TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 27 November 2002
(*Morning*)

Session 1

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TRANSPORT AND THE ENVIRONMENT COMMITTEE
33rd 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:

Derek Bearhop (Scottish Executive Environment and Rural Affairs Department)
Sarah Boyack (Edinburgh Central) (Lab)
Paul Cackette (Office of the Solicitor to the Scottish Executive)
David Williamson (Scottish Executive Environment and Rural Affairs Department)
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 2

Scottish Parliament

Transport and the Environment Committee

Wednesday 27 November 2002

(*Morning*)

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

Subordinate Legislation

Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002

The Convener (Bristow Muldoon): I welcome members to the 33rd meeting in 2002 of the Transport and the Environment Committee. The first item on the agenda is subordinate legislation. I welcome to the committee the Deputy Minister for Environment and Rural Development, Allan Wilson. With him are Scottish Executive officials Derek Bearhop, David Williamson, Paul Cackette and Lesley Mure.

We are first considering the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002. The instrument is laid under the affirmative procedure, which means that the Parliament must approve it before its provisions come into force. I draw members' attention to an amendment that Robin Harper has lodged, which seeks to amend the motion in the name of Ross Finnie and has been selected for debate today.

In the past, our practice when considering instruments under the affirmative procedure has been to give members an opportunity to put questions to the minister before moving to a general debate on the motion—and, in this case, the amendment. Maureen Macmillan and Bruce Crawford have indicated that they would like to ask questions. Before they do so, the minister will have an opportunity to make some introductory remarks.

The Deputy Minister for Environment and Rural Development (Allan Wilson): I am sure that my introductory remarks will obviate the need for any questions. [*Laughter.*]

The Scottish Executive takes a precautionary approach to the application of genetically modified technology. That precautionary approach is built on a strong regulatory framework and well-informed public debate. It is crucial that everyone should have confidence in the ability of the regulatory procedures to protect them and their environment. That protection should include protection from any possible threats posed by the unrestricted use of genetically modified organisms.

The Europe-wide framework for regulating GMOs has been in place since 1990. The original deliberate release directive was born in a completely different era, in which GM crops were largely unknown and the technology was in its infancy. At that time, there was little public interest in the matter and consumer choice did not carry the weight or market influence that it carries today.

Member states had been working on a revised directive for some time before directive 2001/18/EC was published in April 2001. In anticipation of the directive, we in the UK had adjusted our practices to make our processes more transparent and to provide for greater public involvement.

The new directive formalises many of those adjustments and builds in further requirements to strengthen the regulatory system. The strengthened regime will be implemented in Scotland through the regulations that the committee is considering today. The committee's deliberations are particularly important in that regard.

As members know, the regulations follow a process of detailed consultation. They parallel similar arrangements and instruments that are being introduced by the UK Government and the National Assembly for Wales. They provide benefits to human health, the environment, GMO producers and the public in addition to those that the previous regulations offered.

The new regulations will introduce an explicit requirement for environmental risk assessments to cover indirect and long-term effects of GMOs and for mandatory post-market monitoring to detect unanticipated effects of any GMO that is released commercially. There will be mandatory public consultation before decisions are taken on applications and antibiotic-resistant marker genes that could adversely affect human health will be phased out. There will be mandatory traceability through the production and supply chain and no consents will last longer than 10 years without a reassessment.

All those measures take steps towards improving transparency and public involvement in the decision-making process. That is because we believe that the public voice should not be ignored. Our concern is obviously to ensure that the public have every opportunity to contribute towards the regulations, which is part of the reason why we have gone past the European target date for implementation. We consider that proper consultation leads to sound legislation and I am sure that the committee would agree that sound legislation is better than rushed legislation.

I hope that the committee will support the introduction of the regulations, which reflect the principles agreed and set out in the European directive and represent a significant strengthening of the existing regime. That regime has served us well, but it is now in need of improvement to take account of the developments in rapidly progressing technology. The regulations better reflect the needs of the Scottish public, which, as parliamentarians, we are here to serve. I commend the regulations to the committee.

09:30

The Convener: Again, I ask members whether they have questions. I see that both Maureen Macmillan and Bruce Crawford still do, so the minister's remarks did not obviate the need for any questions.

Maureen Macmillan (Highlands and Islands) (Lab): My first concern is about the definition of harm on page 5 in section 4(6). It has been suggested to me by constituents that—

Bruce Crawford (Mid Scotland and Fife) (SNP): I am sorry to interrupt, but I want to be sure that I have the right reference. Where is it?

Maureen Macmillan: It is on page 5, in section 4(6).

Bruce Crawford: Mine is on page 6.

The Convener: Either way, Maureen is referring to section 4(6).

Maureen Macmillan: Perhaps people have the document in different formats.

My constituents are concerned that the definition of harm does not include property, as was originally the case. They fear that that could have a significant impact on the ability of organic farmers or farmers who are trying to grow GM-free crops to seek redress if their crops are contaminated by GM pollen.

The Convener: For the sake of clarity, it seems to me that Maureen is referring to regulation 4(4).

Maureen Macmillan: Yes, I beg your pardon.

David Williamson (Scottish Executive Environment and Rural Affairs Department): Proposed subsection (6) is an amendment to the Environmental Protection Act 1990 and is contained in regulation 4(4).

Maureen Macmillan: I am sorry for that confusion.

Will there be protection for farmers who are growing organic or GM-free crops?

Allan Wilson: Do you want me to answer that now, or do you have other questions?

Maureen Macmillan: Do you want to answer the questions one at a time?

Allan Wilson: I am easy.

The Convener: If you want to ask all your questions at once, Maureen, you might as well.

Maureen Macmillan: I will do that.

My next question concerns regulation 22, which is about the powers to revoke consents and a political judgment of risk. We hope that Mr Finnie would use those powers to stop the trials at Munlochy, but my constituents are telling me that the powers are being watered down by the requirement for new information. Will the minister make it clear whether that is the case?

My final question is about the role of the Health and Safety Executive in partnership with the minister. If the HSE has a veto, does that remove ministerial responsibility?

Allan Wilson: On the definition of harm, which is a reference to regulation 4(4), the amendment to the Environmental Protection Act 1990 has been necessary to reflect the new directive. In that context, harm is taken to mean any adverse effect on human health or the environment. I understand that the European Union is giving separate consideration to some of the points that you raise. The issue will certainly feature in the public debate that we anticipate will ensue. Our primary concern is to protect human health and the environment from any risk raised by GMOs, so we welcome the directive's significantly higher standards of scientific scrutiny.

You raise in general terms the issue of co-existence and the issue of economic liability in particular. We recognise that the directive does not make provision for non-safety issues, such as economic liability—for example, the presence of GM crops causing economic loss. On co-existence, we want to ensure that organic and GM-based agriculture can co-operate without damaging each other. Both those topics will feature in the public debate to which I referred. My colleagues can give supplementary scientific or legal information.

The Convener: At this stage, officials can add to the minister's answers.

Paul Cackette (Office of the Solicitor to the Scottish Executive): The flavour that I took from the question was that it related to organic farmers' concerns about legal liability, because of a feeling that the definition of harm in the new directive was different from the definition in the old one. Neither directive deals directly with legal liability of a GM farmer in respect of organic farmers, but I can certainly see that issues arising from the regulations could play a role when an organic farmer wanted to pursue a claim for loss resulting from negligence.

I am unaware of any cases since the first directive came into play in which a farmer has successfully pursued a claim for economic loss in relation to GMOs. The important point is that, although the wording in the regulations is different, the rights will not be diminished—if the farmers have those rights, they have them already.

We are talking about the regime that regulates GMOs. A separate regime deals with issues of negligence. In terms of the current law of negligence, I am unaware of any cases where a pure economic loss claim has succeeded. The change of definition will not make it harder to pursue a claim. The directive does not make any difference to the position of organic farmers; it is certainly not the intention of the directive to do so and that is not a conclusion that is likely to be drawn.

The Convener: Does the minister want to come back on the other points that Maureen Macmillan made? I should say to the minister and members that this stage of the discussion is about technical clarification. We should not get into the wider debate, because we will have that in due course.

Allan Wilson: Some of the points raised relate to the debate around Robin Harper's amendment. I will try as best I can to explain what are complex points of European and domestic law.

On Maureen Macmillan's question about new information, it is important to explain what the regulations are not. They do not represent a restriction whereby any revocation of consent is based simply on new information coming to light. New information can be interpreted widely to mean a new assessment that is based on advances in scientific knowledge—in either a directly or indirectly related sphere of science—and that examines, or re-examines, pre-existing information to substantiate a revocation of consent. That is a much broader interpretation than some may have applied to the regulations.

I am sure that it is not the wish of Maureen Macmillan, or indeed the committee, that we should ignore health and safety advice to ministers on dangers to those who handle genetically modified material. We would not under any circumstances do so. It is important to stress that the ultimate decision lies with ministers. Part B consents require the agreement of the HSE, but we might choose not to grant consents for reasons that are unrelated to any health and safety concerns expressed by the HSE.

Maureen Macmillan: I would like to ask a question for clarification. Could situations arise in which the minister decided to refuse a consent for health reasons but, after the HSE said that it did not have a problem with the health aspects, the minister would have to back down?

Allan Wilson: I think that that is what I just said.

Maureen Macmillan: Okay—I was not quite clear about that.

Derek Bearhop (Scottish Executive Environment and Rural Affairs Department): The minister requires the consent of the HSE if his decision is to approve a consent. The HSE might have no health concerns, but the minister might have environmental concerns, for example, and could refuse an application. In that sense, the HSE does not have a veto. Are you with me?

Maureen Macmillan: Yes—although I am still trying to clarify what the situation would be if the minister had health concerns, never mind environmental concerns.

Allan Wilson: Are you asking about health concerns unrelated to the safety of the workers who are handling the GM materials?

Maureen Macmillan: Health concerns for whatever reasons.

Allan Wilson: The answer is yes.

Maureen Macmillan: It is just that health and environment are different concerns.

Allan Wilson: There is an important consideration here. The HSE exists to protect the health and safety of workers regardless of the sphere in which they are employed. It would be an irresponsible minister who sought to ignore the HSE's advice that the introduction of a GMO could endanger the health and safety of those who handled it.

John Scott (Ayr) (Con): Have you taken advice from—

The Convener: Excuse me, John. Please address your questions through the chair. I will call you in due course. I call Bruce Crawford.

Bruce Crawford: I look forward to the debate—it will follow shortly—but I wish to raise a point of clarity and understanding. The Executive note deals with the precautionary principle. In his opening remarks, the minister said:

"The Scottish Executive takes a precautionary approach to the application of genetically modified technology."

What is the Executive's definition of the precautionary principle?

09:45

Allan Wilson: I refer you to the full text of introductory paragraph 8 of the directive. The precautionary principle has been taken account of in the drafting of the directive and must be taken into account when implementing it. The precautionary principle should be used where a scientific assessment has identified the possibility

of harmful effects or where there is ambiguity, as I said in my preamble. All proposals to release a GMO are subject to intense scientific scrutiny and approval is not granted if there are concerns about possible harmful effects.

However, the precautionary principle should not be used to stifle scientific development. There is an important distinction. The precautionary principle is intended to be used where there is scientific uncertainty or an absence of information. Where the scientific evidence is unambiguous and no scientific evidence exists to support concern, it would be a distortion of the purpose of the precautionary principle to invoke it.

The precautionary principle is built into the regulation of GM crops, which are released only on a step-by-step basis after detailed scientific assessment of the risk entailed. As members are aware, there is no such thing in scientific terms as no risk—it is important to remember that. GM trials are of course a precautionary step that puts a brake on what might otherwise be commercial development. That is a brief response to the question on the application of the principle.

Bruce Crawford: Thank you. That was a good explanation of the application of the principle. However, I asked for a definition of the principle from the Executive's perspective.

Allan Wilson: I thought that I had just given that.

Bruce Crawford: No, you explained when you would apply the precautionary principle, but we have not had a definition of the principle.

The Convener: The minister has given the answer that he feels is fit for the question. As Sir David would say, I am not responsible for the answers that ministers give. The minister has answered the question that he was asked.

Allan Wilson: Perhaps I am not picking the question up. I thought that I gave a fairly full explanation of not just what the principle is but how it is applied. Approvals are not granted if there are concerns about possible harmful effects. The Scottish Executive would not take risks with human health or the environment. As everybody here knows, we act on the basis of the expert scientific advice that we receive.

The Convener: We will move on. Does John Scott still want to ask a question?

John Scott: No.

Nora Radcliffe (Gordon) (LD): Does anyone have the original definition of harm, which we are replacing?

Allan Wilson: The reference to harm is in section 107(6) of the Environmental Protection Act 1990, which says:

> "'Harm' means harm to the health of humans or other living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property."

Property is the subject of separate European Union consideration.

Nora Radcliffe: Thank you.

Fiona McLeod (West of Scotland) (SNP): In his opening remarks, the minister said that there would be a mandatory review of the long-term implications of the deliberate release of GMOs. He also spoke about traceability of GMOs. How will the Executive achieve the mandatory target? Given that we now have scientific evidence of cross-contamination, will the Executive test fields that are adjacent to and up to 6km away from field test sites?

The minister also made much of consultation with the public. What consultation was made with farmers before the regulations were laid before the Parliament?

Allan Wilson: I will ask my colleague to reply.

David Williamson: There is a requirement on member states to monitor the implementation of the new directive. As a competent authority, Scotland would feed into the UK member state response to the Commission on the issues that arise from the implementation of the directive. The Commission would report on an annual basis in some instances and on a three-yearly basis on other issues that arise from implementation of the directive. Does that answer Fiona McLeod's questions?

Fiona McLeod: No.

David Williamson: Have I missed something?

Fiona McLeod: The minister said that he would study the long-term effects of the deliberate release of GMOs. He also talked about traceability of GMOs in the crop once it is harvested. How does the Executive plan to do that?

David Williamson: If a part C marketing or commercial consent is involved, the new environmental assessment process requires the applicant to include a mandatory post-marketing monitoring plan. That is designed to assess impacts on the environment or human health. The applicant has to report impacts to the competent authority that granted the consent.

Allan Wilson: Two consultations were held—one on the principle and one on the regulations—into which farmers and others were entitled to feed. I am not sure whether Fiona McLeod is seeking further information about the farmer input to that process.

Fiona McLeod: Yes.

David Williamson: Both consultations were copied to the National Farmers Union of Scotland.

The Convener: As that exhausts members' questions, we will now consider the motion in the name of Ross Finnie and the amendment in the name of Robin Harper. I call the minister to speak to and move motion S1M-3560.

Allan Wilson: I welcome the opportunity to try to clarify members' questions, some of which relate to the merits—or perhaps demerits, as they are perceived—of GM technology. However, as the amendment recognises, today's meeting is clearly neither the time nor the place for that debate. Today is the time to implement regulations that strengthen the existing regulatory regime, which we all want to do. The regulations also provide additional benefits in relation to issues involving human health and the environment. As I said in my introductory remarks, the regulations introduce a more robust framework in which to take decisions on whether to allow the release of GMOs.

The regulations have been developed in conjunction with Department for Environment, Food and Rural Affairs colleagues down south, the National Assembly for Wales and the Department of the Environment in Northern Ireland. It is important to note that the regulations ensure consistent and complete implementation throughout the UK.

Whatever happens in the future, which I am not in a position to predict, we need a robust framework in which to take sound, scientifically based decisions. The regulations under the directive provide for that. It is for those reasons that I commend the motion to the committee.

I move,

That the Transport and the Environment Committee recommends that the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 be approved.

The Convener: At the start of the debate, I should have said that standing orders allow us a maximum of 90 minutes to debate the instrument. I hope that we will not need to use all 90.

Robin Harper (Lothians) (Green): In general, I welcome the EU directive but, as I have already indicated in a previous response to the minister and in an e-mail that I sent to the minister last night, I have concerns. I will condense them now.

There are six areas where the meaning of the directive has been lost in the translation—I think that is the best way of putting it—or become weakened. The regulations narrow the definition of harm and weaken the existing definition in the 1990 act of proper control. I have concerns about information, about the existing powers of Scottish ministers and about the Scottish ministers' joint powers with the Health and Safety Executive. I will consider those concerns in detail.

The first part of my amendment relates to the consideration of "ethical principles". Recital (9) of the EC directive clearly states:

"Respect for ethical principles recognised in a Member State is particularly important. Member States may take into consideration ethical aspects when GMOs are deliberately released or placed on the market as or in products."

However, under the regulations, it is not apparent where and how consideration of ethical aspects would be undertaken when GMOs are deliberately released into the environment or placed on the market. A consideration of ethical principles in determining the release of GMOs should be contained in the regulations, which should not be approved until that happens.

Point (a) of my amendment relates to the new definition of harm in the regulations. Regulation 4 would define the key terms and essential concepts of the new legislative regime and would amend the EPA as necessary. Regulation 4(4) would amend and seriously weaken, to include any adverse effects on human health or the environment, the existing definition of harm, which is:

"'Harm' means harm to the health of … living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property".

That has been referred to already.

The removal of the reference to harm to property is a particular concern, given that recital (16) of the EC directive states:

"The provisions of this Directive should be without prejudice to national legislation in the field of environmental liability, while Community legislation in this field needs to be complemented by rules covering liability for different types of environmental damage in all areas of the European Union."

The definition of harm must retain the reference to property and the regulations should not be approved until that happens.

Point (b) of my amendment relates to the definition of control. Under the EPA, organisms are defined as being

"under the 'control' of a person where he keeps them contained by any system of physical, chemical or biological barriers (or combination of such barriers) used for either or both of the following purposes, namely—

(a) for ensuring that the organisms do not enter the environment or produce descendants which are not so contained; or

(b) for ensuring that any of the organisms which do enter the environment, or any descendants of the organisms which are not so contained, are harmless."

The regulations would significantly alter the definition of control:

"Organisms of any description are under the 'control' of a person where that person keeps them contained by specific measure designed to limit their contact with humans and the environment and to prevent or minimise the risk of harm."

The reference in that definition to the minimisation of the risk of harm appears to represent a considerable weakening of the definition in the EPA and should not be accepted.

Regulation 11 states that applications for consent to release or market genetically modified plants should contain information that is prescribed in schedule 2 or 3

"to the extent that such information is appropriate to the nature and scale of the release or application".

It is not clear who would be responsible for deciding which pieces of information outlined in the schedules could be omitted or on which grounds such omissions could be made. The ability to vary the scope and nature of the information in the application does not appear to be identified in the directive. A key element of the directive is that any application should include a risk assessment that takes into account indirect, delayed, cumulative and long-term effects of the release of a GMO into the environment. Selecting the information to be included in an application to release a GMO may compromise our ability to assess fully all the potential impacts of such a release.

10:00

The regulations propose that, in future, ministers may revoke consents only if "new information" comes to light. At present, ministers are allowed to revoke any consent at any time. The regulations propose a worrying reduction of ministerial powers. What is meant by "new information"? Can the Scottish ministers say that information that has been submitted to them is not new and that they will not consider it? Why is the Executive narrowing ministerial powers when that is not necessary? The regulations would give the Health and Safety Executive a veto on decisions to refuse consent for growing GMOs on health grounds. Why?

I ask the committee to support my amendment. It does not throw out the regulations but expresses regret at the omissions and insertions to which I have referred. It puts a moral obligation on the Executive to consider each of them and to lay revised regulations before the Parliament. Of course, if we believe that the regulations are fatally flawed, we can reject them all.

I move amendment S1M-3560.1, to insert at end:

"but, in doing so, regrets that the regulations do not require the consideration of 'ethical principles' before genetically modified organisms (GMOs) are released or placed on the market, as highlighted in the preamble to Directive 2001/18/EC, and that the regulations (a) narrow the existing definition of 'harm' from GMOs under the Environmental Protection Act 1990 instead of retaining the existing definition which includes harm to property, (b) weaken the existing definition in the Act of proper 'control' of GMOs that currently requires any GMOs that enter the environment to be 'harmless', to only having to 'minimise the risk of harm', (c) allow the requirement for information to be contained in an application for consent to release/market GMOs, as required in the Directive, to be varied 'to the extent that such information is appropriate to the nature and scale of the release or application' but do not require full information to be provided according to Annex III of the Directive for any release of GMOs, (d) reduce the current powers of Scottish ministers to 'revoke a consent at any time' to instead only allowing a consent to be revoked if 'new information' comes to light and (e) provide for joint powers with the Health and Safety Executive to refuse a consent on health grounds rather than such powers being retained solely with Scottish Ministers."

The Convener: On a couple of occasions, Robin Harper said that the committee should not approve the instrument until a particular change had been made. However, if the amendment is agreed to, the committee would still have recommended that the regulations be approved.

Bruce Crawford: I will deal later with some of the points that Robin Harper made, as I am confused about his intentions.

I welcome the general direction of the directive—at issue is whether it goes far enough. We are here to approve legislation that reflects the Scottish position and—as the minister said—the concerns of the Scottish people. We are not here simply to endorse the position of DEFRA. Some of the changes that were made to the original draft instrument seem merely to reflect the wishes of the UK department.

In my view, the draft instrument is seriously flawed—for a number of reasons. I am appalled by the failure to apply the precautionary principle throughout the draft SSI. I am concerned that the instrument would dilute existing powers and about the way in which it would define harm—an issue that Robin Harper raised. Other issues of concern are the passing of responsibility from the Scottish Executive to the Health and Safety Executive, the serious gaps that exist on testing issues and the potential impact of the instrument on human health. I will deal with those criticisms in detail.

In its note to the draft regulations, the Executive claims:

"The precautionary principle was taken into account in drafting the Directive and has been taken in account in drafting these implementing Regulations."

The Executive may have taken the precautionary principle into account, but it is a pity that it chose to ignore that principle entirely with regard to the risk of damage.

The precautionary principle advocates a proactive rather than a reactive approach to risk and works on the premise that it is better to be roughly right ahead of time than to be precisely wrong too late. In other words, the precautionary principle demands that action be taken before proof of environmental damage or likely environmental damage is available. Scottish Natural Heritage, which is the Executive's adviser on natural fauna and such matters, interprets the precautionary principle to mean that

"full scientific proof of a possible adverse environmental impact is not required before action is taken to prevent that impact."

There are 12 references in the regulations to the risk of damage, but none has the key word "potential" before it. The precautionary principle will not be applied properly unless the word "potential" is inserted before the phrase "risk of damage". In my view, the regulations are weakened fatally. To save time, I have circulated a list of proposed changes to the regulations. I do not want to go through them individually because that would take a heck of a lot of time. I hope that the list will save the committee some time.

Frankly, Robin Harper's amendment is pointless. Given that, as he said, the regulations are flawed, the only course of action is to vote against them. A vote for Robin Harper's amendment would be a vote to approve the regulations as they stand, which I cannot do. Fiona McLeod will deal with some of the issues that Robin Harper raised about existing powers and protections as well as the passing of powers from the Scottish ministers to the Health and Safety Executive, but I want to consider how the regulations could be strengthened beyond the EU directive's requirements. We must apply the precautionary principle to the testing of conventional crops that are adjacent to genetically modified crop trials. It is vital that such conventional crops are tested for genetically modified contamination, which might freely enter the human food chain.

The European Environment Agency report on genetically modified organisms describes clearly its view of the high risk of crop-to-crop gene flow from oilseed rape. The Executive will no doubt tell us that its advisers, particularly the Advisory Committee on Releases to the Environment, say that the risk is minimal and can be set aside. However, there are risks, which is why we must apply the precautionary principle. I do not dispute that different bodies have different scientific opinions and give different advice. That does not matter; the important point is that the precautionary principle does not require absolute proof; SNH states that full scientific proof of possible adverse impact is not required.

Given that the minister, if I heard him rightly, said that the precautionary principle would be applied in cases of ambiguity or scientific uncertainty, my points should be acceptable to him. If the Executive were truly intent on applying the precautionary principle, it would require tests to be carried out on conventional crops that are situated adjacent to genetically modified crop trials in order to provide guarantees that no contaminated material will find its way into the human food chain.

Forgive me if I misunderstand this complex piece of legislation, but the regulations do not take a precautionary approach to the potential implications for public health. The British Medical Association has advocated strongly that a precautionary approach should be taken with regard to the implications for public health. In its recent advice to the Health and Community Care Committee, the BMA stated:

"Further research is required into the health and environmental effects of GMOs before they can be permitted to be freely cultivated. This must be executed in such a way as not to expose the population to possibly irreversible environmental risk, which may, in turn, have as yet unquantified public health implications."

That is the point of the precautionary principle. The advice continued:

"The BMA recommends that the only way to assess the impact on health is to track any subtle changes in the trial areas. Routine health surveillance currently in place would not pick up adverse effects on the health of people living in the vicinity of GMO trial sites in Scotland".

The BMA recommends that there should be a moratorium on such sites.

The BMA's position represents a precautionary approach. As I have stated, the Executive has failed to do that in a number of ways throughout the regulations. If members believe, as I do, that the precautionary approach has not been properly applied, there is only one course of action that can be taken with regard to the regulations. We should reject them and ask the minister to redraft them and bring them back. That would not take a great deal of time to achieve, but we could end up with a much strengthened position, as Scotland could say for real that it was applying the precautionary principle.

Des McNulty (Clydebank and Milngavie) (Lab): I would like some clarification. Where has the piece of paper that has been circulated to us come from?

The Convener: I understand that that document covers areas where Bruce Crawford believes that the instrument could be improved; it does not have any formal status at this stage. The committee must consider whether to approve or reject the motion in the name of the minister—and thereby the instrument—and whether to approve or reject Robin Harper's amendment. Those are the options before the committee.

Bruce Crawford: As I said in my address, I circulated that piece of paper to try to save time.

Des McNulty: I do not think that what Bruce Crawford has suggested adds anything at all. In particular, I think that he misunderstands the notion of the term "risk", which implies an assessment of the potential for damage. What he has put forward is just nonsense, frankly. He ought to read a dictionary.

The points that Robin Harper makes are reasonable, as they relate to identifiable areas of debate. What is surprising is how he is making those points—by proposing an amendment to the motion. Robin Harper has commented on issues that will be taken forward not just in the context of this SSI, but also in the implementation of future SSIs. The committee has raised issues, and Robin has added to and amplified a number of those points in relation to the instrument that we are considering today.

Bruce Crawford's position is the honest one. He is saying, "Reject this." What he is not saying is what he would put in its place. He is offering the addition of the word "potential" a number of times throughout the instrument. That is pretty much a nonsense and I suggest that we reject what Bruce Crawford has to say.

Fiona McLeod: There are a few points that the minister will not be surprised to hear me raise. They have been raised by other members already, both in the debate and when previously questioning the minister. First, I want to look at the redefinition of "harm" in terms of the environmental assessment and the answers that the minister and his civil servants gave in support of the order. Bruce Crawford has already raised that issue under the precautionary principle. As I have stated on many occasions, the minister knows that evidence is available to show that there is cross-contamination over many kilometres. An environmental assessment has to take that risk into consideration, so any definition of "harm" must take that evidence and the precautionary principle into consideration.

In reply to my earlier question, I was told that the environmental assessment of harm would be done by the applicant for a part C consent. I understood that ministers had no intention of granting part C consents in Scotland and that we were still at the stage of part B consent, which is the consent to trial. The minister and his civil servants have told us today that the new definition of "harm" in the regulations will allow people to grow genetically modified organisms under a part B consent without having to carry out an environmental impact assessment that looks at the effect on

"humans or other living organisms"

of

"interference with the ecological systems ... and, in the case of man ... offence caused to any of his senses or harm to his property."

The minister has already read out that definition of "harm". Quite clearly, the new definition of harm, coupled with the answer that we have had about its applying to part C consents, but not to part B consents, leaves us in the position in Scotland where genetically modified organisms can be grown as a trial and nobody has any comeback.

10:15

Des McNulty raised a point about risk assessments and using dictionaries. He knows as well as I do that when we carry out a risk assessment, we have to define the risk that we are assessing. Therefore, if the risk assessments are to have any meaning, we have to apply the precautionary principle.

When we talked about the definition of harm, the minister said that there were no non-safety issues in the new definition. It is quite clear to all members of the committee as well as to farmers and the public that the cross-contamination of crops is a safety issue. It is not merely an issue of economic damage to the adjacent farmer; it is an issue of damage to the environment and, possibly, to public health in Scotland. The minister cannot just dismiss the point by saying that there are no non-safety issues.

I want to home in on the point about economic damage. Paul Cackette's answer made it quite clear that in his interpretation a farmer on an adjacent farm that suffered cross-contamination would still have a case to put that he had suffered economic harm. After having been questioned many times, mostly by John Scott, will the minister now accept his civil servant's definition and say that he will accept liability for economic damage caused by cross-contamination?

I move on to the issue of the Health and Safety Executive. Section 111(10) of the Environmental Protection Act 1990 states that the minister

"may at any time, by notice ... revoke or vary the consent".

Mr Finnie has constantly argued that that does not give him the ability to revoke or vary a consent in Scotland for some reason. On each occasion he said that that was because the Advisory Committee on Releases to the Environment said that the scientific evidence would not allow him to do that. I wonder why the HSE was introduced in the new regulations. Was that in case ACRE no longer provided the minister with the advice that he wanted to hear? Was it to enable him to turn to another agency to get the advice that he does want to hear?

The fact that I have to ask a Scottish minister to go to the UK environmental regulatory agency, not to the Scottish environmental regulatory agency seems rather strange. However, I am sure that the minister will be able to explain why he would prefer the UK HSE to the Scottish Environmental Protection Agency when considering damage to the environment.

Within the HSE, which is a UK agency, genetically modified organisms and their deliberate release are dealt with by a very small department in Bootle, which is a suburb of Liverpool. As I understand it, the department has three members of staff. From now on, the minister is going to take advice on whether to revoke or vary a consent on the deliberate release of genetically modified organisms in Scotland from a very small department of a regulatory agency, which determines the deliberate release of genetically modified organisms.

I think that the minister misunderstands the HSE's role in these matters. On at least two occasions, the minister referred to the HSE in relation to the health and safety of workers, which, I presume means the farmers and anybody working with the genetically modified crops. That was the basis for the minister's reasoning that the HSE will not have a great power of veto and that the minister will make the ultimate decision. I agree that that should happen. Has the minister read section 3 of the Health and Safety at Work etc Act 1974? It states clearly that it covers not only workers but the public, when they come into contact with the work that is being carried out. Therefore, section 3 will cover adjacent farms and members of the public on land adjacent to the farms where the genetically modified crops are grown. The HSE could, using section 3 of the Health and Safety at Work etc Act 1974, veto anything that the minister decides to do.

The minister kept saying that there should be a full public debate. Should not the public debate have taken place before the regulations came before us rather than unfolding, as the minister implied, after we have implemented them? One of the civil servants stated that the consultation had been copied to the National Farmers Union of Scotland. Does that union represent all farmers in Scotland? Does it take a particular interest in the needs and requirements of organic farmers in Scotland? Could the minister tell us what reply he received from the NFUS and whether he took into account suggestions that it may have made to him?

The statutory instrument is, on many counts, fatally flawed in respect of the protection of the environment in Scotland. It will therefore have to be rejected and, I hope, redrafted and replaced to take account of the concerns of committee members.

John Scott: I am unhappy about parts of the affirmative instrument. I declare an interest as a farmer.

I favour the ultra precautionary principle, as we do in the Conservative party, so I cannot accept the reduction of responsibility that the affirmative instrument seeks for Scottish ministers. It is unacceptable, when the Health and Community Care Committee is considering evidence on the matter, that the minister is seeking to reduce his responsibilities and liabilities in this respect.

Our problem, as lay people, is that we are confronted with apparently conflicting advice. The BMA's submission to the Health and Community Care Committee last week posed the question:

"should the Executive prevent GM crop trials from continuing on the grounds that it is against the precautionary principle to allow them to continue?"

In response, the BMA states unequivocally that those trials should not proceed:

"There has not yet been a robust and thorough search into the potentially harmful effects of GM foodstuffs on human health. On the basis of the precautionary principle, farm scale trials should not be allowed to continue."

It does not get much clearer than that, minister.

On the other hand, the minister and ACRE say that there is not a problem and there is nothing to worry about. Who are we to believe? That is key to our consideration of the affirmative instrument. The Royal Society of Edinburgh states in its submission to the Health and Community Care Committee that GM crops probably do not harm human health, because no one has shown yet that they do. It nonetheless accepts that there has been

"no formal assessment of the allergenic risks posed by inhalation of pollen and dusts."

It cites evidence from the US that suggests that effects are likely to be only "small and long term"—there is no need to worry then.

ACRE's criteria to gauge harm when releasing genetically modified organisms into the environment tell us nothing apart from the fact that the traditional methods used to carry out risk assessment of the "seven attributes of harm" are not ideally suited to the assessment of risk from GMOs and that it proposes a new set of matrices to do that.

I will now address the Government's role in the matter. Today, Ross Finnie—in the unlikely guise of Allan Wilson—is seeking to get out of his responsibilities. Why else would he seek to so significantly water down section 107(6) of the Environmental Protection Act 1990 on the meaning of harm. It states:

"'Harm' means harm to the health of humans or other living organisms or other interference with the ecological

systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property."

Regulation 4(4) of the SSI states:

"'Harm' means adverse effects as regards the health of humans or the environment."

By any standards, that is a diminution. Why is Ross Finnie so determined not to put his money where his mouth is and say, "I will be liable. We, the Scottish Government, will be liable if it can be shown subsequently that we got it wrong"? The only conclusion one can draw from the needless reduction of his responsibilities is that he and the Government are not prepared to accept the liabilities that might fall on them if adverse effects on human health and the environment subsequently come to light.

I do not believe that that approach is good enough. The Executive has called all the shots on the matter from the outset. It has chosen to ignore those, including the BMA and the Transport and the Environment Committee, who have expressed reasonable fears and doubts on GM crops. The bottom line is that if it goes wrong, ministers must take the blame and the responsibility. Ministers cannot give up the power under section 111(10) of the Environmental Protection Act 1990 to revoke any consent at any time and substitute that with the statement that they shall revoke a consent only when new information becomes available that ministers consider

"would affect the assessment of risk or damage being caused to the environment by the release."

That is a cop-out, minister, and to make the HSE responsible is an abrogation of your responsibilities and duties. Therefore, the committee cannot support the affirmative instrument.

The committee has been presented with conflicting evidence. Should it believe the BMA or ACRE? To adequately adopt the precautionary principle, the committee must note the concerns of the BMA and others and act on them. Based on the evidence that it has received, it is to be regretted that the committee could not responsibly pass the affirmative instrument today.

Nora Radcliffe: I had not intended to speak, but some things must be said. The HSE is not responsible. It merely advises the minister, with whom the responsibility rests. We are discussing removing property from the definition of harm. However, should property have been included in that definition in the original Environmental Protection Act 1990?

I do not see any difficulty in saying that the minister needs new information before he revokes a consent. Presumably he would not have given consent in the first place, in an irresponsible or unconsidered way, based on the information that he had.

Angus MacKay (Edinburgh South) (Lab): There are serious and important arguments to be made about GM trials, crops and foods, none of which have been made today. The possible exceptions are the points made by Robin Harper, but they have not altered the way in which I intend to vote. I deplore especially the idea, which has been used as an argument in other contexts and other places, and was repeated yet again by SNP members, that if an agency is in Bootle, it is bad, and if it is in Banff, it is good. That is nonsense.

Robin Harper: I am in a slightly difficult position. An amendment of regret is a new idea. It appends to an Executive motion a series of concerns that one hopes it would address. A large section of the directive has been adopted, and the Executive has moved on some other areas where recommendations were put in asking them to make changes. There is a feeling that the new regulations should be brought in as soon as possible because the bulk of them represent improvements on the present situation.

Members are concerned about the risk of cross-contamination. A serious event occurred in the United States recently, whereby a crop that had been modified to produce medicines cross-contaminated a crop that was destined for the food chain. Where such events are possible, consequent to a further roll-out of GM crops into the environment in Europe—and Scotland in particular—the regulations must be robust enough to ensure that they never happen here. Any concerns over cross-contamination must be taken extremely seriously.

As to how I would like to progress with my amendment, Bruce Crawford has indicated that the SNP is not disposed to support the amendment. In one sense, it is immaterial how the committee votes on my amendment, which expresses serious concerns. Enough concerns have been expressed for the committee to reject the regulations as they stand—although that is consequent on the Executive response—and ask the Executive to come back as quickly as possible with any further amendments that it is prepared to make to the regulations so that they can be operative as soon as possible.

10:30

The Convener: Are you pressing your amendment, or do you wish to withdraw it?

Robin Harper: I press my amendment, but if it is agreed to, I will still urge the committee to reject the amended motion. Have I made myself clear?

The Convener: I understand what you are saying; I am sure that other members do as well.

Robin Harper: In that case, if—

The Convener: I was just clarifying whether you were pressing the amendment. You have had the chance to respond to the debate.

Angus MacKay: Is Robin Harper saying that he wants to—

The Convener: I do not wish to re-open the debate, Angus, because a number of members would wish to do that.

Robin Harper: If there is a misunderstanding, I will withdraw my amendment and leave it as a clear vote on whether to accept or reject the motion.

Amendment, by agreement, withdrawn.

Allan Wilson: A few red herrings have been introduced into the debate. I do not know whether a red herring is a genetically modified fish, but some have certainly been released into the environment of the debate by the SNP and the Tories—I exclude Robin Harper from that analogy.

Nothing comes without risk. Zero risk is impossible. Everything carries a potential risk, as Bruce Crawford outlined. His suggested amendments to the regulations would prevent any GMO releases in Scotland. That is presumably his intent.

Are those amendments compatible with European law? We understand that the Greens wish to withdraw from the European Union; that is not the SNP's position—not yet, anyway. The answer is that the amendments would probably not be compatible with European law, because, if a case passed the test in the directive, which obliges an assessment of risk to health and the environment—I will come to that test later—not to permit that trial would potentially contravene European law. The insertion of "potential" would effectively contravene EU law.

The amendment to the Environmental Protection Act 1990, which has been introduced, is necessary to reflect the new directive. As I said to Maureen Macmillan in the question-and-answer session, "harm" is taken to mean any adverse effects on human health or the environment. I accept that questions remain about economic liability and co-existence. Robin Harper and Maureen Macmillan outlined those questions. I attempted to address them in the question-and-answer session.

In terms of the ethical considerations, the new directive and the implementation of the regulations remain firmly based on a scientific assessment of risk. Individual applications to release or market a GMO are risk-assessed on a case-by-case basis.

There is provision in the directive for the European Commission to have regard to social, economic and ethical issues. In the light of member states' practical experience of implementing the directive, the Commission may issue further guidance to address the ethical concerns to which Robin Harper and others have referred, which arise from the release or marketing of particular types of GMO.

That is important in relation to the information that is being sought under the directive. The information that is required reflects the type of application. For example, an application for the import of cut flowers would require a more limited risk assessment than a GM product for human consumption, but Scottish ministers remain the competent authority in that context, which is as it should be.

The idea that cross-pollination equates to harm is another red herring; cross-pollination does not equate to harm. The purpose of the regulatory system is to assess risk. Ministers will give approval only if the advice is that the GMO carries no greater risk than its conventional equivalent.

Another red herring is the question of the robustness of the consultation process with regard to both the National Farmers Union of Scotland and, latterly, the organic movement. In fact, the consultation that was issued to 120 stakeholders, including local authorities, community councils, health boards, research establishments, universities, environmental groups and associations, as well as all colleague MSPs, attracted a total of 24 responses, which were summarised. At the outset of the consultation, the Executive made clear its intention to make the responses available to the public and to the Scottish Parliament. That consultation included the Scottish Organic Producers Association.

I have dealt with the question of revoking consents and the powers of ministers. In response to Maureen Macmillan, and in relation to the serious point that Robin Harper and other members made, I explained that the reference to new information does not restrict revocation of consents to situations where there has been no prior assessment of pre-existing information. It does, however, provide for the development of the science base, which is taken on board in relation to future assessments and potential revocations.

The last red herring that I wish to deal with prior to asking members to support the Executive's motion came from the Tories, interestingly enough. It is the suggestion that the evidence from the BMA is not contradictory. As members know, Dr Charles Saunders suggested that GM field trials should, simultaneously, be discontinued and be used to quantify potential risks to human health. That is a contradictory position. We favour the continuation of trials, which is obviously necessary to obtain the evidence upon which

future assessments of the risk to human health can be based.

For all those reasons, and for those that I outlined before moving the motion and that are contained in the preamble of our informatory debate, I ask members to support the motion to recommend that the regulations be approved.

The Convener: The question is, that motion S1M-3560, in the name of Ross Finnie, be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

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

Motion agreed to.

That the Transport and the Environment Committee recommends that the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 be approved.

Large Combustion Plants (Scotland) Regulations 2002 (SSI 2002/493)

The Convener: I will deal briefly with the regulations, after which I intend to give members a couple of minutes' break before we proceed to amendments to the Water Environment and Water Services (Scotland) Bill.

The regulations are subject to negative procedure. No members have made points about the regulations and no motions to annul have been lodged. Do members confirm that the committee has nothing to report on the instrument?

Bruce Crawford: I do not wish to annul the regulations, but I have a question about the science, which is a bit confusing. I understand the need for greater restrictions on NOCs and SOCs—non-volatile organic compounds and semi-volatile organic compounds—which the instrument tries to impose, especially to help to deal with issues such as acidic rain and how it impacts on the environment. However, I understood from discussions with bodies such as Scottish Power that such restrictions would increase the amount of CO_2 that is required to be burned because of the temperatures that are involved and the greater burning issues that are involved. I am a bit concerned that we are on the one hand trying to stop NOCs and SOCs going into the atmosphere, but that we might on the other hand contribute more to climate change. I want clarification on that—I thought that an Executive representative would be here to answer such questions.

The Convener: It is not normal for the Executive to send a representative to answer such questions about a negative instrument. The clerks normally circulate statutory instruments well in advance of meetings and if members want technical clarification, they should try to obtain that before meetings. That is not a major criticism, but a suggestion about how to deal with negative instruments in the future.

Bruce Crawford: I understand that, but in passing the instrument, could we ask the Executive to confirm the impact that greater control of NOCs and SOCs will have on CO_2 levels?

The Convener: I am happy to seek clarification, but is the committee agreed that we have nothing to report on the instrument?

Members *indicated agreement*.

The Convener: I am afraid that it is about 17 years since I last studied chemistry, so I could not give Bruce Crawford a technical answer to his question.

10:42

Meeting suspended.

10:48

On resuming—

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

Section 3—The water environment: definitions

The Convener: I welcome the Deputy Minister for Environment and Rural Development back to the meeting after our brief suspension. I also welcome various officials from the Scottish Executive.

We are about to consider amendment 115, in the name of John Scott, which would amend section 3. Before we begin, I appeal to members to be as concise as possible, because we have already taken some time over previous amendments. I hope to make substantial progress today, so I propose that we consider amendments until 1 o'clock. Do members agree?

Members *indicated agreement*.

The Convener: Amendment 115 is grouped with amendment 116.

John Scott: It is essential that, in coastal zone management, different types of areas and bodies of water are clearly defined and that information on them is readily available, particularly for the future development of fish farming. Such information would also be of value to all other users of coastal waters, including fishermen, marine biologists and pleasure craft users. Amendments 115 and 116 would make such maps readily available.

I move amendment 115.

Allan Wilson: I suppose that amendment 115 begs the legitimate question of why the bill will impose a duty on ministers to deposit maps that set out the boundaries of transitional waters—which we discussed last week—but will merely give them discretion to provide the same maps of coastal waters. The answer is simple: it is easier to map coastal waters than it is to map transitional waters. For that reason, the Scottish Environment Protection Agency might without reference to ministers be able to map the extent of such waters, which is why the bill will allow the use of the discretion. I understand that mapping transitional waters is more difficult, which explains why the bill will in that regard impose a duty on ministers; however, it is not the case that coastal waters will remain unmapped. I hope that, with that reassurance, John Scott will seek to withdraw amendment 115.

Amendment 116 seeks to amend section 3(10)(c) and would require ministers to issue revised maps where there appear to be changes to the limits of coastal or transitional waters; however, the bill as drafted will give ministers discretion to do so. In that context, amendment 116 is unnecessary, because SEPA should be able to make the relevant changes without referring to ministers. After all, under the characterisation process, SEPA will have the duty to identify and map all water bodies. A power to ensure that we can guide SEPA is all that we need. As I pointed out, we expect SEPA, without reference to ministers, to map coastal waters; however, as transitional waters are more complex for the reasons that we discussed last week, we feel that a duty is required.

The Convener: I invite John Scott to respond to the debate and to indicate whether he wishes to press amendment 115.

John Scott: As you want me to be brief, I will say merely that I want to press amendment 115.

The Convener: The question is, that amendment 115 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

ABSTENTIONS

Harper, Robin (Lothians) (Green)

The Convener: The result of the division is: For 3, Against 4, Abstentions 1.

Amendment 115 disagreed to.

Amendment 116 moved—[John Scott].

The Convener: The question is, that amendment 116 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division

FOR

McLeod, Fiona (West of Scotland) (SNP)
Scott, John (Ayr) (Con)

AGAINST

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

ABSTENTIONS

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

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

Amendment 116 disagreed to.

Section 3, as amended, agreed to.

Section 4—Establishment of river basin districts

Amendment 34 moved—[Nora Radcliffe].

The Convener: The question is, that amendment 34 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

MacKay, Angus (Edinburgh South) (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 34 agreed to.

Amendment 35 moved—[Nora Radcliffe].

The Convener: The question is, that amendment 35 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

MacKay, Angus (Edinburgh South) (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 35 agreed to.

The Convener: Amendment 36, in the name of Nora Radcliffe, is grouped with amendments 36B, 36A, 127, 91, 92, 128, 93, 98, 132, 147, 46, 59, 148, 149, 150, 139, 61, 62, 106 and 69. Has nobody shouted "House!" yet? Before we consider the amendments, I should point out that several amendments would pre-empt others if agreed to: agreement to amendment 147 will pre-empt amendment 46; agreement to amendment 46 will pre-empt amendments 59, 148 and 149; and agreement to amendment 139 will pre-empt amendment 61.

I invite Nora Radcliffe to move amendment 36 and to speak to her other amendments and others in the group.

Nora Radcliffe: Amendment 36 is important because it would be meaningless to talk about a river basin district that covered almost the whole of Scotland and it would be difficult to get proper involvement in planning for a river basin district for the whole of Scotland. If the bill is to be implemented with the active participation that is a feature of it, we must break down any river basin district that covers virtually the whole of Scotland. Amendment 36A, in the name of Maureen Macmillan, would improve my amendment by replacing the phrase "geographical area" with the word "catchments", which is more sensible. If we are considering the water environment, it is obvious and sensible to act in terms of river catchment areas.

The purpose of amendment 128 in my name is to say that a sub-basin plan should contain the same information and requirements as a river basin management plan. It is crucial that the bill include a requirement that we take sub-basin districts and planning seriously, because those will be the front line where the real work of implementing the water framework directive will be. It is important that we do it properly. The other amendment in my name is amendment 132, which is a consequential amendment.

I move amendment 36.

The Convener: I invite John Scott to speak to and move amendment 36B, and to speak to amendment 127 and other amendments in the group.

11:00

John Scott: Amendment 36B agrees with Nora Radcliffe's amendment 36, but seeks to broaden its scope; there is nothing more complicated to it than that. The amendment incorporates the intention behind Maureen Macmillan's amendment 36A and tries to produce an amalgam of everyone's position, which I hope will be agreeable to the minister. What amendment 127 seeks to do is similar in principal to what Nora Radcliffe is trying to introduce into the bill on sub-basin management plans, which will need to be created, as Maureen Macmillan and others have said.

I move amendment 36B.

The Convener: I invite Maureen Macmillan to speak to amendments 36A, 91, 92, 93 and 46, and

to any other amendments that she wishes to address.

Maureen Macmillan: Amendment 36A picks up the same point that Nora Radcliffe and John Scott made, which is that SEPA must—for all the reasons that Nora Radcliffe gave about involving people from the bottom up—divide each river basin district into sub-basins. The second part of the amendment defines a sub-basin as:

"an area … comprising a particular catchment or geographical area"

and so on. No, that is the wrong amendment—sorry. Which amendment are we on?

The Convener: Amendment 36A.

Maureen Macmillan: Yes. Amendment 36A seeks to replace "geographical area" with "catchments". The other amendment is—I have far too many bits of paper here.

The Convener: The other amendments that you lodged are amendments 91, 92, 93 and 46.

Maureen Macmillan: Those amendments are all about sub-basin plans. I do not think that there is much to add to what Nora Radcliffe said. They amendments are consequential on the idea of sub-basin plans being included on the face of the bill. Amendment 93 has the same intention. It says:

"insert <and a sub-basin plan>".

I move amendment 36A.

The Convener: I invite Fiona McLeod to speak to amendments 98 and 139.

Fiona McLeod: Am I to speak only to those amendments?

The Convener: You can address any of the amendments in the group. Amendments 98 and 139 are the only amendments in your name.

Fiona McLeod: I will address first the amendments in my name. Amendment 98 seeks to ensure that sub-basin plans are included in schedule 1, which is consequential on the committee's cross-party support for the establishment of sub-basin plans. If we go ahead with the intention that we expressed in our stage 1 report to ensure that sub-basin plans are part of the mandatory process, schedule 1 should be amended accordingly to ensure that such plans are mentioned in it.

I find amendment 139 in my name more difficult to argue for, because it is consequential on amendment 140, on the establishment of advisory groups on sub-basin plans. Rather than argue for amendment 140 at this point, I will say only that amendment 139 is consequential on amendment 140, which seeks to set up sub-basin advisory groups.

I will address the minister's amendments 148, 149 and 150. I hope that I have the right numbers.

The Convener: The minister will move amendments 148, 149, 150, 147, 59, 61, 62 and 69.

Fiona McLeod: Without referring to the numbers, I will address my remarks to the minister's amendments in the section on the establishment of sub-basin plans.

I find the minister's amendments quite appealing. Obviously, he has accepted the committee's view as expressed in its stage 1 report and the view that was expressed in the evidence that we took that sub-basin plans are essential to deliver the water framework directive and therefore essential to deliver the bill. However, the amendments are not persuasive enough, because they do not go far enough. If they were agreed to, establishment of sub-basin plans and designation of areas for the sub-basin plans would happen entirely at SEPA's behest. The committee should be more minded to support Nora Radcliffe's amendment 36, as amended by Maureen Macmillan's amendment 36A, to ensure that the recommendations that we made at the end of our stage 1 deliberations are achieved.

The Convener: I invite Des McNulty to speak to amendment 106 and any other amendments in the group.

Des McNulty: Amendment 106 is a consequential amendment, so I do not want to say anything about it.

The Convener: Okay. I invite the minister to speak to amendments 147, 59, 148, 149, 150, 61, 62 and 69 and to any other amendments in the group.

Allan Wilson: As the convener said, if, for example, amendment 46 is agreed to, it will pre-empt many of our amendments.

Members have an important choice. To follow on from what Fiona McLeod said, we have indeed accepted the committee's views and lodged amendments to substantiate the provision. That was done in response to the committee's wish to expand the provision that is made in the bill for public participation. That is important background. We have considered whether we need to do more in the bill to deliver our policy objective of having a network of advisory groups in each river basin district. Members will recall that Ross Finnie and I gave a commitment to consider that matter during the stage 1 debate on the bill. I can now say that we agree with the committee that we need to do so.

We have also lodged amendments to make it clear that advisory groups will no longer be required to have a pan-district remit, which is an

important provision. The amendments will provide for a network of groups covering the whole district, but not in themselves overlapping. The amendments on advisory groups make it clear that SEPA will determine the remit of each group and that the remit can be fixed by reference to sub-basin plans. We shall discuss the strengthening of advisory groups when we discuss a later group of amendments, but that is important background information for the committee's deliberations on the amendments.

Fiona McLeod is wrong about differences. There are differences between amendments 36, 36A and 139, which I will come to, but it is wrong to say that there is any difference in relation to the discretion given to SEPA. Both sets of amendments properly give discretion to SEPA.

Amendment 147, which replaces amendment 58, is the main amendment in the series. It is designed to address concerns raised in relation to sub-basin plans in the committee's report. I am conscious of strictures to be brief, but the section is long and important, so if the committee does not mind, I will deal with it in detail.

We had originally planned to lodge amendments at stage 3, but we have managed to prepare them more quickly than we had expected and have been able to lodge them at stage 2—I hope that that will be helpful. Amendment 147 inserts a requirement in the bill for SEPA to establish sub-basin plans for the entirety of each river basin district—there is no difference in that respect from what Maureen Macmillan and Nora Radcliffe proposed. Therefore, SEPA will be responsible for determining the precise number of sub-basin plans and the areas to which they relate. That is the approach that the committee asked us to take and SEPA has made it clear that that was the way in which it intended to proceed. Therefore, it makes sense to include such provision in the bill. I hope that members will appreciate that change.

The bill as introduced had an important flexibility that amendment 147 does not remove—the ability of SEPA or a responsible authority to prepare a sub-basin plan relating to a particular aspect of water management within the district. The fact that amendment 147 makes such provision distinguishes it from other amendments. It means that it will be possible to draw up thematic sub-basin plans that deal with a range of cross-sub-basin planning issues, such as diffuse pollution and sustainable flood management, where such plans would add value to the process. It is important for SEPA to retain that flexibility. We want SEPA to be able to consider thematic, as well as catchment-based, sub-river basin planning.

Amendment 59 is consequential to amendment 147—it tidies up the changes resulting from that amendment. Amendment 148 makes it clear that the examples of issues that could be covered by sub-basin plans that are given in section 15(2) apply to the discretionary, thematic sub-basin plans that I mentioned. Amendment 149 makes it clear that the areas to which such thematic sub-basin plans relate need not be limited to the areas that are defined by SEPA in relation to the compulsory geographic sub-basin plans. We are leaving that option open. For example, it might be deemed necessary to prepare a plan for a smaller area with more acute problems—such an area could be described as a sub-catchment area. It is important for SEPA to have that option. I would argue that that provision adds value to the process of sub-river basin management planning.

In addition to catchment-based sub-river basin planning, there will be the opportunity to prepare thematic sub-river basin management plans to deal with issues such as diffuse pollution and sustainable flood management.

Amendment 150 seeks to stop any problems arising from those arrangements by requiring that any sub-basin plans that are prepared under new sections 15(1)(a) and 15(1)(b) must not be inconsistent with anything that is contained in the river basin plan that they supplement. That is an important clarification, which I know members were in favour of. Amendment 150 also specifies that sub-basin plans prepared under new paragraph (b) that relate to a particular area must not be inconsistent with the geographic sub-basin plans prepared under new paragraph (a). That is also a useful provision.

In that context, it is probably opportune to consider amendment 106. At present, Scottish ministers and every public body and office holder must have regard to the river basin management plan in exercising any functions that affect a river basin district. Amendment 106 would require that regard would also have to be paid to any sub-basin plan for that district. I sympathise with those intentions and I am prepared to accept amendment 106 in principle. However, I would like to give further consideration to the drafting. In conjunction with Des McNulty and the committee, I undertake to lodge an amendment to that effect at stage 3. Therefore, I ask Des McNulty not to move amendment 106.

I hope that that gives the committee all the assurances that it needs, which Fiona McLeod and others have mentioned. The proposed alterations represent a significant strengthening of the role of sub-basin plans as laid down in section 15 and, as such, represent the fulfilment of a commitment that Ross Finnie and I gave at stage 1.

Amendment 61 is intended to require SEPA to consult such river basin district advisory groups as it thinks fit about proposed sub-basin plans, and to

take into account their views. It does so by requiring SEPA to consult such other persons as it sees fit under section 11(6)(i), in addition to those already referred to in paragraphs (a) to (h) at present. Amendment 62 is designed to achieve the same effect for responsible authorities; that is, they must consult those they think fit on any proposed sub-basin plans.

11:15

In practice, it is envisaged that these amendments will require SEPA, or another responsible authority, to consult such river basin district advisory groups as it thinks fit about proposed sub-basin plans and to take into account their views. Again, that is another important consideration. I recommend that the committee accept amendments 61 and 62, given the enhanced role that the amendments will then offer advisory groups and the link that will be established between sub-basin plans and advisory groups. That, taken in conjunction with the commitment to come back at stage 3 on ministers, public bodies and others having regard to the sub-basin plan for the district in question, completes the picture.

Amendment 69 amends section 19(2)(d). Currently, ministers can use the regulation-making power in that section to require SEPA to consult or consider the views of specified persons before taking any procedural step in relation to a river basin management plan. The amendment would allow ministers to require SEPA to consider the views of specified persons before taking any procedural step in relation to sub-basin plans. The amendment also ensures that, where a responsible authority establishes a sub-basin plan, ministers can make regulations requiring it to consult and involve others, in the same way that ministers can make such regulations in relation to SEPA. I hope that the committee will support amendment 69.

Amendment 36 would compel SEPA to divide each river basin district into sub-basins, which are defined as

"areas designated by SEPA"—

again, there is no conflict between us there—

"comprising a particular catchment or geographical area, including relevant bodies of groundwater, surface water, wetlands and bodies of coastal water."

We have given considerable thought to the issue of sub-basin plans and advisory groups. In that context, and in order that our amendment can provide for the thematic approach as well as the compulsory geographic sub-basin planning, which is an important distinction that adds value to the process, I ask Nora Radcliffe, Maureen Macmillan and John Scott to withdraw amendments 36, 36A and 36B because they have already been covered. Our approach is holistic and meets all the committee's objectives.

Amendment 46 seeks to compel SEPA to designate sub-basins within each river basin district, and to prepare a plan for each sub-basin. That would be unnecessary duplication, as the effect of applying section 10(2) to sub-basin plans is that those plans would require to address all of the matters covered by the river basin management plan. There is already provision in section 10(2) to require that sub-basin plans address all of the matters already covered by the river basin management plans, so there is nothing that is considered at river basin management level that is not subsequently provided for in the sub-basin plans.

Amendment 46 would remove some of the current flexibility from the bill, as it would remove from SEPA the ability to create the thematic, rather than simply geographic, plans that I want established. For example, as we have discussed at length, SEPA could create a thematic sub-basin plan on water resources or, if necessary, flooding. That important consideration is not provided for in amendment 46. As we know, if amendment 46 were passed, it would negate all the rest of our provisions, including SEPA's ability to create thematic sub-basin management plans on sustainable flood management. With that very important consideration in mind, I ask Maureen Macmillan not to move amendment 46.

Given the Executive's amendments, I would argue that amendment 127 is not necessary. It also raises difficulties in so far as it requests

"a sub-basin management plan for each sub-basin district"

without making clear how the districts would be defined or what a sub-basin management plan is intended to cover. Given that I have set that out in the Executive's amendments and that the Executive is going along that road, I ask John Scott not to move amendment 127.

Amendment 91 is also unnecessary. The purpose of the amendment is to establish sub-basin plans, which the Executive is going to do, but the amendment uses drafting that is inappropriate to the rest of the bill. I ask Maureen Macmillan not to move amendment 91. If she does not agree, I would have to ask the committee to reject that amendment, as it does not define the boundaries of the sub-basins to which it refers, nor does it make clear what the boundaries are intended to cover. I suggest that the Executive's amendments to section 15 address those issues.

Although I appreciate the intention behind amendment 92, I do not think that it is helpful. It would create an undue burden on those who are preparing sub-basin plans, by making them report

on issues that are better left to the river basin management planning.

Amendment 92 would force sub-basin plans to include

"A summary of the characterisation of the river basin district"

It would also force them to include

"A summary of significant pressures"

on, for instance, surface water or groundwater for the entire river basin district. I think that it is self-evident that that is not appropriate for sub-basin management plans. Given the impractical consequences of the nature of amendment 92, and the fact that the Executive has lodged the amendments to which I have referred to require sub-basin management plans to incorporate everything that is already provided for in the river basin management plan, I ask Maureen Macmillan not to move amendment 92.

Amendment 128 is similar to amendment 92, in that it requires that a sub-basin plan must include the same matters that a river basin management plan must include, which are set out in part 1 of schedule 1.

Amendment 128 differs from amendment 92 in one important respect. It treats references in part 1 of schedule 1 to the river basin district as if they were references to the area that is covered by the sub-basin plan. That would avoid the problem of sub-basin plans having to contain information that pertains to the entire river basin district, which was the case with amendment 92. However, we continue to have significant concerns about amendment 128 as it is drafted. Executive amendment 147 makes provision for two types of sub-basin plan—the compulsory geographic plan and the other, optional thematic plan to which I have referred.

However, amendment 128 contains the wording

"as if references in that Part of that schedule to the river basin district were references to the area covered by the sub-basin plan."

That does not make sense in the context of the existence of sub-basin plans that deal with thematic issues, although it does so in relation to those that deal with geographic issues. I do not think that it would be useful to be so prescriptive in determining what is included in a sub-basin plan.

Like amendment 92, amendment 128 could create an undue burden for sub-basin plans to report on issues that are better and more appropriately left to river basin management planning. The Executive does not wish to see that happen. I ask Nora Radcliffe not to move amendment 128, on the basis that amendment 147 does what she seeks to do—with added value, as it makes provision for the thematic as well as the compulsory geographic approach.

Amendment 93 would require sub-basin plans to contain such maps, diagrams, illustrations and descriptive matter as Scottish ministers may direct or as SEPA thinks appropriate for the purpose of explaining any matter in the plan. I understand the reasoning behind the amendment, but I do not think that it is necessary. The amendments that we have lodged make provision for two types of sub-basin plans—geographic and issue-based plans—but seek to maximise the flexibility that SEPA has in preparing them. I see no benefit in our being unduly centralist in our approach to sub-basin plans at this stage. If, in the light of practical experience, it becomes necessary for Scottish ministers to impose an obligation on SEPA along the lines of that proposed by Maureen Macmillan, we can do so by making the appropriate regulations under section 19.

The river basin management plan must meet certain statutory requirements. The powers of guidance that Scottish ministers have under section 10(3) are appropriate to the river basin management plan. Sub-basin plans will be much more flexible documents on which SEPA and/or the responsible authorities will take the lead. I recommend that the committee reject amendment 93.

Amendment 98 seeks to replace the requirement in schedule 1 for river basin management plans to include

"Information as to any sub-basin plan."

with a requirement for them to include

"A summary of all sub-basin plans."

That is unnecessary, as the existing requirement would result in information pertaining to the sub-basin plans being included in the river basin management plan. I made that point in relation to amendment 106. Under section 10(2), ministers already have the power to specify any additional matters that they wish to see included in the river basin management plan. We have discussed that issue at length in relation to sustainable flood management. Amendment 98 is superfluous and I recommend that the committee reject it.

Amendment 132 seeks to amend paragraph 8 of schedule 1 to the bill. At present, that paragraph requires that a summary of the publicity and consultation steps that have been taken

"under subsections (3) to (6) of section 11 in relation to the plan and of changes made to the plan in light of the views and representations received on it"

be included in the river basin management plan.

The subsections in question relate directly to the publication and consultation aspects of the river

basin management process. Amendment 132 seeks to insert a reference to section 15(1) in paragraph 8 of schedule 1. I argue that such a reference does not sit well there. Section 15(1) gives SEPA the ability to establish sub-basin plans, but paragraph 8 deals with views and representations. Paragraph 7 of schedule 1 requires that the river basin management plan should include information about any sub-basin plan. That provision is wide enough to address the concerns behind the amendment. I ask the committee to reject amendment 132.

As the convener indicated, for it to make any sense amendment 139 must be read in connection with amendment 140. It seeks to remove the requirement in section 15(3) that SEPA or responsible authorities

"must consult such of the persons specified or referred to in section 11(6)(a) to (h) as it thinks fit about a proposed sub-basin plan and must take into account any views expressed by those consulted."

In any other context, such a provision would be ridiculous, but it is not what it appears to be. Amendment 140 would insert a new section in the bill after section 15. The new section would require SEPA or the responsible authority to establish a sub-basin advisory group for each designated sub-basin, with the function—

The Convener: Minister, could I ask you to leave that until later?

11:30

Allan Wilson: Okay. However, I am going to reject amendment 139 for good reasons albeit that they relate to another amendment.

I turn to amendment 106. I repeat the assurance that I have given to Des McNulty. When we reconsidered the amendment, we saw that it put a brick in the wall that otherwise would not be there, although we had difficulties with the drafting of it. I therefore give the assurance that provision will be made to relate sub-basin planning to river basin management planning in an amendment that we will lodge at stage 3. That amendment will achieve what amendment 106 seeks, but will be drafted in accordance with the rest of the section.

The Convener: I realise that this is a complex section to which many amendments have been lodged, which is why I have allowed more time on it. However, I did not want the minister to address amendments 139 and 140 because there will be an opportunity to address amendment 140 before members are asked to vote on amendment 139. Members will be able to take the broader context into account at that stage.

Bruce Crawford: I admire the minister's stamina in addressing all those amendments—it was not an easy task, and it is an extremely complicated section. I want to cut through some of this stuff so that I can express why I will support amendments 36 and 36A rather than the minister's amendment 147.

Amendment 36A is important because it seeks to leave out the reference to "geographical areas". Why is that important? Because rivers do not know geographical boundaries. If we are to stick by what we mean, from the mountains to the sea, the only proper way to approach the matter would be through a catchment process, not through a geographical process. A lot of what the minister said, about the thematic stuff being applied, made sense, but it could apply equally to catchment areas as to geographical areas. An amalgam between the two approaches would probably be the best result. In the meantime, to ensure that we get the best result, we must support Nora Radcliffe's and Maureen Macmillan's amendments. If we do so, the Executive will have to lodge another amendment, if required, at stage 3. If the Executive wins now, there will be little chance of getting "catchment" into the bill in place of "geographical". It would make tactical sense to stick with Nora Radcliffe's and Maureen Macmillan's amendments.

Allan Wilson: There is a basic misunderstanding that I may be able to correct. The geographically based planning would be catchment based, and the thematic planning that I propose over and above that would add value to that process.

Bruce Crawford: If that is the case, that proves that we are considering two amendments that, although they are talking about the same thing, are not expressing it as well as they could. Therefore, a further amendment must be lodged at stage 3. The only way that we can get that is by supporting amendments 36 and 36A, as that will ensure that the Executive will have to produce an alternative. If we support the Executive's amendment today, we will be left with it at stage 3. That is what the Parliament will end up supporting and we will not get the best result.

Robin Harper: I am especially attracted to the wording of the second part of amendment 36, which defines sub-basins as

"comprising a particular catchment or geographical area, including relevant bodies of groundwater, surface water, wetlands and bodies of coastal water."

I do not see anything in that amendment that would preclude thematic approaches where they were felt to be sensible.

The Convener: I invite John Scott to respond to the debate.

John Scott: Given the foregoing discussion, it seems that my amendment 36B encompasses all

that Bruce Crawford requires. That is of importance. It is a catch-all amendment, yet it allows flexibility. I had been minded to withdraw amendment 36B, but now I will press it.

Fiona McLeod: I seek clarification, convener. I understood that the person who moved the amendment at the beginning of a grouping was the person who summed up the whole debate. In this case, that applies to amendment 36, not to amendment 36B.

The Convener: That is because John Scott's amendment 36B seeks to amend the lead amendment, amendment 36. Give me one second, while I consult.

I am assured that, as John Scott's amendment seeks to amend the lead amendment, he has the right to respond to the debate. While that might appear to be different from normal practice, that is the guidance that I have been given on the procedure.

The question is, that amendment 36B be agreed to.

Bruce Crawford: On a point of order, convener. I am still confused about the procedure. We are deciding whether to agree to an amendment to amendment 36.

The Convener: Yes.

Bruce Crawford: How can we make that decision unless we have heard from the mover of amendment 36 their opinion of amendment 36B? They may or may not wish to accept amendment 36B.

John Scott: And there is the question of whether the mover of amendment 36 wishes to press that amendment to a vote.

Bruce Crawford: Yes. It does not make sense.

The Convener: The mover of amendment 36 had the opportunity to indicate in their initial contribution whether they wished to accept amendment 36B or 36A.

Bruce Crawford: But how could they indicate that without having heard the arguments?

The Convener: They might have a view.

John Scott: But the debate would then be about the amendment as amended.

The Convener: Nora Radcliffe could have chosen to contribute to the open debate prior to the winding-up speeches. After everyone has spoken to their amendments, the mover of a preceding amendment may come back into the open debate to indicate their views.

Nora Radcliffe: Have I still got an opportunity to wind up?

The Convener: If it is helpful to members, and with the committee's agreement, I am prepared to give Nora Radcliffe a brief opportunity to indicate her view on amendment 36B. I emphasise that, during the period of open debate on a group of amendments, there is nothing to stop members coming back into the debate and responding to something that they have heard. Members should take those opportunities when they are presented.

Bruce Crawford: I can understand why John Scott would need to sum up. He is summing up on the original amendment in the grouping. That does not, however, explain why Nora Radcliffe does not get the chance to sum up. Hers is the first amendment in the group.

John Scott: It is because she can sum up subsequently. Her amendment will either stand as it is or it will be amended.

The Convener: I am working from the guidance that I have been given by the clerking team, on the correct procedure for considering amendments at stage 2. Following this meeting, I am happy to discuss further with the clerks the correct procedure and to give further guidance at a later stage. However, I am being given the current definitive guidance.

I am prepared to allow some flexibility. Nora Radcliffe may indicate briefly whether she is minded to accept amendment 36B, if that is what members desire, but I emphasise my encouragement to members to come back into the open debate on a grouping if they wish to comment on what they have heard.

Bruce Crawford: In these specific circumstances or under all circumstances?

Robin Harper: I move—

The Convener: Unless you have a point of order—

Robin Harper: Sorry, but I would just like to move that Nora Radcliffe be heard.

The Convener: I ask Nora Radcliffe briefly to indicate her views on amendment 36B.

Nora Radcliffe: I support amendment 36A, as I believe that "catchment or catchments" would provide a better definition than "geographical area".

The Convener: The question is, that amendment 36B 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)
Harper, Robin (Lothians) (Green)
MacKay, Angus (Edinburgh South) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Radcliffe, Nora (Gordon) (LD)

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

Amendment 36B disagreed to.

The Convener: Does Maureen Macmillan want to move amendment 36A?

Maureen Macmillan: In the light of what the minister has said, I feel that the minister's proposal is more flexible than Nora Radcliffe's amendment 36 or my amendment to that amendment, so I do not intend to move amendment 36A.

Bruce Crawford: Given what I have just said about the need to ensure that we take a catchment-based approach, I would like to move the amendment.

Allan Wilson: I would argue—

The Convener: I cannot reopen the debate at this stage.

Allan Wilson: I do not want to reopen the debate. I want to say that agreeing to amendment 36A would make the process faulty. That might not be your advice, but it is my advice. Our amendments to section 15 make provisions that would be precluded by the provision in amendment 36A.

The Convener: As you say, your guidance differs from the guidance that I have been given. In any case, it is still open to members to move the amendment if they want to.

Bruce Crawford: I intend to move the amendment, because I believe that the Executive should lodge an amendment at stage 3 to tidy up the area—

The Convener: We cannot reopen the debate.

Amendment 36A moved—[Bruce Crawford].

The Convener: The question is, that amendment 36A 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)

AGAINST

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

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

Amendment 36A disagreed to.

The Convener: Does Nora Radcliffe want to press or withdraw amendment 36?

Nora Radcliffe: I have misunderstood the process. I thought that I would have an opportunity to respond to the debate at this point. As I do not, I will press the amendment, but I might not have done otherwise.

The Convener: The question is, that amendment 36 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)

AGAINST

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

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

Amendment 36 disagreed to.

Section 4, as amended, agreed to.

After section 4

Amendment 85 not moved.

Section 5—Characterisation of river basin districts

The Convener: Amendment 117 is grouped with amendment 118.

John Scott: Amendment 117 is aimed at ensuring that the impact of changing climatic conditions is taken into account in the characterisation of a river. Flooding or drought are likely to have as much impact as human activity on the character of a river and as such should be kept under review because, unquestionably, a river's character can change in a relatively short period of time. I have witnessed that happening.

Amendment 118 would require a social and economic assessment of water use to be made. The amendment is based on the evidence that we heard that suggested that the social as well as the

economic impact of change to existing river basin systems should be taken into account before such changes are made. Whether SEPA has the capability to do such work is another matter and local authorities might be better placed to do it, but I believe that it is important that the work is done, as the evidence that we took suggested.

I move amendment 117.

11:45

Allan Wilson: Amendment 117 would require an additional assessment of the impact of natural activity on the status of surface water or groundwater. It is not clear to me—and John Scott's explanation has not particularly helped—how any such impacts would be reviewed in practice and what benefits that might offer. The purpose of the directive, and of part 1 of the bill, which implements the directive, is to protect or restore the water environment to a condition that is as close as possible to its natural condition. That is precisely what we set out to do. It would therefore make no sense to talk about the impact of natural activity on the status of surface water and groundwater, given that we are seeking to restore the natural status of the water.

John Scott might be referring to human impact, but in this context, that has a completely different meaning. Human impact, which we discussed in relation to Des McNulty's amendment 38, is referred to in paragraph 1.4 of annexe II of the directive, which lists all the pressures that must be considered in the characterisation process. The list is long and I will not read it out, but in large part, we have to have direct reference to what the directive already describes. Paragraph 1.4 is a classic example of that as it lists the pressures. On that basis, I recommend that everything that might be deemed to be such a pressure be included by virtue of its inclusion in the directive.

I have sympathy with amendment 118. It attempts to extend the characterisation process, this time to include a social and economic impact assessment of water use. However, we already do that. The economic analysis, which is required by section 5(2)(d), refers to the social and economic aspects of water use, which we have debated. The form of that analysis is specified in annexe III of the water framework directive, which specifies that the analysis should

"make judgements about the most cost effective combination of measures in respect of water uses to be included in the programme of measures under Article 11 based on the estimates of the potential costs of such measures."

That encapsulates better what John Scott seeks to do than does amendment 118. The provision is already there. The bill has to be read in conjunction with annexe III of the directive.

I ask John Scott to withdraw amendment 117 and to not move 118, because their content is provided for in the directive, which is incorporated in the bill.

John Scott: I thank the minister for his comments and welcome the clarification that he has given. In the light of his comments, I seek to withdraw amendment 117 and I will not move amendment 118.

Amendment 117, by agreement, withdrawn.

The Convener: Amendment 37 has been debated with amendment 32. Does Nora Radcliffe wish to move amendment 37?

Nora Radcliffe: Yes. Amendment 37 is consequential on amendment 32, the principle of which the committee has already accepted.

Amendment 37 moved—[Nora Radcliffe]—and agreed to.

Amendment 118 not moved.

Section 5, as amended, agreed to.

Section 6—Bodies of water used for the abstraction of drinking water

The Convener: Amendment 38 was debated with amendment 20. Does Des McNulty wish to move amendment 38?

Des McNulty: The minister said that he would come back to the committee this week with further clarification on amendment 38. Will the minister be given the opportunity to provide that?

The Convener: We cannot reopen the debate at this stage. Des McNulty must decide whether to move amendment 38 on the basis of our previous debate.

Des McNulty: I have seen some of the information that the minister is prepared to give about how the substance of the amendment will be dealt with through other provisions. On that basis, I am prepared not to move amendment 38.

Bruce Crawford: On a point of order, convener. Des McNulty referred to material that he, as a committee member, has seen in regard to amendment 38. I am a committee member, but I am not aware of having seen any material. That makes it difficult for us to make a decision.

The Convener: I do not know what material Des McNulty referred to, but we cannot reopen the debate. At this stage, the issue is whether someone wishes to move amendment 38.

Bruce Crawford: I was not reopening the debate but making a point of order.

The Convener: I cannot tell you what material Des McNulty referred to. Members should simply

indicate whether they wish to move the amendment. I am usually prepared to let members say a brief sentence or so, but we cannot reopen the debate.

Amendment 38 not moved.

The Convener: Amendment 86 is grouped with amendments 119, 120, 123, 96, 130 and 141.

Des McNulty: A constant theme in what I have said about the bill is the requirement to have more information about drinking water quality that is put into the public domain more systematically. Members will be aware of the concerns of my constituents and others about the cryptosporidium outbreaks that took place at the beginning of August.

Amendment 86 would require the drinking water quality regulator to provide, free of charge, regular reports on water quality in print and on the internet. When the minister responded to my previous amendment 39, he made the fair point that it would not be reasonable to require Scottish Water to prepare reports on private water supplies for which it is not responsible. Nonetheless, I believe that it is important for customers to have access to accurate information about the state of their water quality supplies.

Amendment 86 is in the format of a probing amendment, in so far as I do not know whether a requirement for six-monthly reports would be the best way of providing that information. If the information is available, updates could be provided almost daily through the internet. However, what I am clear about is that recent events in Glasgow and Clydebank have shown that people want to know about drinking water quality. The experience with Scottish Water so far has been that people will not always be told what they should be told in an accurate and timely manner.

Information technology would allow the information to be widely disseminated. The information is actually available, although it may require some interpretation for people. I believe that the information could be made available via a website.

Amendment 120 arises from my concerns about the proposed new water treatment plant at Milngavie. One issue that has been raised with me is that the authority should take a multi-barrier approach to protecting water quality. Around the world, water authorities use filtration as a last resort to ensure that water quality meets the relevant standards that are required for human consumption. For example, perhaps in the 19th century the water from Loch Katrine reached Glasgow in a relatively pristine condition but subsequent development of the catchment has introduced various risks. The Scottish Executive should have a role in managing those risks, or at least in identifying them.

There are various catchment plans across Scotland, but they are undertaken on a voluntary basis. Those plans should be strengthened and incorporated in the characterisation process and in the setting of environmental objectives, and amendment 120 would establish a system to achieve those aims.

I move amendment 86.

John Scott: Amendment 119 is self-explanatory. The information, perhaps to a lesser extent than Des McNulty suggested, should be collated, mapped, kept up to date and made available to the public. Apart from anything else, if such information were readily accessible, potential polluters would be more aware that they might be endangering water supplies, especially for drinking water. The more that people are made aware of a water supply, the more likely it is that they will take steps to avoid polluting it, which highlights the need for the maps and information.

Bruce Crawford: I will speak to amendments 123 and 141 together. Other pieces of legislation may cover the outcome that I hope to achieve, but I am not aware of them. Therefore, given that the issue is important, I needed to ensure that the subject of the amendments could be discussed in a proper manner.

Members are aware of the impact of cryptosporidium, especially during the summer and the past few years in Scotland. The outbreaks in Glasgow and Aberdeen grabbed the most headlines. However, they were only the tip of the iceberg of a potential problem with drinking water.

The last report of the drinking water quality regulator for Scotland, which was published in August, shows the scale of the problem. Table B, which is on page 7 of the report and shows high-risk water treatment works for cryptosporidium in Scotland, states that more than a million people could be affected by the bug. All areas are affected, with the largest number of people—just short of 700,000—coming from north Glasgow and the surrounding area. It is a significant issue for the people who live in that area.

It is right that the bill sets objectives to minimise the risk of cryptosporidium entering water that is used for public consumption. Des McNulty referred, rightly, to incidents that happened because sheep in the Loch Katrine catchment area were doing their business close to the loch and it subsequently found its way into the river course. Understandably, Scottish Water has taken action to deal with that, but perhaps specific wording in the bill could deal with such problems.

Of course, the cryptosporidium outbreak was caused not only by the sheep around Loch Katrine, but by the cattle along the aqueducts that led to the Milngavie treatment works. After all,

some of the older aqueducts are 130 years old and run a considerable distance. Amendments 123 and 141 would write into the bill a requirement to minimise the risk of cryptosporidium oocysts from water that is abstracted for public use. As I have said, more than a million people are served by water treatment works that are considered to be high risk and the bill must include some way of dealing with the situation objectively and meaningfully.

12:00

Robin Harper: I support amendment 86. I do not see why the provision should pose any technical difficulties, particularly given the fact that water quality in sewage treatment plants can be tested almost 24 hours a day. As a result, publishing a six-monthly report should present no difficulties. Indeed, we could almost have a daily report.

Fiona McLeod: I also support amendment 86. I am glad that the fact that the committee has overrun in its consideration of the bill has allowed Des McNulty to lodge an amendment stating that the drinking water quality regulator should publish the report instead of Scottish Water. That is only appropriate.

I am struck by the fact that we are able to publish a weekly analysis of the quality of bathing water during the summer months. It is entirely appropriate that the public should be notified of the quality of drinking water. As a result, I am interested to hear from the minister whether such analysis could be done more frequently than every six months.

Allan Wilson: When members refer to incorporating new provisions in the bill, they should recall the comments that I made about the protection of water bodies that are the source of drinking water in the first week of the committee's stage 2 consideration. Sections 6, 8 and 9 are particularly relevant in that regard. I will not go over the ground again, but I repeat my reassurance to members that the relevant provisions have been included in the bill.

Amendment 86 would require the drinking water quality regulator to publish a report on the water quality of each body of water identified by the order under section 6(1). Given what was said about the quality of bathing water, there is an important distinction to make. Amendment 86 would mean that the regulator had to report within six months of the order being made and at six-monthly intervals thereafter. As Des McNulty correctly pointed out, the amendment avoids one of the problems of amendment 39, which is that it would have forced Scottish Water to produce reports about the quality of all bodies of water across Scotland, including those in which it has no interest. However, amendment 86 creates problems of its own.

The drinking water quality regulator's main concern is—and, as the committee will agree, should be—the quality of the water that is delivered to customers' taps. Amendment 86 would divert the regulator from his or her primary aim of protecting public health by requiring him or her to produce reports about the quality of water in reservoirs and other sources of drinking water across Scotland before treatment has been applied. There are thousands of such bodies of water because they must include sources of public and private supply. As a result, the burden on the regulator would be enormous and inappropriate.

As members will appreciate, the regulator produces annual reports on tap water quality. That has been referred to. He does so after the water is treated and that is how we get a post-treatment report on drinking water quality. SEPA's reports on bathing water quality are done fortnightly but the reports are not analogous because bathing water is not treated.

That is not to say that bodies of water that provide drinking water will not be protected under the bill. Section 5 requires a characterisation of the water environment to be carried out and thereafter continuously reviewed. That characterisation includes an analysis of all the human impacts on each body of water. All bodies of water, including those used to provide drinking water, will undergo a thorough analysis of pressures and impacts. That analysis will be reported on and thereafter developed.

We have discussed the environmental objectives that will be set for such bodies of water, which include the aim of seeking to reduce the treatment required. Programmes of measures will be put in place to achieve those objectives. Therefore, amendment 86 is unnecessary, because provision is already made in the bill. Reference to the drinking water quality regulator is inappropriate in that context.

Amendment 119 seeks to amend section 6(3). It would require SEPA to keep available for public inspection an order made under section 6 and would require ministers to review such orders regularly. Again, I support the intent of the amendment, but it is not necessary. Like all forms of legislation, orders are a matter of public record and are readily available to all parties. Ministers are duty bound to review all orders. In this case, the order is likely to require review during each cycle of the river basin planning process. No explicit provision for that is required.

Amendment 120 seeks to introduce a new section that would require SEPA to carry out an

assessment of each body of water used for the abstraction of drinking water. It would give ministers powers to make regulations about how and when the assessment should be carried out, and it would make the other provisions that Des McNulty described.

I now have the chance to answer the question that Des McNulty asked but which could not be answered when he was called upon to move amendment 38. The additional information that I provided to Des McNulty relates equally to amendment 120. Everything that Des McNulty seeks to get out of section 6 is already provided for in the bill. The characterisation that requires to be undertaken under section 5 will provide the assessment that Des McNulty requests.

Section 5(4) requires the characterisation to be carried out in line with annexes II and III to the water framework directive. Paragraph 1.4 of annexe II, to which I have already referred, refers to the pressures on bodies of water that the characterisation must cover, on which Des McNulty sought additional clarification. The list is comprehensive and includes all forms of pollution, from urban, industrial, agricultural—which is important for the issue of sheep et al—and other installations.

After characterisation, the environmental objectives and programmes of measures incorporated in the river basin plan will constitute the catchment area management plan that amendment 120 seeks, which may take into account natural floods, droughts or the measures necessary to improve the drinking water quality. Therefore, a provision exists that will provide the catchment area management plan that the amendment seeks.

Amendment 130 is consequential on amendment 120. It seeks to amend schedule 1 to require the inclusion of a summary of the catchment area assessments and plans in the river basin management plan. As I have said, the information sought by amendment 120 will appear in the river basin management plan. Because the provision already exists, amendment 120 is unnecessary.

Amendment 123 would change section 9 to provide that, for any body of water identified under section 6, the environmental objectives should include minimising the risk of cryptosporidium oocysts entering water abstracted from it.

Before I deal with that in detail, and given Bruce Crawford's comments, I want to make clear the Executive's commitment to the protection of the quality of our drinking water and to Scotland's public health. Those are an absolute top priority. We have learned the lessons of the cryptosporidium outbreak in Aberdeen, which we discussed in committee with John Scott and Des McNulty in the context of the Water Industry (Scotland) Act 2002, and the subsequent scares in Edinburgh and Glasgow. As the committee will know, we acted earlier this year to establish an ad hoc group of ministers, which reported in September. That report contained eight recommendations for action, and all have been advanced as a matter of urgency. They range from the development of better guidance and better management of incidents involving raised levels of cryptosporidium—which is clearly not a matter for the bill per se—to improving information on water distribution networks. Expert advice on cryptosporidium risk was commissioned by the working group and published on 5 November.

In that context, amendment 123 is not necessary to secure action on eliminating cryptosporidium risk, which is already under way. We are already providing everything that the amendment asks for. Executive amendment 16, to which I have made several references, has been discussed several times and provides for the issue. It incorporates a reference to paragraphs 2 and 3 of article 7 of the directive in defining the meaning of "environmental objectives", to which I have just referred. Specifically, paragraph 3 of article 7 provides that for identified water bodies, we should have the aim of

"avoiding deterioration in their quality in order to reduce the level of purification treatment required in the production of drinking water."

The objective of reducing the level of treatment applies to every body of water, including those identified as a source for drinking water under section 6. That is an important consideration, because it extends well beyond cryptosporidium oocysts. It covers bacteria including campylobacter, salmonella and shigella, viruses including hepatitis A and E and Norwalk, which can be water-borne, and microbes such as entamoeba and others—there are too many to list. They may not be present, but if they were, they would be removed before the water reached the tap. The provisions are much more extensive than those that make simple reference to cryptosporidium and they extend across the range of bacteria, viruses and microbes that can affect the quality of drinking water and human health.

What Bruce Crawford wants is already covered. If a water body is a source of drinking water, the bill already provides that reducing the level of treatment is an objective for it. The drinking water directive also requires the elimination of any contamination from drinking water.

That is not all. We must also consider the significant step forward in the bill in how we control activities that can lead to the contamination of drinking water sources such as those at Milngavie.

Section 20 gives us extensive and effective powers to control any activity that leads to pollution of waters. It will give us much better powers to control direct and indirect forms of pollution, which include point source pollution. Moreover, the definition of pollution in section 20(6) makes it clear that harm to human health is a key determinant of whether something is polluting.

Having said all that, I think that it is important to be clear that although we can take steps to reduce the level of cryptosporidium in raw water, we will never be able to eliminate it. Cryptosporidium, after all, is ubiquitous in our environment, and a reservoir will always exist, as will wild animals and farm stock. The objective that I described requires that we seek a reduction in the need for treatment of raw water. That covers all the points raised by Bruce Crawford in relation to cryptosporidium and much more besides, for example bacteria, viruses and microbes.

12:15

Amendment 141 is related to amendment 123, and, given everything that I have said, I believe that it is unnecessary. It seeks to amend section 20(3) to insert a new leg describing pollution by cryptosporidium oocysts in bodies of water identified under section 6 as one of the activities that may be controlled by regulations under section 20. As I am sure the committee will agree, the matter is important, but, as I have said fairly extensively, such pollution is already covered. Section 20(3)(a) already provides that

"activities liable to cause pollution of surface water or groundwater"

are activities that may be controlled.

Pollution is defined in section 20(6), and it is clear that, as far as such activities are caused by the actions of man, pollution by cryptosporidium oocysts can be controlled under section 20. Farming is obviously a human activity, as we have discussed. Once again, what Bruce Crawford is looking for is covered. With those assurances, I am sure that he will be prepared not to move the amendment.

Amendment 96 seeks to amend schedule 1 to require a summary of the order identifying sources of drinking water to be part of the river basin management plan. As I have explained, such an order will be a matter of public record. Moreover, each body of water so identified will appear in the river basin plan together with its environmental objectives. On that basis, I submit that amendment 96 is not necessary either.

Bruce Crawford: I appreciate the minister's good explanation, but I have one specific question before I decide whether I should move my amendment. You rightly said that the intent of the bill was to reduce the level of treatment that is required. That is a key phrase. What about the aqueducts that serve Milngavie treatment works from Loch Katrine? I realise that it might not be easy, but could action be taken to remove cattle from the aqueduct area? That is a specific point that we need to know about. Could there be an exclusion zone?

The Convener: Will the minister respond to that query?

Allan Wilson: Yes. Section 20 gives us powers to control pollution to sources of drinking water. Without going into the detail of the aqueduct that was referred to, the answer to the question is yes.

The Convener: So you would have powers to reduce the pollution in such circumstances.

Allan Wilson: I have gone into that in some detail.

Bruce Crawford: I want not to move my amendment 123, so I am trying to understand the circumstances. What if a farmer has a field with cattle and those cattle are alongside the aqueduct? How do we ensure that the farmer either removes the cattle or creates an exclusion zone, given how the bill is drafted?

Allan Wilson: I reiterate that if the activity—in this case human activity related to agricultural production—pollutes the water environment, section 20 gives us powers to control it. To be precise, the reference in section 20(3)(a) is to

"activities liable to cause pollution of surface water or groundwater".

John Scott: I ask the minister for clarification on that point, which I did not think that we were going to debate today. Let us get away from a reservoir situation completely and consider normal farming practice. For example, there are huge numbers of sheep and cattle along the borders of the Tweed, but there is also water abstraction there. How do you intend to cope with organisms such as you have described entering the water in that context?

Allan Wilson: I cannot get drawn into specifics at this stage. The regulations that we will produce will provide for best practice. That could involve fencing off important bodies of water for drinking water to prevent pollution from whatever source. The powers exist in the bill and such provision could be made. The use of those powers would depend on a case-by-case analysis of the risk and the measures that were needed to prevent pollution.

The Convener: As no other member wants to speak, I ask Des McNulty to respond to the debate and to press or withdraw amendment 86.

Des McNulty: Perhaps unusually, I am inclined to press amendment 86. In my experience,

members have had to use parliamentary questions to get information from Scottish Water and the drinking water quality regulator, and that information has been relatively grudgingly given. I do not think that there is any reason not to provide reports on the quality of reservoirs as well as on the quality of drinking water. Information on both those aspects is part of the picture and would allow the public to map what has been going on.

The minister may want to return with a further amendment to deal with any drafting inadequacies in amendment 86, but the principle that the public should be allowed to get information is vital and we should pursue it. If the drinking water quality regulator and Scottish Water have information, why should the public not have access to it in the form of a report? The committee should support amendment 86.

Allan Wilson: I thought that I had responded to those points. Members are in danger of blurring the distinction between the respective roles of SEPA, in providing reports of the water quality in reservoirs before treatment, and the drinking water quality regulator, in providing reports on water quality after treatment. We propose that the information that Des McNulty seeks for himself and his constituents in any given circumstance should be available from SEPA pre-treatment and from the drinking water quality regulator post-treatment. That is an important distinction; it should not be blurred by giving an additional responsibility to the drinking water quality regulator to report on the contents of reservoirs prior to the treatment of the water. That responsibility already lies with SEPA.

Des McNulty: If that is the case, that is fine and I do not need to pursue the matter. However, we must have the reports. If the minister is saying that the information will be made available and that he will ensure that there is a process for making it available, I am content to withdraw the amendment.

Allan Wilson: I will further undertake to investigate the incidence of irregularity in drinking water treatment reports from the drinking water quality regulator and get back to the committee on that.

Amendment 86, by agreement, withdrawn.

Amendment 119 moved—[John Scott].

John Scott: Why was Des McNulty allowed to speak to his amendments again?

The Convener: That was because the person who moves the lead amendment in a group has the right to respond to comments on the group. We have operated in that way with every bill that we have considered.

The question is, that amendment 119 be agreed to. I ask members to vocalise their agreement or disagreement to amendments to make my job of deciding whether we have agreement easier. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

ABSTENTIONS

Crawford, Bruce (Mid Scotland and Fife) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 1.

Amendment 119 disagreed to.

Section 6 agreed to.

After section 6

The Convener: Does Des McNulty wish to move amendment 120?

Des McNulty: The minister assured us that catchment area management plans would be produced, so I am happy not to move amendment 120.

Amendment 120 not moved.

Section 7—Register of protected areas

The Convener: Amendment 3 is grouped with amendments 4, 40, 87 to 89 and 121.

Allan Wilson: I will try to be as brief as possible. Paragraph 1 of article 6 of the water framework directive requires the register of protected areas to be completed by 22 December 2004 at the latest, which is four years after the date on which the directive entered into force. Amendment 3 makes it clear that SEPA must prepare the register by that date and thereafter maintain it. It is a technical amendment to make implementation of the directive more transparent. Rather than setting in regulations the date by which the register must be prepared, we are doing so in the bill.

Amendment 4 is consequential on amendment 3. It deletes the power to stipulate through regulations the date by which the register of protected areas is to be prepared. Amendment 3 makes that power unnecessary by putting in the bill the date by which the register is to be prepared. I recommend that the committee accept amendments 3 and 4.

Amendments 40 and 87 to 89 would expand the scope of the register of protected areas to include not only areas that are designated as requiring special protection under specific legislation and European legislation for the protection of the water body or the conservation of habitats and species that depend on water, as the directive requires, but areas that have been designated under domestic law, such as sites of special scientific interest and nature reserves, or that have been designated under the Ramsar convention. We see no benefit in that, and in many respects that would duplicate information that is available at the local authority area level. Section 28 of the Wildlife and Countryside Act 1981, for example, requires SNH to compile and maintain a register of SSSIs, including rivers and lochs, in each local authority area.

The directive and the register of protected areas concern the protection of the water environment and habitats or species that depend on it. The amendments would include in the register of protected areas sites that might have no water interest. An example of such a site is a quarry with fossils present or a mountain plateau that supports an important bird community, which we discussed last week. Neither of those sites has any relevance or relation to the water environment or its protection. It would make no sense to include them in the register of protected areas. I understand the sentiments behind the amendments, but I cannot support them, for the reasons that I have given.

The register of protected areas is a formal requirement of the water framework directive, as article 6 of the directive makes clear, and is one of the means by which Europe will police the protection of areas under Community legislation. The register also provides a clear link to the requirements of other Community legislation. For those reasons, there is no value in adding other non-Community designations to the formal register, which would weaken a valuable linkage.

12:30

It is important to stress that the bill is not a nature conservation measure per se. Such measures will come later in our proposed nature conservation bill. The bill will add value by ensuring that protected areas for which water quality is important—whether they are SSSIs or wetlands under the Ramsar convention—will be covered in the river basin management plans. Section 10 provides us with the power to ensure that that happens. That addresses the concerns that inadequate measures will be taken to protect such areas.

It is important to realise that the process of setting environmental objectives for water bodies and putting in place measures to achieve those objectives will be of immense value to water-dependent protected areas. For the first time, the bill provides a comprehensive and effective mechanism for the achievement of the ecological quality that is necessary to support important protected sites, which is a significant step forward for conservation.

My officials have been in contact with officials of SNH, which does not support the extension of the register of protected areas as proposed in amendments 40, 87, 88 and 89. SNH argues that the proposal would require considerable effort on its behalf, much of which would be misplaced in the context of the bill because the effort would have no direct bearing on the water environment. SNH points out—and I agree—that that effort would be better spent on ensuring that the environmental objectives and programmes that are put in place for water bodies that support protected areas are targeted properly. The issue is about the targeted and best use of resources to protect areas that are dependent on the water environment. We should not dissipate that activity across areas that are not dependent on the water environment.

I turn to amendment 121. At present, the bill refers to areas that are protected by Community instrument, including areas that are designated for the protection of habitats or species and in which the maintenance or improvement of the status of the water is an important factor in the protection of those habitats or species. Amendment 121 would expand that measure to include areas for which the maintenance, improvement or—importantly—the deterioration of the status of water is an important factor in the protection of the habitat or species. However, as the water framework directive is based on the principle that member states will be expected to maintain or improve the quality of water, we cannot countenance deterioration in water quality, particularly not in Natura 2000 sites, to which section 7(4)(d) primarily refers. Given that, amendment 120 is unnecessary and I recommend that the committee should reject it.

I move amendment 3.

The Convener: At this point, I would have called Des McNulty to speak to amendment 40, but he has left the room for some reason. I call Fiona McLeod to speak to amendments 87 to 89. If Des comes back, I will allow him to speak to his amendment.

Fiona McLeod: In some ways, it is unfortunate that my amendments are being discussed before we hear Des McNulty's comments on the more substantial amendment 40. I will go through my amendments one at a time.

Amendment 87, by inserting in section 7 the words "or other enactment" after "instrument", would more simply achieve Des McNulty's aim behind amendment 40, which lists the sites that we have to consider and make provision for. By using the phrase "or other enactment", we would ensure that we did not miss anything from the list that is proposed by Des McNulty in amendment 40. That would also mean that we need not constantly review or revise legislation to catch up with any changes that we might wish to make here in Scotland. As the minister said today and at the previous meeting, we are looking forward to a natural heritage bill being debated in the next session of Parliament.

Amendment 87 would also ensure that, if any changes are made outwith Scotland—in the EC or elsewhere—the act, as it will be by then, will allow us to ensure that we can keep our legislation and our sites up to date and protected.

Amendment 88 is consequential on amendment 87. Removal of the word "such" would mean that we did not tie ourselves to current Community instruments or exclusively to Community instruments when considering sites for protection. The minister said that non-Community designations are important, which I agree with; my amendments would ensure that Scottish designations receive due recognition and importance when we are looking at sites to protect.

Amendment 89 is specifically to ensure that Scottish sites of special scientific interest are included. The minister implied that that would mean inclusion of sites that did not necessarily have a direct impact on the water environment, but having asserted that, the minister should tell us the number of sites that do not impact in some way on the water environment. Again, I refer the minister to his comments on day two of the stage 2 process, when he stated expressly that the SSSIs were important and that, because they were important to him, he would ensure their further protection in a future natural heritage bill. I suggest that, rather than wait two, three or even four years, he demonstrate now his commitment to the importance of SSSIs in Scotland by including them in the bill.

Des McNulty: I felt that it was important for us to take account of other important nationally and locally designated areas to ensure a more holistic approach to protecting environmentally sensitive areas. I note what the minister said about trying to get parity in the context of legislation but, in the specific Scottish context of managing such areas, the importance of designated areas should be recognised and we should ensure that all relevant designations are taken account of. In particular, I want to highlight the issue of including SSSIs and sites of importance for nature conservation, such as the one at Mugdock near the reservoir. Such sites might not be as sensitive as the EC-designated sites, but they are important to people living in and around those areas, which should be a factor in deciding on the use of such areas.

I accept the minister's broad thrust, but I wanted to probe and highlight the importance of the different systems of designation.

John Scott: Amendment 121 seeks to allow the proper water habitat to be created for the protection and enhancement of species of wildlife and plant life, which Allan Wilson has mentioned. The very cleanest water is not always necessary, or indeed desirable, to allow some species to flourish. In creating wetland areas, for example, one would take clean, high-quality water from rivers and allow it to become brackish or to stagnate in order to create the desired wetland habitats. In so doing, the water quality must, by definition, deteriorate.

Amendment 121 would allow for the creation of such habitats without such action falling foul of the legislation, which would not otherwise allow the water to become stagnant, brackish or just plain dirty; for example, as a result of wading birds standing in it. If I understood the minister correctly, he said that that is all covered by existing legislation. I am happy to accept that, but I seek his reassurance on that because he covered that point quite quickly.

Allan Wilson: I agree with much of what Des McNulty said, but there is a danger of speaking at cross-purposes in some contexts. We are talking about a requirement to include on the register national levels of designation.

Fiona McLeod asked how many such national designations bear no relation to the water environment. I cannot give a figure off the top of my head, but I ask her why, in a water environment protection measure, would we wish to include on a register areas of national protection that bear no relation to the water environment. That does not make any sense, irrespective of the numbers of such designations. I gave two examples of designations that bear no relation to the water environment—there are others, although the number is immaterial, and such sites should not, ipso facto, be included in a register of such areas.

The bill is not a nature conservation/preservation measure—that will come later. I mentioned numerous measures that are prepared at local authority level and by Scottish Natural Heritage. There is statutory provision for those lists in section 28 of the Wildlife and Countryside Act 1981, which requires SNH to compile and maintain a register of notifications of SSSIs in respect of

each local authority planning authority in Scotland. In addition, national planning policy guideline 14 on natural heritage states that local authorities' local plans should identify all international, national, regional and local authority designations on the proposals map.

Sufficient provision already exists for listing of all local, national and international heritage sites, so there is a question, in this context, about how best to use SNH resources and target them towards local, national and international protected areas that are related to the water environment. There is no purpose or function in incorporating in a simple register areas of national or local protection that bear no relation whatever to the water environment. That is a fairly simple point, which colleagues will be able to grasp.

I believe that existing provisions address John Scott's concerns. As we have discussed, the environmental objectives are flexible enough to accommodate the deterioration in water that John Scott identified, although he did not actually propose it. He gave the good example of wetlands, and how their creation relates to the objective to preserve and conserve the natural state of the water environment. If water is naturally stagnant and maintains different sources of wildlife, the environmental objectives are sufficient to ensure that that stagnant state is the objective that is sought; in that instance, the objective would be to sustain the wildlife that is dependent on that stagnant water. There is no point improving water quality to the extent that that would obliterate the wildlife that is dependent on the water's being stagnant, if you see what I mean.

Environmental objectives will vary case by case according to the body of water that is under consideration.

Fiona McLeod: I would like clarification in relation to amendment 89, which would insert a reference to SSSIs. I ask the minister to consider where I would insert that reference, which would amend section 7(4)(d). How would an SSSI that had no effect on the water environment be covered by that paragraph, given that it refers to areas

"where the maintenance or improvement of the status of water is an important factor"?

All relevant SSSIs will be included; those that are not will not.

12:45

Allan Wilson: As I made clear, our argument is that amendment 89 and other amendments propose a broad-brush approach that would incorporate all local designations, including those that bear no relation to the water environment.

Amendment 3 agreed to.

Amendment 4 moved—[Allan Wilson].

The Convener: The question is, that amendment 4 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)
MacKay, Angus (Edinburgh South) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Radcliffe, Nora (Gordon) (LD)

AGAINST

Scott, John (Ayr) (Con)

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

Amendment 4 agreed to.

Amendment 40 not moved.

Amendment 87 moved—[Fiona McLeod].

The Convener: The question is, that amendment 87 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

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

Amendment 87 disagreed to.

The Convener: Amendment 41 was debated with amendment 32.

Nora Radcliffe: Amendment 41 is consequential on amendment 32, which was agreed to.

I move amendment 41.

The Convener: The question is, that amendment 41 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)

AGAINST

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

ABSTENTIONS

Scott, John (Ayr) (Con)

The Convener: The result of the division is: For 4, Against 4, Abstentions 1.

The vote is tied and I therefore must use my casting vote to vote against the amendment.

Amendment 41 disagreed to.

Amendment 88 moved—[Fiona McLeod].

The Convener: The question is, that amendment 88 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

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

Amendment 88 disagreed to.

Fiona McLeod: As the minister did not understand where amendment 89 would insert the reference to SSSIs, I move amendment 89.

The Convener: The question is, that amendment 89 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

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

Amendment 89 disagreed to.

Amendment 121 not moved.

Section 7, as amended, agreed to.

After section 7

The Convener: Amendment 42 was debated with amendment 19.

Des McNulty: We had a lengthy debate on amendment 42, during which the minister indicated that the registers would be made available. On the basis of those assurances, I will not move amendment 42.

Amendment 42 not moved.

Section 8—Monitoring

The Convener: I hope that we will be able to deal quickly with the next group of amendments. Amendment 5 is grouped with amendment 122 and amendments 6 to 11.

Allan Wilson: I will be as quick as I can be. Amendment 5 is technical and is designed to improve the drafting and transparency of the transposition of the water framework directive. As a requirement of the water framework directive, section 8 tasks SEPA to monitor the water environment, which is limited to three miles from the territorial baseline, and to monitor relevant territorial waters. However, if there is more than one river basin district, section 8 as drafted gives no clue as to what is meant by "relevant" territorial waters. Amendment 5 will ensure that, if we are to have more than one river basin district, SEPA would, in respect of each, have to monitor only the adjacent territorial waters. That is a technical provision, but I trust that members appreciate its merits.

Amendments 6, 7, 10 and 11 will change references to a monitoring "strategy" in section 8 to references to a monitoring "programme". The use of the word "programme" mirrors the terminology in the water framework directive and would make transposition of the directive more transparent. Again, although the amendments are technical, I hope that members will accept them.

Section 8's new subsection (2A), which has been introduced by amendment 8, incorporates the deadline for having relevant monitoring programmes operational by 22 December 2006. New subsection (2B) makes that deadline subject to regulations that are made under subsection (ca), which has been introduced by amendment 9. That will allow ministers to stipulate earlier or later deadlines for the operation of the monitoring programmes that are relevant to protected areas

that are established in community legislation. The provision for the earlier or later establishment of monitoring programmes for protected areas is contained in the water framework directive. Amendments 8 and 9 are, therefore, technical amendments designed to improve drafting and transparency of transposition of the directive. I recommend that the committee accept amendments 8 and 9.

Amendment 122 seeks to place a requirement on SEPA to make available at all reasonable times, for public inspection and free of charge, analysis of information that results from monitoring the water environment and relevant territorial waters under section 8(1)(a).

Amendment 122 is unnecessary; section 10 and schedule 1 of the bill already require river basin management plans to include information about the arrangements for monitoring water status under section 8, and the results of such monitoring. Section 11 also places several duties on SEPA for the publicity and consultation that must accompany the river basin management planning process. The information that will be collected under section 8(1) will, therefore, be in the public domain. On the imposition of any charges in connection with making that information available, section 13(5) already provides that when a river basin management plan is approved, SEPA must make copies of the plan available for public inspection. Public inspection will be free and copies of plans will be available for sale at a reasonable price. I am content that nothing further is required in that regard.

Section 11 places several duties on SEPA in relation to the publicity and consultation that must accompany the river basin management planning process. I recommend, therefore, that amendment 122 be rejected.

I move amendment 5.

John Scott: I think that the intention that lies behind amendment 122 is self-evident in that the amendment would make information gathered through the monitoring process available to all who wish to see it, use it or act upon it. I am sorry: I was talking to Fiona McLeod during the minister's explanation—something to which I probably should not admit—so I ask the minister whether that is what the amendment will do.

Allan Wilson: Yes. Section 13(5) provides that when the river basin management plan is approved, SEPA must make copies of it available for public inspection. Examination of those copies will be free and other copies will be available for sale at a reasonable price.

John Scott: How do you define "reasonable"?

Allan Wilson: We would need to consult Bruce Crawford's dictionary.

Amendment 5 agreed to.

Amendment 122 not moved.

Amendments 6 to 11 moved—[Allan Wilson]—and agreed to.

Section 8, as amended, agreed to.

The Convener: That concludes today's stage 2 consideration of the bill. A target for next week's meeting will appear in the business bulletin.

Meeting closed at 12:56.

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