the convener's point, but I do not think that a direct correlation exists between the freedom to bid for the entire west coast ferry network and a single-route operator being undermined by a subsidised service on the same route.

I return to an important point that relates to Maureen Macmillan's earlier questions. If Western Ferries, as the private sector operator, behaves in an anti-competitive fashion, the community or any other user of the service can make a complaint to the Office of Fair Trading under competition law. Where competition is unfair, that option is always available.

Fiona McLeod asked whether we would publish our exchanges with the European Commission. We will not do that, as the code of access to those documents requires that we do not do so. Our discussions with the European Commission are, by their nature, confidential. It is worth noting that when we discuss matters with the European Commission, as we have done, the discussions are informal. No formal process of prior approval for a tendering proposal exists in the way that the European Commission operates.

Formal procedures would apply either if the Commission judged that we had breached European law, in which case it would take infraction proceedings against us, or if a complaint was made by a private sector operator—for example, that the way in which we had provided subsidy was a breach of competition law—in which case the Commission would have a quasi-judicial role in making a judgment on that complaint. The Commission's quasi-judicial role means that it will not issue a view formally in advance of a tendering process or of a complaint being made.

Fiona McLeod also mentioned NorthLink. I will deal briefly with that question now—it may arise again later. The specification of the NorthLink PSO is different, as I think the member knows, from the west coast PSO. The competitive position that applies in the northern isles is not the same as that which applies on the Gourock to Dunoon route. When the PSO was let for the northern isles services, there was no competition for roll-on-roll-off freight services, for example, and there was no alternative lifeline service for Orkney or Shetland. That meant that no private sector competitor could say that the position undermined their market position and that they therefore had a complaint under European law.

The Convener: I will take Jamie McGrigor next. Des McNulty has also indicated that he wishes to ask a question. I ask both members to be as brief as possible, as we want the minister to cover a range of other issues this morning.

Mr McGrigor: The minister mentioned the phrase “fundamental to its considerations”. Surely “fundamental to its considerations” must be the needs of the people of Dunoon. It is perfectly obvious to me from the meetings that I have attended that those people feel that they will be presented with an inferior ferry service from now on. How will you provide a sustainable ferry service to the people of Dunoon and the Cowal peninsula? How will you provide a service that is legal under European rules? Is not the interpretation of those rules at the heart of the issue? Proposals that have been made recently, including those by Professor Neil Kay, show that the way forward could be a roll-on-roll-off ferry service that would be legal under European rules. What in that proposal would be illegal?

The Convener: If Des McNulty asks his question, the minister can respond to both.

Des McNulty: The concern in Dunoon is twofold. People see it as paradoxical that, in supporting competition rules, one could end up with a situation where competition is actually denied. There seems to be a catch-22 element in the way that things are working. There is a prejudice towards common sense in such matters, but perhaps there is a commonsense solution.

The other issue is the relevance of the findings of the Deloitte & Touche report, which seemed to show that there could be a profitable vehicle service alongside a passenger service, which might be a way of getting round the competition requirements, linked through a public service obligation. That is what certain local councillors are suggesting.

Lewis Macdonald: Those questions raise several issues. I visited Dunoon three weeks ago and met community representatives and local councillors. I had a full discussion with them, from which I was able to glean the views of the community. I do not dispute that people in Dunoon would very much prefer to continue with the present service, which is why we tried to put that case to the European Commission. The issue is about what service we can provide within European rules. The interpretation of those rules is a matter for the European Commission, which has a quasi-judicial role in interpreting those rules. In performing our duty of the stewardship of public funds and delivering services, we must have regard to the discussions with the Commission and reach conclusions on what would be permitted on the basis of those discussions.

On that basis, we have pursued and included in the draft service specification a passenger-only service because we believe that there is a clear case for that. Our conclusions lead us to believe that such a service can be sustained and will pass muster in that it will not be an infringement of

European rules.

Des McNulty referred to the Deloitte & Touche report, which we have considered carefully. The report concluded that it was difficult to make a value-for-money case for any service on the route and we took account of that. We took our own view about what is defensible and desirable. That is why we have pursued the option of a passenger-only subsidy. Providing a separate vehicle service is a possibility, but not as part of the current public service obligation.

When I met community groups in Dunoon, I made it clear that we would consider carefully the responses to the consultation and take some guidance from the community about its wishes. We propose to include within the PSO a passenger-only service. At least one person who attended the meeting I was at in Dunoon suggested that it would be better to take that service out of the undertaking altogether. That would work only if the route were potentially profitable. We are sceptical about whether a combined passenger and vehicle service from Gourock to Dunoon could be made profitable. I do not think that the Deloitte & Touche report provides any substantial grounds for reaching that conclusion, although it suggests ways in which the service might be profitable. Our judgment of the current position in the marketplace is that it would be difficult for that service to operate at a profit.

However, in consulting, we are open to what people have to say to us. The possibility of taking that service out of the PSO was raised with me in Dunoon. We will consider that along with the other consultation responses.

The Convener: I ask Des McNulty to be brief, because we want to make progress.

Des McNulty: The minister's comment was helpful. Can Argyll and Bute Council and other interested parties be consulted on market testing? Are opportunities available to consider the issue in a serious commercial way, before the die is cast?

The Convener: Before the minister responds, I will give Maureen Macmillan another chance to speak. Some of the questions that she wanted to ask have been asked by other members. She can add comments before we move off the topic of the Gourock to Dunoon route.

Maureen Macmillan: I have been told that the vessel causes the problem for profitability and that a new vessel would have to be obtained. Does not the split between opco and vesco supply a mechanism for providing a vessel so that the service could be run profitably? I do not know whether that would be out of the undertaking in the bundle or whether a case can be made for taking the Dunoon to Gourock route out of the bundle and making it separate. Those alternatives must

be considered.

The present Dunoon to Gourock service does not pose any threat to the competition. The competition is not cut-throat, because the other operator has 80 per cent of the vehicle traffic. Could not that be part of the equation? If the Dunoon to Gourock route were separated from the rest of the CalMac bundle, it might not be challenged. If a challenge were made, it would not unravel the whole network. I do not know whether that is a possibility.

Mr McGrigor: The two routes are different. One is 70 per cent longer than the other and goes to a different place that is miles away. Both ferry services appear to be well used. If anything, there are queues to get across, so there is not a lack of people who are trying to use the services. If half the vehicle service is taken away, we will be left with an inferior service. That does not bode well for Dunoon, which is being paraded as a gateway to Scotland's first national park.

Lewis Macdonald: Maureen Macmillan is right to say that yet another option exists. At the end of the consultation, we will consider whether any mechanism has arisen from the responses that allows us to revisit with Europe the idea of ring fencing subsidy. We wish to have a result on that. We have not yet seen any proposal that would satisfy the European Commission's requirements on the competitive impact of public subsidy. That is a difficulty. However, as I say, we intend to continue discussions with the European Commission until we reach our final conclusions and publish our final service specification.

If we conclude that the current service configuration will be unacceptable to the European Commission, three options will exist. One will be the proposal in the draft service specification—a passenger-only service in the PSO. The second option would take the existing service out of the undertaking and encourage a commercial operator—possibly the winner of the tender for the network as a whole—to run the service as an out-of-undertaking service. The third option will be the suggestion that Maureen Macmillan highlighted—the possibility of unwrapping our single bundle, proposing the current Gourock to Dunoon service as a separate PSO and seeking Europe's support for that.

The third option has clear disadvantages. To avoid cherry picking and to keep the network together we have always argued for a single bundle. It would be difficult for us to change our position, but we would consider doing so if we felt that it would produce the result that we wanted with Europe. However, if we come to the conclusion that a passenger and vehicle service will not be acceptable to Europe as part of the wider package, we must also conclude that it is no

more likely to be acceptable as a stand-alone item.

12:00

Maureen Macmillan is right to suggest that the proposal would have the advantage of not jeopardising anything else in the single bundle. However, it would jeopardise our current proposal for a passenger service. We could not propose a combined passenger and vehicle service as a separate undertaking and, having seen that rejected, restore the proposal for a passenger service to the single bundle.

There are difficulties with proposing a separate PSO for the Gourrock to Dunoon service, but that is one of the options available to us. We may conclude that a case can be made for the profitability of the route as a passenger and vehicle service, and that the community would prefer such a service to the one that we propose. However, before taking the next step we would need to consider Des McNulty's point about investment.

In my view, a passenger-only service within the single bundle is the best option. That is why we included it in the draft service specification. However, we are open to other suggestions.

Jamie McGrigor suggests that the routes are different and therefore not comparable. That would not be the Commission's view. It has accepted our argument that for foot passengers alighting from buses or trains these are different routes, because the terminuses are several miles apart. However, the distance between the two points on either side of the Clyde is not significant for motor vehicle users. It does not affect the Commission's judgment that the routes serve the same market.

Nora Radcliffe: The Executive has not included the current freight discount scheme in the specification, as it is seen to contravene European competition regulations. What steps has the Executive taken to develop freight discount schemes that comply with European regulations? If no discount scheme is included in the specification, it could be cheaper for hauliers to set up their own ferry services. What would be the knock-on effects of the establishment of private freight services?

Lewis Macdonald: CalMac has just announced that it does not intend to increase freight rates in the financial year 2003-04. Freight charges will be included in the specification at a lower level than would have been the case had CalMac increased them.

Nora Radcliffe is right to say that some aspects of the current freight discount schemes are dubious as regards equity of treatment. CalMac is

investigating what discount schemes would comply with European law. The essential points are competition and equity. In other words, discounts cannot be made on the basis of the nationality or place of residence of a haulier. However, they can be made on the basis of the long-term commitment of a haulier to a route and the volumes that they intend to carry. That would allow for a scheme to be introduced that provides significant discounts for hauliers who have a long-term interest in the service. We are monitoring the development of CalMac's proposals and hope that they will be helpful to hauliers on the west coast.

Nora Radcliffe: So you are confident that private arrangements will not be seen as desirable?

Lewis Macdonald: I am confident that we will be able to develop a discount scheme that is consistent in its application to all users and that will be attractive.

Nora Radcliffe: So the aim is to achieve the best service possible within the spec.

Lewis Macdonald: Yes.

Maureen Macmillan: When I took evidence, hauliers raised with me the problems of small hauliers who perhaps do one journey a week and have done so for the past 30 years. They feel that they do not get any discount. They are local people who regularly take loads to places such as Mull or Tiree, but they never build up enough air miles or sea miles, if you like, to get their discount. Can you consider their situation?

Lewis Macdonald: CalMac is examining two aspects. One is volume, which clearly would not help those individual hauliers, and the other is long-term commitment to the route, which clearly has the potential to help those individuals. I hope that what CalMac proposes will include elements of both aspects.

Maureen Macmillan: I am conscious of the developing aquaculture industry in the islands. Issues have been raised about the frequency of ferry services, because the aquaculture industry obviously needs to deliver its goods fresh to market daily and not a couple of times a week. Are you examining that issue more closely?

Lewis Macdonald: Yes. Again, the current operator is undertaking some of that work. For example, in the Argyll islands CalMac is consulting on timetable enhancements that would provide a more regular service to several islands that are in the position that you described. CalMac takes on board a wide range of considerations, including economic development aspects and others such as the use of ferries by passengers and tourists. We would expect that process of going from the draft service specification to the final specification

to include enhancements that are proposed in the interim period.

Des McNulty: Maureen Macmillan and I got a lot of information from the work that we did in the islands. There was general satisfaction that the specification would be based on current and projected timetables and that there would be a measure of stability and continuity. However, there was a view that that could lead to lack of flexibility in relation to future needs and development opportunities.

It was suggested that there should be a separate route development or route enhancement fund against which operators, local authorities or users could suggest proposals for service enhancement. That could be funded temporarily or in the long term as a means of route development outwith the specification. What is your view of that suggestion? What criteria other than revenue criteria would be appropriate to apply to a route enhancement or route development fund?

Lewis Macdonald: That is an interesting suggestion that we will consider carefully. We have indicated our intention, during the initial tender period, to carry forward work on enhancements for the second tender period. However, that would not just come to conclusions every five years. We envisage that as a continuous process. Any organisation that contributed to the support of services would obviously be included in the decision-making process on such services.

The service specification is not set in stone. There is provision for some flexibility. We would like to have flexibility for service enhancements of between 5 and 10 per cent of the contract value. That would allow a fair amount of room for the enhancement of services, when a good case can be made. Revenue would be part of the grounds for such a case, but we would consider a range of other criteria that apply to a lifeline service, including economic and tourism development and other opportunities, as well as social need.

Des McNulty: You envisage the possibility, during the contract period, of being able to access route enhancement or route development funds from a source that would allow the provision of an improved service.

Lewis Macdonald: Potentially, as a continuing process.

Maureen Macmillan: There is a feeling, particularly in the Argyll islands, that the enhancements need to be done speedily because of the deteriorating social and economic conditions of some of the islands such as Tiree and Islay, where people feel that their economy and lifestyle are stifled by the fact that there are not enough

ferry sailings. I would like to think that the enhancements will happen as soon as possible rather than in the distant future.

Lewis Macdonald: I know that the consultation on the enhanced timetables for Tiree is under way. We expect that to be a continuous process.

Des McNulty: The contract will last for five years, but people have told us that the planning framework for the development of these services may be eight, 10 or even 15 years, in the context of vessel acquisition policy and people making economic commitments in the islands based on transport links and so on. Do you recognise the fact that there is a need for a planning framework to be constituted, perhaps separately from the direct relationship between the Executive and opco? It could be a consultative element that would allow people to contribute to the development of a planning framework for those services.

Lewis Macdonald: We are consulting on our consultative structure, which, as members will know, is rather haphazard. At the moment, the west coast Scottish ferries have a more thorough consultative structure than exists in the northern isles, for example. We will shortly begin consulting on our proposals for strengthening the consultative structure across Scotland's ferry services.

As I indicated in response to your point about the rural development fund, the Mull overland route and the Islay-Jura overland route are substantial projects. They are some way from being included in the service specification, but we will continue to work with all interested parties in developing those ideas and looking to incorporate them at an important stage in the process.

Des McNulty: Almost everyone to whom we have spoken has said that the provision of lifeline services not only is a transport matter but is to do with the maintenance of the whole social and economic fabric and development of the areas that depend on them. In that context, do you think that there is a role for something like a strategic transport authority in the Highlands and Islands that would link together the transport issues with the economic development issues? How do you see the necessary joined-upness being created?

The Convener: I will allow Jamie McGrigor to ask a supplementary question before the minister answers.

Mr McGrigor: I actually have two questions on two separate points. The first is to do with the Ballycastle to Campbeltown service. I heard this morning on—

The Convener: Excuse me, but I do not think that that is directly relevant to the service specification.

Mr McGrigor: I thought that we were talking about Highlands and Islands ferry services. Campbeltown is in the Highlands and Islands.

The Convener: We are asking specifically about the consultation on the draft specification. That is a separate issue.

Mr McGrigor: The second point that I wanted to raise concerns NorthLink Ferries. Does that come under the subject that we are discussing?

The Convener: Again, it is separate. The session today is specifically about the Executive's consultation on its draft service specification.

Mr McGrigor: Perhaps I could ask about the consideration of livestock sailings. What services will be available for the carriage of livestock from the inner isles of Tiree, Coll, Barra and Mull?

12:15

Lewis Macdonald: On the issue of a Highlands and Islands transport authority, I believe that the committee will be familiar with the Executive's position. There were discussions in the Highlands and Islands strategic transport partnership about its development and the establishment of such an authority on the Strathclyde Passenger Transport Authority model. Those discussions have not reached a point at which that will happen in the short term. Perhaps the question will arise again should the HISTP choose to develop its partnership in that direction. That is perfectly feasible, but we have not yet reached that point.

The Ballycastle to Campbeltown route is an entirely separate service specification. The northern isles contract was entirely separate and the provisions are different. There is no specific provision in the Clyde and Hebrides ferry services specification that sets livestock aside from other freight and vehicle carriage.

The Convener: We now move to issues relating to the Transfer of Undertakings (Protection of Employment) Regulations.

Des McNulty: Is there any scope for the specification to contain a contractual requirement to ensure the effective application of TUPE regulations, regardless of whether they are found to apply by the courts?

Lewis Macdonald: No. The application of TUPE regulations is a matter for law. In the Clyde and Hebrides ferry services specification, we deliberately required bidders to bid as though TUPE regulations apply and to apply those regulations if they are successful in their bid. Those are firm and clear requirements on the bidders. However, at the end of the day, if a party decides on a court case and the conclusion is reached that TUPE regulations do not apply, the

court ruling will overrule what is in the contract. The court's legal judgment on whether the regulations should apply will override anything in our tendering documents or the contract.

Des McNulty: My supplementary question relates to how such a situation will be dealt with. Irrespective of whether there is a court ruling, if a successful bidder were to begin to undermine the conditions that are apparently part of the agreement on maintaining the regulations, what steps could you take to ensure that those conditions are sustained? What would you do in such circumstances?

Lewis Macdonald: I hope to provide a safeguard against such a possibility. However, in the invitation to tender, we made it clear that the subsidy will be accordingly adjusted if TUPE regulations are found not to apply. We have removed any financial incentive for the operator to seek not to apply TUPE regulations, as the level of subsidy that they will receive for operating the PSO will be reduced. That is the best mechanism that is available to us to ensure that there is no reason for an operator to seek to overturn the application of the regulations.

Des McNulty: Will you apply financial penalties speedily? Are you sure that you have the legal basis to do so?

Lewis Macdonald: We are confident that we do. The penalties are built into the contract, so they would be immediate.

The Convener: I am not clear why it would not be possible to build in many TUPE protections in the contract. The contract for the service would be knowingly and willingly entered into by the bidder and I do not understand why that is not possible.

The other issue that I want to raise does not relate only to TUPE regulations. In many areas, the Executive has given a commitment that it wants to see an end to two-tier work forces. With the contract, a two-tier work force could potentially apply if subsequent employees are offered lesser terms and conditions than existing employees. How does the Executive intend to address that issue?

Lewis Macdonald: On your first point, there is no mechanism in law that would allow us to override the law. The fundamental difficulty with the application of TUPE regulations is that the judgment on whether they apply is a matter for the law and not the Executive.

The Convener: Why is it not possible to define terms and conditions in the contract? That would not override the law. Operators could then bid for the contract on that basis.

Lewis Macdonald: Is your suggestion that we should specify the terms and conditions of

contracts of employment in the contract for the tender?

The Convener: Yes.

Lewis Macdonald: That would be unwieldy and difficult to implement. We have gone as far as we can in laying down the contractual parameters within which potential operators must make their bids. I suspect that contracts of employment and contracts for provision of subsidised services are and will remain separate, but perhaps Sandy McNeil has a legal view on that.

Sandy McNeil (Scottish Executive Legal and Parliamentary Services Department): The foreseeable difficulty with the convener's suggestion is that there might be a certain arrogance on the part of the Executive in trying to specify the terms and conditions, given that the courts could unravel the contract at a later stage. Also, specifying all of the position points in the contract would make the contract decidedly unwieldy. The best method is to get the bidders to do the homework as though TUPE applied and to bid on that basis. We should not give employers any incentive to try to make TUPE not apply, which would reduce the financial consideration.

Lewis Macdonald: That is the legal position. As the responsible minister, I would be concerned about setting in stone the terms and conditions. I would not want to prevent the operator from enhancing terms and conditions during the term of the contract.

The Convener: I meant that a baseline set of conditions could be given.

Des McNulty: I want an assurance that, in the due diligence exercise in which I know you will engage, the employment conditions and job security issues are taken into account. Will you check that the bidders have planned to maintain the employment conditions?

The Convener: Will you also address the issue of the potential for a two-tier work force?

Lewis Macdonald: In considering bids, we will ensure that they comply with the specification, which includes the specification on the application of TUPE. TUPE has a number of difficulties, one of which is that it applies only at the point of transfer and does not impose on the future terms and conditions of members of staff, which would be the same with or without TUPE. That is not a matter that the Scottish Parliament can amend.

The best protection that the work force has in such circumstances is collective bargaining power. I expect the work force to use collective bargaining power so that the successful operating company protects the terms and conditions of existing members of staff and new employees. That is the extent to which we can provide protection for

future terms and conditions.

Robin Harper: I gather that the Executive has concluded that a requirement for Gaelic-speaking ferry crews is counter to EC procurement rules, which means that the specification does not include any such requirement. Trade union representatives have informed us that it is important to have one Gaelic-speaking crew member on routes with a strong Gaelic tradition, particularly in an emergency. The trade unions are of the view that that would not contradict EC procurement rules because the ability to speak Gaelic would not be a statutory requirement of all staff. What is your view on that?

Lewis Macdonald: We considered carefully whether a case could be made for a requirement for Gaelic speakers on safety grounds. The Maritime and Coastguard Agency requires that crews should be able to communicate effectively with passengers, which provides general support for employing crew members who are of the same language group as the majority of passengers. As I am a Hebridean, I considered the matter closely, but there is no longer a population on the west coast of Scotland that is unfamiliar with English. Therefore, the argument for a requirement for fluency in Gaelic on the basis of safety is not easy to sustain.

A number of points in the specification are designed to encourage the use of Gaelic. We are content to explore further with the appropriate authorities what minimum requirement might be imposed. I take on board the point that was made by the trade union side that it might not be a breach of European procurement rules to have a requirement for one Gaelic speaker on vessels that serve routes where there are many Gaelic-speaking residents. We must be confident that our solution does not breach the rules.

Robin Harper: Does that mean that signage on the ships will not have to be in both languages?

Lewis Macdonald: Part of the specification is that Gaelic signage on vessels that serve those routes should continue. We will also require the continued use of welcome announcements in Gaelic and English.

Maureen Macmillan: Which routes will have dual signage?

Lewis Macdonald: That will be decided after consultation with the appropriate structures, such as local authorities.

The Convener: That brings us to the end of our questions. I thank the minister and the various officials from the Scottish Executive.

12:27

Meeting continued in private until 13:04.

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