

# **TRANSPORT AND THE ENVIRONMENT COMMITTEE**

Wednesday 18 September 2002  
*(Morning)*

Session 1

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## TRANSPORT AND THE ENVIRONMENT COMMITTEE

25<sup>th</sup> 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 :

Peter Peacock (Deputy Minister for Finance and Public Services)

### WITNESSES

Geoff Aitkenhead (Scottish Water)  
Professor Alan Alexander (Scottish Water)  
Dr Andrew Black (Institution of Civil Engineers Scottish Hydrological Group)  
Kathy Cameron (Convention of Scottish Local Authorities)  
Michael Cunliffe (Crown Estate)  
John Thomson (Scottish Natural Heritage)  
Graham U'ren (Royal Town Planning Institute in Scotland)  
Eric Wilson (Royal Town Planning Institute in Scotland)

### CLERK TO THE COMMITTEE

Callum Thomson

### ACTING SENIOR ASSISTANT CLERK

Alastair Macfie

### ACTING ASSISTANT CLERK

Rosalind Wheeler

### LOCATION

Committee Room 2



## Scottish Parliament

### Transport and the Environment Committee

Wednesday 18 September 2002

(Morning)

[THE CONVENER opened the meeting in private at 09:37]

09:45

*Meeting continued in public.*

**The Convener (Bristow Muldoon):** I welcome members of the press and public to the 25<sup>th</sup> meeting this year of the Transport and the Environment Committee. We have with us the Deputy Minister for Finance and Public Services, Peter Peacock MSP, and Colin Miller, the head of the Scottish Executive's constitution unit. Welcome to you both. You are here for agenda item 3, which we will get to in a second, after we have concluded item 2.

### Items in Private

**The Convener:** Item 2 is consideration of items in private.

Do members agree to take item 6, which is consideration of our draft report on the rail industry in Scotland, in private?

**Members indicated agreement.**

**The Convener:** Further, at next week's meeting we will deal with arrangements for stage 1 of the Building (Scotland) Bill. To save time, do members agree that at all times we will consider lines of questioning for witnesses at stage 1 in private?

**Members indicated agreement.**

**The Convener:** The only other matter that I need to address at this point is an apology from Adam Ingram MSP. I understand that he has a number of committee clashes, so unfortunately he has been unable to attend this committee for a few weeks.

## Subordinate Legislation

### Scottish Public Services Ombudsman Act 2002 (Amendment) Order 2002

**The Convener:** Item 3 is subordinate legislation. The minister and an official from the Executive are here to take part in a debate on the Scottish Public Services Ombudsman Act 2002 (Amendment) Order 2002. The order is laid under the affirmative procedure, which means that Parliament must approve it before its provisions can come into force. Before I give members the opportunity to question the minister, I invite Peter Peacock to make his introductory remarks.

**The Deputy Minister for Finance and Public Services (Peter Peacock):** I will be brief in setting out the background to the order. Schedule 2 to the Scottish Public Services Ombudsman Act 2002 lists the bodies that are liable to investigation by the ombudsman. The order seeks to remove from schedule 2 the reference to the traffic commissioner for the Scottish traffic area.

At stage 2 of the Scottish Public Services Ombudsman Bill, I indicated to the Local Government Committee that Executive officials were involved in discussions with Whitehall colleagues over whether it was appropriate for a traffic commissioner for any part of the UK to be covered by an ombudsman. While that was in question, we considered that it was important to ensure that the public were able to complain to the ombudsman about the devolved functions of the Scottish traffic commissioner. Accordingly, the reference to the commissioner was retained in the bill. However, it is now clear to us that the devolved functions of the traffic commissioner should not fall to be considered by the ombudsman.

The commissioner's only devolved functions are: to determine appeals against local authority decisions on taxi fares; to appoint adjudicators to consider appeals against charging for and removing improperly parked vehicles in Edinburgh and Glasgow; and to receive and record registrations to run local bus services, and thereafter to monitor the bus operators' adherence to the operating conditions in such registrations.

The commissioner's role in respect of taxis and the registration of local bus services is as a tribunal and should not, therefore, be covered by the ombudsman. Any decisions of the commissioner as a tribunal are subject to judicial review and the ombudsman is not permitted, under section 7(8) of the Scottish Public Services Ombudsman Act 2002, to consider such matters.

The function of appointing adjudicators is contractual in nature and the ombudsman is

prevented from investigating those matters by paragraph 7(1) of schedule 4 to the Scottish Public Services Ombudsman Act 2002. Accordingly, there is nothing for the Scottish Public Services Ombudsman to investigate in terms of the traffic commissioner's devolved functions—hence the order that is before the committee. I am happy to answer any questions.

**The Convener:** Prior to our moving to consideration of the motion, do any members want to question the minister?

As there are no questions, I ask the minister to move motion S1M-3353.

*Motion moved,*

That the Transport and the Environment Committee recommends that the Scottish Public Services Ombudsman Act 2002 (Amendment) Order 2002 be approved.—[*Peter Peacock.*]

*Motion agreed to.*

**The Convener:** I thank the minister and the Scottish Executive official for their attendance.

### **Environmental Impact Assessment (Scotland) Amendment Regulations 2002 (SSI 2002/324)**

**The Convener:** Agenda item 4 is two further pieces of subordinate legislation. They are both negative instruments.

The first instrument is the Environmental Impact Assessment (Scotland) Amendment Regulations 2002 (SSI 2002/324). It includes a provision that suspends mineral workings when an operator does not provide environmental information within a reasonable time to planning authorities that are reviewing mineral permissions. The regulations have been drafted so that the provision applies to review of mineral permissions applications that have not yet been completed. That aspect of the provision was included in response to petition PE225, from William Ackland, about such an application for Sheephill quarry at Milton, near Dumbarton. Members will recall that the committee wrote to the Executive to flag up the issue of applications that are currently under way. That resulted in the redraft of the regulations.

The only slight hitch with the regulations is that the Subordinate Legislation Committee raised concerns about defective drafting, with the result that the Executive intends to introduce revised regulations, which will revoke the regulations that we are considering today at the earliest possible opportunity. As the regulations have not been revoked at this stage, they carry on with their usual parliamentary progress.

We are in the unfortunate position of considering an instrument that has been recognised as flawed.

Members will recall that during consideration of a previous item of subordinate legislation we raised concerns with the Subordinate Legislation Committee about defectively drafted instruments that were due to be revoked being put forward. We received a response, which members have had circulated to them, from the convener of the Subordinate Legislation Committee, Margo MacDonald. The response indicates that the decision to revoke an instrument lies with the Executive, which will almost always proceed with a faulty instrument until a new instrument is ready to replace it. The reason for that is that it may well be that aspects of the instrument are needed because they are sound or that items of existing legislation may be about to lapse. In addition, the response from Margo MacDonald suggests that, following consideration of such an instrument, the lead committee should provide a summary of its points on the instrument in a report in order to set its decision in context. Having made that introduction and noted the fact that the instrument responds to the committee's consideration of a public petition, I invite members to comment on the instrument.

**John Scott (Ayr) (Con):** I feel that I should say something, but not on the instrument. I merely comment once again on the fact that we appear to be presented with instruments that are faulty at the outset. Some box should be ticked somewhere. We could do better. I will leave my comments at that.

**Robin Harper (Lothians) (Green):** Is our sole option this morning simply to pass comment on the instrument?

**The Convener:** We have to consider the regulations by 30 September. It is possible for us to put questions to the Executive and to consider the instrument at next week's meeting, if we wish.

**Robin Harper:** This is a huge, detailed document that we have not had for very long. I suggest that we spend a week examining it and reserve comment until the next meeting.

**The Convener:** Copies of the instrument were circulated to members on 22 August. Members have had the regulations for almost a month. I realise that we receive many items of correspondence, but it is incumbent on us to examine instruments and, if we have concerns about them, to be prepared to raise those.

**Robin Harper:** I was speaking only for myself.

**The Convener:** I suggest that in our report we note our continuing concern that an instrument, the drafting of which is regarded as defective, has again been placed before the committee. We should recognise that it is the role of the Subordinate Legislation Committee to alert the Parliament to such instruments and congratulate

the committee on its vigilance. We should also note that the Executive intends to submit a redrafted instrument promptly to correct the defective drafting in this instrument. We should indicate that we have nothing further to report regarding the policy issues raised by the instrument. Is that agreed?

**Nora Radcliffe (Gordon) (LD):** Did you mention that we should welcome the fact that the Executive has responded positively to a recommendation by the committee?

**The Convener:** I did not, but I should have.

**Nora Radcliffe:** The fact that that has happened shows that the system is working. An issue has been raised and dealt with.

**The Convener:** We can say in our report that we welcome the fact that the Scottish Executive has responded to issues that were raised in a petition and by the committee. Is that agreed?

**Members indicated agreement.**

### **A9 Trunk Road (Ballinluig) (Temporary 50mph Speed Limit) (Continuation) Order 2002 (SSI 2002/371)**

**The Convener:** No member has indicated that they wish to comment on the order. No motion for annulment has been lodged. Are members content to report that we have nothing to report on the instrument?

**Members indicated agreement.**

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

**The Convener:** Item 5 on our agenda is stage 1 consideration of the Water Environment and Water Services (Scotland) Bill. I welcome the first panel of witnesses to today's meeting. We look forward to hearing your evidence. I welcome Kathy Cameron from the Convention of Scottish Local Authorities; Graham U'ren from the Royal Town Planning Institute in Scotland; Eric Wilson from the Royal Town Planning Institute in Scotland; and Dr Andrew Black from the Institution of Civil Engineers Scottish Hydrological Group.

After you have had the opportunity to make opening statements, we will move to questions. Some questions will be directed to all members of the panel—please indicate whether you would like to respond. Some questions will be addressed to representatives of particular organisations.

**Kathy Cameron (Convention of Scottish Local Authorities):** I am a policy officer with the Convention of Scottish Local Authorities. We welcome the opportunity to speak to the committee this morning on the matter of the Water Environment and Water Services (Scotland) Bill.

I must advise you that I am a late substitute for COSLA's chosen representative who, unfortunately, called off at short notice. The other COSLA officer who could have assisted is, at this very moment, addressing the Enterprise and Lifelong Learning Committee on its inquiry into tourism. However, although I am not qualified to answer any technical questions, I will do my best to answer more general questions. Those that I cannot deal with today, I will take back to COSLA, which will write back to you.

10:00

COSLA's member council submitted a range of views on the water environment aspects of the bill during the consultation exercise earlier this year. We consolidated those comments and reiterated them in our written evidence to the committee. Councils have expressed concerns about the role of the Scottish Environment Protection Agency as the lead body in relation to the culture and capacity of the organisation regarding consultation and the gathering of economic and social data to inform river basin management planning. In addition, councils queried the interrelationship between SEPA's proposed roles and the statutory development planning role of local authorities, particularly in relation to local plans and structure plans.

Development planning helps to deliver the spatial element of the overarching community

plans for council areas and will help to deliver the Scottish Executive's framework for economic development and social justice action plan, as well as the proposed national planning overview. It is important that river basin management planning is developed within that wider policy context and that it informs and is informed by the development planning process.

Councils were also concerned about the lack of detail about the mechanism for the identification of sub-river basins. It has been informally suggested that that might take place by order, in the same way as, for example, the designation of national parks. If that will be the case, there needs to be clear indication of intent as to whether sub-river basin plans will cover all or part of Scotland and, if in part, which areas. If ministers will have the power to make such decisions, there should be a duty and obligation to first consult all relevant stakeholders, allowing them time to consult and to publish the results of their consultation. There is a need for clarification regarding the consultative fora and their perceived relationship with other planning processes. COSLA would welcome clarification on the role of the consultative fora, particularly beyond the preparation of the river basin management plans.

In COSLA's written evidence on the water services element of the bill, a number of amendments were suggested concerning the duty to provide water and sewerage services. The context for those amendments is the growing concern about the mismatch between the development requirements of local plans and the investment in new infrastructure capacity by Scottish Water. That is currently resulting in major constraints on development in a number of parts of Scotland, including some of the most economically deprived areas. COSLA has received representations from a number of councils, particularly in the west and south of Scotland, in that regard. East Ayrshire has also experienced development constraints in relation to domestic and business sites in its area in terms of Scottish Water's reasonable cost criteria.

Councils have expressed concerns about the difficulties of achieving agreements with the previous water authorities regarding the maintenance of the above-ground elements of the surface water drainage infrastructure. In drawing attention to that concern, COSLA trusts that the bill will recognise the difficulties in the urban context and will also recognise the wider impact of the increased number of flooding incidents that Scotland is experiencing, and ensure that that is dealt with in the river basin management plans.

Councils have noted the suggested costs associated with the implementation of the water framework directive in Scotland and have

recorded their concerns about the resource implications. COSLA has reinforced that with a written submission to the Parliament's Finance Committee.

Councils want there to be full consultation on the various levels of planning linked to the legislation. Furthermore, it is not seen as sufficient for the Executive simply to consult. Stakeholders at each level of planning will in turn need appropriate provision to consult their members and communities of interest.

COSLA notes that, once the bill is enacted, there will be considerable secondary legislation. Much of the planning concern relating to the water framework directive will be in the sphere of secondary legislation. COSLA trusts that there will be early, continued consultation and opportunity for comment as the secondary legislation is made.

**Graham U'ren (Royal Town Planning Institute in Scotland):** Thank you for inviting the institute to help you with consideration of the bill at stage 1. I would like to say a few words about the role of the institute and about our specific interest in the bill. I am the director of the Royal Town Planning Institute in Scotland and Eric Wilson is one of our members in practice and a senior officer with Dumfries and Galloway Council. He is also a member of the Scottish Society of Directors of Planning. We wanted to involve a practitioner member such as Eric, because consideration of part 2 of the bill will involve discussion of the practical issues—already referred to by COSLA—that surround securing the aims of development plans through the co-operation of the water authority and developers. With Eric's help, we would like to explore how we can find a suitable way for them to co-operate in providing the necessary infrastructure.

My comments will be more general. Our institute is a UK and international body that represents professional town planners. Our representative role is subject to the fact that we are a chartered body and a charity, so our primary obligation is a duty to the public. We deal with the education, training, best practice and good conduct of our members in serving the interests of the public. We also make representations, such as we are making today, on the processes of government to secure a good planning system. The overriding point that I am making is that we are not thirled exclusively to the statutory planning system, but see planning as a much wider discipline and a valuable tool in all aspects of life. Nor do we necessarily protect the status quo, and you might hear more from us on that when a planning bill comes along.

It is in a wider context that we are interested in the bill that is under consideration today. We want to examine the relationship with the statutory

planning system. We also want to make the point that we believe that integrating plans is of fundamental importance for the future government of Scotland. Where there are spatial dimensions to any other plan outside the planning system, every effort should be made to ensure proper integration.

We are also interested in the development of the concept of a national planning framework for Scotland, which was announced by the Executive just before the summer. We expect to see some interesting new developments outside the normal statutory process, which should make it easier for all bodies to participate according to time scales that are perhaps more suitable to their annual programme approach to things. That should allow objectives to come together at national level.

Regulation of the water environment and of the provision of services affecting water should be seen in the context of a big-scale, integrated spatial framework that is more attuned to modern needs. We note references in the policy memorandum to such things as a two-way commitment in the business of integrating planning processes. However, for many years, sponsoring departments for services such as water have talked about a two-way commitment in policy memoranda. They have been more than happy to include a statutory provision for the planning system to co-operate with the service, but they have not tended to include an obligation for the service to co-operate with the planning system. The same is true of the Water Environment and Water Services (Scotland) Bill.

There is a duty of sustainable development on Scottish Water in the Water Industry (Scotland) Act 2002. We have an outstanding question with the Executive as to whether that goes as far as a duty towards the planning system, as we consider the planning system to be one of the main ways of delivering sustainable development. As far as the second part of the bill is concerned, we might be inclined to say that there should be a statutory provision requiring Scottish Water to have regard to statutory development plans. We note that the Water Industry (Scotland) Act 2002 has a significant range of powers of direction for ministers to make statutory instruments. Until we know more about how they can use those powers, it is difficult for us to say just how far we would want to push that point. There will still be a learning curve with the existing legislation before we know how well it will accommodate integrated planning.

We have submitted a written note stating that we see the enabling legislation as requiring full consultation on such statutory instruments as are introduced to implement it in due course. That will raise the issue about the practicalities of

relationships between systems. We have raised the point about a duty to have regard to statutory development plans. We have raised the point about the river basin management plans being proper spatial plans that can be used by developers for guidance along with the statutory development plans. We have made the point about the need for SEPA to be adequately resourced to deal with its new responsibility. We have also made a point about Scottish Water's investment priorities. If not its investment priorities, then at least its approval processes must ensure that it is facilitating the process of new development. We can discuss that in detail later.

**Dr Andrew Black (Institution of Civil Engineers Scottish Hydrological Group):** Good morning and thank you for your invitation to participate in today's meeting.

I represent the Scottish Hydrological Group. It is a multidisciplinary group of scientists, engineers and managers concerned with the scientific study and management of fresh water in Scotland's rivers, lochs, reservoirs, estuaries and groundwaters. As hydrologists, we have a distinctive focus on river basins, or catchments. We see the hydrological links in river basins as important single units. That perspective is one that underlies the idea of river basin management planning and it is an area where hydrologists can make an important contribution.

Generally, we welcome the bill. There has been an increasing need for a system of river basin management planning in Scotland for many years. The bill therefore represents a valuable step forward.

However, as I have suggested in my written submission, the group believes that the bill misses some important opportunities, especially in relation to flood hazard management. It is interesting that flooding has already been mentioned by the other two witnesses. Much of the future flood hazard management activity in Scotland will overlap with the river basin management planning process proposed by the bill. Our view is that those activities should be co-ordinated within a single framework.

We agree with the RTP1 that integration with land-use planning is desirable. We also share COSLA's view that flood hazard management needs to be incorporated into the bill. Perhaps there is an intention to do that, but it is not explicit at the moment.

We are concerned that the bill should, in practice, involve sufficient and appropriate monitoring and research to allow the generation of robust status assessments of individual water bodies and the generation of defensible requirements of water users. The intention is that

those developments must be based on good science, so we are concerned that that should be delivered in practice.

Finally, and echoing comments from others, we are mindful that the bill is intended to be enabling legislation. Much of the detail is not yet known and that is going to have a big impact on the reality of the bill x years down the line.

**The Convener:** Thank you to all three witnesses for your opening statements. The first group of questions will be directed at the whole panel so please indicate if you wish to make a response.

**Robin Harper:** The questions will give you an opportunity to expand on points you have already made in your submissions this morning and in your written submissions.

Do you think that the bill seeks fully to implement the spirit of policy integration that is at the heart of the water framework directive? For instance, does it integrate with Scottish Executive policies on agriculture and forestry? Where is the integration with the development of the European marine and soil strategies? Do you have any general comments on those questions?

**Dr Black:** I shall lead off. I am not sure how widely the bill integrates. I have already commented on flooding. The bill could, perhaps, seek to integrate more fully in other directions as well.

The water framework directive, which provides the impetus for part 1, throws a lot of challenges at member states. The bill is principally concerned with the requirements of the directive, but some of the comments that have just been made suggest that there are important linkages, overlaps and possibly even conflicts with other frameworks. I am not sure that that is fully worked out yet.

10:15

**Graham U'ren:** I subscribe to that view. I talked about the statutory development plans, but from the wider interest in planning, the same issue goes for land uses that are not necessarily part of the statutory planning system—agriculture and forestry are particular cases in point. In terms of land use in its broadest sense, river basin management planning should have regard to a fully integrated approach. That integration should happen at the policy-making end in all cases—it should not await reactive processes when people make applications for planning approval, a water user licence or an agricultural grant.

**Kathy Cameron:** I reiterate what we said in our written evidence: we do not see implementation of the water framework directive and the necessary river basin management plans as standing in isolation. They should not be isolated from the

national local policy documents, such as community plans, development plans, local economic strategies, area waste plans and agenda 21. There is a considerable list of plans with which there should be some co-ordination.

**Robin Harper:** I want to take the point about integration a little further. Do you think that the bill should specify the number of proposed river basin districts? Do you have any observations on how it could be strengthened to make the links between river basin management plans and sub-basin plans clearer?

**Graham U'ren:** We subscribe to the view, which we assume is held fairly generally, that one river basin management plan for Scotland is a good idea, subject to the cross-border arrangements. That would ensure a good strategic overview and a good relationship to the proposed national planning framework. Greater commitment to that national spatial view would help many of the services. There is a good relationship in relation to water.

The sub-basin plans and the fact that there is no prescription for them—they are discretionary—have been mentioned. That is okay up to a point, but it does not tell us much about what they will be like and what will be their relationship to a strategic plan. That might not be a matter for primary legislation, but it is something on which there could be further clarification.

**Dr Black:** I am very happy with the idea of having one district to cover all Scotland, apart from the cross-border areas. That will be a good vehicle for ensuring consistency across the country and allowing best practice to be shared effectively.

**Robin Harper:** Do you think that, within the national planning framework, the bill sets out a clear relationship between the development planning process, the community planning process and river basin management plans? Is the bill clear enough on those relationships?

**Graham U'ren:** No, it is not clear enough—far from it. It is enabling legislation, so we have many questions about what will happen at the next stage, in the statutory instruments that will bring together the concepts that we are talking about. It is difficult, but there are benefits to enabling legislation. Perhaps some further thinking can be done, even if it does not form part of the bill that will be enacted.

Kathy Cameron made the point about there being many types of plan. It would be difficult to list all of them in primary legislation—one reason being that a number of them will change over time. Statutory development plans may not change all that much, but local economic strategies, for example, could well be different a few years from now. It is therefore difficult to make a prescriptive

list. On the other hand, some way of expressing the approach to integration is needed before we go much further.

**Kathy Cameron:** Again I concur with my colleague. In an evidence-taking session on 4 September, the deputy convener said that the devil is in the detail. Those were precisely the words that came to my mind when I was preparing for this session today. One could argue that work on the secondary legislation will be even more important than work on the bill. I am thinking of how the water framework directive will be developed and implemented in Scotland. I completely concur with the RTPI.

**Eric Wilson (Royal Town Planning Institute in Scotland):** I want to add one comment about the range of plans that Graham U'ren alluded to. One problem is that they are all on different time scales. In particular, a statutory development plan allows builders and developers to programme their work and their investment. If work proceeds on the basis of such a plan, and a parallel piece of legislation then affects that, a strong link will be needed between the two so that decisions taken by the water industry reflect those taken by the development industry.

**Dr Black:** The timetable set out by the water framework directive is fairly clear about the intervals that are required in the production of river basin management planning. I take Eric Wilson's point, but I am not sure what we can do about it, given what is set down in the water framework directive.

**Nora Radcliffe:** Do you regard the overlapping time frames as a problem, or can we get round that by good consultation and co-ordination?

**Eric Wilson:** The answer is good co-ordination and an awareness of what each organisation is doing. I was responsible for preparing a structure plan. During the preparation, I had very close consultations with the then West of Scotland Water. However, in the transition from WSW to Scottish Water, because of the changing priorities, programmes and time frames, my development plan programme is now slightly out of kilter. Constant co-operation and understanding is required.

**John Scott:** Which plan would take precedence? That will have to be established at some point. I am clear about which one should take precedence.

Dr Black said that he is happy with the concept of one local authority being, in essence, the lead authority and taking responsibility for Scotland—a concept that I am normally happy with—but each local authority has probably developed its own structure plan and local plan. Is any local authority necessarily the best placed to administer another

local authority's plan in conjunction with the water industry?

**Dr Black:** I think that we have a slight misunderstanding. I was speaking in support of the idea of having one river basin district for Scotland and against the idea of having one lead local authority exercising control or influence in other local authority areas. I do not support that idea at all. Robin Harper wondered whether we would be best to have one river basin district for Scotland as a whole. That is what I support.

**John Scott:** And which plan should take precedence?

**Dr Black:** There are difficulties in that respect but, as other witnesses have suggested, the best approach seems to be consultation and working together. We should be trying to avoid conflicts rather than working out how to deal with them when they arise. Although that might not be easy sometimes, it might be the way to go. The river basin management and planning processes and the land-use management and planning processes need to be responsive to each other to satisfy their own objectives without causing undue conflict with others.

**Graham U'ren:** This is a real issue, although we have not really encountered it so much in the past. River basin management planning and the regulatory process that stems from it have the potential to deal with the principle of development in the same way as statutory development plans and land-use planning have done. Other forms of environmental regulation tend to require developers to meet a certain standard. As any developer who invests enough will potentially be able to meet that standard, it does not undermine the principle of development. However, the proposed planning process has the potential to do so, which emphasises the significance of the relationship between river basin management planning and statutory development planning. That said, total integration is really important for the wider policy objectives, which is why Eric Wilson emphasised the importance of issuing guidance to developers in advance and why I pointed out that integration should take place at the policy plan-making stage and not at the reactive regulatory stage.

**Robin Harper:** As the bill's provisions develop and begin to bite, a lot of integration of the various plans, and dialogue, will be necessary. Do you envisage that, at some point in the future, river basin management plans will take primacy over all other plans?

**Graham U'ren:** Frankly, I cannot see that happening. If it does happen, it will do so only after a long debate and a lot of machinations. With river basin management planning, it is possible that less than the required standards might be

accepted. I forget the precise term for that—I think it is called derogation. Similarly, the statutory planning process has always been about taking into account a range of factors, some of which might seem to set absolute standards and might result in a refusal of planning permission because of their overriding nature. However, planning decisions are largely balanced decisions. Because of its social and economic responsibilities, the river basin management regime will have to do more of that and will probably draw on the statutory planning system for much of its perspective on social and economic factors. It will have to be prepared to compromise to achieve the balanced decision-making that we are used to in the statutory planning system. It remains to be seen whether organisations that are more used to regulations that require them to meet a certain standard will need to adapt significantly to work within the new regime. However, that is what will be involved.

**John Scott:** Are you confident that SEPA, as the environmental regulator, can deliver a directive that has real economic and social consequences? COSLA has already raised concerns about the collection of social and economic data for river basin management plans. Should bodies other than SEPA be given specific responsibilities in that regard?

**Kathy Cameron:** You have correctly highlighted the fact that we have expressed concerns about SEPA. Notwithstanding its capacity to do its current job effectively, the organisation has not previously played any role in the gathering of that sort of information. Councils have carried out that task. As a result, we want close co-operation between SEPA and local authorities to ensure that the correct information is made available.

The downside is that requiring local authorities to provide additional and more detailed economic data would have a resource implication for them. We acknowledge that SEPA needs either sufficient resources to do more to implement the water framework directive or sufficient co-ordination and consultation with local authorities to ensure that the best process is developed.

10:30

**Eric Wilson:** I agree. As I said, the statutory planning process provides social and economic data. Originally, the system was based on land-use planning, but it has progressed to require the provision of a social and economic dimension, so local authorities gather and collate information on that. SEPA need not repeat that—it could use the available information. River basin management plans would therefore lean heavily on the information that is in the public domain and the information that other organisations provide.

**John Scott:** You do not expect a cost implication for SEPA or local authorities because the information is already freely available.

**Eric Wilson:** The information is available. Providing it is part of a local authority's function. The other difficulty is that we have parallel plans, such as those for community planning. An understanding is required of the relationship between community planning and statutory land-use based planning. Local authorities will incur costs, but those data are part of the information that several statutes require them to gather.

**Graham U'ren:** We are impressed with SEPA's recognition of the issues, which is reflected in its written evidence to the committee. We have discussed the matter with SEPA. In SEPA's current operation, it needs to develop its approach to the planning process that we are discussing. Having an adequate scale of staff to deal with the processes that arise, particularly that of being involved in other planning processes, of which the statutory planning process is one, is a serious resource issue for SEPA. There are more than 150 local plans and about 12 structure plans, which SEPA must monitor. If it is to do that effectively and understand what its policies mean for each housing site, for example, it will need a significant staff resource to keep on top of all the plans.

**John Scott:** It has been put to the committee that it would be logical to include flooding controls explicitly in the bill. Should SEPA be given an overview role? What are the advantages and disadvantages of keeping flood management under local authority control?

**Kathy Cameron:** Under flood prevention legislation, local authorities have a duty to provide flood management schemes. COSLA is aware of the issues that relate to increased flooding in Scotland, which is why it recently established a task group on flooding issues. I imagine that considerable interest would be expressed in integrating the work of that task group with the current discussions on the water framework directive.

There is great concern in non-governmental organisations about implementation of the river basin management plans, their impact on flood basins and whether any development should take place on flood plains. Resources are available for flood prevention schemes via the Executive. Councils access them as they see fit. Pressure is increasing on councils to produce more and better flooding defence schemes.

It is important that the opportunity is taken in the bill to ensure that there is co-ordination between current activity and the future activity that will be required to reduce flooding in Scotland. We should

not go down a road from which we cannot return by setting up certain processes that cause more flooding.

**John Scott:** In that case, should SEPA have an overview role, or should that be left to local authorities?

**Kathy Cameron:** It should be left to local authorities.

**John Scott:** Does anybody else want to comment on that?

**Dr Black:** There is a strong case for SEPA becoming the lead agency on flooding. SEPA is to be responsible for river basin management planning; flood hazard management is an aspect of managing a river basin. Floods are generated by water that comes not from a single point, but from an upstream catchment, and the way in which a flood hazard is managed in one place—by the building of defences or the setting aside of land for flood attenuation—impacts on other areas downstream.

Flood hazard assessment and the managing of solutions to flooding are technical matters. At the time of local government reorganisation in 1996, water department staff in the former regional councils were transferred almost entirely to the water authorities. Local authorities consequently found themselves without staff who had expertise in flooding matters and, since then, it has been a hard job for local authorities to recruit staff—often a single individual—who have the necessary expertise to stay on top of flooding issues in their areas. The fact that much flood management in Scotland involves external consultants, who produce plans when it is deemed necessary to consider such things, places considerable responsibility on the individuals who have to try to manage those processes without a lot of expertise and technical back-up.

As Scotland's lead agency for technical expertise in hydrology, SEPA would be much better placed to handle flood management issues in a co-ordinated way. It would be more efficient and having in charge a team of people who are more attuned to all the options and aware of national developments would help the delivery of best practice throughout Scotland. With climate change threatening—I should say expected—to increase the nature of the flood problem in future, more will have to be done. It would make sense to have a central unit where flood management plans could be developed. For my money, SEPA would be the best agency to set up such a unit.

**Kathy Cameron:** It is reasonable to talk about SEPA possibly taking overall control of the issue of flood hazard management, as it already carries out some duties in that regard, but we must consider the issue of resources. If SEPA is asked

to take on a more taxing role in flood prevention, it will have to be resourced accordingly.

I return to the point about the capacity of local authorities to respond, following reorganisation. Councils are involved individually and collectively in flood appraisal groups, in which they operate with a range of other organisations, including insurers. Insurance issues are high on the flood hazards agenda at the moment.

I do not think that it is correct to say that council staff are not as capable of addressing flood hazard issues as they were at the time of reorganisation. We are six years down the road from reorganisation and we have gathered our resources accordingly. The fact that the flood appraisal groups cover approximately 85 or even 90 per cent of Scotland means that there is considerable awareness of our sector's responsibilities for flood prevention and flood incidence. I assume that if that duty were passed to SEPA, the flood prevention legislation would have to be revised as far as local authorities' responsibility to act is concerned.

**Maureen Macmillan (Highlands and Islands (Lab):** Kathy Cameron just answered my question, which was about existing co-ordination among local authorities. It is obvious that rivers do not respect local authority boundaries. Do you think that local authorities are able to co-ordinate their work sufficiently to remain in charge?

**The Convener:** That question has been answered.

**Nora Radcliffe:** A question that I was going to ask later fits neatly into this discussion. How good are the cross-border working relationships between Scottish local authorities, English local authorities and the Environment Agency in England?

**Kathy Cameron:** The two South of Scotland authorities—Dumfries and Galloway Council, on whose behalf Eric Wilson can speak, and Scottish Borders Council—work in close co-operation with their cross-border colleagues on water matters. I cannot speak about that in detail—I am happy to defer to Eric Wilson.

**Eric Wilson:** Kathy Cameron is perfectly correct. Both Dumfries and Galloway Council and Scottish Borders Council have working relationships with each other and with the relevant authorities in England. For example, the Solway firth partnership involves all the agencies, including environmental agencies and amenity organisations, on both sides of the border and meets quite regularly. Therefore, mechanisms exist to allow those discussions to take place.

**Dr Black:** Those discussions have generally been about working arrangements across national

boundaries or between local authorities. A lot of good work has been done, but that does not get us away from the fact that each local authority has only a fairly small staff responsible for overseeing the technical work of developing plans for flood hazard management options, which are usually of a structural nature. My view is that there is still merit to be found in pooling resources in a national centre of excellence. It is extremely difficult to work out optimum solutions for events that, in many cases, have not happened in living memory. Much of the work that is done is targeted at measures that must be put in place to protect an area of housing or industrial development from a flood that might come along only once every 50 or 100 years. Such questions require a lot of technical expertise and I continue to believe that a national solution would be best.

**John Scott:** Do the witnesses agree that the issue must be addressed as a matter of urgency? The floods that used to happen once every 20, 30 or 50 years now happen once every five years. It appears that flooding is becoming a much greater problem.

I did not mean to make a speech, but the RTP1 and COSLA have concerns about the different review timetables for local plans, structure plans and river basin and sub-basin management plans. Given that some long-term structure plans have been approved without regard to the bill, can the two regimes be joined seamlessly? Indeed, can they be joined at all?

**Graham U'ren:** We have already referred to the need for integration and to the practical difficulty that arises from the plans being out of synchrony, although that difficulty is not insurmountable. The point has already been made that, through the creation of proper joint working arrangements, plans can be updated to catch up on what is left out. It is probable that all the planning cycles will never coincide exactly, but a *modus operandi* can be worked out in which plans can be reviewed to update and reflect what is happening elsewhere. I do not think that there is a particular problem, but there must be the will and a system to get to grips with it.

**Nora Radcliffe:** Do you acknowledge that having overlapping time frames might be a strength and might give more flexibility?

**Graham U'ren:** One of the ideals that we work to is to try to ensure that everything coincides exactly, but of course that will never happen.

**Nora Radcliffe:** When setting a time frame for five or 10 years hence, it might be helpful to have an interlocking regime, with a review halfway through the process. Do you see what I am getting at?

10:45

**Graham U'ren:** Yes. The key question is what you mean by a review. Under the regime that we are discussing, a review takes place every six years or so—I think that reviews will take place in 2009 and 2015. The structure development plans are supposed to be reviewed every five years. Some structure plans have established an updating procedure—not a full review—every couple of years. The Strathclyde plan used to be subject to a two-year update. That update was not a full review—it dealt with selected items. One could have a full review or an update or a simple amendment process for one key issue.

**Nora Radcliffe:** We are expecting a planning bill to be introduced. I get the sense that issues that we are considering in relation to the Water Environment and Water Services (Scotland) Bill will have an impact on the planning bill when it comes along.

**John Scott:** I have a further question. Is it your view that achieving synchronisation would be the best thing? Should the planning bill that will be introduced in the next session seek to achieve synchronisation by allowing structure plans to be updated on a rolling basis? Such updating would allow us to work towards synchronisation.

**Graham U'ren:** We should not necessarily expect the planning bill to provide synchronisation in the sense that all plans would have to be prepared on the same cycle or milestones, because that would not be practical. However, synchronisation in the sense of using updating and amending techniques is extremely important. Unless we have a planning system that is more responsive in its ability to keep development plans up to date, we will not be well served. That is a big focus of attention for the planning bill.

**Nora Radcliffe:** I will direct my next question to Dr Black. Responsibility for the maintenance of sustainable urban drainage systems has been an issue. Should that issue be picked up in the Water Environment and Water Services (Scotland) Bill, with a view to eliminating the confusion?

**Dr Black:** That is a nice thought. I would be happy for sustainable urban drainage systems to be linked in principally through the planning processes, as is currently the case. My view is that SUDS are a good idea, but they are not necessarily the best idea in all circumstances. In simple terms, a key underpinning idea of a SUD system is that it soaks up water slowly and releases it slowly, after a flood wave has passed by in a river or stream downstream. Sometimes, the best solution might be to get the water out quickly, before the big flood wave comes along. I would be happy for responsibility for SUDS to sit primarily in the planning system. Consultation with

SEPA can and does happen and it should be encouraged.

**Des McNulty (Clydebank and Milngavie) (Lab):** I am not sure that Dr Black answered the question, which was about the maintenance arrangements in relation to SUDS. Will you answer that question and will you also respond to the view that an overly aggressive withdrawal of public funds for the connection of new developments to the network could be a disincentive for developers? That could be a consequence of the lack of clarity in the current financial arrangements.

**Dr Black:** I do not want to express a view on where maintenance enforcement should lie. I recognise that it represents a burden, but there are different ways of handling that.

**Des McNulty:** One of your colleagues may want to respond to the question.

**Kathy Cameron:** In its original response to the water environment element of the bill, COSLA expressed concern about the confusion in the arrangements between local authorities and the then water authorities for the delivery and maintenance of SUDS. That concern still exists. I am not best equipped to say much more on the matter. I would be happy to provide the committee with a written response.

**Eric Wilson:** Maintenance is a significant issue, because the first question that a developer asks when he is required to provide a SUD system is, "Who pays for it?" In certain instances, the developer is prepared to pay for it. I do not agree with my colleague that planning authorities should necessarily be responsible for the maintenance of SUDS, as that is a burden stretching over a limitless amount of time. We may need a national organisation to take on responsibility for maintenance.

**Maureen Macmillan:** My question relates to part 2 of the bill, on water services. Both COSLA and the RTPI have expressed concerns about Scottish Water's priorities for upgrade of existing water and sewerage networks. What are the alternatives to the proposals in the bill concerning the relationship between those priorities and development?

**Eric Wilson:** That is a significant concern. The five West of Scotland Water priorities seem to have been transferred by and large to Scottish Water. Servicing development was the fifth priority in that list. West of Scotland Water's approach was driven by the requirement to meet standards set by European legislation, which affected the way in which investment was front-loaded.

As a planning officer, I find myself in the difficult and unusual position of supporting the

development industry, which has a genuine concern. If financial responsibility is transferred to the development industry, that may be acceptable in a national context. However, there could be significant problems because of the variations that exist across Scotland. In an area where there is significant pressure for development, where house prices are high and where the economy is buoyant, the development industry may be able to absorb any additional cost. However, in a rural area or an area whose economy is not buoyant, the additional burden imposed by the transfer of financial responsibility to private developers may make the difference between a development going ahead and its not going ahead. The issue is as simple as that. The representations that local authorities, COSLA and the house-building organisations have made reflect the concern that I have outlined.

**Des McNulty:** Are you saying that it is reasonable for water consumers in other parts of Scotland to pay connection charges to subsidise developers who are building in rural areas?

**Eric Wilson:** That option must be considered. If the economic return that the water industry commissioner requires is applied as a cost-benefit analysis across the board, some sites will be able to meet it and others will not. We may need to consider having a form of subsidy.

**Des McNulty:** Why should that subsidy come from water consumers? Why should water consumers in Clydebank or Glasgow pay for connections that are part of an implicit development cost in another part of Scotland? Can you offer me an economic argument that would sustain that position, other than the argument that someone has to pay?

**Eric Wilson:** The issue is the allocation of a budget and the priorities within that budget. In relation to the competing demands on that budget, a higher priority should be given to servicing new development. If that means that there is an element of subsidy, that has to be the case.

**Des McNulty:** Are you talking about the water authority's budget?

**Eric Wilson:** Yes.

**Des McNulty:** The water authority's budget is not provided to subsidise new housing developments. That is not its purpose.

**Eric Wilson:** It has been the case historically, in relation to the reasonable cost element. The financial details are not laid out in the bill, which must be borne in mind when the issue is examined.

**Des McNulty:** Would that involve identifying what "reasonable cost" means?

**Eric Wilson:** Yes.

**Des McNulty:** What is a reasonable cost?

**Eric Wilson:** The bill appears to move away from an absolute definition of "reasonable cost" to one where ministers can take into account social and economic factors. Perhaps there is a need to take into account social and economic factors, not just the return on the investment.

**Des McNulty:** I am not clear how that will work, even from a ministerial point of view. The water authority is subject to the water industry commissioner's requirements, which are supervised by Ross Finnie, the Minister for Environment and Rural Development, whereas planning and housing are dealt with by another minister. Is there an implied transfer, such that the cost of delivery in one area is subsidised by arrangements elsewhere?

**Eric Wilson:** No, I do not think that there is an implied transfer. The issue is how the development industry and planning authorities can influence the capital programme of Scottish Water. What is the mechanism to do that?

**Des McNulty:** I am sorry for pursuing the matter, but there is an implicit question, which is not only how that can be done, but whether it should be done. You imply that developers' costs should somehow be underpinned by passing on a reasonable—or in some people's minds an unreasonable—charge to Scottish Water.

**Eric Wilson:** I am not saying that all developers' costs should be underpinned. It is recognised that the development industry will have to bear its share of the costs—there is no doubt about that. I am saying that, in certain circumstances, where the area under question is an area of low economic activity, for example, and the development industry cannot bear the cost, there may need to be some form of subsidy.

For example, ministers recently announced that an extra £41 million would be available for first-time connections in rural areas. All rural areas are putting together a programme to bid for that money, but it is unclear what the criteria are for that bid. We are waiting for information on the criteria. That may be a one-off financial arrangement, but at least it recognises that there is an element of disadvantage in rural areas.

**The Convener:** We have pursued this matter far enough.

**Des McNulty:** I had one more question to ask.

**The Convener:** We go to Maureen Macmillan.

**Maureen Macmillan:** A lot of the concerns that I was going to ask about have been dealt with. I was particularly interested in how the proposals might impact on rural development and social

housing in rural areas.

You call for the regulations relating to the connection of new developments to have regard to development plans. Do not development plans already take into account the water and sewerage network and potential connections to it when identifying suitable land for development? There would be problems only in marginal cases—in remoter areas, for example.

11:00

**Eric Wilson:** The next round of structural plans will have to be sharpened in relation to infrastructure costs. My structure plan had a significant chapter on infrastructure. As I mentioned in response to another question, we had extensive consultations with the water authority in drawing up that plan.

Scottish ministers approve all the structure plans of all the planning authorities in Scotland. They also approve the budget for Scottish Water. The RTP1 is saying that closer co-operation and understanding is needed between what is being projected in the development plans and the capital programme to improve investment in the infrastructure.

**Maureen Macmillan:** I am trying to find out how big the problem is. Is it just a problem at the margins? I cannot imagine that there are all that many examples of places where development would be stymied because of the proposed new way of working.

**Eric Wilson:** I would disagree that the problem is at the margins. Dumfries and Galloway—my authority—has had consultations with the Ayrshire and the Scottish Borders structure plan authorities. At various stages, each of those authorities has made representations about underinvestment.

The west of Scotland has been in a particularly acute situation. I know that from my colleagues on the joint structure planning authority in Ayrshire—Kathy Cameron alluded earlier to written comments from East Ayrshire.

The issue is significant. It was addressed by the Scottish Executive planning division when it held a seminar in order to elicit the views of planning authorities. That seminar was also attended by the Scottish Executive water division. I believe that there is a recognition that the planning and water authorities must be seen to be working in parallel.

**Maureen Macmillan:** Kathy, do you have any comments to make?

**Kathy Cameron:** I am inclined to concur with my colleague. I am not terribly familiar with the area, so I will defer to Eric Wilson on the technical aspects. We are happy to provide a written response to such questions.

**Maureen Macmillan:** You have made some points about the issue in your written submission.

**Kathy Cameron:** As you say, we have raised those points in our written submission, but we are happy to provide further information.

**John Scott:** My question is for the RTPI. Your written submission calls for SEPA to have regard to the statutory land-use planning process. Are you concerned that the bill could lead to conflicting land-use policies? What about extended links to policy areas outwith development planning control, such as agriculture and forestry? Would those areas not have to have more regard to the planning system? I know that you touched on that issue in your opening submission, but we would be grateful if you enlarged on your comments.

**Graham U'ren:** As I hope I indicated at the beginning, we are more concerned about proper planning across the spectrum of integration than about beefing up the statutory planning system to take more control. We do not believe that that is the right way forward.

From time to time, aspects of agriculture have been raised, particularly concerns over intensification. There were suggestions that planning authorities should take control of agriculture. That has never been our view.

I am not sure that I can add a lot to what we have already said. The issue is down to ensuring that all the agencies responsible work in a way that means that they can look after their own interests while getting added value from working together. That applies to all types of land-use planning processes, including regulatory processes, grant-giving processes and investment processes.

**John Scott:** In your written evidence, you argue that the lack of clarity about whether money will be available to connect new developments will put developers off and will make it more difficult for planners to identify land suitable for development. What do you see as the alternative?

**The Convener:** We have already partly covered that question, but I invite the witnesses to add any further comments.

**Graham U'ren:** I would add that one of the areas of the planning process that might concern us more than ever is the stage of preparing land allocations in structure plans. That process involves agreeing with developers how much land is to be allocated and roughly where it is likely to be. That may be brought forward in order to meet the requirements of the market as well as planning requirements.

The process is set out in the national planning policy guidelines relating to planning and housing. It often involves a lot of interest, discussion and

contention, but the structure plans will ultimately come before the relevant minister, who has to take a decision. Not long ago, the Glasgow and Clyde valley structural plan went to the Court of Session, as developers were not happy about the way in which the land-supply issue had been included.

That stage comes long before developers begin to put together ideas about developing particular sites and long before planning applications are made. The bill already emphasises a shift in the division of responsibility for paying for water and sewerage infrastructure away from the water authority towards the developer—I will try to illustrate the problems with that later. Developers will be more concerned about the potential costs at the early stage.

We have already discussed SEPA's involvement early in the process of river basin management planning. We need Scottish Water's total co-operation in drawing up structure plans so that we are sure that the overall land supply that we are discussing with the house builders is feasible from the point of view of the development costs and not just from the point of view of physical access, of whether the development is undermined or of whether it is in a marketable area, which are the issues around which the debate usually centres.

The need for earlier co-operation by everybody in the process, which will allow us to plan effectively, is largely being brought about by the shift in the emphasis of responsibility, although there is a cost element. We would like that issue to be brought home to Scottish Water.

**John Scott:** I want to be absolutely clear about this. You are saying that it is likely that, given the way in which Scottish Water is set up and the way in which the role of the water industry commissioner for Scotland is set up in respect of delivering value for money, the development of rural housing will effectively be inhibited. In rural areas, the costs of putting in sewerage will be disproportionately high relative to the returns to be gained subsequently from the marketplace.

**Eric Wilson:** I think that your last comment is correct: those costs would be disproportionately high. Developments in rural areas may involve a very small number of housing units, but those units could be critical to a particular locality and could make the difference between a school remaining open and its not remaining open, for example. In the context of the bigger picture, the numbers involved are small, but significant. In many instances, builders will be building, say, two or three houses in a given location in a year—that is the scale of a typical operation in rural areas.

Graham U'ren spoke about effective future planning. At the moment, planning authorities are required to provide an effective five-year supply.

One of the definitions of land that is effective is that it must be able to be serviced. The current revision of NPPG 3, which applies to housing, suggests that the effective land supply should go to seven years. The next round of structure and local plans will need to build in an effective seven-year land supply. That brings us to the time frames that we were discussing earlier, which are necessary to ensure that land is effective.

Local plan designations and structural plan allocations do not necessarily name the developer but simply identify an area of land. In many ways, such designations and allocations are aspirational and simply say that a piece of land is suitable for development. It may be several years before a known developer is available. The water industry is rightly concerned about that, because it will want to know who the developer is and what the time frame is so that the development can be programmed. That issue needs to be looked at.

However, I think that planning authorities are aware of that issue. They are certainly being much more rigorous in their appraisal of what is effective land, so that when the information is transferred to the water authority, there is a higher probability that development of the site will take place rather than being purely aspirational.

**The Convener:** Des McNulty can ask the final question.

**Des McNulty:** Does the same argument apply within local authorities? For example, do you communicate with your own authority when land is identified as being potentially affected by flooding? When the issue of whether land is appropriate for development is being considered, is the programming of the flood prevention methods and infrastructure improvements that might be required to bring the land into use taken into account?

**Eric Wilson:** Absolutely. Earlier, Kathy Cameron referred to flood appraisal groups. By definition, flood appraisal groups involve other agencies, such as SEPA, which sits on those groups to provide information.

As part of the process of identifying sites, planning authorities look at a whole range of factors. Servicing, especially water and sewerage, is one factor, but a whole range of issues must be taken into account, including education provision, access and whether the land is of high-amenity value. For a site to be identified, a consensus of opinion that balances all those issues is required. The answer to your question is yes, because all those factors are taken into account in assessing the ability of a site to be developed.

**Des McNulty:** Given the fact that we all know the scale of the flood prevention that is required to protect even existing sites where there are houses, are resources really available for

developing flood protection mechanisms for sites that might be built at some time in the future? Is that an issue?

**Eric Wilson:** There are two issues. One is retrospective flood defence mechanisms, but the one that we are talking about is the allocation of land for the future. Where there is a known risk of flooding, a flood risk appraisal is taken of the site.

**Graham U'ren:** The implementation of that would be down to the planning process, so we are really looking at a planning gain issue. If the development was to go ahead, the cost of that flood defence would probably be borne by the developer, who might be from either the public or private sector. The cost is not likely to fall on any of the statutory agencies that are involved in flooding and water.

**Des McNulty:** As far as I am aware, a number of housing developments in the west of Scotland have been constructed in areas that had a flood risk. The planning authorities allowed the developments to take place, but there turned out to be flooding problems. Do planning authorities have any liability if permission is granted where there is a known risk but flood prevention mechanisms are not put in place to protect the houses? I know that there are climatic difficulties, but some of these issues are not the product of global warming or acts of God but the predictable consequences of planning decisions.

**Graham U'ren:** That is an interesting area of law, but my answer to your question is no. Planning decisions are by their nature a balance of factors, so they do not tend to carry any such liability, whether that is retrospective liability for flooding or for anything else. Where an authority is shown to have been aware of something, the authority should take that into account. However, that is as far as it goes. Despite everybody's efforts, gaining information about flooding is still not an exact science.

**Dr Black:** I agree with all that, but I would add one point. I agree that, if a planning decision has been made, the planning authority is not liable when it comes to floods. However, the situation is different if a local authority has implemented flood defences and a flood then occurs and causes damage to people's property. I believe that a test case is coming up in Edinburgh. The City of Edinburgh Council will, I think, find itself in court because some defences were found to have failed. Because the council had developed those defences, insurers will suggest that the council should be responsible.

**Des McNulty:** So a council is liable if it tries to do something, but not liable if it does not try to do anything?

**Dr Black:** It is interesting.

11:15

**The Convener:** I had said that Des McNulty's would be the final question, but Robin Harper has a brief supplementary.

**Robin Harper:** My question is for Andrew Black. Has not the discussion of the past five minutes underlined the importance of having an overall authority—such as SEPA—in charge of co-ordinating? Every time that a flood defence is put in, there is a knock-on effect, above or below or both.

**Dr Black:** It is impossible to consider flood hazard management as not lying within the field of river basin planning. There is so much synergy that it would be artificial and disjointed not to bring them together.

**The Convener:** That brings us to the end of our questions to the first panel of witnesses this morning. I thank Kathy Cameron of COSLA, Graham U'ren and Eric Wilson of the RTPi, and Dr Andrew Black of the Institution of Civil Engineers Scottish Hydrological Group. Thank you all for your evidence. Where supplementary evidence is to be supplied—from COSLA, for example—we look forward to receiving it.

We continue our consideration of the Water Environment and Water Services (Scotland) Bill with our second panel of witnesses. I welcome John Thomson of Scottish Natural Heritage, Geoff Aitkenhead and Professor Alan Alexander of Scottish Water, and Michael Cunliffe of the Crown Estate. Some of you have appeared at the committee before. You will have the opportunity to make some introductory remarks, after which the committee will ask questions. The questions will initially be general, directed to all members of the panel, and then specifically directed to each of the organisations that are represented.

This is the first time that Scottish Water officials have appeared before the committee since difficulties were experienced in Glasgow's water supply during the summer. Although we have representatives of Scottish Water here, I advise members that this is not an opportunity for us to examine that issue. I urge members to concentrate on the Water Environment and Water Services (Scotland) Bill. We will consider the difficulties in Glasgow when the incident control team's report is made available in a few weeks' time.

**Michael Cunliffe (Crown Estate):** I thank the committee for the opportunity to present evidence on the bill. The Crown Estate is involved in two ways. First, we are involved with fresh water, as the owners of extensive rural estates and salmon fishing rights in parts of Scotland, although our position is no different from that of any other large landowner. Secondly, we are involved uniquely in

the marine context, through the Crown's ownership of the sea bed in territorial waters and the greater part of the foreshore.

We welcome the bill and the introduction of systematic water management planning, together with the basis for regulations to provide improved control mechanisms. The Crown Estate has a specific interest in the marine aspect of the bill. Much the greater part of the water to which the bill will apply is seawater, and we believe that it is important that plans should be framed with that in mind. New controls in the marine environment should integrate with other planning and control mechanisms that apply there.

In the case of fish farming, it is widely recognised that the existing controls are unsatisfactory. We are glad that the bill will enable SEPA to be provided with modern, fit-for-purpose powers to control the way in which fish farms operate. However, that will do only half the job. The bill would be even better if it also tackled the lack of a statutory framework to regulate the location of fish farms by extending the planning powers of local authorities. I believe that the committee has expressed a view on that, in the context of its inquiry into marine aquaculture.

**John Thomson (Scottish Natural Heritage):** Scottish Natural Heritage greatly welcomes the bill and the thinking behind it, in the directive that it is designed to implement. The bill can make a major contribution to setting development in Scotland on a more sustainable course. That can be encapsulated in a single phrase—working with nature. We are convinced that the costs that will be involved will, over time, be more than offset by the benefits that will flow from having a high-quality environment and, importantly, the marketable skills and expertise that will be built up in implementing the regime.

We welcome especially the principle of setting objectives for water that are based on natural aquatic biodiversity, with the key aims of ensuring that there is no deterioration in that biodiversity and that, in some cases, there is an enhancement of it. Achieving those aims will bring major benefits for the natural heritage, which will not be restricted to the aquatic environment.

The bill's proposals for a new system of regulation should deliver a more efficient and better-targeted regime. However, it is the planning elements of the new framework that are the most important and promising. We welcome especially the proposals for widespread participation in the preparation of plans. That will be necessary both at the strategic level, in the drafting of the river basin district plans, and at the local level, in the drafting of the possible sub-basin plans. The sub-basin plans will be critical to the achievement of adequate public participation in, engagement with and ownership of the plans that emerge.

Adequate integration with other planning mechanisms is critical. Development plans are prominent among those, but there are also community plans, rural development plans, which are likely to increasingly underpin support for agricultural and other land-use activities, indicative forestry strategies, national park plans and deer management plans. All those mechanisms are relevant. We would like to think that, in time, the framework that is being created by the legislation could provide the starting point for a comprehensive regime of indicative land and water-use planning of the kind that has recently been advocated by the Royal Commission on Environmental Pollution.

We recognise that it is important not to be overambitious at the outset and that we have to learn to walk before we can run. However, we should be sure about the direction that we want to move in. We do not want to move in a bureaucratic or authoritarian direction, but in a direction that increases efficiency through more joined-up government and enhances democracy through local participation and objective setting.

Last week, the Finance Committee took evidence on the resource implications for SNH so I do not want to elaborate on that in great detail. SNH has been contributing willingly, at a strategic level, to the process and is keen to continue to do so. However, if we are required to make detailed operational contributions to the process, we will certainly struggle to do so within our existing resources and could do so only at the expense of significant elements of our programme.

**Professor Alan Alexander (Scottish Water):** I thank the committee for the opportunity to address you today. I will make a brief statement on behalf of Scottish Water and then Geoff Aitkenhead and I will address any questions that you want to raise.

Scottish Water welcomes the bill's commitment to protecting the water environment in Scotland and we recognise the important contribution that we can make to ensuring the successful achievement of that goal. To that end, Scottish Water is implementing a £1.8 billion investment programme, of which about half is on the waste water side, which is particularly relevant to the water framework directive. That investment has been agreed under the quality and standards 2 programme and will improve the quality of drinking water and ensure cleaner rivers, beaches and coastal waters.

That programme is due for completion in 2006, which is the end of our first regulatory period. Further investment will have to follow and my guess is that it will be at least at that level and possibly higher over the next period. Shortly, the Scottish Executive and Scottish Water will begin to work out the funding and outputs that are to be

included in the quality and standards 3 programme. That makes the present moment a particularly timely one in which to consider the impact of the water framework directive.

Scottish Water takes seriously its commitment to the environment and continues to invest to protect its long-term sustainability. However, as I am sure that the committee is aware, there are considerable costs to be incurred in pursuit of such an aim and a real commitment to successful implementation requires an equal commitment to deliver somehow the necessary funds.

The introduction of the new bill will impose a number of new obligations on Scottish Water that were not foreseen at the beginning of the review period for the quality and standards 2 programme. As a result, those obligations have not been included in the current programme and no funding has been made available for them. Scottish Water therefore has concerns about the financial implications of imposing further obligations during a review period without recourse to additional funding. At the Finance Committee last week, we were clear about that point.

In the absence of any additional funding, any new obligations under the bill that raised an immediate need for investment would require existing commitments under the quality and standards 2 programme to be deferred until the next review period. It would be quite impossible to add anything without subtracting something else.

Until the detail of the secondary legislation is defined, Scottish Water is unable to assess accurately the financial impact within the review period and beyond. However, we would be keen to participate in the development of future secondary legislation and to work with the Executive and regulators to develop solutions that will minimise the call for investment while protecting the environment in the way that the bill envisages.

Having listened from the public gallery to the previous exchange, I know that the committee has already considered one specific issue to which I draw members' attention. It is timely that I pitch in with our—I was going to say tuppence-worth, but it is actually £17 million-worth. We pointed out at the Finance Committee last week that part 2 of the bill deals with developers' infrastructure costs. We currently pay a total of about £17 million a year as contributions to developers' costs. In effect, that is a subsidy that is paid to developers by Scottish Water's customers. The payment was introduced when the housebuilding market was less buoyant than it is today and at a time when the Scottish Office paid rural water supply and sewerage grant. If you deconstruct the issue, it all goes back to the payment of that grant, which no longer exists. It is an inherited commitment. The expenditure has an adverse affect on our competitive position,

because the English and Welsh public limited companies, with whom we compete and against whom we are compared, operate a system that is broadly cost neutral and which therefore does not run through to customers' charges. We hope that the bill and the delegated legislation that is drafted under it will create the level playing field on developers' costs that fair competition demands. As I said, we will be happy to respond to any questions.

11:30

**The Convener:** I thank the three witnesses for their statements. You have all raised issues that we will come back to in our questions.

**Robin Harper:** I have three general questions for any or all of the witnesses to chip in on. We heard from John Thomson about the extent to which he would like to see the bill integrate all sorts of other areas. Does the bill seek to implement fully the spirit of policy integration at the heart of the water framework directive? For example, does it integrate properly with the Scottish Executive's policies on agriculture and forestry? Where is the integration with the development of the European marine and soil strategies?

**John Thomson:** The bill makes a start, but it is implicit in my comments that there is quite a long way to go. A lot of the integration needs to take place at the sub-basin level rather than the river basin level, as is currently proposed. If we are to have, in essence, one national river basin district and cross-border arrangements, integration at that level is needed, but critically, in respect of the objectives of the legislation, integration will need to take place at a lower level than that. That is where the processes need to be brought together. The bill makes a start, but the processes need to be teased out. It is probably fair to say that not all the interests that I have identified as needing to be involved have yet recognised that all this is relevant to them, so a process of awareness raising and education must be carried out.

**Geoff Aitkenhead (Scottish Water):** The bill offers significant opportunities for policy integration. When we get down to the detail of regulation and secondary legislation, there will be opportunities that should be realised.

**Professor Alexander:** This is not only about joined-up government in the sense that Robin Harper talked about, but about making that joined-up government compatible with the regulatory framework. One point that strikes me immediately is the need to try to get the periods for planning under the WFD to correspond with the planning periods for Q and S and for our regulation. As well as policy regulation, regulatory and oversight integration must be examined.

**Nora Radcliffe:** Can I ask a daft question: what is Q and S?

**Professor Alexander:** I am sorry; I have descended into jargon. It stands for quality and standards, which is the process by which our investment programme is put together. The Q and S 3 process will start at the beginning of next year.

**Michael Cunliffe:** I have a particular interest in integrated coastal zone management. I can envisage opportunities in that for sub-basin plans addressing the particular circumstances of the coastal zone, including what happens on land adjoining the coast and what happens in the sea within the 3-mile limit that the bill covers. There is a good basis for integrated planning to take place.

**Maureen Macmillan:** John Thomson talked about integrated planning with forestry and national parks and their deer management, but he did not refer to agriculture, which I feel is important. Would it be possible to have integrated planning with agriculture, given that there are two separate regimes?

**John Thomson:** Yes. I am sorry if I left out agriculture from my list, because it was supposed to be there. Integrated planning with agriculture is essential. Diffuse pollution is a big issue. The challenge of point-source pollution has been tackled effectively, but one could argue that diffuse pollution has not been tackled as effectively. It is critical that agriculture is included in integrated planning.

It is also important to consider a carrot-and-stick approach to help agriculture evolve and reduce its pollution impact. There must be a carrot as well as a stick, and some means must be found of doing that. That was highlighted in the "Custodians for Change" report that was prepared for the Executive by a group that Jeff Maxwell led. That report considered thoroughly integrated planning for agriculture.

**John Scott:** I have a general observation to which I hope that the witnesses will respond. SNH, Scottish Water, SEPA, local authorities, the agriculture industry and forestry will apparently have to bear significant extra costs. You have all alluded to that today. Where do you expect the money to come from?

**Professor Alexander:** Scottish Water has only two sources of funds. One is our customers' charges and the other is borrowing—the cost of which we pay from customers' charges. Unless and until specific funding is given for specific purposes, those are our only funding sources. There is, as Mr Scott will know, a general antipathy towards hypothecated funds being given to public bodies. Therefore, our working assumption must be that additional costs to us will be defrayed directly or indirectly from customers' charges.

**John Thomson:** We are not in the position of raising charges. Therefore, any extra resources that we require must be provided from our grant-in-aid, which means that it comes from the taxpayer. I do not want to overstate that, as a small percentage only of extra staff would be involved in the bill's implementation.

Another point is the relative impact on Scotland of the water directive, which can easily be overlooked. Generally, we have a much lower mountain to climb than many other countries within the European Union have, so extra costs on consumers and taxpayers will probably be substantially lower in Scotland than in other member states. To that extent, the directive's implementation could create a competitive advantage for Scotland rather than a disadvantage.

**The Convener:** Professor Alexander gave detailed evidence to the Finance Committee, and the Transport and the Environment Committee will receive a copy of the Finance Committee's report in due course. I know that you cannot produce precise estimates until the bill and the subordinate legislation are implemented, but do you have broad working assumptions about the cost impact on Scottish Water?

**Professor Alexander:** The short answer is no. Until we see the detail that will follow in secondary legislation, quantification within a tolerable level of accuracy is difficult. We believe that the cost impact will be substantial. Last week, we told the Finance Committee that, if history is any guide, implementation of the legislation will cost us more than the current estimates suggest. It is incredibly difficult to go beyond that. That is why in my opening statement I said that we want to work closely with the Executive in framing the subordinate legislation, which we strongly believe must be influenced by the costs and the period over which they will be spread.

I should add that, as long as the costs to us are factored in to the quality and standards process on the investment side and the regulatory cycle on the operating costs side, we will be able to cope. However, I return to my answer to John Scott's question: coping will involve some of the costs—perhaps a large proportion of them—falling on customers and therefore on charges.

**John Scott:** Would it be fair to say that taxpayers will pay for the extra costs through drinking water charges? They will pay extra taxation to fund SNH and extra charges through the local authority rates burden to fund the local authorities' ability to cope.

**Professor Alexander:** I am tempted to use the old phrase that there is no such thing as a free lunch. The fact is that costs will have to be paid

for. I speak only for Scottish Water, but, given the current regulatory regime, I cannot see where that money can come from other than direct or indirect customer charges. That is not to say that customers might not be willing to pay those extra charges. If we can convince customers that the benefits are as great as the directive anticipates that they will be, that will be fine. However, in the planning that we have to go into over this cycle and the next, we need to know what the costs will be before we can persuade people to pay extra charges.

**Robin Harper:** SNH's written deposition stressed the organisation's view that the river basin development plans need to be underpinned by strong arrangements for local involvement through sub-basin plans. Should the bill specify the number of proposed river basin districts? How can we strengthen the bill to make clearer the links between river basin management plans and sub-basin plans? Do you have any practical suggestions on that point yet?

**John Thomson:** The honest answer to your last question is no. We are still in the thinking process.

We do not necessarily believe that national coverage is required on sub-basin plans. Obviously, such plans are more of a priority in certain areas where there are complex interactions and where natural heritage interests of a high order are at stake. We are by no means in a position to specify how many river basin districts there should be. We have not ruled out in our own minds the possibility that there might be a combination of geographically defined sub-basin plans and sub-basin plans that are prepared on another sectoral or specialist basis. Given that we are saying that integration is key, we have a certain presumption in favour of geographically targeted sub-basin plans.

It is rather difficult to make clearer in the legislation the relationship between the overall river basin plan and the sub-basin plan until we are clearer about the sub-basin plan regime. However, it would probably be possible to make clearer in the legislation the expectation that there will be a sub-basin plan regime, in order to make it sound slightly less optional than is suggested by the wording in the bill as introduced.

**Geoff Aitkenhead:** My answer is in a similar vein. Scottish Water does not think that the legislation should specify the number of sub-basin plans that are to be prepared. There is a great benefit to flexibility in that regard, particularly for SEPA. Some areas will have higher priority and, in the first instance, energy and effort should be put into those areas.

I would liken the process of strengthening the links between river basin management plans and

the sub-basin plans to the preparation of a business plan. Strategic objectives would be set out in the river basin management plan, but the detailed task or activity schedule of things that deliver the high-level objectives would be set out in the sub-basin plans.

**Maureen Macmillan:** I want to ask about consultation and participation at all levels. SNH mentioned that subject and it was mentioned in evidence last week. What do the other panellists feel about the balance between the national and the local in respect of consultation and participation? If you think that it should happen at local level, who do you envisage will participate and who would be consulted?

11:45

**John Thomson:** I am happy to say something from SNH's perspective. As Maureen Macmillan mentioned, we have already stressed our belief in wide participation. It is clear that a range of important players, including public agencies and Government departments, would expect to be involved at national level. Indeed, it is important that the Executive in its various guises is directly involved in the process at national level. That should also happen at local level. It is clear that local authorities are key players at the local level and the relevant staff from bodies including the agriculture department and the Forestry Commission should be involved at local level.

As a general rule, if in doubt, people should be included. The process should be inclusive, because that is the way to reach an outcome that everybody will be prepared—to a reasonable extent—to sign up to. I am not pretending that it is ever possible to get complete unanimity, but that is the way to get sufficient consensus among the range of interests. That begs the question whether the process should involve a wider group and a core group. That question always arises in such circumstances. We do not have a firm view on that, but our presumption would be to cast the net wide in the first instance.

**Geoff Aitkenhead:** For me, the answer lies in the differentiation between the strategic and the tactical. At national level, matters of strategy must be addressed. That process needs to involve a host of bodies, both governmental and non-governmental. The process is one of positioning the water framework directive and Scotland within global economies such as tourism, which need to be considered at national level.

The process at local level is one of translating the strategic aims into tasks, activities and plans that will deliver the benefits that are envisaged by the directive. That needs to be done in the context of the sustainability agenda, which seeks to find

the right balance between the environment and economic and social implications. That process needs to involve wide-ranging consultation at local level.

**Michael Cunliffe:** I endorse that view. Our tenants, both on land and on the sea, are among the people who would be relied upon to deliver the improvements in water quality that the bill seeks to bring about. It is important that people have an opportunity to be consulted on the framing of plans that will set the framework in which they will be expected to take action.

**Professor Alexander:** I would like to add the caveat that the institutional arrangements that we have in Scotland immediately indicate the formal bodies that one must consult with. In terms of consultation at local level, local authorities and community councils come immediately to mind. That raises the issue of coverage throughout Scotland of those bodies, particularly in respect of community councils. As members know, community council coverage in Scotland is patchy. Another issue concerns the representativeness of some of the bodies that have a statutory right to consultation. That means that there are ad hoc non-statutory groups that, quite rightly, have to be consulted closely. The community relations unit that Scottish Water has set up tries to ensure that it involves not only the statutory bodies that I mentioned, but other bodies that seem to have an interest in the matter or that have information that we need to take into account. I make that caveat about formal and informal consultation.

**Robin Harper:** Do you think that the bill sets out a clear enough relationship between the development planning process, the community planning process and the river basin management plans?

**John Thomson:** It was implicit in my earlier remarks that I do not think that it does. That said, I have a good deal of sympathy with those who prepared the bill, because we are all at quite an early stage in trying to work out that relationship. After all, I know from experience that we are at an early stage in working out exactly what the scope of the community planning process is and how far it extends into the area that will be covered by the bill. I argue that it should set out that clear relationship, but it is possible to take a different view—it is an area that needs a good deal more attention. I have an open mind about whether it is eventually specified precisely in the primary legislation or whether primary legislation simply contains appropriate signals, with more detail being laid out in secondary legislation. However, it is important that the issue of those relationships is addressed.

**Geoff Aitkenhead:** The bill, thus far, does not address very well the issue of linking development

planning to community planning and river basin management plans. Our experience of community planning is that it has not focused to any great extent on environmental matters; it clearly has higher agendas. On the development planning front, which also relates to some extent to community planning, there is the issue of the aspirational nature of such plans. Going back to what we said about policy integration at the outset of today's meeting, river basin management plans give us an opportunity to understand the contribution of environmental sustainability and what it might bring to community planning and development planning.

**Robin Harper:** I have a final question about funding, which reflects John Scott's concerns. Should the bill provide an opportunity for extra targeted funding through agri-environment schemes to encourage managed retreat, reinstatement of water meadows and other practices by the farming community that would assist in flood management?

**John Thomson:** Yes. The caveat, from SNH's point of view, is that that would have to be done within the context of a much expanded agri-environment programme. The wider role of agricultural land in flood prevention and catchment management should be reflected in the public subsidies that are available to farmers and crofters.

**John Scott:** Although what Robin Harper suggests is absolutely laudable, do you accept that it is stretching the bounds of credibility to expect that it will happen, given that existing agri-environment schemes are incredibly underfunded and acknowledged to be so?

**John Thomson:** I do not think that it is beyond the bounds of feasibility. Who would have thought, a few months ago, that the Commission would propose such a radical reform of the common agricultural policy as the proposals that are now on the table? In the context of that sort of reform, channelling significant amounts of money into the sort of management that has been mentioned is possible. It is obvious that we are a long way from reaching agreement throughout the European Community on that particular package of proposals, but I do not think that implementation of Robin Harper's suggestions is beyond the bounds of possibility.

**John Scott:** Do you acknowledge that it is unlikely?

**John Thomson:** The time scale is an important consideration. Things that might be impossible to achieve within a few years might well be possible within a decade or more.

**Geoff Aitkenhead:** If the way in which the bill is implemented is to have credibility, it is important

that plans that emerge from it, particularly sub-basin plans, are well thought through and that there is absolute clarity about where the funding to implement the action plans will come from. It is important to guard against river basin management planning becoming aspirational in the way that some other forms of planning are aspirational. There must be absolute clarity on where the funding comes from.

**Professor Alexander:** If I understood him correctly, Robin Harper was canvassing the possibility of specific funding for specific purposes. Those of us who work in the public sector usually operate on the refuse-nothing-but-blows principle. However, the committee must recognise that the more specific the funding, the more that raises manageability issues for the body that gets it. Local government has had that problem over the years. The move from general to specific grants has raised questions of manageability.

From Scottish Water's point of view, I would prefer that any costs associated with the bill and with the WFD were identified and factored into the Q and S process and the other regulatory processes, rather than their being parcelled into separate boxes. In financial and business-planning terms, we would find that much easier to handle effectively and economically.

**John Scott:** My question concerns the Scottish Environment Protection Agency. As an environmental regulator, are you confident that SEPA can deliver a directive that has real economic and social consequences? The Convention of Scottish Local Authorities has raised concerns about the collection of social and economic data for river basin management plans. Should other bodies be given specific responsibilities in that regard?

**Geoff Aitkenhead:** Although we support SEPA's proposed role in the implementation of the bill, we accept that SEPA might well need to recruit or to develop additional skills, which go beyond the skill sets that exist within the organisation at the moment. However, we do not regard that as an insurmountable problem.

**The Convener:** Do any of the other panellists wish to respond on that issue?

**John Thomson:** I endorse Geoff Aitkenhead's view. We see it as a natural progression for SEPA to move into such a role, but we accept that that role will require rather different skills from those that SEPA has predominantly at the moment.

**John Scott:** Do you feel that it is more appropriate for SEPA, rather than a local authority, to exercise that role?

**John Thomson:** Geoff Aitkenhead in particular has stressed the need for flow-down from the

national strategic level—the river basin level—to the sub-basin level. A national body such as SEPA can provide that flow-down, but it is important that SEPA views its role as being to co-ordinate and to facilitate the planning process as well as to implement quite a lot of what flows from it.

**John Scott:** It has been put to the committee that it is logical that flooding controls should be included explicitly in the bill. Should SEPA be given an overview role? What are the advantages and disadvantages of keeping flood management under local authority control?

**Geoff Aitkenhead:** There is a debate to be had on that issue. We have recent experience throughout Scotland of serious flooding. Experts on global warming suggest that flooding is likely to get worse rather than better. Flooding inevitably forms part of any river basin management plan and of the sub-basin plans. It needs a national strategic approach and there is a strong argument for SEPA having a role in that regard not least because—I come to the comparison with local authority controlled administration of flood prevention—we are talking about river basins, which pay no heed to local authority or political boundaries. There is a case for SEPA having a role in flood defence measures as the Environment Agency does in England.

12:00

**Nora Radcliffe:** How much information do you hold about your abstractions and discharges? How should SEPA apply the precautionary principle if it feels that it does not have enough data to make an informed decision?

**Geoff Aitkenhead:** We have inherited a range of information about abstractions that are in the ownership of Scottish Water. We have no difficulty with providing much more detailed information on abstractions from surface waters and groundwaters and discharges.

On the precautionary principle, in many cases the safe yield of the sources that Scottish Water uses for public water supplies is calculated either on a differing basis throughout Scotland or is not calculated robustly. We have water orders in many areas, which lay down the quantity that can be taken from a particular source. Documents that the Scottish Executive—and the Scottish Office before it—publishes annually often refer to the amount in the water order as the yield of the source, but those things are quite different.

We have in recent years been involved in a research project in conjunction with SEPA. We have developed a method of calculating the safe yield of water sources and we are now applying that method to all the sources from which Scottish Water draws water. In time, we will have a robust

view of the safe yield of the sources that Scottish Water uses.

**Nora Radcliffe:** You are up to date with that work.

**Geoff Aitkenhead:** Yes.

**Nora Radcliffe:** That is good to know.

In written evidence you said that you were looking for

“a fair charging policy based on monitoring and impacts of pollutant loads rather than a simple cost revenue policy.”

Is not it the case that the bill aims to establish an holistic regime that is based on the ecological quality of the water rather than just the pollution-carrying capacity of watercourses?

**Geoff Aitkenhead:** That is our understanding. We are looking for an holistic approach. On the issue of charges being linked to monitoring and pollutant loads, we would rather be in a situation in which we were able to influence to a degree the charges that we pay. A monitoring regime will have to be put in place and costs will have to be picked up for that. We are concerned that we have little or no control over SEPA's costs. In an appropriately designed charging scheme we would have the ability to control to some degree the charges that we pay.

**Fiona McLeod (West of Scotland) (SNP):**

Given that SEPA's role is going to change so greatly from that of an environmental regulator or policeman, do you think that we have to examine the way in which it is funded? At the moment 50 per cent of SEPA's funding comes from charges for its activities and the Executive wants that to increase to 75 or 80 per cent. Given what you have just said, do you think that that is an appropriate way in which to fund the new type of organisation that SEPA will be?

**Geoff Aitkenhead:** No. There would be merit in a review of SEPA's charging arrangements.

**Nora Radcliffe:** You have raised specific concerns about the power of SEPA to require remedial and restoration work to be carried out in water courses and regulation of works currently covered by water orders. What changes in the bill would you like to see and are they compatible with the aims of the directive?

**Geoff Aitkenhead:** The main point is the need for clarity in what the requirements on Scottish Water might be. We await the development of further regulation or secondary legislation so that we can understand fully the implications for Scottish Water. We look forward to taking part in the development of secondary legislation.

**Nora Radcliffe:** Is the bill adequate, as it stands?

**Geoff Aitkenhead:** We have no difficulty with the principles of the bill with regard to the restoration of surface waters that are in need of such restoration. We need to understand what we need to do to help in that, and how it is funded and built into our investment plans.

**Professor Alexander:** The overarching issue for us is that the cost should be predictable. In terms of the operation of the business that is Scottish Water, we need to know, preferably in line with our regulatory periods, what the costs will be. That would extend to the SEPA charges, too. If the costs to us are led by someone else, the manageability of Scottish Water is made more difficult.

**Maureen Macmillan:** Perhaps Scottish Water can enlarge on the perceived problem of developers' costs. You will have heard the evidence of the previous witnesses on that. The key concerns in your written evidence seem to relate to construction standards and funding arrangements should you be required to carry out connection work. Could you enlarge on those concerns? How much do the proposed new regulations differ from what is currently in place?

**Professor Alexander:** I would like to make a general point. As I said in my opening remarks, the costs to us of developers' charges run straight through to customer charges. That produces cross-subsidy throughout Scotland. When I arrived this morning I heard an exchange between Des McNulty and the RTPI on that very issue. We have a regime under which our regulator expects us to move our charges towards cost reflectivity—our customers will pay on a basis that maps on to our costs for providing the service. The current arrangements for developers' costs cut right across that principle. In effect, we are putting that £17 million aside and saying that it does not count in the way in which we manage the rest of the business.

If, in public policy terms, there is a case for continuation of a subsidy to developers in certain areas—that seemed to be what the RTPI was saying—the question for the Government is how that is to be defrayed. Members would expect me to say this, but I believe it to be true: it is not equitable for those costs to run through to the domestic customers of Scottish Water. As competition becomes a greater possibility, it puts us at a cost disadvantage in relation to potential predators on our customer base. I do not want to question whether, in public policy terms, it is a good idea to have such subsidies, but I am certain that that is not the best way to pay.

**Maureen Macmillan:** We heard earlier that £41 million has been earmarked for rural housing development. No one is very sure how that is to be accessed or under what criteria. Have you any

ideas on that?

**Geoff Aitkenhead:** The £41 million is identified in "Water Quality and Standards Investment Priorities for Scotland's Water Authorities 2002-2006" as funding for rural first-time sewerage and development constraint issues. We have an agreed protocol with SEPA, and an agreement with the Scottish Executive, that priorities for spending the £41 million will be set by SEPA. In relation to first-time sewerage, there are a number of small communities throughout Scotland where SEPA has concerns about the efficacy of the existing private waste water treatment arrangements. SEPA will put those communities in order of priority and then put forward business cases for spending the £41 million. Scottish Water will be the vehicle for delivery of that investment, but we will not decide the priorities.

**Maureen Macmillan:** But you are talking about existing communities and not new developments in rural areas.

**Geoff Aitkenhead:** That is correct.

**John Scott:** I want to return to the issue of cost. I was interested to hear Professor Alexander say that Scottish Water is, in effect, shackled by £17 million of social costs. Others have described the bill as aspirational. Would you prefer it to be more realistic than aspirational, with a view to keeping everybody's costs down? I have calculated that the taxpayer will probably pay five times for the aspirational bill.

**Professor Alexander:** You are leading me into a policy area that I would like to keep out of. There is no doubt that there are costs, but there are also benefits. It is for Parliament to decide whether the benefits implicit in the implementation of the WFD are justifiable in view of the costs incurred. From Scottish Water's point of view, we need predictability in what it will cost us to run our business and deliver on our core responsibilities. On this specific issue, we believe that the current arrangements are inequitable. Beyond that, I do not want to go.

**Nora Radcliffe:** May I take you back to something that you said at the beginning. You said that your competitors south of the border were broadly cost neutral on developers' infrastructure costs. How did they arrive at that cost-neutral position?

**Professor Alexander:** Geoff Aitkenhead will go into the detail, but the companies down south do not have to pay a subsidy. Their arrangements for infrastructure costs do not run through to their charge base.

**Geoff Aitkenhead:** In the water industry in England and Wales, the situation is broadly as it is in the gas, electricity and telecommunications

industries. If a developer decides to build one house or several houses on a particular site, it requisitions the services needed for that site and pays for them.

**Nora Radcliffe:** So cost neutral just means that the other guy pays but you do not. Costs are not equalised. I just wanted to clarify what was meant.

**Professor Alexander:** The costs do not hit the balance sheet.

**The Convener:** That brings us to the end of the questions that were specifically for Scottish Water.

**Robin Harper:** This question is for John Thomson of Scottish Natural Heritage. You would like the bill to deliver an aquatic ecosystem approach. Are you confident that the bill gives enough power to the right people to achieve that? I am thinking of the general positive duty in relation to wetlands.

**John Thomson:** No, we are not confident that the bill goes far enough. We have already touched on the need to bind responsibilities for flood prevention into the bill. That is an area of weakness. I also highlight the importance of various arms of the Executive being fully bound into the process as well. I know that there are various doctrines on the extent to which the Crown can bind itself, but I do not want to get bogged down in that.

However, the message must be that ministers should also have the duties that the bill intends to impose on some of the public agencies. Several arms of the Executive have responsibilities that are relevant to the aims of the bill, and it is important that those responsibilities should be spelt out clearly in the bill. The bill does not go far enough, although it goes in the right direction.

**Robin Harper:** Why could it be counterproductive to set out clearly the relationships between different land-use practices and strategies in primary legislation? In your submission, you suggest that ministers should be required to set out the ways in which they will exercise their functions in respect of the water framework directive. Does the water framework directive require such a duty?

12:15

**John Thomson:** I am not sure whether the directive requires such a duty. I will need to check that. On setting out the relationships, we feel that, because primary legislation cannot easily be changed, it is often better to leave areas where there is a degree of uncertainty to be specified in secondary legislation, which can more readily be changed. As I said, we are all learning about this area as we go along, so there is merit in having enabling legislation backed up by detailed

secondary legislation. We would be happy with that, although we want to highlight the issues that we believed should be addressed, both in secondary legislation and in any subsequent guidance that was issued by the Executive.

**Nora Radcliffe:** Let us develop that point. Industry wants proposals for secondary legislation quickly, to enable it to plan. However, SNH advocates a step-by-step or, as you said earlier, walk-before-you-run approach. What advice can you give us about marrying those two imperatives?

**John Thomson:** In saying that we need to be able to walk before we can run, we are not arguing for delay. We are keen to jog pretty quickly. SNH is happy to play its part in teasing out what is needed in the secondary legislation, and I understand why industry wants clarity about it. I imagine that industry will want to influence what is contained in the secondary legislation. It is our view that the details should be in the secondary legislation; that the Parliament should set quite stretching targets for the introduction of the legislation; and that all the interests should be brought together to contribute to the design of that legislation.

**Nora Radcliffe:** SNH is keen on incentive charging to help to pay for restoration and remedial measures. How will that work?

**John Thomson:** I am not an expert on charging. Charging to cover the costs of restoration and remedial measures is a sound application of the polluter-pays principle. It is also likely to give people signals about the way in which they should operate in the future. If people know that there is a charge attached to certain activities, which goes towards restoration costs in the long run, they will be likely to avoid those activities and the problem will not arise. However, I am not an expert on the details of the charging regime.

**The Convener:** Let us move on to some specific questions for Michael Cunliffe, of the Crown Estate.

**John Scott:** England and Wales have not yet decided on a limit to the extent of their controls. Is it your understanding that they are to opt for the same limit of three nautical miles that is proposed in the bill? If they opted for a different limit, would that create a problem? For example, how could the Solway firth be policed properly?

**Michael Cunliffe:** I am afraid that I am not up to speed with plans for the implementation of the water framework directive in England and Wales. I deal only with its implementation in Scotland. I will have to ask my colleague in London how the plans in England and Wales are going.

I identified the Solway firth as an especially tricky area in getting the boundaries in the sea just right as between a cross-border river basin district and an exclusively Scottish river basin district. We will have to give further thought to that when the English proposals have been worked out.

**Maureen Macmillan:** I have a question about aquaculture. In your introduction, you said that the bill ought to contain provisions concerning the transfer of planning powers for the regulation of salmon farming from the Crown Estate to local authorities. Why is that important?

**Michael Cunliffe:** It is widely recognised in the industry and the regulatory bodies—the local authorities, the Crown Estate and everybody else who is involved—that the present arrangements for controlling the location of fish farms are unsatisfactory. Essentially, they rest on a non-statutory system that guides the grant of leases by the Crown Estate. Under the present interim arrangements for the regulation of the location of fish farms, a local authority considers all the different aspects, representations and factors that affect the location of fish farms. The authority then reaches a decision and provides a recommendation to the Crown Estate, which, under normal circumstances, will give effect to it by either granting or withholding a lease for a fish farm.

That is an attempt to mirror the statutory planning system, but it does not have a proper, statutory basis. It is unclear, for example, how enforcement could be achieved under that arrangement. There is a statutory overlay of the system by the environmental regulations for fish farming whereby, except in Shetland and parts of Orkney, the Crown Estate is the relevant authority for the environmental assessment of fish farming proposals. That arrangement sits awkwardly with our main role as a landlord. The situation came into sharp relief earlier this morning, when I was involved in discussion with a fish farming company. As a landlord, we wanted to help the company with a development proposal, but our statutory function under the EIA regulations meant that we were unable to do so.

The Crown Estate is not well equipped to carry out what is essentially a planning and environmental regulatory function, and we believe that that function would be much better placed with the local authorities. There is widespread agreement on that. The Scottish Executive consulted on it some time ago and came to the conclusion that that transfer of function should take place at the earliest opportunity. The Crown Estate believes that the bill provides such an opportunity. The Executive takes the view that it ought to wait for a planning bill, but we do not know when such a bill will be introduced. It will

clearly not be introduced before the next session of the Parliament. Therefore, we invite the committee to consider amending the Water Environment and Water Services (Scotland) Bill to bring that transfer about.

**Maureen Macmillan:** You consider the matter quite urgent.

**Michael Cunliffe:** We believe that it should be dealt with as soon as possible. The prospect of a further delay of two, three or even four years is unattractive to us.

**Robin Harper:** You are saying that the locational guidelines that exist in the hole between regulatory bodies effectively have no weight.

**Michael Cunliffe:** The guidelines have weight, but they do not have statutory backing. The Scottish Executive has produced some guidelines on broadly the coastal areas either where fish farming is preferred or where there is a presumption against it. Some local authorities have produced non-statutory aquaculture framework plans in an attempt to guide the location of fish farms. However, although the plans are taken into account in the process, they ultimately depend on the good will of all participants. After all, they have no statutory teeth.

**John Scott:** In your submission, you raise the possibility of a sub-basin plan for coastal waters. How workable is that proposal? How can inland watercourses be managed with respect to an area of coastline that could be governed under different management criteria?

**Michael Cunliffe:** That would come under the overarching strategy as set out in the river basin management plan for Scotland, or for a part of Scotland. The strategy will need to integrate the freshwater and coastal regimes. At the more detailed level behind the overall river basin management plan, there could be scope for the creation of a sub-basin plan for an estuary or a long section of coast to deal with the marine aspects, with saline and transitional waters and with activities on the coast that directly affect the quality of those waters. However, we need to take into account the quality of freshwater that comes down the rivers and feeds into the coastal water, and tie that in with the overall river basin management plan and any sub-basin plan for the adjoining freshwaters.

**John Scott:** Is that likely to increase or decrease the current regulatory burden on coastal activities?

**Michael Cunliffe:** It need not increase the burden. Indeed, it might make the whole system more effective and better integrated.

**Nora Radcliffe:** I want to return to the question of basing sub-basin plans on sectors or

communities of interest rather than on spatial or geographical factors. What are your views on such horizontal or vertical sub-basin plans?

**John Thomson:** I have already referred to that issue. I see a case for the sectoral approach in certain cases where there is clearly a range of communities of interest. Experience to date with consensus-building exercises—which is very much what this issue is about—has suggested to us in SNH that there is a lot of advantage in having a clear geographical focus. Even people who have very different perspectives on economic interests or whatever can identify with a certain part of the country and are prepared to work together to make a success of that particular place. That is not easy with a more sectoral approach. As a result, although SNH prefers a geographically focused approach, we would not rule out the possibility of other approaches in certain circumstances if it can be demonstrated that they are likely to be of advantage.

**Geoff Aitkenhead:** I suspect that much of the work on setting water quality objectives and understanding the impact on water quality of a whole host of activities will hinge on water quality modelling. I also suspect that a lot of work will be carried out to tie together river quality modelling, estuarine modelling and coastal water modelling. That probably argues against disaggregating those aspects for a sectoral sub-basin plan. The geographical basis would fit with water quality modelling.

**The Convener:** That ends our questions to the second panel of witnesses. I thank John Thomson, Geoff Aitkenhead, Professor Alexander and Michael Cunliffe for their evidence. We have had a very useful session.

12:29

*Meeting continued in private until 13:56.*



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