

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 4 December 2002
(Morning)

Session 1

£5.00

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TRANSPORT AND THE ENVIRONMENT COMMITTEE

34th 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)

*John Scott (Ayr) (Con)

Elaine Thomson (Aberdeen North) (Lab)

COMMITTEE SUBSTITUTES

*Helen Eadie (Dunfermline East) (Lab)

David Mundell (South of Scotland) (Con)

Iain Smith (North-East Fife) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Allan Wilson (Deputy Minister for Environment and Rural Development)

WITNESSES

Allan Garvie (Aberdeenshire Council)

Councillor Sandy Park (Highland Council)

Robin Pellew (National Trust for Scotland)

Graham U'ren (Royal Town Planning Institute in Scotland)

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 4 December 2002

(Morning)

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

The Deputy Convener (Nora Radcliffe): I call the meeting to order now, because it is likely to be a long one.

The convener has just arrived, but I shall proceed with the first couple of items on the agenda. The first item is the declaration of interests by the new member of the committee, Elaine Thomson, which we will deal with when she arrives.

Items in Private

The Deputy Convener: Item 2 is consideration of whether to take items in private. Item 4 is consideration of possible lines of questioning for witnesses and item 6 is consideration of a draft response to the Rural Development Committee on the draft orders for the Cairngorms national park. Are members happy to take those items in private?

Members indicated agreement.

The Deputy Convener: At next week's meeting, the committee will consider lines of questioning for witnesses on the Organic Farming Targets (Scotland) Bill at stage 1. Do members agree to take that item in private next week?

Members indicated agreement.

The Deputy Convener: I now hand over to the convener for item 3.

The Convener (Bristow Muldoon): Good morning, colleagues. I apologise for my late arrival.

Elaine Thomson is ill and will not be here today. I understand that Helen Eadie intends to come along as a substitute for Elaine.

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

The Convener: I encourage members to be as concise as possible so that we can make progress with the amendments that we are to consider.

Des McNulty has been promoted to a ministerial post this week and I am sure that we all want to send him our best wishes and hope that he will be successful. As he is now a minister, Des will not move any of the amendments that he has lodged but not yet moved. When we reach those amendments in the marshalled list, any other member may choose to speak to and move them. If no member chooses to move them, they will fall at that stage. For information, the amendments are, in the order in which they appear in the marshalled list: 142, 94, 96, 97, 130, 99, 101, 102, 103, 143, 104, 144, 145, 146 and 106.

Section 9—Environmental objectives

The Convener: Amendment 12 is grouped with amendments 43, 13, 14, 124, 90, 15, 125, 126, 16, 142, 17 and 18.

The Deputy Minister for Environment and Rural Development (Allan Wilson): I seek clarification on one point. Although I will oppose amendment 142, I would nevertheless like to speak to it, but I will not do so unless it is moved. If it is moved, that might expedite proceedings somewhat.

The Convener: Are you asking whether another member needs to move amendment 142?

Allan Wilson: I am seeking your indulgence. If amendment 142 is moved, will I be allowed to speak to it?

The Convener: I am happy to allow that. I am advised that you should speak to that amendment when you speak to the other amendments in this group. Of course, any other member could choose not to move an amendment in their name, so the same situation could arise for any amendment.

Robin Harper (Lothians) (Green): I would be happy to move amendment 142.

The Convener: Robin Harper has indicated that he intends to move amendment 142.

Allan Wilson: That clarifies my point. I was not trying to be difficult; I was trying to be helpful.

I shall begin with amendment 12. Section 9 requires the Scottish Environment Protection Agency to set an environmental objective for each body of water in each river basin district. Amendment 12 would add to section 9 the requirement to prepare programmes of measures. As members know, such programmes are an

explicit requirement of the river basin planning process in the water framework directive. They are the means by which the environmental objectives set for each body of water are to be achieved. The amendments in this group would place a duty on SEPA to prepare the programmes of measures. By virtue of sections 10 to 17, SEPA would do so through the participatory river basin planning process.

Amendment 13 would make more explicit the link between characterisation of the water environment—the process under section 5 through which a full picture of the state of the water environment and the human pressures on it, alongside the economic analysis of water use, is obtained—and the rest of the river basin management planning process. Article 11 of the directive specifically requires member states to take account of the results of the characterisation in establishing a programme of measures. In particular, it is clear from annexe 2 of the directive that the results of the characterisation must be taken into account when the environmental objectives are set. Amendment 13 would make that link explicit. It would aid transparent implementation of the directive by ensuring that the objectives and programmes of measures take into account the evidence that is gathered by the characterisation process.

09:30

Amendment 14 is consequential to amendments 12 and 13. It would amend section 9(2) to reflect the wider ambit of section 9(1).

Amendment 15 would make it clear that ministers may make regulations, further to the aims of section 9, on environmental objectives and programmes of measures. In respect of the setting of environmental objectives, the amendment makes it clear that regulations may provide for the type of environmental objective that may be applied to particular types of body of water. It is intended that that would allow the Executive to make regulations about the circumstances in which the flexibilities in the directive—for example, designation as a heavily modified body of water—may be used. Such flexibilities are additional to the issues that regulations may already cover, which are listed in paragraphs (a) to (d) of section 9(3).

Amendment 16 would specify the aspects of a programme of measures for which ministers may make provision through regulation, including the type of measures that must or may be included in the programme, the date by which the programme must be prepared and the methods and procedures that are to be followed in preparing the programme.

Amendments 17 and 18 are consequential to

amendment 12. Schedule 1 requires that a summary of the programme of measures that is to be applied to achieve the environmental objective be provided in each river basin management plan. The amendments make it clear that the “programme of measures” to which schedule 1 refers is that prepared under section 9.

For those reasons, I recommend that the committee agree to amendments 12 to 18.

Amendment 43, in the name of Fiona McLeod, would amend section 9(1) to require the programme of measures summarised in the plan to include the basic and supplementary measures that are set out in article 11 of the directive. I hope that the Executive amendments that I have outlined address that issue and make clearer the relationship between the programme of measures and environmental objectives. I do not support amendment 43 because, if amendments 12 to 18 are agreed to, it would no longer be necessary and would not be appropriate.

I will explain why. Section 25(3) makes it clear that the expressions that are used in the directive and in the bill and that are not otherwise defined in the bill have the same meaning in the bill as they have in the directive. Because the bill does not define the “programme of measures”, the effect of section 25(3) is that that expression must be defined with reference to its meaning in the directive. Article 11.2 of the directive makes it clear that each programme of measures must include the basic measures that are specified in article 11.3 and, where necessary, supplementary measures. Therefore, each programme of measures must include as a minimum the basic measures and, where appropriate or necessary, the supplementary measures. Members will agree that that is entirely appropriate.

In contrast, amendment 43 would require the inclusion of every basic and supplementary measure that is set out in article 11 in the programme of measures to achieve the environmental objectives for each body of water. I am sure that members agree that that makes no sense. The point of the planning system is to determine the most appropriate means of achieving the environmental objectives that are set for each body of water. We should not pre-empt that system by providing that all basic and supplementary measures should be implemented on every occasion. What Fiona McLeod sought to achieve with amendment 43 would be covered by the Executive amendments, which would provide a more appropriate means, or methodology, of achieving what I believe was the motivation behind amendment 43.

Amendment 142 would require SEPA to review annually the programmes of measures set for each body of water in the river basin district and to

make the changes it believes are necessary to achieve the objectives. Amendment 142 should be considered in light of the Executive amendments to section 9 that I have already described. Those amendments make clearer the close relationship that exists between the environmental objectives and the programmes of measures. For example, amendment 15 would make it clear that regulations may make further provision for the preparation of a programme of measures. That could, if ministers desired, enable us to make regulations that would deal with the review of a programme of measures.

On that basis, I ask Robin Harper not to move amendment 142. The amendment would establish an annual review to make sure that we hit targets for the achievement of the environmental objectives for each body of water. However, such a scheme would be very much along the lines of the work that we would envisage happening in practice.

It is already clear from section 9 that the Scottish ministers may—it is intended that they will—make regulations to set the dates by which the environmental objectives must be achieved. Obviously, some environmental objectives will be easier to achieve than others, but by requiring an annual review of the programme of measures, the amendment would be unduly restrictive.

Review of the programmes of measures for bodies of water that are most at risk of failing to meet the objectives will be almost constant. SEPA will focus its monitoring regimes on such bodies of water. On the basis of that regular monitoring, SEPA might require to adjust the programmes of measures in order to ensure that we are still on track to meet the environmental objectives. In those circumstances, an annual review would not be enough.

Conversely, of course an annual review will not be necessary for other bodies of water because they meet the environmental objectives and are already of a high status. We will put in place regulatory regimes that will ensure that SEPA will be aware of any new pressures that might affect the body of water. Where there are no such pressures, SEPA can be reasonably confident that the good, or high, status is not threatened. On-going monitoring would provide a check, but an annual review would not be necessary.

Given the amendments that we have lodged and the explanation of how the monitoring regime would work in practice, I hope that members agree that the flexibility in the bill would provide us with better options. Regulations made under section 9, as amended by amendment 15, would allow us to ensure that review of the programmes of measures is targeted where it is most needed—that is, towards the bodies of water that require

action to bring them up to good or high ecological status.

I turn to Bruce Crawford's amendment 90. Section 9 requires SEPA to set environmental objectives for each body of water in a river basin district. Section 9(2) states:

"Such objectives may be set so as to apply with modifications in relation to particular descriptions of body of water or in particular circumstances."

That provision would enable SEPA, when it is setting objectives, to take advantage of the flexibility offered by article 4 of the water framework directive in relation to particular types of water or particular circumstances. In some cases, article 4 allows the setting of a lower objective. For example, article 4.5 allows the setting of a lower objective where the body of water is so affected by human activity that the achievement of a higher objective would be infeasible or disproportionately expensive. In other provisions, such as paragraphs 6 and 7 of article 4, the objective stands, but non-compliance is allowed provided that certain conditions are met. Amendment 90 would expand that by adding:

"(including circumstances attributable to the impact of climate change)."

It is not entirely clear what amendment 90 seeks to achieve—it could be further dilution of the ecological impact, but I suspect not.

The intention may be to enable SEPA to set objectives for us to apply, with modifications, in the circumstances that are referred to in the amendment—that is, climate change. In that case, the amendment would be unnecessary because, as already noted, the bill would enable SEPA to take advantage of the flexibility conferred by the directive on when lower objectives can be set or the circumstances in which non-compliance with objectives will be permitted. Article 4.5 in particular enables the deadlines established for the achievement of the objectives to be extended in certain cases, including where "natural conditions" do not allow the timely improvement of the status of the water environment.

Section 9(2) is already wide enough to cover such eventualities. Amendment 90 would be unnecessary because section 9(2), in setting objectives that will apply, with modifications, to particular descriptions of water in particular circumstances, is sufficiently wide to cover climate change.

I turn to amendments 124 and 126—this will be fun. I understand that Maureen Macmillan is an English honours graduate and a former English teacher. She may be able to assist me and to correct the Executive if we are wrong.

This is an important issue, but we believe that the use of the singular is correct. The term "body

of water" is being used in section 9(2) and (3)(d) in a generic sense. For example, one would say "types of car" or "breeds of dog", not "types of cars" or "breeds of dogs". Likewise, we think that it is right to say "particular descriptions of a body of water", not "particular descriptions of bodies of water". I hope that that is clear, and I hope that John Scott will not press those amendments.

Maureen Macmillan (Highlands and Islands) (Lab): Our ears pricked up there. We thought that something interesting had come up at last.

Allan Wilson: I can assure you that we had a very interesting discussion among ourselves about amendments 124 and 126. I have been convinced that "body of water" is the appropriate term, but I am open to alternative suggestions.

I hope that, in light of Executive amendments 12 to 18, which I have already discussed, John Scott will agree that amendment 125 is now unnecessary. The amendment would amend subsection (3) of section 9 to enable ministers to make regulations also on the methods and procedures to be followed in achieving environmental objectives. The Executive amendments render that unnecessary because they would provide for regulations on programmes of measures—that is, the critical achievement of the objectives—to be made by ministers. However, the power to make regulations on how objectives are set is also crucial. The Executive amendments would retain that power. For that reason, I hope that the committee agrees that they are a better option than amendment 125.

I move amendment 12.

The Convener: I ask Helen Eadie to confirm that she is present as a substitute for Elaine Thomson.

Helen Eadie (Dunfermline East) (Lab): I confirm that. I apologise for being late.

Fiona McLeod (West of Scotland) (SNP): It is nice to learn that the minister and I are in sympathy in what we are trying to achieve through our amendments in relation to the water framework directive. I want to ask the minister a few questions to clarify his comments to ensure that our amendments really are going to achieve the same result.

Amendment 43 would ensure that we clarify the programme of measures that is to be set out. I want to ensure that Scotland has the best toolkit possible for implementing the water framework directive—it should be a toolkit rather than a list of prescriptive measures. That was why I referred to article 11 of the water framework directive, which includes basic measures as well as supplementary measures, as the minister pointed out.

The minister referred me to section 25(3) and said that section 9 includes all the explanations in

the water framework directive. I refer him to Executive amendment 16, the end of which specifies article 4 and paragraphs 2 and 3 of article 7 of the directive. My amendment specifies article 11. I want to ensure that, in not accepting my amendment, we will still ensure that all of article 11, especially paragraph 3, will be included in the programme of measures. I ask that because amendment 16 specifies two articles, but not article 11.

Allan Wilson: Yes. I did say that, though in a fairly lengthy manner. Without repeating the question, the answer is yes. I can go into detail if you wish.

09:45

The Convener: Are you satisfied with that, Fiona?

Fiona McLeod: Yes.

The Convener: In that case, do you intend to press the amendment?

John Scott (Ayr) (Con): Is now the time to do that?

The Convener: This is Fiona's opportunity to contribute to the debate, and I thought that it might be of benefit to other members to know what she intends to do.

Fiona McLeod: I shall allow the debate to continue.

John Scott: Amendments 124 and 126 are a matter of plain English, which, of course, amendments should be. As Maureen Macmillan pointed out to me, the provisions do not read well, and I agree with her. During my primary school days it would have been said that they do not scan properly.

I was prepared to accept that a "body of water" might be a technical term, which would be used to describe a single amount, or several amounts, of water. If that is not the case, I suggest that amendments 124 and 126 are only a matter of grammar.

Amendment 125 would give Scottish ministers the ability, should they wish it, to exercise powers to establish procedures by which environmental objectives might be achieved. In the light of the minister's statement, I am prepared not to press amendment 125.

Bruce Crawford (Mid Scotland and Fife) (SNP): I do not envy the minister's position in having to deal with amendments before he has heard the arguments. I listened carefully to his remarks about amendment 90 and I think that I understood them, but it may be useful for the minister to hear my reasoning.

The minister rightly identified article 4 of the water framework directive as dealing with issues of non-compliance and lower objectives. The intent of amendment 90 is to build on the directive and ensure that longer-term planning for expected changes in weather patterns is part of the environmental objectives. The directive does not advise or give guidance on that area, especially with regard to climate change.

The directive should give such advice for several reasons. Inland flooding costs approximately £20 million, and the Executive has predicted that by 2050 that figure will have risen by 68 per cent and that by 2080 it will have risen by 118 per cent, which is a steep rise. Also by 2080, which may seem a long way away, rivers such as the Clyde could see a 50 per cent increase in flood risk.

Those predictions are based on climate change and global warming. The Executive's climate change scoping study identified several key economic sectors as being especially vulnerable to flooding. They include transport, domestic areas, water supplies, waste water management, commercial premises and tourist facilities.

Given the bill's environmental objectives, I assumed that there would be a requirement to ensure that climate change is included. If it is not sufficiently covered under article 4, it should be included in the bill to ensure that SEPA does the long-term planning to deal with issues such as the Executive's scoping study and to ensure that measures are applied when introducing environmental objectives.

I am interested in hearing what the minister has to say about article 4. Will article 4 deal specifically with the issue that I have raised? If so, I will feel a bit easier.

The Convener: Would you like the minister to respond to that point?

Bruce Crawford: I do not mind—it is up to you.

The Convener: The minister has indicated that he will deal with the issue when winding up.

Earlier Robin Harper indicated that he wished to move amendment 142, in the name of Des McNulty. I invite him to speak to the amendment.

Robin Harper: The minister indicated that he thought that amendment 142 was both restrictive and superfluous. However, the amendment is carefully worded. It states that there should be a review

“at least once each year thereafter”.

That does not preclude continuous review.

The minister has explained that the provisions of amendment 142 are implicit in the amendments that the Executive has lodged. I am not convinced

that it is entirely superfluous to refer explicitly to yearly review. It could be useful to have such a reference on the face of the bill. If in winding up the minister is able to persuade me that amendment 142 is superfluous, I will not move it. If he is not, I shall do so.

Maureen Macmillan: I want to speak to amendment 126. It is not clear what is meant by “body of water”. If it is being used as a term, perhaps it should appear in inverted commas. Is it intended that section 9(3)(d) should refer to “particular descriptions of the term ‘body of water’”? I realise that we cannot conduct a dialogue about the issue, but I believe that clarity is needed.

Angus MacKay (Edinburgh South) (Lab): I will join in this grammatical warfare. I am trying to read through section 9 to determine whether the Executive's argument is consistent. Section 9(2) states:

“Such objectives may be set so as to apply with modifications in relation to particular descriptions of body of water or in particular circumstances.”

If the Executive's argument is correct, I do not understand why the word “modification” is not used in the section rather than “modifications”. There is a lack of consistency.

I have also tried to read amendment 126 differently in the context in which it applies. Section 9(3) begins:

“The Scottish Ministers may by regulations make provision as to—”.

If we replaced that phrase with the words, “The First Minister may by regulations make provision as to—”, and replaced the term “body of water” in section 9(3)(d) with “ministers of water”, “ministers of water” would make more sense than “minister of water”. I do not understand why the term “bodies of water” does not make more sense than “body of water”. Perhaps the minister can enlighten us about why the Executive has adopted the stance that it has on this grammatical point. This is a matter of concern that needs to be clarified.

The Convener: John Scott has indicated that he wants to speak before we move to the minister's wind-up.

John Scott: Will the convener indicate what he means by wind-up? I want to respond to the argument that the minister has made. After attending a dog show, one would not say that one had seen several kind of dogs—one would say that one had seen several kinds or types of dogs. After attending a car show, one would not say that one had seen several type of car. We would not usually say that, although people in Kilmarnock might do so. Rather than using the singular, one would refer to several types of car and several kinds of dog.

Angus MacKay: One would refer to several types of ministers.

John Scott: Indeed—that illustrates my point perfectly. The term “body of water” exists in both the singular and the plural, and it needs to be defined clearly. In this case, it should appear in the plural.

The Convener: As no other member wants to take part in the open debate, I will ask the minister to respond to the various amendments.

Allan Wilson: I will take the last one first. There are indeed several kinds of dog and breeds of dog, but there is only one body of water.

Fiona McLeod: That is the problem.

Allan Wilson: That said, I am happy to accept John Scott’s amendments if the committee believes that they clarify the intent. I suspect that we could discuss semantics and the correct grammar for ever and a day. I think that “body of water” is the correct term in the context but if members feel that “bodies of water” or “bodies of waters” is better—

Maureen Macmillan: No. The term has a particular meaning.

Nora Radcliffe (Gordon) (LD): The three words describe an entity.

Maureen Macmillan: The provision could say, “descriptions of the term ‘body of water’”.

John Scott: There is no need to do that. It should just be put into plain English.

Maureen Macmillan: That would make it plain.

John Scott: Then you would have to have a definition of—

Angus MacKay: If we had some inverted commas—

The Convener: I call the meeting to order. We cannot have a dialogue.

Allan Wilson: The basic point is that, in the context of the bill, the term “body of water” is being used in a generic sense, so it is perfectly appropriate.

John Scott: But, as it stands, it is not clear whether we are using the singular or the plural.

The Convener: John, let the minister continue with his response.

Allan Wilson: I am happy to concede John Scott’s amendments.

Maureen Macmillan: Well, I am not.

The Convener: Excuse me. You can choose how you want to vote on the amendments, but the minister is indicating that he is content to accept them.

Allan Wilson: I am saying that the terms in the amendments have the same meaning however they are used. We are relaxed about whether the committee accepts or rejects amendments 124 and 126.

On the more serious point of amendment 90, on the application of the directive and its impact on climate change, section 2 already imposes a duty on all Government departments, public bodies and responsible bodies to have regard to the impact of the implementation of the water framework directive on all their activities, including those related to climate change. Article 4(5) particularly addresses the points that Bruce Crawford has raised. Section 9(2) of the bill is drawn up sufficiently widely to provide for what he seeks. Without getting into the debate again, I repeat that amendment 90 is unnecessary. There is ample and specific provision in the bill, which transposes the directive, and in the directive itself.

The Convener: Bruce Crawford is looking for further clarification.

Bruce Crawford: I do not have the advantage of having paragraph 5 of article 4 in front of me. Does it mention specifically climate change and changes in weather patterns?

Allan Wilson: It is an extensive paragraph and I do not intend to quote it. I said in my preamble and hopefully made it clear subsequently that paragraph 5 refers to natural conditions, among other things. That covers climate change.

On amendment 142, and on the points that Robin Harper and Angus MacKay raised, the regulations would set the date by which improvements are to be achieved. That would be the means of ensuring that the monitoring regime secures improvement, which is, ultimately, the environmental objective that I think we are all trying to secure.

In that sense, the monitoring regime that we impose on SEPA will require to have direct regard to the achievement of objectives, which will vary from body of water to body of water. To impose amendment 142’s provisions is unnecessary; they will be provided for under section 9, as we propose to amend it.

10:00

Amendment 12 agreed to.

Amendment 43 not moved.

Amendment 13 moved—[Allan Wilson]—and agreed to.

Amendment 123 not moved.

Amendment 14 moved—[Allan Wilson]—and agreed to.

Amendment 124 moved—[John Scott].

The Convener: The question is, that amendment 124 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Harper, Robin (Lothians) (Green)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
Muldoon, Bristow (Livingston) (Lab)
Radcliffe, Nora (Gordon) (LD)
Scott, John (Ayr) (Con)

The Convener: The result of the division is: For 9, Against 0, Abstentions 0.

Amendment 124 agreed to.

Amendment 90 not moved.

Amendment 15 moved—[Allan Wilson]—and agreed to.

Amendment 125 not moved.

Amendment 126 moved—[John Scott]—and agreed to.

Amendment 16 moved—[Allan Wilson]—and agreed to.

Amendment 142 not moved.

Section 9, as amended, agreed to.

Section 10—River basin management plans

Amendments 127, 91 and 92 not moved.

The Convener: Amendment 128 has been debated with amendment 36. Does Nora Radcliffe wish to move amendment 128?

Nora Radcliffe: Yes. If we are to have meaningful sub-basin plans, it is important that either amendment 92 or amendment 128 be agreed to.

I move amendment 128.

The Convener: The question is, that amendment 128 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

Eadie, Helen (Dunfermline East) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)

Muldoon, Bristow (Livingston) (Lab)
Scott, John (Ayr) (Con)

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

Amendment 128 disagreed to.

Amendment 93 not moved.

Section 10 agreed to.

Schedule 1

MATTERS TO BE INCLUDED IN RIVER BASIN MANAGEMENT PLANS

The Convener: Amendment 94, in the name of Des McNulty, has been debated with amendment 109. Does any member wish to move amendment 94?

Robin Harper: I might move it.

Bruce Crawford: We need a moment to read the amendment.

The Convener: The amendment says:

"In schedule 1, page 25, line 5, at end insert—

<A summary of the assessment of the risk of flooding carried out for the district under section (Assessment of flooding risk).>".

Amendment 94 moved—[John Scott].

Bruce Crawford: On a point of order, convener. If amendment 94 is agreed to, will that have consequences for other amendments?

The Convener: I do not believe that amendment 94 pre-empts any other amendments.

Bruce Crawford: I am not sure about that.

The Convener: I do not believe that it will pre-empt.

Allan Wilson: I understood that amendment 94 was consequential on amendment 85, which was not moved.

The Convener: Is amendment 94 a consequential amendment?

Allan Wilson: The amendment is consequential on amendment 85.

The Convener: In order to clarify the matter, I propose that we suspend the meeting for a couple of minutes.

10:07

Meeting suspended.

10:12

On resuming—

The Convener: For members' information, amendment 94 is linked to amendment 85 and it is

clear from the minutes that amendment 85 was not moved. Therefore, it may make sense to withdraw amendment 94, although that is obviously up to members.

John Scott: In the light of that clarification and as my memory has been jogged, I am happy to withdraw the amendment.

Amendment 94, by agreement, withdrawn.

Amendment 95 moved—[Bruce Crawford].

The Convener: The question is, that amendment 95 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

Eadie, Helen (Dunfermline East) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Radcliffe, Nora (Gordon) (LD)

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

Amendment 95 disagreed to.

The Convener: Amendment 44 has been debated with amendment 32. Does Nora Radcliffe wish to move the amendment?

Nora Radcliffe: Yes. Amendment 44 is in a string of consequential amendments. As amendment 32 has been agreed to, amendment 44 will make the bill consistent.

Amendment 44 moved—[Nora Radcliffe].

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Muldoon, Bristow (Livingston) (Lab)

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

Amendment 44 agreed to.

Amendment 96 not moved.

10:15

The Convener: Amendment 97, in the name of Des McNulty, was debated with amendment 109. Like other amendments that we have discussed, it could create an inconsistency if it were agreed to. Again, it is up to members to make up their minds on the matter.

Bruce Crawford: On a point of order, convener. An inconsistent amendment is different from a consequential amendment. Are you saying that amendment 97 is consequential or that it is inconsistent?

The Convener: The point is that the amendment on the register of flood-prone areas was not agreed to, so amendment 97 would relate to something that is not in the bill.

Amendments 97 and 45 not moved.

Amendment 17 moved—[Allan Wilson]—and agreed to.

Amendments 129 and 98 not moved.

The Convener: Amendment 130, in the name of Des McNulty, was debated with amendment 86. It falls into the same category as amendment 97.

Amendment 130 not moved.

The Convener: Amendment 131 is in a group on its own.

Nora Radcliffe: Amendment 131 is self-explanatory. The amendment seemed to be a helpful addition to make easier for people the whole process of participation that the water framework directive requires.

I move amendment 131.

Allan Wilson: I am happy to accept that some information will be technical and to say that we think that a non-technical summary would be useful to aid wider comprehension of the provision.

The Convener: Nora, do you wish to respond?

Nora Radcliffe: No. I just add that the amendment would be a sensible addition to which I hope the committee will agree.

Amendment 131 agreed to.

The Convener: Amendment 132, in the name of Nora Radcliffe, was debated with amendment 36. Nora, do you wish to move amendment 132?

Nora Radcliffe: No.

Bruce Crawford: I move amendment 132.

The Convener: The question is, that amendment 132 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

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

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

Amendment 132 disagreed to.

The Convener: Amendment 133 is grouped with amendments 140 and 63 to 68.

Nora Radcliffe: Amendment 133 asks for a summary of the changes that are made to the river basin management plan in the light of the advice that is received from advisory groups under section 17(2). The amendment would strengthen the role of the advisory groups and ensure that they were not only taken seriously, but were seen to be taken seriously.

I move amendment 133.

Fiona McLeod: Amendment 140 would set up sub-basin advisory groups. The committee and the minister agree that we should have sub-basin plans, and we have now passed amendments to ensure that. The bill talks about a river basin advisory group. We now know that the river basin for Scotland will be Scotland and that therefore there will be only one national advisory group and national planning. As we have agreed that sub-basin plans will produce the ownership of that planning and ensure that there is local delivery to achieve the aims of the water framework directive, it is important that we have sub-basin advisory groups for each sub-basin that we establish. Only by having such advisory groups will we empower all interested parties at the local level and ensure that everybody buys in and, in the technical jargon, takes ownership of the sub-basin plans. That is how we will achieve the co-operation, the integration and the change that the water framework directive is asking for.

Amendment 140 is in line with the recommendation in our stage 1 report that only by ensuring local change will we achieve the aims of the water framework directive. My amendment to set up sub-basin advisory groups is simply consequential to our agreement on the need for sub-basin plans.

A few days ago, we touched on my amendment 139, but we did not really talk about it because it is consequential to amendment 140. Amendment 139, which we have not yet voted on, ensures that the advisory groups on sub-basin plans are

included in schedule 2. In summary, amendment 140 sets up sub-basin advisory groups to deliver the aims of the water framework directive at a local level, and amendment 139 ensures that those groups are included in the bill.

Allan Wilson: I correct Fiona McLeod on an important aspect of river basin management. Although the bill certainly provides for an advisory group, it also provides—more certainly—for advisory groups, which will be established under the provisions that we have already debated. That is the also the case for sub-basin advisory groups. We have lodged six amendments to make that provision explicit.

Executive amendment 63 adds a new subsection to section 17, making it clear that each advisory group will be assigned a remit and that, within that remit, an advisory group can advise on any matter relating to the preparation of the river basin management plan for its district. It provides for a situation in which not all advisory groups will be required to have a pan-district remit. That reflects the policy to which I have just referred, in relation to the Scotland-wide river basin district. We want that provision to extend to sub-river basin districts, so that a network of advisory groups will cover the river basin district. The amendment retains the flexibility to allow for groups with a pan-district remit, which provides for thematic advisory groups—for example, on diffuse pollution, which I mentioned at the previous meeting—to be established where that is useful, in addition to the advisory groups for geographical or catchment-based districts.

Amendment 64 follows on from amendment 63. It provides for SEPA to determine the remit of each advisory group, which will vary according to their establishment.

Amendment 65 stipulates the way in which the remits of the advisory groups are to be fixed. It enables them to be established by reference to sub-basin plans or geographical areas—including catchments—as well as by reference to any other aspect of water management in the river basin district.

The combination of amendments 63, 64 and 65 provides maximum flexibility to ensure that advisory groups can be best used to meet the desire for active participation and involvement in the preparation of the river basin management plan and the sub-basin plans that flow from it.

Amendments 66, 67 and 68 require to be considered together. Importantly, they amend section 17(4) to ensure that SEPA must seek appropriate representation of the interests that are described in section 11(6). The bodies and persons that are named in section 11(6)(a) to (i) bear a resemblance to those that are named in

Fiona McLeod's amendment 140, with one important exception that I will speak of later. Amendments 66 to 68 ensure that, in determining the number, membership and remit of advisory groups for each river basin district, SEPA will be referred to section 11(6).

The Executive's amendments represent a significant step forward in ensuring the effectiveness of advisory groups, and provide for the thematic groups that I have described. I recommend that the committee accepts amendments 63 to 68.

Consequently, amendment 133 is unnecessary. It seeks to insert into part 1 of schedule 1 the requirement for a

"summary of the changes made to the plan in light of the advice received under section 17(2)",

which is advice that is given by an advisory group. That is unnecessary, as section 12(2)(b) already requires SEPA, in submitting a river basin management plan to Scottish ministers, to submit an accompanying statement

"containing a summary of the views and representations referred to in subsection (9)"

of section 11

"and of any adjustments made to the plan in light of those views and representations."

More important, perhaps, paragraph 8 of schedule 1 requires every river basin management plan to include a

"summary of the steps 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."

As advisory groups fall under section 11(6), the information that Nora Radcliffe wants in the river basin management plan will be available. The existing provisions are adequate; therefore amendment 133 is unnecessary.

10:30

Amendment 140 is a long amendment that would insert a new section into the bill. The new section would require SEPA or the responsible authority to establish sub-basin advisory groups for each designated sub-basin, which would have the function of advising SEPA on any matter relating to the preparation of the sub-basin plan. In determining the membership of the advisory groups, SEPA would have to ensure appropriate representation from the organisations and interests that are listed in amendment 140.

Although I sympathise—and, indeed, agree—with the intention behind the amendment, I hope that Fiona McLeod will accept that it is no longer necessary in light of the amendments that we

have lodged—in particular, amendments 63 to 68. Those Executive amendments will allow advisory groups to be established by reference to sub-basin plans—which, as I have indicated, will cover the entire extent of the river basin district—or to any other aspect of water management within the district, such as sustainable flood management or diffuse pollution.

Amendments 63 to 68 make it clear that SEPA will be required to seek appropriate representation of the interests that are described in section 11(6) when determining the number, membership and remit of advisory groups for each river basin district. In that regard, there is one important distinction between the Executive's intentions and those behind amendment 140. Section 11(6)(h) specifies that the membership shall include

"such persons as appear to SEPA to have an interest in the protection of the water environment within the river basin district,"

which might loosely be described as environmental non-government organisations. Amendment 140 fails to make provision for their inclusion. That is a significant omission, because environmental NGOs should be incorporated within the advisory groups. That sets amendment 140 apart from the Executive's amendments. I remind committee members that our amendments relating to advisory groups should be read in tandem with the amendments on sub-basin plans that we have already lodged.

I hope that the committee will agree that our amendments on those two areas satisfy its concerns about the need to ensure full participation in the river basin management planning process. We combine a geographic approach, which includes a catchment-based approach, with a thematic approach to river basin and sub-river basin planning. Our provision for advisory groups specifies the inclusion of environmental NGOs, whereas amendment 140 fails to specify their inclusion. Therefore, our approach is much better.

Bruce Crawford: I will deal with the minister's point about the involvement of NGOs in the advisory groups. The minister's advisory groups will deal with the whole of the river basin district, which is an all-Scotland situation. Amendment 140 deals with advisory groups for the sub-basin plans. It specifies the involvement of

"such other persons as SEPA thinks fit."

There will be a considerable number of river sub-basin plans for the whole of Scotland. Although it would be great if NGOs could be represented in the advisory groups for all those plans, at this stage of development it would be difficult for them to find enough people. That is why we want to ensure that SEPA can pull in such people as it thinks fit in the circumstances.

There is no conflict between amendment 140 and what the minister is trying to achieve—the provisions complement each other quite well. Rightly, the minister has talked about sub-basin plan areas and thematic responses—his amendments deal with those issues. However, amendment 65 states:

“SEPA may determine the remit of an Advisory Group for any river basin district”

by reference to sub-basin plans. Fiona McLeod's amendment would require advisory groups to be set up for sub-basin plans. That is an important distinction.

I return to the issue of the culture that we are trying to achieve through the directive. Do we, like the minister, seek a process that is based on consultation, or do we seek a process that is based on participation? Through amendment 140, Fiona McLeod is seeking a process that is based on participation. For me, the directive is all about participation—people being involved in the process from beginning to end in a proper, meaningful way. Fiona McLeod's amendment seeks to achieve that. Participation is stronger than consultation.

Nora Radcliffe: I welcome the Executive amendments. I hope that they will achieve what we want—a network of sub-basin plans across Scotland that will enable people to become involved locally and will be far more meaningful than the Scotland-wide river basin plan. However, I am not sure whether the Executive amendments alone will achieve that to the extent that we want.

Amendment 133 adds weight to the advice that the advisory groups will give, as it would require river basin management plans to indicate where the advice of an advisory group had been taken. Amendment 140, in the name of Fiona McLeod, makes clear what sort of sub-basin advisory groups we seek. I will press amendment 133.

The Convener: The question is, that amendment 133 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Muldoon, Bristow (Livingston) (Lab)

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

Amendment 133 agreed to.

Amendment 18 moved—[Allan Wilson]—and agreed to.

Schedule 1, as amended, agreed to.

Section 11—River basin management plans: publicity and consultation

The Convener: Amendment 99, in the name of Des McNulty, is grouped with amendments 100, 101, 102, 134, 103, 135, 143 and 136. In Des McNulty's absence, it is open to another member to move amendment 99. Angus MacKay has indicated that he wishes to move the amendment. I invite him to do so and to speak to the other amendments in the group.

Angus MacKay: I will speak briefly to amendments 99, 102 and 143, all of which are in the name of Des McNulty.

All the amendments are straightforward. Amendments 99 and 102 are about how we ensure that the publicising of and consultation on river basin management plans is transparent, and that there is active involvement in the process. I would like to hear whether the minister is prepared to accept the amendments. If not, can he guarantee that the objectives of the amendments will be achieved through another course of action?

Amendment 143 tries to ensure that the publicity and consultation involve not only a range of organisations and interests, but ordinary members of the public, who would be at the sharp end of the consequences of a failure to deliver this policy. Those people should have the opportunity to engage and to have their concerns heard.

I would like to hear the minister's views on those three amendments.

I move amendment 99.

Bruce Crawford: I have sympathy with Des McNulty's amendments, which Angus MacKay spoke to, and I will listen carefully to the minister's response.

I turn to amendment 100. The bill as it stands outlines the process by which SEPA will consult with the bodies that are listed in section 11(6). The bill does a good job of explaining the consultation process: it deals with the measures that are to be taken in preparing a river basin plan, the time periods that are involved, how statements, summaries or draft plans will be published and how comments will be sought. The bill describes a good consultation process, but, to return to a point that I made earlier, it does not describe a process of full participation.

To achieve a participative process, the bodies that are listed in section 11(6) must be involved

earlier in the process. SEPA should seek the views of interested parties before it lifts a pen to draft a statement. It is important that interested parties feel part of the process from the beginning, which would have two distinct advantages. First, those parties would have greater ownership of the final outcome and would be more accepting of it. Secondly, SEPA would have a greater understanding and a better perspective, which would ensure that statements, summaries or draft plans better reflected the reality as seen by interested outside bodies.

The intention of amendment 134 is to ensure that the level of publicity that is given to a statement, summary or draft plan is at least equal to that required for structure plans under the Town and Country Planning (Scotland) Act 1997. The wording of amendment 134 reflects section 8(1)(a) of that act. It is important to ensure that Scottish ministers require the resubmission of a river basin plan under section 12(3) of the bill. At present, there is no standard for publicity, but amendment 134 remedies that.

John Scott: It is important that water users are consulted as well as those organisations that exist to protect water bodies. That is the aim of amendment 135, which would also support Maureen Macmillan's amendment 27. At this point, I should declare an interest as a farmer because I am thinking primarily of mining, forestry and farming interests. It is important that those interests are consulted because, as the minister has said, much of the cost of implementing the regulations will fall on those groups. In the interests of balance, it is vital that users and consumers of water are represented.

Amendment 136 is a further suggestion to allow as wide a group of people as possible to be consulted. The amendment would give a power to ministers to make suggestions about consultees, should SEPA, for whatever reason, overlook certain individuals or groups.

Robin Harper: I agree strongly with Des McNulty's amendments 99, 102 and 143, to which Angus MacKay spoke. It is important that the bill should contain a commitment to the ethos of active participation.

Nora Radcliffe: I support Des McNulty's amendment 143. We accept that flooding should be covered in the bill and the amendment would enable bodies such as flood appraisal groups to be part of the process. It is useful for the bill to state that such groups will be included.

I think that section 11(6)(g) already covers the people that John Scott wants to involve through his amendment 135.

Allan Wilson: Amendment 99, which was moved by Angus MacKay, seeks to amend section

11(1) to include a requirement that the statement to be provided by SEPA, three years before the river basin plan, should include measures to encourage active involvement. I support the incorporation of the principle of the act of involvement in the bill, but I am not sure that amendment 99 represents the best way of doing so. However, I am pleased to accept the amendment in principle and undertake to introduce an appropriate amendment, suitably worded to provide for the encouragement of active involvement, at stage 3. On that basis, I hope that Angus MacKay will withdraw the amendment.

10:45

Amendment 100, which would require SEPA to have a consultation three years in advance of the actual production of the river basin plan, is unnecessary. The wording in section 11(1) is clear that there will be consultation, and that is emphasised in section 11(5). Therefore, it makes no sense for SEPA to consult in the form of a consultative statement. Much as I am in favour of active involvement, participation and consultation, I hope that Bruce Crawford sees the sense of what I have said and chooses not to move amendment 100. Adequate provision is made for extensive consultation, participation and active involvement of all the persons specified in section 11, from the preparation of the consultation through to the production of the river basin plan.

Amendment 101 has not been spoken to.

Amendment 102 seeks to amplify the provisions of section 11(5)(a) about how SEPA should publicise the statement, summary or draft plan. Again, I do not disagree with the thrust of that amplification, but we must bear in mind that extensive provisions in section 19 give ministers powers to make regulations about that very issue. That said, I am prepared to accept amendment 102 in principle and to bring forward an appropriate amendment at stage 3 that will deliver the purpose of amendment 102, but retain the flexibility to make use of new means of communication, as technology develops, to publicise the statement. That will be in addition to newspapers, because there are other forms of mass media communication that we would incorporate.

Amendment 134 seeks to do similar things to amendment 102, but in a slightly different way. On the basis of the undertaking that I gave in relation to amendment 102, I hope that Bruce Crawford will not move amendment 134. The same applies to amendment 99, in the name of Angus MacKay.

Amendment 103 was not spoken to.

Amendment 135 seeks to amend section 11(6)(h) to include those who have an interest in

the use, as well as the protection, of the water environment. Although I support the policy intention behind the amendment, I do not believe that it is necessary. As Nora Radcliffe pointed out, users of water are adequately covered by section 11(6)(g), as well as by subparagraphs (b), (d) and (e) of that section.

Amendment 143, which Angus MacKay will move, seeks to amend section 11(6) by adding another category of person whom SEPA must consult at various stages in the river basin planning process. That category is those who

“appear to SEPA to have an interest in the promotion of sustainable flood management”.

That was supported by Robin Harper, among others. Amendment 143 fits with amendment 109, which, if members recall, we agreed to last week. Amendment 143 is sensible and I am happy to support it.

I should say that by

“persons as appear to SEPA to have an interest in the promotion of sustainable flood management”

we envisage that SEPA would have to consult other public agencies and representational groups, but we would not want to burden SEPA with having to consult individual householders in an area that has been affected by flooding. With that caveat, I recommend that the committee accept amendment 143.

Amendment 136 is unnecessary. The provisions of section 11 and the rest of part 1 are structured to make it clear that the responsibility to ensure that there is effective involvement and consultation rests with SEPA, therefore it should be for SEPA to determine who else should be consulted. The check that John Scott seeks is provided by the powers in section 19, which I have referred to, which enable ministers to make regulations covering consultation and active involvement.

Fiona McLeod: May I ask the minister for clarification on one of the amendments that he said he is accepting in principle?

The Convener: Certainly.

Fiona McLeod: On amendment 102, in the name of Des McNulty, the minister said that he accepts the principles of publishing documents and placing notices. Des McNulty has worded the amendment to include “the river basin district”, which covers the whole of Scotland. Amendment 102 states that notices are to be published in at least one local newspaper. I hope that the minister agrees that it is inadequate to publish in the *Milngavie & Bearsden Herald* what he expects everybody in Scotland to read. I hope that there will be more extensive coverage than is required by the amendment.

Allan Wilson: The short answer is yes, there will be. That is one of the weaknesses that we identified with amendment 102. The use of new mass-communication technology would supplement and complement the provision of the information in the newspaper medium.

Bruce Crawford: I seek a helpful answer before we get to amendment 100, which I will have to move if I do not hear some firm information from the minister. The intent behind amendment 100 is to ensure that there are no unpleasant surprises from SEPA when the draft statement or summary is put to the interested parties. Does the minister accept that he could lodge an amendment to address that situation in a more successful way—in his opinion—than I have done?

Allan Wilson: I will consider that. The advisory groups that are referred to in section 17 will provide for full and active participation. I would expect those groups to provide advice in the process. If our proposals are accepted and all the people who are listed in section 11(6), at river basin and sub river basin level, are incorporated, there will be more than adequate provision for the active involvement of, and participation in consultation by, all those interests, including environmental NGOs, in the sub-river basin planning process.

Bruce Crawford: Sorry, I do not want to have a conversation on this point, but that will occur after the documents have been drawn up. I am trying to ensure that the advisory groups and those with an interest who are listed in the bill will be involved in drafting the documents. If the minister could consider that, that would help.

Allan Wilson: We have given consideration to that. I thought that I had made it clear that it is not the case that the advisory groups would be involved in advance of the preparation and publication of the original consultative draft. There is no need to consult on a consultative draft.

Bruce Crawford: Okay, thanks.

Angus MacKay: I am happy to accept the minister's views on amendment 99 and welcome his intent to submit an alternative proposal. His comments about amendment 102 make sense for the broader media, and I intend to press amendment 143, with which the minister is comfortable.

Amendment 99, by agreement, withdrawn.

Amendment 100 moved—[Bruce Crawford].

The Convener: The question is, that amendment 100 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)
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 Scott, John (Ayr) (Con)

AGAINST

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

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

Amendment 100 disagreed to.

Amendments 101 and 102 not moved.

Bruce Crawford: Given the minister's assurances to Angus MacKay that other amendments will be lodged, I will not move amendment 134.

Amendment 134 not moved.

Amendments 103 and 135 not moved.

Amendment 143 moved—[Angus MacKay]—and agreed to.

Amendment 136 not moved.

Section 11, as amended, agreed to.

Section 12—River basin management plans: submission for approval

The Convener: Amendment 137 is grouped with amendments 104, 144, 145, 138, 105 and 146.

John Scott: Amendment 137 would give SEPA a degree of latitude with its timescales for the publication of plans. I am interested to hear the minister's views on that. Amendment 138 was lodged in the spirit of openness in order that the public can see that the Executive's approach to rejecting plans is reasonable and can stand up to scrutiny. Publishing the reasons behind decisions to reject plans may help others to avoid making similar mistakes.

I move amendment 137.

The Convener: Amendments 104, 144, 145 and 146 are in the name of Des McNulty.

Nora Radcliffe: It is important that integration of river basin plans and sub-basin plans be delivered with the other planning frameworks, and amendment 104 would provide for that. Amendment 144 is slightly different. There are currently no appeal or scrutiny procedures for river basin management plans. An "examination in public" facility is available for structure plans. It has not been used widely, but the Executive has recommended that, as part of the proposals that

are outlined in the review of strategic planning, it become mandatory for strategic development plans.

The process that is proposed in amendment 144 would allow ministers to consider objections or concerns that were lodged by those participating in the process of river basin management plans without such objectors having to resort to legal challenges. Amendment 144's proposal would fill a gap in the bill's appeals process. I think that someone queried whether the bill would be compliant with the European convention on human rights if it did not have an appeal mechanism.

11:00

The Convener: No member wants to speak to amendment 145, which is in Des McNulty's name. Therefore, I ask Angus MacKay to speak to amendment 146.

Bruce Crawford: On a point of order, convener. I want to understand what is happening. We are jumping to amendment 146, but according to the list, amendment 105 precedes amendment 146.

The Convener: I am taking all Des McNulty's amendments together. Nora Radcliffe wanted to speak to two of them and Angus MacKay wants to speak to one of them. I will come to you next.

Bruce Crawford: Okay. I understand.

Angus MacKay: I will not detain Bruce Crawford for long.

Amendment 146 seeks to delete part of section 13 to try to ensure clear opportunities for access to information by members of the public and organisations and so to have as much transparency and public involvement in the process as possible.

I would be grateful for the minister's comments on amendment 146. I acknowledge that part of the amendment bears an uncanny resemblance to an earlier amendment about which he made a point about other media. He might want to repeat that point and to develop it in respect of the rest of the amendment.

Bruce Crawford: I hope that the intent of amendment 105 is clear. I think that we all expect the river basin management plan to be a hugely significant document for Scotland. The plan will deal with a wide range of issues, from environmental and economic impacts to issues around watercourses throughout Scotland. Given the plan's significance to Scotland, amendment 105 would ensure that, as part of the approval process, ministers would lay the plan before Parliament. That would ensure transparency, accountability and the involvement of Parliament; it would also strengthen the role of parliamentary

scrutiny and, given the plan's importance to Scotland, enhance democracy. I hope that the minister will be able to accept amendment 105 as a reasonable amendment.

Allan Wilson: I will deal first with amendment 105. We would not make express provision for its proposals in the bill, but ministers would inevitably do what amendment 105 wants them to do. Amendment 137 is also unnecessary; it would amend section 12(1) to require SEPA to publicise both its submission of the plan to ministers and the plan within a reasonable time from the time of the submission. However, section 12(1) already provides that SEPA must ensure that publicity is given as soon as it has submitted the plan. I argue that sooner is better than later in that context and so I cannot support amendment 137.

Nor can I support amendment 104, which Nora Radcliffe spoke to, which seeks to require SEPA to prepare and submit a report about how the plan integrates with wider policies of ministers

"in relation to planning, agriculture and water"

at the same time as SEPA submits the plan to ministers. That would put SEPA in an invidious position. It is not for SEPA to ensure that ministers' wider policies integrate with the plan—that is ministers' responsibility. The general duties in section 2, which we discussed at length, are the mechanism to ensure that our overall policy framework will comply with the river basin management plan.

Section 16 plays an important role and we have discussed it extensively. That section will ensure that Scottish ministers, SEPA, and every public body and office holder of every public body must have regard to the river basin management plan when exercising functions that affect their river basin district. That is the mechanism by which we will ensure that all those bodies work together for the effective functioning of river basin planning. As if that were not enough, I remind members that we passed Robin Harper's amendment 30—against my advice—which inserts a requirement that Scottish ministers, SEPA and the responsible authorities ensure that an integrated approach is followed when they perform their duties under the relevant enactments. There are three precise means by which we will ensure that that integrated approach is followed and it is not for SEPA to ensure that ministers' wider policies integrate with the plan—that is our responsibility.

John Scott's amendment 138 seeks to change one word in section 12(4) to the effect that ministers would have to publish rather than to state their reasons for returning the plan to SEPA. Amendment 138 is unnecessary because in that context, "state" means the same as "publish". The amendment would involve making the reasons

available publicly. If we state what those reasons are, they are publicly available, so we reject amendment 138 on those grounds.

Amendment 145 was not spoken to.

Amendment 144 seeks to amend section 12 by adding two new subsections that would give Scottish ministers the power to require the holding of an examination in public in respect of views and representations about the river basin management plan that have not led to adjustments in the plan. That would happen when the ministers received the plan, but before the stage at which they had the chance to return the plan to SEPA for further work in terms of section 12(5). Ministers would also be given the power to make regulations about the procedures to be followed in such an examination. When we considered amendment 144, I examined the provisions of sections 12(3) and 13(2), to which I refer members now. As members will note, section 12(3) enables ministers to return the plan to SEPA if they believe that further consultation requires to be conducted and to direct SEPA on the steps that must be taken.

In addition, section 13(2) provides wide powers for ministers to seek further information, conduct investigations and consult further before deciding whether to approve a plan. Therefore, on the basis of sections 12(3) and 13(2), amendment 144 is unnecessary.

We should be clear about the procedure for submission and approval of river basin management plans. After SEPA and its partners in the river basin planning process have drawn up the plan, SEPA will be required to submit the plan to ministers with a statement setting out how it has involved and consulted others and what changes to the plan have been made in the light of that consultation and active participation. If ministers believe that further consultation is required, they can return the plan to SEPA and ask for that consultation to be done. Ministers can then approve the plan as it stands, approve it with modifications, or reject the plan and return it to SEPA. Before they do that, ministers can use the provisions of section 13(2) to seek information, to investigate or to consult on the submitted plan. I am sure that members agree that the process is comprehensive.

Provisions in sections 12(3) and 13(2), which empower ministers, are extensive and comprehensive. An examination in public could already have been held by ministers under section 13(2). As a consequence, there is no need for amendment 144.

As I have said, section 19 contains extensive powers for ministers to make regulations about how the plan is put together and about the approval process. I assure the committee that

more than sufficient provision is made in all those sections to cover the policy intent behind amendment 144.

Another difficulty with amendment 144 is that it would restrict public examination to issues in relation to which views have been expressed but

“in respect of which adjustments to the plan have not been made”.

The effect of that would be that an examination in public would be constrained to the issues in dispute. I can envisage—as I am sure can the committee—circumstances in which ministers might want to see an examination of issues beyond those that might have been in dispute. The examination would be required to look at the whole picture. Under amendment 144, the examination could not consider the whole plan. The provisions in sections 12(3) and 13(2) are more than adequate for that purpose.

Another difficulty with amendment 144 is the sequence of the examination in public for which it would provide. It would provide for the examination to take place after the plan and the statement had been submitted, but before ministers had had the chance to return the plan to SEPA for further action, if that is what they wish to do, under section 12(3). If members think about it, that does not make sense. Section 13(2) would provide for the investigation to take place after the plan had been submitted to ministers and they were satisfied that no further work on it by SEPA was required. That is a more logical and chronological sequence of events.

Amendment 146, to which Angus MacKay spoke, bears more than a passing resemblance to the amendment that we discussed in the previous section. Its intention is to strengthen the duty that will be placed on SEPA to encourage public knowledge of the approved river basin management plan and to allow general access to the approved plans. Similar arguments to those that we employed in the previous debate apply to this one.

I ask Angus MacKay not to move amendment 146, on the basis that we will lodge a suitable amendment that will do all that and, in addition, provide for copies of the plan to be available for sale at a reasonable price—that is an important point—to enable public consumption of the plan. As with amendment 102, amendment 146 is unduly prescriptive about the means by which the publication of a plan will be made known—again, I refer to the issue of notices being placed in national or local newspapers. We have the same concerns about utilising new technology and more user-friendly means of mass communication. We will produce an amendment that will provide for all those things to ensure that the plan is on sale at a

reasonable price and that there is wider electronic distribution. We will pick up the points that have been made about newspapers.

Bruce Crawford: The minister said that ministers would inevitably do the things that I am trying to achieve with amendment 105. Does that mean that he supports my amendment?

The Convener: I think that the minister said that he did not support your amendment and that it was unnecessary. Can the minister confirm that?

Allan Wilson: I said that it was unnecessary. The drafting would not work very well either. I am giving Bruce Crawford the policy assurance that he seeks that ministers would inevitably do what amendment 105 wants them to do.

Bruce Crawford: The present minister might do that, but another minister might not.

Fiona McLeod: I want to press the minister on the matter. Surely the laying of the river basin management plan before the Parliament is inevitable only if that is stipulated in the act. Can the minister refer to another provision in the bill that will ensure that the inevitability of parliamentary scrutiny will be achieved?

Allan Wilson: I undertake to bring that forward.

John Scott: If I may, I ask the minister how he defines a reasonable cost for a published river basin management plan. I will withdraw amendment 137 and not move 138 on the basis of what the minister said.

Amendment 137, by agreement, withdrawn.

Amendment 104 not moved.

11:15

Nora Radcliffe: In the light of the minister's assurance that a mechanism for appeal exists for those who are not satisfied with river basin management plans, I will not move amendment 144.

Amendment 144 not moved.

Amendments 145 and 138 not moved.

Section 12 agreed to.

Section 13—River basin management plans: approval

Amendment 105 moved—[Bruce Crawford].

The Convener: The question is, that amendment 105 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)

AGAINST

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

ABSTENTIONS

Harper, Robin (Lothians) (Green)

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

Amendment 105 disagreed to.

Amendment 146 not moved.

Sections 13 and 14 agreed to.

Section 15—Sub-basin plans

The Convener: The next group of amendments consists of two amendments to amendment 147, which has already been debated. Given that there was some confusion over such amendments last week, I will explain to members how we will proceed with the debate so that they know when they will have the opportunity to contribute.

I will first ask the minister to move amendment 147, but not speak to it, because it has already been debated. I will then call Nora Radcliffe to speak to her amendments to amendment 147 and move amendment 147A. Other members will then be able to speak in the general debate, after which I will ask the minister to respond to the amendments to amendment 147 and Nora Radcliffe to respond to the whole debate. Are members clear about the procedure that I intend to follow?

Members: Yes.

The Convener: I also point out that, if amendment 147 is agreed to, amendment 46 will be pre-empted and will not be called.

Amendment 147 moved—[Allan Wilson].

The Convener: Amendment 147A is grouped with amendment 147B.

Nora Radcliffe: I welcome amendment 147. Amendment 147A relates to how we define sub-basin plans or areas. For those to be meaningful, we should think in terms of catchments or groups of catchments that would form a geographical area. It would be helpful to define a “geographical area” as a catchment, as I propose in amendment 147A. The argument against doing so is that such a definition could not pick up thematic plans. However, it seems to me that the thematic plans could be picked up under the overarching river basin management plan. It is important that the sub-basin areas should be clearly defined as catchments. We cannot have geographical areas that may or may not be a catchment or

catchments; if we did, we would lose the whole force of the holistic intention of the water framework directive.

Amendment 147B simply seeks to ensure that the Scottish Environment Protection Agency is required to provide the maps that define the sub-basin areas, so that people are clear about what the sub-basin areas are. Those are the reasons for my two amendments to what is a very welcome Executive amendment.

I move amendment 147A.

The Convener: Do other members want to speak to the amendments?

Maureen Macmillan: I want to ask the minister one small thing. Will the minister assure me that thematic plans and catchment plans are not mutually exclusive?

The Convener: If no other members wish to speak in the open debate, I call the minister to respond.

Allan Wilson: I can give Maureen Macmillan an absolute assurance that thematic plans and catchment plans are not mutually exclusive. Our proposed thematic plans, which would cover sustainable flood management, would be complementary to the river basin management plans or sub-basin plans. That is important, because the plans take forward our provision for the promotion of sustainable flood management both nationally and in each catchment/geographical area.

I welcome Nora Radcliffe's support for amendment 147, but I cannot support her amendments to it. Let me explain why, because the issue is important. I do not dispute that the geographical area would not be a catchment or catchment based. However, another option under consideration is the creation of a system of compulsory sub-basin plans that would consist of catchments inland, with coastal waters being divided separately into sensible management units. Members will, I am sure, accept that coastal waters are not always sensibly divided on the basis of catchments—the Minch is probably the best example that we can think of in that context. Forcing coastal waters into a catchment or catchment-based approach would not be helpful. We want to give SEPA the flexibility to develop its planning on a catchment/geographical basis to include the coastal waters.

Quite apart from that, a technical difficulty with amendment 147A is that it would require river basin districts to be subdivided into catchments. River basin districts extend 3 miles offshore and include coastal waters, whereas “catchment” seems to us to be a land-based concept. If amendment 147A was accepted, we are not

certain that SEPA would be able to allocate coastal waters to appropriate catchments. In order to have an integrated approach to river basin and sub-basin planning management, we require to make provision for coastal waters because, among other things, such provision is important for sustainable flood management and for the problems of diffuse pollution in coastal areas. That means that the concept must extend beyond a simple catchment or catchments approach. We need to use the term “geographical” precisely to provide for our coastal zonal management.

Amendment 147B is also problematic, in that it would mean that a sub-basin plan area would need to be identified on the map that is required under section 4(4)—if members can cast their mind back to the debate that we had on that subsection. That would be effectively unworkable and overly restrictive. The amendment would require sub-basin boundaries to be fixed at the same time as the boundaries of the river basin district are fixed. We know where the prospective boundaries of the river basin are so, in that sense, amendment 147B is premature.

A more important consideration is that amendment 147B does not provide for flexibility to adjust sub-basin boundaries in light of subsequent experience. That will be important. In addition, Scottish ministers prepare the section 4(4) plan, whereas SEPA sets up the sub-basin areas, so I do not see how the ministers can identify the sub-basin areas in the section 4(4) plan. Clearly, the two things do not match. We should not confuse the sub-basin plan areas, which are designated by SEPA, with the river basin districts, which are designated by ministers. The two things are different.

I presume that, with amendment 147B, Nora Radcliffe is seeking the publication of a map that shows the sub-basin districts as and when they are agreed. I am happy to concede to that, but it should not be done under section 4(4), because that refers to the river basin district and not to sub-basin districts.

I hope that the committee will accept amendment 147 but I cannot accept the two amendments to that amendment for the reasons that I have given.

The Convener: Thank you, minister. Nora, will you respond to the debate and indicate whether you wish to press or withdraw amendment 147A?

Nora Radcliffe: I accept the technical arguments that the wording would not deliver the holistic answer that we are all trying to get at. I would still be happier if there were some way of indicating geographical areas and whole river systems with their coastal adjuncts, but I do not know whether there is a way of doing that tidily. I

accept that amendments 147A and 147B do not achieve what I want, but perhaps we can put our heads together and see whether there is a way of making the issue explicit at stage 3. We have had a useful discussion and, in light of what the minister has said, I will not press my amendments.

Amendment 147A, by agreement, withdrawn.

Amendment 147B not moved.

Amendment 147 agreed to.

The Convener: As I indicated, amendment 147 pre-empts amendment 46. I will therefore proceed to amendment 59. At this point, I indicate to members that I do not intend to call any more debates on groups of amendments today, as we have other business to conduct. However, I hope that we can get through a series of votes so that we can conclude today's business.

Amendments 59, 148, 149 and 150 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 139 is in the name of Fiona McLeod. If amendment 139 is agreed to, amendment 61 will be pre-empted and so will not be called.

Bruce Crawford: Why would amendment 139 pre-empt amendment 61? I want to understand what is going on.

The Convener: Amendment 139 seeks to leave out section 15(3), to which amendment 61 subsequently refers.

Bruce Crawford: Thank you.

Amendment 139 moved—[Fiona McLeod].

11:30

The Convener: The question is, that amendment 139 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)

AGAINST

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

ABSTENTIONS

Harper, Robin (Lothians) (Green)

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

Amendment 139 disagreed to.

Amendments 61 and 62 moved—[Allan Wilson]—and agreed to.

Section 15, as amended, agreed to.

After section 15

Amendment 140 moved—[Fiona McLeod].

The Convener: The question is, that amendment 140 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)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
Harper, Robin (Lothians) (Green)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Radcliffe, Nora (Gordon) (LD)

John Scott: Can I have a minute to consider?

The Convener: No, you can either vote or abstain.

John Scott: I am in favour of the amendment. I do not wish to abstain; I want to vote for the amendment.

The Convener: Votes in favour have already been taken. You are too late.

ABSTENTIONS

Scott, John (Ayr) (Con)

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

Amendment 140 disagreed to.

Section 16—Duty to have regard to river basin management plans

Amendment 106 not moved.

Section 16 agreed to.

Section 17—River Basin District Advisory Groups

Amendments 63 to 68 moved—[Allan Wilson]—and agreed to.

Section 17, as amended, agreed to.

Before section 18

Amendment 107 moved—[Bruce Crawford].

The Convener: The question is, that amendment 107 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

Eadie, Helen (Dunfermline East) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Radcliffe, Nora (Gordon) (LD)

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

Amendment 107 disagreed to.

Section 18 agreed to.

Section 19—General regulation-making power

Amendment 69 moved—[Allan Wilson]—and agreed to.

Section 19, as amended, agreed to.

Section 20—Regulation of controlled activities

The Convener: Amendment 47 was discussed with amendment 32.

Amendment 47 moved—[Nora Radcliffe].

The Convener: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Muldoon, Bristow (Livingston) (Lab)

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

Amendment 47 agreed to.

Amendment 141 not moved.

The Convener: Amendment 48 was also debated with amendment 32.

Nora Radcliffe: Convener, amendments 48 to 54 are consequential to amendment 32. Do you want me to move them en bloc?

The Convener: We are not taking them all together. We would prefer to take them individually.

Amendment 48 moved—[Nora Radcliffe].

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Muldoon, Bristow (Livingston) (Lab)

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

Amendment 48 agreed to.

Amendment 49 moved—[Nora Radcliffe].

The Convener: The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Muldoon, Bristow (Livingston) (Lab)

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

Amendment 49 agreed to.

Amendment 50 moved—[Nora Radcliffe].

The Convener: The question is, that amendment 50 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Muldoon, Bristow (Livingston) (Lab)

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

Amendment 50 agreed to.

The Convener: That brings us to the end of our consideration of amendments today. Next week, we will start with amendment 70, which concerns the regulation of controlled activities. I hope that we will be able to conclude our consideration of the bill at next week's meeting. I thank the minister and the Executive officials for their attendance and their contribution to the meeting.

The next item is preparation for consideration of agenda item 5. We will move into private session and return to discuss the Cairngorms national park issue in public in a few minutes. Members of the press and public who are interested in that issue should not wander too far away.

11:37

Meeting continued in private.

11:52

Meeting continued in public.

Cairngorms National Park (Draft Orders)

The Convener: Agenda item 5 is to take evidence as part of the committee's consideration of the draft orders for the Cairngorms national park, on which the committee is the secondary committee. We welcome Allan Garvie, the head of planning of Aberdeenshire Council; Councillor Sandy Park, the chairman of planning, development, Europe and tourism of Highland Council; Graham U'ren, from the Royal Town Planning Institute in Scotland; and Robin Pellew, the chief executive of the National Trust for Scotland.

You have all given us written submissions so, given the pressure of time, we have decided not to take opening statements. However, we hope that you will be able to give the committee all the relevant evidence in answer to the questions that we will put to you. As the secondary committee for the consideration of the orders, we intend to concentrate on the planning aspects of the orders to determine whether the planning arrangements are appropriate to the establishment of the national park. I recognise that the orders give rise to broader issues that members might want to discuss, but I hope that those issues will be covered fully by the Rural Development Committee, which is the lead committee on the matter.

Robin Harper: My questions are for all the witnesses. Do your organisations support the proposed split of planning powers between the national park authority and local authorities, as outlined in the draft designation order, and will you explain the reasoning behind your answers? Would your organisation like to see different arrangements for the administration of planning in the Cairngorms national park? If so, will you outline your proposals and explain what benefits those would have over the system that has been proposed by the Executive?

Allan Garvie (Aberdeenshire Council): Aberdeenshire Council wants to make the draft designation order work well. It will accept the proposals, provided that a clear protocol for the call-in arrangements is finalised as soon as possible, to be available for operation on day one. The council is concerned that, given the amount of detail that is required, it is running short of time. It wants to ensure that all councils can make the protocol workable with the national park authority, and in its reports to committees in the past few weeks, the council asked the Scottish Executive to appoint a special planning adviser to facilitate that discussion.

So far, the council has worked with the Cairngorms Partnership on many environmental

projects, but not on development control or planning powers. Therefore, many detailed matters must be prepared, and the sooner discussions begin, the better.

The council is equally convinced that there must be clarity about handover arrangements. The draft designation order states that local planning powers cease on the due date. The council is well down the path of preparing an Aberdeenshire-wide local plan, which has been the subject of extensive consultation and, of course, objection. The council wants to hand the plan over to the national park authority as a done deal and, subject to the authority's agreement, work through any matters about which it is concerned. That approach is necessary because by that time it is likely that the plan will be before a public local plan inquiry. Therefore, we must consider transitional arrangements and workability.

In principle, the content of the protocol must be considered. It should enhance public confidence and should, perhaps, be the subject of limited consultation of interested parties to ensure that the right measures are included. That said, the council believes that the clear initial objectives and focus of the national park authority should be on land and visitor management issues. Therefore, the council will offer its services to help to deliver the planning function, possibly on an agency basis.

The council's objectives may change in the future. The Scottish Executive has promised a new planning bill that will rearrange forward planning functions, and councils must be alert to possible developments in 2004 with the arrival of city region structure plans, single development plans and, dare I say it, a single local plan for a national park.

Persons travelling along the Deeside Road from Aberdeen will have passed through three major policy zones by the time they reach the national park. Only one area committee will determine the applications in those zones. The Marr area committee, which covers 40 per cent of Aberdeen and has delegated powers to determine most planning applications, will have to get into three different mindsets, either as consultee or decision maker, as it moves through the geography of Deeside. I suspect that it will be difficult to convince the public that that is a coherent approach.

The Convener: Thank you. I now invite Councillor Park to express his views on Mr Harper's question.

12:00

Councillor Sandy Park (Highland Council): As far as Highland Council is concerned, working in partnership with the park authority would be an acceptable compromise. Highland Council has a

tremendous track record in partnership working on the community planning, health and the joint future agendas. I do not foresee any problem whatever and I think that we will have a very successful partnership with the national park authority.

As Allan Garvie said, the local plan issue in Aberdeenshire is well advanced; in fact, it is really brand new. In Highland, we are not so far advanced, and the plan for Badenoch and Strathspey is about to be reviewed. I believe that there will be a tremendous opportunity at an early stage for the national park authority and Highland Council to revise the current local plan. Highland Council has 60 per cent of the area of the park and the local plan structure is very important for the people living in the park—the people to whom we should give consideration. Consultation on the local plan is immense; everybody is consulted and that is where we get our working pattern.

Highland Council basically supports the proposals. At this stage, I do not foresee different arrangements being needed. We are all finding that time is catching up on us. Six months or a year down the road, different arrangements could be considered for the park as a whole, but at the moment I do not think that that is necessary.

Graham U'ren (Royal Town Planning Institute in Scotland): The Royal Town Planning Institute in Scotland is really uncomfortable about the proposal to split planning powers. Let me explain right away that, two years ago, during early consideration of the National Parks (Scotland) Bill, we prepared a paper for the committee specifically on the subject of splitting powers, regardless of where the powers ended up. As I recall, the committee supported our view that, to ensure an effective and useful planning service, it is far preferable, as a matter of principle, to ensure that local development control and planning issues are kept together.

That is a different issue from splitting planning between the local and the strategic. We have had experience of working under a two-tier local government system, and now we have experience of a two-tier planning system, where there has to be co-operation for strategic development planning. Nevertheless, that concept is quite correct; strategic and local issues have to be dealt with regardless of the administrative geography. However, the planning function operates first and foremost through the planning authority of first resort—the one that everybody goes to. It is there that local plans must reflect the cascading policies from national and strategic levels. All planning applications must be submitted and there is a comprehensive right to use all the powers of the planning acts.

With regard to the full range of powers, the orders that we are dealing with today refer only to three parts of the Town and Country Planning

(Scotland) Act 1997. I forget how many parts there are, but there are at least 12. Among the other parts of the act that the national park authority will not have access to are parts that are regularly used in relation to the local planning function, which the national park authority will have. Not only will that inhibit the park's ability to implement its local plan through proactive means—not just through determining planning applications—there is silence on the issue of who is responsible for picking up a blight notice, for example. If the local plan makes a provision that blights property and no move is made by any authority to activate the local plan and allow the property to be purchased, provisions for compensation exist, but the property owner has no redress under the arrangements that are proposed.

That is a small example, but the institute is concerned about the splitting of development control from local planning, which is one of the main reasons why we think the national park should have comprehensive planning powers, as the experiences in England have confirmed. The key statement in England has not been simply that the national park bodies should have those powers, but that policy and implementation should be in the hands of one authority. More than anything else, that principle is the issue of concern.

My other point is about resources. Although planning powers provide a resource to carry out the job, the issue of resources also relates to establishing a critical mass of planning staff, not just in terms of quantity, but in terms of the range of skills that are available. In the recent past, some planning authorities in Scotland split their planning service between two departments. That is not as draconian as splitting the service between two authorities, but after experience of that move, a number of planning authorities reversed the arrangements and returned to a consolidated planning service.

In places where there is no planning service in local government, such as Northern Ireland, the system does not receive the added benefit that the planning discipline brings to the authority. I am a member of the Heritage Lottery Fund committee for Scotland, which deals with the townscape heritage initiative. That initiative is led throughout Scotland by planning authorities, not because that is a statutory duty but because those authorities have the skills through their planning services to lead on the initiative. In Northern Ireland, the local authorities are hamstrung because they do not have the appropriate skills to implement the townscape heritage initiative effectively. My point is that it is important for the delivery of planning under any circumstances to have not only the powers, but a consolidated critical mass of planning service.

For those reasons, our institute is unhappy about the proposed split. Our view is that, given the circumstances in the Cairngorms, the alternative is to give the national park authority full planning powers. We are not concerned about the strategic planning arrangements, which can exist separately for the reasons that I stated. It is possible that, under future arrangements, there will be no structure plan for the national park and that the strategic planning context will be provided by national planning guidelines and a national framework. Attention should be paid to that issue when the proposed planning bill, which was mentioned earlier, is considered.

The arrangements that we suggest do not mean that we do not recognise an alternative to national park authorities having planning powers. The enabling provisions in the National Parks (Scotland) Act 2000 are correct because future candidate national parks in relatively remote parts of Scotland might fall entirely within one authority area. We cannot see the wisdom of having a separate planning authority in that situation. However, from the planning service point of view, we do not see any difference between the situation in the Cairngorms and that which prevails in Loch Lomond and the Trossachs national park.

Robin Pellew (National Trust for Scotland):

The National Trust for Scotland wants the park to work, which is why it is with considerable sadness that we advocate rejection of the plans that have been introduced by the Executive. I emphasise that our involvement in the park is local, through the Mar Lodge estate, which will constitute just under 10 per cent of the park area. We want the pioneering developments in land management, public education and access that we are putting in place on that estate to be rolled out in the rest of the park. Our involvement is also national, in that we are a national organisation that operates on behalf of the people of Scotland. We also have an international dimension.

We do not support the proposed split arrangements for development and implementation. We are concerned about a possible lack of consistency because four or five local authorities will be involved, each with its own structure plan, and the development of the local park plan will inevitably be based on or assimilate the input of the local authority structure plans. Therefore, the park plan might not necessarily be for the benefit of the Cairngorms because it will also have to assimilate many external considerations. We are also concerned about a lack of clarity in how the current arrangements will work. We would welcome further clarification—for example, through a protocol—so that many of the unanswered questions, which we have to take on trust, could be answered.

We are primarily against the split arrangement, however, because tensions will inevitably be created when one body is responsible for developing the park plan and several other bodies—the local authorities—are responsible for the plan's implementation through their structure plans. When policy and implementation are separated tensions are bound to be created that could spill over into conflict if contentious planning applications have to be called in. We envisage the things getting to the stage—as happened in England in national parks with split arrangements—where being at loggerheads creates a stalemate. That would put off developers who were interested in developing tourist facilities and the local communities would consequently suffer. What is proposed will almost inevitably lead to such a conclusion.

We think that the key to making the park work is to decide how best to reconcile the interests of the local communities—in terms of social and economic development from the inward investment from tourism that park status will generate—with our desire to protect the landscape and the natural heritage. We think that such reconciliation would best be achieved by having a single authority responsible for all planning and development control.

We also think that it is important that local people are highly involved and that there is greater local accountability. We envisage the national park authority, with its five plus 10 plus 10 structure, having a predominance of local people drawn from within or adjacent to the park area. Therefore, authority that was delegated to that body for development control would involve more local accountability. Indeed, we see accountability almost as a tier structure, in which most local accountability would come from the national park authority.

The second tier would come from development control being retained by the local authority so that, for example, people from as far away as Thurso, Ullapool, Elgin and Forfar could make decisions about what happens in the park. The third tier would be the minister calling in manifestations of failure in contentious issues for decisions to be made behind closed doors. That would represent a total abrogation of local involvement and local accountability. Therefore, we think that giving full authority for planning and development control to the national park authority would increase local involvement and accountability.

However, the Department for Environment, Food and Rural Affairs reviewed the whole system of planning in a report in July 2002, which examined different options for how best to achieve the reconciliation function within the national parks. I will read two sentences from the report:

"We are not convinced that such an arrangement would deliver consistent decision-making and support integrated management of Parks. It would also mean Park authorities being seen as a negative influence in planning."

That is because of the calling in of applications. The report adds:

"In the absence of authoritative evidence to the contrary, responsibility for both local planning policy and development control should remain with National Park Authorities".

That is based upon 50 years' experience of running national parks south of the border. It was done in Loch Lomond and the Trossachs and we have heard no explanation for why it should not be done effectively in the Cairngorms.

12:15

The Convener: Thank you for your remarks on those general questions. Several members are now bursting to ask questions.

Robin Harper: I have one question of clarification. Is it the view of the councils that the Sandford principle is embedded in the national parks legislation?

Allan Garvie: I had the experience of working for Lord Sandford when I spent a year at the Department of the Environment. He announced the principle that when conservation versus development inside a national park becomes an issue, conservation will win. That is the basic issue and I am not convinced that the principle is as clear as it should be in the act. It certainly could be re-emphasised in the designation order.

Bruce Crawford: I ask my questions having been on a planning committee of a council and a development control committee. They work in interesting ways.

I will start with conflict; we are discussing whether the orders will resolve conflict and tension. What do the witnesses think about the local plan process being the responsibility of the national planning authority and the development control process being the responsibility of the council? I am sure that you will have seen the conflict and tension that already exists within local authorities between those two functions. Will the tensions be exacerbated by the proposed process in respect of who is responsible for what?

How do you envisage that the appeal mechanism—which is different from the call-in mechanism—will work? A developer may appeal against a particular proposal's being turned down by the development control committee of the council, but that would affect the structure plan that is set by the national park authority. How do you envisage that issue being resolved? Is the draft designation order strong enough in its

direction on that point? Development control committees of councils are semi-judicial bodies. Does the order deal properly with the issue of the park authority in respect of its local planning process being a semi-judicial process in the same way as development control is in local authorities? That is another possible area of tension.

In the development control process, local authority members are required, under the code of conduct for members, not to give views on a development control application. Should the same requirement be applied to park authority members who will consider a local plan or structure plan?

I will need to hear what the answers are to those questions. I am trying to ensure that I ask questions and do not make statements. If I go any further, there is a danger that I will start to make statements.

Robin Pellew: As I explained, when responsibility is split into two parts so that the policy and the development of the plan lies with one body and responsibility for its implementation and execution is with another body, it makes life a damned sight more difficult than it would be if responsibility lay with one organisation.

I listened with interest to what Graham U'ren said. If we had a national park that was all within one local authority area, it would be perfectly reasonable for the whole caboodle to be retained by the local authority. However, we do not. Four, possibly five, authorities are involved and that is why the problem of consistency arises.

The appeal process will be extremely muddling. If I were a developer and a number of local authorities were involved, one of my primary considerations would be in which local authority area I would try to pitch my development, because there might be different criteria, different attitudes and different approaches to planning in different local authority areas instead of there being a single cohesive and integrated plan under the national park authority. If my plan were rejected, against whom would I appeal? Who would be the statutory authority: the national park authority, which may be saying no, or the local authority, which may be saying yes, or vice versa? It is extremely difficult to know. That is why we need clarification and some form of protocol.

We are making the process unnecessarily complicated. Models exist—potentially including Loch Lomond and the Trossachs—that show how a national park can work in a much simpler and more manageable way. For whatever reason, the process is being made unnecessarily difficult and complicated, and that is stacking the chances against the success of the park.

Councillor Park: I am trying to get my head round all the complications that we seem to be

throwing into the pot. I will give an example of the total applications determined. In Badenoch and Strathspey, there were 234 applications. The applications were made under the headings: householder, minor dwellings, minor business and industry, other minor developments, total minor applications, major dwellings—which means 10 or more houses—and major business and industry. There were 12 applications under the heading of major developments. Of those 234 applications, 164 were dealt with under delegated powers.

I am trying to get my head round where Mr Pellew is coming from with the complaint about mixing and matching. If the local plans and structure plans are in place, surely the figures are evidence enough that many applications are of a minor nature. Most major applications in the area would be put out to consultees anyway.

Robin Pellew: The vast majority of applications will be routine and straightforward, and the contentious ones will not necessarily be the ones involving big developments—the major tourism developments, and so on. The issue is how a decision on the siting of a development—which may be small or involve a tree preservation order—will be made in the context of the wider brief, which is to reconcile the development with the protection of the landscape and the natural heritage. The criteria are slightly different.

In England, full planning and development control is retained by the national park authorities. They delegate to the local authorities the routine, run-of-the-mill applications and a protocol is developed between the NPAs and the local authorities for that devolved responsibility. The national park authorities address only the contentious applications, which concern not necessarily large developments, but developments whose positioning in the park has to be taken into account as well as the landscape. The number of applications in relation to large developments is comparatively small, but contentious applications, because they involve issues that may seem trivial, are made quite frequently.

I assume that, if full authority remained with the national park authority, it would not have to make every decision on every TPO or conservatory extension at the back of every cottage. Such decisions would be made through devolved authority. Nonetheless, primary authority would remain with the NPA, not with the local authority.

Graham U'ren: At this stage of developing legislation, lines tend to get drawn in the sand. Some of today's most important statements have been made by local authority representatives who will have to make the arrangement work—whatever it is. A positive attitude is absolutely essential.

The philosophy behind the proposals in the Cairngorms has been very much about partnership. Partnership is a difficult issue for us to reflect in the statutory planning system. A planning committee will have to make resolutions wearing its statutory hat. However, when it comes to programmes and working together to align different agencies' objectives, partnership can be a very strong method indeed. The ethos of partnership will be absolutely essential in the national park. It is hoped that whatever planning arrangements are eventually made will convey that.

Retaining split powers means that protocols and policies will be essential. That might lead us to think increasingly about putting more in the legislation, especially in the statutory instrument, and about examining the minutiae of the consequences and how to deal with situations. We will not get a workable solution unless there is a voluntary agreement on what is needed to make the arrangement work.

I point the finger not at legislation, but at central Government guidance and the work behind the scenes to make whatever situation there is succeed. We should learn from the experience of regional and district councils and the call-in arrangements before 1996. I believe that tensions are inevitable from time to time, but if we learn from that and examine closely the ethos of the national park authority and what it is intended to do, we may find that the tensions are not as severe as originally anticipated. That will require much work, which is made more difficult by the very purpose of small developments. I do not believe that the call-in issue is relevant only to the very rare large developments; there is a tension between strategic and local in land use, infrastructure, patterns of development and so on.

We are talking about the national park's statutory objectives with regard to protecting the national heritage resource and the landscape. We all know that their quality can be eroded incrementally by poor attention to detail. Therefore, the protocols for split powers are quite a big issue. Call-in powers in relation to the detail of design policies and landscape protection policies in the national park plan will have to be considered very carefully.

Allan Garvie: I will pick up a couple of points that have not yet been covered. On the code of conduct for elected members, if the provisions persist, the local council or its area committee will have to be consulted formally on an application that has been agreed to be appropriate by the national park authority. If there are members of the national park authority on the area committee, I imagine that they would not express a view. That will have to be codified. The time for the

committee to have all the information will be when all the information is ready to be reported by the officers of the national park authority. That is when the members nominated by the national park authority to the area committee will give their view. There must be a point at which they do not give their view at local level in the council committees. That will have to be written into the script. I am convinced it will, because it is possible that new information will appear from other sources held by the national park authority, and quite properly so. A new code will have to be written to cover that.

Appeals have not been mentioned. Clearly, they will depend on the reasons for refusal, if the determination came from the national park authority. Specialist officers from constituent councils may well be called on to provide evidence, if that evidence has been used to formulate the report and the reasons for refusal. In such situations, I would expect a team effort from the councils and the national park authority where there is unity of purpose.

The Convener: I ask Bruce Crawford to make his supplementary questions brief, as a host of members want to contribute.

Bruce Crawford: If the national park authority took one view and the council took another, what effect would that have on the appeal process? Given that there would be two different processes, is there potential for an increased number of judicial reviews?

12:30

Graham U'ren: As long as all parties with a legitimate interest have the necessary access, the reporters will deal with the different points of view and statutory roles. Certain parties will look for inconsistencies between the positions of the authorities, but the system of reporters should deal with such problems adequately.

When Bruce Crawford referred to the appeal process, I thought that he might refer to the issue of appeals against the decision to call in, which is a throwback to previous days. Ministers would have to make the decision in the first instance, so the provision will have to be included in the procedure and covered by the protocol. It is another complication.

Maureen Macmillan: I have a question for Councillor Park. The committee has heard negative views of the draft orders from Robin Pellew and Graham U'ren. They are not in favour of partnership working and have highlighted the associated difficulties. They believe that the national park authority should have total planning control. However, the idea of partnership working did not come out of the blue; Highland Council, which, presumably for good reason, is keen to see partnership working, suggested it. Will you

elaborate on why the councils are so keen for a park authority that is different from the Loch Lomond and the Trossachs National Park Authority?

Councillor Park: I am more in love with Cairngorms national park than anyone else. It is unique to Britain, if not the world, so why should it follow a model that is successful in England or at Loch Lomond? The difference between Loch Lomond and the Trossachs national park and the Cairngorms national park is that Cairngorms national park is like an upside-down bowl with everything situated around its edge; Loch Lomond national park is the other way around.

Highland Council sees no problem with partnership working. It may be proved wrong. In its consultation processes, the council takes on board the views of local people who live in the park, not the views of people elsewhere in the world, and local people have expressed a preference for partnership working. They were greatly concerned with finalising planning permission before national park status was established because they feared that the gates might be closed and further development restricted.

I have no problem with partnership working. The Highland Council and, I am sure, Aberdeenshire Council have tremendous professional teams and so are well placed for successful partnership working.

Angus MacKay: I have three questions, two of which are to one side and might be more appropriately dealt with by the Rural Development Committee. They are from the Ramblers Association. First, will the failure to include in the designation order powers to set up a park ranger service have an impact on the policing of the planning powers of the various bodies? I do not imagine that there will be such an impact, but I want the witnesses to confirm that. Secondly, does the vexed question of the southern boundary raise any problems for joint working on planning?

Thirdly, given that developers are a bit like water, in that they tend to find the weakest point in a system, I am concerned that cross-boundary working will open up the possibility of developers exploiting—or creating confusion among—the different approaches to planning policy. As there are 32 different agencies in the local authority system in Scotland, we do not have to look far to discover areas in which local authorities compete with one another for significant economic and housing developments. How will that competition be prevented when there are often strong economic drivers for development? One local authority's policy might favour development in a way in which another local authority's policy does not. How do we ensure that local authorities work together?

I do not believe that a joint approach is impossible, but for transparency, clarity and consistency, we must discuss how approaches will work in different local authority areas and how to ensure that one local authority's policy position, which might have a slightly lower or higher threshold than another's, is not used by developers to play that local authority off against the other. As Bruce Crawford mentioned, the situation might lead to increased use by developers of judicial review and the court system to secure developments in cases in which they might not be able to do so if a single authority were involved.

The Convener: It is not necessary for the witnesses to respond to the first of Angus MacKay's questions, which was about park rangers. We want to concentrate on the planning issues.

Allan Garvie: I would like to respond to the first question. We want the Cairngorms national park authority to have the power to appoint rangers. We deliberately reorganised the Aberdeenshire Council ranger service on the assumption that a co-ordinated arrangement would be forthcoming through the national park plan that would bring together the existing arrangements and provide a welcome, particularly for visitors. I would like that power to be reinstated.

Paragraph 8 of my submission refers to the fact that a special protection area and a special area of conservation straddle Aberdeenshire's Council's boundary with an adjoining authority. If we take the view that the Scottish Executive should define those areas scientifically, as advised by the European Commission, so that only scientific evidence can be taken into account when the zones are decided, the national park boundary should include those areas entirely. That opens up the discussion about Perth and Kinross.

The planning process is about partnership working, not only between councils, but between developers. In our area, we have a group called the north east housing planning alliance, which considers housing assessments and works with the development industry in discussing draft policies and mechanisms. That is one way in which we can ensure that policies have a degree of credibility. The answer is not only inter-authority working, but working with other bodies.

Councillor Park: I draw members' attention to our written submission, which points out that it is important that a protocol on planning powers be introduced early on.

Robin Pellew: On the park ranger issue, I was disappointed by the designation order's decision that local authorities should retain ranger services. It is important that the park authority has its own

rangers, particularly for dealing with issues such as education, responsible public access to the countryside and land management. We run a ranger service at Mar Lodge and we would like our ranger service to be a national park ranger service and not a local authority one within the national park. There is a fundamental difference between the two. I would hope that we could either change the ranger service to a national park one or rapidly evolve towards that.

The problem of the southern boundary involves serious planning considerations. We are concerned about the lack of consistency in how the Executive applied the sub-units, which were evaluated by Scottish Natural Heritage, as the recorder. Low-scoring areas have been included in the park, but high-scoring areas on the southern boundary have been excluded. We are also concerned about the Executive's lack of explanation. It is manifestly clear that the criteria that were used are not in the enabling act. Therefore, what criteria were used?

On the planning issues, it is obvious that there will be problems of consistency and so on, because four or five local authorities will be involved. However, the more important issue is zoning within the national park in relation to visitor management, development pressure and so on. Bringing in the north Perthshire hills would help with that. On visitor management, for example, the natural point of access to the park for the majority of visitors will be in the south, coming up on the A9 or the A93. That is the natural gateway to the park, but it is outside the park.

Many people who climb the hills within the park—and we assume that the park will bring in more visitors—do not come in cars because they want to start at one side of the park and walk to the other. For example, someone could walk from Dalwhinnie across to Deeside by going up over Glen Tilt and down Glen Feshie or whatever. Those people want to be dropped off at one place and picked up at another. Therefore, a public transport system is needed that benefits visitors and the local community. The obvious way of doing that is to have a bus service that trundles around the outside edge of the park. In which case—

The Convener: Can I draw us back to the planning issues?

Robin Pellew: Sorry?

The Convener: We want to stick primarily to the planning issues.

Robin Pellew: Yes, I am coming back to that. I am just making the point that a lot of public transport will be outside the park's boundary because the transport is in Perthshire. Our primary concern is that excluding the Perthshire area will

have a great impact on the handling of zoning and visitor management and will pull the core of the park, which is the Cairngorm mountains, down towards the park's southern border. For example, one could apply for world heritage site designation for the Cairngorms area, but there is no obvious natural buffer zone around that central area. The Perthshire hills could have been the southern part of such a buffer zone, but that area is not within the park.

There are also implications for development pressure and affordable housing. If each local authority has its own targets and plans for development, how will those be reconciled within the park plan? Such issues are highly relevant to the question of the incorporation of the buffer zone of the Perthshire hills along the southern boundary.

Graham U'ren: I will comment briefly on each of the three points. It is true that, in the context of a statutory planning system, the issue of a ranger service has no consequences. So far, I have talked about planning being concerned primarily with the statutory planning system. However, as planning professionals, we are extremely concerned about a framework for decision making that has an impact on land use and on change in the environment. That framework is strongly related to certain aspects of management, such as providing a ranger service.

Therefore, we found it strange that the power to provide a ranger service was specifically removed from the national park. There is not even provision for the possibility of the national park having a concurrent power with a local authority, which would have enabled us to use the park plan and the partnership arrangements to work out who was going to play which role. The designation order specifically retains other concurrent planning powers that leave considerable doubt about who will take enforcement action in particular cases. However, it was decided that for ranger services, for which there is total discretion and no statutorily determined responsibilities, the park would have no responsibility. When the decision is considered that way, it looks rather odd. There would be no harm at all in the order retaining the powers for the park authority to have a ranger service, to contribute to a service or to agree with the local authority how a ranger service is to be provided.

12:45

On the southern boundary, I am a little unsure as to the consequences for planning per se, other than possible consequences if planning considerations are not taken into account. However, in the wider scheme of things, we do not know what the future holds.

A crucial issue is the prospect, or otherwise, for the designation of the Cairngorms as a world heritage site. In my experience, in a place such as New Lanark, which is built heritage rather than natural heritage, how the setting, buffer zone and fringe areas are managed is absolutely fundamental. Not only must that work be done; it must be shown to United Nations Educational, Scientific and Cultural Organisation that a scheme is in place to do it effectively. That is fundamental to the chances of success in world heritage site inscription. The worry is that omitting any part of the Cairngorm massif might prejudice the position.

The experience in America has been mentioned from a management point of view and, more particularly, from the point of view of the national park management, as it might have a bearing on planning. One of my members, who has just returned from America, told me that there is a clear difference between those parks that have an adequate, protected buffer area at the entrance, and those that do not, where the visitor pressure is immediately felt in the core, sensitive area.

On the point about consistency of planning policy, the national park authority has the power to make planning policy, which should ensure that the policy is consistent round the park. From the implementation standpoint, there is always the chance that interpretation of those policies will vary round the park.

On behalf of the planning profession, I must admit that our performance in preparing and keeping statutory development plans up to date is not good. The real worry is that, when the park plan becomes out of date, the scope for inconsistency becomes even greater. However, we hope that a planning bill and the resources that the Executive gives local authorities for planning will help us to keep our plans up to date and relevant.

The Convener: Some of the questions that Helen Eadie, John Scott and Nora Radcliffe had intended to ask have probably been at least partly covered. If they want to ask supplementary questions related to those areas or if they want to discuss other points, they can do so.

Helen Eadie: I want to raise the issue of the elected versus the non-elected members of the national planning authority. Although Robin Pellew said that decisions would be devolved or delegated, it was not clear how that would be done. Would decisions be delegated to local development committees? That is a concern. In my opinion, local authority members must be involved in decision making. I ask the witnesses to clarify that point and to comment generally on non-elected members serving on bodies that make planning decisions.

Allan Garvie: I hope that non-elected members appointed by the minister would bring extra knowledge, possibly from outside the area, that may help the determining committee. They could be considered a blessing in one respect because they would bring an outside perspective, rather than one from round the hill. However, there is a risk, as Helen Eadie rightly implies.

The second question concerned delegation, and to whom that delegation would be made. I interpreted that question to refer to delegation to an officer as an authorised part of a delegation scheme on certain categories of development. The procedure for minor developments that attract no major objections is well established in local authorities and helps to speed up the process. Whether that would persist for applications that may be called in for a national park authority—which may not happen often—has not yet been thought through. However, that would be the normal procedure.

Helen Eadie: My next question concerns the anxiety that would be prompted if the development control committee were taken out of the equation altogether. I have been a member of a planning committee, so I know about delegation, but I would be concerned if we went down the route suggested by Robin Pellew. He said that there would be delegation within the planning authority, but would that delegation be to officers or a development committee in a local authority?

Allan Garvie: That would depend on the nature of the protocol that was agreed. Matters that have been investigated by the national park authority and that are thought not to raise significant implications could be returned for local decision making. However, they would have to be assessed before that happened.

Robin Pellew: On the composition of the national park authority, I should point out with a rueful smile that there is a mistake in the draft order. Article 5, which details the constitution of the authority, says that there will be 25 members but lists only 20. If the committee wanted to score a few points, it could point out that article 5(3) should say that 10, rather than five, members of the authority are to be appointed by ministers.

Helen Eadie: We are covered from the Parliament's view because the Scottish Parliament information centre briefing makes that clear.

Robin Pellew: Okay.

Delegation would work if the national park authority retained authority for development control, but delegated casework, particularly for routine planning applications, through the usual local authority system. The local authorities would then make decisions in line with local authority structure plans or local plans and according to a

protocol negotiated between the national park authority and local authorities. The NPA would retain the right to make decisions on major or contentious issues—that definition would have to be incorporated in the protocol—or on applications that are out of line with the local park plan. That would significantly cut down the volume of the caseload that the national park authority would have to deal with, because the bulk of the routine work would continue to be dealt with by the local authority as normal, which we discussed in the context of Highland Council's statement.

Graham U'ren: There are two different issues—delegation from one authority to another and the role of elected members. As I said earlier, although all the national parks in England have full planning powers, the broad authority, which is not a national park but is within the national parks regime, delegates planning control decisions to the local authorities concerned. That is largely because it is a small area and authority without the critical mass to run the service. Therefore, such a system already works, and protocols and mechanisms can be put in place as described.

Wherever the decisions are made, we should examine the principles in the Loch Lomond and the Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002 (SSI 2002/201), which makes it plain that planning decisions will be made by a committee involving a majority of elected members. I cannot remember all the definitions, but that means both elected local authority councillors and elected national park members. The role of non-elected members on any planning committee will always be a minority one. That principle has been accepted for one park and should probably be adopted for others. There has been a lot of satisfactory debate about that.

John Scott: Let us look over the horizon to the day, which we all want to see, when the national park has world heritage status. Can you confirm that to achieve that, the park has to have its own planning authority? As Robin Pellew just said, do we not also need significant buffer zones by the boundaries?

Graham U'ren: I suppose that I put my head on the block on that one. It is difficult for me to say with absolute certainty that that is the case, because that is for the United Nations Educational, Scientific and Cultural Organisation and its advisory committees to decide. In recent years, it has been just as keen on the management planning arrangements as on the intrinsic merit of the areas as prerequisites for inscription. My experience has been that those arrangements do not involve split powers, but a consistency of policy framework and a rigour in implementation.

John Scott: Is that something that, in your view, only a national park authority could give?

Graham U'ren: Yes.

Councillor Park: John Scott is concerned with national parks and world heritage. I am a great believer in one step at a time. If the national parks are established and properly managed, world heritage status will follow. The situation will be reviewed in five to seven years, and that will be the time to consider world heritage status. We must get the national parks right first.

John Scott: I do not disagree with Sandy Park, but Parliament must have a vision for the future and not just be concerned with the nuts and bolts. The committee wants to take a long-term view.

Robin Pellew: The world heritage designation is likely to be based on the geological and earth features of the central Cairngorm mountains. The primary issue, therefore, is to consider land management and in particular the management of grazing pressure from the deer, which will be fundamental to the role of the national park authority.

As part of the process of assessment for nominated sites, there would need to be reassurance, as Graham U'ren stated, not just on the quality of the intrinsic features, but on the integrated management. Integrated management means an effective body that can reconcile the park's social and economic pressures with protecting its significant features, and the assessors would look to the national park authority for that management. To have integrated management and development control would be a great assistance. The lack of it would not necessarily preclude listing, but would make it more problematic.

Similarly, because of visitor management pressures, assessors would look for an adequate buffer zone around the nominated area, and, again, the absence of the southern boundary would make assessment more difficult; it would not preclude it, but would make it more problematic.

Sandy Park is right to say that the national park must be in place before world heritage listing is sought, but it must be established in such a way that does not obfuscate the logical progress towards world heritage listing.

Nora Radcliffe: The committee is considering the planning aspects of the national park, and some serious concerns have been expressed. In planning terms, the proposed revised boundary creates problems. Members have heard the implications of that for world heritage listing, and I want to ask a brutal question. The committee has been presented with a take-it-or-leave-it draft designation order. The local authority representatives have tried gallantly to show how it could be made to work through measures that

sound quite extensive and demanding. Would it be better to agree the order and try to make it work, or should the committee review the order and produce something that would work better? That approach would, of course, cause a short delay, but that would be worth while if the committee produced an order that worked well from day one.

13:00

Robin Pellew: This has been extensively discussed by my council, which includes people who have a lot of expertise in national park establishment and management.

Provided there were some form of independent monitoring and audit of the way in which the proposed split planning structure would work, it would be worth proceeding. However, if the structure were combined with the illogicality and inconsistency of the way in which the boundary has been drawn, it would be worth sending the proposal back to the Executive for a rethink. That was the view of my council after a thorough debate. If only one of those factors was present, it would be worth proceeding, but the combination of both factors outweighs the value of proceeding.

The down side is that if the proposal were sent back to the Executive, it might be a long time before it came back again. However, the National Trust for Scotland believes that, given that we have been waiting for 15 or 20 years, it is worth waiting a little longer if it means that we get it right. If we rush in with an artificial time scale, we might get it wrong and end up having to spend a long time trying to rectify what could have been done before the park was established.

Some people, particularly Aberdeenshire Council, have pointed out that the time scale calls for nomination by the local authorities before the local authority elections. If nomination were postponed until after the elections—so that the people who were nominated had been re-elected—more time would be allowed for the designation order to be reconsidered and come back before this committee, the Rural Development Committee and the rest of Parliament. There would still be time for it to be considered before Parliament is dissolved prior to the Scottish Parliament elections. That would be possible inside the 40-day lodging period if the establishment of the national park authority were delayed until after the local elections on 1 May.

Graham U'ren: The question is the right one, but it is difficult to answer.

We have always held the view that the national park authority would be the right body to have planning powers and that, perhaps, the park area should be larger. However, it is important to remember the huge public expectation that has

been built up. Despite the fact that lines have been drawn in the sand, there has been a great deal of co-operation and a constructive approach. The worry about a delay in the process is that a lot of good will would be undermined unless it could be seen that that delay would definitely result in a better product. Discussions such as the one that we have had today have to go a bit further before we can say that the establishment of the park should be put off.

We should remember that there is an alternative: a decision could be made to go ahead with the designation of the park and to put in hand an immediate review of the outstanding issues. There is nothing wrong with coming back to an amendment order before the review period of five years that we suggested. It is important that the status of the Cairngorms national park is established as a priority and that something is done by way of administering that area under the National Parks (Scotland) Act 2000. We recognise that there is a dilemma and we will offer our advice and resources to help manage whatever system there will be. I am afraid to say that the politicians are sitting on the other side of the table.

Allan Garvie: I am not empowered to answer that question on behalf of my council, because we did not consider the issue. However, we have drawn attention to the need for ministers to consider the new councillors who will be elected to the new local authority after 1 May as the relevant people for the board of the national park authority, in order to have continuity and to maintain links with the community.

I have already indicated that developing a protocol is not straightforward. It is quite a tall order to get things up and running by 1 September, given all the documentation that will start to flow from various councils to the national park authority and back again. One might think that 1 September is a long way away; however, it will take time to spare staff from their existing work loads to allow them to devote time to the Cairngorms issues. I cannot emphasise that enough. We want to do the job properly.

Councillor Park: I agree with Allan Garvie about the short time scale and the importance of 1 May.

I also agree with Graham U'ren. The public perception is that the national park is going ahead, and boundaries and other such issues could be addressed in a very early review. Even Highland Council has concerns about boundaries cutting small forests, villages and communities in half. I have no problems with addressing such issues at a very early stage of the national park's development and a procedure—or the protocol—should be in place to ensure that that happens.

The Convener: If members have no other questions, I thank our witnesses for their evidence—

Robin Pellew: I would like to make one or two brief points. The South Downs national park designation order was drafted recently. Members might be surprised to learn that that area has many things in common with the Cairngorms. It faces pressure from, for example: a high-density human population, with many people commuting to Brighton, London and so on; intensive agriculture; a major need for landscape restoration and so on.

The people involved in the development of the order gave careful consideration to the kind of planning arrangements that could cope with the volume, scale and intensity of this type of planning and development requirement. Indeed, they considered a series of options that ranged from the extreme of leaving planning in the hands of the local authority, to that of leaving it in the hands of the national park authority. In the proposed model, the national park authority will be primarily responsible for planning and development control, although some aspects will be delegated to local authorities. That model is based on the long experience of national parks in England, which includes the 1992 Edwards committee review. Despite the fact that the three local authorities involved in the south downs park object to the proposal and would like to retain development control, real leadership is being given in the development of a national park in a highly pressured and contentious area.

I also want to make a plug for a motion about the Cairngorms national park that was lodged yesterday by Keith Raffan. I will not read out the text of the motion, which relates to the revision of the boundary. However, committee members can sign up to it—

The Convener: I must interrupt you, Mr Pellew. I do not want to open a debate about Keith Raffan's motion. I am sure that members will consider their views on it when the time comes.

I draw this item to a close. I thank all four witnesses for their evidence, which will help members in their consideration of the draft orders.

13:09

Meeting continued in private until 13:38.

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