TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 13 November 2002
(*Morning*)

Session 1

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CONTENTS

Wednesday 13 November 2002

TRANSPORT AND THE ENVIRONMENT COMMITTEE
31st Meeting 2002, Session 1

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Nora Radcliffe (Gordon) (LD)

COMMITTEE MEMBERS

*Bruce Crawford (Mid Scotland and Fife) (SNP)
*Robin Harper (Lothians) (Green)
*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

Helen Eadie (Dunfermline East) (Lab)
David Mundell (South of Scotland) (Con)
Iain Smith (North-East Fife) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Sarah Boyack (Edinburgh Central) (Lab)
Allan Wilson (Deputy Minister for Environment and Rural Development)

WITNESSES

Hugh Henry (Deputy Minister for Social Justice)
Lorimer Mackenzie (Scottish Executive Development Department)
Paul Stollard (Scottish Executive Development Department)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Rosalind Wheeler

LOCATION

Committee Room 2

Scottish Parliament

Transport and the Environment Committee

Wednesday 13 November 2002

(*Morning*)

[THE CONVENER *opened the meeting at 09:23*]

Interests

The Convener (Bristow Muldoon): I call the meeting to order and open the 31st meeting in 2002 of the Transport and the Environment Committee.

The first item on the agenda is a declaration of interest. Before I invite Bruce Crawford to make his declaration, I welcome him back to the Transport and the Environment Committee. I know that he has been active in transport and environment both when he served on the committee and when he did not.

I also want to record our thanks to Adam Ingram for his contribution as a member of the committee. We wish him well for his work on the Enterprise and Lifelong Learning Committee. I invite Bruce Crawford to declare any interests that might be relevant.

Bruce Crawford (Mid Scotland and Fife) (SNP): I have no relevant interests to declare other than in issues to do with transport and the fact that I have a clapped-out motor that failed its MOT miserably last week.

The Convener: Commiserations, Bruce. I give you the happy news that my car passed its MOT with only £20-worth of work.

Items in Private

The Convener: Do members agree to take in private item 3, which concerns the contractual arrangements for our adviser on the rail inquiry, and item 10, which is our consideration of a stage 1 report? Do members also agree to take in private consideration of a draft report on stage 1 of the Building (Scotland) Bill at our meeting next week?

Members *indicated agreement*.

09:25

Meeting continued in private.

09:41

Meeting continued in public.

The Convener: We have made good progress on the items that we considered in private. However, as we are not yet able to move on to the Water Environment and Water Services (Scotland) Bill at stage 2, I propose that we deal with item 7, which is our consideration of subordinate legislation, and item 9, which concerns correspondence on the Cairngorms national park designation order.

Subordinate Legislation

Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (Scotland) Regulations 2002 (SSI 2002/450)

The Convener: We have two negative instruments before us, the first of which is the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (Scotland) Regulations 2002. No member has raised any points on the regulations and no motion to annul has been lodged.

Fiona McLeod (West of Scotland) (SNP): The Subordinate Legislation Committee has raised the point that the instrument is defective. The committee reports that the Executive's response is that it agrees that the drafting could be misleading and that it will amend the regulations. What is the procedure in a situation in which we have to tell the Parliament to pass an instrument that the Executive agrees is defective and which it will amend? Would it not be more appropriate to withdraw the instrument and bring it back at a later stage?

The Convener: As we have discussed in the past, the procedure is for the Subordinate Legislation Committee to draw the attention of the lead committee to what it regards as defective drafting. Although the committee does that on many occasions, the defect in the drafting may not be serious enough to require the annulment of the instrument. Given that the Executive has indicated that it will lodge a suitable amendment, it is not necessary for us to take that approach. Even if the committee wished to do so, there is a requirement for a member to lodge a motion of annulment. As no motion to annul has been lodged, we cannot take that approach on this occasion. On that basis, are members content? Do members agree that we have nothing to report on the instrument?

John Scott (Ayr) (Con): Are we in a position to ask the Executive to introduce the new instrument as quickly as possible?

The Convener: The Executive has indicated to the Subordinate Legislation Committee that it will do so. If we were also to make that request, we would duplicate the work of the Subordinate Legislation Committee.

John Scott: Or reinforce the point.

The Convener: To be honest, I think that a request from us would be superfluous.

Are members content? Are we agreed that we have nothing to report?

Members *indicated agreement*.

Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2002 (SSI 2002/451)

The Convener: No member has raised any points on the regulations and no motion to annul has been lodged. I take it that the committee has nothing to report on the regulations. Are we agreed?

Members *indicated agreement*.

Cairngorms National Park

09:45

The Convener: I received a letter from Fiona McLeod asking me to find time at a meeting of the Transport and the Environment Committee to discuss our consideration of the designation order for the Cairngorms national park.

I am looking to members to guide me on the approach that we should take. The first issue concerns the role of the Parliamentary Bureau in designating the lead committee in respect of instruments that are laid before the Parliament for its consideration. The designation order for the Cairngorms national park has not yet been laid, but it is anticipated that the Rural Development Committee will be designated as the lead committee.

I understand that it is possible but unusual for a secondary committee to be designated on an instrument, but that is an issue that would also be considered by the Parliamentary Bureau. I also take cognisance of the fact that much of the work that has taken place recently on the instrument has been undertaken by the Rural Development Committee, which has taken considerable evidence on the matter.

Given that work and the fact that the Rural Development Committee is likely to be designated as the lead committee, I suggest that the way for the Transport and the Environment Committee to express its interest in the planning issues that are involved in the instrument, is to appoint reporters. The committee could then ask those reporters to represent its interests at meetings of the Rural Development Committee at which the instrument was considered.

If we agree to go down that line, I intend to raise the issue with the convener of the Rural Development Committee. I will indicate the Transport and the Environment Committee's interest in the order and ask the convener of the Rural Development Committee to give our reporter due opportunity to contribute at meetings at which the instrument is considered. I am, however, open to comments or suggestions for alternative courses of action that members might like to make.

I will take Fiona McLeod first, as we are considering her letter.

Fiona McLeod: Thank you. I should perhaps begin by explaining why I felt that it was necessary to raise the issue as an agenda item. If members look at annexe B of the paper that we have in front of us, it contains a copy of a letter to the Deputy Minister for Environment and Rural Development from Mike Rumbles, the convener of the Rural Development Committee. Members will see that he raises a number of quite detailed questions.

John Scott: Do you mean Alex Fergusson?

Fiona McLeod: I apologise. Yes. As the Transport and the Environment Committee is not materially involved in the consideration of the instrument, I am not sure what the Executive's response is.

The Executive raises two points that are relevant to our committee and in which we have an interest. The first is the boundaries of the new Cairngorms national park, which will take in a large part of Scotland's environment—environment is within our remit. Members will note that in the consultation process there was almost unanimous opposition to the boundaries that the Executive proposed in its draft instrument.

The other matter that is especially important to our committee is planning powers. That is our subject and we should have a view on it. Once again, the majority of responses to the consultation ran contrary to the planning powers that the Scottish Executive and the Rural Development Committee are proposing. Given that Cairngorms national park will be the second national park, our committee would wish to consider the planning powers.

On committee designation, it struck me that the Social Justice Committee and the Local Government Committee were made secondary committees on the Building (Scotland) Bill, on which we are the lead committee. The Social Justice Committee has sent us a report giving its views on the Building (Scotland) Bill, which will become an annexe to our report on the bill. If we were a secondary committee on the designation order for the Cairngorms national park, not only would we be able to send a reporter—who in effect would be an observer, because they could not vote—to the Rural Development Committee, but any report that we produced would become an annexe to the Rural Development Committee's report.

I understand that work load is always a problem for our committee, but given that the order has not been laid, and that there will be 40 days between its being laid and the Parliament's having to report on it, I prefer that we reserve judgment on our work load and reassess it on the day on which the order is laid.

The Convener: I will take other members' comments. There are a couple of procedural issues. First, the Parliamentary Bureau will consider which committee will be the lead committee to consider the order. It will then lodge a motion stating to which committee the order should go, which Parliament will approve or otherwise. Secondly, it is more common that there

are secondary committees when considering primary legislation. It is not as common, but it is not impossible, for that to happen with subordinate legislation.

Robin Harper (Lothians) (Green): In a sense, we have precedents. When we first started three years ago, the Transport and the Environment Committee took evidence on national parks. In fact, at that time, we were under the impression that we would be the lead committee on the National Parks (Scotland) Bill, but the bill went to the Rural Development Committee, for other good reasons. Also, we co-operated with the Rural Development Committee on the aquaculture inquiry, because it made its feelings clear about what should happen when we were considering the implications for the safety of our marine environment. So there is a precedent of our taking evidence on national parks and a precedent of our working with the Rural Development Committee on another issue. I strongly support what Fiona McLeod said.

There are severe differences of opinion. I have a very thick file of lobbying from various interests all over Scotland. There are two completely different views of what a national park should be, with regard to Loch Lomond and the Trossachs and to the Cairngorms. It is vital that another opinion is taken before the Executive makes up its mind.

Angus MacKay (Edinburgh South) (Lab): I am not necessarily against Fiona McLeod's idea that we should seek a role as a secondary committee. I have considered some of the concerns that were raised in Alex Fergusson's letter to the Deputy Minister for Environment and Rural Development, and which were discussed at the evidence-taking session.

Great strength of feeling exists on the issues, particularly on the proposed boundary of the park. There is not necessarily a simple answer on the boundary issue that will satisfy everyone. Another committee could be designated as lead committee and we could have a secondary role. I would be more comfortable about that if, as Fiona McLeod mentioned, we had a clearer indication of the minister's thinking on how he intends to respond to Alex Fergusson's letter. The introduction to the letter makes it clear that the minister had indicated to the Rural Development Committee that the committee's views would be taken closely into account.

Before taking a decision on whether we want to bid for secondary or primary committee status, we could ask the minister what his intentions are, given that he has received Alex Fergusson's letter of 14 October and the *Official Report* of the evidence-taking session. If the minister can assure us that he intends to frame the order in the light of consideration of that material, we might not need to go to the extent of being a secondary committee. If he cannot give us an unequivocal answer on that, we might want to take a secondary role in the process to ensure that all the bases are covered. We should not take a decision today, but should write to the minister to challenge him on what his response on the matter will be. If we get a happy response, that will be fine. If we do not, we will need to reconsider Fiona McLeod's recommendation.

The Convener: My understanding is that the minister has not yet provided a response to Alex Fergusson's letter; certainly, the clerks are not aware that such a response has been made.

Nora Radcliffe (Gordon) (LD): I support Fiona McLeod's view that we should seek to be a secondary committee on the issue. The designation order is extremely important, because it concerns our second national park, which is in an important part of Scotland. We want to get the legislation right. I have grave doubts that the process is going well. I have many concerns about the fact that something that has been widely consulted on and agreed has apparently been ignored.

I do not know whether we have time to write to the minister and to receive a response, because the designation order will be published soon.

The Convener: Its publication is imminent.

Nora Radcliffe: I think that it might be published by the end of the week.

The Convener: If we were to consider the order on the Cairngorms national park, we would need to focus on issues that fall directly within our remit, such as planning. We should not get into a broader debate about the size of the park—it would be appropriate to leave that to the Rural Development Committee. Although I acknowledge that that is an important aspect of the order, it is not the role of a secondary committee to replicate the work of the lead committee. A secondary committee should focus on issues that fall directly within its remit.

Des McNulty (Clydebank and Milngavie) (Lab): It is worth bearing in mind the history of the situation. The reason why the Transport and the Environment Committee was not the lead committee for consideration of the National Parks (Scotland) Bill was that, at that time, we were considering the Transport (Scotland) Bill. The decision was taken on that basis. It was not decided that, on principle, national parks should be dealt with by what was then the Rural Affairs Committee. The argument was one of contingency.

I sat through the Rural Affairs Committee's consideration of the planning issues in the

National Parks (Scotland) Bill. Although I was told that I would be on the Rural Affairs Committee for only a brief period, I ended up being a member of it for seven months. It probably would be legitimate for us to consider some aspects of the Cairngorms national park issue. I go along with Angus MacKay's suggestion about establishing what our role should be. We should not necessarily automatically accept the position of subordinate committee in relation to implementation. When the decision was taken that the Rural Affairs Committee should be lead committee on the bill, we queried whether that meant that that committee should always deal with national parks. We put in a couple of markers in that regard, so we have grounds for returning to the Executive on that.

The Convener: As the Rural Development Committee has recently taken a great deal of evidence on the Cairngorms national park, it would be going a bit far if we were to try to become the lead committee on the issue at this late stage.

Bruce Crawford: I agree. We cannot take over as the lead committee at this stage. It might have been more appropriate if, in the first place, the issue had come to the Transport and the Environment Committee, but it did not and we must accept that. That said, I agree with Fiona McLeod and Nora Radcliffe that we must consider the committee's position in relation to the designation order. We can play a role in the process, but that role must focus on the issues that are pertinent to the committee.

Focusing on those issues will be difficult, as the size of the boundaries will have an impact on who the planning authority should be. We were previously led to believe that the majority chunk of the park inside the curtailed boundaries would be left in the Highland Council area. Under those circumstances, there might have been an argument to say that the local authority should continue as the planning authority. However, if it is a wider park that takes into consideration the Perthshire hills and the Angus glens, there is a strong argument to say that the national park authority should be the planning authority. It is difficult to divorce issues of boundaries from planning perspectives.

10:00

The Convener: I accept that point. Where there is a real link, those issues could be teased out. The majority opinion that I am picking up is that the committee wants to have a role in the consideration of the designation order. Ultimately, we cannot say that we will have such a role; it is for the Parliament to decide where to place the order for consideration.

The two alternatives are that we indicate now that we would be interested in having such a role or, as Angus McKay suggested, that we inquire how the minister intends to respond to the correspondence and the *Official Report* of the Rural Development Committee meeting before we decide whether to express that interest. Expressing interest and writing to the minister are not incompatible with each other. The question is whether the members who want to express that interest are prepared to accept a delay of perhaps a week while we correspond with the minister, or whether they want us to pursue the matter now. Fiona McLeod raised the issue, so I invite her to respond.

Fiona McLeod: If we had a timetable for the laying of the designation order, I would say that we had time to write to the minister. However, some members have said that the order could be laid by the end of the week; therefore, we do not have time to write to the minister. Rather than talking about timings, we should return to the principle that members have been discussing, which is that we want to take at least a secondary role in considering the order. I believe that we should indicate that now.

Maureen Macmillan (Highlands and Islands) (Lab): I am not clear whether taking a secondary role will involve considering just planning or also the boundaries. I feel that we should discuss just the planning powers, if we are to consider the order, and not the boundaries.

The Convener: I accept the point that Bruce Crawford made: that there is an overlap between those two issues. It would not be appropriate for us to try to take an overarching view of the order, as we would not be the lead committee. However, there is a genuine point about the planning powers and the boundaries having an impact on each other. That issue could be explored without opening up the whole issue of the order.

Maureen Macmillan: Okay.

The Convener: The consensus seems to be that members want the committee to take a secondary role in the consideration of the order. It is not in the gift of the committee to decide that. Therefore, as the convener, I shall send a letter to the Parliamentary Bureau, expressing the consensus view of the committee and asking it to take that into consideration when it decides where the order should go.

Nora Radcliffe: It would be courteous to write to the convener of the Rural Development Committee as well.

The Convener: I shall copy the letter to the convener of the Rural Development Committee.

John Scott: Can you define clearly what we would envisage our role to be?

The Convener: The letter that I shall send to the Parliamentary Bureau will contain the key points that members have made in today's discussion. Are we agreed on that course of action?

Members *indicated agreement*.

The Convener: I suspend the meeting for two minutes, to allow our witnesses on the Water Environment and Water Services (Scotland) Bill to take their seats and get organised.

10:04

Meeting suspended.

10:06

On resuming—

Water Environment and Water Services (Scotland) Bill: Stage 2

The Convener: I welcome the Deputy Minister for Environment and Rural Development, Allan Wilson, and Alicia McKay, Michael Kellet, Elinor Mitchell and Brian Dornan, who are Scottish Executive officials.

I remind members of the procedure, because it is a while since the committee has considered a bill at stage 2. Each group of amendments will be dealt with in turn and the member who lodged the lead amendment will have the opportunity to speak to and move their amendment. Other members who have amendments in the group will be given the opportunity in turn to speak to their amendments. They will not be required to move their amendments at that stage, but can move them later. Other members will also be able to speak.

If the minister did not move the lead amendment in a group, he will be able to respond to the group. Finally, the member who moved the lead amendment will be able to wind up and respond to the debate. Decisions on amendments might not always be taken immediately after those amendments have been discussed—decisions will take place at the appropriate points.

Section 1—General purpose of Part 1

The Convener: Amendment 19 is grouped with amendments 21, 25, 28 and 42. I remind members that when they speak to and move a lead amendment, that is their opportunity to comment on other members' amendments in the same group.

Bruce Crawford: I thank the convener for reminding us of the procedure—the reminder was well received.

I hope that it is obvious to members that amendments 21 and 28 are linked to amendment 19. I shall speak to the cluster of amendments and not just to amendment 19.

During the stage 1 debate in the chamber, I highlighted a weakness in the bill—the lack of a requirement for a national flood plan or flooding strategy. The bill will make improvements—particularly if the suggestions that the committee made during its stage 1 inquiry are introduced—but we will still have an approach that is more fragmented than necessary. That will inevitably continue ad hoc policy making and decision taking. Ultimately, the taxpayer and the environment will bear the cost.

As I said in the stage 1 debate, we need a structure that will ensure that a strategic, focused and consistent approach is taken at river basin and sub-basin levels. That approach can be delivered only if the bill requires ministers to establish a national strategy for sustainable flood management. A strategic overview must be established if we are to have any hope of creating an holistic and integrated approach to implementing flood-avoidance measures.

During the stage 1 debate, John Scott said:

"more ... needs to be done to achieve an integrated approach that takes into account environmental, agricultural and forestry policy objectives. Unless an integrated approach is taken, taxpayers' money may be spent pursuing contradictory policy objectives, which must be avoided at all costs."—[*Official Report*, 30 October 2002; c 14727.]

I support that view. Des McNulty said:

"we must have co-ordinated flood management systems. Indeed, we might ... have to come up with a national flooding strategy".—[*Official Report*, 30 October 2002; c 14736-37.]

I agree with that, too. Sarah Boyack said:

"The bill should set the framework for a coherent overview on flood prevention and management. I do not care whether it is SEPA or the local authorities that produce a national flood approach".—[*Official Report*, 30 October 2002; c 14740.]

It is safe to say that the creation of a national flood strategy has general support. It is no surprise that that view prevails, as we are all aware of the implications of climate change, more flooding incidents because of increased rainfall and greater coastal and tributary flooding as sea levels rise. The question is: who should be responsible? I ask the committee to support the view that the establishment of a national strategy for sustainable flood management should lie in ministers' hands. Only ministers can have an overview of the impact on agriculture, farming, industry, forestry and even housebuilding policy, for instance. That will have an impact not only on Scotland's lochs and rivers, but on the sea that surrounds our land. Only ministers can make the big changes in policy and in the targeting of financial resources that will be required to create an integrated and strategic overview.

The national flood strategy could deal with matters such as flood defences and flooding consequences, but local authorities are best equipped to deal with those matters. More important is the need to take a proactive approach to flood-avoidance strategies. Only by doing that will we move from hard defences, sandbags and canoes to protecting natural flood plains and considering how we plant our forestry, where we build our settlements and how agriculture and biodiversity can better co-exist to the benefit of both.

Most important, a national flood plan is required because of people. The bill is as much about people as it is about the environment. If members are concerned about whether the responsibility should lie with ministers, I suggest that they visit the Department for Environment, Food and Rural Affairs website, which makes it clear that DEFRA is responsible for the strategic approach to flooding in England and Wales. That strategy might not be very good, but the department is responsible for it. I am sure that the Scottish ministers could come up with a much more satisfactory strategy. I implore members to support my amendments 19, 21 and 28.

I move amendment 19.

Des McNulty: With your indulgence, convener, I ask for Sarah Boyack to be given the opportunity to speak to amendment 25, as we share the amendment and it should have been lodged in her name, rather than mine. I will speak to amendment 42 after that.

The Convener: I am prepared to accommodate that.

I welcome Sarah Boyack to the meeting, and apologise for not doing so earlier.

Sarah Boyack (Edinburgh Central) (Lab): Thank you. I am grateful to have the chance to speak on amendment 25, because I have a constituency interest and also an interest through my membership of the European Committee, which gave evidence to the Transport and the Environment Committee at stage 1.

When amending the bill we have to meet several criteria. We have to know that it is necessary to amend the bill, and we also have to know that we get the wording right. As a former minister, I know that it is difficult to pass both those tests. The minister will come along afterwards, and he gets different advice from the rest of us. However, it was clear at stage 1 that a key purpose of the bill was to mitigate the effects of flooding. It is critical that action on flooding is included in the bill, and that we identify the duties to act on flooding. That is what amendment 25 is about.

10:15

At the moment, we all know that we are concentrating on dealing with the aftermath of the failure to manage flood issues. In Edinburgh, the bill is £25 million. Across the country, it varies from area to area. The problem is that the target is moving. Climate change is making it harder to deal with flooding. We have to tackle and manage the root causes. We have to have effective flood-avoidance strategies, which means taking an integrated and co-ordinated approach across local authority boundaries. Crucially, that means gaining

expertise that does not already exist. That is the reason for seeking to include in the bill the measures in amendment 25.

We need to take an integrated and co-ordinated approach, which means that the Scottish Environment Protection Agency, local authorities and the Executive have to pull together to ensure that we have action. The promotion of sustainable flood management has to be a statutory responsibility, because it is not happening effectively enough at present.

The committee's stage 1 report raised concerns about exactly how the responsibility should be laid, and about SEPA's exact role as a policy maker and regulator. We cannot afford to get hung up on that, because local authorities already make policy and implement and regulate it. The Executive does the same. It is clear that the Parliament and ministers will set the overall policy framework. The challenge is achieving the co-ordination to deliver that framework. If we need further guidance as a result of the bill, I am confident that ministers will produce it.

It has been suggested to me that we are, in a sense, going beyond our European obligations as they stand under the water framework directive, but it would be a tragedy not to act now and to wait for the rest of the European Union to catch up with us, because the costs and insurance problems are affecting my constituents and the Government. This is not about taking a Rolls-Royce approach; it is about producing a bill that is fit for purpose and which meets our needs now.

Ross Finnie is quoted in the Transport and the Environment Committee's stage 1 report on the bill as saying:

"the timely implementation of this Bill will put us ahead of the game across Europe"

with "sensible river basin planning". There is no problem in being ahead of the game if we need to be ahead of the game, and I think that we need to be ahead of the game.

I hope that the minister will look favourably on amendment 25. I hope that its wording is correct, although I am sure that the minister will tell us if it is not. I would like the duty in amendment 25 to be included in the bill. There must be a duty, and it must apply to the relevant authorities. Sustainable flood management has to be at the heart of the bill, because it is about protecting the water environment and managing and reducing the impact of flooding. I hope that the minister will accept the case for acting now.

Des McNulty: In its stage 1 report, the committee determined

"that river basin management planning will only be judged to have been a success if the number of floods and the amount of damage caused by flooding is reduced over the next few decades."

It recommended that:

"SEPA should require that each sub-basin plan includes an assessment of flood risk and proposals on how flood risk can be mitigated".

The aim of amendment 42 is to create a process so that the committee's recommendation can be implemented, by identifying areas that are at risk of flooding. In keeping with the enabling nature of the bill, I have left some latitude for ministers in relation to the content of the register and how it should be prepared. The most important decision that will have to be made relates to the level of flooding that is to be registered. In other parts of the world, a once-in-a-hundred-years flood is the risk level that is chosen, but given Scotland's climate and topography, I did not feel that I was in a position to define the level of flooding at this stage. That should be left for ministers to decide, following consultation with communities and expert bodies.

Amendment 42 would not only create a register that identifies areas at risk—I would think that residents and landowners are often already aware of the areas of highest risk in their communities—but it would be a starting point on which a number of smaller amendments could be lodged to show how any register of flood-prone areas could be used as a stepping stone to address current flooding problems in Scotland. Formalising the register, substantial parts of which already exist, would be a significant step forward in showing that we are serious about dealing more effectively with flood issues. Amendment 42 and amendment 25, which seeks to insert in the bill sustainable flood management, are the correct way to proceed.

I have one or two differences of opinion with Bruce Crawford and his Canute-style approach. The appointment of a minister to be in charge of a national flood management strategy is not necessarily the best way to proceed. There are better ways to achieve the aim, perhaps by placing duties on SEPA and identifying the clear role of local authorities. I take issue with Bruce Crawford's approach, although not necessarily with the direction in which he is trying to go.

Amendments 25 and 42 represent a serious and thought-through way of tackling flood issues.

Angus MacKay: I speak in support of amendments 25 and 42. Des McNulty has opened the account on Bruce Crawford this morning. I am sure that Bruce will be delighted to be welcomed back to the committee in that fashion, and to know that more will come as the bill proceeds.

Sarah Boyack makes an important point. Constituents of mine who live close to the Braid burn, who have suffered major flooding twice in

the past few years, will be concerned to know that as soon as possible we will take an approach to legislation and action that is practical and prevents their homes from being flooded again. At the same time, they will be comfortable with the fact that we should pass legislation and take action that satisfies the administrative requirements of the water framework directive, in order to keep our house in order.

I am sympathetic to amendment 25 and to Sarah Boyack's view that rather than take a Rolls-Royce approach, we need to take the approach that what is best is what works. Amendment 25 takes us down that path.

I am also sympathetic to Des McNulty's amendment 42. If we are not to take the approach that is outlined in amendment 42, I would like to hear from the minister strong reasons why we are not. If the minister cannot satisfy the committee on that point, we might want to leave him some latitude to come back to us, because there is significant merit in what Des McNulty said.

I understand the approach that Bruce Crawford is taking in amendments 19, 21 and 28. I would not argue that that approach has not been given serious thought, as Des McNulty's comments might have implied, but it is the wrong approach nonetheless—delighted though I am to hear Bruce Crawford again extolling the merits of the UK approach and putting his unionist credentials on the record for the benefit of the committee.

Robin Harper: I support strongly the tone of everything that has been said by the four contributors so far. Their comments reflect the general unease that the bill might not provide the level of integration that is required to deal with floods. That is why I will support Bruce Crawford's amendments 19, 21 and 28, amendment 25, which Sarah Boyack spoke to and, in principle, Des McNulty's amendment 42. I remind Des, however, that King Canute waded into the waves on his own in order to prove that he could not stop flooding. The single-person approach that we might be left with—or the approach with a lot of unco-ordinated authorities attempting on their own to stop flooding, with a fairly low level of co-operation—is exactly what we do not want; we want a high level of integration.

John Scott: I also support the sentiments of amendments 19, 21, 25, 28 and 42. I will reserve judgment until I have heard what the minister has to say but, as I said in the stage 1 debate, if we are to address all the issues, it is vital that we do so in an integrated way that covers all levels of policy. It is vital that we hear what the minister has to say.

The Convener: I am delighted that John Scott resisted the temptation to take the King Canute comparison further.

The Deputy Minister for Environment and Rural Development (Allan Wilson): It is good to be back in front of the committee. I always enjoy such occasions and I suspect that today will be no different. I am grateful for the opportunity to deal with the first group of amendments, which deals with the important issue of flood management.

As my colleague Ross Finnie and I said in the stage 1 debate, we take flooding seriously, not least because of its human impact, to which Angus MacKay referred. As the MSP for a constituency in a flood-prone part of the world, I am well aware of the misery—to which members referred—that flooding can inflict on our fellow citizens. For that reason, if for no other, the issue is important.

The committee agrees that the bill will make a valuable contribution to flood management. I will explain why in a minute. It is probably worth while putting it on record that we are considering the workings of the Flood Prevention (Scotland) Act 1961. After this meeting, I will attend a meeting in Bute House with colleagues including the Minister for Justice and the Minister for Social Justice, who is responsible for planning, to consider how the flood management system is working and how it could be better co-ordinated—Sarah Boyack used that terminology. That consideration continues. Our examination of the bill adds value to that process and we should consider the bill in that context.

From the outset, we should be clear that the river basin planning system that the bill introduces provides a useful forum for discussing flood management issues at the strategic level that Bruce Crawford and others talked about. That is because the system brings together local authorities, which have a key role in that aspect of flood management. I think that the committee shares our view that local authorities, which have local knowledge and are elected by local people, are best placed to decide where flood defences are required. Local authorities come together with other partners on a catchment basis, which is the most sensible basis for thinking about flooding.

As I said at stage 1, I am sympathetic to the views that lie behind several amendments in the group. The most obvious examples of what I mean are amendment 25, to which Sarah Boyack spoke, and amendment 28. I agreed with much—but not all—of what Bruce Crawford said, but I agreed with everything that Sarah Boyack said.

We made it clear at stage 1 that section 10 gives us the power to make regulations that determine the issues that a river basin management plan must cover. We can use that power to ensure that flooding issues, as they impact on the protection of the water environment, are included in a plan. However, as many members have said today and previously, that should be more explicit. I agree,

and I undertake to consider whether the inclusion of flood management as an issue for river basin management plans could be clearer in the bill.

We could make that clearer in several ways. We could amend section 10, include a provision in schedule 1 and/or amend section 2, as Des McNulty and Sarah Boyack suggested, with the appropriate terminology to distinguish the functions that are necessary to promote sustainable flood management where practicable from those functions for which that might not be practicable. I propose to come back at stage 3 with relevant amendments to ensure that the members' concerns are covered.

10:30

I support the promotion of sustainable flood management, but I am concerned that amendment 25 would impose a high test on ministers, the Scottish Environment Protection Agency and the responsible authorities that would be neither desirable nor, importantly, relevant in all cases. Section 2 imposes general duties on those parties to secure compliance with the directive. In due course, one or more orders will be made under section 2 to specify enactments under which the Scottish ministers, SEPA and the responsible authorities must exercise their functions or designated functions to secure compliance with the directive. Amendment 25 would require ministers, SEPA and the responsible authorities, when exercising those functions, to promote sustainable flood management. Such a duty might therefore apply in respect of a potentially wide range of functions, which would not always be appropriate and would be unduly onerous. Given my undertaking to Des McNulty and Sarah Boyack to come back with a substitute amendment, I ask Des McNulty not to move amendment 25.

I turn to Bruce Crawford's amendments 19, 21 and 28. As Sarah Boyack said, and as other members know, contributing to the mitigation of the effects of floods is an element of the protection of the water environment and is therefore already covered explicitly in part 1. Amendments 19, 21 and 28 would require ministers to prepare a national strategy for sustainable flood management and to incorporate that strategy as part of the general purpose in section 1. Section 1 sets out the general purpose, goals or broad aims for part 1, but it does not determine how we get there; that is what the rest of part 1 does. Given that, amendments 19 and 21 would not sit appropriately alongside the rest of section 1 and should be rejected.

Although I have sympathy with amendment 28, it is unnecessary because we expect the river basin management planning process to address flood management issues, where they are relevant to the protection of the water environment. Given that, it makes no sense for ministers to prepare a stand-alone strategy without a requirement to involve others, which is a prerequisite of river basin management plans. I referred to the importance of local authorities in the planning process, and it is worth pointing out that local authorities are properly charged with deciding where flood defences are required, but that that does not imply that a national strategy does not underpin those decisions.

Flood defence schemes are approved and funded by ministers to national design standards. All schemes are required to take account of upstream and downstream impacts. River basin planning will provide the strategic forum within which the strategy can be developed. To an extent, amendment 28 betrays the spirit of participation that underlies part 1, which I do not believe to be Bruce Crawford's intention. We want an all-embracing and holistic approach to flood management. I ask Bruce Crawford not to move amendment 28, as it would not sit with river basin management planning as a whole.

Amendment 42 would introduce a new section in the bill requiring SEPA to prepare a register of flood-prone areas. I do not regard the amendment as necessary; in fact, it is potentially damaging. Section 25 of the Environment Act 1995 states:

"(1) Without prejudice to section 92 of the [1970 c. 40.] Agriculture Act 1970 (provision of flood warning systems), SEPA shall have the function of assessing, as far as it considers it appropriate, the risk of flooding in any area of Scotland.

(2) If requested by a planning authority to do so, SEPA shall, on the basis of such information as it holds with respect to the risk of flooding in any part of the authority's area, provide the authority with advice as to such risk."

SEPA already assesses flood risk in Scotland. It does that job very well and, increasingly, to a very high technological standard. I assume that colleagues have seen, as I have, the maps that SEPA produces of flood-risk areas. Many others, including planning authorities and insurance companies, use those maps. My greatest concern about the amendment is that it would give a statutory basis to the designation of particular parts of Scotland as officially at risk of flooding. That could have considerable impact on insurance premiums.

The most appropriate place in which to refer to this pre-existing body of work is section 2. We should incorporate in the relevant enactments that I have just cited a reference to sustainable flood management. I hope that, given that assurance, colleagues will withdraw or not move their amendments. At stage 3 we will lodge amendments that address members' concerns, which I share.

The Convener: I invite Bruce Crawford to respond to the debate and to indicate whether he intends to press amendment 19.

Bruce Crawford: I say to Des McNulty and Angus MacKay that it is good to be back—I think.

Sarah Boyack's amendment, and Des McNulty's, complement what I am trying to achieve. I have been accused of trying to impose a King Canute-style approach on the minister. However, if we leave the minister with few powers to take the holistic approach that he supports, I believe that when dealing with flooding in the future he will be more like the little boy with his finger in the dyke than King Canute.

Angus MacKay referred to my unionist credentials. I am happy to learn from all small nations in Europe, including our neighbours south of the border.

I agree with everything that the minister said in laying out the holistic approach that he wants to take. However, what really matters is how that is achieved. I do not think that the river basin planning process will be strong enough to make the changes that will be required in national policy to underpin what is intended in the bill. The river basin planning process cannot decide on policy in farming and agri-environment. We could use the rural development scheme to target money so that, for example, farmers were paid to create flood plains. A river basin plan cannot do that, but a minister can.

Another issue is the future of housebuilding. A river basin plan cannot introduce or circulate to local authorities national planning policy guidelines, which decide their planning policies. Only a minister can do that, and only in that way can we start to affect what local authorities do in relation to housebuilding for the future.

Ministers set the policies for Scottish Enterprise Tayside and all the other local enterprise companies throughout Scotland. A river basin plan cannot do that, and the targeting of that money might affect floods in the future.

Most important, the minister should set a climate change strategy for Scotland. A river basin plan cannot do that, but a minister can, and that is the level at which we need to start talking about making changes in policy development to address proper sustainable flood management. The minister gave a prime example when he said that he is going off shortly to discuss issues of flood management and protection. If the minister were responsible for producing a sustainable flood management plan for Scotland, that would already be in the bill. That is exactly why we need to be doing such work and giving the powers to the minister. If we do not do that, we are, in effect, asking him to stick his finger in the dyke while we continue with the sandbags and canoe approach.

I was heartened to hear the minister talk reasonably about how he might deal in section 10 with the intention behind amendment 28; I look forward to seeing how that would work. However, my amendments would ensure that the minister was required to produce a plan, rather than leaving the situation unclear.

The Convener: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Harper, Robin (Lothians) (Green)
McLeod, Fiona (West of Scotland) (SNP)

AGAINST

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

ABSTENTIONS

Scott, John (Ayr) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 19 disagreed to.

The Convener: I allowed the debate on the first group of amendments to go on for a while, because the question of floods is key. However, I appeal to members to be as concise as possible in dealing with further amendments so that we can make progress.

Amendment 20 is grouped with amendments 22, 38 and 39.

Des McNulty: Amendments 20 and 22 are geared towards linking the bill to all the elements of the water framework directive, one of which is the notion that good water quality will contribute to securing the drinking water supply for the population. Scotland is in the middle of implementing the requirements of the drinking water directive—more effectively in some areas than others.

The water framework directive is framed with the fundamental objective that bodies of water that are used for the abstraction of drinking water should be identified. Member states should then ensure compliance for each body of water in line with that directive. The way in which Scotland implements that will be important for the public health of our country.

Paragraph 3 of article 7 of the directive states:

"Member States shall ensure the necessary protection for the bodies of water identified with the aim of avoiding deterioration in their quality in order to reduce the level of

purification treatment required in the production of drinking water. Member States may establish safeguard zones for those bodies of water."

That is a key part of the European directive, which the bill is supposed to implement, and it is appropriate that we ensure that the bill includes it. I do not understand why ministers have chosen not to put that in place.

The spirit of openness and transparency is an important characteristic of the water framework directive. With amendments 38 and 39, I am trying to bring together environmental protection and public health by identifying and making clear any threat to the integrity of a body of water used for the abstraction of drinking water that would be a threat to public health. All threats should be identified and it is incumbent on all levels of government to do so and to work with communities to mitigate them.

10:45

Among the factors that could be identified under the amendments are cryptosporidium in certain catchments, pesticides in others and metals such as lead in others. Consumers should have access to relevant information about their drinking water and be aware of its quality. It is also important that people are informed about water quality and that there is a mechanism to ensure that that information is not just released at times of crisis but as part of a continuous process. The idea of having water quality reports is not new or unique; they are produced in several jurisdictions in North America, Australasia and other places where statutory reporting systems for drinking water quality are in place. Bearing in mind the problems that we have experienced in the west of Scotland, what I am trying to do with these amendments makes sense.

I move amendment 20.

Angus MacKay: I would like to know why amendment 39 specifies "six monthly intervals" for the publishing of the reports, as opposed to any other period of time. I do not know whether that is too often or not often enough.

John Scott: The proposal in amendment 39 would cost a significant amount. Who would pay for the analysis?

The Convener: I ask Des McNulty to respond to those points when he winds up the debate.

Allan Wilson: We are in agreement with Mr McNulty on certain aspects of his amendments. Perhaps I should make clear the impact that the bill, as drafted, would have on bodies of water that are the source of drinking water.

Section 6 provides that such bodies of water must, in the first instance, be identified. We will consider amendments to that section in due course. It is important to note that, when we say "such waters", we mean all waters that are a source of drinking water, whether the supply is public or private, which is important in relation to John Scott's point on amendment 39.

Once the bodies of water have been identified, we would use the powers that would be given to us in section 8 to ensure that the condition of the waters is monitored to the standards that are required by article 7 and annexe V of the water framework directive. Section 9 would require us to set environmental objectives for bodies of water that have been identified under section 6. I refer members to the Executive's amendment 16, which would incorporate an explicit reference to article 7.3 of the water framework directive, which reads:

"Member States shall ensure the necessary protection for the bodies of water identified with the aim of avoiding deterioration in their quality in order to reduce the level of purification treatment required in the production of drinking water."

I hope that members will agree that, with amendment 16, we have acted to achieve the purpose behind the other amendments in the group, which I will now deal with individually.

Amendment 20 would insert a new leg to the definition in section 1(2) of

"protection of the water environment"

by adding:

"avoiding a deterioration in the quality of water in bodies of water used for the abstraction of drinking water".

That amendment would be unnecessary in the light of what I have said. Subsection (2) already makes it clear that

"'protection of the water environment' includes … preventing further deterioration of … aquatic ecosystems".

In that context, "aquatic ecosystems" includes all bodies of water, whether or not they are sources of drinking water supply.

Amendment 22 would insert a new provision in section 1(3). Subsection (3) establishes the wider aims of section 1, and the new aim under amendment 22 would be

"a reduction in the level of purification treatment required in the production of drinking water".

That amendment would be unnecessary, because amendment 16 would provide an explicit link to article 7.3 of the water framework directive. Amendment 16 would have more practical impact because it would be inserted in section 9, which deals with environmental objectives.

Amendment 38 seeks to amend section 6 by providing that along with the order designating waters that are the source of drinking water must come a description of the factors that threaten the

quality of that water. That amendment also is unnecessary, because section 5(2)(b) refers to

"a review of the impact of human activity on the status of surface water and groundwater".

Section 5(2)(a) would require

"an analysis of the characteristics of the water environment"

to be carried out and thereafter continually reviewed. Such a characterisation would include the analysis of all human impacts and activity on each body of water. Therefore, a thorough analysis of the pressures and impacts would be prepared for all water bodies, including those that are the source of drinking water—which is what we are discussing in this context—and would be subject to continuous review. Such analyses would be reported on under river basin management plans.

At the heart of the bill and of planning for the water environment is the inclusion of the best possible information about the pressures that are on that environment. Those pressures may relate to "agricultural activities", "mining activities" or "industrial activities", which are cited in amendment 38, but all those activities are part of wider "human activity", and would be provided for under section 5; monitoring those pressures would be provided for under section 8. Those provisions render Des McNulty's amendment 38 unnecessary and redundant.

Amendment 39 says:

"Scottish Water must … at six monthly intervals … publish a report on the water quality of each body of water identified"

under section 6. I argue that that, too, is unnecessary. As I have explained, and as, I hope, members have taken on board, the quality of all bodies of water in Scotland will be reported on, assessed and continuously reviewed as part of the river basin management planning process.

Amendment 39 would introduce an added complication, to which I think John Scott partly alluded. As I said at the outset, we are talking about all water supply and sources of abstraction, whether public or private. Amendment 39 would force Scottish Water to produce reports about the quality of water in bodies of water in which it has no interest—in other words, in private supplies or sources of drinking water. It would be inappropriate to impose such a duty on Scottish Water, as that would lie outwith its statutory functions.

Given that all the points that Des McNulty has raised in this group of amendments are incorporated either in the water framework directive or elsewhere, I ask him to withdraw amendment 20 and not to move amendments 22, 38 and 39.

The Convener: I would like the minister to clarify one point before Des McNulty responds to the debate. Would the reports to which you referred be made publicly available?

Allan Wilson: Yes.

Des McNulty: When we prepared amendments 20 and 22, we were not aware of the contents of Executive amendment 16. The minister is clear about the fact that paragraphs 2 and 3 of article 7 of the water framework directive would be fully incorporated in the bill, so I am content. I will seek to withdraw amendment 20 and not move amendment 22.

I am much less happy about the minister's assurances on amendment 38. He pointed to section 5(2), which refers to the characterisation of river basin districts, but that is not the same as what I ask for. For identified bodies of water that are linked to water catchment, an enabling process should exist to identify contamination threats, whether from agricultural, mining or industrial activities. Scope also exists to add factors. I am concerned because ministers say that they have insufficient powers to deal with those threats. Amendment 38 would be a positive step towards establishing a mechanism that would at least identify contamination threats. The minister did not refer to public health issues, which are crucial. I am not minded not to move amendment 38, which would add something to the bill.

As for amendment 39, the minister said that he would publish more information, but I would like to know what information would be produced. I will not move the amendment, as mechanisms exist to provide more information and need not be part of the bill. However, it would be helpful if the minister were to write to us before stage 3 to say how that information would be produced and in which formats we might receive it. I will not move amendment 39, but I will move amendment 38 at the appropriate time.

Amendment 20, by agreement, withdrawn.

Amendment 21 moved—[Bruce Crawford].

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Harper, Robin (Lothians) (Green)
McLeod, Fiona (West of Scotland) (SNP)
Scott, John (Ayr) (Con)

AGAINST

MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)

McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Radcliffe, Nora (Gordon) (LD)

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

Amendment 21 disagreed to.

Amendment 22 not moved.

The Convener: We are close to the time at which we will conclude our stage 2 consideration for today, but we have time to deal with amendment 23, which is in a group on its own. I ask Nora Radcliffe to be as concise as possible in dealing with the amendment.

Nora Radcliffe: The intention of amendment 23 is simple. The water framework directive is intended to maintain and improve water quality, but that cannot be done without a baseline. Amendment 23 would set a baseline from which we would take our measurements and against which we would decide whether standards were better or worse.

It is important to have a baseline in the bill and the amendment suggests

"the date of Royal Assent of this Act"

as the point at which we could set the baseline and from which we would take measurements.

I move amendment 23.

The Convener: I ask other members to be as concise as possible in commenting on the amendment, as the minister has a pressing engagement elsewhere.

11:00

Robin Harper: I presume that the fact that some assessments might take place several months or a year before the date that has been mentioned will make no difference to the meaning of amendment 23. Would I be right in assuming that the latest assessment would be taken as the standard?

Angus MacKay: Perhaps the amendment makes sense, but I do not understand it. If we are trying to define what would constitute further deterioration, where is the standard, to which the amendment refers, set down? What would happen if, after the date of royal assent, we decided to change the standard or if the standard were changed by individual or multiple bodies in some other context? Would the legislation bind us to a standard that might be lower than the new standard?

John Scott: I think that amendment 23 is perfectly reasonable.

Allan Wilson: The point is important in the wider European context. If we set standards in advance of other European countries, we could be found to be in breach of those standards and subject to infraction procedures.

As members are aware, the prevention of the deterioration of our water environment is one of the prime purposes behind the bill and is explicitly included in section 1. That being the case, I do not believe that amendment 23 is necessary. Further, it would not be wise to accept it as it would set Scotland apart from its European partners.

The water framework directive establishes the prevention of the deterioration of the water environment as one of its fundamental objectives, but it does not establish a date on which the no-deterioration requirement would kick in. I do not think that it would be sensible to set a different date for Scotland from that which will be set for the rest of Europe. As Angus MacKay said, that might put our water users at a competitive disadvantage compared with their compatriots in the rest of the EU. As I said in response to SNP questions in the stage 1 debate, we do not want to gold-plate the legislation to Scotland's competitive disadvantage.

What underpins the bill is the fact that we do not know at the moment the true state of the water environment. We do not know what the standard that is referred to in the amendment is at the moment for most of Scotland's water, but it is important that we conduct a characterisation of each river basin district, as I said in the debate on the previous group of amendments. There would be a characterisation under section 5(1) and a review under section 5(3), done in accordance with the technical specifications that are set out in annexes II and III of the directive. Human activity and its impact on the water environment will form part of the characterisation process. Only when we have done the characterisation and supplemented it with the on-going enhanced monitoring that will be introduced by section 8 will we be in a position to determine what the benchmark standard might be. We would have to go through that process before we could set a date. That subject is exercising our colleagues in member states across Europe.

A lot of hard work, involving sophisticated science, must be done during the characterisation process and in the subsequent monitoring process before we can set a date. To designate the date of royal assent as the date from which a reduction in the standard would be measured would not be appropriate. Having given all those assurances, I ask Nora Radcliffe to withdraw amendment 23.

Nora Radcliffe: Does that mean that you see the value of having some sort of fixed point when there is a sensible opportunity to set one, and of setting a benchmark at the appropriate stage?

Allan Wilson: The first benchmark date that we have set—which is a common date, set across Europe—is the date for the publication of a river basin management plan. The specific requirement is for that to take place in 2009 and that is what has been laid down.

Nora Radcliffe: It seems important to have a benchmark or fixed point, although I accept that the one that I have suggested in amendment 23 is perhaps not appropriate. It would be helpful for the committee to know the timetable for the characterisation that we have been discussing. That would give us a better understanding of when benchmark setting might be appropriate. In light of what the minister has said, however, I seek leave to withdraw amendment 23.

Allan Wilson: The bill specifies that the characterisations must be done by a date in 2004. There is then the run-up to the publication of management plans in 2009.

Amendment 23, by agreement, withdrawn.

The Convener: I propose that we conclude our consideration of the Water Environment and Water Services (Scotland) Bill for this meeting. We will of course return to it next week and in subsequent weeks. I thank the minister and his officials, and Sarah Boyack, for their attendance and contribution.

I suspend the meeting for a couple of minutes in order to allow one ministerial team to depart and another to arrive.

11:07

Meeting suspended.

11:13

On resuming—

Building (Scotland) Bill: Stage 1

The Convener: Agenda item 8 is consideration of the Building (Scotland) Bill at stage 1. Today, we will hear evidence from Hugh Henry MSP, Deputy Minister for Social Justice. I welcome to the committee the minister and two officials from the Scottish Executive, Lorimer Mackenzie and Paul Stollard.

The minister is giving evidence at the end of our stage 1 consideration; we have already received evidence from a variety of groups. Before we move on to questions to the minister, I invite him to make an introductory statement, if he so wishes.

The Deputy Minister for Social Justice (Hugh Henry): Thank you for this opportunity to give evidence. As you have indicated, convener, my evidence comes at the end of the committee's involvement in stage 1; members have carried out a fair bit of work already. It is right to thank the organisations and individuals who have assisted the Executive in the preparation of the proposals. A huge amount of work has gone into the bill, including a significant amount of consultation. We value and have benefited from the views that have been expressed by a wide range of organisations. That has helped us to produce a bill that I hope meets the needs of all those with an interest in building standards. Building standards impact on each and every one of us, although they might not be the most obvious thing that we think about.

11:15

The Building (Scotland) Act 1959, on which the current system is built, has done a good job over the years, but it has been in place for a long time, and things have moved on. Through the bill, we want to achieve an evolution of the system, rather than a radical transformation and replacement of it. We seek to build on what is good in the existing system and to improve on that, where possible. The bill does not necessarily represent a quantum leap. Many of the witnesses who gave evidence approved of that approach.

The principles of the bill and an explanation of its detailed provisions are set out in the policy memorandum and explanatory notes. I will not go over those matters now. I hope that it will be worth while, and helpful to the committee, if I pick up some of the points that have been made by previous witnesses, about which there may have been misunderstandings or concerns, but that we think we can address.

The first of those concerns is about the scope of the bill and the extent to which it covers issues of disabled access. Members will recall the submission from the Disability Rights Commission, which raised concerns over the use of the word "convenience". It argued that the use of buildings by disabled people is much more than merely a convenience. We agree whole-heartedly with that. However, the word "convenience" is used in the bill, not in a dismissive sense, but in a technical sense. The bill says that building regulations are for

"securing the health, safety, welfare and convenience of persons in or about buildings".

We made it clear in the policy memorandum that that would cover the accessibility and usability of buildings by all people. The provisions are framed in such a way as to be understood by those who use building legislation: the same phrasing is used in the 1959 act. If we thought for one minute that a gap existed, we would have taken the opportunity to close it. The use of "convenience" is not about being dismissive or about overlooking what we believe is a very important issue.

The bill would introduce the power to appoint private sector verifiers. We are on record as saying that we have no intention of using such an approach. However, we recognise that we are dealing with a sector that changes, and that is in a process of change; sometimes, it can change rapidly. There may be advantages to that provision in future, and it is right to anticipate what might come up while retaining the control over the process.

The purpose and primary responsibility of verifiers, whether in the private or public sector, is to protect the public interest. In evidence and during the consultation process, both opponents and supporters of private verification have played on the disadvantages or advantages of a competitive market. There seems to be an assumption that the model that we envisage using would be a completely free market, with verifiers offering competitive services to customers, who would be the owners of buildings. However, that is not the case.

We intend that the new system will deliver better services to those who go through the building standards system. I should clarify that the verifiers' primary responsibility will always be the public interest, and the introduction of private sector verifiers in the future would be undertaken on that basis. The committee might have intended to raise those concerns, but I thought that I should comment on them.

Earlier, I referred to those who contributed to the consultation process that took place prior to the introduction of the bill. The building standards system works as well as it does only because of a long tradition of close working between all the key players in the sector. If one speaks to those key players, one gets the sense that, although there may sometimes be frustrations and disagreements, there is a good degree of co-operation between them.

Since the passage of the 1959 act, the Scottish Office, and now the Scottish Executive, have benefited from the advice and assistance that has been given by the public and private sectors. The changes that will result from the bill will continue to be the subject of consultation, and we look forward to continuing our close working relationship with key stakeholders, which we believe is critical to a successful future for the Scottish building standards system.

Bruce Crawford: I thank the minister for his statement, in which he explained clearly the direction that the Executive is taking with the bill. I am new to the bill—this is the first time that I have been involved in the committee's discussion on building regulations. I was impressed by the fact that 800 people were consulted and that the Executive received 191 responses. That is a good model for how ministers should consult—perhaps others should look at how you conducted that exercise.

I turn to the policy objectives, as set out in the policy memorandum. Some of the policy objectives—and therefore the thrust of the bill—seem to miss issues of sustainability and climate change. Perhaps those issues are dealt with appropriately elsewhere—you may simply tell me that that is the case. Perhaps I am just not aware of what is going on, but I would have thought that building regulations would need to reflect the changes that we expect from a wetter climate and warmer winters. The paragraphs in the policy memorandum under the heading "Impact on sustainable development" are well constructed but make no specific mention of the impact of climate change or how regulations might require to be altered to deal with it. For example, will we need different standards of roofing to deal with increased rainfall? As a lay person, I do not know.

Paragraph 83 states:

"There is still room for improvement in performance".

How would the bill bring about such an "improvement in performance", or would other mechanisms be used?

Hugh Henry: I will ask the officials to respond to that point in a moment. The bill explicitly identifies for the first time the achievement of sustainable development as a central aim of the building standards system. We want to create a more efficient and flexible system that is better able to deliver on sustainability objectives, now and in the

future. We have recently displayed our commitment to high standards of energy efficiency in Scotland by raising those standards in an amendment to building regulations. We have the highest standards for thermal insulation and energy efficiency in the United Kingdom. However, as Bruce Crawford suggested, we cannot afford to be complacent. He pointed to the wider issues of climate change, which will impact on us. It is clear that we will need to consider those issues in relation to our planning system and building standards. One of the officials may be able to say more about climate change.

Lorimer Mackenzie (Scottish Executive Development Department): Any measures that may be required to allow us to react to changes in climate and achieve the standards to which Bruce Crawford alluded would be introduced in accordance with the regulations that will flow from the bill. The fact that sustainable development is one of the purposes of the bill will allow building standards to evolve to meet needs as they arise, whether they relate to flooding or to other risks. That will be done through regulations and guidance; such measures would not feature in the bill because they already fall within the purposes of the bill. Regulations are subject to rigorous consultation, and if any are introduced to meet future needs, they would be the subject of consultation with interested parties, ranging from users of buildings to the professionals who build them.

The Convener: Fiona McLeod and Robin Harper both want to follow that point up. They will ask their questions first; then I will allow the minister to answer them together.

Fiona McLeod: You have spoken about a lot of measures coming through regulation stemming from the bill. You are making it clear that you will reduce technical standards from statutory standards, which must be met under building regulations, to guidance, which merely should be met. That ties in with some of the questions that the Disability Rights Commission raised.

Robin Harper: The minister observed that our standards of thermal insulation are higher than those in the rest of the UK. Does he agree that they are still relatively low in comparison with those in the rest of northern Europe, which should provide the comparator for Scotland?

Hugh Henry: I will take the second question first. We recognise the achievements that have been made in other parts of Europe and that more could be done in Scotland. We are trying to change progressively, or incrementally, and we can take satisfaction from that, without being complacent. I am concerned about the matter. I have discussed it with officials. Apart from Robin Harper, a number of members have spoken to me about the issues that are involved, which we will continue to scrutinise. Where we can make improvements, we will. There are obvious implications for the building industry, local authorities and the Executive, but Robin Harper is right: technically, more could be done. I am sympathetic to doing more when that is possible, but I do not underestimate the associated difficulties.

On the first question, there is no doubt that the expanded functional standards upon which the new system will be based will involve greater flexibility of interpretation. The bill sets out a clear framework that will give us the power, through regulations, to satisfy any concerns. I have not seen anything to suggest that the expanded standards are in any way a weakening or a diminishing.

Paul Stollard (Scottish Executive Development Department): The expanded functional standards will still set a minimum that must be met and that the courts will be able to enforce. That minimum will be no lower than that which we set at present through regulation. The guidance that will accompany the regulations will, where possible, give developers, builders and architects a number of options to on how to comply with the standards. The standards will have the force of law and will be slightly more expanded than the current regulations.

Angus MacKay: The minister has already touched on disability issues so he might have addressed most of my question already. Is he saying that the building regulations will refer to the specifically designated purposes that were requested by the Disability Rights Commission? Has he had any direct discussion or correspondence with the Disability Rights Commission about its concerns? If not, will he do so?

Hugh Henry: A seminar was arranged with the Disability Rights Commission to seek disabled people's views on access issues—officials have already outlined the consultation proposals. At that seminar, delegates' views were facilitated through a series of workshops. I have been told that the exercise was well received by the groups that attended. If we can do more, and if more consultation is required as we go through the stage 2 process, we are more than happy to engage in that way.

As I said, the bill sets out key purposes. The term "convenience" to which I referred is intended to cover everyone, whether disabled or not. We are committed to ensuring high standards of access to buildings for everyone and we do not think that the new system will undermine that.

The Executive's intention is that accessibility will be mandatory in the building regulations that will be established under the new system. Indeed, the new hierarchy of standards and guidance will give designers the freedom to produce new and innovative solutions. Too often, buildings have been designed not with people in mind, but with some technical purpose or flight of fancy in mind. It is right that we require buildings to be designed to give proper access. Lorimer Mackenzie may want to say whether anything arose from our consultation that would help to clarify matters.

11:30

Lorimer Mackenzie: Last week, the committee heard from the Disability Rights Commission. I think that it said that it had concerns about having detail in the regulations, but that it accepted the reasoning behind our approach. At the event that the DRC held on our behalf in Dundee—which, incidentally, was attended by Gil Paterson, who is the Equal Opportunities Committee's reporter on disability—the view was expressed that we need to keep in touch with interested disability rights groups and disability access groups and ensure that, when we put together the guidance and the regulations that flow from the bill and will flow throughout the new system, we consult such groups to get the right solutions. However, the DRC accepted our broad approach.

We have already given an undertaking that we shall continue to consult such groups officially. We have been working with the DRC and have had meetings with Heather Fisken, who gave evidence to the committee last week and who organised the consultation for us. In the next few weeks, I think that there will be a further briefing on wider disability issues, which our division will attend. That work is continuing and will continue as the system embeds.

Angus MacKay: I am happy with that answer, convener, and would like to move to my next question, which relates to the extension of functional standards to the external features of large developments, such as footpaths and street lighting. That extension received support during early consideration of the bill. Do you support that proposal? What are your reasons for supporting or opposing the proposal?

Hugh Henry: We are attempting to ensure deliverability and consistency. I am not clear whether there is a major issue relating to footpaths, but if there is an issue that we need to address, we can do so as we approach stage 2. I have not identified a particular problem in that respect.

Paul Stollard: We already cover certain areas that are connected with buildings, such as access for people to walk to them, access for fire appliances, drainage of car parks and services that must go to buildings. Under the bill, we will continue to cover those areas, so how one reaches and leaves a building safely will be covered.

Angus MacKay: Are you talking about a footpath between the front door of a flatted development and the pavement, for example?

Paul Stollard: Yes.

Angus MacKay: I understand from the early representations that we received that the question relates to the development of entirely new estates. What is your view on extending functional standards to cover all the infrastructure that connects the different parts of such estates and connects estates to the outside world? I think that that was the issue that emerged in representations.

Hugh Henry: The bill is not intended to cover such areas. It does not include anything on roads, access or services to the land, street lighting or signage.

The Convener: Robin Harper and Des McNulty are trying to ask questions. Robin can ask the first question.

Hugh Henry: Just before he does, I should say that if Angus MacKay has a concern that we need to consider before stage 2, we will certainly do that. To ensure that there is no misunderstanding, I say that at the moment that is not our intention.

The Convener: The specific concern is to do with when, as Angus MacKay outlined, builders complete the building satisfactorily but do not complete the lighting, paths and so on in an estate. That presents problems in the future for the owners. That issue has been raised with us.

Hugh Henry: That is an understandable concern. Before I became a member of the Scottish Parliament, I was a councillor in a community that started from nothing and has been built over the past 30 years. I am well aware of the persistent problems that arise from the issue that has been outlined. We must consider the planning issues. It is a bit more difficult to judge whether it is right to include provisions on the matter in a bill on building standards. I will reflect on that and we will come back to the committee.

Robin Harper: I will pursue the point that the minister just made. Would it be considered a function of standards to provide for safe play areas for children in large estates?

Hugh Henry: Not necessarily. Planning authorities currently consider that matter. I know from direct experience that when the local authority of which I was a councillor insisted on such play areas, it proved to be the usual road to

hell paved with good intentions. In some cases the play areas went in and worked well but, after several years, when the children had grown older, the areas became a magnet for older children and we received complaints about youngsters hanging about there to drink and cause bother. We then received petitions from people wanting the play areas to be removed. I could take the committee on a tour of several estates where such facilities became a source of constant irritation and, in one case, violence between neighbours. Although the intentions are right, I do not underestimate the problems. Planning authorities consider the matter closely, but I hesitate to specify such provision in a building bill.

Des McNulty: I will amplify the point. Three areas of concern affect people most. One is the lack of a proper penalty system when contractors fail to elevate footpaths, lighting standards and so on to an appropriate level. There is a question as to whether that should be dealt with in the bill.

A second issue is the time line. Even when the contractor does eventually get those facilities up to the appropriate standards, it often takes an unreasonable length of time for that to happen. Should a time period be attached to achieving those standards?

The third issue is whether there should be a requirement to establish satisfactory maintenance arrangements. I had the same experience as the minister had of estates that were built with wonderful intentions, with footpaths and steps that are now a serious health hazard for people living in those localities. It would be sensible in the context of a building standards bill to ensure that there is an appropriate standard up to which things should be brought within a reasonable time and to ensure that mechanisms are in place so that things are appropriately maintained.

The Convener: I know that you have said that you will reflect on the matter, minister. Do you want to add anything further?

Hugh Henry: I do not think so. This issue causes anguish throughout the country. I will repeat the point that I made—I am not sure that this bill is the place to address the issue. If we can do something about it, we will certainly come back to you. We will reflect on that important concern.

Maureen Macmillan: The committee has heard concerns about the relationship between continuing requirements and other health and safety legislation. One example was about how continuing fire safety requirements will relate to existing fire safety regulations. Another issue is the role of verifiers in assessing continuing requirements after the issue of a completion certificate. Will the minister clarify how the continuing requirement system will work in practice?

Hugh Henry: I will bring in one of my officials.

Paul Stollard: Certain measures will be included as part of the design solution to fulfil the standards that will require maintenance beyond the completion of the building. Examples could be a boiler or sprinkler system that needs to be maintained or a septic tank that needs to be desludged. Section 2 will simply ensure that if it is brought to a local authority's attention that those continuing requirements are not undertaken, the local authority will have the power to take action. There is no power to do that under the Building (Scotland) Act 1959.

Fire authorities are given some powers on matters that relate specifically to fire for certain classes of buildings, but there is not complete coverage. Therefore, although there is a measure of overlap with some of the fire provisions, the intention is to have complete coverage of all the standards and ensure that there are no gaps. At the moment, we have good relations with fire authorities and building control authorities, which work well to police existing buildings. We do not see any problems with the changes, and the Chief and Assistant Chief Fire Officers Association and the Fire Brigades Union told us that they were happy to develop them in procedural guidance at a later stage to enshrine best practice.

Des McNulty: I have two questions on health and safety. The first relates to the possibilities in the bill for minimising the risk of injury to children. Two per cent of children presenting at the accident and emergency department of Glasgow's royal hospital for sick children—about 11 a week—have isolated finger injuries, most of which are caused by crushing and jamming of fingers in doors. Some are so serious that they lead to amputation, and a high proportion of those injuries happen to children under the age of five years old. I am told that a substantial number of the injuries would be avoided if the building standards required the use of safer forms of hinges on doors, and mechanisms could be introduced to achieve that. Is the minister prepared to consider introducing an amendment to deal specifically with reducing the risk of such finger injuries? Are there other opportunities in the bill to examine minimising the risk of other injuries to children?

Hugh Henry: Des McNulty is right to identify the contribution that building regulations can make to improving the health and safety of people in buildings. They already do so, and one example is that they set standards for the safety of stairs so that construction causes no hazards to users. We would be willing to examine solutions, and we could use regulation, but we would have to be persuaded that any suggested solutions could be adequately implemented. We would want to go out to proper consultation. Bruce Crawford mentioned

extensive consultation, and we want that to continue. We would want to ensure that we are not imposing something that cannot be delivered. If there are potential solutions and things can be done to improve health and safety, we will look to regulation, but we will engage in consultation before acting.

Des McNulty: I will welcome anything that can be done to implement the International Organisation for Standardisation guidelines on child safety, for example. I am happy to speak to the minister and his officials about how to develop the issue.

My second question concerns asbestos, which is a particular issue among my constituents. The Asbestos (Prohibitions) Regulations 1992 prohibit the importation and supply of asbestos and the use of chrysotile asbestos, unless it happened to be in use before 1986 or, in some cases, 1993. Those regulations are 10 years old. New European legislation on asbestos has been introduced since then. In the context of the Building (Scotland) Bill, perhaps there could be a review of the regulations about asbestos and the use of asbestos, in order to take account of the most modern European rules.

There is also an issue about regulations concerning the removal of asbestos. There has been a significant step forward in establishing safe mechanisms for doing that. Do you feel that the bill provides an opportunity for examination of issues that are associated with the use of asbestos and the removal of asbestos, which could be dealt with in regulations? The Convention of Scottish Local Authorities and other agencies in Scotland would welcome such examination.

11:45

Hugh Henry: I am well aware of Des McNulty's long-standing interest in the issue and his campaigning for some of the victims of exposure to asbestos. I have worked in the Clydebank area and I know about the huge damage that asbestosis and mesothelioma have caused to his constituents. That tragic situation should be considered carefully when any decisions are taken that will have a future impact.

However, asbestos in buildings is a hazardous substance and, as such, it is dealt with under health and safety legislation. The Building (Scotland) Bill will have no impact on health and safety legislation, which should adequately address the issues in question. If there were issues that went beyond that, we would reflect on them. The problem of asbestos should be tackled through health and safety legislation.

Robin Harper: In its evidence to the committee, the Royal Institution of Chartered Surveyors in Scotland indicated that a substantial proportion of properties in Scotland might fail to meet the building standards assessment standards. Do you agree that that is a concern for home buyers and sellers and, if so, do you have any views on how to address that concern?

Hugh Henry: Some concerns have been expressed that we might try to force owners to upgrade existing buildings. That is not our intention. There has been discussion of whether the building standards assessment will replace letters of comfort. I am not aware that the concerns that you outlined will impact in the way that you suggest.

Lorimer Mackenzie: We envisage that the building standards assessment will fit into roughly the same niche that letters of comfort sit in at the moment. I live in a flat that was built in 1826. No one will expect it to meet 2005 building regulations and that was never the intention of the building standards assessment. An assessment will take place when an owner asks for it. We envisage that that will happen when a property is being sold, for example. An assessment is likely to have the same trigger as letters of comfort. It will be triggered by a buyer's surveyor indicating that certain work should be checked, because it looks dodgy.

We will examine the detail of what a building standards assessment will involve and we will consult on that. It might be possible to obtain a more limited assessment of particular work—that is the sort of detail that we will consider. A building standards assessment might include the provision of a piece of paper that does some of the work of a letter of comfort. It might say, for example, that although building work did not meet certain standards, it did not fall too far short.

The purpose of the building standards assessment generally is to try to catch the bits of work that have not been through the system properly and to give an incentive to people to go through the system properly to ensure that the standards are met. It would be unfair to say that the concerns of the RICS and other bodies are exaggerated but, when implementing the system, we will endeavour to ensure that the system does not produce the effect that Robin Harper mentions.

Paul Stollard: The building standards assessment might draw a distinction between regulations that are to do with safety, such as whether the building is structurally sound and has enough fire exits, and regulations that are to do with energy performance, sustainable development or access to the disabled. It would be unreasonable to expect an 1826 flat to meet the requirements of the latter regulations. There might be an imperative to do work with regard to safety regulations but, in regard to the other issues, only an assessment of the situation would be done.

John Scott: The housing improvement task force report stated that 26 per cent of owner-occupied homes suffer from critical disrepair. Do you have figures for the number of buildings in the independent rented sector that are in a similar state of critical disrepair? How do you propose to address the problem in the public and private rented sectors?

Hugh Henry: I am not aware of the figures and I do not know whether they exist. If they do, we will make them available to you.

Last week, Margaret Curran made an announcement on housing finance, which will make a significant contribution to local authorities. I know that COSLA and individual local authorities welcomed the announcement. We have recognised that there is a problem in the private sector and we think that what we have done will free up resources, which we have ensured will be targeted at the particular area of need. More money is going in through local authorities to help to address some of the problems that you have identified.

There are areas where there are a number of houses below tolerable standard, which is a significant issue. Some older towns have many buildings that are the product of the industrial revolution, almost, and there are clearly problems to be addressed in that regard.

We are moving in the right direction, but I do not know whether the statistics that you ask for exist.

Angus MacKay: I presume that building regulations are set in place not only to ensure that buildings, during and after construction, are kept in safe and proper order but to provide a certain quality of life for people living in them. If that is the case, is there—or could there be—any capacity in the regulations to make provision with regard to minimum standards that should apply in relation to houses in multiple occupation and the effect that those properties have on immediate neighbours, particularly in tenemental properties? I have a particular constituency interest in this matter, as there are a large number of HMOs in Edinburgh, particularly in the Sciennes, Marchmont and Polwarth areas.

Hugh Henry: We would draw a distinction between dangerous buildings and defective buildings. Clearly, there are steps that we would have to take in relation to buildings that are deemed to be dangerous.

We have been following the debate about houses in multiple occupation and are engaged in a consultation process at the moment on some of the related issues. There are fire safety issues to do with HMOs, which I have asked one of my ministerial colleagues to look at. We certainly do not want to hit at responsible landlords, and there is also an issue in hostels.

Paul Stollard: At the moment, the HMO licensing scheme is accompanied by benchmark standards, which were issued as guidance by the Executive and have been widely used by local authorities—but not by all of them—in pitching the level at which they license. However, when new work is done, rather than work on existing buildings, that new work already has to meet the technical standards; for example, new fire doors or a new alarm system must meet the technical standards. Where people are improving or converting buildings to be used as HMOs, it is certainly the intention that they will have to meet the technical standards as set out in the new guidance. Problems arise where the guidance is being applied retrospectively to properties that are already being used as HMOs and are licensed as they exist. That is why we produced the benchmark guidance.

Hugh Henry: We know that there is a huge problem in Edinburgh, and we think that what we have done has contributed significantly to improving standards and tightening requirements.

Angus MacKay: Will the minister write to me again with further details on the specific issues that have been covered?

Hugh Henry: Sure.

Angus MacKay: That would be helpful.

Am I to understand from what has been said that where an HMO licence is being applied for for the first time or is being renewed, the regulations or standards would have to be in force? As an adjunct to that, do those regulations cover only safety issues or do they cover issues relating to environmental health and public nuisance, such as noise?

Paul Stollard: The distinction depends on whether a licence is being renewed or the use of a building is being changed to become an HMO. Where there is a change of use, certain parts of the existing regulations will come into force. I do not, without copies of the regulations in front of me, want to be more precise about exactly which parts, but certain parts would come into force. We can provide the committee with guidance on that. If a building is already in operation as an HMO and a licence is either being applied for or being renewed, we produce benchmark guidance for that purpose, which some local authorities use to set their licensing conditions.

Hugh Henry: We will reply to Angus MacKay with the information that he seeks. If members have specific examples, by all means write to us and we will follow them up.

The Convener: Thank you.

Nora Radcliffe: I would like to ask about the verifiers and certifiers that would be created by the

bill. The policy memorandum outlines concerns about the operation of approved inspectors in England and Wales. What are your concerns about that system of approved inspectors and how have those concerns affected the development of the Building (Scotland) Bill?

Hugh Henry: Private sector verification already exists in England and Wales. Some of the respondents to the consultation stressed the advantages of improving the professionalism of building standards and providing more choice for the public and industry. They also argued about flexibility and consistency. We have given some thought to the verification and certification process.

Paul Stollard: In his opening statement, the minister stressed that verification in Scotland, whether it is in the public sector or the private sector, should be for the public benefit rather than for a specific client. That is a key feature of the bill. It is unlike the system of approved inspection in Wales, where verifiers are employed by an applicant for a warrant and there is a level of commercial discussion about fees and the like.

There is not as yet any published research that has been done over a long enough period of time on the effectiveness of the English approved inspectors system to which we can refer to make an assessment of whether it has had a significant impact. We are going on only anecdotal information. I am aware that some local authorities have offered the committee evidence through COSLA, and that similar evidence has come up from south of the border. However, as I say, it is only anecdotal.

Nora Radcliffe: What would need to change to make private sector verifiers acceptable in relation to transparency, accountability, consistency, impartiality and the underpinning issue of public interest?

Hugh Henry: We need objectivity that is underpinned by very clear guidelines and regulations. If we specify from the beginning that the public interest needs to be served, private sector verifiers will know what they have to do. We will give them very clear rules within which they can operate.

12:00

There will also have to be audit and scrutiny. We certainly do not want a system in which private sector verifiers are simply rubberstamping applications on behalf of applicants and no one is aware of any problems. There must be a level playing field. It is not a case of undercutting the public sector; if people are going to offer private verification, it will need to add value and improve the system. As a result, we must have very robust guidelines and monitoring, and we would need to be convinced at every stage that those criteria were being met before we would go any further.

John Scott: Given the foregoing discussion about verifiers, why does not the bill specify a system for the appointment, monitoring and auditing of private sector and local authority verifiers?

Lorimer Mackenzie: That is another issue that will benefit from consultation. We are in close contact with consumer organisations and with the public sector and private sector bodies that have given evidence over the past few weeks. The criteria for verifiers might evolve in line with sectoral needs. If we tried to stipulate them in the bill, they would be too rigorous. After all, it has been 40 years since the previous Building (Scotland) Bill, and we do not want to come straight back to Parliament to amend such criteria. Our idea is to set regulations for the procedure.

However, all the procedures for auditing and monitoring performance can be contained in the appointment letters under the powers in the bill for ministers to appoint verifiers. The criteria against which ministers would check verifiers might very well evolve, and we would want to consult the public and private sectors closely on that matter. As a result, although the bill contains powers that allow a sensible structure to be put in place, we would not want to stipulate such provisions in the bill because that might be seen as overly rigorous.

The issue ties in to a certain extent with the four factors of transparency, impartiality, accountability and consistency that were mentioned earlier. As far as impartiality is concerned, the bill contains provisions to ensure that there is no conflict of interest, regardless of the verifier. That is important, because we feel that the bill should cover certain areas of propriety in that respect.

On transparency, we will examine performance management, and we can require verifiers or others to publish their performance targets, criteria and everything else. As far as accountability is concerned, verifiers will always be accountable to ministers, who are of course accountable to Parliament. Finally, consistency will be maintained partly through the new central body that the bill will introduce and which will help to guide local authorities. In its evidence, the National House Building Council pointed out the advantages of private sector verifiers, one of which was consistency. As a result, all four factors are covered by different mechanisms, although we are seeking an holistic approach. Propriety issues feature in the bill because we feel that they require such an absolute, but others might evolve in line with industry and sectoral needs.

Fiona McLeod: I acknowledge your point that the system for appointing, verifying and monitoring verifiers cannot be set out in the bill and that it should come through guidelines. However, can you point out where the bill says that that will happen before any verifiers are appointed?

Lorimer Mackenzie: The bill says that ministers may appoint verifiers. We envisage following a model similar to the NHBC system in England and Wales, in which letters of appointment contain the conditions of that appointment. The bill does not contain a requirement to that effect, but it is our intention to use the letters of appointment in that way.

Paul Stollard: I think that Fiona McLeod might find what she is looking for in the first paragraph of schedule 2, which states:

"A verifier or certifier is appointed for such period, and holds the appointment on such terms, as the appointment may specify."

That gives us the power to set the terms of the appointment, which will include audits, reports to the central body and sampling their projects to ensure that they have been carried out properly.

Fiona McLeod: So such terms would be defined by guidance.

Paul Stollard: Indeed.

Fiona McLeod: Would that guidance come before Parliament?

Lorimer Mackenzie: It would not come before Parliament.

Hugh Henry: That would be for ministers to deal with.

Lorimer Mackenzie: The industry would be consulted on the guidance, but the guidance would not come before Parliament. However, Parliament could be consulted, for example if, for example, a couple of organisations were competing to undertake a particular verifying role. The terms under which an organisation could be appointed might depend on its expertise in a particular environment. Specialised determinants involving technical detail could be involved and Parliament might be asked to decide which organisation to use.

John Scott: The Construction Industry Council is responsible for the appointment of approved inspectors in England and Wales. Do you envisage a similar role eventually for the Scottish Construction Licensing Executive in relation to approved certifiers of design or construction?

Paul Stollard: The Scottish Construction Licensing Executive is a new organisation, which was set up earlier this year. We are observers on its board and are watching its development with great interest. The Scottish Construction Licensing Executive could usefully be involved in the approval of certifiers, but not verifiers, of construction for particular trades. As I understand it, the Construction Licensing Executive includes plumbers, electricians, decorators, builders and a couple of smaller groups. We could have discussions or an agreement with the Construction Licensing Executive to build on that, depending on how it evolves over the next two years.

John Scott: Thank you. Returning to the issue of fire, several witnesses, such as the Fire Protection Association, have asked that a duty be imposed on verifiers to consult the relevant fire authority when an application for a warrant includes an innovative design that does not follow technical guidance. How do you feel about that proposal?

Paul Stollard: We had lengthy discussions on those issues with the Fire Brigades Union and the Chief and Assistant Chief Fire Officers Association—CACFOA. Those organisations are content that we set up procedural mechanisms for consulting them on projects about which they might have concerns. We would allow them to determine what those projects would be because the vast majority of warrant applications are for things such as garden sheds, kitchen extensions and minor jobs in which the FBU and CACFOA have no interest.

We are keen, however, to enshrine in a procedural guide existing good practice in liaison between building control authorities and the eight fire authorities. Both the FBU and CACFOA said that they were content with that move forward. To encapsulate guidance as a statutory requirement would raise difficulties because of the large number of warrants and the need to enlist other statutory consultees on specific areas. For example, SEPA would be involved in drainage issues.

John Scott: Thank you. That was helpful. The committee has heard concerns that extensive use of self-certification of design and construction could, because of a fragmentation of responsibility, increase the risk of structural failure in major buildings. What is being done to ensure that such risks are minimised?

Hugh Henry: The provisions in the bill allow in theory for a complete building design to be self-certified by one designer, although we anticipate that that will not be permitted in the foreseeable future. Designers would have to demonstrate competence over a range of specific disciplines. We expect that individual designers would normally only be permitted to certify specific parts of a design, like structural engineers in the present system. However, auditing procedures would certainly be needed to enable problems to be

identified and dealt with in ways for which the current system does not allow. That could allow wider use of certification. Perhaps Paul Stollard or Lorimer Mackenzie could add to that.

Paul Stollard: On structural failure, which has been raised with the committee, we do not use the term self-certification, we talk about certification by approved certifiers. The key in that phrase is "approved": there is no suggestion that someone would be allowed to certify just because they are a member of the Institution of Structural Engineers, for example. A separate register of people who showed competence in particular types of structures would have to be set up. Those people would be allowed to certify those structures, but their work would be audited. They would not merely be appointed at the beginning of their working life and approved for the rest of it; rather, their work would be audited and sampled regularly. There would still be a third-party verification, but it would be done by the central body and would be a sampling process.

John Scott: We are concerned about fragmentation of projects. Although individual competent professionals would certify a project, we are worried about the holistic overview. Although each bit of the building might be adequately designed, the whole building might not work. That is our fear.

Hugh Henry: The reality is that buildings are already designed by a variety of professions and subcontracted specialists. We acknowledge that reality and, by introducing requirements for certifiers to take account of how their work fits into a building, we can address the problems that you mention. Verifiers will need to have an overview, as at present. The new system could be developed to cope with new ways of designing and constructing buildings.

Paul Stollard: I stress that we consider the verifier's role to be key. The verifier's job is to ensure that all the certificates—all the different parts of the building—are put together to make a whole. If a structural engineer has designed part of a building, how that part is assembled on site is equally important. The engineer might have a design certificate, but the verifier will need to ensure that, when that part of the building is built on site, it is built in accordance with that design certificate.

The verifier's role remains paramount. The verifier's job is to tie everything together. Inevitably, because of the way in which buildings are procured now, lots of different skills will be involved, but we want to retain the verifier as the key defender of the public interest.

Des McNulty: I am not sure that that will necessarily work. We have complicated buildings now, and a lot of larger building organisations are, in effect, management companies rather than construction companies. The system that you are introducing will lead to fragmentation of responsibility between each professional group that is conducting its part of construction at the time that the building or group of buildings is being built. Verification will also be done at that level. The question of whether an overarching requirement exists for building safety to be inspected holistically is unresolved.

You propose a significant change to the system. The real issue is the safeguarding of the integration and the accountability of the system. I do not deny that a professional auditing process will happen through the verifiers' activity, but how will the relationships between one verifier and another, and among those whose work is being verified, be managed?

Paul Stollard: There will be one only verifier for a job, so that verifier will cover the job and have the holistic view.

Structural engineers already certify structures within certain limits. In fact, if anything we are constraining that, because instead of allowing any structural engineer to sign off, which is the case at the moment, we are seeking to allow only those who are approved certifiers to sign off. That will be a constraint.

The verifier may well take professional advice—many local authorities already do that. They may bring in their own structural engineers or they may bring in consultant engineers to check schemes. We expect that to continue. Verifiers may well have to take specialist advice if they do not have expertise in-house, but there will not be more than one verifier on a job.

Des McNulty: I do not think that that was entirely clear to the professional bodies that we consulted and which spoke to us on this issue a couple of weeks ago. Perhaps that needs to be clarified.

Hugh Henry: We will go back and talk to some of the bodies to ensure that we allay any concerns.

12:15

John Scott: We are getting conflicting evidence. Apparently, you are totally happy with what is being proposed, but others are not. We have to decide on that matter and write a report, so we need the issue to be cleared up. We would welcome that.

Hugh Henry: We will go back and talk to those bodies that have concerns, but there has been consultation. We have already sought to address some of the concerns with many of those who are

engaged in the process. Perhaps Paul Stollard could give more details.

Paul Stollard: The committee heard evidence from the architects and from the RICS, who broadly support the principle. The Institute of Civil Engineers expressed some concerns. We have had discussions with the chief executive of the Institution of Structural Engineers, which has been supportive of the ideas that we propose. I do not think that the Institution of Structural Engineers has given written evidence to the committee. It is that body that would be most likely to be involved in the matter.

The Convener: It would help the committee if you could respond to some of those points in writing.

Hugh Henry: We can spell out for the committee whom we have spoken to and the views of the individual bodies. The committee could then decide on balance which approach it believed to be the most appropriate.

The Convener: I will ask the clerks to the committee to liaise with your department to get that information. Obviously, we will need it pretty speedily, given our timetable for consideration of the bill.

Hugh Henry: We will ensure that that happens.

Des McNulty: It might be useful if the officials read the *Official Report* of our discussions with the people to whom I referred, because we had a fairly extensive debate on the issues and it would be useful to clear up the points.

Fiona McLeod: Another issue that seems to have caused a bit of confusion—given what the Executive is saying and what people think will actually happen—is who applies for a building warrant. Currently, agents can apply for building warrants, but the surveyors thought that from now on it would be the owner of the building, and only the owner of the building, who could do that. Last week, the building control officers were taken aback by that. They seemed to think that they could continue with the system in which an agent can act on behalf of an owner. Do we need to define what the word "owner" means, so that it has a wider definition, or do you intend it to mean simply the owner of a building?

Hugh Henry: We have taken steps to address that issue.

Lorimer Mackenzie: We are aware of the concerns about owners and tenants who have responsibility under leases to undertake work. We are looking at how we can refine the definition of owner to address the concerns. We use the example of Ocean Terminal, the owner of which might be an organisation that does not have an interest in precisely what the shops in Ocean Terminal are. The shops that occupy the units have the responsibility for fitting them out. We want to examine the definition of owner to ensure that it covers those who actually have responsibility for the work. That is the commonsense approach.

There might have been some misunderstanding with the use of the word "agent". At the moment, builders can apply for building warrants by saying that they are the builder doing the work, although somebody else might own the house. Builders do not apply as agents; they apply because the current legislation allows them to do so. Agents are just people who represent the owner; they do not take on any responsibility. They make the application, but the owner is still responsible and signs the forms. We were at the committee evidence-taking session when COSLA was asked whether agents could sign. The chief building control officers said that of course agents could sign. Under general law, agents can sign.

The question that the RICS and others were addressing was whether a builder could have a locus to say, "I have a professional interest in this building" and therefore apply for a warrant. The answer that we are trying to give is no, because, even under the current legislation, the owner has the responsibility. We are trying to make it clear at the point of application that it is the owner who takes that responsibility. That raises various questions about when people become the owners of buildings. Agents will continue to be able to apply—as they can at the moment—but we want to make it clear that the owner is the person who takes the ultimate responsibility for the work under the current legislation.

Fiona McLeod: How will you clarify the definition of an owner? Will you make that clear in the schedules?

Lorimer Mackenzie: No. We are considering lodging an amendment at stage 2. We are talking to all the organisations that have given evidence to the committee, because we have had concerns about the issue for a while.

Hugh Henry: If the committee has any specific worries, we would welcome its thoughts on the matter. We will talk to a range of people about it.

John Scott: What is wrong with the existing system?

Paul Stollard: In trying to improve the system, our aim is to ensure that owners accept the liability for the work that is done. We want to make it clear that the responsibility for the building work and the maintenance afterwards lies with the owner. Concern was expressed that, if a builder applied for a warrant and departed, having finished the job, the owner might say, "This is not my responsibility. The builder did the work: you will

have to pursue him." The owner already has the responsibility, under the 1959 act, but there is a lack of clarity because of builders' applying for warrants. We are happy for owners' agents to apply, but the owner will still carry the responsibility.

Fiona McLeod: The bill does not specify any penalty for submitting a late application for a building warrant. Should it? Is it your intention that such a penalty should exist? Do you envisage another way of achieving it?

Hugh Henry: It would be a criminal offence not to apply for a warrant.

Paul Stollard: It is an offence to undertake work without a warrant: that is retained in the bill. However, to enable people to regularise situations either by default or because they have become aware of something afterwards, we are now allowing late applications. We would probably penalise late applications when it comes to considering the fees that are charged for warrant applications. A late application would clearly involve more work for the verifier—perhaps in trying to establish what work was done before and how it was done—and therefore, when we present the scale of fees, there may be a higher fee for a late application. People would be deterred from deliberately applying late because they would pay more.

Robin Harper: Can you give an assurance that building standards registers will be available in such formats and at such a cost that they will be fully accessible to all?

Hugh Henry: We are considering carefully how we might do that. There is, for instance, an issue about whether the information should be available in Braille. However, there may be technical problems with doing that, regarding some of the plans and designs. We are considering a range of options. We want to make the information widely accessible and in forms that are appropriate for people with specific needs, but that will depend on the cost of preparation. In a sense, the costs are contained in the system. We would not want to prepare information in a format that excluded people. We are aware of the problem and we will come back to the issue.

Robin Harper: Why does the bill not include a definition of what constitutes a defective or dangerous building?

Hugh Henry: As I said, there are differences in the definitions of dangerous buildings and defective buildings. Buildings that are dangerous require action. We believe that the provisions in the bill will strengthen the powers of local authorities to identify dangerous buildings and maintain their powers to enforce repairs where they are necessary.

When the committee asked the RICS about this issue, the RICS replied that it favours having a definition of a defective building but that it would not want to have to define it. The problem for everyone is how to define a defective building.

The present system is not perfect, but it has served us relatively well and we have concluded that the best way forward is to continue to allow the interpretation that reflects the prevailing views. If there is a serious enough argument about the definition, the courts can help to define it. If there were an easy answer, we would certainly provide it, but, unfortunately, there is no easy answer.

Maureen Macmillan: What will all the fees and charges cost? Local authority representatives expressed concern that fees would have to be set at a level that would cover all the costs associated with running the building control system. Will you guarantee that the establishment of a national scale of fees will not have an adverse effect on local government finances?

Hugh Henry: Yes, we believe that we can. We know that COSLA and the building control officers have given evidence to the committee and that they have identified their new duties. We know that COSLA welcomes the Executive's review of fees and charges and it is clear that we need to discuss that with COSLA before implementation. There will always be concerns when new duties are imposed and when there is new work, but it is right to allow local authorities to recover costs. The more information that we get from local authorities as part of our review, the better the situation will be when we prepare our final proposals.

We are engaged in consultation with COSLA, but in setting the fees the aim remains the same as that under the present system, which is for local authorities to recover the costs of implementing the system. We have a research contract to examine costs and fees in the provision of building standards services in Scotland, which will help us in our determination to set fees once the act comes into force. We are conducting research and we are engaged in consultation with COSLA, so that will inform the final outcome.

Maureen Macmillan: So your intention is that the fees will have a nil effect on local government finances.

Hugh Henry: Yes. The scale will have a nil effect on local government finances. However, there is a separate question about the level of the fees that are being charged.

Maureen Macmillan: Yes.

Nora Radcliffe: The central building standards body will be an important part of the structure. Why is that body's remit and membership not set out in the bill?

Hugh Henry: Part of ministers' responsibility is to consider some of the administrative issues to do with central standards and structures. We think that that should address the issues. I do not know whether any comments on that were made as part of the consultation.

Lorimer Mackenzie: The model of the agency or unit would be responsible to ministers and therefore part of the Scottish Executive. There is no constitutional difference between the model and the ministers, which is why there is no need for the membership to be stipulated in the bill. The consultations that were done last year and in March sought views on the establishment of a body because it was seen as an integral part of the system, although we made it clear to the consultees that its membership and remit would not feature in the bill. We got broad support for a body. The question that was put in the consultation in March referred to an agency, which people broadly supported. A decision is still to be made about the exact nature of the body and how it will meet the needs of the ministerial role. It will not be constitutionally separate from ministers. Ministers will always remain accountable for what it delivers.

The Convener: That brings us to the end of our questions for the minister and his officials, whom I thank for their evidence. We can now move towards preparing our stage 1 report. I bring the public part of the meeting to a close, as we will take the remaining agenda item in private. I thank the minister and his officials and the press and public for their attendance and interest in the meeting.

12:30

Meeting continued in private until 13:10.

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