

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 20 November 2002
(Morning)

Session 1

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TRANSPORT AND THE ENVIRONMENT COMMITTEE

32nd 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)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Rosalind Wheeler

LOCATION

Committee Room 1

Scottish Parliament

Transport and the Environment Committee

Wednesday 20 November 2002

(Morning)

[THE CONVENER opened the meeting at 09:35]

Interests

The Convener (Bristow Muldoon): Welcome to the 32nd meeting in 2002 of the Transport and the Environment Committee. Apologies have been received from Angus MacKay, and I have been advised that Helen Eadie is attending in his place. Welcome to the meeting, Helen. Have you any relevant interests to declare?

Helen Eadie (Dunfermline East) (Lab): Nothing in addition to those that are contained in the members' register of interests, which are membership of the Co-operative Party and the Fabian Society and trade union membership of the GMB.

The Convener: Thank you. Will you confirm that you are here as a substitute for Angus MacKay?

Helen Eadie: I am here as a substitute member.

Item in Private

The Convener: It is proposed that we deal with item 5, which is consideration of our forward work programme, in private. Is that agreed?

Members indicated agreement.

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

The Convener: I welcome back to the committee the Deputy Minister for Environment and Rural Development, Allan Wilson and several officials from the Scottish Executive.

Members should have with them the relevant documentation, which includes the revised marshalled list of amendments, the groupings for amendments and a copy of the bill.

Section 1—General purpose of Part 1

The Convener: Amendment 108, in the name of Nora Radcliffe, is in a group on its own.

Nora Radcliffe (Gordon) (LD): In a sense, we are starting where we left off. At the end of our last meeting, I argued the case for the establishment of a benchmark against which the effectiveness of the bill's provisions could be measured and suggested that the date of royal assent would be suitable. After debate, I accepted that that was not suitable and I have lodged a further amendment suggesting that the date on which characterisation of each ecosystem is complete would be a sensible benchmark for measuring the effects of actions taken under the bill when it becomes an act. All the relevant arguments were made at last week's meeting.

I move amendment 108.

The Deputy Minister for Environment and Rural Development (Allan Wilson): There is an element of groundhog day to this. I reassure Nora Radcliffe that preventing the deterioration of our water bodies is a key part of the bill, and that the Scottish Environment Protection Agency employs the principle of no deterioration in its work. That is part of the culture of environment protection in Scotland.

Although the wording has changed since last week, the amendment is potentially damaging and many of my comments from last week still apply. The amendment would include in the bill a date from which the objective of no deterioration would kick in. Whereas last week's amendment 23 provided that the date should be the same as the date of royal assent, amendment 108 provides for the date to be at the end of the characterisation process for each body of water covered under section 5. As members know, section 5 requires characterisation to be carried out by 22 December 2004. For that reason, I believe that amendment 108 is unhelpful. It would set Scotland apart from the rest of our European partners.

As I said last week, the water framework directive does not set a specific date from which a status of no deterioration becomes effective. I

believe firmly that doing things in isolation from the rest of Europe would not be helpful. The same argument would apply to whatever date was proposed by an amendment. Any Scottish benchmark that is set separately from the rest of Europe risks putting our water users at a disadvantage to their competitors elsewhere in the European Union. At stage 1, in response to questions from Alasdair Morgan and others, I gave assurances that I would not put Scottish business, industry and commerce at a competitive disadvantage. I intend to adhere to that principle.

Let me cover in more detail why 22 December 2004 would not be a sensible date at which to draw a line in the sand in this regard, as Nora Radcliffe proposes. Characterisation will improve considerably our knowledge about the condition of the water environment throughout Scotland. That is not the end of the process, however—in fact, it is not even the beginning of the end. As I said last week, the results of the characterisation will be subject to review and updating. In particular, the enhanced monitoring regime that we provide for under section 8, to which we will come shortly, will provide vital further information about all bodies of water, particularly those that are identified as being at risk during the characterisation process, and those are the ones about which Nora Radcliffe and other committee members will be most concerned. Members will be aware that the water framework directive requires the new monitoring regimes to be in place by December 2006.

The 2004 date fails to take into account what is known as the intercalibration of biological monitoring results, as provided for under paragraph 1.4 of annexe 5 to the water framework directive. That process is designed to obviate the question of competitive disadvantage and to ensure a level playing field across Europe in terms of agreed environmental objectives. The process should ensure that good ecological status in one part of Europe is of an equivalent standard to what applies in the rest of Europe. Technically, that is not an easy job, as members will understand, but it is a very important job if we are to ensure a level competitive playing field.

That process will start next year, with the provisional identification of reference sites. It will not be complete until halfway through 2006, two years after Nora Radcliffe's prospective date for the conclusion of the internal characterisation process. On that basis, amendment 108 would set a premature date. The Commission has, in any event, agreed to produce guidance on the date on which the no deterioration obligation takes effect and it would be premature for us to pre-empt that guidance from the Commission. For those reasons, we ask Nora Radcliffe to withdraw amendment 108.

Nora Radcliffe: With due respect, I refute some of the minister's arguments. The whole point about the water directive was that it gave member states flexibility. That way of doing things is an important part of the way in which the directive was laid down, and it marked a new departure for Europe. Flexibility means that things can be different in different member states. As Allan Wilson said, a line will be drawn in the sand, although I do not accept the argument that competitiveness will be affected. However, if the Commission is setting a date that will draw a line in the sand, it makes sense to abide by that and for me to withdraw amendment 108.

Amendment 108, by agreement, withdrawn.

Section 1 agreed to.

Section 2—The general duties

The Convener: Amendment 24, in the name of Des McNulty, is grouped with amendments 56, 84, 27, 30 and 57.

09:45

Des McNulty (Clydebank and Milngavie) (Lab): I spoke on issues relating to amendment 24 last week, so in recognition that we do not want to spend a lot of time in groundhog day, I will not repeat every point that I made.

The objective is to gear the bill more explicitly towards the idea of sustainability, which embraces environmental as well as social and economic factors. The general duties of the bill should reflect those factors and there should be a duty on ministers, SEPA and the relevant responsible authorities to ensure sustainable use and management of the water environment.

The text of amendment 24 draws on the wording that is used with respect to Scottish Water under section 51 of the Water Industry (Scotland) Act 2002. It is appropriate that something similar should appear in the Water Environment and Water Services (Scotland) Bill. Last time, the minister made a positive comment about how sustainability could be incorporated and perhaps we could deal with amendment 24 in that context.

Amendment 56 is a probing amendment, which is geared towards placing a stronger requirement on agencies and individuals within the Scottish Administration to deliver the goals of the water framework directive. On a practical level, strengthening the provisions of section 2 should lead to better joined-up thinking across Scottish Executive departments and result in better implementation of the legislation. I am pushing the minister to go one step further than the bill does.

Amendment 57 highlights the role of wetlands in the water environment. In reply to a question on

25 September, the Minister for Environment and Rural Development assured us:

"We recognise that wetlands play a protecting role in the ecology of the water environment and that the conditions of our wetlands in Scotland vary according to the aquatic ecosystems. We are not ignoring wetlands and we do not intend to exclude them from the scope of the bill; I acknowledge that many people have highlighted their importance."—[*Official Report, Transport and the Environment Committee*, 25 September 2002; c 3525.]

The minister believes that:

"The register of protected areas will enable us to include specific areas such as nitrate vulnerable zones or areas designated under the habitats or wild birds directives." — [Official Report, *Transport and the Environment Committee*, 25 September 2002; c 3526]

However, some witnesses to the committee argued strongly that the provision in the bill should be strengthened to ensure that wetlands are specifically recognised. Accordingly, natural systems, including wetlands, would be better able to facilitate restoration enhancement of water bodies as set out in the water framework directive. Article 1(a) of the water framework directive recognises wetlands and amendment 57 suggests that that should be clearly incorporated in the bill.

The committee's stage 1 report states:

"The Committee has taken evidence on - and some of its members have seen for themselves - the importance that natural wetlands systems can have in filtering pollution and controlling flooding. Some witnesses have called for the Bill to explicitly state the importance that should be given to wetlands in meeting these objectives. The Committee agrees with this position".

Amendment 57 seeks to put in place an appropriate provision that implements the intent of the water framework directive and is in line with the committee's thinking on the matter.

I move amendment 24.

The Convener: Fiona McLeod has not yet arrived, so I invite Bruce Crawford to speak on amendment 84.

Bruce Crawford (Mid Scotland and Fife) (SNP): Fiona's train has been held up. I shall speak on her behalf.

Des McNulty said that amendment 56 was a probing amendment to see whether the minister would be prepared to strengthen what section 2(5) is seeking to achieve. Amendment 84 specifically tries to achieve that strengthening, in that it seeks to remove the words

"have regard to the desirability of protecting"

and to insert "further the protection of". The wording that is proposed in amendment 84 is stronger and a lot more specific than the words that are currently in the bill. It is quite clear what Fiona McLeod is seeking to achieve, so I do not need to say any more at this stage.

Maureen Macmillan (Highlands and Islands)

(Lab): The key words in amendment 27 are "active involvement". I concede that the bill includes a provision on consultation, which will bind SEPA to take account of the views of various named persons. However, there is some scepticism abroad, which was also shown in the committee, that such consultation may be one-sided and that the views of those persons may not have much impact on decisions. I am sure that that was not the intention.

A commitment to the active involvement of those persons should be specified in the bill. That should not be a problem, given that paragraph 13 of the policy memorandum states:

"The system will be open, transparent and participative."

The principle of active involvement is also contained in the water framework directive, and we should not be shy about promoting it on the face of the bill.

Many organisations and businesses have direct experience of working in or depending on the water environment. Businesses in areas such as angling, fish farming or tourism depend on high-quality environmental standards in rivers and coastal waters. It is important that they have significant input to decisions affecting the water environment and do not feel in any way that they are being overlooked or, indeed, dictated to. I look forward to the minister's comments on that.

Robin Harper (Lothians) (Green): With amendment 30, I want to strengthen section 2(5) of the bill, which states:

"Without prejudice to subsections (1) to (4), the Scottish Ministers and every public body and office-holder must, in exercising any functions, have regard to the desirability of protecting the water environment."

The phrase "have regard to" is relatively weak, if not almost entirely meaningless. The bill is about the desirability of protecting the water environment. I want to replace that wording with something much stronger and more meaningful.

As currently drafted, the bill will not ensure that all Executive departments and decision makers will integrate the requirements of the directive into their work. The directive applies in particular to land uses outwith the development planning system, such as farming and forestry, which have a major impact on Scotland's water environment. If the departments that oversee those land uses do not fully embrace the requirements of the directive in setting and implementing land use policy over bureaucracy, confusion and waste of taxpayers' money will result. A general duty is required to facilitate that process.

The committee's stage 1 report stated:

"Other witnesses highlighted the need for other Executive

policies, for instance in respect of agriculture, aquaculture and forestry plus developing European strategies on marine and soil policy to be developed in an integrated way in order that WFD objectives will not be undermined. The Committee recommends that the Executive pays close attention to this evidence."

I want the subsection to read:

"The Scottish Ministers, SEPA and the responsible authorities must, in exercising their functions under the relevant enactments, ensure that an integrated approach is adopted."

Nora Radcliffe: I support Des McNulty's amendment 24, because the three-legged stool approach to sustainable development—that there are three elements that should each be given equal weight—is quite important. That approach gives a degree of stability, whereas making any one element more or less important skews the entire approach to sustainable development. It is valuable to give the three elements equal weight. It is a good amendment.

I agree totally with Maureen Macmillan that active involvement is such an important part of the entire approach to the directive that it is well worth stating it, in words of however many syllables.

On Robin Harper's amendment 30, it is worth saying explicitly that we want an integrated approach.

I have sympathy with Fiona McLeod's amendment 84, but I am having difficulty in getting my head around the semantics of it. In the context, would "further the protection of" mean that everything that the Scottish ministers did must further the protection of the water environment? I do not think that the amendment would have the effect that is intended.

Allan Wilson: Many issues have been raised and I will try to work through them in a way that ensures that I take people with me.

Amendment 24 asks us to insert a new paragraph in section 2(4). Perhaps at this point it would be helpful to consider the terms of section 2 in more detail, particularly in the light of the remarks of Robin Harper, whose fears about the lack of integration of departments' functions, strategies and policies I will attempt to allay.

Importantly, section 2(1) requires Scottish ministers and SEPA to exercise their functions under part 1 of the bill and their functions under any other enactments specified by them in an order made under that section so as to ensure compliance with the requirements of the directive. That means that the strategies and policies relating to agriculture, aquaculture, forestry, climate change—which was mentioned last week—and so on all have to be integrated by SEPA and the Scottish Executive with the requirements of the directive.

Section 2(2) requires the responsible authorities to exercise any of their designated functions in relation to the water environment that are specified in an order made by the Scottish ministers under that section so as to secure compliance with the requirements of the directive. That would provide for the integration of policy and strategy.

Section 2(4) ensures that the Scottish Executive, SEPA and responsible authorities must have regard to the social and economic impact of the exercise of those functions. Again, that is an important provision that we wanted to be included in the bill as we are dealing with an environmental measure and the other two pillars of the three-pillar sustainable development strategy require us to have regard to the social and economic impact of the directive.

Amendment 24 seeks to replace that qualification by imposing a wider duty on the bodies. It would also require them to act in the way best calculated to contribute to the achievement of sustainable development. I am supportive of the policy intention behind the amendment, but I am not supportive of the amendment's drafting. The revised amendment 24 talks of ecological rather than environmental impacts. I understand the reasons for the change, but the change does not, in itself, address my concerns with the drafting of the amendment, which reads:

"The Scottish Ministers, SEPA and the responsible authorities must, in exercising those functions, act in the way best calculated to contribute to the achievement of sustainable development, having regard to the social, ecological and economic impact of such exercise of their functions."

It is not immediately clear what that would mean in practice. We need to do a bit of thinking about how the amendment relates to sections 2(1) and 2(2). Clearly, the new duty, which concerns the achievement of sustainable development, would need to be tied to the primary duty under sections 2(1) and 2(2); I therefore ask Des McNulty to withdraw his amendment. Because I, too, wish reference to the achievement of sustainable development to be incorporated in the bill, I will consider the matter further and produce an amendment at stage 3 that will better serve our aims. I would expect that amendment to result in a new subsection, as our amendment 109 will do in relation to flooding.

The proposed text in amendment 27 states:

"The Scottish Ministers and SEPA, in exercising their functions under the relevant enactments, shall encourage the active involvement of such persons as appear to them to have an interest in the protection of the water environment."

Again, I support in general the policy intent behind amendment 27, but its wording might create difficulties.

10:00

The relevant enactments to which amendment 27 refers consist of part 1 of the bill and other enactments that ministers may by order specify. As members will know, the bill contains extensive provision for encouraging public involvement in the river basin management plan process. For example, section 11(3) stipulates:

“Not less than one year before the beginning of the period to which a river basin management plan is to relate, SEPA must publish a draft of the plan.”

Section 11(5) makes it clear that

“SEPA must—

- (a) publicise the opportunity to make representations about the statement, summary or draft plan.”

Section 11(6) contains an extensive list of those whom SEPA must consult on draft plans and of whose views it must take account.

In terms of the general principles of openness, consultation and transparency, section 12(2) makes it clear that when a river basin management plan is submitted for approval it

“must be accompanied by a statement”

of the steps that SEPA has taken to encourage participation in the process.

On SEPA's functions under other enactments specified in an order under section 2, I do not believe that it would be appropriate or desirable to place a duty on SEPA and ministers to encourage active involvement in all cases when exercising their functions, which is what amendment 27 proposes. The relevant enactments might contain such provision, so amendment 27 would cause duplication. In other instances, public involvement would not be directly relevant to SEPA's specific functions. For example, confidentiality issues could be involved in the licensing process, abstraction, discharge consents or whatever. There is adequate provision in the bill to ensure transparent consultation with and the active involvement of the relevant people. However, we could discuss whether that process requires to be tightened up.

I believe that I have provided for what amendment 30 seeks in sections 2(1) and 2(2). I agree that integration of policy is important, but I am not convinced that it is practicable or desirable in all cases. However, I believe that the best way to ensure integrated policy making and implementation is to bring together all the relevant bodies. The river basin management plan process will do that.

Section 16 makes the provision, which amendment 30 seeks, for ministers to have a duty to

“have regard to the river basin management plan.”

This issue came up at last week's meeting. However, section 16, as members will see, states:

“Scottish Ministers and every public body and office-holder must ... have regard to the river basin management plan for that district as approved under section 13.”

Therefore, in addition to sections 1 and 2, which transpose the directive for all public bodies, including SEPA and the Executive, section 16 provides a duty to have regard to the river basin management plan in all areas of policy and strategy, which includes things such as agriculture, forestry, aquaculture and climate change.

Amendment 56 seeks to amend section 2(5), which requires Scottish ministers and every public body and office holder to have regard to the desirability of protecting the water environment when exercising any functions. That duty operates in addition to the duties that are specified under sections 2(1) and 2(2).

As we received amendment 56 at about half-past 6 last night, Michael Kellet and others were up till half-past 1 this morning considering the terms of the amendment. In my opinion, that is not the best way to make, or respond to, legislative change. I have quite a lot to say about amendment 56 because it deals with a very complex area of legislation, so I ask members to bear with me.

Principally, I believe that amendment 56 is unnecessary, but we also have technical concerns about the way in which it is drafted. The amendment would require Scottish ministers, SEPA and the responsible authorities to seek to further the protection of the water environment in exercising their functions under the “relevant enactments”, which are defined in section 2(8). That is in effect what sections 2(1) and 2(2) already do. We see no benefit in duplicating that wording in section 2(5).

As I have already explained, section 2(1) requires Scottish ministers and SEPA to exercise their functions under the relevant enactments—those enactments being part 1 of the bill and any other enactments specified by Scottish ministers—to secure compliance with the requirements of the directive. That is an important point that Robin Harper made. As we all know, the directive is about the protection of the water environment. Section 1 of the bill makes it clear that the purpose of part 1 is to make provision for or in connection with protection of the water environment.

Section 2(2) of the bill requires that the responsible authorities must exercise their designated functions in relation to the water environment, as specified in an order by the Scottish ministers under that section, to secure compliance with the requirements of the directive. That is an important point. It is entirely appropriate

that we specify for the responsible authorities the particular functions that relate to the water environment that must be exercised to secure compliance with the requirements of the directive. In that sense, we have already made provision for everything that was said about the policy intent. In a technical sense, I am not convinced that the reference in amendment 56 to the relevant enactments in relation to the responsible authorities would work.

If amendment 56 were accepted, the second leg of the amended section 2(5) would reiterate the existing duty to have regard to the desirability of protecting the water environment. However, that duty would be placed only on other public bodies and office holders that were not covered by the first leg of the amended section 2(5). It is not clear how those other public bodies and office holders are to be identified and distinguished from those that already fall within the definition of "responsible authorities" in section 2(8). In practice, then, amendment 56 would be unworkable.

Probably the most succinct way of putting that is to say that, as presently drafted, section 2(5) requires Scottish ministers and every public body and office holder to have regard to the desirability of protecting the water environment when exercising any function. As I stated, if we wished to impose a higher duty on such bodies or office holders—which may be the intention of Des McNulty, who lodged amendment 56—we could specify particular functions in an order under section 2 that would then have to be exercised so as to secure compliance with the directive. That seems to me to be a preferable approach. Indeed, I refer the committee to last week's discussion about whether to include the terms "agricultural activities", "mining activities" and "industrial activities". We are already able to make provision for what is being sought; indeed, in the context that I have just mentioned, we will make such provision.

Amendment 56 refers to responsible authorities and other public bodies exercising their functions under the relevant enactments, whereas the power to specify relevant enactments by order under section 2 is relevant only to the Scottish ministers and SEPA. We have referred to the responsible authorities' designated functions because it is appropriate to specify their functions that are relevant to the protection of the water environment. Many public bodies have functions that are not relevant to the protection of the water environment. Amendment 56 blurs that distinction. The arguments are fairly complex, but the policy intent is covered in the existing provision.

Amendment 57 would insert a subsection after section 2(5) to require Scottish ministers, responsible authorities and office holders, in

exercising their functions under the relevant enactments, to

"protect, enhance and restore the water environment, including wetlands and natural systems, to achieve the environmental objectives set out in each river basin management plan and to enhance biodiversity."

That would be an interesting addition, but the amendment's drafting leads to problems. The same point as we just explored in some detail arises about the relevant enactments and the inapplicability of that phrase to responsible authorities. As I hope that I explained, the definition of responsible authorities includes such office holders as the Scottish ministers may specify by order under section 2. Who are the other office holders to which amendment 57 refers? How are they to be identified?

Notwithstanding those problems, the amendment would place a duty on Scottish ministers, responsible authorities and office holders to protect, enhance and restore the water environment. In general, the directive and the bill, which transposes the directive, are intended to enhance and improve the water environment. That function is abundantly clear from sections 1 and 9, which more appropriately address the delivery of the environmental objectives to which Des McNulty refers.

A further difficulty with amendment 57 is its inclusion of wetlands in the definition of the water environment. I suspect that we will discuss that later in considerably more detail. When we deal with the group of amendments on definitions of the water environment, we will discuss the good reasons why wetlands have not been included in the bill's definition of the water environment. Water covers only 2 per cent of Scotland's surface area. Wetlands cover almost 9 per cent of Scotland's landmass and include extensive designation of blanket bog and other peat-land vegetation, undifferentiated salt marshes, maritime grasslands and heaths, for example. For anybody who is interested in those figures, I have a statistical breakdown. Including wetlands in the definition would be a clear extension of the bill.

In considering the bill, the committee and other committees were concerned to constrain and identify properly the costs that were associated with its implementation. Amendment 57 would place on the Scottish ministers, responsible authorities and SEPA the duty to enhance, protect and restore wetlands. At a stroke, that would expand the bill's coverage fourfold from 2 per cent to more than 8.7 per cent of Scotland's landmass. That would constitute a massive duplication of effort. Wetlands are already protected by several existing designations, including those as sites of special scientific interest, special areas of conservation and Natura 2000 sites.

Among other things, the purpose of the water framework directive is to establish a framework for the protection of waters. As members know, wetlands are directly dependent upon those waters—indeed, Des McNulty referred to that in his introductory remarks to amendment 57. We make specific and deliberate provision for those wetlands in the general purposes of section 1(2)(a) of the bill. That section sets out provisions for the protection of the water environment. So that there can be no dubiety about them, I will read out the subsection for the record:

“preventing further deterioration of, and protecting and enhancing, the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on those aquatic ecosystems”.

Quite apart from the difficulty with the drafting of amendment 57 that I highlighted earlier, the amendment goes much further than is required under the water framework directive. Undoubtedly, the provisions of amendment 57 constitute gold plating. We await draft guidance from the European Union on the definition of wetlands. As is the position with regard to other member states, the guidelines may be non-binding, but we will certainly take account of the EU guidance when we receive it.

10:15

I could say a lot more about wetlands, but I will not do so at this juncture. We will come to discuss them when we debate the series of amendments that have been lodged by Nora Radcliffe and Maureen Macmillan among others. Suffice to say at this juncture that the inclusion of the word “wetlands” seeks to expand the provisions of the bill fourfold in terms of the landmass that it covers.

I will move on to amendment 84, which Bruce Crawford moved on behalf of Fiona McLeod, who has just arrived—I am sorry to put you on the spot, Fiona. Amendment 84 seeks to amend section 2(5) of the bill, which places a duty on Scottish ministers, every public body and office holder to have regard to the desirability of protecting the water environment in the exercise of their functions. Amendment 84 would place a stronger duty on them, requiring them to “further the protection” of the water environment. In practice, that would mean that every public body would be required to further protect the water environment.

Amendment 84 does not ameliorate the original concern that we had with amendment 26, which is that all public bodies and office holders would have to further the protection of the water environment. Amendment 84 differs from amendment 26 only in so far as it makes clear that public bodies and office holders must further the protection of the water environment when exercising any of their functions.

Let us be clear about what that would mean. It would mean that hospitals and other public bodies would be required to take action to fulfil that duty. I think we all agree that that does not make any sense in relation to the protection of the water environment. The primary purpose of hospitals is to heal the sick and of the police to prevent crime and apprehend criminals. The same arguments that were made last week in respect of amendment 26 apply equally to amendment 84. I ask Fiona McLeod not to press amendment 84. If she does, the Executive will have to oppose the amendment, which means that it will not be agreed to.

The Convener: I thank the minister for his comprehensive response. The group contains a number of amendments. Because of that, I allowed the minister the opportunity of responding in detail to all of them. It could be said that you were a bit conservative in your recognition of 8.7 per cent of Scotland being wetlands. After the summer that we have just had, some people might say that the whole of Scotland is a wetland.

I invite Des McNulty to respond and indicate whether he wishes to press or withdraw amendment 24.

Des McNulty: I take on board the commitments that the minister made, in particular his important commitment to promote a stage 3 amendment that would have the effect of incorporating into the bill a commitment to sustainable development. I hope that I will be consulted on the terms of that amendment before it is lodged.

Allan Wilson: Yes, I would be happy to do that.

Des McNulty: On the basis of the minister's commitment, I am content to seek the committee's agreement to withdraw amendment 24.

When I spoke to amendment 56, I indicated that it was a probing amendment. As the minister indicated, it was an attempt to place a higher duty on the Scottish Executive in relation to the protection of the water environment. The minister has recognised that higher duties need to be imposed through other mechanisms. On the basis that further amendments will be lodged to achieve that, either later in stage 2 or at stage 3, I am content not to move amendment 56.

Amendment 57 raises more difficult issues. I accept that incorporating wetlands in the bill would expand its scope significantly. However, to some extent that is the intention behind the amendment. To persuade me not to move amendment 57, the minister would have to provide us with details of both the cost and scope implications of the amendment. The minister may be prepared to consider the drafting issues that have been raised. However, the will of the committee is that wetlands should be recognised explicitly in the bill.

The minister referred to the provisions of section 1(2)(a), but those do not go anywhere in the bill as drafted. We want the importance of wetlands and scope of what we are trying to achieve to be recognised and advanced in the bill.

I am prepared to be persuaded that amendment 57, as drafted, may not be the best way of doing that. I am also prepared to be persuaded that the cost implications of the amendment may make it inappropriate. However, I am not content with the minister's suggestion that wetlands cannot be included in the bill because so much of Scotland would be affected. I want him to recognise that we must incorporate the protection of wetlands into the bill. His response on that point will influence the position that I take on amendment 57.

The Convener: Given that Des McNulty has put a question to the minister, I am prepared to allow the minister to respond to that.

Allan Wilson: As I indicated earlier, wetlands are included in the designation. Des McNulty asked a specific question about the potential costs of amendment 57. We are concerned not simply about extending duties and responsibilities to other areas, but about the duplication of effort that that would involve. As I have explained, other agencies have significant involvement in the protection of wetlands through designations of wetlands as sites of special scientific interest, special areas of conservation and special protection areas and other Natura 2000 designations.

Des McNulty is proposing that we give SEPA responsibility to set objectives for, characterise, monitor and review an additional 8.7 per cent of the total landmass of Scotland. Recently, we gave SEPA £2.5 million for this function. Amendment 57 would mean quadrupling the landmass for which SEPA is responsible. On a conservative estimate, we might expect that to entail an immediate quadrupling of the resources to which I have referred. I would be happy to come back to the committee with more detailed implications of extending the bill as proposed. No one should doubt that those would be other than considerable.

Des McNulty: I understand from considerations within the European Union that there is likely to be a revision of the water directive, which will explicitly expand the requirements in relation to wetlands. We could be in a position in which the limited recognition that the bill gives wetlands could be overtaken rapidly by EU requirements. Do you have any ideas how you would respond to that criticism? The point that I keep coming back to is how we can take wetlands issues a bit further in the bill. You have said that it is not appropriate to expand SEPA's responsibilities because of costs and competence issues.

The Convener: You can address that point to the minister, but I want to draw this discussion to a close, because we do not want a dialogue between the pair of you to continue endlessly.

Allan Wilson: Michael Kellet discussed precisely that at a European meeting either last week or two weeks ago. The relationship between the Executive and the EU as far as transposing the directive is concerned is obviously crucial. We have given ourselves a power in section 24 to amend the bill to comply with any subsequent direction from Europe.

In direct response to the point that Des McNulty raised, I can say that no one at European level is suggesting that all wetlands be protected under the directive in the same way that rivers, lochs and coastal waters are. That is not what we would expect to come out of the European Union. There might be an attempt to insert an additional protection in Scottish legislation, because there is no prospect of Europe incorporating it within a directive.

The Convener: I ask Des McNulty to complete his remarks briefly.

Des McNulty: I have completed them already.

The Convener: I understand that you indicated earlier that you wished to withdraw amendment 24. Is that correct?

Des McNulty: Yes.

Amendment 24, by agreement, withdrawn.

The Convener: Amendment 109, in the name of the minister, is grouped with amendments 85, 94, 95, 97, 129 and 107.

Allan Wilson: We come to a very important and extensive provision. I apologise in advance, because I am going to deal with all the amendments in the group in order to give a detailed response.

It is important to reflect briefly on the flooding that hit Elgin and the surrounding area since we discussed the issue last week. As most members will be aware, I visited the area on Monday. What I saw brought home to me again the terrible effects of flooding on those who are affected by it. The events in question were exceptional. The rainfall rate was 5mm per hour over a period of 48 hours, giving rise to the highest river flows ever recorded. I understand that one river gauge in the catchment measured a one in 250 year event.

The council had, with assistance from the Scottish Executive, done some work since the previous flood in 1997, but it is clear that that was not sufficient to deal with an event of this magnitude. I am aware that flood defence proposals are being prepared and the Executive has already provided financial support to start that

work. I encouraged the council to make speedy progress in submitting detailed proposals to us and I am encouraged by that. We have earmarked funds and have quadrupled the amount of money available for local authorities to bid for to provide flood defence mechanisms.

The events in Moray serve to underline the importance of the amendments that we are discussing today. I have to be clear: as I said last week, we are not relying on the bill alone to tackle flooding. I also said last week that we have established an ad hoc group of ministers to examine the problem. The group met last week to agree its remit, which is to consider current arrangements for addressing flood risk and how advice and support is provided to those at risk from, and affected by, flooding; and to provide advice to Cabinet on how those arrangements can be improved by the end of February 2003.

10:30

I also said that we are currently examining the workings of the Flood Prevention (Scotland) Act 1961. As a result, we are taking action on flooding on a number of fronts. It is important to bear in mind that the bill is only one of them. The Cabinet sub-committee will address issues that are beyond the bill's scope such as the campaign to raise flood awareness; the operation of the flood alert and flood warning system; local authorities' duties and responsibilities; provisions to comply with flood defence systems; the whole question of the emergency service response in the aftermath of flooding incidents such as those in Moray; the critical role of the co-ordination of those services; and, not least, insurance implications for householders and others. The sub-committee's holistic approach to flooding will address all those issues.

I said last week that we would consider how to make the link between flood management and river basin planning clearer in the bill. At that stage, I thought that we would not be able to do so before stage 3, but I am delighted to be in a position to move amendment 109. The amendment builds on amendment 25, which was lodged by Des McNulty and Sarah Boyack and which we discussed last week, and resolves the difficulties with that amendment's very wide application.

Amendment 109 would require the Scottish ministers, SEPA and responsible authorities to promote sustainable flood management where their functions under section 2 are relevant in that respect. I hope that the committee agrees that the amendment represents a significant step forward and complies with the policy intent behind amendment 25, which the committee supported. Members will recall that its drafting strongly

resembles the general duties on Scottish Water and the Scottish ministers in the Water Industry (Scotland) Act 2002.

Amendment 85 proposes a new section to deal with the assessment of flooding risk. As I have made clear, I am not antipathetic to the sentiments behind it—indeed, amendment 109 would provide that, as far as it is consistent with relevant enactments, the Scottish ministers, SEPA and other responsible authorities designated under the bill must promote sustainable flood management—but I genuinely believe that it is ill advised.

Subsection (1) of the new section proposed by amendment 85 would place on SEPA the duty to carry out an assessment of flood risk in each river basin district. That would constitute a major duplication of existing activity, as section 6A of the Flood Prevention (Scotland) Act 1961, which was inserted by section 3 of the Flood Prevention and Land Drainage (Scotland) Act 1997, already requires each local authority to publish a report that specifies measures that are judged necessary to prevent or mitigate the flooding of land in its area. Such reports must be published every two years and must specify the measures that have been taken since the previous report. The latest of those biennial reports were published in November 2001.

Local authorities are also under a duty to assess the condition of watercourses in their areas, for the purpose of assessing whether they are likely to flood. Subsection (1) would place that responsibility on SEPA in addition to and not in place of local authorities. That would duplicate local authorities' existing duties and is therefore wholly unnecessary.

We should also consider the role that SEPA already plays in flood prevention. As I said last week, SEPA already has the function, under section 25 of the Environment Act 1995, of assessing flood risk in Scotland. Indeed, I have a map that it produces with me, which shows its assessment of flood risks. Many people throughout Scotland—not least the insurance industry—already use its flood risk maps.

It is important to point out that the reference in amendment 85 to section 7 of the Flood Prevention and Land Drainage (Scotland) Act 1997 is erroneous. We believe that the reference should be to section 6A of the Flood Prevention (Scotland) Act 1961, to which I referred earlier. That is a reason in itself why the amendment should not be accepted.

The new subsection (3) proposed by amendment 85 would require SEPA to take into account the report prepared under subsection (1) when it carries out the characterisation under

section 5. The setting of environmental objectives under section 9 would then have to take into account that characterisation report and the flood risk assessment. We should not venture down that path. Articles 4 and 7 of the water framework directive are clear about the basis on which environmental objectives should be set. It is not clear whether the introduction of the new consideration is wholly consistent with the water framework directive; therefore, I oppose it.

The bill makes it clear that characterisation and objective setting must be carried out in accordance with the detailed and technical requirements of the directive. Amendment 85 would give particular prominence to flooding and would give the impression that other considerations that are laid down in the directive are of less importance. It is clearly not the intention of the directive to make prevention or control of pollution subservient to flooding, for example.

Nevertheless, I see what Des McNulty is getting at with subsection (3). It is crucial that the committee is aware that we will seek to designate local authorities as "responsible authorities" and to specify their functions under the 1961 act as "designated functions" in an order made under section 2 of the bill. As a result, local authorities will be required to exercise their functions under that act so as to secure compliance with the directive, which includes the mitigation of floods.

If amendment 109 is accepted by the committee, the Scottish ministers, SEPA and the responsible authorities will have a duty to promote sustainable flood management so far as is consistent with the purposes of the designated function in question. That is a more sensible and practical way of promoting sustainable flood management than is suggested by amendment 85.

Members will also be aware that the construction of flood defence schemes will, in due course, require to be consented in terms of the new control regime on building, engineering or other works in, or in the vicinity of, any body of inland surface water. That would be introduced under section 20 and it would be another means of ensuring that those schemes as a whole take a sustainable approach to flood management. In effect, local authorities will then be licensed by SEPA in respect of sustainable flood management.

Finally, in discharging their duties under the 1961 act, local authorities will have regard to many of the issues that are mentioned in the new section proposed by amendment 85, particularly paragraphs (a), (c) and (d) of subsection (5). It is entirely appropriate that local authorities, which are answerable to local people, consider those issues. I do not believe that requiring SEPA to duplicate existing work is in any way helpful.

For all those reasons—the duplication of existing local authority and SEPA duties, the erroneous reference to the Flood Prevention and Land Drainage (Scotland) Act 1997 and the skewing of the emphasis of the bill away from the intention of the water framework directive—I ask that amendment 85 be not moved. In addition, on the basis of the commitment that I have given to designate local authorities as responsible authorities and the proposed amendment that I have discussed, I ask Des McNulty not to move amendment 85.

Amendment 94 is consequential to amendment 85. It seeks to amend schedule 1 to require a summary of the assessment of flooding risk to be set out in the river basin management plan. For the reasons I have already given in relation to amendment 85, we cannot support amendment 94.

Amendment 95 also seeks to amend schedule 1. It would require a summary of the programme of measures to be applied to achieve sustainable flood management to be included in the river basin management plan. That is unnecessary. Paragraph 6 of schedule 1 already provides that a summary of the programmes of measures that are designed to achieve the environmental objectives that are set out under the bill shall be included in the river basin management plan. Measures relating to sustainable flood management will be included there where relevant. It would be odd to single out the measures that are aimed at sustainable flood management above all other measures, for example those that are aimed at tackling, controlling and preventing pollution.

Amendment 129 seeks to do the same thing as amendment 95, but in a slightly different way. I am sorry to say that I oppose it for the same reasons as I oppose amendment 95. Measures to tackle flooding in a sustainable way are already covered by paragraph 6. I repeat that singling-out measures that are directed at this aspect of the bill do not make sense.

Amendment 97 would amend schedule 1 to require a summary of the register of flood-prone areas to be included in the river basin management plan. Amendment 97 is obviously consequential to amendment 42, which we discussed last week. I said then that giving SEPA the duty to establish such a register is not necessary; it already has the function of assessing flood risk under section 25 of the Environment Act 1995. Given that provision, the additional provision is unnecessary.

Amendment 107 reintroduces the issue of a national strategy for sustainable flood management. It seeks to introduce a new section to require ministers to prepare such a strategy. The strategy would also have to take account of

river basin management plans and sub-basin plans. I hope that in light of amendment 109, Bruce Crawford will agree that amendment 107 is no longer necessary. If he does not—and apparently he does not—I can only reiterate the reasons that I gave last week as to why such an amendment is not necessary.

As I have already made abundantly clear in this forum and in others in the past week, where flooding issues are relevant to the protection of the water environment, the river basin management plan will address them. This should be clear to everyone, and it should even be clear to Bruce Crawford—above all else, tackling flooding requires partnership between local authorities and other public bodies, such as SEPA and Scottish Water. It also requires partnership between the Executive and those bodies.

Ministers cannot alleviate the flooding problems on their own. I could not do so even if I were the little boy of Dutch folklore to whom Bruce Crawford constantly refers. I think that he is actually mixing his metaphors because, as I understand the tale, the little boy is a national hero in Holland precisely because of what he prevented. I have no desire to aspire to the status of national hero. Suggesting, as Bruce Crawford does with amendment 107, that we can alleviate flooding problems on our own is not helpful, and he knows that.

River basin planning already provides us with the forum to consider flooding issues strategically at the Scotland-wide level. It will bring together all those who have an interest. The Cabinet is, as I previously explained, considering all the other issues such as raising flood awareness, the flood alert and flood warning system and co-ordination of the emergency response in the aftermath of flooding. For all those reasons, I ask the committee not to support amendment 107 and to support amendment 109.

I move amendment 109.

10:45

Des McNulty: I warmly welcome amendment 109, which establishes the principle of sustainable flood management. That is a positive response to the points that Sarah Boyack, I and other committee members made last week. Amendment 109 is a major step forward; I am sure that the committee will welcome it warmly.

Amendment 85 is an attempt to build on that principle and to establish a starting point for sustainable flood management in Scotland. I understand the minister's concerns about the preparation of a register of flood-prone areas and the impact that that may have for home owners when they purchase home and contents insurance, which we discussed last week, but it is

important to make people broadly aware of the risks of flood or the hazards of flood. People can then make their own judgments and their own dispositions. Flooding is not just a matter for SEPA or the local authorities; it is a matter for individual members of the public. They should be informed. I am not sure that the registers are currently as widely dispersed as they should be. I look for the minister to commit, perhaps in the context of amendment 40, to ensuring that the information is more widely available.

Amendment 85 attempts to make somebody responsible for doing an assessment of the risk and to incorporate the findings of that assessment into the characterisation and setting of environmental objectives. I have been careful in drafting the amendment to ensure that duties of local authorities under other legislation are not encroached on. The objective is to give SEPA a co-ordinating role to bring together different local authorities, because rivers do not respect local authority boundaries; they flow through a variety of local authorities.

The Clyde, which flows through my constituency, flows through several local authorities on its way to the sea. In light of some of the comments that were made this morning by the leader of Glasgow City Council, it is important that local authorities do not make a unilateral declaration of independence or say that they are not going to co-operate with other people on flooding. It is important that there is an integrated approach and that some legislative weight is used to impose that approach. We cannot have a voluntaristic approach to flood management. Legislative force is required.

Amendment 85 is drafted so as to allow SEPA a fair degree of latitude, but it lists a number of matters for which regulation should make provision, including what types of risk should be identified. Once such risks are identified, appropriate actions can be taken to reduce them. I recognise that it is quite a detailed amendment. I am trying to sketch out a process. It establishes that the correct elements are in the process. Somebody should have responsibility for co-ordinating the activities of local authorities without cutting across their proper functions. That is the underlying theme behind the amendment.

As the minister said, most of my other amendments in this group are consequential to amendment 85 or other major amendments, so I will not spend a lot of time talking to them.

Bruce Crawford: The minister rightly raised issues about Elgin and recognised that this has been the highest flooding ever recorded in that area—it was a once in 250 years event. We are all aware that, unfortunately, because of climate change, we will see a lot more such events. I hope

that we will not see too many more like that, but I suspect that in the years to come they will happen more often than once every 250 years.

I hope that the minister is examining how we can use European structural funds to help people who are affected in places such as Elgin. I realise that European structural funds require to be matched by Executive money, but they may provide opportunities to start some of the alleviation work that needs to be done on a large scale, whether it be the creation of floodland areas further upstream from places such as Elgin or the building of hard defences. There are opportunities that need to be examined.

I recognise that amendment 109 represents a good step forward from where we were last week. Sarah Boyack and Des McNulty were obviously behind the thrust that achieved that. I hope that some of my remarks last week also contributed to the production of the amendment. I recognise the movement that there has been.

The minister says that amendment 95 is unnecessary because the issue is already dealt with in section 5, but paragraphs 2 and 3 of schedule 1 refer to specific areas of coverage for other issues that are covered in the bill. That undermines the minister's argument. Amendment 95 is straightforward in intent: it seeks to require river basin management plans to contain a summary of programme measures that are to be applied to achieve sustainable flood management. It is similar in intent to what Nora Radcliffe is trying to achieve in amendment 129.

It would be amazing if neither amendment 129 nor amendment 95 were successful today. This is about joined-up government. If the river basin management plans are not to recognise the devastation that can be caused by flooding and the things that have to be put in place to deal with it, I do not know what we can put in the schedule. Amendment 129 tries to achieve the same thing as amendment 95. I will be interested to hear how the minister responds to Nora Radcliffe's arguments.

The arguments for a national flood strategy and sustainable flood management were aired last week, when an earlier amendment in my name was discussed. I do not intend to repeat what I said then. I was mystified by the lack of support from Executive members—especially Des McNulty and Sarah Boyack—who had previously been vociferous in calling for a national flood strategy. The minister may be able to persuade them that he has gone far enough, but amendment 109 does not propose a national flood strategy.

Last week, I perhaps chose the wrong section in which to make the amendment I seek. I have, therefore, lodged another amendment—

amendment 107—which would require the minister to develop a national, sustainable flood management strategy exactly where he has said flooding should be dealt with: in the river basin management planning areas.

I am taking a different approach from the one I took last week. In arguing the case, I will also put forward the arguments that are presented in an excellent document from WWF Scotland, which was sent to all MSPs yesterday, entitled "Turning the tide on flooding". It explains very nicely the requirement for a national flood strategy. On page 4, under the heading, "Who is responsible for flood management in Scotland?" it clearly states:

"There is no one body with an overview of flood management in Scotland. Responsibility is divided between the Scottish Executive, Local Authorities, the Scottish Environment Protection Agency, Scottish Water, the emergency services and Flood Appraisal Groups, but there are still major gaps."

I do not believe that amendment 109 covers those gaps. In the Clyde valley alone, 14 separate organisations are responsible for dealing with flooding.

WWF Scotland continues:

"Even within the Scottish Executive responsibility for flooding lies with separate engineering and planning units, rather than in the water unit, and focuses on concrete defence schemes."

The minister said that there is a need for integration. If ever there was an area that required integration and an overall, holistic approach in the Scottish Executive—and the strategy was drawn together by the Executive—this is it. WWF Scotland makes a good job of explaining that.

The report goes on to talk about planning, the clear role the Executive can take in dealing with flooding and, in particular, national planning policy guideline 7. Members will recall that, last week, when debating the requirement for a national flooding strategy, I homed in on planning because only the minister can change the national planning policy guideline. The power should, therefore, sit with the minister.

In conclusion, WWF Scotland says that the Water Environment and Water Services (Scotland) Bill has

"fragmented responsibilities for flooding, with no national overview and no role for catchment flood management".

It believes that shortcomings in the bill mean that flooding is sidestepped and that Scotland could end up having to foot a bill that goes way beyond what anyone would expect to pay for through taxation. It also calls for

"A national flood strategy for Scotland identifying responsibilities for a sustainable catchment overview."

WWF has done a good job of explaining why that is required. It examines a wide range of issues, but narrows down to the River Clyde as a specific example.

The minister referred to the Cabinet sub-committee that has been meeting and will produce something by February 2003. I welcome that development and am encouraged by the list of issues that it will examine, but they all deal with the implications of flooding, not the symptoms, which underlines the absolute requirement for a national flood strategy. If any position put by the minister today explains why we need to ensure that we have an endgame and a national flooding strategy to help protect communities across Scotland, that was it.

The minister referred to the little boy with his finger in the dyke. I referred to that recently on "Newsnight". The little boy had to get lots of little helpers to stop the flooding. It was not just one digit. He held his finger in the wall until the troops arrived and the people came to help him. All I am suggesting to the minister is that in a strategic overview and holistic position, he requires lots of help to produce a flooding strategy for Scotland that can deliver. That needs a national plan.

The Convener: I call Nora Radcliffe to speak to amendment 129.

Nora Radcliffe: I want to say first that I am delighted to support amendment 109. It is excellent that provision for sustainable flood management has been included in the bill. People would have been very surprised if we had not included that, and I am delighted to welcome that amendment.

I totally agree that local authorities should have the lead role in flood management. They are obviously the right people to address it, given their local knowledge and resources. I have a lot of sympathy with amendment 85, because it would develop a role that SEPA has already without impinging on local authority responsibilities. Like Bruce Crawford, I am delighted to see the start of flood management, but it has to be explicit that sub-basin planning is part of that, which is the intention of my amendment.

On how we can help the people of Elgin to recover from the devastation of the flooding, I cannot help thinking that it might be appropriate to draw on the contingency fund and I point out that the Scottish National Party thought that we should not have one.

The Convener: Sarah Boyack, Robin Harper and Maureen Macmillan all want to speak to the amendments in this group, so I call Sarah Boyack.

Sarah Boyack (Edinburgh Central) (Lab): If you are calling me in front of the other members, that is fine.

The Convener: I was calling you because previously you were a supporter of a similar amendment.

Sarah Boyack: In that case, that is excellent. I welcome amendment 109, which Allan Wilson moved this morning. It does what Des McNulty and I were trying to do with our previous amendment. I know that getting the perfect wording of amendments is tough, so I thank the minister for picking up on the point that we made, accepting it and putting it into a form that can amend and strengthen the bill. It is important for the provision to be in the bill.

I want to push the minister on amendments 85, 94 and 97, which are complementary to amendment 109. It is important that we have clarity. Des McNulty was not arguing that powers should be taken away from local authorities and given to SEPA or that SEPA should do what local authorities already do. As he pointed out, the problem is that flooding happens across local authority boundaries. Amendment 85 puts into a reasonably good context the purpose of using river basin districts to take a strategic overview of how we manage our flooding problem, identify risks and set an agenda for tackling flooding. I would like the minister to explore that issue fully.

11:00

In subsection (4) of the section that amendment 85 would insert after section 4, Des McNulty makes it explicit that local authorities should continue to do the work that they are required to do under the Flood Prevention and Land Drainage (Scotland) Act 1997 and that SEPA should examine that work and carry out an overview of the risk of flooding. SEPA would not be duplicating the work of individual authorities—it would be pulling together the work of a variety of authorities.

The River Clyde was mentioned in the superb case study that the WWF conducted. If one looks at the river basins in Scotland, one can see our rivers crossing local authority boundaries. Amendment 85 is not about taking away local authorities' powers; it is about putting them in a strategic context.

Bruce Crawford commented on planning. Local government was reorganised several years ago and a lack of effective strategic planning management is still apparent. I welcome the fact that the Executive is acting on that. One can draw an analogy with flooding. It is necessary to have an overview that goes beyond local authorities. It would be appropriate for the bill and for ministers to give SEPA the responsibility for having a national overview of flooding, because SEPA is a national organisation that is responsible to Scottish ministers. It would work directly in

accordance with the regulations that are made by Scottish ministers.

Des McNulty has provided an appropriate way of putting into effect the aim that the minister has set out in amendment 109, so I hope that the minister will consider supporting amendment 85. The minister did not take amendment 85 to bits—he said only that it would duplicate local authorities' work. That was not the intention of amendment 85 and, as it is worded, it would not have that effect.

I am conscious that amendment 109 will add a provision to the bill. That addition has resulted from the committee's report and its lobbying. Unless one reads the *Official Report* of the minister's comments in committee—I know that some organisations do that—it is difficult to follow the bill's progress. Before we debate the bill at stage 3, it might be helpful to have an aide-mémoire that updates the memorandum. The update need not relate to the whole bill, but only to flooding, because we have concerns about clarity in that regard. I welcome amendment 109. Amendment 85 provides a robust follow-on to that amendment. I would be interested in the minister's comments on amendment 129.

Robin Harper: I indicate my strong support for amendment 107, which calls for a national flood plan. The bill must have an aim of replacing expensive, damaging and ultimately redundant engineering solutions with sustainable flood management and up-river and down-river soft options. That aim must be embedded in the bill.

I want to make a quick observation on amendment 57, which refers to wetlands. Over the years, I have received many representations expressing reservations about the effectiveness and value for money of SSSIs, SACs, Natura 2000 and other such initiatives. Where they relate to wetland designations, it would be no bad thing for such initiatives to fall within the bill's remit.

The Convener: You should probably have made those comments in the previous debate, but I shall let you off on this one occasion.

Maureen Macmillan: Most of what I wanted to say has been said already by Sarah Boyack, but I would like to thank the minister for visiting Elgin. I was not terribly impressed with the way in which the SNP tried to make political capital out of the Elgin floods by suggesting that the committee and the Executive were not taking seriously the need to manage future floods. What we have been calling a once-in-250-years event is probably, as Bruce Crawford said, going to happen more frequently. We must be prepared for it and contingency funding must be in place. As Nora Radcliffe said, the SNP wants to abolish contingency funding and use it for other purposes, but it is important that we have that money in place for just such events.

John Scott (Ayr) (Con): As everyone else is doing it, I too put on record my party's support for the people of Elgin in the misery that they have suffered. I agree that it is likely to be more than a once-in-250-years event. I also very much welcome the minister's conversion—I do not know whether it is a Pauline conversion—in introducing the amendment on flooding.

Allan Wilson: In the light of the extensive opportunity that we have had for debate, I shall be brief. I turn first to Des McNulty's point about the maps. I shall consider again the wider dissemination of maps. I am aware of certain problems in the background, which I will discuss with SEPA, but I shall certainly seek wider dissemination. As members will see, the maps transcend local authority boundaries, so the risk assessment process already goes beyond those strict boundaries.

I also assure Des McNulty that the enforcement provisions and legislative mechanisms that he seeks to prevent UDI by local authorities already exist. Local authorities will be required to exercise their functions under the bill so as to secure compliance with the directive. That includes the mitigation of floods, and I referred to that important provision in my preamble.

Bruce Crawford—inadvertently, I suspect—answered his own question about why his amendment last week was not supported by me or by other members. It was the wrong amendment in the wrong place. I have introduced the right amendment in the right place, which renders Bruce Crawford's amendments, this week and last week, redundant.

I agree with Nora Radcliffe's comment that the problem with amendment 129 is that it duplicates the functions of SEPA with regard to flood risk assessment. I also agree with what Nora Radcliffe and Maureen Macmillan said about helping the people of Elgin. I met the member for Moray yesterday and was happy to reassure her that the Executive would be activating Bellwin support this time, as it did last time, to assist with the costs of dealing with the emergency. Maureen and Nora are both absolutely correct to point out what I pointed out to the member for Moray: that had we followed the advice of her own leader in the SNP, we would not have been able to draw on the contingency fund to provide that assistance.

Some of the references to canoes and sandbags, which may have been made in the heat of the moment, were demeaning to the efforts of the local authority people who turned out in the dead of night to assist. That is an important point that I would like to make.

Bruce Crawford: On a point of order, convener.

The Convener: I hope that it is not a point of argument, Mr Crawford.

Bruce Crawford: It is not a point of argument. The purpose of the minister's summing up is to sum up information that has already been dealt with and not to introduce new information.

The Convener: I felt that the minister was responding to the debate.

Allan Wilson: I was responding to points made by colleagues. It is not my intention to go beyond that.

Des McNulty's and Sarah Boyack's proposal does not intend to duplicate local authority powers, but unfortunately, that is the effect. Duplication, by implication, might diminish and confuse those powers. However, as I have said from the outset, I am prepared to work with the committee. Sarah Boyack suggested that the aide-mémoire should be updated and laid out. The aide-mémoire, which details where authority and responsibility lie with the agencies and, indeed, with ministers, would be of valuable assistance to the committee in its deliberations and further consideration of the bill. In conjunction with my already hard-pressed officials, who were up until 1 am this morning preparing a response to many of these points, I will undertake to advance that aide-mémoire, if that is what is required to assist the committee's deliberations.

In response to Robin Harper's point about wetlands, I reiterate that those wetlands that are dependent on aquatic ecosystems that we seek to protect are incorporated within the scope of the bill. We will discuss that scope more generally.

For all those reasons, I ask the committee to support my request for colleagues not to move their amendments. I will give a commitment to continue the dialogue on laying out more definitively the strategy that we seek to introduce as a consequence of the bill.

Sarah Boyack: Will that be before stage 3?

Allan Wilson: Sorry, I omitted to say that. From the brief discussion that we had, we anticipate doing that early next year, if not sooner. It will certainly be before stage 3 consideration, which has been pencilled in for the latter part of January next year. Is that correct?

The Convener: I do not know the exact date. It is sometime around January.

Bruce Crawford: My understanding of Bellwin, certainly from when I dealt with floods in Perth, is that it simply gives local authorities permission to borrow more money. Is that right?

Allan Wilson: It is a valuable aid by which local authorities can draw support from central Government to assist in dealing with emergencies.

Bruce Crawford: My point is whether it is a borrowing consent extension for local authorities.

The Convener: That is more of a separate political argument than an aside about consideration of an amendment. It is not necessarily relevant to any of the amendments that we are considering.

Amendment 109 agreed to.

Amendments 25 and 56 not moved.

Amendment 84 moved—[Fiona McLeod].

The Convener: The question is, that amendment 84 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Radcliffe, Nora (Gordon) (LD)
Scott, John (Ayr) (Con)

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

Amendment 84 disagreed to.

Amendment 27 not moved.

The Convener: Amendment 28 is in the name of Bruce Crawford. Do you wish to move amendment 28, Bruce?

Bruce Crawford: Given that other amendments of a similar ilk will follow, there is not much point in moving amendment 28.

Amendment 28 not moved.

11:15

The Convener: Amendment 29 is grouped with amendment 31.

Nora Radcliffe: Amendments 29 and 31 duplicate each other—Bruce Crawford and I have the same intention. Amendment 29 would require the Scottish ministers to make an annual statement to Parliament on the implementation of the water framework directive. The provision might seem to be a slightly unusual belt-and-braces approach, but given the bill's importance and the fact that it will involve a lot of secondary legislation over a long time, it would be helpful to review regularly what has been done. As we are starting timeously, we have the opportunity to review whether matters are being progressed timeously and whether we are taking people with us.

I lodged amendment 29 because I am still smarting from the lesson of the nitrates directive,

which we dealt with soon after the Parliament began, although that was 10 years after the directive was passed. The directive had been ignored for 10 years, which meant that actions had to be taken in a hurry and there was no time to consult properly because we faced infraction proceedings and the threat of fines of £0.25 million a day. We had to impose what could be described as burdens on farmers and businesses, which they had to meet in a short time frame. Had we acted timeously when the directive was passed in 1991, those problems would not have arisen. I will move the amendment in the light of the lessons that we should have learned from the nitrates directive.

I move amendment 29.

Bruce Crawford: Nora Radcliffe is correct that our amendments try to achieve similar ends. The nitrates directive is a good example, not only because of the cost implications and the time taken to implement it, but also, as we heard yesterday, because of the potential for the closure of the scallop fields as a result of algal blooms that are related directly to nitrate run-off from fields. That is not the Executive's fault, but if we had implemented the directive earlier, perhaps we would not have been in the mess that we are in now.

Ministers should provide Parliament with an annual statement of progress on the water framework directive, particularly given the time scales for implementation and the future cost implications. Some of those issues were raised at stage 1. According to the projections by the consultants WRc plc, the cost implications will continue up to 2080, which is a long period. It is right that the Parliament should take a view on that matter.

The difference between amendment 29 and amendment 31, in my name, is that Nora Radcliffe wants the report on progress on the water framework directive to be on its own. My view is that the information should be part of a report on sustainability. As many cross-cutting issues and areas are involved, it would be impossible not to have a report on sustainability as a whole, part of which would be on the WFD. An holistic approach and a strategic overview of sustainability are required and WFD issues would be an integral part of the overview.

For example, we should be able to examine progress on the water framework directive in the context of the Executive's climate change strategy and its planning, agriculture and forestry policies. Everyone talks about joined-up government. Amendment 29 goes some way to achieving that, but amendment 31 goes a step further to achieving the joined-up government that members want to see. This is a chance to achieve that by

requiring ministers to report to the Parliament on sustainability, with the water framework directive an integral part of that.

Robin Harper: I am happy to support either amendment, though perhaps Nora Radcliffe's has the advantage of staying within the limits of the bill.

The work that Michael Kellet and his team have done has placed the Scottish Parliament ahead of the game in Europe and it would be a good idea to sustain that ambition. Either amendment 29 or amendment 31 would give us the best chance to do that.

John Scott: Either amendment is acceptable, but I favour amendment 29, which does not take the committee quite so far.

Des McNulty: There should be an annual report on sustainable development. Whether that is appropriately called for in an amendment to the bill is open to question—probably this is not the best place to do that.

The word "statement" is inappropriate. Rather than a parliamentary statement, either on the bill's progress, which was suggested by Nora Radcliffe, or on Bruce Crawford's suggestion, I would prefer either a written report on sustainability or for the information that Nora Radcliffe requested to be published in SEPA's annual report.

Members agree that information must be made available to the public. The issue under discussion is the mechanism through which that information should be published. I hope that the minister will make it clear that the information will be provided in a written format, which is the most appropriate mechanism for ensuring that the public receives it. It will be up to the committees to scrutinise the information as they see fit.

Allan Wilson: Amendment 29 seeks to place on Scottish ministers the duty to provide an annual statement to Parliament on the progress of the implementation of the directive and the achievement of the environmental objectives set under section 9.

Amendment 31 is similar to amendment 29. It seeks to impose a duty on Scottish ministers to provide an annual report to Parliament. In that instance, in those measures taken by SEPA, responsible authorities and ministers to comply with the general duties under section 2, steps are taken to ensure integration of the requirements of the directive.

I have no problem with the policy objective. However, I agree with Des McNulty's comments and I am not convinced that that is an appropriate amendment to the bill. Should the requirement to produce a report be placed in the bill? If that precedent is set, the same argument could be applied to every piece of legislation.

The environmental objective set under section 9 will not be agreed until 2009, and amendment 29 does not take account of that. In that context, it is unnecessarily bureaucratic. Parliament can hold ministers to account about such issues at any time, which is an important provision, so the stipulation of an annual report is unnecessary.

I take the point that was made about the nitrates directive. Parliament has learned from that, and we are ahead of the game, which is where we want to stay.

I would argue that we are as open, transparent and accountable a Parliament as any in Europe. As and when necessary, Parliament holds ministers to account over issues such as this. I do not think that a requirement to report to Parliament annually would necessarily assist that process. Indeed, the parliamentary process might be clogged up with consideration of annual reports from ministers. Each member may lodge parliamentary questions, written and oral, to the First Minister. You may call me to account in parliamentary debates and during committee meetings at any stage of the process, to 2009 and beyond.

I emphasise again that the river basin management planning process is open. The steps taken by the relevant authorities should be clear to everyone concerned, and I can give the assurance that Des McNulty seeks. SEPA will produce an annual written report, which will be a good foundation on which to base any call for greater ministerial scrutiny. On the subject of reporting, article 15 of the water services directive states:

"Member States shall send copies of the river basin management plans and all subsequent updates to the Commission and to any other Member State concerned within three months of their publication".

There are therefore provisions in the directive for reporting internally and externally. I do not intend to die in a ditch over this, but we want to take all those considerations into account. If members look at this in an holistic fashion, they will reject the two amendments in the group.

Nora Radcliffe: Let me deal with the point about precedents. The bill is complex; it has a long time frame and a lot of subordinate legislation, which will involve an awful lot of people having to do an awful lot of things. Much of that will be an awful lot easier if things are done timeously.

We are all busy and we all know that things tend to slip. An annual reminder of where we are at, of where we should be, of what other people should be doing and of what is coming down the track would be valuable. I think that it was Ogden Nash who said that it is not what you do that trips you up, but what you do not do. I think that that is a salutary lesson.

I know that we can hold ministers to account at any time, but we need to consider what would trigger a regular check that things were going as they should and that people were remembering what had to be done. We do not want to reach 2009—[*Interruption.*] I see that the minister wishes to intervene.

Allan Wilson: I see where this is going. I accept the principle, and will lodge an amendment at stage 3 in order to accommodate that requirement.

Nora Radcliffe: I am very grateful to the minister. I think that it would be valuable were such a requirement to be met. It is unique to this bill, because of the characteristics that I have mentioned. I thank the minister very much.

Amendment 29, by agreement, withdrawn.

The Convener: Amendment 30 was debated with amendment 24.

Robin Harper: I will move amendment 30, as I think that section 2 needs amending and requires stronger wording with regard to an integrated approach.

I move amendment 30.

The Convener: The question is, that amendment 30 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)
Radcliffe, Nora (Gordon) (LD)
Scott, John (Ayr) (Con)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)

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

Amendment 30 agreed to.

Bruce Crawford: On a point of order, convener. I am not aware that the vote was five to four. I thought that the vote was four all. One member did not vote.

The Convener: Which member did not vote? [*Interruption.*] Nora Radcliffe voted.

Nora Radcliffe: I indicated yes, then I wavered, but if you counted me, it would have been as a yes. Sorry.

The Convener: Thank you for that clarification. I thought I saw Nora Radcliffe's hand move.

The Convener: Amendment 57 was debated

with amendment 24. Does Des McNulty wish to move the amendment?

Des McNulty: I seek clarification from the minister. My concern is where wetlands come into the bill. I want the bill to recognise explicitly the importance of wetlands in filtering pollution and controlling flooding. Although the minister indicated that he was not happy with the cost implications of the amendment, he was not hostile to the idea of incorporating wetlands—

The Convener: I do not really want to reopen the debate.

Des McNulty: I just seek clarification.

The Convener: Does the minister wish to respond very briefly?

Allan Wilson: I have laid out extensively our current provisions for wetlands, the bill's definitions in that respect and the guidance that we expect from Europe. We are about to debate definitions of water environment more fully, and the bill makes provision for wetlands that are dependent on aquatic ecosystems—

The Convener: I do not want to get into the debate again. I ask Des McNulty whether he wishes to move his amendment.

11:30

Des McNulty: I will not move amendment 57, as that will allow me to lodge amendments at stage 3.

Bruce Crawford: In that case, am I allowed to move amendment 57?

The Convener: Yes.

Bruce Crawford: In moving amendment 57, I want to say that at no point does it mention anything about time scales. As a result, any costs associated with the provision—

The Convener: As I said, I do not want to reopen the debate.

Bruce Crawford: I thought that you just had.

The Convener: I think that Mr McNulty was seeking clarification on a particular point.

Bruce Crawford: Well, in that case, we need to keep things tighter.

The Convener: Absolutely.

Amendment 57 moved—[Bruce Crawford].

The Convener: The question is, that amendment 57 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

Eadie, Helen (Dunfermline East) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Radcliffe, Nora (Gordon) (LD)
Scott, John (Ayr) (Con)

ABSTENTIONS

McNulty, Des (Clydebank and Milngavie) (Lab)

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

Amendment 57 disagreed to.

The Convener: Amendment 31 has already been debated. Does Bruce Crawford wish to move the amendment?

Bruce Crawford: Before I do so, I hope that the minister will respond positively on one point. I am grateful for his comment that he will lodge amendments on the issue, but the difference between Nora Radcliffe's amendment 29 and amendment 31 is that my amendment requires the Scottish ministers to set before the Scottish Parliament an annual report on sustainability. I think that the proposal was supported by Robin Harper and Des McNulty. If the minister says that he intends to introduce a requirement to publish an annual statement on sustainability, I will reconsider whether to press the amendment.

Allan Wilson: If I were the First Minister, I could probably tell Bruce Crawford what he wants to know. However, I prefer—and have agreed to support—the method of reporting that is proposed in amendment 29. I will discuss with colleagues provisions for reporting on progress on sustainable development more generally, because obviously that extends beyond the scope of the bill. Even if we agreed to publish an annual report, I do not think that we would formalise it in the legislation, but I am certainly prepared to consider the matter with colleagues and come back to the committee.

Bruce Crawford: Will you do that before stage 3?

Allan Wilson: Yes. I will do it quickly.

The Convener: Do you wish to press amendment 31, Bruce?

Bruce Crawford: The only thing that concerns me now is that I have to protect my position for stage 3. After all, what we get from the minister might not be strong enough to achieve my aims. I will press the amendment just now only because I want the Presiding Officer to see that the matter has been pressed to a vote.

The Convener: The question is, that amendment 31 be agreed to. Are we agreed?

Members: No.**For**

Crawford, Bruce (Mid Scotland and Fife) (SNP)
McLeod, Fiona (West of Scotland) (SNP)

Against

Eadie, Helen (Dunfermline East) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Radcliffe, Nora (Gordon) (LD)
Scott, John (Ayr) (Con)

Abstentions

Harper, Robin (Lothians) (Green)

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

Amendment 31 disagreed to.

Section 2, as amended, agreed to.

The Convener: We have fallen behind schedule, so we will continue to debate amendments until 12 o'clock, before moving on to the remainder of our business.

Section 3—The water environment: definitions

The Convener: Amendment 32 is grouped with amendments 110, 33, 1, 111, 2, 112, 113, 114, 34, 35, 37, 41, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 78 and 55. I invite Nora Radcliffe to move amendment 32.

Nora Radcliffe: I had just relaxed, thinking that we would have stopped at half-past 11.

Wetlands are an essential element of riverine systems. The bill makes considerable reference to surface water and groundwater. Those terms do not quite cover wetlands, which need to be included specifically in the bill.

It has been said that including wetlands in the bill will have certain consequences, including financial consequences. However, the financial consequences of not including wetlands in the bill are considerably greater than the financial consequences of dealing with them in an integrated and holistic way. Being faced with a £3 billion bill for flood damage is a pretty heavy counterweight to the cost of including wetlands in the bill along with surface water and groundwater.

It has been said that the bill will create extra work for SEPA and will duplicate effort, but those arguments are mutually exclusive. If the work is already being done by bodies such as Scottish Natural Heritage and the Macaulay Land Use Research Institute, the required information exists and SEPA will not have to do much to include it in its characterisation.

The bill allows for us to catch up if we are required by Europe to include wetlands in the

provisions. However, it would be more cost-effective to include wetlands in the bill at this stage, and deal with them in an integrated way, than to add them to the bill later.

I urge members to support amendment 32, to leave out "and groundwater" and insert "groundwater and wetlands", the amendments consequential on that and amendment 33, which defines what is meant by wetlands.

As the convener said, we want to make it clear that we mean not every soggy park in Scotland, but wetlands that are part of a riverine system. We cannot realistically leave such wetlands out of a bill that deals with surface water and groundwater. Wetlands, surface water and groundwater are part of a coherent whole. It makes no sense to separate out one element.

I move amendment 32.

John Scott: Amendment 110 relates to the snowfields in the Scottish mountains, which are essentially standing water during the winter. They are a fundamental part of the water supply. They are important to the quality of drinking water that comes from them and to aquifers. For that reason, they need to be protected. The minister needs to make provision for those huge amounts of water, which should come under the auspices of the bill.

Amendment 111 concerns the limits of transitional water, which vary depending on whether a river is in flood. The amendment aims to draw attention to how we define the seaward limits of transitional water.

I declare an interest in relation to amendment 112. When I lodged the amendment, I had in mind farmers' slurry lagoons, which often contain rain water because they are open to the air. I appreciate that the term "pollutants" covers that to an extent, but realistically, animal manure is not a pollutant; it is a fertiliser, although water might be stored with it and be added to it before it is spread on land.

Amendment 113 seeks to insert the words "cooling systems in electricity generating stations".

Obviously such systems are enclosed systems in the same way as artificial swimming pools are, and they should be treated in a similar way.

Amendment 114 is similar to amendment 111 and is about attempting to map something that varies from day to day and week to week, namely the boundaries of transitional water. It is important that those boundaries are clearly defined. We also need to know where the outer limits are, to give clarity to that definition. If a river is in flood, the boundary might go miles out to sea. At other times, it does not, and the mix of salty and non-salty water varies from day to day. There has to be a definition to take that into account.

Allan Wilson: A significant number of the amendments deal with wetlands and their place in the bill. I will deal with that issue first.

I do not believe that the amendments concerning wetlands are necessary or desirable. There are a number of reasons why. They would mean that we would have to include wetlands in the characterisation and objective-setting processes that the water framework directive requires for surface water and groundwater. That would be a considerable task and would greatly extend the scope of the bill.

As defined in the bill, the water environment covers just under 2 per cent of Scotland's land mass. If we were to extend that definition, an extra 9 per cent or thereabouts of Scotland's land mass would be covered by all the provisions of part 1. That would mean that SEPA would have to characterise, monitor, set environmental objectives for and put in place programmes of measures for large areas of Scotland that are already adequately provided for. I submit that the cost of that extension would be enormous, and I know that that has concerned the committee and other committees that have considered the issue. The benefits would also be very small, given all the other protections that are in place. We have discussed the issue with officials of Scottish Natural Heritage who support the Executive's position.

The committee will be interested to know that the relationship between wetlands and the water framework directive is currently being discussed in Europe. I have made reference to that in relation to another amendment. That relationship is important and real, as I will describe, but no one—I repeat: no one—in Europe is suggesting that all wetlands should be protected under the water framework directive in the same way as rivers, lochs or coastal waters are, which would be the effect of the amendments about wetlands.

We must remember that wetlands are already well protected by a number of existing designations. Those include special areas of conservation and special protection areas designated under the EC habitats and wild birds directives. They are also protected as sites of special scientific interest, and we are considering strengthening the protection of those in our forthcoming nature conservation bill, with which Nora Radcliffe will be familiar.

The UK biodiversity action plan identifies several forms of wetlands as priority habitats, and the EC nitrates directive also offers protection to Scotland's wetlands. The water framework directive does not require us to set objectives for wetlands and we do not want to indulge in gold-plating the EC directive, particularly in an area where it is clear that we would be duplicating existing domestic and European protection.

The purpose of the water framework directive is, among other things, to establish a framework for the protection of water and those wetlands that are directly dependent upon them. The bill already recognises that and so, as it stands, will play an important part in the protection of those wetlands. For example, it will allow us to tackle diffuse pollution to meet quality standards for surface water bodies, and wetlands that are fed by surface streams and run-off will undoubtedly benefit from that provision.

11:45

Achieving good groundwater status for water bodies will also help wetlands. It is a requirement that the level of groundwater is not subject to alteration as the result of human activity that would significantly damage wetlands that depend directly on the groundwater body. Similarly, the chemical composition of groundwater should not result in significant damage to associated wetlands if that groundwater is to be classed as good status.

I assure members that all that is provided for. It is simply not necessary, or indeed practical, to treat bogs as we would a river, a loch or another body of water. The bill does a lot for wetlands, but protecting wetlands is not the primary purpose of the water framework directive or of the bill. We do not want to duplicate existing protections, nor do we want to introduce costly additional burdens when that is not necessary. That would constitute gold plating and, as I have said, we are not in that business. If the amendments were passed today, we would have to return to the matter at stage 3.

Amendment 45 changes schedule 1 to leave out reference to "every body of water" and insert a reference to objectives set for

"all components of the water environment".

That is unnecessary and confusing. Environmental objectives will be set under section 9 for each body of water in the district. The term "body of water" is already defined in section 25 as

"a body of groundwater or a body of surface water".

To use different terminology in schedule 1 is to introduce an unwarranted degree of confusion. I am not clear what the new form of words would achieve that is not already achieved by the existing wording, so I ask that amendment 45 not be moved so that our existing definition can be retained.

Amendment 1 makes it clear that the definition of coastal waters in section 3 does not include any water outwith the

"territorial sea of the United Kingdom adjacent to Scotland",

to which area the competence of the Scottish Parliament is restricted. Although the normal

extent of coastal waters under the bill is 3 miles from the territorial coast baseline, the territorial sea of the United Kingdom adjacent to Scotland at either side of the border may be less than 3 miles in places. Amendment 1 makes it clear that, where that is the case, the conservative limit applies. On that basis, I recommend that the committee agree to amendment 1.

Amendment 2 makes it clear that water contained in drinking water treatment works is not included in the definition of "water environment". That means that the protection afforded by part 1 will not apply to such works. I recommend that the committee agree to amendment 2.

The bill currently describes a "body of surface water" as a

"discrete and significant element of surface water such as a loch, a stream, river, canal or other watercourse, part of a stream, river, canal or other watercourse, a body of transitional water or a stretch of coastal water."

Amendment 78 makes it clear that the definition of "body of surface water" also encompasses part of a loch. That is important because it will enable lochs such as Loch Lomond, which exhibit a range of physical characteristics, to be categorised as more than one water body. The amendment is technical, and I hope that the committee will support it.

I turn to the amendments lodged by John Scott, which have given us considerable scope for discussion. Amendment 110 amends section 3(2) so that "water which is frozen" would be explicitly part of the water environment. As members would expect, we have taken legal advice and I confirm that the amendment is not necessary. Water that comes within the definition of the water environment in section 3 will remain within that definition whether it is frozen or liquid. A frozen river or loch is still within the definition, but the definition does not extend to incorporate glaciers.

John Scott: Is that then transitional water?

Allan Wilson: I am coming to transitional water.

On that basis, I hope that John Scott will decide not to move amendment 110.

Amendment 111 is interesting. It seeks to amend section 3(7) to specify how the seaward limits of transitional waters are to be defined. Therefore, it bears on the definition of transitional waters in section 3(6). To clarify, I advise members that transitional waters generally mean estuaries. The amendment would extend the size of transitional waters because the measurement of the extent of substantial influence of freshwater on saline waters would take place at times of high freshwater flood.

I am unsure about the purpose of the amendment. It is clear that waters, whether

coastal or transitional, are still protected by the bill. The definition of transitional waters in the bill is the same as that in the water framework directive. On balance, we should stick with that definition to avoid any unforeseen difficulties that may be caused down the line by extending the definition.

Amendment 114 amends subsection 10(a) and is consequential to amendment 111. Therefore, we do not support it either.

Amendment 112 seeks to amend section 3(9)(e), which provides for the exclusion from the definition of water environment of artificially created systems for the treatment of pollution. That covers artificially created natural systems of pollution control, for example sustainable urban drainage systems—SUDS. Where those are employed, it would make no sense for them to be required to meet environmental objectives. They are designed to allow a natural water body to meet its environmental objectives.

Amendment 112 provides that such systems designed to treat effluents or organic waste would also be excluded. It is a probing amendment, but I confirm that effluents or organic waste, where they have the potential to cause harm, are encompassed by the term "pollutants". On that basis, I hope that John Scott will agree that the amendment is unnecessary. For example, if a farmer were to install a SUD system to treat effluent, the system would already be excluded from the bill. That scenario may have been John Scott's motivation for lodging the amendment.

Amendment 113 seeks to add water in cooling systems in power stations to the exclusions from the water environment. Again, that is not necessary. Such water could, in no sense, be held to constitute surface water or groundwater under the terms of section 3(2). Therefore, there is no question of it being included within the definition of the water environment. However, that does not mean that power stations will be able to abstract water without an environmental check. Their abstractions, like all others, will be the subject of controls under section 20. Once the water is taken from the water environment and is in the power station, it will no longer be part of the water environment and will not be subject to the provisions of part 1. I confirm that the discharge of water back into the water environment is then the subject of environmental control.

I ask members to accept amendments 1, 2 and 78 and to reject all other amendments.

The Convener: I urge members, if they need further clarification from the minister on this grouping or any subsequent grouping, to seek it at this stage, rather than after debate on a group of amendments has been concluded. Do any members wish to participate in the open debate?

John Scott: I seek clarification.

The Convener: I will let members who have not yet spoken contribute first.

Maureen Macmillan: I want to talk about wetlands—it seems that there are wetlands and wetlands. We seek a definition of what can and cannot be considered as wetlands. Obviously we do not want to consider every piece of squelchy ground in Scotland.

Part 1 of the bill deals with the bill's general purposes and mentions

“wetlands directly depending on aquatic ecosystems”.

What exactly does that mean? Does it mean wetlands on a flood plain? How far beyond that does it go? How far beyond that is the Executive prepared to go in the light of a possible future European directive? I can understand the argument about not wanting to include 10 per cent of Scotland, but we want to broaden the present definition.

The Convener: The minister can clarify that later. Robin Harper has a related query.

Robin Harper: Is the minister satisfied that the bill is worded flexibly enough to cope with the new definitions from Europe that will not appear until March next year?

Allan Wilson: I am satisfied that the definition in part 1 provides the assurance that Maureen Macmillan seeks: that wetlands that depend on other aquatic ecosystems will be afforded environmental protection as a consequence of the measure.

Discussions with Europe and Michael Kellet continue regularly. No one is likely to require wetlands to be introduced into the water framework directive for such a level of statutory protection. I am equally sure that there is adequate provision in the bill to allow us to amend the bill to comply with such requirements, if they are introduced. Officials tell me with authority that we do not expect that to happen in Europe. We expect non-binding guidance that will define wetlands better. We would take that into account, but it will largely, if not entirely, comply with our existing definition.

The advice that I have received from Michael Kellet and others makes me confident that we have made more than adequate provision for the protection of wetlands—which Robin Harper and I wish to be protected as a consequence of the bill—as defined by Europe, but no further than that.

Bruce Crawford: Amendment 1 refers to the

“limits of the territorial sea of the United Kingdom adjacent to Scotland.”

I understand why that wording is used, but the minister always tells us that we should not create duplication or try to add provisions that already exist. My reading of the Scotland Act 1998 suggests that amendment 1 is superfluous, because that wording is already in a definition in that act.

Allan Wilson: We accept that argument, but we want to put beyond doubt and make explicit in the bill the position in the Scotland Act 1998.

Bruce Crawford: That is duplication.

Allan Wilson: We are making the position explicit in the bill. We are certainly not duplicating anything.

John Scott: I seek further clarification on amendment 110, which deals with not insubstantial bodies of water. The snowfields of the Cairngorms are obviously static bodies of water. Are they inland bodies of water? I am trying to categorise those significant snowfields.

Allan Wilson: As I said, snowfields do not represent a category of body of water. The quality of a snowfield depends on what falls on it from the sky. I am clear about the fact that snow in those snowfields and glaciers are not bodies of water for the purpose of the bill.

John Scott: That is the point. Those snowfields need to be protected. They are about to be bodies of water when they become unfrozen, so they need the bill's protection. In effect, they are reservoirs of water.

Allan Wilson: Well, it becomes protected at the point that it ceases to be a snowfield and becomes the water that runs down the rivers into the lochs and, subsequently, the sea.

John Scott: So, a snowfield is protected only at that point. I find it bizarre that snow it is not protected until it becomes water.

The Convener: I will stop you there, John. I brought you back in on a point of clarification and the minister has given you a clarification on the point. If you need further clarification, please ask.

John Scott: I am sorry. Right, I will go on to talk about amendment 111, which is an attempt to define where boundaries stop and start. The minister spoke about the bodies of water that relate to the sub-basin plan under section 15(2)(a). If we are talking about the need to publish maps, I would have thought that there is also a need to define where the bodies of transitional water stop and start. It may be that the maximum flood area is not the correct boundary—it may be the mid point or the low point. Amendment 111 is a probing amendment that raises the question of where transitional waters stop and start.

12:00

Allan Wilson: It will be a matter of fact, which will be determined by SEPA during the characterisation process. The limits of the transitional waters will be a line that will be defined on a map. Under section 3(10)(a), the Scottish ministers

“must deposit with SEPA maps showing what appear to them to be the landward and seaward limits of every body of transitional water”.

John Scott: How will the transitional waters be defined? At what point will that happen?

Allan Wilson: By direct reference to section 3(6), which gives a definition of transitional waters. As I said earlier, that definition is a repetition of the definition that is included in the directive. The Scottish ministers would define what constitutes transitional waters—there will be a line on a map.

The Convener: As no other member wishes to come in, I invite Nora Radcliffe to respond to the debate and indicate whether she wishes to press amendment 32.

Nora Radcliffe: The matter is important and, with the convener's indulgence, I would like to have a wee bit more discussion before I sum up.

I cannot understand why wetlands can be included in part 1 as part of the

“protection of the water environment”

but that it is not possible to include wetlands as part of the water environment in section 3.

Wetlands are neither surface water nor groundwater; they are an essential part of our aquasystem. What is the minister's objection to including wetlands in section 3(2)?

Allan Wilson: To a certain extent, Nora Radcliffe has answered her own question, which is one that has exercised the European Commission and other member states. Wetlands are in essence a bridge—a transition—between land and water. In section 1, we draw the line at which we incorporate wetlands. They are those that are dependent on the aquatic ecosystem to which they are connected.

Nora Radcliffe: So is the term “wetlands” implicit in the term “surface water”?

Allan Wilson: Where the wetland is

“directly depending on those aquatic ecosystems”

they constitute surface water and are afforded the protection of the bill.

Nora Radcliffe: Wetlands are important enough to be mentioned implicitly in section 3(2). If we are talking about the transitional waters between salt water and fresh water, surely the transitional waters between land and water are also relevant.

Allan Wilson: Perhaps we should look at the subject from the perspective of another definition. Surely Nora Radcliffe will agree that blanket bog and other peatland vegetation do not constitute wetlands and that, ipso facto, they should not be incorporated in the bill. Amendment 32 would extend the definition of wetlands massively beyond what we propose, which is those that are

“directly depending on those aquatic ecosystems”,

which are protected. Blanket bog has no relationship whatsoever with bodies of water.

Nora Radcliffe: But certain wetlands do.

Allan Wilson: That is right; I should say that they may not have such a relationship.

Nora Radcliffe: I just think that it—

The Convener: Could I ask you just to respond to the debate?

Nora Radcliffe: Yes, certainly.

As the minister says, people have bent their minds to the matter over weeks, months and years, but I think that it is important to include wetlands explicitly. I want to press my amendment and perhaps invite a definition that the Executive is happy with and that is limited to wetlands that are part of river systems. That is particularly important if we are talking about including provisions for flood management and having flood measures as part of river basin planning. I do not see how we can leave wetlands out of it. I will press my amendment on that basis.

Allan Wilson: Can I make a point of clarification? Wetlands are included, as defined in section 1. We have made that point explicitly on several occasions, so it is not correct to say that they are excluded.

Nora Radcliffe: That is in section 1, but I still do not understand why it cannot be in the rest of the bill.

The Convener: I think that we have concluded the debate and should consider the questions on the amendments while the debate is fresh in our minds—and then conclude our consideration of the bill today.

The question is, that amendment 32 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)

Macmillan, Maureen (Highlands and Islands) (Lab)

Radcliffe, Nora (Gordon) (LD)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Scott, John (Ayr) (Con)

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

Amendment 32 agreed to.

The Convener: John Scott, do you want to move amendment 110?

John Scott: Yes, please. I would be happy to withdraw the amendment if the minister were to take time and think about how the bodies of waters—

The Convener: I do not want to reopen any debate. I need you only to move it or not to move it.

John Scott: I move amendment 110.

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

Members: No.

The Convener: There will be a division.

FOR

Scott, John (Ayr) (Con)

AGAINST

Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Harper, Robin (Lothians) (Green)
 McLeod, Fiona (West of Scotland) (SNP)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Radcliffe, Nora (Gordon) (LD)

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

Amendment 110 disagreed to.

Amendment 33 moved—[Nora Radcliffe].

The Convener: The question is, that amendment 33 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)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Scott, John (Ayr) (Con)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Muldoon, Bristow (Livingston) (Lab)

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

Amendment 33 agreed to.

Amendment 1 moved—[Allan Wilson]—and agreed to.

Amendment 111 moved—[John Scott].

The Convener: The question is, that amendment 111 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scott, John (Ayr) (Con)

AGAINST

Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Eadie, Helen (Dunfermline East) (Lab)
 Harper, Robin (Lothians) (Green)
 McLeod, Fiona (West of Scotland) (SNP)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Radcliffe, Nora (Gordon) (LD)

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

Amendment 111 disagreed to.

Amendment 2 moved—[Allan Wilson]—and agreed to.

Amendments 112, 113 and 114 not moved.

The Convener: I propose that we suspend our stage 2 consideration of the Water Environment and Water Services (Scotland) Bill until next week and move to the next agenda item. I will allow members a short break before we move on. I thank the minister for his participation.

12:10

Meeting suspended.

12:14

On resuming—

Subordinate Legislation

Water Customer Consultation Panels (Scotland) Order 2002 (SSI 2002/473)

The Convener: No member has raised any points on the order and no motions for annulment have been lodged. Can I confirm that the committee has nothing to report?

Nora Radcliffe: Are we allowed to welcome the order? It is a move forward in involving people in the water services and should be welcomed.

The Convener: You can welcome it, and that will be on the record, but we do not need to take any action. Is that agreed?

Members *indicated agreement.*

John Scott: What are we agreeing to?

Nora Radcliffe: An order on water customer panels.

The Convener: It is too late now. We will move the meeting into private session for consideration of the last two items on our agenda. I thank members of the press and public for their attendance.

12:15

Meeting continued in private until 13:29.

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