

MEETING OF THE PARLIAMENT

Wednesday 13 May 2009

Session 3

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Scottish Parliament

Wednesday 13 May 2009

[THE PRESIDING OFFICER *opened the meeting at 14:30*]

Time for Reflection

The Presiding Officer (Alex Fergusson):

Good afternoon. The first item of business, as always, is time for reflection. We felt that it would be more than suitable, on this particular occasion, which is as close as possible to the 10th anniversary of the first sitting of our Parliament, to have as our time for reflection leader the Very Rev Gilleasbuig Macmillan, the minister of St Giles Cathedral.

The Very Rev Gilleasbuig Macmillan (St Giles Cathedral, Edinburgh): Presiding Officer,

"Bless the Lord, O my soul: and all that is within me, bless his holy name. Bless the Lord, O my soul, and forget not all his benefits."

"God be merciful unto us, and bless us; and cause his face to shine upon us. That thy way may be known upon earth, thy saving health among all nations.

O let the nations be glad and sing for joy."

"He hath shewed thee what is good; and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?"

"God is love; and he that dwelleth in love dwelleth in God, and God in him."

Let us pray.

For all that is beautiful and good and true, we offer thanks and praise.

For this land of Scotland –
Its fertile fields and running rivers
Majestic hills and windy islands
Towns and cities, villages and clachans
We bring devoted thanks;

Most of all for Scotland's people –
Their character, their style
The young and old, the in-between
Traditions, skills, the language and the music
We celebrate with pride;

For Scots abroad we pray, as also we remember
The influence of our people in the wider world
The new Scots who have come from there to here
The happy mix of races, creeds and customs;

For ten years of this Scottish Parliament –
For dreams, vision, dedication
Honourable efforts, dutiful administration,
Honest debate, testing of deep principle,
Readiness to serve the people's common good,
We make our thankful tribute.

When things go badly wrong in our communities
And pain and hurt demolish peaceful life,
Help us and all our people in our land
To put new effort into the making of good neighbourhood

And let so much that's good bring help to heal and build,
Harnessing all our strengths for wise humanity.

Not for this land alone we pray,
But for the whole wide earth;
For children born and growing up in places near and far,
That all may have the chance of nurture, freedom, peace,
And all may learn to use their skills for good;
And the whole earth learn peace;

Through Jesus Christ our Lord.

Amen.

Business Motions

14:34

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-4111, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Flood Risk Management (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during Stage 3 of the Flood Risk Management (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated, each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress:

Groups 1 and 2: 20 minutes

Groups 3 to 8: 1 hour 5 minutes

Groups 9 to 13: 1 hour 45 minutes

Groups 14 to 18: 2 hours 25 minutes.—[Bruce Crawford.]

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S3M-4134, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, seeking a suspension of standing orders to allow the Parliament to meet at 9 o'clock on Thursday 14 May 2009.

Motion moved,

That the Parliament agrees that "9:00" be substituted for "9:15" in Rule 2.2.3 for the purpose of allowing the meeting of the Parliament on Thursday 14 May 2009 to begin at 9.00 am.—[Bruce Crawford.]

Motion agreed to.

The Presiding Officer: The next item of business is consideration of motion S3M-4135, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a revised business programme for Thursday 14 May 2009.

Motion moved,

That the Parliament agrees the following programme of business—

Thursday 14 May 2009

9.00 am Parliamentary Bureau Motions

followed by Ministerial Statement: Influenza A (H1N1)

followed by Ministerial Statement: Community Courts

followed by Stage 1 Debate: Scottish Local Government (Elections) Bill

followed by

Financial Resolution: Scottish Local Government (Elections) Bill

11.40 am

General Question Time

12 noon

First Minister's Question Time

2.15 pm

Themed Question Time
Finance and Sustainable Growth

2.55 pm

Scottish Government Debate:
Scotland's Engagement in the United
States of America and Canada

followed by

Stage 3 Debate: Flood Risk
Management (Scotland) Bill

followed by

Parliamentary Bureau Motions

5.00 pm

Decision Time

followed by

Members' Business — S3M-3894
Cathy Jamieson: RNID Hearing
Matters Campaign—[Bruce
Crawford.]

Motion agreed to.

Flood Risk Management (Scotland) Bill: Stage 3

14:35

The Presiding Officer (Alex Fergusson): The next item of business is stage 3 proceedings on the Flood Risk Management (Scotland) Bill. In dealing with amendments, members should have the bill as amended at stage 2—that is, SP bill 15A; the marshalled list—that is, SP bill 15A-ML; and the groupings, which I have agreed. The division bell will sound and proceedings will be suspended for five minutes for the first division this afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate and 30 seconds for all other divisions.

Section 1—General duty

The Presiding Officer: We go straight to group 1. Amendment 19, in the name of Elaine Murray, is grouped with amendment 10.

Elaine Murray (Dumfries) (Lab): It is a pleasure to kick off proceedings at stage 3 of the Flood Risk Management (Scotland) Bill, about which there has been a lot of discussion and agreement.

Amendment 19 is a rewrite of an amendment that was lodged at stage 2. It focuses on the need for all agencies, including the Scottish Environment Protection Agency, the Scottish ministers, councils and any designated responsible authorities, to take an integrated approach to flood risk management in exercising their individual functions. As the bill stands, those authorities will be required to co-operate so far as is practicable in order to co-ordinate the exercise of their functions. Co-ordinated actions require the agencies to work in harmony whereas integration requires them to work together as a whole. Integrated working is required to ensure that all aspects of flood risk prevention are covered.

All forms of flood risk—whether from surface, ground, river or coastal water—need to be addressed in an integrated way. To do that, policy must also be integrated, and the work of the many agencies that may be involved in flood prevention must fit together as much as possible.

Peter Peacock's amendment 10 recognises that some issues—surface water run-off and the management of natural features, for example—will cross local authority boundaries and local plan districts and that flood risk planning needs to be integrated in such cases. It proposes that the lead authority plan should include a description of how an integrated approach will be achieved. I

encourage members to support both amendments in the group.

I move amendment 19.

The Presiding Officer: I remind members that, if they wish to participate in a discussion on a group of amendments, they should press their request-to-speak buttons when the group is announced.

Peter Peacock (Highlands and Islands) (Lab): The implementation of certain flood protection measures may require two or more local authorities to take a co-ordinated approach in order for the measure to be effective. A measure could be proposed high up in a catchment area that seeks to slow down the flow of water, and a measure could be proposed further down in a separate local authority area that will store water in a flood plain, for example. Such measures will work effectively only if the relevant local authorities co-ordinate their implementation across the whole catchment. Amendment 10 seeks to ensure that local authorities are required to secure a co-ordinated approach.

Amendment 42, in the name of the minister, also deals with co-ordination to implement certain measures. I look to the minister to give me a brief assurance that her amendment deals with the issue of co-ordination. If it does, I will not move amendment 10.

The Minister for Environment (Roseanna Cunningham): Amendment 19 places a duty on the Scottish ministers, SEPA and responsible authorities to co-operate when they exercise their functions in order to adopt an integrated approach. That is entirely consistent with the spirit of the bill, so I support the amendment.

Amendment 10 relates to the co-ordination of efforts to implement measures that cross multiple local plan districts. Local plan districts will be discrete flood risk management units based on catchments. As such, flood risk management efforts should never need to be co-ordinated across different districts. We therefore believe that amendment 10 is unnecessary.

Furthermore, section 34 already includes provision on joint working arrangements between local authorities when local flood risk management plans are being prepared and, as Peter Peacock said, amendment 42, which will be discussed later, will require the lead local authority to set out information on how the efforts of all the bodies that are involved will be co-ordinated to implement measures. For those reasons, I urge Peter Peacock not to move amendment 10.

Elaine Murray: I am pleased that the minister intends to accept amendment 19.

Amendment 19 agreed to.

Section 2—Directions and guidance

The Presiding Officer: We come to group 2. Amendment 26, in the name of the minister, is grouped with amendment 8.

Roseanna Cunningham: The concept of sustainable flood management was introduced by the Water Environment and Water Services (Scotland) Act 2003. Broadly speaking, sustainable flood risk management is about taking a catchment-focused approach to organising actions to manage flood risk for current and future generations. Sustainable flood risk management is at the heart of the bill, so guidance on it is essential.

Amendment 26 will require the Scottish ministers to issue guidance to SEPA and the responsible authorities on acting in the way that is best calculated to manage flood risk in a sustainable way. The guidance will have to be issued no later than 18 months after the relevant bill provisions are commenced, and it will have to be reviewed at least every six years and, when necessary, updated. Before the Scottish ministers issue guidance, they will have to consult SEPA and the responsible authorities.

Further, amendment 26 will require the Scottish ministers to issue guidance on the social, environmental and economic impact of exercising flood risk functions. That addresses a specific concern that the Rural Affairs and Environment Committee raised at stage 2 about the actions that the Scottish ministers, SEPA and the responsible authorities will take to ensure that the social, environmental and economic impacts of flood risk management are considered fully.

Amendment 8, which was lodged by Robin Harper, is very similar in purpose to my amendment 26, the only difference being that my amendment would require guidance to be issued on sustainable flood risk management and on the equally important issue of considering the social, environmental and economic impact of exercising flood risk functions. My amendment is therefore rather wider. For that reason, I ask the member not to move his amendment 8.

I move amendment 26.

Robin Harper (Lothians) (Green): I will speak to amendment 8, but I hope that the minister will be content with my conclusion.

I lodged amendment 8 to ensure that the second part of recommendation 9 in the Rural Affairs and Environment Committee's stage 1 report is met. The recommendation was that the Government should produce a similar amendment at stage 2, but it failed to do so. I am therefore pleased that the Government has done so at stage 3.

Amendment 8 would require the Scottish ministers to issue guidance on sustainable flood risk management to SEPA and other responsible authorities, and that guidance would have to be taken into account when those authorities exercised their flood risk-related functions. Prior to issuing the guidance, the Scottish ministers would have to consult SEPA, all responsible authorities and other appropriate persons, whom I envisage to include district flood risk advisory groups. Guidance is essential to ensure that we have a common understanding of what it means to manage flood risk in a sustainable way, and it will be the first important step in a new approach to flood management.

In accordance with previous legislation that the Parliament has passed and with European directives, my amendment proposes that the guidance be produced within one year of the bill coming into force, whereas the Government's amendment 26 would require the guidance to be produced within 18 months of that. I will not quibble over six months, although the sooner the guidance is issued the better. The minister has assured me that amendment 26 will achieve the same aim as amendment 8, which is to ensure that ministers, in association with all appropriate partners, develop guidance for SEPA and local authorities on what it means to manage flood risk in a sustainable way. I will therefore be happy not to move amendment 8.

Roseanna Cunningham: Amendment 26 does what Robin Harper said and more. I am glad to hear that he is content with the amendment that we lodged.

Amendment 26 agreed to.

After section 2

Amendment 8 not moved.

Section 9—SEPA to prepare flood risk assessments

14:45

The Presiding Officer: In group 3, amendment 27, in the name of the minister, is grouped with amendments 28 to 30, 5, 33, 65, 36, 40, 41, 9, 42, 44, 7, 17, 18, 60 and 64.

Roseanna Cunningham: Of necessity, my comments on this group will be longer. I will speak to amendments 27 to 30, 33, 36, 40 to 42, 44, 60 and 64 before turning my attention to the amendments lodged by Peter Peacock and Rhoda Grant. As I am sure that members will appreciate, I have a lot of ground to cover. To help members digest this particularly complex grouping, I intend to break it down into more manageable collections of amendments.

The first set of amendments that I will discuss relates to the assessment made under section 16. The assessment is intended to create for the first time a national picture of opportunities for natural flood risk management measures throughout Scotland. It will be a challenging exercise, but I do not expect SEPA to undertake the work in isolation: local authorities, the Forestry Commission and other bodies will be expected to contribute.

Amendment 30 stipulates that the map accompanying the assessment made under section 16 must be prepared at a scale that SEPA considers will assist in considering measures under section 24 and the inclusion of information in local flood risk management plans prepared under section 29. Amendment 30 addresses directly concerns raised by the committee at stage 2; I recognise the constructive contributions that committee members made during the preparation of amendment 30 and other amendments.

Peter Peacock has lodged a set of amendments that also deal with the issue of scale and section 16 assessments. Although I fully appreciate the good intentions behind his amendments, it is my view that amendments 5, 7 and 9 duplicate the amendments that I have lodged and that they therefore risk creating unnecessary duplication and confusion. For those reasons, I ask Peter Peacock not to move those amendments.

The second set of amendments relates to information that should be included in the supplemental and implementation parts of a local flood risk management plan.

Amendment 40 clarifies that local plans should include supplemental information on how implementing measures may alter or restore natural features and characteristics. Amendment 42 requires the lead local authority to specify how the responsible authorities will co-ordinate their functions to implement measures that alter, enhance or restore natural features and characteristics. Such co-ordination is particularly important as those types of measures must work in concert with measures in other parts of a catchment. Amendment 42 is the amendment to which I referred earlier. The amendments in this grouping all help to ensure that natural flood management options are considered in the preparation and implementation of local flood risk management plans, and I trust that they will be supported. Amendment 44 clarifies that SEPA may request responsible authorities to prepare information, assessments or maps about how the alteration, enhancement or restoration of natural features and characteristics could contribute to flood risk management.

Amendments 33 and 60 deal with a duplication that arose as a consequence of two similar

amendments being agreed to at stage 2—one lodged by me and one by Peter Peacock. Peter Peacock and I have worked closely over the past few weeks to draft an alternative amendment that avoids such duplication. Amendment 60 will require SEPA to set out reasons for identifying measures in a flood risk management plan. When an assessment made under section 16 indicates that restoration or enhancement of natural features or characteristics could contribute to managing flood risk but a measure to take forward such an opportunity has not been identified, amendment 60 will require SEPA to set out the reasons why. Amendment 33 is a technical amendment to remove the remaining duplicate provisions.

My amendment 36 and amendment 65, which has been lodged by Peter Peacock, relate to the setting of objectives and measures to tackle flooding problems. The setting of objectives and measures is a complex process that requires a variety of factors to be balanced carefully. Amendment 36 requires the Scottish ministers to issue guidance to SEPA and the responsible authorities on setting objectives and measures under sections 23 and 24. The guidance must pay particular attention to the consideration of measures to alter or restore natural features and characteristics. The first guidance must be issued by 22 December 2012 and will allow the Scottish ministers to set out a framework to support the selection of the most sustainable flood-risk management measures.

Central to the selection of the most sustainable measures will be taking a catchment-focused approach. I expect SEPA and local authorities in taking such an approach to look first at how the timing, magnitude and duration of a flood can be altered to reduce flood risk—that is, what steps can be taken to manage the sources and pathways of flood waters before they cause a flood risk. By first focusing on the sources and pathways of flood waters, the aim is to reduce, but not necessarily replace, the need for traditional engineering solutions. Clearly, natural flood management options have an important role to play in that respect and, in most cases, I expect those options to be considered first. I intend fully to set out those and other important considerations in the guidance issued under amendment 36.

I believe that amendment 65, which has been lodged by Peter Peacock, will complement this approach by requiring SEPA to consider the contribution that restoring natural features and characteristics can make to reducing, slowing or otherwise managing flood waters. I therefore support amendment 65.

Finally, I support amendments 17 and 18, which have been lodged by Rhoda Grant, who spent a considerable amount of time on the committee while the bill was going through, although she is no longer a member of it. The amendments will add reference to the restoration and alteration of natural features and characteristics to the definition of “flood protection work”.

Amendments 27 to 29, 41 and 64 are all consequential amendments.

I move amendment 27.

Peter Peacock: I will speak to amendment 65 in particular but also to the other amendments in the group. I acknowledge that, through the joint action of the committee and the Government, we have made huge progress since the first discussions took place. One matter that has received great attention throughout the passage of the bill—and indeed before the bill was introduced—is natural flood management. That cause has been advanced strongly by Scottish Environment LINK, and I pay tribute to its hard work and its advice during the passage of the bill. Andrea Johnstonová deserves a mention on the record, given the work that she has done.

There is little doubt that the committee has been attracted by the proposition of using more natural approaches to flood risk management. Such approaches might be more sustainable in the long term than hard engineering, and they have the additional advantage of utilising or restoring natural characteristics and habitats, which has other benefits for our society as a whole. When such approaches can be used to take the peak off floods before we need engineered solutions downstream, they should certainly be considered.

Natural flood management approaches might not work in every circumstance and they are not a panacea, but they certainly have a contribution to make and have great potential, too.

It has also become clear that we require a change in culture, particularly within local authorities, which are heavily influenced by engineers. Good people though engineers are, that situation can lead to a bias towards hard engineering solutions when natural flood alleviation measures might help. As the minister said, the Scottish Government has addressed that in part by introducing amendment 60 to schedule 1. I am grateful for that amendment, because it moves things forward. It strengthens the provisions for reporting and explaining why natural flood management measures are not included in a flood risk management plan.

Amendment 60 does not go far enough to address some of the concerns of the Rural Affairs and Environment Committee. Amendment 65 seeks to address that point. It requires that SEPA

must consider measures that seek to reduce, slow or otherwise manage flood water by altering, including enhancing, or restoring natural features and characteristics. Put more simply, it requires SEPA to consider the contribution that natural flood management, as it has become known, can make to the management of flood risk.

Amendment 65 is linked to the consideration of structural measures under section 24(1)(b), which includes measures that involve flood protection works. The minister has referred to Rhoda Grant’s amendment 17, which seeks to deal with part of that, too.

I have been grateful to discuss such matters off-stage with the Government—the minister referred to that. An earlier draft of amendment 65 tried to express the idea of giving natural flood management priority, but I accept that that has legal difficulties. Following discussions, the amendment that was lodged was designed to achieve consensus. I thank the minister for saying that the Government will support the amendment.

I also thank the minister for setting out that she expects natural flood management issues to be discussed and considered first when decisions are made about what flood management plans need to be engineered—if that is the right word—and that she expects that process to be specified in guidance. I am grateful for all that. When taken with other stage 3 amendments that the minister mentioned, that fully meets the committee’s recommendation in its report.

Given what the minister said, I accept that her amendment 30 deals with the points that I sought to make through amendments 5 and 7, so I will not move them.

The situation is similar for amendment 9, as the minister’s amendment 42 deals with more detailed mapping. I am content with the minister’s assurance and that her amendment deals with the issue adequately. Accordingly, I do not plan to move amendment 9.

Rhoda Grant (Highlands and Islands) (Lab): Section 84 defines flood protection work as

“any operation on land for the purpose of protecting any land from flooding”.

The definition includes a wide range of operations, but it lacks an emphasis on natural flood management.

The committee was concerned that those who are involved in flood prevention work will have a mindset that favours more structural measures, because of their training and experience. Changing the definition to include a paragraph that reads

“any work that involves the alteration (including enhancement) or restoration of natural features and

characteristics of any river basin or coastal area”

would ensure a shift of emphasis towards more natural solutions in the consideration of structural measures. Amendment 17 is therefore important to the bill. I welcome the minister’s support, and I hope that the rest of the Parliament will support the amendment.

Amendment 18, which is in my name, is consequential, so I urge members to support it, too.

John Scott (Ayr) (Con): I support most of the amendments in the group. I welcome the minister’s response to stage 2 amendments that were intended to strengthen the provision of natural flood management. I also welcome Peter Peacock’s amendment 65, which supports the principle of considering natural flood management techniques at the beginning, rather than at the end of a flood.

Like Peter Peacock, I agree with Scottish Environment LINK that natural solutions are more likely to be sustainable in the long term, will be cheaper to maintain and might benefit local communities. Natural flood management techniques should also help to increase biodiversity, deliver better habitat protection and improve water quality. In every sense, they will represent value for the money that is spent on developing them.

During the passage of the bill, I have learned of hydraulic roughness, which means slowing the progress of water and taking the peaks and tops off floods. I see huge potential in developing that concept on upstream flood plains as soon as possible.

Allowing hitherto natural flood plains to flood again and turning those temporary bodies of water into leaky dams by placing barriers of trees across flood plains and along riverbanks is a simple concept to visualise and understand. That is likely to be the most effective tool in the box of natural flood management techniques.

We will support all the amendments in the group that are moved.

Amendment 27 agreed to.

Section 16—SEPA to assess possible contribution of alteration etc of natural features and characteristics

Amendments 28 to 30 moved—[Roseanna Cunningham]—and agreed to.

Amendment 5 not moved.

Section 19—Flood risk maps

15:00

The Presiding Officer: We come to group 4. Amendment 31, in the name of the minister, is grouped with amendment 32. I see that the Cabinet Secretary for Rural Affairs and the Environment is to speak to the amendments.

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): I will speak to amendments 31 and 32, in the name of Roseanna Cunningham.

During stage 2, Liam McArthur lodged an amendment with the intention of ensuring that flood risk maps included details of potential damage to protected sites that do not depend on water, including a number of terrestrial sites and woodlands. We agreed that flooding could place non-water-dependent sites at risk and said that we would consider amending the bill to address the point. Amendments 31 and 32 will ensure that such areas are considered when flood risk maps are being prepared. I trust that the amendments in the group address Liam McArthur’s concerns, and I hope that the chamber will support them.

I move amendment 31.

Liam McArthur (Orkney) (LD): As the cabinet secretary indicated, I moved an amendment at stage 2 to address the fact that the bill did not cover non-water-dependent protected sites, which appeared to be an oversight. I am happy with the Government’s amendments in the group.

Amendment 31 agreed to.

Amendment 32 moved—[Richard Lochhead]—and agreed to.

Section 23—SEPA to prepare flood risk management plans

Amendment 33 moved—[Roseanna Cunningham]—and agreed to.

Section 24—Flood risk management plans: objectives and measures

The Presiding Officer: We move to group 5. Amendment 34, in the name of the minister, is grouped with amendments 56, 58 and 62.

Richard Lochhead: The amendments in the group are all largely drafting amendments.

At stage 2, Bill Wilson lodged an amendment to introduce a requirement on SEPA, when setting objectives and measures in flood risk management plans, to take account of the social, environmental and economic costs of implementing those measures. Amendment 34 is

a minor consequential amendment: it changes the word “cost” to “costs”, to reflect the new wording.

Section 80 already provides that the consent of the appropriate authority is needed before any of the powers of entry that are conferred by section 68 can be exercised on Crown land. Amendment 56 clarifies that the requirement applies to the powers that are listed in sections 68 or 70.

Amendment 58 provides that the references in the bill to European directives include references to the amended versions of the relevant directives. Amendment 62 is consequential on amendment 58. I hope that the chamber will support the amendments in the group.

I move amendment 34.

Amendment 34 agreed to.

The Presiding Officer: We come to group 6. Amendment 35, in the name of the minister, is the only amendment in the group.

Richard Lochhead: Amendment 35 clarifies that non-structural measures may include

“the carrying out of research, monitoring and other methods of gathering information relevant to managing flood risk”.

Clearly, we need good information if we are to get the right measures in the right places, whether they are natural flood management measures or flood warning systems. Amendment 35 will ensure that those data-gathering exercises are targeted appropriately.

I move amendment 35.

Amendment 35 agreed to.

Amendment 65 moved—[Peter Peacock]—and agreed to.

After section 24

Amendment 36 moved—[Roseanna Cunningham]—and agreed to.

Section 25—Flood risk management plans: publicity of drafts etc and consultation

The Presiding Officer: We now come to group 7. Amendment 37, in the name of the minister, is grouped with amendments 43, 45, 49 to 51, 57 and 63.

Roseanna Cunningham: We lodged the amendments in the group in response to a recommendation by the Rural Affairs and Environment Committee in its stage 1 report that the Scottish Government

“explore ways of ensuring that the appropriate emergency service acts proactively to manage flood risk”.

In some ways, the issue relates to the debate that we will have on group 15.

Amendments 37, 43 and 45 ensure that category 1 responders must be consulted on flood risk management plans and that they must be appropriately represented on all district and sub-district advisory groups.

Amendments 49 to 51 ensure that SEPA will consult all relevant category 1 respondents in an area on the provision and alteration of flood warning systems.

Amendments 57 and 63 define a category 1 responder as

“a person or body listed in Part 2 of Schedule 1 to the Civil Contingencies Act 2004”.

Those bodies include the emergency services—fire, police and ambulance—among others.

As I indicated, later we will discuss an amendment that proposes to give the fire and rescue service a specific role in flood risk management planning. I do not want to pre-empt that discussion, but I believe that the amendments that I have lodged strengthen the role of all category 1 responders in the flood risk management planning process. I trust that the amendments will be supported.

I move amendment 37.

Amendment 37 agreed to.

Section 26—Flood risk management plans: submission for approval

The Presiding Officer: We come to group 7. Amendment 38, in the name of the minister, is grouped with amendment 39.

Roseanna Cunningham: During stage 2, John Scott lodged an amendment that sought to give the Scottish ministers a role in deciding which bodies SEPA should consult about draft flood risk management plans. The Scottish ministers already had power to do that under section 26 of the bill, but I undertook to lodge an amendment at stage 3 that would make the drafting clearer. Amendments 38 and 39 clarify the Scottish ministers’ existing powers to direct SEPA to undertake further consultation, if they consider that that is required.

I move amendment 38.

John Scott: I speak in support of amendments 38 and 39. I am grateful to the minister for lodging the amendments in response to my amendment 87 at stage 2. Although I accept that neither of the amendments changes the powers of ministers, they clarify their existing powers to direct SEPA at an early stage, if required, under section 26. The amendments are to be welcomed.

Amendment 38 agreed to.

Amendment 39 moved—[Roseanna Cunningham]—and agreed to.

Section 29—Local authorities to prepare local flood risk management plans

Amendments 40 and 41 moved—[Roseanna Cunningham]—and agreed to.

Amendment 9 not moved.

Amendment 42 moved—[Roseanna Cunningham]—and agreed to.

Amendment 10 not moved.

Section 30—Local flood risk management plans: publicity and consultation

Amendment 43 moved—[Roseanna Cunningham]—and agreed to.

Section 36—Duty to have regard to flood risk management plans and local flood risk management plans

The Presiding Officer: We come to group 9. Amendment 4, in the name of Peter Peacock, is the only amendment in the group.

Peter Peacock: I suspect that we are getting into slightly more controversial territory and that the consensus may not last, but I live in hope.

Amendment 4 is designed to give effect to the unanimous recommendation that the Rural Affairs and Environment Committee made in relation to flooding funding in its stage 1 report. Labour members have consistently pushed the issue of funding, as we believe that the bill as it stands leaves future funding less well ordered and clear than it could.

The committee received a number of recommendations and representations on the adequacy of the means for planning and funding national priorities for flood protection. The amendment seeks to place ministers under a duty to

“have regard to flood risk management plans”

when determining funding allocations to SEPA and local authorities. In my view, it is a modest but important amendment that requires ministers, in effect, to consider and form views on short, medium and long-term priorities, without tying their hands in relation to specific funding allocations and decisions at any given moment. As I mentioned, the amendment seeks to give effect to a committee recommendation.

The duty that the amendment creates is for ministers to

“have regard to flood risk management plans”

when allocating funding to SEPA or any responsible authority. It does not say how ministers must allocate the cash or how much funding they must provide; ultimately, those are

matters for ministers. However, the wider public need to be assured that, when considering funding, ministers have had regard to the various plans that exist. After all, by providing for investment in future measures, the bill is designed to reduce the trauma that all too many people experience when their home and community are flooded.

Ministers will no doubt argue that they will, of course, have regard to plans and that the new duty is not needed. In my view, the duty is clearly needed to give some assurance over the period during which successive ministers will be required to have regard to the important issues concerned. Ministers will have to consider a range of other matters when it comes to funding, and the amendment does not prevent them from doing so.

Richard Lochhead: I am intrigued by amendment 4. I appreciate that Peter Peacock has a point to make, but is it the policy of his party to lodge such amendments for every bill that comes before the Parliament from now on? Clearly, ministers give all such issues equal priority. I ask him to clarify the point for the record.

Peter Peacock: That is a matter for future bills. Flood funding is an important issue, and many people in Scotland have been traumatised by flooding. At the very least, ministers must have regard to flood risk management plans before they decide on funding allocations. That is all that amendment 4 does—it does nothing more and nothing less. Ministers should consider the plans before they make their decisions. Some might make out that the duty is onerous or even unnecessary, and that it conflicts with ministers' wider duties and responsibilities, but I do not accept that argument. It is no more onerous than the amendment says—ministers must “have regard to” the plans. That leaves ministers considerable scope, while ensuring that they cannot ignore flood funding among the many other issues that they have to consider.

I move amendment 4.

Liam McArthur: As Peter Peacock has indicated, amendment 4 represents a unanimous recommendation by the Rural Affairs and Environment Committee. We received wide-ranging evidence from a cross-section of witnesses, many of whom expressed concern, not least the redoubtable Jim Moodie of Fife Council, who voiced a number of concerns about what would happen if a “have regard to” provision was not placed in the bill. The bill delivers a wide range of benefits, but it is important to ensure that we will the ends as well as the means. Peter Peacock's amendment is, as he suggests, perhaps more modest than some of the proposals that committee members had been considering earlier in the process. I certainly commend the amendment.

Elaine Murray: As Peter Peacock has described, his amendment 4 places a duty on ministers just to “have regard to” flood risk plans. That indeed reflects the recommendations in the Rural Affairs and Environment Committee’s report on flooding and flood management, and in its stage 1 report on the bill. In fact, the amendment does not go as far as those recommendations might suggest. It does not tie ministers into reintroducing ring-fenced funding for flood prevention, which many of us would like to see. The amendment says that, especially in spending review years, ministers should take into account the burden that is placed on the finances of SEPA and responsible authorities if they are to be able to implement the flood risk management plans that they have drawn up. It is important that funding follows policy, and that is all that we are asking for at this point. As Peter Peacock said, amendment 4 is relatively modest, and I hope that the Government feels able to accept it.

Roseanna Cunningham: I fear that Elaine Murray’s hopes are going to be dashed.

I regret that Peter Peacock decided to lodge amendment 4. It would of course require ministers to

“have regard to flood risk management plans ... and local flood risk management plans”

when making funding decisions. Under the bill,

“The Scottish Ministers, SEPA and responsible authorities”

have a duty to act

“with a view to reducing overall flood risk”,

and they must

“act with a view to achieving the objectives set out in the flood risk management plan”.

It is for ministers, in co-operation with the responsible authorities, to allocate funding across a wide range of Government responsibilities in order to meet agreed national and local priorities. To place an additional statutory duty on ministers to “have regard to” such plans risks elevating flood risk management above all the other important functions of SEPA and other responsible authorities that ministers must consider when determining spending priorities. If such requirements are going to begin to appear in other legislation, everything will become a priority—in which case, as we know, nothing will be a priority.

For those reasons, I believe that amendment 4 is unnecessary, and I ask Peter Peacock to withdraw it.

Peter Peacock: I take it that we will just have to disagree. I do not accept the minister’s arguments, as she knows. She said that the requirement

“risks elevating flood risk management”,

but it does not actually elevate it. Ministers remain free to make the decisions that all ministers and Governments have to make in sorting out their relative spending priorities. The provisions contained in amendment 4 would require ministers to have regard to what are very important plans before they arrive at their decisions. As other members have said, it is a modest proposal, but it is significant.

The Presiding Officer: The question is, that amendment 4 be agreed to. Are we all agreed?

Members: No.

The Presiding Officer: There will be a division. I suspend proceedings for five minutes.

15:14

Meeting suspended.

15:19

On resuming—

The Presiding Officer: We move to the division on amendment 4.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)

McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)

Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 58, Against 56, Abstentions 0.

Amendment agreed to.

After section 36

The Presiding Officer: We now come to group 10. Amendment 13, in the name of Karen Gillon, is grouped with amendment 14.

Karen Gillon (Clydesdale) (Lab): Like the amendments that the Parliament has just agreed to, amendments 13 and 14 seek to give effect to unanimous recommendations made by the Rural Affairs and Environment Committee in its flooding report; indeed, at the time, the minister was the convener of the committee.

The committee has had long and, at times, heated discussions on the importance of there being clear and impartial advice and evidence before any planning permission is granted for a development about which there is concern that the risk of flooding may be increased either at the site of the development itself or downstream.

It was made clear during evidence taking that pressure is always brought to bear on planning authorities by many different parties when there is evidence that a development that is seen to bring perceived economic benefit may increase the risk of flooding either at the site or further down the river's catchment area.

The committee recommended that the Scottish Government ensures that a full flood risk assessment is a prerequisite for the granting of planning permission for individual developments in areas that are at risk of flooding. *[Interruption.]*

The Presiding Officer: Order. I am sorry, Ms Gillon, but there are far too many conversations taking place in the chamber. I ask members to concentrate on business.

Karen Gillon: Thank you, Presiding Officer.

When asked whether there was any merit in having a statutory requirement for a flood risk assessment and for finding and developing a solution to manage any flood risk before an individual development is given consent, SEPA responded positively. Even Homes for Scotland expressed concern about ambiguity in interpretation and evident loopholes and recommended that the policy be reviewed.

The committee was very clear that a statutory requirement was needed to ensure that the planning system was clear and transparent:

sufficient evidence must be available to prove—or sufficient time must be taken to ensure—that mitigation will be done and works will be carried out before planning permission is granted. The evidence to the committee was that it was very difficult to get that work undertaken once planning permission had been granted.

I hope that Parliament will see that these measures are positive, that they will aid the process and that they will ensure that we do not take short-term decisions that will, in the end, have long-term impacts and lead to unnecessary flooding. I ask the chamber to support the two amendments in my name.

I move amendment 13.

Roseanna Cunningham: Amendments 13 and 14 appear to replicate existing duties that are already in planning legislation. Amendment 13 would require a flood risk assessment to be prepared where a development could increase the risk of properties being flooded. Amendment 14 would require planning authorities to have regard to that flood risk assessment when determining the application for planning permission.

Where flood risk is an issue, planning authorities already have a statutory duty to consult SEPA on planning applications. In commenting on an application, SEPA may advise that an assessment of flood risk should be prepared, and the planning authority has the power to require applicants to submit such an assessment.

In determining whether a flood risk assessment is necessary, SEPA will consult its flood risk experts, and both SEPA and the planning authority will consult SEPA's indicative flood maps. The authority must also consider SEPA's comments in response to an assessment before determining the application. That requirement arises from regulation 25 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, which prevents a planning authority from determining a planning application until it has given consultees such as SEPA time to respond.

Further, if a planning authority proposes, contrary to SEPA's advice, to grant permission, the case must be notified to the Scottish ministers, who may decide to call in the application. That approach allows the planning authority and SEPA to exercise judgment on the risk posed by the proposal, before requiring the applicant to pay for an expensive consultant's study. The need for a flood risk assessment is therefore something that planning authorities, with advice from SEPA, are best placed to decide. On that basis, I ask Karen Gillon to withdraw amendment 13 and not to move amendment 14.

Karen Gillon: I thank the minister for her explanation. However, she was clearly not convinced by that explanation when she was a member of the Rural Affairs and Environment Committee, which produced the recommendations. Without wanting to delve into too many difficult issues and without mentioning the "A" word in too much detail, the experience of the Parliament this session is that current planning procedures are not sufficiently robust. I therefore urge the Parliament, in the best interests of the society in which we live, to ensure that amendments 13 and 14 go through and that undue influence is not placed on SEPA or anyone else in the future.

Roseanna Cunningham: I am curious about whether the member is going to make an allegation of undue influence in a specific case. If she is, I can say that there has been absolutely no proof whatsoever that any undue influence has been exerted in any planning case.

Karen Gillon: I am not suggesting that; I am suggesting that we want to ensure that undue influence cannot be brought to bear. Indeed, in evidence to the Rural Affairs and Environment Committee, SEPA said that it would find the proposed mechanism helpful. If SEPA is asking for it and if the Rural Affairs and Environment Committee, of which the minister was the convener, unanimously recommended it, I can see no good reason for the Parliament not to support amendments 13 and 14. I will press my amendments.

The Presiding Officer: Before I put the question on amendment 13, I remind members who might have come into the chamber late that, if they wish to take part in discussions on groupings, they should press their request-to-speak buttons when the grouping is announced. I think that one or two members were disappointed that they did not get to speak on this grouping.

The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)

Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)

Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McGregor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 56, Against 55, Abstentions 0.

Amendment 13 agreed to.

Amendment 14 moved—[Karen Gillon].

The Presiding Officer: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
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 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)

Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)

Robison, Shona (Dundee East) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 56, Against 56, Abstentions 0.

I have to use my casting vote. In line with convention, I vote against the amendment.

Amendment 14 disagreed to.

15:30

Section 37—Power of SEPA to obtain information, documents and assistance

Amendment 44 moved—[Roseanna Cunningham]—and agreed to.

Section 43—Sub-district flood risk advisory groups

Amendment 45 moved—[Roseanna Cunningham]—and agreed to.

Section 45—Annual report on implementation of Directive

The Presiding Officer: We move to group 11. Amendment 46, in the name of the minister, is grouped with amendment 47.

Roseanna Cunningham: Annual reports to Parliament provide valuable information on the implementation of legislation. The bill includes a requirement on the Scottish ministers to report to Parliament on action taken during the year by ministers, SEPA and the responsible authorities for securing compliance with the requirements of the European Community floods directive. Amendments 46 and 47 will extend the scope of such reports to cover all action taken to develop flood risk management plans and subsequently to implement measures that are set out in those plans. That will give Parliament a full picture of the action that is being undertaken by those who are responsible for managing flood risk.

I move amendment 46.

Amendment 46 agreed to.

Amendment 47 moved—[Roseanna Cunningham]—and agreed to.

Section 48—Interpretation of Part 3

Amendment 7 not moved.

Section 49—General power to manage flood risk

The Deputy Presiding Officer (Alasdair Morgan): We come to group 12. Amendment 11, in the name of Elaine Murray, is grouped with amendments 20, 21, 48, 12 and 22.

Elaine Murray: Again, the amendments in my name in this group rework an issue that I raised at stage 2, when I also highlighted the issue of the management of land for flood risk prevention. At stage 2, I moved that local authorities might be permitted to apply to Scottish ministers for a land management order for the purposes of flood prevention in a manner similar to that which applies for the management of sites of special scientific interest under the Nature Conservation (Scotland) Act 2004, and to compensate landowners for the loss of income from such land—a proposal that attracted John Scott's support in principle. However, the minister felt that my proposal would have created two parallel procedures. She suggested that the bill already contains provisions that will enable local authorities to carry out flood prevention operations. Nevertheless, all of us agreed that the bill could usefully be further amended at stage 3, so I did not press the amendments in my name at stage 2.

Subsequently, I have worked with committee clerks and John Scott has worked with Government officials, so group 12 offers two sets of alternative amendments—amendments 11 and 12, in my name, and amendments 20, 21 and 22, in the name of John Scott—that have the same aim. However, I note that the Scottish Rural Property and Business Association seems to be more concerned about the effects of amendments 11 and 12, so I will be interested to hear the minister's views on the issue.

Both sets of amendments would ensure that local authorities have the power to carry out land management with the aim of slowing down or storing water. Both sets of amendments would also provide for landowners to be compensated for the loss of income derived from their land when it is used for flood prevention. I think that amendments 11 and 12 are neat, but brevity might not necessarily be the best option in this case. Therefore, I am happy to listen to the minister's assessment of both sets of amendments. There may be technical reasons why amendments 20, 21 and 22 are preferable.

I will move amendment 11 at this point, but I might seek Parliament's permission to withdraw it and decide not to move amendment 12 if it

transpires that amendments 20, 21 and 22 would achieve the same aim and are more competently expressed.

I move amendment 11.

John Scott: Before I speak to amendments 20, 21 and 22, I must declare an interest as a farmer, although not one who is ever likely to benefit from those amendments.

In essence, the amendments in my name seek to compensate land managers for income lost or forgone as a result of their land being flooded. The downside of the use of natural flood management techniques, on which we all wish to place emphasis, is that land that is currently being used for agriculture, growing timber or other purposes might have to be flooded frequently or infrequently to protect communities downstream—or, on occasion, upstream—of the land in question. Therefore, it will be important, once flood risk plans have been developed, to assess the likely frequency of pieces of land being sacrificed to flooding and, possibly, coastal inundation, and thereafter to work out compensation for income lost on an occasional or regular basis.

In that regard, it would be best if individual long-term agreements could be reached between local authorities and land managers and an annual income stream created that is based on a risk assessment of potential damage to crop, stock, timber or other business interests. In addition, the use of annualised payments similar to cross-compliance payments or land management order payments would remind land managers of the duties and obligations that they must meet under their agreements and would encourage them to maintain their land exactly as the flood risk plans required.

I say that because I am concerned that a danger to natural flood prevention techniques might emerge if land is not maintained exactly as the flood risk plans demand. Given the likely complexity of some of the hydrology involved in producing those plans, they must not fail because agreements that have been reached on land use are not properly implemented.

I have listened carefully to Elaine Murray's arguments and believe that, in principle, amendments 11 and 12 seek to achieve the same ends as the amendments in my name. However, as my amendments are broader in scope than hers, I believe that they will work better in practice, so I hope that she will consider withdrawing amendment 11 and supporting mine.

Roseanna Cunningham: I will speak to amendment 48 before I deal with amendments 11, 12, 20, 21 and 22. Amendment 48 is a technical amendment that seeks to remove the unnecessary overlap that was created by the cross-reference in

section 49 to acquiring land under section 55—I dare say that that is crystal clear to everyone.

The other amendments in the group all aim to address a point that the committee made at stage 2. The committee was concerned that section 49 did not make it clear that local authorities could enter into agreements about how land is managed or make monetary contributions towards such work. Amendment 21 makes it clear that local authorities can enter into arrangements with landowners and occupiers to manage land in a way that will assist with the retention or slowing down of flood water, which could include a range of natural flood management measures. Amendment 22 will allow local authorities to pay landowners and occupiers for income that they lose as a result of entering into such agreements. I fully support the concept of entering into agreements about how land should be managed in that respect, so I support the amendments in the name of John Scott.

Amendment 12, in the name of Elaine Murray, is clearly similar to amendment 22, in the name of John Scott, but we believe that it is narrower in scope and could make it more difficult for local authorities to pay landowners who agree to change land management practices. Amendment 11, which would add a reference to operations by local authorities that would assist with the retention of flood water or slow down the flow of such water, is not necessary, as the definition of flood protection work already includes operations to retain or slow flood water. For those reasons, I ask Elaine Murray to withdraw amendment 11 and not to move amendment 12, and I reiterate my support for the amendments in the name of John Scott.

Elaine Murray: The intention of the two sets of amendments is to achieve the same aim. If John Scott's amendments achieve that more effectively than my amendments, I am more than happy to ask Parliament's permission to withdraw amendment 11.

Amendment 11, by agreement, withdrawn.

Amendments 20 and 21 moved—[John Scott]—and agreed to.

Amendment 48 moved—[Roseanna Cunningham]—and agreed to.

Amendment 12 not moved.

Amendment 22 moved—[John Scott]—and agreed to.

Section 57— Recovery of expenses

The Deputy Presiding Officer: We move to group 13. Amendment 23, in the name of Elaine Murray, is grouped with amendment 24.

Elaine Murray: These amendments were the subject of an amendment at stage 2. The motivation behind them arose from evidence given to the Rural Affairs and Environment Committee by Jim Moodie of Fife Council, who has been mentioned already today. Mr Moodie told us that although the bill contained a mechanism to allow a local authority to recover costs when it had to undertake work on privately owned land to repair or reinstate flood prevention measures, there was no similar mechanism when authorities were required to clear debris from private land to prevent flooding from occurring.

Although landowners should not be responsible for the whole cost of installing flood prevention measures on their land that are devised and agreed by the responsible authorities, where landowners have been negligent in keeping watercourses or field drains free of debris, and in so doing have placed neighbouring properties in danger of flooding, the local authority should be able to reclaim the expense to the public purse of remedial work.

At stage 2, the minister agreed that the situation was anomalous, but felt at that stage that any amendment should be tied in with the new requirements for local authorities to produce and implement schedules of clearance and repair work. I am grateful to her officials for subsequently suggesting a suitable form of words, now presented as amendments 23 and 24, in order to achieve that aim. I trust that the amendments will attract the support of all members.

I move amendment 23.

Roseanna Cunningham: As indicated, amendments 23 and 24 deal with an issue that was raised at stage 2. They expand section 57 to enable local authorities to recover from the landowner or occupier expenses that are incurred in carrying out clearance and repair works under section 51(1)(a), where the need for such work was caused by the positive actions of the owner or occupier. That would include, for example, situations in which a flood risk arises as a consequence of a landowner dumping debris in a river. Under those circumstances, it is entirely appropriate for a local authority to seek compensation for any works that it undertakes to rectify the situation.

I am therefore happy to support amendments 23 and 24.

Amendment 23 agreed to.

Amendment 24 moved—[Elaine Murray]—and agreed to.

After section 61

The Deputy Presiding Officer: We move to group 14. Amendment 15, in the name of Robin Harper, is grouped with amendment 16.

Robin Harper: Amendment 15 seeks to add an additional requirement to section 56A(3) of the Water Industry (Scotland) Act 2002.

During oral evidence at stage 1, it became clear that Scottish Water prioritised the more immediate or short-term financial cost of options when assessing what form of work to undertake. The Rural Affairs and Environment Committee made it clear that that was incompatible with Scottish Water's duty to promote sustainable flood management, which will be more cost effective in the long term.

The committee recommended that changes to existing arrangements for financial regulation of Scottish Water were required in order to remove any doubt that Scottish Water will be able to meet its full responsibilities under the bill. The Government's response has not addressed those concerns satisfactorily. Therefore, I have lodged amendment 15, which I hope will, along with Peter Peacock's amendment 16, ensure that Scottish Water delivers sustainable flood management.

While amendment 16 addresses the Water Industry Commission for Scotland, amendment 15 adds an additional requirement on ministers to consider Scottish Water's duty to act in the best way calculated to manage flood risk sustainably when issuing directions to Scottish Water under section 56A of the 2002 act.

15:45

Scottish ministers issue a statement on ministerial objectives to Scottish Water. The statement includes objectives on such things as the standards of services to be provided to customers by Scottish Water; support for new development; the protection of drinking water; and other forms of environmental protection.

With the new bill, the statement will now also include sustainable flood management. That will sit alongside a requirement on ministers to consider Scottish Water's duty to act in a way calculated to contribute to sustainable development when issuing directions.

I believe that amendment 15 will go some way towards ensuring that Scottish Water starts to consider a range of investment options that allows it to take a more sustainable approach to its investment programmes.

I move amendment 15.

Peter Peacock: When Scottish Water officials admitted in their evidence at stage 1 that Scottish

Water prioritised options with more immediate and short-term financial benefits when assessing what form of work to undertake, I think that we all realised that there could be a problem. The admission came despite the fact that Scottish Water has a duty under the 2002 act to act in the best way calculated to contribute to sustainable development.

In its stage 1 report, the Rural Affairs and Environment Committee recommended that the Scottish Government should change its existing arrangements for the financial regulation of Scottish Water, in order to remove any doubt that Scottish Water will be able to meet its full responsibilities under the present bill.

The Water Industry Commission is the economic regulator of Scottish Water and has only a limited role in promoting sustainability. In that limited role, it has to have regard to any Scottish Water duties and to the guidance that is issued to it by ministers. However, it remains unclear how the commission goes about meeting that obligation. Amendment 16 seeks to ensure that it is required to consider Scottish Water's duty to act in the best way calculated to contribute to sustainable flood management when exercising its functions regarding charges. That duty would sit alongside the existing requirements for the commission to consider guidance that is issued to Scottish Water by Scottish ministers.

Amendment 16 deals only with issues of sustainable flood management. The issue of the sustainability of Scottish Water is wider than just flood management and cannot be fixed through this bill. I hope that the minister will be able to offer reassurance that the general issue of the sustainability of Scottish Water's investment programme will be dealt with appropriately at an early opportunity. That could be achieved in the short term by issuing guidance to the WIC on issues of sustainability and on how the WIC should exercise its functions regarding charges.

I support amendment 15, and I hope that members will also support amendment 16 when we come to a vote—if, indeed, we do.

Sarah Boyack (Edinburgh Central) (Lab): This is an important issue. I have constituents who regularly suffer sewage flooding problems but cannot get resolution through Scottish Water, even though councillors and I have lobbied it.

Scottish Water would like to address the issue. It has bid for funding to give it the capacity to do remedial work to solve the problem, which is caused by greater flooding incidents. However, Scottish Water is not able to secure funding, because that would contravene the advice given by the WIC. That means that my constituents will not even be considered for the next round of

improvement works until 2014. They have property that is regularly flooded with sewage, but the problem will not be addressed. That is not just an economic problem for my constituents, it is also a health and safety issue. It is directly related to the way in which advice from the WIC is structured. That is why we need to ensure that sustainable development is added to the calculations when investment advice is being set for the next period.

At lunch time today, the cross-party group in the Scottish Parliament on renewable energy and energy efficiency held a meeting at which we considered energy efficiency and water use. There is at present no way of ensuring that the economics of climate change are factored into investment programmes. Amendments 15 and 16 will go part of the way towards ensuring that the issue is at least on the agenda. We must not simply take the short-term solution that seems economically appropriate now. That would mean that our medium-term decisions would be the wrong decisions for climate change and sustainable development.

Roseanna Cunningham: Members are concerned to ensure that Scottish Water is funded to carry out its new responsibilities under the bill. I recognise and share that concern. However, given the structure and operation of the regulatory framework in which Scottish Water operates, I do not believe that amendments 15 and 16 are necessary. I assure members that the existing framework will ensure that the new functions are funded.

Scottish Water carries out a number of important functions, including—most obviously—the treatment and supply of drinking water and the treatment of waste water and sewage. Those functions are funded through the regulatory framework, but neither is identified specifically within the relevant legislation and there is no difference in importance between those functions and the new functions under the bill.

Members might find it helpful if I say a few words about the funding of Scottish Water and the basic role of the Water Industry Commission in determining and setting charges. To determine the maximum charges for a period defined by ministers, the commission considers the cost of all the core functions that Scottish Water must perform in that period together with the requirements of any guidance or any applicable directions that ministers may have given to Scottish Water. That includes a direction from ministers setting the investment objectives that guide Scottish Water's investment programme.

The definition of "core functions" in the Water Industry (Scotland) Act 2002 is very broad. It includes the basic functions of providing water and sewerage services but will also, on the passing of

the bill, include all of Scottish Water's flood risk-related functions under the bill. That means that the present text of the 2002 act will already require the cost of performing flood risk-related duties to be taken into account when charges are set, just as the duties in relation to water supply and waste water are taken into account.

By focusing on just one of Scottish Water's important functions, the amendments risk undermining the carefully balanced regulatory framework. Scottish Water is already under a statutory obligation to act in the best way calculated to contribute to sustainable development, which is clearly the issue behind the amendments.

In fact, the Government has issued Scottish Water with guidance on that duty, to which the commission must have regard in setting charges. We recognise that understanding of the issue continues to develop and, as I said at earlier stages of the bill, I would be happy to review and update the guidance in full consultation with all relevant organisations, bodies and groups. As the commission is an independent body, there is no provision for ministers to issue it with directions or guidance. However, I consider it essential that we work towards a shared understanding of sustainable development and its evolving role in the water industry. I can, therefore, commit to entering into open discussions with the commission and Scottish Water to pursue that shared understanding.

I do not believe that the amendments will do anything to address the wider concern that members have outlined today. On that basis, I ask Robin Harper to withdraw amendment 15 and Peter Peacock not to move amendment 16.

The Deputy Presiding Officer: I call Robin Harper to wind up and to press or withdraw amendment 15.

Robin Harper: The assurances from the minister were fairly detailed but not detailed enough. I think that I would be safer moving the amendment.

The Deputy Presiding Officer: The amendment has already been moved, so you are pressing it.

The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)

Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)

Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McGregor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 55, Against 57, Abstentions 0.

Amendment disagreed to.

Amendment 16 moved—[Peter Peacock].

The Deputy Presiding Officer: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)

Glen, Marilyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Park, John (Mid Scotland and Fife) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)

Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McGregor, Jamie (Highlands and Islands) (Con)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 57, Against 57, Abstentions 0.

The vote is tied. I cast my vote against the amendment.

Amendment 16 disagreed to.

Section 67—Consultation required by sections 65 and 66

Amendments 49 to 51 moved—[Roseanna Cunningham]—and agreed to.

After section 67

The Deputy Presiding Officer: We come to group 15. Amendment 25, in the name of John Scott, is the only amendment in the group.

John Scott: I thank Peter Peacock, Liam McArthur and other members of the Rural Affairs and Environment Committee for their support for my proposal at stages 2 and 3.

The minister is aware that amendment 25 was developed in response to concerns that the fire and rescue authorities expressed during the committee's flooding inquiry, and in meetings and correspondence from them since. In our view, the fire and rescue service and others correctly identified a gap in the arrangements for co-ordinating inland flood rescues after a flood warning has been issued. The committee also thought that greater information should be made available to the public about how to cope with flooding and how to respond to flood risk warnings. We thought that the fire and rescue service would be well equipped to disseminate

information to the public at large in flood risk areas, in the same way that the fire service makes available information about fire prevention.

The Deputy Presiding Officer: Order. There are too many conversations going on.

John Scott: In England and Wales, the Pitt report has delivered an enhanced and more co-ordinated response to flood prevention and flood rescue. The committee thought that the bill created an opportunity to enhance the response in Scotland. For that reason, I welcome the Government's announcement on Tuesday of the review that will be conducted into those matters. We all know well that they stray into civil contingency planning and involve other agencies. I look forward to the Government making early recommendations on completion of that review. I also look forward to the minister's remarks.

I move amendment 25.

Peter Peacock: I will be brief.

I am grateful to John Scott for lodging amendment 25, which has allowed a debate to take place on an issue that many witnesses raised in the committee. They were anxious about the emergency procedures that will be put in place to help them when a flood occurs and about advice on what they require to do in advance of a flood.

The issue had a good airing in the committee. Like other members, I am grateful that I have had the opportunity to discuss it with ministers. The review that the minister announced yesterday, which has become even more relevant in the light of recent events, is welcome. If the minister reads the same thing into the *Official Report*, as I assume she will, I will be happy to support any move for the amendment not to be pressed.

Liam McArthur: As John Scott said, the issue aroused considerable discussion in the committee, although, given the time that was available, there were limited opportunities to take oral evidence on it. I am clear that, whatever arrangements are currently in place, there are occasionally failures to co-ordinate and implement measures effectively. It has been suggested that the roles and responsibilities of emergency services and others are fairly clear when water is lapping around people's ankles or is even higher, but there seems to be a lack of clarity about roles and responsibilities leading up to that point.

I acknowledge the complexity of the issue, which drifts into the area of civil contingencies. I also acknowledge the efforts of ministers and their officials to find a resolution. Like John Scott and Peter Peacock, I welcome Fergus Ewing's announcement earlier this week on the instigation of a review. However, I urge ministers to ensure that the review is timely and is not allowed to drift

towards the end of the year. I would welcome clarification of the timescale.

16:00

I encourage the Government to take any early actions for which it need not await the outcome of the review, particularly in relation to co-ordination. Members are aware of the tragic events on Loch Awe earlier this year—my colleague Alan Reid has highlighted concerns about that. John Grieve has drawn attention to a failure to co-ordinate and a lack of knowledge of where resources were and who had them. I urge ministers to provide a sense of urgency and to give a commitment to conduct the review in early course and to take any early actions that are possible. Like John Scott and Peter Peacock, if I am given reassurances on those issues, I will agree to amendment 25 being withdrawn.

Roseanna Cunningham: I am grateful to John Scott for giving us the opportunity to discuss the issues that are raised in amendment 25. Concern has been raised at all stages of the bill about instances in which response arrangements have not gone well. However, I believe that a statutory framework for multi-agency response is already in place under the Civil Contingencies Act 2004. That highly practised multi-agency approach is the key principle that underpins our wider resilience strategy. The bill deals with flooding, but the range of rescue incidents involving water is far wider. That is why it would be wrong to pick out one single cause, such as flooding, and one single service for a statutory duty, without considering the issue more broadly.

As members might know, the Minister for Community Safety announced yesterday that a comprehensive review of the emergency services' ability to deal with all forms of water rescue, including flood rescue, has been ordered. The review will be led by Paddy Tomkins, who as a former chief inspector of constabulary will bring with him a strong understanding of the legal and operational role of emergency services in responding to such emergencies. Among other matters, the review will examine the need for a change in the law on the responders who cover water rescue; the resources and capability of all agencies that are currently involved in water rescue emergencies, such as flooding; the need for changes in the current operational arrangements between responders; and the level of public awareness of the risks that are associated with open water, including flood water.

At present, a wide range of agencies, including police, fire and rescue services, the Scottish Ambulance Service, the coastguard and the Royal National Lifeboat Institution could be called on to undertake a water rescue, with many interventions

involving a multi-agency response. The review will actively seek views from all those agencies for full consideration by ministers. Any proposals to reform the legal framework or change operational practice would be taken only after full public consultation. The review has the support of the Chief Fire Officers Association Scotland, which, as the committee knows, originally asked for an amendment on the issue. The review also has the support of the Fire Brigades Union, the Convention of Scottish Local Authorities and many other organisations, voluntary and statutory, that can be called on to support a flooding or water rescue event. I hope that the review will reassure the Parliament that the Scottish Government is doing everything that it can to ensure the correct response from all the emergency services in the event of a flood.

I give a commitment to inform the Rural Affairs and Environment Committee of the outcome of the review and of any legislative or operational proposals in due course. The Minister for Community Safety has advised that he hopes that that will be done before the end of the year. For all those reasons, I urge John Scott to withdraw amendment 25.

Amendment 25, by agreement, withdrawn.

Section 68—Powers of entry

The Deputy Presiding Officer: We come to group 16. Amendment 52, in the name of the minister, is grouped with amendment 53.

Roseanna Cunningham: Amendments 52 and 53 will fix a minor omission from section 68. Amendment 52 will give local authorities that are lead authorities powers of entry for the purposes of preparing local flood risk management plans under section 29 and for the purposes of preparing reports under sections 32 and 33. Amendment 53 clarifies that those powers of entry will be available only to local authorities that are lead authorities under section 29(8).

I move amendment 52.

Amendment 52 agreed to.

Amendment 53 moved—[Roseanna Cunningham]—and agreed to.

Section 72—Compensation: supplementary

The Deputy Presiding Officer: We come to group 17. Amendment 54, in the name of the minister, is grouped with amendments 55 and 66.

Roseanna Cunningham: Amendments 54 and 55 ensure that the 10-year deadline for giving notice of a claim for compensation covers all the activities listed in section 71 in respect of which compensation can be awarded.

Amendment 66, which was lodged by Peter Peacock, seeks to ensure that any compensation due is made within a “reasonable period”. I understand that the speed of payment is not usually an issue. Claimants are generally concerned more about the time that it takes the local authority to determine the amount of compensation that is due in the first place. In that respect, amendment 66 would achieve very little. The negotiation of whether compensation is due and the amount that should be payable depend on the circumstances of each case. Often it involves factors outwith the local authority’s control, such as the quality of the information that is provided by the claimant in support of his claim and his timely response to any requests for further information. The authority might also have to commission specialist technical reports to inform the valuer about specific aspects that need to be taken into account.

The intention behind amendment 66 might have been to speed up the negotiation process and ensure that it is completed within a reasonable period. However, agreement over compensation is rightly a two-way process, which makes it difficult to generalise about what a reasonable period might be. It might well be that the local authority has made a timely offer, but that the claimant disagrees with it. Indeed, there have been cases in which claims have been made for compensation and the valuer has subsequently shown that the claimant has not suffered any loss in value. However, getting to the bottom of such complicated situations can be a protracted process. Under those circumstances, it is difficult to understand what would constitute a reasonable time. That is why any question of disputed compensation is referred to the Lands Tribunal for Scotland, which is an independent body that can look at the case dispassionately and come to a reasoned decision.

What constitutes a reasonable period will always depend on the factors and circumstances in each case, including how both parties have approached the negotiations, and such questions should probably be left to the tribunal to determine in each case. As the Lands Tribunal for Scotland is an independent body, the Scottish Government should not deal with the matter in guidance. However, amendment 66 has been lodged as a clear response to an expressed concern. In the circumstances, I wonder whether Peter Peacock would be satisfied at this stage with my commitment to discuss his more general issue with the Scottish Council for Development and Industry, COSLA and interested bodies to see whether any specific issues need to be teased out. On that basis, I ask Peter Peacock not to move amendment 66.

I move amendment 54.

Peter Peacock: As the minister said, the matter was brought to my and others' attention by the SCDI, which is a highly respected business organisation. Amendment 66 reflects concern in the business community that it can sometimes take many years before a compensation dispute between a council and a business can be settled—in fact, a decade has been quoted to me as being not unknown, whereas a timescale of 18 months would be far more reasonable.

The purpose of amendment 66 was to concentrate the minds of local authorities, as well as to require the minister to issue guidance on the issue with a view to ensuring that a settlement can be made in a reasonable timeframe. The minister has set out a variety of reasons why the amendment might not be technically competent or might address the wrong issue in the context of what I am trying to achieve. I am grateful to the minister for what she said and, on the basis of her commitment to meet the SCDI to discuss the matter and hear its concerns, to look at what might be done to engage with the problem and to speak to COSLA, I am happy not to move amendment 66.

Amendment 54 agreed to.

Amendment 55 moved—[Roseanna Cunningham]—and agreed to.

Amendment 66 not moved.

Section 80—Crown application

Amendment 56 moved—[Roseanna Cunningham]—and agreed to.

Section 84—Interpretation: general

Amendment 57 moved—[Roseanna Cunningham]—and agreed to.

Amendments 17 and 18 moved—[Rhoda Grant]—and agreed to.

Amendment 58 moved—[Roseanna Cunningham]—and agreed to.

Schedule 1

MATTERS TO BE INCLUDED IN FLOOD RISK MANAGEMENT PLANS

The Deputy Presiding Officer: We come to group 18. Amendment 59, in the name of the minister, is grouped with amendment 61.

Roseanna Cunningham: Amendment 59 is a response to an amendment that was lodged by Peter Peacock at stage 2, which aimed to address the concern that the bill as drafted did not place enough emphasis on the need for long-term planning. Amendment 59 requires flood risk management plans prepared by SEPA to describe whether each measure is to be implemented in the

six-year period before the plan is next reviewed, in the following six years or after some other period. I assure members again that the bill is very much about long-term planning and that, in all likelihood, flood risk management plans will have to look at how to tackle flood risk over the next 50-plus years.

From discussions with the committee at stage 2, it was clear that there was a desire for more explicit information on the costs of measures to be included in flood risk management plans. Amendment 61 will require flood risk management plans to include information on the costs of measures that are to be implemented before the plan is next reviewed.

I move amendment 59.

The Deputy Presiding Officer: No other member has indicated a desire to speak. *[Interruption.]* Mr Peacock has now done so. He has got in by a nose.

Peter Peacock: Thank you, Presiding Officer. I have known what it is like to be ignored throughout most of my life. *[Interruption.]* I hear expressions of ironic sympathy from members in other parties. I thank the minister for acknowledging the points that were made at an earlier stage. The amendments that she has lodged address those points, for which I am grateful.

Amendment 59 agreed to.

Amendments 60 and 61 moved—[Roseanna Cunningham]—and agreed to.

Schedule 4

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Amendments 62 to 64 moved—[Roseanna Cunningham]—and agreed to.

The Deputy Presiding Officer: That concludes consideration of amendments.

Flood Risk Management (Scotland) Bill

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a debate on motion S3M-4058, in the name of Richard Lochhead, on the Flood Risk Management (Scotland) Bill.

16:13

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): I am absolutely delighted to open the debate on the Flood Risk Management (Scotland) Bill, which I believe is a timely and crucial piece of legislation for Scotland. We even had our moments of excitement this afternoon with two casting votes and a number of narrow votes, too.

I hope that the people of Scotland and members of the Parliament, particularly those who represent communities that are under threat from flooding or which have experienced damage as a result of flooding events in past years, will recognise that the bill will improve substantially Scotland's approach to tackling flooding and its impacts. It will equip Scotland with a modern and sustainable approach to managing all forms of flooding. In doing so, it will promote a safer, stronger and more secure environment for Scotland's citizens and businesses.

For the purposes of rule 9.11 of the standing orders, I advise the Parliament that, having been informed of the purport of the Flood Risk Management (Scotland) Bill, Her Majesty has consented to place her prerogative and interests in so far as they are affected by the bill at the disposal of the Parliament for the purposes of the bill.

Before outlining key elements of the bill, I will take a moment to thank all those who contributed much to its development. Our consultation exercises allowed us to listen to and learn from the experiences of people who have been affected by flooding, alongside people with experience of tackling flooding problems throughout Scotland. That input was greatly appreciated and helped the process considerably.

I thank the members of the Finance Committee, the Subordinate Legislation Committee and particularly the Rural Affairs and Environment Committee, whose diligent scrutiny of the bill helped shape the bill's final form, as it should. I also thank the committee clerks, who worked hard to support the committees' work. I put on record my sincere thanks to our officials in the bill team and to the Government and parliamentary legal teams. They worked extremely hard on what has

been at times a demanding bill, with a challenging timetable. I am confident that all those who worked on the bill will agree that collaboration across party lines and with stakeholders was central to the bill's successful development.

I also say a word of thanks to the former Minister for Environment, Michael Russell, who began to pilot the bill through the Rural Affairs and Environment Committee at stage 1 and to his successor, Roseanna Cunningham, who steered the bill through stage 3 today and who made a seamless transition from chairing the committee at stage 1 to steering the bill through stage 3 on the Government's behalf.

The bill's aim is simply to equip Scotland with 21st century legislation for 21st century flood risk management. Research into climate change tells us that flooding could become more frequent and more severe. We must act now to minimise the impact of future flooding on Scotland's people, services, environment and economy.

Historical records show an upward trend in average rainfall for each year. For instance, Scotland became 20 per cent wetter between 1961 and 2004. That change included an increase of almost 70 per cent in winter rainfall in northern Scotland. The summer of 2008 was one of the wettest on record—August was 50 per cent wetter than normal and the ensuing floods disrupted people's lives and damaged their livelihoods.

The unavoidable conclusion from climate change predictions is that flooding is likely to become an increasingly regular threat to our communities, our lives and the economy. The unavoidable message is that we must act now to minimise the impact of future flooding on Scotland's people. Blaming climate change entirely for recent flooding would be convenient, but there are other factors to consider, which include how we have managed our land and our waterways to suit our society's needs, which has compounded the effects of flooding in some areas.

We recognise that flooding cannot be eliminated. However, experience tells us that well co-ordinated action can significantly reduce the likelihood of flooding and its harmful impacts. Scotland's current flooding legislation—the Flood Prevention (Scotland) Act 1961—has been criticised for restricting the range of flood management measures that can be adopted; for lacking a clear framework to co-ordinate measures across catchments; and for delaying the implementation of measures to manage flooding. As I am sure everyone agrees, much of that act is outdated and no longer reflects how Government services and local services are delivered in Scotland.

The bill will address those problems directly and will give Scotland the modern and sustainable approach to managing flooding that it deserves, while also transposing the European Union floods directive. It will remove unnecessary burdens and obstacles to developing flood protection measures and it will clarify roles in and responsibilities for flood risk management by, for example, placing local authorities, the Scottish Environment Protection Agency, Scottish Water and the Scottish ministers under new and clear duties. It will also provide Scotland with an improved reservoir safety regime. It is important that the bill will establish a framework for collaboration between the bodies that are tasked with managing flooding and protecting Scotland's people, environment and economy.

The bill will create a flexible approach to managing flooding, which can be adapted to different circumstances—including many local issues—throughout the nation. Furthermore, the intent behind creating a flexible approach is to produce legislation that will work for current and future generations.

The bill will deliver flood management at a catchment scale, which will allow local authorities and others to take the best possible approach to managing flooding in their areas. Options will range from traditional defences to improved flood warning and natural flood management measures wherever appropriate.

Robin Harper (Lothians) (Green): To back up the bill, which I am glad that we will be able to pass later this afternoon, does the minister agree that local authorities need to be given the strongest advice not to allow building on existing flood plains?

The Deputy Presiding Officer: It would be helpful if you could begin to wind up your remarks, cabinet secretary.

Richard Lochhead: Okay.

The member raises a fair point. The issue featured throughout the debate in committee, as it did in the chamber and in discussions with stakeholders. I am sure that it will be reflected.

The new national flood risk assessments and flood maps will improve our understanding of the likelihood and consequences of flooding from rivers, the sea, extreme rainfall events and groundwater. Those new assessments will be complemented by flood risk management plans that will ensure that the most sustainable and cost-effective measures are put in place to manage flooding. The implementation of the bill over the next few years will make vital improvements to how we manage flooding and make a real and long-term difference to the lives of people in Scotland.

I believe, as does the Scottish Government—indeed, I am sure that we all believe—that the bill will position Scotland at the forefront of modern flood risk management. More important, it will make a significant and lasting difference to those who are at risk of flooding. I believe that the bill deserves the support of every member of the Parliament.

I am delighted to move,

That the Parliament agrees that the Flood Risk Management (Scotland) Bill be passed.

The Deputy Presiding Officer: We are going to try to finish the debate this afternoon. It would be helpful if opening speakers did not take up their entire allotment of time.

16:21

Elaine Murray (Dumfries) (Lab): Point taken, Presiding Officer.

The Flood Risk Management (Scotland) Bill transposes into Scots law the provisions of a European Union directive. Many members will have witnessed the distress that floods have caused our constituents. The legislation will not prevent flooding from ever happening again, but it should ensure that the relevant authorities, working together in the full knowledge of their respective responsibilities, will develop better systems of flood prevention.

Consideration of the bill was enlightened by the Rural Affairs and Environment Committee's earlier inquiry into flooding, and amendments at stages 2 and 3 have effected significant improvement to the original bill. The progress of the bill illustrates how effective Parliament's committee system can be in working with the Government to achieve the aims of stakeholders.

I record the thanks of Labour members to RSPB Scotland and Scottish Environment LINK for their considerable and considered input at all stages of the bill. As Peter Peacock said, we thank in particular Andrea Johnstonová. I thank the minister and her officials for their constructive engagement with the committee. I also thank the committee clerks for their invaluable assistance in translating our aspirations into amendments. Through that assistance, the focus on sustainability has been strengthened. The bill now reflects a clear emphasis on the importance of natural features and characteristics in flood prevention measures, and provides the steer that is necessary to effect cultural change.

The need for the agencies that are involved in flood prevention not only to co-operate but to co-ordinate their activities using an integrated approach will now be laid in statute. Local authorities will be empowered to manage flood risk

through land management, and owners will be entitled to claim compensation for work on their land that acts to prevent flooding but adversely affects their income from other uses. Local authorities will also be able to recover expenses for work that they are obliged to do on private land in the pursuance of flood prevention, whether in repairing flood defences or in clearing debris from water courses to prevent flooding of neighbouring land or properties.

However, the best flood prevention schemes will not be implemented if there is insufficient funding to make them happen, which is why amendment 4, in the name of my colleague Peter Peacock, was so important. Similar amendments were debated at committee, but lost on the convener's casting vote. I am delighted that Parliament agreed to amendment 4, albeit narrowly. The benefits of the bill will be realised only if ministers allocate adequate funding to responsible authorities to enable them to undertake the prevention schemes that they have identified as being necessary. The amendment that was agreed today is not unduly restrictive; it simply requires ministers to "have regard to" flood risk management planning when allocating funding to the Scottish Environment Protection Agency and other responsible authorities.

The Rural Affairs and Environment Committee felt that the current legislative requirement on Scottish Water to deliver its functions

"at lowest reasonable overall cost"

may not enable it to give adequate weight to issues of sustainability. It was for that reason that my colleagues Peter Peacock and Robin Harper lodged amendments to amend the relevant sections of the Water Industry (Scotland) Act 2002 on the duties of the Water Industry Commission for Scotland and Scottish Water. The aim of the amendments was to enable Scottish Water to deliver sustainable solutions to flood management. The amendments required ministers to consider the issuing of directions to Scottish Water and the WIC on their duties on sustainable flood risk management. I am sorry that we did not manage to persuade Parliament to agree to the amendments, but I hope that their spirit will be taken forward. I think that, in her responses, the minister indicated that she will progress some elements of the amendments, even without their having been agreed to.

In her amendments, Karen Gillon focused on the committee's consideration of the need for flood risk assessment to be undertaken prior to planning permission being granted in areas that have been assessed as being prone to flooding. One amendment was agreed to but the other was not. At this stage, I am not quite certain what the effect of that will be; however, we must note that the

amendments reflect concerns that were brought to Parliament in the form of petition PE1207, from Gordon Sinclair, which was considered at stage 1. Similar issues were raised by our colleague Helen Eadie in her speech during the stage 1 debate.

To summarise, this is a good bill that has been further strengthened by the committee process and by parliamentary consideration at stage 3. It represents a major improvement to flood risk management in Scotland and a cultural change in the approach to flood prevention—from the previous assumption that prevention required hard engineering solutions to an approach that requires that consideration be given to use of natural features and characteristics. A duty has been placed on ministers, SEPA and the responsible authorities to act to achieve the objectives that are set out in flood risk management plans. The bill, when enacted, should help to prevent the considerable distress that is caused to individuals and communities by flooding incidents. It will be a welcome addition to the statute book.

16:26

John Scott (Ayr) (Con): I congratulate the Government on the passing of the bill today. It has been an exciting bill to work on. Although it has been slow in its gestation, I believe that today we have delivered a bill of which all those who have been involved in its creation can be justifiably proud.

During consideration of the bill, the composition of the Rural Affairs and Environment Committee has changed regularly: only Peter Peacock and Bill Wilson remain on the committee from the start of its initial inquiry into flooding. However, the concept and spirit behind the committee's work—to deliver a bill that is fit for purpose, to tidy up existing legislation, to develop natural flood prevention techniques and to contribute to the social, economic and environmental development of Scotland—have been constant throughout.

Today we must thank our clerks, who have delivered two reports on flooding in Scotland and who have, on occasion, worked long into the night to sort out amendments for stages 2 and 3 of the bill. We must also thank all those who gave evidence to the committee during both inquiries, especially those who invited members of the committee to see for themselves the problems and solutions that we are addressing today. We must thank Scottish Environment LINK and RSPB Scotland for their constant input into the bill, as well as the members of the Government bill team, all of whom worked tirelessly to create a bill that we all hope will improve flood risk management in Scotland.

The bill is vital in addressing the problem of climate change. Increased rainfall since the 1960s is a fact of life in Scotland and, as the minister indicated, it is likely to increase further. Sea level rises and coastal inundation are not yet immediate problems, but they are likely to become greater problems in the future. If I have a concern about the bill, it is that we may not have addressed sufficiently the problems that are likely to be associated with sea level rises and storm and tidal surges. Storminess and semi-tropical storms, producing huge deluges of rain, are likely to increase. Those events pose the biggest threat to at-risk communities in Scotland.

In response to the threats that have been identified, we have developed the approach that is set out in the bill. At its simplest, the bill changes the emphasis of flood management from hard to soft engineering practices, as well as tidying up other areas of legislation. Although funding has not been discussed at length today, it will be a key to delivering the protection of communities that we all seek. Given the cuts in the Scottish budget that are likely as a result of the recession, I hope that lack of funding will not prove to be an insurmountable problem in the future.

I welcome, especially in the light of recent tragedies, the Government's commitment to a review of inland waterway search and rescue provision and I look forward to the emergence, within a reasonable timescale, of better and clearer contingency planning as a result.

Finally, I thank colleagues on the committee, who have been great fun to work with. I hope that the bill will achieve what it sets out to do.

16:29

Liam McArthur (Orkney) (LD): The passing of the bill is a further significant landmark for the Scottish Parliament, as we enter our second decade. Scottish Liberal Democrats warmly welcome not only the detail of the legislation but the manner in which it has been dealt with since its introduction. I suggest gently that although there are numerous examples of the minority Government's talk of working with other parties to achieve agreement being found wanting, the bill is a good illustration of what can be achieved through early, meaningful and transparent engagement—not just with Parliament and its committees but with the wider group of interested parties.

There have continued to be areas of disagreement throughout the process, including this afternoon, but it is worth observing that those have, on the whole, been limited. Resolutions to such disagreements have invariably been found relatively painlessly to satisfy all sides. For that

reason, I record my thanks, as a member of the Rural Affairs and Environment Committee, to the ministerial team—in both its current and previous forms—and to their officials for the work that they have put in, particularly since the bill was introduced in September last year. At stage 1 I commended them for their willingness to listen and respond, and I am pleased that that approach has, by and large, remained since then.

I also record my sincere thanks to the committee clerks and to the Scottish Parliament information centre and other support staff, who have helped me up the learning curve since I joined the committee in September last year. Unlike some other members, I did not have the advantage of having participated in the previous flooding inquiry, but the clerks helped me to mask that fact, at least in the early stages. To all those who provided written and oral evidence, both to the committee and on a one-to-one basis, I offer my thanks. Like Elaine Murray and Peter Peacock, I draw particular attention to the efforts of Andrea Johnstonová.

It would be an unhealthy state of affairs if we agreed on all aspects of any piece of proposed legislation, however much the overarching principles might commend themselves. Even now, there will be those—perhaps even ministers—who can and will point to bits of the bill with which they are unhappy. However, that is the nature of the beast. As politicians it is, in the current climate, nice to think that the issues of controversy are related to policy, and not to the flood risk of one's moat, swimming pool or—heaven forbid—tennis court.

I am under no illusions that, however it might have seemed at times over the past six or seven months, we have been involved in the more straightforward task. Implementing the bill's measures and ensuring that they are effective and will achieve the objectives that have been set will be altogether more onerous. In that regard, we as parliamentarians must ensure that subsequent guidance is clear, well informed and timely; that funding is in place to meet agreed needs; and that we have the appropriate skills mix that is required as part of the culture change that we all agree needs to take place in our approach to managing flood risk in this country. That, as Elaine Murray has suggested, is all that we realistically can do.

It is imperative that natural flood management processes and features play a greater role in addressing a problem that, as the cabinet secretary said, we are likely to face more and more in the years and decades ahead. That is not to say that more traditional and innovative hard engineering solutions will not continue to be necessary, but a better balance needs to be struck. That can best be achieved by taking a

longer-term perspective, but without losing sight of the need for early action; by making explicit our expectations of a range of bodies; and by ensuring, among other things, that appropriate compensation can and will be paid. In that way, we can help to effect the necessary culture change. We can do so without the need for a presumption in favour of natural processes, a concept about which there was clearly confusion, particularly among various local authorities. I think that the bill now achieves the right balance in that respect.

As for my own interest, the issue of coastal flooding has a particular resonance. Again, I record my desire for SEPA to take proper account of data on climate change impacts and local tidal patterns, including tidal surges, in seeking conclusions on flood risk. I echo John Scott's sentiments and concerns on that.

At stage 1 I concluded that this is a good bill that could be made better. Over the past three months, the necessary improvements have largely been made. The bill does justice to the legacy of the Water Environment and Water Services (Scotland) Act 2003, which was successfully introduced by my colleague, Ross Finnie. I congratulate the Government, and Liberal Democrats look forward to voting in favour of the bill at decision time.

The Deputy Presiding Officer: We now move to the open part of the debate. I am afraid that I will have to limit speakers to three minutes each.

16:33

Maureen Watt (North East Scotland) (SNP): I start by mentioning that I was not on the Rural Affairs and Environment Committee for stage 1. At stage 2, I was in the unusual position of considering Government amendments that had been lodged by my predecessor as convener, who had convened stage 1 proceedings.

I add my thanks to all the clerks for their hard work, and to all those who gave evidence on the bill. The process began for the Rural Affairs and Environment Committee away back in September 2007, when the committee agreed to conduct an inquiry into flooding and flood management. It was undertaken in the knowledge that the Government intended to introduce a bill. Such pre-legislative scrutiny proved very valuable, as it allowed the committee to feed its thinking on the best approach to flood risk management into the Government's work at a very early stage. As a result, the bill as introduced to Parliament reflected a number of the committee inquiry's recommendations. In addition, the issues and associated inquiry recommendations that the Government did not endorse served as a useful starting point for scrutiny of the bill.

In its stage 1 report, the committee highlighted concerns, for example about resources and the shortage of specialist staff to implement the bill's provisions. Given the skills that we require in this country, youngsters might consider becoming water engineers. The committee also noted that there is uncertainty about the funding that will be provided to local authorities and Scottish Water to implement the legislation, and expressed concern about the conflict between SEPA's role in implementation and its priorities as an environmental regulator.

I am pleased that the Government has responded positively to a large number of the committee's recommendations. I am also pleased that points to which the Government did not see fit to agree were doggedly pursued to the end of stage 3. I am glad that the committee has ensured that flood risk will be managed sustainably and that existing natural features, such as wetlands, will be used to manage flood risk, wherever that is possible.

The committee's recommendation that clear strategic priorities be derived from the risk assessment process and be made publicly available has also been adopted. We have also received assurances that local authority development and flood risk management planning processes should prevent developments in areas that are subject to significant flooding. The need for more detail on how local authorities can recover expenses or fine landowners who do not maintain watercourses has been addressed, as has the need for more detail on how landowners can be compensated for loss of earnings if their land is required for flood prevention work.

We have a good bill. The committee reserves the right to conduct post-legislative scrutiny.

16:36

Peter Peacock (Highlands and Islands) (Lab): I have spoken in Parliament about a visit that I made to an old lady in the village of Caol, near Fort William, who told me about the terrible flooding that she had experienced. She told me that all her family photographs, which had been in the bottom drawer of a desk in her room, had been destroyed and she would never be able to look at them again. It was a poignant moment. I know that the Cabinet Secretary for Rural Affairs and the Environment and the Minister for Environment have heard similar stories in their constituencies. If the bill does nothing other than reduce the chance of such losses in the future, it will have served a useful purpose.

The bill will speed up a series of procedures in making provision for communities who are affected by flooding. However, it remains a

complex bill—some of the terminology and concepts will be extremely complex for lay people. SEPA, which will have substantial new powers as a result of the bill, and local authorities will have a major job to do to interpret and explain the bill to communities who are affected by flooding, and to enable people to realise what is possible. SEPA staff have been in the public gallery this afternoon—I hope that they will take seriously the agency's new powers and their responsibility to explain the bill's provisions.

We have made substantial progress on natural flood management. The concept was very raw for committee members early in our inquiry on flooding, but it has been better defined and our understanding has become much more sophisticated. Natural flood management will have a big part to play in the future, which is why members have given the issue so much attention. I am pleased that we have made progress in that regard.

Finance will continue to be a big issue— notwithstanding the bill's provisions—for the reasons that the minister set out. Flooding will increase as climate change continues, which means that we will have to make more provision in more places throughout Scotland, if we are to protect communities. There is no question but that more cash will be required over time. The Government has a long way to go in relation not just to the quantum of cash that is to be made available but to how the cash is administered. I urge the minister to continue to consider the administration of funding, to ensure that small communities, such as South Uist, that require large flooding schemes can get the cash that they need.

The bill is better as a result of the scrutiny that it has received. There has been good co-operation between the Government and committee members in reaching consensus, which I welcome. I congratulate Scottish Environment LINK staff on all their work to support, encourage, cajole and persuade committee members to take seriously and push to a conclusion certain issues. I will very much welcome the passing of the bill.

16:39

Bill Wilson (West of Scotland) (SNP): One cannot unboil an egg but I welcome the fact that this bill takes us from hard to soft—at least in terms of flood prevention. From now on there will be an emphasis on sustainable flood management practices making use of the natural features of the environment rather than hard engineering solutions. This will benefit biodiversity and the amenity and scenic value of our landscape. I am convinced it will prove more cost effective in the long term.

However, a change in mindset will be required if we are to adopt across Scotland an environmentally benign and co-ordinated approach to flood risk. If we are to meet our biodiversity and climate change targets, the cost benefit analysis must and will be extended beyond simple financial estimates. The guidance that will be provided by ministers on how to create the new cost benefit analysis is critical, so I urge the minister to ensure that the final decision on guidance will be open to discussion among a range of sources.

The minister will not be surprised if I return to a concern that I raised in the course of the flooding inquiry that preceded the introduction of the bill, and during the committee's consideration of the bill. I am almost tempted to tell the minister to take a guess.

A supplementary submission from Scottish Environment LINK that was recorded in the stage 1 report on the bill also noted the potential for changes in sea level as a result of climate change. It stated:

"Potentially Scotland will in future experience more extreme rises in sea levels than previously predicted. For example, it has been estimated that future sea level rise by 2080 could be 20 cm higher in the Clyde estuary and 28 cm higher in Moray and Aberdeenshire than previously estimated."

During the course of the flooding management inquiry, Professor John Mitchell, the director of climate science at the Met Office, agreed with me that preventing new building below a certain height above sea level would be sensible. It is vital that our actions to mitigate the effects of global warming should include a prohibition on development below a given height above sea level—surely that should be at least 1m. If we fail to prevent major developments within the expected range of sea-level rises, we are only building problems for the future.

Let me emphasise that I am referring to significant developments. If a farmer decides to build a byre or an individual a holiday cottage, it is hardly a matter of great concern. However, when it comes to power stations, hospitals or housing estates, surely it is common sense to take possible sea level rises into account when granting planning permission. Therefore, I urge the minister to examine changes to planning law in the near, rather than the distant, future.

I also urge the minister to ensure that SEPA is instructed to make public the estimates of sea level rises it uses when preparing its coastal maps of flood risk. For coastal flood maps to contribute to good decision making, knowledge of the estimates that are used to build the flood maps is vital. As we are trying to be quick, I will stop there.

The Presiding Officer (Alex Fergusson): I am grateful for the extra time. We come to closing speeches.

16:42

Jim Hume (South of Scotland) (LD): There can be no doubt that the bill is a leap forward for Scotland in dealing with the seriousness that flooding and the danger of water brings to the Scottish people, and it furthers the work of the Liberal Democrat former minister, Ross Finnie, who introduced the Water Environment and Water Services (Scotland) Act 2003.

At the weekend, a couple from Kilwinning in my region tragically died after trying to rescue their dogs. I am sure all our thoughts go out to their family and friends. That acts as a reminder of the devastating force of water. Liam McArthur mentioned the disaster in Loch Awe, also reminding us of the importance of joined-up rescue services for inland waters.

In many towns in my area, such as Hawick, Selkirk and Dumfries—which are in Elaine Murray's constituency—residents and shopkeepers live in fear of flash floods and the devastation they can bring, as they have done in the past. Those people are victims of the fact that towns with industry had to be built next to the flowing rivers of the Nith and Tweed tributaries.

There is a broad welcome for the bill and a recognition of the hard work that has been put into it by the clerks and all the committee. In particular, the work of Elaine Murray and John Scott has encouraged the Government to address the processes, thereby avoiding much controversy in flood plan implementation: if land users have to give up their livelihoods and land for the greater good of the community, it is only right that they be compensated.

My colleague Liam McArthur lodged an amendment that took into account environmentally important areas, which was in recognition of the rich biodiversity that is found in our riparian areas and the need to take that into account in deliberations. Both withdrawn amendments have influenced the bill positively.

Amendment 31, in the name of Roseanna Cunningham, seemed to cover Liam McArthur's point, as special areas of conservation cover large parts of Scotland, including the River Tweed and its tributaries.

The Cabinet Secretary for Rural Affairs and the Environment, with the aid of his past and present ministers, has been fastidious in progressing the bill. However, there are still concerns about it, particularly from local authorities, which have difficulties in gaining expertise in hydrology—

Maureen Watt mentioned that. We can perhaps learn that expertise from countries such as Austria, which has had to attempt to tame the likes of the great Danube with hard and soft engineering, which have been mentioned often in the debate. There is undoubtedly a skills gap in hydrology, which we must fill.

Funding, of course, is the age-old enemy, and there is a perceived lack of funding that would back up the bill's provisions. Flood measures funding is not ring-fenced, and it may take second place to front-line services such as education and social services. Given that we have a recession and budgets are limited across the board, I fear that flood measures may be put off until a later date, particularly when plans do not have to be finalised for some time. Of course, the longer we wait to implement projects, the more expensive they tend to become and the more the risk to life and property increases.

Concerns have been raised throughout the bill's stages about SEPA's role as facilitator and regulator. I am not totally convinced that there is no conflict there.

The Liberal Democrats welcome the bill and look forward to the speedy implementation of its provisions in flood risk areas, with adequate funding of proper expertise and engineering—soft and hard. I do not refer to the soft and hard eggs to which Mr Wilson's scrambled message referred. Finally, I acknowledge the hard work that was done for all stages of the bill by all who have previously been mentioned.

16:46

Nanette Milne (North East Scotland) (Con): Like all members, I am pleased that the Flood Risk Management (Scotland) Bill has now completed its progress through Parliament and that the flood risk management plans and co-ordinated structures will soon be in place, which should help to protect people in Scotland from the devastating effects that flooding can have on their homes and communities and their emotional and physical wellbeing.

The bill is timely, as it comes in the wake of significant flooding episodes in recent years and one of the wettest summers on record. Climate change is likely to result in more wet summers, and a rise in sea level is possible. It is recognised that flooding is a threat to nearly 100,000 properties in Scotland. Water surges threaten our coastal defences and may cause surface flooding with which our urban drainage systems will struggle to cope.

There is an urgent need for long-term planning, with an emphasis on sustainable flood management, so the bill is welcome indeed. There

is a plethora of flood-related legislation, but much of it is now outdated and out of line with changes to the delivery of Government and local services in Scotland. The bill gives us the opportunity to put right that situation.

By establishing a framework for assessing flood risk, mapping flood hazard and risk, developing flood risk management plans and transposing the EU floods directive into Scots law, the bill ought to lead to a reduction in the incidence and adverse consequences of flooding. The bill's main provisions have been ably discussed by many members this afternoon, so I will not repeat them—I will just highlight a few areas.

The initial provision in part 3 of the bill on the preparation and review of the assessments and plans that are required by the EU floods directive caused us some concern, because it contained no requirement to implement natural flood management techniques, nor was there a presumption in favour of natural flood management, hence our support for the stage 3 amendments that dealt with that.

The use of agricultural land for natural flood management must be considered carefully alongside the need to protect food security—that is of prime concern to my party. Although we welcome the provisions in part 4, which give local authorities broad powers to develop a full range of flood risk management measures, we feel strongly that land managers must be adequately compensated for any income loss sustained because their land is used as flood plain or as a means of holding back the flow of water.

We very much welcome the emphasis on natural flood management, but we recognise that it will not completely get rid of the need for hard engineering solutions to flooding problems. However, the bill should help to induce a culture shift in the minds of local authorities, with natural solutions being used wherever possible.

We are pleased that the Government has announced a review of all inland waterway rescue services, because they clearly require consideration and improvement. We look forward to the outcome of the review in due course.

There is clear consensus on the need for the bill and on its provisions. The Rural Affairs and Environment Committee, the Scottish Government and the various agencies with an interest in the bill are to be congratulated on their hard work and co-operation in taking forward such a complex and important bill and in amending it at stages 2 and 3 such that it has been strengthened and improved as it has gone through the parliamentary process. We are broadly happy with the end result, and we look forward to supporting the bill at decision time.

16:50

Karen Gillon (Clydesdale) (Lab): I very much welcome the opportunity to participate in this stage 3 debate. Those of us who have been on the Rural Affairs and Environment Committee since the start of session 3 have been on a relatively long journey in our consideration of flooding, but our pre-legislative scrutiny—in the form of the committee's inquiry into flooding and flood management—has helped us in our understanding of the issues.

John Scott: Will Karen Gillon accept my apologies for not including her in my list of those who have been a member of the committee from the beginning?

Karen Gillon: I will accept John Scott's apology in the constructive manner in which it was offered, although I must confess that I had a small absence for stages 1 and 2 of the bill. However, I came back from maternity leave for stage 3.

The bill has been shaped positively by that parliamentary process, which I think has, on the whole, been constructive and consensual. Yes, we do not agree on everything, but we now have a good bill that will begin the process of effecting culture change. However, the real test of the bill is not how worthy it is as a document or how much we have learned, but the extent to which it will prevent communities throughout Scotland from experiencing the type of flooding devastation that Peter Peacock mentioned. The bill is not the end of the process, either. Perhaps a future Rural Affairs and Environment Committee will need to reconsider, through post-legislative scrutiny, how matters can be improved.

Bill Wilson's scientific background leads him to explore issues in a very particular way and to ask difficult questions of his own ministers. The questions that he has raised today have some considerable merit, as has the persistence that he has shown in highlighting the need for more effective use of surface materials that allow better run-off in residential areas. I hope that the Minister for Environment will respond to those points in due course, if not in her closing speech today.

On what is a constantly changing picture, the bill will provide us with the ability to respond effectively as and when change happens and as information becomes available. The bill will also embed the principle of catchment planning to ensure that actions cannot be taken in one area that will impact on another without it having some involvement in the process. All in all, we have a good bill before us today. Those of us on the Scottish Labour Party benches will have much pleasure in supporting the Flood Risk Management (Scotland) Bill at decision time.

16:53

The Minister for Environment (Roseanna Cunningham): I am in the unusual position of having made a transition, midway through the bill's parliamentary process, from being the convener of the lead committee dealing with the bill to being the minister sitting on the other side of the room dealing with the committee's concerns. I understand that I share that dubious distinction with Sarah Boyack. We are perhaps the only two members of the Parliament who have had that experience, although I may have been luckier in that I have managed to get the bill through stage 3, whereas I think that the timing was rather more difficult for Sarah Boyack last time round.

I thank all those who have been members of the Rural Affairs and Environment Committee and the various clerks who have dealt with the committee throughout the period in which it has discussed flooding. As members will have heard, the committee undertook an inquiry into flooding and flood management before we—I am still saying “we”, but I mean the committee—considered the bill.

No one doubts that we need new and improved flooding legislation. My constituency certainly has a traumatic history of serious flooding incidents, including the overwhelming floods of 1993, which are difficult to eradicate from the collective consciousness, therefore I am all too aware of the distress and suffering that flooding can cause individuals and communities. That awareness is shared by the Cabinet Secretary for Rural Affairs and the Environment, whose constituency has also had to deal with such experiences. Indeed, the vexed issue of moving water rescue—which emerged late as a big issue—is also a matter with which I am familiar, as a result of events in the River Tay. However, having got to this stage, we all know that legislation alone is not enough. The Scottish Government has already put in place a framework to implement the bill. That work will build on partnerships and experiences that have been developed.

As some members have said, it is vital that we have a sufficient number of specialist staff. The skills shortage became clear to everyone who was involved in the committee's inquiry and consideration of the bill. Last week, I met the Cabinet Secretary for Education and Lifelong Learning to discuss how we can ensure that Scotland has adequate skills and staffing to carry out the new duties that the bill will introduce.

Furthermore, SEPA is planning to create 10 new posts in its flood risk science training programme in this and the following two years. The successful candidates will work for SEPA on a part-time basis while studying for MSc degrees at the University of Dundee or the University of Stirling—SEPA's

partners in the initiative. That will help us to deal with the significant issue that arose during the passage of the bill.

I will try to deal with some of the points that have been made during the debate. As we would have expected him to, Robin Harper pleaded with us not to build on flood plains, but the fact is that we have already built on a great many flood plains. The process began so many hundreds of years ago that it is impossible for us to take back the land in question. The planning guidance that is provided to local authorities includes a presumption against building on functional flood plains that have not already been built on. We will continue to highlight that message when it is appropriate to do so. *[Interruption.]*

The Presiding Officer: Order. I am sorry, minister. It is the height of discourtesy for members who have not taken part in the debate to come wandering into the chamber and just start talking among themselves. Kindly refrain from doing so.

Roseanna Cunningham: Karen Gillon asked what the impact will be of the fact that one of her amendments on planning was agreed to and the other was not. I can tell her that it will now be a requirement that a flood risk assessment be prepared, but no one will have to take any notice of it. We will have to go away and have a look at that, as we will have to do in relation to the decisions on all the amendments that the Parliament has considered today.

Karen Gillon: Will the minister take an intervention?

Roseanna Cunningham: I had better just press on, if the member does not mind.

John Scott talked about coastal flooding. I can assure him and Bill Wilson that tidal surges and other coastal flooding are fully covered by the bill.

It is clear that we cannot prevent flooding, but the bill will ensure that our flood practitioners have the necessary framework to deal quickly and effectively with those areas that are at greatest risk. That is, after all, the principal aim of the bill. We ought to remember that local authorities will have an enormous amount of work to do as a result of it being passed.

We will continue to take into account all relevant views as we develop secondary legislation. I put on record my thanks for the enormous amount of work that officials have done, to which other members have referred. As well as providing assistance with drafting, they held many meetings and discussions with MSPs, non-governmental organisations such as Scottish Environment LINK and RSPB Scotland, and other stakeholders. We will continue to discuss issues with all stakeholders.

Finally, I thank all members for their comments. It has been a commendable process, so I thank everyone who has contributed to the development of the bill, which I believe will make a significant and lasting difference to people who are at risk of becoming victims of flooding. I urge every member to support it and I commend it to Parliament.

The Presiding Officer: I thank all members for their co-operation in allowing us to conclude consideration of the bill this afternoon.

Business Motions

16:59

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-4136, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, which sets out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 20 May 2009

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Stage 3 Proceedings: Education (Additional Support for Learning) (Scotland) Bill

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 21 May 2009

9.15 am Parliamentary Bureau Motions

followed by Scottish Labour Party Business

11.40 am General Question Time

12 noon First Minister's Question Time

2.15 pm Themed Question Time
Europe, External Affairs and Culture
Education and Lifelong Learning

2.55 pm Scottish Government Debate:
Importance of Aquaculture to the
Scottish Economy

followed by Legislative Consent Motion:
Coroners and Justice Bill – UK
Legislation

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Wednesday 27 May 2009

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Scottish Government Business

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 28 May 2009

9.15 am Parliamentary Bureau Motions

followed by Scottish Government Business

11.40 am	General Question Time
12 noon	First Minister's Question Time
2.15 pm	Themed Question Time Health and Wellbeing
2.55 pm	Scottish Government Business
<i>followed by</i>	Parliamentary Bureau Motions
5.00 pm	Decision Time
<i>followed by</i>	Members' Business—[<i>Bruce Crawford.</i>]

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S3M-4121, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, which sets out a timetable for stage 1 of the Marine (Scotland) Bill.

Motion moved,

That the Parliament agrees that consideration of the Marine (Scotland) Bill at Stage 1 be completed by 30 October 2009.—[*Bruce Crawford.*]

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S3M-4122, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, which sets out a timetable for stage 2 of the Climate Change (Scotland) Bill.

Motion moved,

That the Parliament agrees that consideration of the Climate Change (Scotland) Bill at Stage 2 be completed by 12 June 2009.—[*Bruce Crawford.*]

Motion agreed to.

Parliamentary Bureau Motion

17:00

The Presiding Officer (Alex Fergusson): The next item of business is consideration of a Parliamentary Bureau motion. I ask Bruce Crawford to move motion S3M-4123, on the approval of a Scottish statutory instrument.

Motion moved,

That the Parliament agrees that the draft Scotland Act 1998 (Modification of Schedule 4) Order 2009 be approved.—[*Bruce Crawford.*]

The Presiding Officer: The question on the motion will be put at decision time.

Decision Time

17:00

The Presiding Officer (Alex Fergusson): As stage 3 of the Flood Risk Management (Scotland) Bill has been completed, there are two questions to be put as a result of today's business.

The first question is, that motion S3M-4058, in the name of Richard Lochhead, on the Flood Risk Management (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the Flood Risk Management (Scotland) Bill be passed.

The Presiding Officer: The final question is, that motion S3M-4123, in the name of Bruce Crawford, on the approval of a Scottish statutory instrument, be agreed to.

Motion agreed to,

That the Parliament agrees that the draft Scotland Act 1998 (Modification of Schedule 4) Order 2009 be approved.

HBOS-Lloyds TSB Merger

The Deputy Presiding Officer (Alasdair Morgan): The final item of business is a members' business debate on motion S3M-3989, in the name of Margo MacDonald, on the HBOS-Lloyds TSB merger. The debate will be concluded without any question being put.

Motion debated,

That the Parliament considers that there would be merit in a public inquiry to look into the information that persuaded the Prime Minister and the Chancellor of the Exchequer to set aside the usual procedures that apply to company mergers and takeovers when HBOS and Lloyds TSB were given government support to do so, with a subsequent significant impact on the finance sector and employment in Edinburgh and in spite of the likelihood of the proposed merged bank being in breach of competition law and the cost to the taxpayer, before the shareholders and employees of both banks had been made aware of the full facts of the financial situation of both and before any alternatives had been explored.

17:03

Margo MacDonald (Lothians) (Ind): I realise that, in a members' business debate, one does not seek votes, but I am looking for all men and women of good will to give me their support in my efforts to establish that there should be more investigation into the business of the HBOS-Lloyds TSB merger.

The motion seeks the agreement of members that there should be a public inquiry into the reasons for the decision by the Prime Minister and the Chancellor of the Exchequer to dispense with the normal procedures that usually accompany company mergers when HBOS and Lloyds TSB were supported and encouraged by the Government to engage in such a process. The motion also reminds members of the particular relevance of the decision to support the merger, which a more analytical observer might describe as a takeover. It refers to the inevitable and quantifiable increase in the number of people who are likely to become unemployed in the financial sectors in Edinburgh, the Lothians and the capital's travel-to-work area, and the less easily measurable but nonetheless adverse impact on the city's self-confidence and reputation as a secure and well-managed financial centre, which has implications not only for the people who live in this area but for all of Scotland, in terms of the economic generation that has been ramping up in the city over the past decade.

But it is a done deal, is it not? Why bother to rake over cold embers, even if the commonly held view among people who work in the sector is that the merger was not such a get-out-of-jail move as was assumed last September, when Gordon Brown and his chancellor sprang their news that

there would be no investigation into the so-called merger? At the time, I and others said, “Oh, they probably really didn’t have any choice.” In fact, probably everybody said that. However, by the middle of October, the situation in other banks was not much different from that in HBOS and Lloyds TSB. The merger was therefore seen in a quite different context. We had thought that the proposed merger was a stand-alone crisis that left the Government with no choice other than to wave it through before the banks’ depositors left one or other or both of the banks high and dry. By October, it was obvious that the same flawed lending policies had been pursued by other banks, and that a strategic policy, rather than an emergency reaction, was required.

Months before shareholders voted on the merger proposal, other options should have been explored to address what was known to be a systemic weakness, so why did that not happen? Why did Gordon Brown, whose reputation was built on his being a prudent chancellor, fail to take advantage of the time bonus that was bestowed on him by other banks here and abroad being in the same pickle? The suspicion is that this most political of Prime Ministers stuck to his initial decision for political reasons, in spite of having been given time to let the normal practices on mergers come into play, and in defiance of the widespread and growing opinion among banking professionals that the size of the merged bank would break European Union and United Kingdom rules.

We should not forget, when we are trying to work out why Gordon Brown in particular did not take advantage of the time that he had been given, the initial approval of the decisive action that he took. That approval got him out from under the weight of accusations that followed his cop-out from calling an election—accusations that he was an indecisive ditherer. Almost overnight, his reputation changed. There has to be some reason, other than the business case for a merger, to explain why Gordon Brown threw so much weight behind the merger in the period leading up to the shareholders’ meetings and votes.

It may be significant that Lord Mandelson, having succeeded John Hutton as Secretary of State for Business, Enterprise and Regulatory Reform on 3 October, made plain from the outset his opinion that recapitalisation of the two banks would be dependent on the merger going ahead. Some members may recall that he seemed to jump in before he had had time to think the thing through.

Although the Prime Minister said that he did not see the reports from the Financial Services Authority—reports that pulled together information that the banks supplied on their financial health—it

seems most unlikely, given his known propensity to micromanage other departments’ policies when he was chancellor, that he did not glance at the more independent reports produced jointly by the Bank of England, the Treasury and the FSA. He cannot have been unaware of their concerns about anti-competitiveness, or of the concerns expressed by the Office of Fair Trading relating to personal accounts and banking services for small and medium-sized enterprises in Scotland, or of concerns expressed about the impact on the mortgage market.

I accept that the suspicions that I have outlined—and they are only suspicions—as to the reasons for the failure to test the efficacy of the proposed merger against the normal standards cannot be proved without a complete record of the interdepartmental information exchange in the period from 18 September 2008, when the merger was first announced, and the decision of Lord Mandelson to proceed with the merger in spite of the OFT reporting on 24 October that, since the onset of its investigation, market conditions had “changed considerably”.

The OFT report advised caution. It emphasised the

“enormous importance of the mortgage business to the UK economy.”

It also warned, given the market conditions, that

“the combination of the largest and third largest mortgage provider is significant enough to cause concern.”

The report concluded that the proposed merger would result in a “substantial lessening of competition.”

Frankly, the redactions applied “in the public interest” to my request for the papers that might explain why the original plan was unaltered, even when the market conditions had changed hugely, have compromised the transparency of this whole episode. The question has to be why. If it is a done deal, why can we not understand it better?

The point at which my suspicions tipped over into certainty that there should be a public inquiry into the merger came with the reported refusal of Lord Mandelson’s department to hand over a document considered in camera at the appeal by the anti-merger group. The group was told that the document had been destroyed. Even if that is true, it strengthens the case for an inquiry into the merger decision-making process that led to shareholders voting when they may not have been in possession of the full facts about the soundness of HBOS, the effect on the mortgage market and the competitiveness of the merger. If it is not true, an inquiry is essential to discover what had to be hidden in the public interest.

17:11

Christine Grahame (South of Scotland) (SNP): If the FSA had been doing its job properly and light-touch Gordon Brown had been doing his job properly as Chancellor of the Exchequer, the banking sector would not have been left to self-regulate as it was and we would not have been left in such a deep mess. There would also have been no need for a public inquiry. I quite like raking over cold embers, as that is where we find interesting pieces of evidence in this case and others.

John Park (Mid Scotland and Fife) (Lab): Will the member give way?

Christine Grahame: I have only four minutes.

Neither Ireland nor Norway is in this mess, and Ireland is projected to come out of the recession more quickly. The idea that Scotland has been better off as part of the UK, enabling the bail-out of banks to go ahead, is nonsense. The UK is not in a good position to bail out the banks—it cannot afford that—and our children for generations to come will be paying through the teeth for the subsidising that has had to happen, so that is a false tale.

We now own 70 per cent of the Royal Bank of Scotland and 65 per cent of Lloyds. The social housing portfolio of the Dunfermline Building Society is wholly owned by the Bank of England. Indeed, the House of Commons is undertaking an inquiry into the takeover of the Dunfermline Building Society, calling witnesses from the Treasury, the Bank of England, the FSA and, thereafter, representatives of the Dunfermline Building Society and the Nationwide Building Society.

The Deputy Presiding Officer: Order. The member seems not to be speaking to the motion.

Christine Grahame: I am. That is linked to our holding an inquiry here.

The Deputy Presiding Officer: Good. The member should get to that now.

Christine Grahame: I am right at it, Presiding Officer.

Looking at the timetable for the Lloyds TSB-HBOS merger is like watching a runaway train hurtling down the tracks. Reference has been made to the fact that Lord Mandelson gave clearance for the merger in October 2008. He did not refer the matter to the Competition Commission, despite the position of the OFT. That was Lord Mandelson—unelected, sacked twice—railroading against the wishes of the HBOS shareholders. Alternatives were rubbished: Sir Peter Burt and Sir George Mathewson, who had been senior members of the bank, were ridiculed, and there were even attempts to undermine their

reputations. The process was all rather sullied, rushed and undemocratic, bypassing any alternatives.

I understand that there may be issues with having a public inquiry in Scotland; I hope that the minister will address them. It is my understanding that such an inquiry would proceed under the Inquiries Act 2005 and that there may be limitations when matters cross from devolved to reserved areas either in the scope of any inquiry or in the compellability of evidence, both documentary and from witnesses—some of our parliamentary committees have had difficulty with the compellability of witnesses during parliamentary inquiries. However, there can be joint inquiries between the two legislatures. I have not had the time today to check whether there have been any. If there have been, I would like to know about them; if not, would such a proposal have legs? Could there be some kind of joint inquiry because of the economic implications of the situation for Scotland?

We can hold parliamentary inquiries, but they are limited in the compellability of witnesses and in their scope. Perhaps the Finance Committee and the Economy, Energy and Tourism Committee could hold such an inquiry, but what would be its limitations, which would not apply to a public inquiry? It is an important issue, given the thousands of jobs in Scotland that are dependent on the financial sector. Scotland has been particularly vulnerable. We do not want to have just brass plates for headquarters; neither do we want Scotland's banking reputation to remain tarnished. That would be wholly undeserved.

It may be possible to have a public inquiry, subject to the caveats that I have mentioned, but if the best that we can do is a parliamentary committee inquiry, that exposes the limitations of devolution and the substantial fault lines that continue to run through the uneasy devolution settlement. This is a particularly good example of that. I am uneasy that the merger was concluded hastily for political, not economic, reasons that we may not be able to explore.

17:15

John Park (Mid Scotland and Fife) (Lab): I congratulate Margo MacDonald on securing the debate, which is welcome. It provides another opportunity to discuss the issues that are faced by a great number of workers in the financial services sector, particularly those in HBOS and Lloyds.

I remember the September morning on which I first heard the news that HBOS and Lloyds were to be merged. Like many at the time, I was concerned about the reasons behind it and the implications for the workforce.

The Parliament has shown itself in a good light during the process. We have had many debates on the merger and have done some practical things. There has been consensus in the Parliament, particularly on the Financial Services Advisory Board's jobs task force, to try to ensure that there are proper responses to the HBOS-Lloyds merger in particular and the problems that the Royal Bank of Scotland and other banks in Scotland face. One of the first things that I did was meet shop stewards and union representatives from HBOS and Lloyds—the group is now known as the Lloyds Banking Group—to enter into dialogue with them about their concerns and understanding.

I turn to points that members have made. There were concerns about the level of regulation. All politicians should bear some responsibility for that. Not that long ago, the First Minister said that regulation of Scotland's financial services sector was gold plated and that, in an independent Scotland, the Scottish National Party would want to move away from that. When we talk about such issues, we should all bear in mind the language and rhetoric that politicians used.

I am not persuaded at this point that there should be a public inquiry, because all the efforts of politicians, including all MSPs, and everyone else who has concerns about the financial services sector in Scotland should be directed towards helping people in that sector and looking to the future. Perhaps we will learn lessons from the past in doing so.

Today, I met representatives of RBS who are very concerned about their employment.

Margo MacDonald: One of my concerns was that we might find what is happening in America happening here. In America, shareholders who think that they were not given full information before their bank's situation completely changed are organising litigation. I have heard whispers from shareholders of the former Lloyds TSB that they were not in full possession of the facts about HBOS, and I am concerned about that.

John Park: I understand that there will always be concerns as we move forward. We undoubtedly had a unique set of circumstances in September, and quick action needed to be taken. Lessons were learned from what happened to Northern Rock almost a year previous to that. However, the reality is that there are daily implications for the individuals who work in the banks. They have to deal with those implications and pick up the pieces. I know from speaking to a constituent of mine who worked in HBOS's corporate banking arm that people in that office are not receiving bonus payments—not payments for exceptional performance throughout the year but payments that were seen as deferred earnings. The current

situation has huge implications for those individuals: low-income to middle-income people are suffering from major strategic errors that were made by senior managers, particularly in HBOS.

Companies such as Dunfermline Building Society and RBS have been able to put certain areas into administration, but it is clear that the HBOS banking model was exposed in a way that showed that it was broken. At the time, looking for a merger was undoubtedly the right thing to do. The unions supported a merger—although not necessarily of HBOS and Lloyds—because they recognised that the HBOS banking model was broken.

We need to have more discussions such as this. As I have said, I am not convinced that a public inquiry is needed. All our efforts must be directed towards ensuring that the financial services sector grows in Scotland and that we sustain employment.

17:19

Derek Brownlee (South of Scotland) (Con): Like John Park, I am not entirely persuaded of the need for a public inquiry, but I come from a different angle in that I believe that many of the points that Margo MacDonald raises are worthy of further exploration. I acknowledge that Margo MacDonald has been entirely consistent on the issue for months and has raised concerns since the merger was first mooted but, for a variety of reasons, I am not sure that a public inquiry would be appropriate.

In effect, three options were on the table for HBOS last autumn. The first was the merger—or the takeover if we want to refer to it as that. The second was nationalisation, which most people thought was the worst possible option. The third option, which was considered for some time, was to preserve HBOS as some form of independent entity, whether through another bank providing financing or some other method. Margo MacDonald and others spent a lot of time considering those options. To be fair, it is legitimate to ask whether the fact that the Government was so unambiguously in favour of the merger and so clearly behind it—despite the fact that it did not take a political decision to say that it must happen—put off other potential bidders. However, what has emerged since the HBOS and Lloyds TSB shareholder votes shows us graphically the reality of HBOS's situation.

The question that I posed in the debate on the situation last October was simple—I asked what the likely cost would be to the taxpayer if the merger did not go ahead and an alternative could not be found. Margo MacDonald's point about the disgruntlement among shareholders of Lloyds

TSB—which was acknowledged as a strong and well-resourced bank—puts that into context. HBOS's problems were so much greater than we appreciated when the merger was first mooted, and shareholders in what was Lloyds TSB perhaps now feel that they got a raw deal. That suggests that the cost to the taxpayer of nationalising HBOS would have been significantly higher than the cost of supporting the merged Lloyds Banking Group. When we are borrowing £180 billion a year more than we are raising, there is a serious issue that we cannot simply ignore. The capacity simply to nationalise and preserve an independent HBOS was seriously compromised. That is perhaps clearer now, looking back, than it was at the time.

Christine Grahame mentioned regulation, and John Park alluded to it. We must be careful on that issue. The problem with the Financial Services Authority and the regulation of the banks was not to do with light-touch regulation. The year-on-year growth of the FSA and the volume of regulation shows that the problem was not that there was not enough regulation but that the regulation was not effective. We should not confuse volume of regulation with effective regulation, which it is rather easy to do.

We are left with the fundamental question of what happens now. We are where we are, and the combined Lloyds Banking Group has a great deal to do to get back to a state of greater financial health. I acknowledge that how that happens will have a significant impact on the Scottish economy, and I am clear that headquarters are important to the Scottish economy. However, raking over the coals, as Christine Grahame put it, will not necessarily take us further, although I would be fascinated to find out what actually happened during those vital few weeks early in the autumn last year.

17:23

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I, too, congratulate Margo MacDonald on bringing this important issue to the Parliament. I for one hope that, in either Opposition or Government time, we will be able to discuss the issues that have been raised and the wider context in a substantive debate and to test the Parliament's opinion again.

In September, we first debated the merger in Government time. In October, in Liberal Democrat time, we debated the issue under a motion that sought to gather opinion against the merger. Liberal Democrats have continued to express anxiety and concern not only about individual jobs in the institutions but about the longer-term consequences of the merger and the situation. I recall distinctly Mr Brownlee describing that motion

as “reckless and unwise”; he was wrong. His Westminster counterpart, the former Chancellor of the Exchequer Kenneth Clarke, indicated that he deeply regretted the merger; he was correct. I suspect that Mr Brownlee will not admit that he was incorrect to use that language, but hindsight proves absolutely that he was.

Derek Brownlee: The reference to recklessness related to that motion's mention of Edinburgh's status as a financial centre being jeopardised. The point that I made in that debate was that HBOS was likely to be nationalised if the merger did not proceed. The Liberal Democrats ridiculed that at the time but, since then, Vince Cable has said that, if Lloyds TSB had not launched the takeover bid, HBOS would have been nationalised. That is in his latest tome, a copy of which I was given recently. Is it not the case that the decisions are not as simple as the Liberal Democrats suggested last October?

Jeremy Purvis: It is certainly correct that we have had concerns about Edinburgh's position as a financial centre. We also have long-term concerns about the impact that the takeover and the creation of a monolithic organisation such as the Lloyds Banking Group will have on competition in the sector in Scotland. Mr Brownlee knows that we argued that part of the solution that the Government put in place for Northern Rock should have been considered for HBOS. My Westminster colleague Vince Cable argued that, as we did in this Parliament.

Gavin Brown (Lothians) (Con): Absolute rubbish.

Jeremy Purvis: If the members who are making sedentary comments look at the *Official Report*, our references to Northern Rock will be perfectly apparent to them.

The recapitalisation of the banks means that we have primarily taxpayer-funded institutions in Scotland. That is significant for understanding exactly why competition law was set aside in the case of HBOS. The two issues are connected. The Westminster Parliament voted to set aside competition law against the advice of independent advisors and the country's regulatory bodies. It did so on the basis that there was no alternative.

There is a continuing need to examine the banking situation for the retail and investment sectors, but the Scottish Government can have a direct role in the competition law issue. Distinct Scottish markets are recognised for OFT and Competition Commission inquiries. The precedent is perfectly clear: we saw one recently in the inquiry into airport ownership and, before that, we saw it in the milk industry.

The Scottish Government made representations to the OFT in advance of the report on the HBOS-

Lloyds TSB merger. Given our long-term concern for not only retail banking in Scotland's high streets but the competition for small business banking, I hope that the Scottish Government will continue to take a close interest in the matter. Indeed, the first anniversary of the decision to set aside competition law, which approaches after the summer recess, would be an appropriate point for the Scottish Government to ask the OFT to re-examine competition within the Scottish banking sector. I am asking not for a debate about global finance or whether the takeover would have happened in an independent Scotland but for an inquiry into competition in the high street and in small business banking. I hope that the Scottish Government will take that on board and ask the OFT to investigate.

17:28

Sandra White (Glasgow) (SNP): I welcome the opportunity to have a debate on this important issue and congratulate Margo MacDonald on her tenacity in ensuring that it is not forgotten. I am pleased to support her call for a public inquiry and thank her for supporting my motion, which called for a special parliamentary committee to be set up to investigate the matter, and the letters of support that she sent to the Finance Committee.

As has been mentioned, the Parliament has debated the issue before. I firmly believe that further investigation of the situation that surrounded the merger of HBOS and Lloyds TSB is desirable and has merit. I wish that any such inquiry would also examine the transfer of the Dunfermline Building Society's operations to the Nationwide Building Society. It is important that we do that.

There are many unanswered questions. For instance, why is there no paper trail? I wrote to the Financial Services Authority, which told me that it was conversations between Gordon Brown and leading bankers that led to the merger of HBOS and Lloyds TSB—although Margo MacDonald told us that there was evidence but it has now been destroyed. That, above all, deserves an inquiry of some sort.

Margo MacDonald: I cannot prove that evidence was destroyed. It was reported to the anti-merger group that part of what I think was a 350-page document had been destroyed.

Sandra White: I thank Margo MacDonald for that clarification. I accept what she says, but I believe that even that merits an investigation.

It is the duty of this Parliament to take the necessary actions to get to the truth and to represent the people of Scotland. Although we are talking about bankers, Gordon Brown and legislation, we have to remember that real people

are affected; members of the public have suffered and they want action and answers.

It might be that the Scottish Government does not have sufficient powers to direct a public inquiry into this affair, but that does not mean that we cannot support a Scottish parliamentary inquiry. Of course it will be argued that without the full powers of a public inquiry any resultant parliamentary inquiry, or other such inquiry, would lack the necessary powers to compel witnesses to give evidence, but I believe that there are sufficient grounds not to reject calls for an inquiry. I am optimistic that anyone who was asked to come to the Scottish Parliament to give evidence would be more than willing to do so. I firmly believe that we have to push for an inquiry.

I had a feeling that the Scottish Conservatives would still need to be convinced of the merits of an inquiry, but I really did not think that Labour would need convincing. Perhaps the Conservatives should heed the comment of David Cameron, the Conservative leader, that he would make a constructive working relationship with the Scottish Parliament and the Scottish Government a priority in the event of the Conservatives forming the next UK Government.

Derek Brownlee: Will the member take an intervention?

Sandra White: I am sorry, but I cannot take an intervention.

As David Cameron falls over himself to apologise and Gordon Brown follows, the talk turns to transparency and openness once again. It is in the interests of this Parliament and the Scottish people to be open, honest and transparent, to establish an inquiry into the decisions that led to the merger of HBOS and Lloyds TSB and to investigate why the Dunfermline Building Society was similarly carved up.

Jeremy Purvis mentioned the use, or otherwise, of competition law in this matter, which merits investigation. The events of the past week have shown us that the public have no time for back-room, dodgy deals. I hope that members here today will reflect on how the public feel about this issue and that they will support an inquiry, whether a public inquiry or an inquiry by a committee of the Parliament.

17:32

James Kelly (Glasgow Rutherglen) (Lab): I welcome the opportunity to take part in the debate and I congratulate Margo MacDonald on lodging the motion. The debate gives us an opportunity to reflect on the Lloyds TSB takeover of HBOS and on the general issues surrounding the banking

crisis, given the importance of the banks and the financial sector to the Scottish economy not just in relation to the jobs they provide in Edinburgh and throughout Scotland but in relation to the mortgages that householders throughout Scotland's communities hold with the banks.

I know that the motion is about Lloyds TSB but, as I see the sun streaming through the window, I reflect back to this time last year, when, on a sunny Friday, I, along with a number of other MSPs, visited the RBS headquarters on a business exchange visit. We could not have realised at the time that, by the end of the year, RBS would have capitulated, its value would have gone into meltdown and it would have been 70 per cent owned by the Government. What struck me on that visit was the number of assurances we were given about the reliability of the business model at RBS—which were proven in future months not to be sound.

I welcomed the strong intervention of the UK Government in the Lloyds TSB-HBOS merger. There is no doubt that it would have been catastrophic for the Scottish economy if the UK Government had not intervened.

Sandra White: Does the member agree that if the UK Government had put in place more stringent banking legislation, as other countries did, we would not have been in the same position with Lloyds TSB and other banks?

James Kelly: The point is that the UK Government's priority was to intervene to save jobs and provide stability so that the Scottish economy did not go into meltdown. I very much welcomed that intervention. Investment to the tune of £37 billion was made in Scotland. It is worth pointing out that that is more than the total Scottish budget. If Scotland had been independent at that time, I would have feared for its future.

As for the issues that Margo MacDonald's motion addresses, we had and still have relevant concerns about the banking sector. We want to ensure that robust business models are adopted and that our banks improve cash flow so that we support businesses and the economy. We want transparency about senior management and their bonuses. We also want reassurances and help for the workforce at this difficult time. It is clear that job losses will occur, but we want to minimise them and to try to get the workforce into other jobs.

The Parliament should concentrate its efforts on looking to the future, not to the past. I do not diminish the issues that Margo MacDonald raises, but the role for the Parliament's debating chamber and its committees is to consider how we can help the banking system to grow and support the Scottish economy.

17:36

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I congratulate Margo MacDonald on lodging the motion. I always admire her tenacity and style and I often support the causes that she espouses, but I cannot support the motion this evening. There is a case for a broad-ranging inquiry that investigates the details of everything that happened in the lead-up to the general banking crisis, but there is no case for homing in on one aspect, as Margo MacDonald recommends.

The key issue for Edinburgh members and, I am sure, for all other members is the employment situation. John Park emphasised the key question, which is how we protect and preserve as many jobs as possible now. Given that employment and unemployment are probably the key aspects for everyone, it is worth saying that the main banking union, Unite, has always supported the merger. Critics of the merger must take that into account—and perhaps explain it. It is by no means obvious that resisting the merger would have meant more jobs. Like the trade unions, my basic belief is that unemployment would have been higher without the merger and without the wider action that the UK Government took to support the banking sector.

Sandra White: The member mentions saving jobs. In his reply to me, James Kelly said that the purpose of the Government's intervention was to save jobs, yet he said later that jobs are being lost. If the Westminster Government put in money to save jobs but we are now talking about jobs being lost, how does that correlate?

Malcolm Chisholm: As is obvious, jobs are being lost in the banking crisis; the issue is whether we would have lost more jobs without the intervention.

Another point that should be picked up, to which Christine Grahame referred, is that shareholders voted for the merger. The Chancellor of the Exchequer made it clear that funding was not contingent on the deal going through.

Margo MacDonald *rose—*

Malcolm Chisholm: I do not have time to give way; I have already taken one intervention. I know what Margo MacDonald wants to say. If I have time at the end, I will take another intervention.

We must remember the dire situation that HBOS was in last year. It developed long before the crisis of September; we have heard that internal people warned about the absence of risk controls and we know from figures from the Financial Services Authority that in June last year HBOS's funding gap was greater than that of any other UK bank, at £198 billion. That led to massive reliance on the

wholesale funding markets, which seized up after the collapse of Lehman Brothers on 15 September. Within hours, HBOS shares crashed—the markets decided that the bank was going to go. The fact of the matter is that, without the intervention of and guarantee from the UK Government, the bank would have gone under. It is clear that, without that intervention, we would have had far more job losses, not to mention the devastating effect on the rest of the economy.

We have to remember what the situation was like in that critical week in September and applaud what the Government did at the time. Even more than that, we need to acknowledge the wider action that the Government took at the beginning of October to save the banks by way of recapitalisation. Whatever their criticism of the UK Government in other areas, members of other parties should give the Government credit for the decisive action it took at that time to save the banks.

In the small amount of time that remains to me, I will focus on the present and the need to save as many jobs as possible. A City of Edinburgh Council meeting on the local economy on Monday of this week heard that Edinburgh is beginning to see beneficial flows of investment, including in the financial sector. One very interesting piece of information is that the Lloyds Banking Group is beginning to see Edinburgh as a centre of excellence, including for its procurement arm and asset management business. We have to look at what happened in terms of swings and roundabouts.

17:41

The Minister for Enterprise, Energy and Tourism (Jim Mather): I congratulate Margo MacDonald on securing a debate on such an important issue. I have appreciated the speeches from members on all sides of the chamber.

As we have heard, we are going through a period of unprecedented change in the global financial services industry, with banking at the eye of the financial storm. Few could have foreseen the dramatic change in circumstances that we have experienced and the alarming speed at which events took place. I remind colleagues that the main aim of the Scottish Government remains to create a more successful country, with opportunities for all in Scotland to flourish, by increasing sustainable growth.

In pursuit of that aim, since the first announcement of the intended acquisition of HBOS by Lloyds TSB, the Scottish Government has done everything within its powers to ensure the best deal for Scotland. Throughout the process, we have been clear that our banking

industry is a cornerstone of the economic life of the nation. Any loss of function and decision making from Scotland, along with employment, would have a detrimental impact on Edinburgh—the impacts would be felt far beyond Edinburgh, but particularly there.

The concerns that the takeover raised about the impact on jobs, decision making and competition in Scotland were reflected in the Scottish Parliament resolution of 30 October. We always made it clear that Lloyds TSB acted perfectly honourably in pursuing its commercial interests. However, we believe that the UK Government has not been even-handed in its dealings on the matter.

We believe that it is right that the Scottish Government and the people of Scotland should have before them the full facts that United Kingdom ministers at the highest level considered when decisions were taken to set aside normal competition considerations to enable the merger to go ahead. However, as things stand, if Scottish ministers were to establish a full public inquiry, its terms of reference would extend only to devolved matters. Unfortunately, the issues that Margo MacDonald set out in the motion and many of those that members raised in their speeches relate to matters that are reserved to Westminster by the Scotland Act 1998. They are important matters nonetheless.

Derek Brownlee: We all appreciate the difficulties in respect of the reserved-devolved divide. However, if I picked up correctly what the minister said, it is the Scottish Government's view that the public and shareholders should have the right to understand the full facts. Is he suggesting that the advice that was presented to UK Government ministers should be published? If so, will the Scottish Government do likewise?

Jim Mather: Mr Brownlee is not convinced of the need for a public inquiry and yet he wants to know what happened. Likewise, we want to know what happened. We want to get the information into the public domain.

Margo MacDonald spoke about the lack of choice and the haste that were in play; the ignoring of the OFT report; the setting aside of competition law; and the reluctance to bring forward recapitalisation. Underpinning all that is the flawed model that got us into the situation in the first place: the regulatory race to the bottom. People in Scotland had a right to believe that Her Majesty's Treasury, the FSA and the Bank of England were up to the job. However, book after book on the subject—by John Kay, Vince Cable, Philip Augar and George Soros—tells us that there was a climate, created largely by Government, that encouraged financial institutions to borrow short and lend long. Institutions were encouraged

to come close to overtrading—something that they would not encourage their customers to do.

Sandra White's speech was pertinent. She argued that a further investigation, to include the sale of the Dunfermline Building Society, was justified and spoke about the impact on people here in Edinburgh—people who were depending for their retirement pensions on rock-solid RBS and HBOS shares that have turned bad on them. In addition, we must consider the compensating book-keeping entry that everyone in the UK has suffered. People have suffered stress about their business, their jobs, their incomes and the value of their portfolios, savings, pensions and property, and now devaluation of the currency—that is a big compensating book-keeping entry.

Although a public inquiry established by Scottish ministers would be unable to consider fully the issues relating to competition or mergers and acquisitions, we think that it is vital that lessons are learned. The current crisis and the ways in which Governments across the world reacted to it and worked to deal with it will be the focus of many debates and inquiries around the globe in the foreseeable future.

Just as important is the long-term impact of the crisis on the size, shape and focus of our financial institutions. That matter will be uppermost in our thinking as we move forward. I must respond to the point that James Kelly made about independence and the funding of the banks. When a bank becomes too big to fail, we must ask, "Too big to fail for whom?" The Scottish banks that we are discussing were too big to fail for UK plc, the USA and Holland.

The primary driver of sustainable economic growth is now at the forefront of our minds.

James Kelly: Does the minister accept that the amount of investment that was required to save the banks—£37 billion—was greater than the Scottish budget and that, had Scotland been independent, we would have struggled to sustain our banking system?

Jim Mather: I resent the proposition that Scotland is not a bankable proposition. Scotland is always a bankable proposition. We can build a strong situation, especially if Scotland now stands shoulder to shoulder with its banks and the rest of its strong financial services sector—our investment trusts, fund managers, life and pension businesses, actuarial businesses, legal businesses and accountancy businesses.

Jeremy Purvis: Will the minister give way?

Jim Mather: I have 30 seconds left and am keen to finish my speech properly.

Sandra White's eloquent call for openness and transparency has been echoed by George Soros.

We need to ensure that our banking sector supports fully our national competitiveness. Any inquiry that helps us to understand the impact of recent events and decisions on our banking sector can only be helpful. I am looking to engage with the sector further, beyond FiSAB and our dealings with Scottish Financial Enterprise. I will engage equally with the US banks that are investing in Scotland; they are delighted with the quality of their staff here and plan to invest more. I fully support any move to hold a Scottish parliamentary committee inquiry into this matter.

Meeting closed at 17:48.

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