

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 2 December 2009

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2009.

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by email to:
licensing@oqps.gov.uk.

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
RR Donnelley.

CONTENTS

Wednesday 2 December 2009

Col.

SUBORDINATE LEGISLATION	2217
Common Agricultural Policy (Single Farm Payment and Support Schemes and Cross-Compliance) (Scotland) Amendment Regulations 2009 (SSI 2009/391)	2217
CROFTING LEGISLATION.....	2218
MARINE (SCOTLAND) BILL: STAGE 2	2219

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

30th Meeting 2009, Session 3

CONVENER

*Maureen Watt (North East Scotland) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Karen Gillon (Clydesdale) (Lab)
*Liam McArthur (Orkney) (LD)
*Alasdair Morgan (South of Scotland) (SNP)
*Elaine Murray (Dumfries) (Lab)
*Peter Peacock (Highlands and Islands) (Lab)
*Bill Wilson (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Rhona Brankin (Midlothian) (Lab)
Jim Hume (South of Scotland) (LD)
Nanette Milne (North East Scotland) (Con)
Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Robin Harper (Lothians) (Green)
Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)
Stuart McMillan (West of Scotland) (SNP)

CLERK TO THE COMMITTEE

Peter McGrath

SENIOR ASSISTANT CLERK

Roz Wheeler

ASSISTANT CLERK

Lori Gray

LOCATION

Committee Room 2

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 2 December 2009

[THE CONVENER *opened the meeting at 09:35*]

Subordinate Legislation

Common Agricultural Policy (Single Farm Payment and Support Schemes and Cross-Compliance) (Scotland) Amendment Regulations 2009 (SSI 2009/391)

The Convener (Maureen Watt): I welcome everyone to the 30th meeting in 2009 of the Rural Affairs and Environment Committee. The main purpose of today's meeting is to consider amendments to the Marine (Scotland) Bill at stage 2. I remind everyone to switch off their mobile phones and brambles, because they impact on the broadcasting system.

Agenda item 1 is consideration of a Scottish statutory instrument, which is subject to negative procedure. The Subordinate Legislation Committee commented on the amendment regulations and an extract of its report is included in late paper RAE/S3/09/30/2. No member of the Rural Affairs and Environment Committee has expressed concern about the regulations in advance of the meeting and no motion to annul has been lodged. I invite comments.

John Scott (Ayr) (Con): I am dismayed—again—at the number of errors in the instrument. I appreciate that the Scottish Government intends to correct the errors in due course, but it is unreasonable that there should be so many errors. If farmers make errors when they fill in forms, they are immediately held to blame for doing so, but it appears to be okay for drafters of legislation to make errors, say that they are sorry and then come back with amendments. There are double standards.

The Convener: I understand that the Government will lay an amending instrument before the Parliament. The Cabinet Secretary for Rural Affairs and the Environment is present, so perhaps he will take note of your comments. Do members agree to make no recommendation in relation to the instrument?

Members indicated agreement.

Crofting Legislation

09:37

The Convener: Item 2 is consideration of our approach to the forthcoming bill on crofting. The Rural Affairs and Environment Committee is likely to be the lead committee for stage 1 scrutiny. The purpose of this item is to allow the committee to take administrative decisions in advance of the bill's introduction. The committee is invited: first, to agree that the clerks should issue a call for written evidence after the bill's introduction; secondly, to authorise me to make bids to the Conveners Group and, where necessary, the Parliamentary Bureau for fact-finding visits or external meetings; thirdly, to delegate to me responsibility for arranging for the Scottish Parliamentary Corporate Body to pay witnesses' expenses; and fourthly, to agree to take in private at future meetings agenda items on witness selection, locations for visits or external meetings, the review of evidence and the consideration of draft reports. Do members agree to the approach that I have suggested?

Members indicated agreement.

Marine (Scotland) Bill: Stage 2

09:38

The Convener: Item 3 is further consideration of amendments to the Marine (Scotland) Bill at stage 2. Members should have their copy of the bill and the marshalled list and groupings of amendments. I welcome the Cabinet Secretary for Rural Affairs and the Environment and his officials.

Section 78—Publicity in relation to marine conservation orders and urgent continuation orders

The Convener: The first group of amendments is on marine conservation orders: publicity. Amendment 235, in the name of Stuart McMillan, is the only amendment in the group.

Stuart McMillan (West of Scotland) (SNP): As with other amendments that I lodged, which we considered during the previous two meetings, I lodged amendment 235 on behalf of the Scottish boating alliance, in my role as convener of the cross-party group on recreational boating and marine tourism.

The Scottish boating alliance thought that it was important that there should be specific provision for notices to be given in the appropriate way and to the appropriate people, to alert people who use the sea and are affected by an order to the impact on their activity. It was considered important to include the United Kingdom Hydrographic Office.

I move amendment 235.

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): Good morning to the committee. Amendment 235 would require Scottish ministers to send a copy of every marine conservation order to the UK Hydrographic Office so that the charts could be updated and notices to mariners issued. However, discussions between the Scottish Government and the Hydrographic Office have indicated that it would prefer not to receive that sort of information. There are a number of reasons for that but, in brief, the Hydrographic Office does not think that it would contribute to the core work that it does, and it could possibly distract from it.

I assure the member that the relevant information will be publicly available on websites and elsewhere, if that is the concern of the Scottish boating alliance, to which the member referred. Given the comments that I have made, I ask the member to withdraw amendment 235.

Stuart McMillan: I am happy to seek to withdraw the amendment. I will speak to the Scottish boating alliance about the minister's comments, and we will decide whether to lodge the amendment again at stage 3.

Amendment 235, by agreement, withdrawn.

Section 78 agreed to.

Section 79—Representations and hearings in relation to proposed marine conservation orders etc

The Convener: The next group is on marine conservation orders: impact on economic position. Amendment 236, in the name of Karen Gillon, is grouped with amendments 237 and 238.

Karen Gillon (Clydesdale) (Lab): As members are aware, the committee decided last week that social and economic reasons could be taken into account by ministers when they are determining orders. The amendments in the group therefore give a venue and vehicle by which that can happen. They give people an economic reason to give evidence to ministers, either orally or in writing. It is for the minister to determine how that is done. I hope that members will see the amendments as sensible and agree to them.

I move amendment 236.

Liam McArthur (Orkney) (LD): The committee accepts that the evidence that we have received shows that the displacement of marine activity is an inevitable consequence of implementing the legislation, and that is a factor that needs to be considered when we are managing our seas according to the ecosystem approach. The way in which we respond to such consequences, which will be significant in some cases, is important, not least in building trust in the public and the communities that are most directly affected. There is a risk that any displacement effect could simply shift problems from one place to another—a feature that has been all too common in recent times in our fish-catching sector, as a result of the way in which European Union regulations have been implemented.

Amendment 238 seeks to help ministers to respond to such a situation in an appropriate and flexible fashion. It will reassure the many and various parts of our fishing industry, and it could serve to safeguard the interests of a far wider grouping of bodies and individuals.

Amendment 236 rehearses some of the arguments that I made last week about one of my amendments. It reflects the principles of the Aarhus convention, but I think that I will keep my power dry on that one until later in the proceedings. Not surprisingly, therefore, I support the principles of amendment 236, although I suspect that it might meet a similar fate to my earlier amendments.

Richard Lochhead: In response to Karen Gillon's comments, I should say at the outset that last week's discussions were on designation

orders, whereas amendments 236 and 237 are about the main conservation orders, so we are not speaking about exactly the same thing.

Marine conservation orders will be used only when absolutely necessary to support marine protected area objectives. They will be used to manage uncontrolled activities that pose a threat to our future assets. The bill already provides ministers with the power to give any person the opportunity to make representations and, of course, I intend to use those powers when it is practical to do so. However, a duty to allow oral or written representations by those who consider that they will suffer material disadvantage could be used vexatiously, which could slow down the process unnecessarily. In particular, such a duty would restrict the powers to make urgent conservation orders in an emergency situation. As a result, there could be impacts on the natural features and historic assets that we seek to protect in the MPAs. I therefore urge the committee to resist amendments 236 and 237.

09:45

We fail to see how amendment 238 would add value, because much of what it proposes is already in the bill. Section 76 places a requirement on ministers to send a draft order to any person who has an interest in, or who would be affected by, a marine conservation order. Section 77 provides an exception, to allow urgent orders to be made without prior consultation, although those powers would of course be used only when absolutely necessary. Section 76 also provides a suitable basis for ministers to assess the likely impacts of a proposed order. To discharge the requirement, ministers would have to undertake an assessment of who would be affected by an order. Ministers will not make a marine conservation order without generally assessing the impacts that it will have. Amendment 238 would place ministers under a duty to assess not only economic impacts, but displacement impacts. I would obviously wish to be aware of displacement issues wherever possible, but assessment of displacement impacts is a lengthy process and, as the amendment would apply to urgent conservation orders, it would render them useless in many circumstances. For those reasons, I urge the committee to resist amendment 238.

Karen Gillon: I listened carefully to what the minister said. If he will provide further information ahead of stage 3 on how he intends to implement the existing provisions in the bill, I will be happy not to press the amendments at this stage.

Richard Lochhead: I am happy to do that.

Amendment 236, by agreement, withdrawn.

Amendment 237 not moved.

Section 79 agreed to.

After section 79

The Convener: Amendment 238, in the name of Liam McArthur, was debated with amendment 236.

Liam McArthur: For the same reasons as Karen Gillon gave, particularly in relation to urgent orders, I would welcome further clarification from the cabinet secretary. However, I will not move the amendment at this stage.

Amendment 238 not moved.

Sections 80 and 81 agreed to.

Section 82—Offences: contravening a marine conservation order

The Convener: The next group is on marine protected areas: offences. Amendment 189, in the name of Robin Harper, is grouped with amendments 239, 190 and 240.

Robin Harper (Lothians) (Green): Amendment 189 simply seeks to ensure consistency between the penalties for offences in parts 3 and 4. Sections 25, 30, 36, 47 and 49 give details of the penalties that are applicable for contravening licence provisions, and every one of them provides for offences to be punishable by a fine not exceeding £50,000 on summary conviction and, on conviction on indictment, an unlimited fine, imprisonment for up to two years, or both. However, sections 82 and 83, which cover the offences of contravening a marine conservation order and offences relating to protected features of a nature conservation MPA, do not include a prison term as part of the suite of punishments.

I hope that that is an oversight and that the cabinet secretary will take the opportunity to rectify the situation. I certainly hope that it is not an indication that he believes that environmental offences should be subject to lesser sanctions than other types of offence. Frankly, the punishments for environmental offences have historically been derisory, as has the sentencing. They are getting better, but removing the option of a custodial sentence from the suite of sanctions in relation to nature conservation MPAs and MCOs would represent a backward step in achieving appropriate sentencing for environmental offences. The possibility of a custodial sentence would represent how seriously we as a society now regard environmental offences.

I move amendment 189.

Stuart McMillan: Once again, amendments 239 and 240 were lodged on behalf of the Scottish boating alliance, as were all the amendments that I lodged for consideration today.

Amendments 239 and 240 would put in place a proportionate fine—equivalent to that which I am informed was introduced into the UK Marine and Coastal Access Bill—for situations in which summary proceedings are used to pursue someone who is charged with an offence. Sections 82(2)(b) and 83(4)(b) already provide for an open-ended, and therefore potentially much larger, fine after conviction on indictment, which seems a more appropriate court procedure for offences for which a high level of fine is envisaged.

Bill Wilson (West of Scotland) (SNP): I find amendments 239 and 240 very alarming indeed. I have long believed that the fines for companies and businesses are often far too low and frequently do not cover the profit that is made from the illegal act. Reducing fines in conservation areas to £5,000 might actually encourage people to seek to make profit, because the profit would be higher than the fine. Therefore, I urge Stuart McMillan not to move amendments 239 and 240, which I think are an invitation to damage the environment in the name of profit.

Richard Lochhead: Amendments 189 and 190 would provide courts with the ability to imprison any person who was found guilty of contravening a marine conservation order or damaging a protected feature of a nature conservation MPA. However, the penalties that are currently provided in sections 82 and 83 are consistent with the penalties for committing an offence against protected European species and habitats in Scottish or UK waters, which are similar conservation offences. We believe that consistency with existing conservation penalties is a better guide for the conservation offences in the bill than consistency with penalties for marine licensing offences, as is proposed in amendments 189 and 190. We also believe that the possible imposition of a significant fine is sufficient penalty for the offences relating to MPAs. Therefore, I ask the committee to resist amendments 189 and 190.

On amendments 239 and 240, sections 83 and 84 provide for maximum fine levels of £50,000 following summary conviction for the offences of damaging features or assets of an MPA. As Bill Wilson said, amendments 239 and 240 would reduce that figure to £5,000, but they would leave unchanged the penalty of an unlimited fine following conviction on indictment. An important point is that amendments 239 and 240 would not reduce the penalty that might be imposed but would simply require all more serious cases to be taken on indictment. I do not think that that would be appropriate. I believe that the bill currently strikes the right balance by allowing a sheriff to impose a fine of up to £50,000 following summary conviction. Therefore, I urge the committee to resist amendments 239 and 240 also.

Robin Harper: It strikes me that we are allowed to do better than the minimum that is suggested in European Union directives. In my view, it would be more sensible to bring up all our sentencing to the highest level that is set out in the bill rather than to leave out those sentences for offences that involve MPAs and MCOs. There is nothing to prevent us from doing that. Therefore, I ask the cabinet secretary to reconsider his attitude to those offences.

I am not sure how much good I will do by pressing my amendments. I hope that my doing so will not prevent the cabinet secretary from agreeing to consider whether it might not be better to have consistency across the board rather than the current inconsistency between European legislation and our legislation.

I am minded to press amendment 189.

The Convener: The question is, that amendment 189 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Morgan, Alasdair (South of Scotland) (SNP)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

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

Amendment 189 disagreed to.

Section 82 agreed to.

Section 83—Offences relating to protected features of a Nature Conservation MPA

The Convener: Will Stuart McMillan move amendment 239?

Stuart McMillan: As I looked round the table when I spoke to amendments 239 and 240, I could see that they had no support whatsoever—

Karen Gillon: Stuart McMillan is very perceptive.

Stuart McMillan: Therefore, I will not move them.

Amendment 239 moved—[Karen Gillon].

The Convener: The question is, that amendment 239 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Gillon, Karen (Clydesdale) (Lab)
 McArthur, Liam (Orkney) (LD)
 Morgan, Alasdair (South of Scotland) (SNP)
 Murray, Elaine (Dumfries) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Scott, John (Ayr) (Con)
 Watt, Maureen (North East Scotland) (SNP)
 Wilson, Bill (West of Scotland) (SNP)

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

Amendment 239 disagreed to.

Amendment 190 not moved.

Section 83 agreed to.

Section 84—Offences relating to marine historic assets

Amendment 240 moved—[Karen Gillon].

The Convener: The question is, that amendment 240 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Gillon, Karen (Clydesdale) (Lab)
 McArthur, Liam (Orkney) (LD)
 Morgan, Alasdair (South of Scotland) (SNP)
 Murray, Elaine (Dumfries) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Scott, John (Ayr) (Con)
 Watt, Maureen (North East Scotland) (SNP)
 Wilson, Bill (West of Scotland) (SNP)

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

Amendment 240 disagreed to.

Section 84 agreed to.

After section 84

Amendment 241 not moved.

Section 85—Exceptions to offences under section 82, 83 or 84

The Convener: The next group is on marine protected areas: exceptions to offences under sections 82, 83 and 84. Amendment 242, in the name of Robin Harper, is grouped with amendments 75, 243, 76, 77 and 93.

Robin Harper: Section 85 as drafted means that it is not an offence to contravene a marine conservation order, or to carry out a prohibited act in an MPA, which hinders the stated conservation objectives for the area, if it is done in the course of fishing. I find that exception extraordinary and unacceptable. Why should one industry be given such a get-out clause, especially considering that it is the industry that is most to blame for creating

the parlous situation in the marine environment that we are trying to rectify through the bill? If the answer is that it is because of the common fisheries policy and historical fishing rights, amendment 242, which is supported by Scottish Environment LINK, would deal with that situation without giving the industry carte blanche to act with complete disregard for MPAs and their conservation orders.

It is commonly believed that there are historical fishing rights between 6 and 12 nautical miles, which means that non-UK vessels cannot be charged under UK law if they are in compliance with the CFP. Therefore, the Scottish fleet should not be subject to different rules that would be seen as adversely discriminatory. However, there is no justification for such a defence within 6 nautical miles or in areas between 6 and 12 nautical miles in which there are no historical fishing rights. Therefore, amendment 242 would limit the defence, so that it would be applicable only between 6 and 12 nautical miles where there are historical fishing rights.

I am pleased that the cabinet secretary has lodged an amendment that will bring the Scottish bill into line with the UK bill. However, I want the defence to be as limited as far as possible from the outset and not to have to wait for a change to the CFP. The committee stated in its stage 1 report that it did not believe that the additional protection for sea fishing was necessary.

I move amendment 242.

Richard Lochhead: I will speak first to amendments 75 and 93. Section 85(2) includes a defence that is applicable to offences of damaging an MPA or contravening a marine conservation order. The defence operates if a person can show that the act in question was done for the purpose of sea fishing and that its effect could not have been reasonably avoided.

We have taken care to ensure that section 85(2) provides a defence only in respect of responsible actions. The defence is included in the bill to maintain a level playing field between our fishermen and foreign vessels. At present, the common fisheries policy limits our ability to use domestic legislation to control foreign fishing vessels. Imposing an offence that could be committed only by our fishermen would leave them at a disadvantage compared with foreign fishermen, without necessarily adding anything to the protection of an area.

10:00

Amendment 75 introduces a new power for Scottish ministers to vary or remove the defence by order in Parliament. It provides the flexibility to respond to, for instance, the reform of the common

fisheries policy, and I would intend to use the power only when the circumstances are right and when I can be sure that there would indeed be a level playing field. Amendment 75 also delivers consistency across the UK, which Robin Harper alluded to.

Amendment 93 is consequential on amendment 75. It ensures that any order made would be subject to affirmative resolution procedure.

Amendments 242 and 243 are an attempt to tighten section 85 and restrict the defence there. I am not convinced that that is a sensible approach. It would remove the defence completely within 6 nautical miles and mean that it applies only in parts of the sea within 6 and 12 nautical miles. I am content that the defence that is set out in the bill, with the addition of amendment 75, provides for a balanced approach to the issue and delivers consistency across the UK, following a similar debate in the UK Parliament. Amendments 242 and 243 would not achieve that consistency, and I urge the committee to resist them.

Amendment 76 is a technical amendment that replaces the term “marine structure” with the more appropriate term “marine installation”. Amendment 77 seeks to narrow the range of those defences in section 86 for circumstances in which damage to the MPA is unavoidable due to the need to save lives to secure the safety of a vessel, aircraft or marine structure. The amendment would remove the defence where the act in question was to prevent damage to a vessel or cargo.

Karen Gillon: Why should that defence be removed? If, for example, a vessel were to be damaged and oil were to be released into the environment, that could be more dangerous than the alternative.

Richard Lochhead: Largely, it is because preventing damage to ships or cargoes is a commercial matter for ship owners, and those owners are responsible for ensuring that their ships and cargoes are fully and properly insured against loss or damage. Removal of the defence will not interfere with the rights of a vessel master to take whatever action they need to take in order to secure the safety and lives of crew and other persons at sea.

Karen Gillon: If a vessel were to be damaged and oil were to be released from the vessel as a result of the fact that it was not taken away from the site, would that not be more environmentally damaging than the alternative? Would we not want to encourage the removal of the vessel?

Richard Lochhead: Section 86(1)(iii) says that the defence involves the person proving that the offence was carried out for the purpose of

“preventing damage to any vessel or its cargo”.

I am not sure that we are talking about the same circumstances in the case study that you are giving. I would be happy to write to you before stage 3, if that would be helpful.

Bill Wilson: Perhaps, in the case that Karen Gillon has in mind, there might be some overlap between securing the safety of a vessel, which is covered in 86(1)(ii), and preventing damage to a vessel. That would mean that such action would still be covered by a defence. Is there such an overlap between subsections (ii) and (iii)?

Elaine Murray (Dumfries) (Lab): The Scottish Fishermen's Federation has raised a concern about amendment 75. The concern relates not to the fact that the amendment allows the minister to revoke the fishermen's defence by order, but to the fact that there is no indication of the circumstances under which such an order could be laid. The SFF feels that that should be included in the primary legislation. The reassurances that were given at Westminster in relation to that power were rather vague. Could you give a more firm reassurance, minister?

Richard Lochhead: The reassurance should be given by amendment 93, which is consequential on amendment 75. It ensures that any order that is made would be subject to affirmative resolution procedure, which means that it would be scrutinised by the Parliament.

Elaine Murray: So, it will be debated in Parliament and the opportunity to take evidence and so on will be made available.

Richard Lochhead: Yes.

Robin Harper: The issue is not one of inconsistencies or problems with European law, but whether the fisheries defence should be allowed. I will test the waters, so to speak, by pressing amendment 242.

The Convener: The question is, that amendment 242 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Morgan, Alasdair (South of Scotland) (SNP)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

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

Amendment 242 disagreed to.

Amendment 75 moved—[Richard Lochhead]—and agreed to.

Amendment 243 not moved.

Section 85, as amended, agreed to.

Section 86—Prohibited act taken in an emergency

Amendment 76 moved—[Richard Lochhead]—and agreed to.

Amendment 77 moved—[Richard Lochhead].

The Convener: The question is, that amendment 77 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

AGAINST

Gillon, Karen (Clydesdale) (Lab)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

ABSTENTIONS

McArthur, Liam (Orkney) (LD)

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

Amendment 77 agreed to.

Section 86, as amended, agreed to.

Section 87—Marine management schemes

The Convener: The next group is on marine protection and enhancement: marine management schemes. Amendment 168, in the name of Bill Wilson, is grouped with amendments 169, 170 and 191.

Bill Wilson: Post-designation, it is essential that conservation objectives are used to develop the marine management schemes for each MPA. For MPAs to be successful, they will have to be clearly understood. It is vital that people understand clearly what may, or may not, be done within an MPA. People need to understand that activities that do not impinge on an MPA's objectives will not be prohibited. If we are to win support for MPAs, it is essential to show that they are essential for marine health—and therefore economic health—and that they are not catch-alls or acts of prohibition. We must show that their purposes are specifically defined. It is for those reasons that I lodged amendments 168 to 170.

I move amendment 168.

Elaine Murray: The purpose of lodging amendment 191 is a straightforward one. Section 89 places a duty on the relevant authorities to consult Scottish Natural Heritage. Amendment 191

would place a duty on those authorities to “have regard to” any advice that SNH gives.

Richard Lochhead: I understand that, with amendments 168 to 170, Bill Wilson is trying to provide for greater transparency in the objectives and management of the MPAs. However, I do not believe that requiring all MPAs to have a management scheme is the best way to achieve transparency.

Management schemes are only one of several tools that can be used to achieve the objectives in designating an MPA. Management schemes can be bureaucratic and resource intensive. They are not used in every single case but tend to be used in cases where there is controversy of some sort. At stage 3, I will be happy to look again at the information that is published with a designation order and at how that can be done to ensure that the objectives of an MPA are clear to the public, as Bill Wilson requested. On that basis, I would be grateful if he seeks leave to withdraw amendment 168 and does not move amendments 169 and 170.

Amendment 191 would insert into section 89 a new subsection that would require authorities to

“have regard to any representations made ... by Scottish Natural Heritage under subsection (1).”

However, subsection (1) already contains a duty on authorities to consult SNH, and it is implicit in every statutory duty to consult that regard must be had to a consultee's responses. It is therefore unnecessary to add the new subsection. Doing so would reflect oddly on other statutory provisions on consultation that include nothing of that nature. On that basis, I urge Elaine Murray not to move amendment 191.

Bill Wilson: I am happy to accept the cabinet secretary's assurances that he will consider matters further, and I look forward to meetings with him to discuss matters in more detail. Therefore, I seek leave to withdraw amendment 168.

Amendment 168, by agreement, withdrawn.

Amendments 244, 245, 169, 246 and 170 not moved.

Section 87 agreed to.

Section 88 agreed to.

Section 89—Marine management schemes: consultation etc

Elaine Murray: Given the assurances that the cabinet secretary has given on the record, I will not move amendment 191.

Amendment 191 not moved.

Section 89 agreed to.

Section 90 agreed to.

After section 90

The Convener: The next group is on marine protection and enhancement: nature conservation MPAs—duty to review achievement of stated objectives. Amendment 247, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray: Currently, there is no requirement for the sites in question to be monitored but, without monitoring, it will almost certainly be impossible for the Scottish ministers to report on the extent to which the stated conservation objectives have been achieved. Amendment 247 will introduce a requirement to carry out appropriate monitoring of nature conservation MPAs by directing the appropriate statutory conservation body to do so.

The committee's stage 1 report stated:

"The Committee recommends that the Cabinet Secretary consider the merits of the Bill requiring MPAs to be regularly monitored and reviewed following designation."

The statutory conservation body—SNH or the Joint Nature Conservation Committee—will be required to assess the extent to which the conservation objectives of the designated MPA have been achieved. It may also assess the contribution of any relevant marine management schemes to the objectives. The review must take place every five years.

I move amendment 247.

Bill Wilson: It is important that we have a monitoring system in place, because it is clear that setting up MPAs and not monitoring them would make no sense. We all know about mackerel migrations, for instance. It would be rather silly to have an MPA that is in the wrong place because species have moved. I hope that a clear statement will be made on the intent to monitor.

Liam McArthur: I echo what Elaine Murray and Bill Wilson have said. We may have different concerns that we want to be captured in a review, but the only way of achieving that and providing an element of assurance for those affected is through a review system. A five-yearly review seems to be in line with precedent.

Richard Lochhead: Section 91 already provides for the Scottish ministers to report to Parliament, including on the extent to which the stated conservation objectives of an MPA have been met. Reporting will be done at six-yearly intervals, beginning in 2012. In practice, that will involve a programme of monitoring so that the reporting duty can be properly met. The process will be led by Marine Scotland, and there will be input and support from SNH, the JNCC and others who can contribute reliable scientific data.

The amendment would require additional monitoring that is above and beyond what section 91 requires. Further, it would require an assessment on a different timescale from the one in section 91, which could lead to more duplication and additional bureaucracy. As monitoring is already an integral part of the bill, I urge the committee to resist the amendment.

Between now and stage 3, I am happy to reflect on the concerns from several members about the monitoring mechanisms and to discuss whether we should toughen the bill. However, I hope that I have assured members that monitoring will be in place and that ministers will report to Parliament on the results of that.

10:15

Elaine Murray: The committee discussed the subject at stage 1 and expressed a number of concerns, which have been articulated today. I appreciate the opportunity for further discussion with the cabinet secretary before stage 3 on the intention to lodge an amendment, if that is possible. Given that we might find something more appropriate, I am content not to press amendment 247.

Amendment 247, by agreement, withdrawn.

Section 91—Reports to Parliament

The Convener: The next group is on definitions. Amendment 175, in the name of the cabinet secretary, is grouped with amendments 79 to 81, 87, 176, 90, 91, 94, 95 and 177.

Richard Lochhead: The amendments are minor and technical. Amendments 175, 79, 80, 176 and 94 will ensure that references to the UK Marine and Coastal Access Act 2009 are phrased appropriately throughout the bill.

Amendment 95 will insert a definition of "marine installation" in section 146. Amendment 90 will remove the definition of that term from section 141.

Amendments 87 and 91 will bring the Scottish provisions on enforcement into line with the UK act.

Amendment 177 will insert the definition of "UK marine area" into section 146.

Amendment 81 will insert a definition of the term "animal" for the purposes of part 4. That definition will ensure that all stages of an animal's life cycle are included in the definition of an animal, because it might be necessary to protect an animal at one of its immature life-cycle stages—for instance, when animals are in the form of eggs or larvae.

I move amendment 175.

The Convener: Members have no comments. Does the cabinet secretary have anything to add?

Richard Lochhead: I hope that I am not asked any questions.

Amendment 175 agreed to.

Amendments 248 to 250 not moved.

The Convener: The next group is on marine protected areas: reports to Parliament. Amendment 192, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur: I have pleasure in speaking to amendment 192, which would introduce the welcome concept of learning through doing. Section 91(3) requires ministers to report on the extent to which an MPA's stated conservation objectives have been achieved. International best practice has established the need for that evaluation process to involve testing assumptions, learning from the results of such testing and subsequently revising and improving management practices where appropriate. In the brave new world, we are all to call that adaptive management, but I much prefer the concept of learning through doing. I encourage colleagues to follow international best practice by supporting the amendment.

I move amendment 192.

The Convener: I call the cabinet secretary—*[Interruption.]*

Richard Lochhead: I am sorry, convener—I am suffering a wee bit as I have a cold coming on.

I agree in principle that it would be sensible to amend section 91 to provide that reports to Parliament should include details of any amendments to marine conservation orders or marine management schemes, so I thank Liam McArthur for lodging amendment 192. However, the amendment is limited to changes that result from monitoring. It might be preferable to take a more comprehensive approach of reporting all amendments to MCOs and management schemes from all causes. I am willing to lodge a stage 3 amendment to develop Liam McArthur's proposal, perhaps in a different format, if he agrees to withdraw amendment 192.

Liam McArthur: I welcome the cabinet secretary's embrace of learning through doing and his wish to learn more through doing more. On that basis, I will not press amendment 192.

Amendment 192, by agreement, withdrawn.

Amendments 171 to 173 moved—[Richard Lochhead]—and agreed to.

Section 91, as amended, agreed to.

Section 92—Grant of certain licences under Wildlife and Countryside Act 1981

Amendments 79 and 80 moved—[Richard Lochhead]—and agreed to.

Section 92, as amended, agreed to.

Section 93 agreed to.

Section 94—Interpretation of Part 4

Amendment 81 moved—[Richard Lochhead]—and agreed to.

Amendment 251 not moved.

Section 94, as amended, agreed to.

After section 94

The Convener: The next group is on marine litter strategy. Amendment 272, in the name of Robin Harper, is the only amendment in the group.

Robin Harper: Amendment 272 would require the Scottish ministers to develop and co-ordinate a comprehensive strategy to deal with the problem of marine and coastal litter.

Earlier this year, I lodged motion S3M-3900, which called for such a strategy. I was pleased that the motion received cross-party support, including support from Elaine Murray. The committee commented on marine litter in its stage 1 report and invited the cabinet secretary

"to clarify whether he considers current enforcement provisions on marine littering are sufficiently robust".

Current provisions are not sufficiently robust, which is unfortunate. Despite excellent voluntary schemes, such as the fishing for litter initiative, levels of marine litter continue to rise throughout the UK and are at an all-time high. In the context of the highest levels of marine litter that have ever been recorded, Scotland has the highest density in the UK. The results of last year's excellent beachwatch survey, which was carried out by the Marine Conservation Society, showed that our sewage-related debris levels are three times the national average. Most embarrassing, the highest point source is the general public.

As the Solway Firth Partnership said when it gave evidence to the committee,

"The issue needs resourcing, and an organisation needs to be prepared to take responsibility."—*[Official Report, Rural Affairs and Environment Committee, 22 June 2009; c 1786.]*

Similar arguments have been made by the Marine Conservation Society and Surfers Against Sewage. Both organisations have campaigned hard on the issue for many years and are currently running popular online petitions that call for a strategic approach to be delivered by a lead organisation.

Amendment 272 would put the required responsibility for developing and implementing a marine and coastal litter strategy on the Scottish ministers, who have powers to deal with the main point sources and to co-ordinate the various organisations that would play a part in reducing marine littering. The objective of the strategy would be

“to reduce the total load of marine litter in the marine environment, and ensure that the properties and quantity of marine litter is such as to be below a level which causes an adverse impact on—

- (a) the health of the marine environment,
- (b) navigational safety.”

The Scottish ministers would have to consult all relevant stakeholders during the drafting of the strategy and report to the Parliament on its progress every two years.

We need to step up our game and change our approach. In the marine strategy framework directive, a descriptor of good environmental status is:

“Properties and quantities of marine litter do not cause harm to the coastal and marine environment.”

The bill is the best place for enabling legislation to achieve such a status. Not only is marine and coastal litter unsightly, it is strangling our seas. Some 94 per cent of all North Sea fulmars have some sort of plastic in their stomachs and 144 marine species have suffered from entanglement. We need to change our approach to tackling the issue and a co-ordinated strategy, led by ministers, is the best way to achieve that.

I move amendment 272.

Liam McArthur: Having been responsible for raising the issue of marine litter at stage 1, and in light of the recommendation in the committee's stage 1 report, I am inclined to support the principle behind amendment 272. Given the evidence about the increasing amounts of marine litter, notwithstanding the efforts to deal with it that Robin Harper mentioned, there is a need for more effective co-ordination. I am a little concerned by some of the wording in the amendment—in particular, subsection (4) appears to be rather all-encompassing—so I will be interested to hear what the cabinet secretary says. I encourage him to consider what can be done on the issue ahead of stage 3.

John Scott: I agree with what Robin Harper and Liam McArthur have said. As MSP for Ayr, which is in effect a maritime constituency, I know that we have enormous amounts of litter on our beaches in Ayr and, I think, across Scotland. If something can be done, it is certainly time that we addressed the issue. I am not sure that amendment 272 is necessarily the right way of going about that, but I

would certainly be grateful if the minister could introduce provisions at stage 3 that might at least start to address the problem.

Peter Peacock (Highlands and Islands) (Lab):

As others have said, Robin Harper has raised an important issue of principle. I completely understand what he is trying to achieve by amendment 272, but I am not clear that it would achieve what he is hoping for. For example, subsection (2) would require ministers to set out a strategy to

“ensure that the properties and quantity of marine litter is such as to be below a level which causes an adverse impact”,

but I am not sure that, in legal terms, a strategy could ensure that that would happen. The amendment is unclear about who would do the work to remove the litter, how that would be done and how the work would be funded. Like Liam McArthur, I think that more work requires to be done on this important issue, so I will be interested to hear what the cabinet secretary says. I hope that something further can be done to clarify the matter at stage 3. However, I do not think that amendment 272 fits the bill.

Elaine Murray: As Robin Harper said, I signed his motion earlier in the year and—like Liam McArthur, John Scott and Peter Peacock—I support the idea of a marine litter strategy. However, I have concerns about introducing provisions at stage 2 that we cannot take evidence on and examine in detail. Like others, I am also not convinced that amendment 272 would necessarily do what we want it to do. I am a bit concerned—as I said last week about the surfing amendments—about introducing major policy changes at stage 2 on which we have not had the chance to do the stage 1 investigation of evidence. However, I would like to hear what the cabinet secretary intends to do about a marine litter strategy, because we definitely need to take the issue seriously.

Richard Lochhead: I share Robin Harper's view and the view of committee members that marine litter is a significant problem. As we all know, anyone who walks on any Scottish beach will come across a variety of items within a matter of yards. I participate in beach clean-up projects in Spey Bay and Lossiemouth in my constituency and I am sure that members who represent coastal constituencies do likewise in their areas.

Let me put on record that I am happy to develop a marine litter strategy for Scotland. My initial thoughts are that we will develop the strategy in partnership with stakeholders, including the Marine Conservation Society, whose representative Calum Duncan is in the public gallery. I should say that we have allocated £10,000 to the Marine Conservation Society for its

cool seas campaign in 2010. According to the beachwatch survey that the society carries out every year, there were 2,581 items of litter per kilometre on the Scottish beaches that were surveyed in 2008. We all agree that that is wholly unacceptable and we must take action to address it. In my view, the development of a litter strategy will help the implementation of the marine strategy framework directive and the achievement of good environmental status.

10:30

However, devolved powers for marine litter are limited to litter sourced from land. A significant amount of litter comes from ships, and the prevention and control of such marine pollution are reserved to the UK Government. The Parliament therefore cannot legislate on marine litter from ships, nor can we control international litter, which floats across the sea to Scottish shores from other countries. For those reasons, I see little point in having a duty to have a litter strategy in the bill.

Nonetheless, we will all agree that the split between devolved and reserved issues should not prevent us from talking to our neighbours about marine litter and its impacts. I ask Robin Harper not to press his amendments, but I give a commitment to the committee that we will take forward a marine litter strategy. We look forward to the input of the committee, of Robin Harper and of other members with an interest in the issue.

Robin Harper: I derive great comfort from the unanimous view of the committee that there is a problem to be addressed and from the minister's commitment to producing a strategy, which is what the amendment is basically about.

As far as seaborne litter, or jetsam, is concerned, we could do more to encourage ships to land litter when they come into foreign ports. I ask the minister to address the issue in some way in the strategy.

I am content to withdraw the amendment on the grounds that work is being done, and we can always return to the issue at stage 3 if that seems best.

Amendment 272, by agreement, withdrawn.

The Convener: The next group is on cetacean sanctuary. Amendment 273, in the name of Robin Harper, is the only amendment in the group.

Robin Harper: Amendment 273 names the entire Scottish marine area as a cetacean sanctuary. Scotland's waters are home to more than 20 varieties of cetacean, including harbour porpoises; common bottlenose, striped, Risso's and Atlantic white-sided dolphins; and minke, pilot and killer whales. Less-common sightings include humpback, fin and sperm whales.

I acknowledge the relatively high level of legal protection that is already provided for cetaceans in our waters, but despite that, cetaceans face a growing number of problems. Designating our waters as a cetacean sanctuary is designed to address those issues in three ways. First, such a designation would highlight the importance of Scotland's seas to cetaceans, and it could attract new research funding. Lack of scientific understanding continues to hamper our conservation efforts. Entanglement and acoustic disturbances remain real problems, about which we actually know very little. The introduction of a proper strategy to deal with marine litter will help with the entanglement issue, but an increase in research funding is also essential. If designating our waters as a cetacean sanctuary would help, I am all for it. Subsection (2) of the new section that amendment 273 would introduce would assist with that, and with increasing our knowledge and understanding of how our activities can impact on cetacean welfare.

Secondly, the measure would be a huge boon for the ever-growing ecotourism industry. Whales and dolphins are Scotland's number 1 wildlife tourist attraction, and the potential for the Scottish industry is huge. In rural areas, whale and dolphin watching can provide as much as 12 per cent of local income, with wildlife tourism operators being mostly local people. Each operator supports up to five full-time equivalent jobs. Globally, the whale-watching industry is estimated to be worth \$2.1 billion, and it is enjoyed by more than 13 million people in more than 119 countries every year.

That brings me neatly to my third objective. By designating our waters in the way that I propose and by highlighting the importance of cetaceans, we will be sending a message to the few countries that continue to hunt whales and slaughter dolphins. We will be making it clear that we find their behaviour unacceptable, and we can show them that these animals are worth more alive than dead. There needs to be a real international effort to step up cetacean protection.

I fully support the idea of marine reserves on the high seas. The whales that are slaughtered by Norway, the Faroe Islands and Iceland—which recently upped its quota because, apparently, minke whales are also to suffer the consequences of the banking crisis—are the whales that visit our waters. We must make it clear that cetaceans are a key element of the ecology of our oceans. Their numbers, overall, have reduced so much that no hunting of any species can be justified on any grounds whatsoever.

We should give our coastal communities a boost through tourism, increase our understanding of, and research into, cetaceans and make it clear

that in Scotland's waters those animals are valued more alive than dead and will, therefore, receive the best levels of protection that we can provide.

I move amendment 273.

Peter Peacock: I completely understand what Robin Harper is trying to achieve. I can watch bottlenose dolphins just a few miles from where I live, and I appreciate the magnificence of those creatures and many others and the need to do as much as we can to protect them. I wish that Robin Harper had spoken to us all about this a good deal earlier so that we could have worked collectively on something that would achieve his objectives.

However, I fear that his amendment 273 would not achieve anything. It is actually rather curious. It would certainly say that Scotland's waters are a cetacean sanctuary, but it seems that that is all that it would do. I am not sure what the purpose of the amendment is if it would not have any practical effect.

The second part of amendment 273 seems to involve some sort of self-reporting system. It talks about action that

"may have resulted, or may have been likely to have resulted in the unintentional killing or injury of a cetacean"

but it does not talk about disturbance, unless we are to assume that disturbance equals injury. I am not clear, therefore, that the amendment would give cetaceans any more practical protection than they would have under other provisions in the bill.

It might be that the objectives could be met by another amendment at stage 3, but I do not think that amendment 273 would have the effect of what Robin Harper seeks to achieve.

Elaine Murray: I share concerns about the hunting of cetaceans and so on and I understand what Robin Harper wants to achieve. However, I am not sure whether the term "sanctuary", as defined in law. Would designating an area as a sanctuary ensure that issues of entanglement, acoustic problems and so on would actually be addressed?

I echo what Peter Peacock said about the issue being raised late in the day. We have not had time to consider the best way in which to take it forward.

I wish that international pressure would change the minds of countries that still hunt whales but, unfortunately, they have been extremely resistant to international pressure in the past and I am not sure that the designation of the Scottish marine area as a cetacean sanctuary would impact much on their views.

John Scott: I agree with Peter Peacock, Elaine Murray and, indeed, with Robin Harper in terms of the concept behind amendment 273, but I am not

certain that the amendment necessarily gets the approach right, and we have heard no evidence on the matter. It ties in with the overall issue of protection of some of our endangered species, such as the ones that sea anglers seek to catch. I am enthralled by the concept but I am not sure how we can take the matter forward. The cabinet secretary might have some ideas.

Liam McArthur: I echo Elaine Murray's sentiments about the hunting of cetaceans and agree with others that the matter has been raised late in the day. Proposed new subsection (2) offers some potential to tighten up the situation and perhaps achieve something through the reporting mechanism, but I am struggling to see that it provides any more protection than is already provided under European legislation. Like John Scott, I wonder whether the cabinet secretary might be able to pull a rabbit out of a hat.

Karen Gillon: Or a dolphin.

We should perhaps report back to the Standards, Procedures and Public Appointments Committee. At this stage in our deliberations, it is too late for us to consider fully the amendments that have been lodged. They are on important issues, but we have not been able properly to take evidence on them in the timeframe that has been available to us. Perhaps we need to flag up issues in respect of stage 1 to that committee.

I would be happy to support a measure that would do something practical to protect cetaceans, but I am not convinced that amendment 273 would do that. Like Elaine Murray, I am not convinced about what proposed new subsection (1) would do or what it would mean, other than being a nice wee phrase. What would it actually achieve? Proposed new subsection (2) would not be sufficiently robust to provide any protection to anybody because it would rely on people's good will. If somebody has gone to the bother of injuring or killing a cetacean, their good will might not be as forthcoming as the amendment suggests. If we want to do something to protect cetaceans, it would need to be more stringent than what is proposed in amendment 273. Like other members, I am not sure how we will achieve that ahead of stage 3, given our inability to take further evidence at this late stage in the proceedings.

Bill Wilson: I certainly would not disagree with any of Robin Harper's stated aims and I agree with most of what he said. However, I have one concern. We hope to exploit the seas for renewable energy through wave, wind and tidal power, which have acoustic effects, the exact nature of which are not yet known, so I am concerned about the whole of Scotland's seas becoming a sanctuary. We might find that we could not create wave, wind or tidal power sources if the whole of Scotland's seas were to be a

cetacean sanctuary. If there was a dolphin in the area that we wanted to develop, we would lose that opportunity. We need a better understanding of exactly what we intend to achieve and of the acoustic effects of wave, wind and tidal power.

The Convener: Over to you, cabinet secretary. Do you have the rabbit in your hat?

Richard Lochhead: I fear that I do not have a rabbit or a porpoise in my hat.

Amendment 273 proposes that the bill should include a declaration that the Scottish marine area be designated as a cetacean sanctuary for porpoises, dolphins and whales. The committee and the Scottish Government want to protect Scotland's spectacular marine wildlife and the benefits that they bring, such as expanding ecotourism. However, we do not think that such designation by itself would create any new legal duties and we cannot see what added value it would offer. Cetaceans already enjoy the highest levels of legal protection and are protected under the European Union habitats directive. The habitats regulations make it a criminal offence to commit acts that result in the deliberate or reckless killing, injuring, taking or disturbance of cetaceans in all waters out to 200 miles.

The second subsection that amendment 273 would insert would add a requirement to report to Scottish Natural Heritage the unintentional or incidental killing or injuring of cetaceans. That is already covered by the habitats directive and is delivered through the United Kingdom cetacean bycatch monitoring scheme, which employs independent scientists to collect information on incidental killing in our fisheries. It is not clear what value the subsection would add to the process that already exists. In addition, it would be extremely difficult to enforce such a reporting requirement in practice, especially considering that much of the incidental killing is likely to occur at sea.

I appreciate why Robin Harper would think that having a cetacean sanctuary might encourage ecotourism, but the fact is that ecotourism and dolphin watching, which Peter Peacock and I enjoy in the Moray Firth, is already taking off in Scotland.

Designation of our waters as a sanctuary might also discourage key marine industries, as Bill Wilson suggested, including marine renewables and oil and gas, from exploiting the unique opportunities that are offered in our waters. They might seek out alternative locations, such as Portugal, Ireland or Norway, which have no similar designations.

For all those reasons, I ask the committee to resist amendment 273.

Robin Harper: I thank the cabinet secretary for his remarks. Amendment 273 was in no way meant to present problems for the offshore wind and wave industry; it is about intentional harm and killing. I was quite clear in my mind that all these protections exist. The amendment is about badging our legislation with a simple statement that would attract international acclaim and make clear that its point is to protect the overall ecology of our seas, not just whales.

Given that committee members and the cabinet secretary have evinced considerable sympathy for the purpose of the amendment, I will not press it. I bought a bottle of champagne yesterday, hoping to open it after 5 o'clock today, but I will not do that. I shall save it for stage 3, because I will lodge an amendment at that stage in the hope that some form of words can be found that will not further complicate matters, but will give the bill a really good badge and encourage the rest of the world to realise how important whales are.

Amendment 273, by agreement, withdrawn.

10:45

The Convener: The next group is on protection of marine European protected species. Amendment 274, in the name of Robin Harper, is the only amendment in the group.

Robin Harper: It is important that the committee and the cabinet secretary be aware of the remaining concerns in this policy area. Amendment 274 would further strengthen the provisions of amendment 273 by requiring Scottish Natural Heritage to develop, for the Scottish marine area, guidance on the offence of intentional disturbance and injury, and on the prevention of all disturbance and injury of marine European protected species, in line with guidance that the Joint Nature Conservation Committee is developing for the United Kingdom offshore area of England and Wales.

We are putting ever-increasing demands on our marine environment in a huge variety of ways. The proposed guidance should help all users of the marine environment to carry out appropriate environmental assessments in order to prevent adverse impacts on marine life. The JNCC guidance does not cover the Scottish marine area, as our habitats regulations are rather different from those in the rest of the UK. In fact, we in the Whale and Dolphin Conservation Society argue that the legislation in Scotland will be stronger through its protection of individual animals as opposed to groups. Therefore, it not only makes sense to follow England and Wales by developing our own guidance, but it is perhaps more appropriate to the Scottish context due to our stricter regulations. I believe that the bill is the

most appropriate place for such an enabling measure, but if the cabinet secretary disagrees, will he put on record his commitment to producing guidance of that sort?

I move amendment 274.

Peter Peacock: Robin Harper indicated that amendment 274 is linked to amendment 273. With amendment 273 having been withdrawn, amendment 274 looks rather incongruous standing on its own.

I do not have a difficulty with subsections (1) to (4) of the proposed new section that amendment 274 would introduce. However, proposed subsection (5) would undo the good work of the first four because it says that, even if a person ignored all the provisions in the guidance, that would

“not in itself render the person liable to proceedings of any sort.”

That rather demands that we ask why there should be guidance if there is no sanction for not complying with it. That would undermine the guidance.

Also, proposed subsection (6) would introduce the concept—which I do not really understand—of something

“tending to establish liability.”

To be frank, I am not sure that that would stand up in court. Paragraph (b) of that proposed subsection also uses the phrase “tending to negative liability”: I am not sure that there is a legal concept of “negative liability”.

I would go along with the first four proposed subsections, but subsections (5) and (6) significantly undermine the amendment’s credibility. Perhaps Robin Harper could consider that. If he plans to reintroduce amendment 273 at stage 3, perhaps he could consider it in tandem with this one.

Elaine Murray: I am grateful for Robin Harper’s explanation, because I was not sure why amendment 274 had been lodged at all—I was certainly not aware that we did not have specific Scottish guidance on marine European protected species, so I would be interested to hear what the minister’s intentions are in that regard.

Along with Peter Peacock, I simply do not understand proposed subsections (5) and (6); I found them to be quite confusing. Their wording would tend to make me not amenable to agreeing to amendment 274.

Liam McArthur: As Elaine Murray does, I suspect that amendment 274 probably serves a useful function as a probing amendment. In relation to Peter Peacock’s comments, I am

slightly wary about subsection (1), which talks about

“the protection from all injury and disturbance”.

That is an issue that we will come to shortly, because there are practical difficulties with that wording.

On subsection (5), Peter Peacock criticised Robin Harper for the amendment’s lack of teeth: previously, Mr Harper was looking to bang people up for two years for failure to comply. The middle ground needs to be found. It will be useful to hear what the minister has to say.

Richard Lochhead: Robin Harper’s amendment 274 proposes placing a requirement on SNH to prepare and issue guidance on disturbance for marine European protected species, including cetaceans, marine turtles and so on. European protected species are listed in the Conservation (Natural Habitats, &c) Regulations 1994, which of course implement the EU habitats directive. The regulations include several species, both marine and terrestrial. The marine species include all species of cetacean—dolphins, porpoises and whales—marine turtles and the sturgeon. I mean the fish, of course.

The Scottish Government is aware of the Joint Nature Conservation Committee draft of such guidance for England and Wales and it is actively considering the development and publication of equivalent guidance on disturbance issues for marine European protected species. I hope that that gives Robin Harper the assurance that he is looking for. The guidance will clarify the requirements of the legislation and address issues particular to Scottish waters. I am happy to assure the committee that the Scottish Government, in consultation with others, will develop and publish such guidance.

I point out that, if amendment 274 was to be agreed to, the effective implementation of the habitats directive would appear in two separate pieces of legislation—the bill and the regulations to which I referred—which would be confusing for users of the sea who wish to refer to the law to find out about the issue. For those reasons, I ask the committee to resist amendment 274, if it is pressed.

Robin Harper: Given the assurances from the cabinet secretary and the concerns about the subsections subsequent to subsection (4), I seek to withdraw amendment 274.

Amendment 274, by agreement, withdrawn.

Section 95—Offence: killing, injuring or taking seals

The Convener: The next group is on conservation of seals: offences. Amendment 275,

in the name of Elaine Murray, is grouped with amendment 276.

Elaine Murray: In the committee's stage 1 report, we invited the cabinet secretary to consider including in the bill an offence of intentionally or recklessly harassing seals, although we recognised that careful drafting would be required to address the complexities that surround the issue, including the risk of unintended consequences. Other species are already protected from disturbance and harassment. An offence of disturbing European protected species, which were alluded to a few moments ago and which include dolphins, porpoises and otters, already exists under the Conservation (Natural Habitats, &c) Regulations 1994. Section 9 of the Wildlife and Countryside Act 1981 provides an offence of disturbance of specific animals. That section was amended by the Nature Conservation (Scotland) Act 2004 to include cetaceans and basking sharks. Analogous legislation in Northern Ireland and the Isle of Man already provides that seals are protected in those areas.

Amendment 275 proposes the insertion of the words "disturbing" and "harassing" in the definition of the offence. In evidence at stage 1, Professor Boyd of the sea mammal research unit stated:

"I would broadly support such a provision. A possible consequence of tighter management could be that harassment becomes a tool that is used in certain quarters for trying to reduce the number of seals in a particular area. Repeated harassment of animals at haul-out sites could be a problem in the future."—[*Official Report, Rural Affairs and Environment Committee*, 1 September 2009; c 1844.]

The cabinet secretary has advised the committee that a power to protect seals from disturbance or harassment already exists under regulation 28 of the Conservation (Natural Habitats, &c) Regulations 1994 in relation to European sites. However, that regulation does not refer to European marine sites and it permits the making of byelaws, rather than providing an outright prohibition of the disturbance of the relevant species.

On harassment, the committee was concerned to ensure that acts intended only to deter seals from causing damage to fisheries or fish farms were not included and therefore could be used to avoid the need to adopt shooting, and that such methods should not be criminalised as a result of the inclusion of the word "harassment".

Although some non-lethal methods used by fish farms or some river fisheries, such as acoustic deterrent devices, are aversive for seals, it would not amount to harassment. The definition of "to harass" in the "Oxford English Dictionary" is to

"torment (someone) by subjecting them to constant interference or intimidation",

while "to deter" means to

"discourage from doing something through fear of the consequences"

or to

"prevent the occurrence of."

Concerns were expressed that people who disturb seals unintentionally—for example, by walking on a beach near a seal colony—might be criminalised. The Wildlife and Countryside Act 1981 allows for the defence of incidental results where accident or injury is unavoidable. Walking on the beach would not be tantamount to subjecting the seals to constant interference or intimidation.

Haul-out sites—a recognised definition with respect to seal colonies—are areas on land that seals use for breeding, pupping or resting. When seals perceive a threat they race into the water, which might result in pups and mothers being separated, aggressive behaviour between mothers trying to return to their pups and, in more extreme cases, abandonment of the site. Amendment 276 proposes to make obstructing access to a haul-out site an offence. Obstructing access might result in mothers being unable to return to their pups and their pups being abandoned. In fact, it might result in the entire site being abandoned. The concern is that obstruction of access to haul-out sites could be used to get rid of seal populations by frightening the seals away. Therefore, obstruction could be used by those who wish to deter seals from being in a particular area and it would not be as seal-friendly a method of deterrence as some of the other methods that could be used.

We want to discourage people from using alternative methods of getting rid of seals. If you look at some of the things that have happened recently, such as the slaughter of seal pups in the Shetlands earlier this year, it is clear that some people are prepared to use unsavoury methods to rid an area of seals. Indeed, I know that in Fife Council—Alasdair Morgan might be more aware of this than I am—concern has been raised that various seal colonies seem to have disappeared from the shore. That might be due to disturbance of the colonies in the manner that I described.

At stage 1, the committee had sympathy for the intention of deterring harassment and disturbance of seals, but it was concerned about how that could be achieved. I admit that what I propose might not be the right way of doing that—I might not have used the correct terminology or my amendment might not be in the right part of the bill—but I invite the committee and the cabinet secretary to consider whether there are alternative ways of achieving the amendment's aim. There is a concern that if we were to introduce some of the other methods that we propose in the bill, people

might resort to harassment and disturbance as a method of seal control.

I move amendment 275.

Liam McArthur: I support what Elaine Murray said and what she is trying to achieve through amendment 276, but I have some concerns about amendment 275. I well understand the definition of “harassment”; it is not only Alasdair Morgan who has access to the “Collins Dictionary”.

John Scott: The “Chambers Dictionary”.

Liam McArthur: Sorry—the “Chambers Dictionary”. I am concerned about the definition of the act of disturbing seals. As I mentioned at stage 1, as a regular dog-walker on Orkney beaches, I am reluctant to criminalise myself or to have a hand in shaping legislation of which I will immediately fall foul. That was acknowledged by Elaine Murray in her concluding remarks. It might be that another formulation of the wording could achieve the intention without having the unintended consequences that the committee was concerned to avoid in its stage 1 report.

Alasdair Morgan (South of Scotland) (SNP): I have a concern about amendment 276 because it proposes the creation of an offence. Although a seal haul-out site can be defined by naturalists when seals are using it, I wonder whether it can be defined legally. How long does a seal haul-out site last and when does it first become one? Elaine Murray referred to seal haul-out sites being abandoned. It is a bit difficult to define legally things that might be transitory, even if that transition might take months or years.

11:00

John Scott: I have sympathy with the sentiments that Elaine Murray expresses in her amendment, if not necessarily with the amendment itself. There is an undefined or inadequately defined difference—notwithstanding quotations from dictionaries—between harassment and deterrence. That is key to all this. Perhaps a definition can be offered in guidance, but I am not sure. A balance must be struck in defining the difference between harassment and deterrence and, at the moment, that is not done clearly enough.

Bill Wilson: I support the amendments in principle. My concern is the wording. For example, on amendment 276, if a single seal regularly hauls out at a point, is that a seal haul-out site? If it is, there will be rather more seal haul-out sites than we can reasonably regulate or manage. The ideas are good, but I want to be assured that we will get the wording right so that we do not create lots of unintended consequences.

Peter Peacock: Elaine Murray raises a very important point about the bill and the amendments generally tightening up the definition of disturbance and of how someone may try to eliminate a problem that might exist with seals. If tightening up on those fronts creates the unintended consequence of disturbance and harassment being used as techniques, that would be disturbing in its own right. Elaine Murray is right to highlight that, and it is important to address such issues. I am interested to hear what the minister has to say about that, because I suspect that more work might need to be done to ensure that we avoid the danger of unintended consequences.

Richard Lochhead: We appreciate the principles behind amendment 275, but we cannot support it. It is clear that the protection of fish farms from seals and the protection of seals from renewable energy developments will involve deterrence. Methods that seek to deter a seal might also harass or disturb a seal. By definition, non-lethal measures are designed to stop a seal from doing what it wants to do. The aim might be to deter, but the outcome might be disturbance or harassment. If we agree to amendment 275, will we criminalise what might be our best approach to protecting seals?

That highlights a potential unintended consequence of the amendment. Harassing or disturbing a seal away from its chosen route—which could be through an underwater turbine—seems to me to be a better outcome than allowing the seal to be killed or injured, and perhaps suffering a slow and painful death. We need to consider the balance between deterring, harassing and disturbing. There is a fine legal line between those three concepts, and further consideration is required before we can reach a settled conclusion. Of course, there might be a case for issuing guidance.

In addition, the habitats regulations already provide powers against molesting or disturbing seals in special conservation areas. The habitats directive deliberately offers more limited protection for seals than for cetaceans in recognition of the need to balance the interaction between seals and fisheries, and amendment 275 would remove that important distinction. For those reasons, I ask Elaine Murray to withdraw amendment 275.

Section 95 sets out offences in respect of seals. We are not convinced that there is a need for amendment 276 and the new offence that it would create of obstructing access to haul-out sites, or locations such as beaches, rocks and skerries where seals haul out and congregate between feeding trips. It is not clear what exactly would constitute that offence. The wording of the amendment is wide, and the effect could be to

criminalise many existing activities. The habitats directive provides protection for the most important seal haul-out sites, and I am concerned that amendment 276 would gold-plate European Community legislation.

We are also concerned about the potential consequences for many legitimate activities. For example, amendment 276 might restrict the activities of wildlife tourism operators around seal haul-out spots, even though seals were not being disturbed. It could also significantly limit public access to and leisure activities on the Scottish coastline and it might hinder or prevent developments, including the development of marine renewables, around the Scottish coast.

The issue is best addressed through the marine planning processes, which can consider seal conservation in the wider context of all activities in the marine and coastal environment. I urge the committee to resist amendment 276.

Elaine Murray: I will respond to some of the points that were made. I tried to describe the difference between disturbance and harassment by saying that harassment involves continued activity to try to dissuade animals from being in a certain place. I do not think that Liam McArthur would be guilty of the offence when he walked his dog on the beach—unless he deliberately encouraged his dog to chase the seals every morning.

The haul-out sites that seals use for breeding, pupping, resting and sometimes for keeping warm tend to be occupied not by single seals but by colonies, so it is unlikely that there is a multitude of sites where single seals haul out. Haul-out sites are where colonies go to do certain things. The intention behind amendment 276 is to prevent people from frightening seals into the water and then obstructing their return to land as a method of deterring them from using certain sites.

I will not press amendment 275 or move amendment 276 at this stage, because I want carefully to consider what the cabinet secretary and members said on the record. I will give the issue more consideration in advance of stage 3, in case a more appropriate approach can be taken.

Amendment 275, by agreement, withdrawn.

Amendment 276 not moved.

Section 95 agreed to.

Section 96 agreed to.

Section 97—Exceptions: licensed activity etc

The Convener: The next group is on seal licences: power to enter land to protect fisheries or fish farms from seals. Amendment 82, in the name of the cabinet secretary, is grouped with amendments 83 to 85.

Richard Lochhead: Amendments 82 to 85 are minor but important technical amendments, which are intended to make it clear that a seal licence and an authorisation to enter land are two separate things and that an authorisation to enter land does not on its own provide an exception to the offence of killing a seal. The amendments make it clear that unless the case is one of the humane killing of a seriously disabled seal, a licence to kill a seal is always required. The amendments are in line with the view that the committee expressed at stage 1.

I move amendment 82.

Amendment 82 agreed to.

Amendments 83 and 84 moved—[Richard Lochhead]—and agreed to.

Section 97, as amended, agreed to.

Section 98—Seal licences

The Convener: The next group is on seal licences: protection of health and welfare of farmed fish. Amendment 262, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray: Amendment 262 would ensure that, in addition to damage to fisheries or fish farms, consideration of the welfare of farmed fish could be a ground for granting a seal licence. Farmed fish become stressed when they are under attack from seals.

If the committee agrees to my amendment 278, the Scottish ministers will be required to be assured that all non-lethal alternatives have been tried and have failed—that will be the case with all applications for licences to kill seals to prevent serious damage to fish farms. Therefore, amendment 262 should not increase opportunities to kill seals. The approach acknowledges that fish farmers, like terrestrial farmers, have welfare responsibilities towards the creatures in their care.

I move amendment 262.

Bill Wilson: I am looking at amendments 262 and 277, which seem to be slightly contradictory. Amendment 262 would allow a licence to be granted to protect the welfare of farmed fish. I presume that that means that if fish were being frightened by a seal moving up to or attempting to get into a fish farm it could be argued that the fish were becoming stressed and a licence should be granted to protect their welfare. However, amendment 277 would allow the killing or taking of seals under a seal licence only after serious damage to the fish farm had occurred, if I am reading it correctly.

Elaine Murray: The amendments address two separate considerations. I should not talk about

amendment 277, because it has not yet been called, but it is intended to ensure that if, for example, a seal was passing a fish farm, people could not say, "There's a seal in the area and it is bound to damage the fish farm," and use that as an excuse to apply immediately for a licence. Amendment 262 is intended to ensure that if it could be proved, for example, that seals were hanging about the area and causing perhaps not serious damage but serious stress to the fish, consideration of the welfare of the fish would be a ground for granting a licence.

Richard Lochhead: Section 98 sets out purposes for which seal licences may be granted, one of which is

"to prevent serious damage to fisheries or fish farms".

There are unlikely to be situations in which a licence could be granted under amendment 262 but could not be granted under the existing provisions in section 98. Nevertheless, I want to ensure that the seal licence system addresses the needs of fish farms, including the need to protect the health and welfare of farmed fish, so I am happy to support amendment 262.

Members: Hooray!

Peter Peacock: We could borrow Robin Harper's champagne.

Amendment 262 agreed to.

The Convener: We are halfway through the groups of amendments, so we will have a break.

11:11

Meeting suspended.

11:19

On resuming—

The Convener: The next group is on seal licences: non-lethal alternatives. Amendment 277, in the name of Elaine Murray, is grouped with amendments 278 and 294.

Elaine Murray: When I spoke to amendment 262, I also spoke to amendment 277, the purpose of which is to clarify that a fishery or fish farm that applies for a seal licence must have suffered serious damage before the licence is granted. Seals may well be present in the area without causing damage. For example, they might be passing through, in which case clearly no one could claim that they needed to be killed.

It is reasonable to require an applicant to justify taking or killing a seal in his licence application. Seals must not be shot simply because they have approached a fishery or fish farm; there must be evidence that the animals pose a threat to the fishery or fish farm or that welfare issues are

involved, for example where stress is placed on wild or farmed stocks.

I understand that Scottish Government officials have indicated to Advocates for Animals that the Government proposes to grant annual licences on the basis of information about serious damage in the previous year. In a sense, amendment 277 clarifies the Government's intention in that respect.

Amendment 278 would add a requirement that the applicant demonstrate that all non-lethal alternatives had been tried and shown to fail before the licence application was made. In our stage 1 report, the committee stated that it saw

"no reason in principle why the requirement that the Scottish Ministers may only issue a license to kill or take a seal if there is 'no satisfactory alternative' to doing so should not apply in all areas".

It follows that seal licences should not be granted unless verification is provided that the latest available non-lethal, anti-predator measures, such as anti-predator nets and acoustic deterrent devices, have been tried and shown to fail. The argument applies to both conservation and animal welfare grounds.

Section 105 addresses the issue of non-lethal deterrents in relation to conservation. It states

"The Scottish Ministers must not grant a seal licence authorising the killing or taking of seals in a seal conservation area unless they are satisfied ... that there is no satisfactory alternative way of achieving the purpose for which the licence is granted".

Under proposed new subsection (3), which amendment 278 seeks to insert into section 98, Scottish ministers "must specify" the available and approved non-lethal methods. That would give clarity to users and help to ensure that no one who used those methods appropriately would be liable to be prosecuted for any of the offences listed in section 95. It also allows for the system to be updated as new methods are developed. In addition, proposed new subsection (3) qualifies the reference to "all non-lethal alternatives" in proposed new subsection (2)(b), which amendment 278 also seeks to insert into section 98.

Amendment 294 is consequential on amendment 278. It would require any application for a seal licence that was granted for use in a seal conservation area to meet the same criteria required in other areas, including the requirement under amendment 278—if agreed to—for non-lethal alternatives to have been tried and shown to fail.

I move amendment 277.

Liam McArthur: I am reassured by, and do not demur from, what Elaine Murray has said. In general, I support the sentiments that lie behind

her amendments. However, I have concerns that relate to issues that Bill Wilson raised when he spoke to earlier amendments. The committee has made it absolutely clear that seals should be shot only as a last resort, after all other alternatives have been exhausted, and only under very strict conditions. We are dealing with some of those conditions in this group of amendments and will deal with others in later groups.

Given the significant environmental impact that major escapes can have on the wider marine environment, I am a little worried by the drafting of amendments 277 and 278. I note that a licence would be granted only after

“serious damage to a fishery or fish farm”.

We cannot allow the situation to get to that point before action is sanctioned. Perhaps the drafting needs to be tightened up. I remain concerned about the implications and consequences of having to wait until that stage before action can be taken.

Bill Wilson: On proposed new section 98(2)(b), the committee agreed, as did I, that a new fish farm should be capable of trying all non-lethal alternative methods and that, if it cannot carry out many of them, it should perhaps not be sited in that location.

With regard to existing fish farms that cannot carry out some non-lethal methods, would they be unable to get a licence, even though they might have been in place for five or 10 years? Would that then lead us to Liam McArthur’s scenario, which involved an increased risk of damage and escapes?

Some amendments specify dates, such as 2010. That leads me to suggest that amendment 278 should either contain the word “practical”, which would mean that fish farms would not have to try impractical methods, or include a date, which would mean that we would be influencing what happens with new fish farms rather than existing fish farms.

It would be helpful to have clarification of those points.

Karen Gillon: I appreciate what Elaine Murray is trying to do in amendments 277 and 278. However, given the decision of the committee on amendment 262, we might need to reconsider the issue before coming to a final view on the matter at stage 3. If we are looking to protect the health and welfare of farmed fish, it might be necessary to take action before damage has occurred, rather than after. I appreciate that Elaine Murray is trying to ensure that people do not use any loophole in the bill as an excuse to kill seals when they present no danger. However, I suggest that the fact that we have agreed to amendment 262

means that we might wish to tighten up the wording of amendments 277 and 278 and lodge them again at stage 3.

Alasdair Morgan: I have three points of detailed concern.

With regard to amendment 277, do we have a legal definition of what “following” means? How much time would be allowed to elapse between the incident and the application for the licence? No time period is defined in the amendment.

I think that Elaine Murray implied that she thought that the Scottish ministers would specify in regulations different definitions of non-lethal alternatives for different circumstances. However, that strikes me as meaning that the regulations could specify non-lethal alternatives for each fish farm. As Bill Wilson said, certain methods might not be practical in certain geographical or other circumstances. That would mean that the regulations would have to be amended every time a new fish farm opened, which is not particularly practical.

Given the current effect of section 105(a), which says that a licence cannot be granted unless there is

“no satisfactory alternative way of achieving the purpose for which the licence is granted”,

the point seems to be covered already. I am not exactly sure what proposed new section 98(2)(b) would add to that.

Richard Lochhead: The new licence system will require from existing fisheries and fish farms evidence of previous instances of serious damage caused by seals and the effectiveness of non-lethal measures. That information will then be assessed against the general picture in the area. That might result in refusal of a licence application because the damage was not considered serious enough or because additional non-lethal measures were required.

Crucially, the general assessment process allows seal licences to be granted to newly established fisheries or fish farms that might not yet have been attacked, provided that they are sited in an area in which similar facilities have experienced seal attacks. I welcome the way in which Karen Gillon highlighted that important point.

Amendment 277 would restrict the ability of Marine Scotland to grant a seal licence to newly established fisheries or fish farms, since they would be unable to produce evidence of previous seal attacks, even if similar local facilities had been attacked.

I understand the intention behind the amendment. It seeks to ensure that a seal licence

is granted only when it is really required. However, the amendment would leave new fisheries or fish farms at risk of significant losses. I am sure that the committee is aware that new fish farms could face significant monetary costs as a result of damaged nets or cages or lost stocks.

There would also be potential environmental impacts from escaped farmed fish mixing with and contaminating the wild fish population with disease or parasites. For those reasons, I ask the committee to resist amendment 277 or Elaine Murray to consider withdrawing it.

11:30

Like amendment 277, amendments 278 and 294 would restrict Marine Scotland's ability to grant licences, as it would be able to grant them only to farms that had already been attacked or suffered losses. They would also introduce a new and tougher standard: fish farms would have to be able to demonstrate that all non-lethal alternatives had been tried and shown to fail. The principle behind the amendments is well intentioned, but they would set the bar too high. In particular, proposed new section 98(2)(b), on non-lethal measures, would effectively prevent the issuing of seal licences. The requirement to demonstrate that all non-lethal measures have been tried and have not proved to fail is much too strict. Non-lethal measures are continuously under development and testing and can be operational for prolonged periods before it becomes clear whether or not they work in particular locations or conditions.

Our policy is that non-lethal measures should be used wherever possible, and that seals should be shot as a last resort. The committee supported that policy at stage 1; it is also the policy on which the aquaculture industry's code of practice is based. However, not all non-lethal measures are useful in all situations against all seals. Acoustic deterrents, which might be effective, cannot always be used in some areas because of their possible impact on cetaceans, which is a theme that we have pursued in our discussion of previous amendments. Anti-predator nets cannot always be deployed because of risks to other species. Often, seals become used to acoustic deterrents and learn to ignore them over time. It is therefore likely that some limited seal management will be necessary, and we should allow for that.

The amendments could mean fisheries and fish farms investing major amounts of time and money in non-lethal measures without any guarantee that they will work; in the meantime, people would not be able to protect their livelihoods. For those reasons, we urge the committee to resist amendments 278 and 294.

Elaine Murray: On the issue of serious damage, as I said, the Government seemed to indicate that licences will be granted based on the previous year's evidence of serious damage, so amendment 277 is not necessarily out of kilter with the proposed mechanism for granting licences.

I appreciate that the wording of proposed new section 98(2)(b) causes some concern because of the reference to all non-lethal methods. However, the intention behind proposed new subsection 98(3) is that ministers should specify by regulation the types of non-lethal alternatives that would be appropriate in certain circumstances. I do not imagine that the Government would have to update the regulations every time a new fish farm came on board, but fish farms tend to be in particular locations that are appropriate to them, and within those areas there might be some guidance or regulation to indicate what methods were appropriate. Indeed, there would have to be guidance on appropriate, non-lethal alternatives to shooting. The intention behind amendment 278 is to put in place a regulatory framework that would specify the forms of non-lethal alternative appropriate to a particular type of fish farm in a particular type of location.

My intention is that such regulations would apply not just to new farms, but to any farms, including those that already exist. An awful lot of fish farms use other methods of control at the moment; they do not all take seals as a method of control. There is already good practice out there.

On Alasdair Morgan's points, I do not know whether there is a legal definition of "following"; there might be. The cabinet secretary might be able to tell us that, but I am certainly not aware of such a definition.

The point that I was trying to make about section 105 is that it refers only to conservation areas and not to the entire environment, and the committee's recommendation was that the provision should apply to the entire area, and not just to conservation areas.

On balance, however, I will not press amendment 277 or move the other amendments in the group. I would like to reflect on a number of points that have come up during the discussion. However, we might want to return to the issue at stage 3, and as there are concerns about wording, I might want to consider those concerns before I lodge further amendments.

Amendment 277, by agreement, withdrawn.

Amendment 278 not moved.

The Convener: The next group is on seal licences: circumstances in which licences may not be granted. Amendment 279, in the name of Robin Harper, is grouped with amendment 280.

Robin Harper: I hope that members are well aware of amendment 279 and its intention, on which the written evidence of previous months contained quite a lot of information. I have received many e-mails and several letters about the subject—the letters from Mr Terry Nutkins and Mr Brian May are in front of members. That correspondence is testament to the hard work of Advocates for Animals and the Seal Protection Action Group in raising the issue's profile. Amendment 279 also has support from the British Association for Shooting and Conservation Scotland and the Scottish Society for the Prevention of Cruelty to Animals.

Amendment 279 would prevent a seal licence from being granted in the period in which

“females are likely to be in an advanced stage of pregnancy or to have dependent pups.”

The breeding seasons for common seals and grey seals are different. The closed season for greys is from September to December and for commons is from June to August. Section 2 of the Conservation of Seals Act 1970 at least allows for closed seasons in principle. Only about a dozen closed-season licences are granted each year. The bill will not only remove closed seasons completely but bring fish farms into the licensing regime. That is a significant step backwards for seal conservation.

Seal pups of both species depend entirely for their survival on their mothers' fatty and protein-rich milk. If a pup loses its mother before the natural weaning process has taken place, it slowly starves to death, experiences stress and has increased susceptibility to pneumonia or septicaemia.

I have made it clear several times that I and the vast majority of the public are appalled by the prospect that pregnant or nursing seals would be shot. Such a practice is cruel and is not tolerated on land—cows that have just calved and ewes that have just lambed are not taken away for slaughter. Why should the situation be different for animals that are in the marine environment?

I move amendment 279.

Bill Wilson: I am aware that the cabinet secretary proposes monitoring of the seals that are shot. If the Government does not accept amendment 279 and finds that large numbers of lactating seals are being shot, does the bill contain the power to amend licences to introduce a closed season? If not, will the cabinet secretary reassure us that a stage 3 amendment will introduce a power to introduce a closed season should monitoring reveal that to be necessary?

Liam McArthur: I have a fair amount of sympathy for what Robin Harper's amendment

279 would achieve but, as I said in relation to earlier amendments, if we acknowledge the need to prevent or at least limit escapes from damaged nets, we must also recognise that such escapes might well occur in the breeding seasons to which the amendment refers. The amendment does not appear to distinguish between pregnant or lactating seals and other seals. I want a bit of reassurance about how we can address attacks on or serious damage to fish farms in the specified periods.

I have sympathy with amendment 280, as I had with amendment 276. However, the issues with the definitions of seal haul-out sites and whatnot are as pertinent to amendment 280 as they were to amendment 276.

Elaine Murray: Like Liam McArthur, I am sympathetic to the intention behind amendment 279. However, if the two periods in the amendment were taken together, there would be a closed period of around six months of the year, because the animals do not breed at the same time. A seal licence will specify the type of seal that can be taken, but how easy is it to distinguish between grey seals and common seals in such circumstances? Can we be absolutely sure that there would not be a total closure for the breeding seasons of both types of seal? Can we distinguish between the breeding seasons of grey seals and common seals?

Why does amendment 280 specify a distance of “one kilometre of a known seal haul-out site”?

On the date on which the provision in amendment 280 would come into force, what would happen if seals decided to set up a haul-out site near an established fish farm, where there had been no such site before the seals moved in? How would that affect the fish farm?

Peter Peacock: I will be brief, as Elaine Murray has just raised two issues with amendment 280 that I thought about raising. I will not repeat what she said.

Liam McArthur raised a material consideration in relation to amendment 279. If a seal attacked fish farms during the breeding season—I do not know enough about seal behaviour to know whether that is typical behaviour—and caused many escapes, there would be consequences for the wider environment. Squaring the circle is difficult, but Bill Wilson's approach might be the right one. Rather than specifying what may not be done, perhaps the bill could specify what could be done in the circumstances that Bill Wilson described. The minister could be given powers to act in circumstances in which there were difficulties of the sort that Robin Harper is trying to deal with. Perhaps more work needs to be done before we reach stage 3 to try to achieve, by a slightly

different route, what Robin Harper is seeking to achieve.

John Scott: I do not disagree with Robin Harper's sentiments in trying to protect seals, but Elaine Murray encapsulated the situation. I share her concerns. Because of our inability to distinguish pregnant seals and to differentiate between grey seals and common seals in the water—only the head would be visible—a seven-month closed period from 1 June until the end of December would be needed. That does not square with our duty to protect. I appreciate that we need to do all that we can to protect seal pups—as a farmer, I buy into that argument—but we also have a duty to protect tens of thousands of fish. We have just agreed to an amendment that says that we have a duty to do that. Over to you, cabinet secretary. How can that circle be squared?

Richard Lochhead: If Robin Harper will forgive me, I take issue with his comment that the bill is a backward step for seal protection. We believe that it is a big step forward. Currently, someone requires a licence only if they shoot during the breeding seasons, but the bill proposes that a licence must be applied for throughout the whole year. Most rational people would see that as a step forward, not a step backwards, for seal protection.

I understand the reasoning behind amendment 279, which seeks to protect pregnant or nursing females. Of course, that is an entirely laudable aim, but there is no evidence that the killing of such animals is a significant issue. By contrast, it is known that around 50 per cent of seal pups die of natural causes in their first year of life. The effect of amendment 279 would be to prevent all seal management during the periods in question, which amount to seven months of the year—three months for the common seals' breeding season and four months for the grey seals' breeding season. John Scott referred to that. Such a severe restriction would leave fisheries and fish farms without protection against seal predators, even if they were males or non-breeding females. That seems to be a disproportionate approach. A fish farm could find its seal management options significantly restricted for seven months of the year.

The Government intends to monitor the new seal licensing system closely through the reporting system. Our intention is that recovered seal carcasses will be examined under the Scottish strandings scheme, which is run by the Scottish Agricultural College in Inverness and which exists to determine the cause of death of marine mammals. That will allow us to assess the potential impact of the system on pregnant or nursing females. If the monitoring were to highlight a significant problem, we would certainly be happy

to consider adding to the seal licensing conditions a prohibition on seal management during sensitive periods. I hope that that gives Bill Wilson the assurance that he seeks. For those reasons, I ask Robin Harper to seek to withdraw amendment 279.

11:45

I understand the desire to limit potential conflict between seals and fisheries and fish farms that lies behind amendment 280. However, I have a difficulty with the specific terms of the amendment, which fails to recognise the significant number of seal haul-out sites, their presence all round the Scottish coasts and the fact that they can change over time. In addition, seals are highly mobile and can forage a considerable distance from their haul-out sites. The amendment proposes what amounts to exclusion zones round seal haul-out areas, as fisheries and fish farms would be unable to protect themselves or fish populations, even if non-lethal measures proved ineffective. Limited shooting under licence would have no significant impact on the viability of a local seal population. For those reasons, we ask Robin Harper to consider not moving amendment 280.

The Convener: I call Robin Harper to wind up and to indicate whether he wishes to press amendment 279. I think that he did not speak to amendment 280 earlier, so he might want to do so.

Robin Harper: I will address some of the problems that the committee has raised with amendment 280, but I start by expressing my gratitude to members for the creative way in which they have engaged with my amendments. I also acknowledge the huge amount of help that members have had from the clerks in the past three weeks.

On the shooting of seals, it is possible to distinguish the two species by their heads. If a trained marksman has a good enough sight of the head to take a shot, he or she has a good enough view of the head to tell whether it is a grey seal or common seal. I cannot fully confirm that, but I believe that it is the case.

On amendment 280, the concerns that Alasdair Morgan evinced about defining haul-out sites and about the fact that they move have been enough to convince me that, although the amendment is good in intention, it must be considered further, along with other amendments that might come back at stage 3. I hope that the cabinet secretary or committee members will take forward the spirit of the amendment.

My final remark is that I have news of the latest research that has been done in Norway on closed containment. If, as I hope, the industry takes to

closed containment, the issue of shooting seals might disappear altogether in the next five years anyway.

Amendment 279, by agreement, withdrawn.

Amendment 280 not moved.

Section 98, as amended, agreed to.

Section 99—Methods of killing or taking seals under seal licence

The Convener: The next group is on seal licences: conditions. Amendment 281, in the name of Elaine Murray, is grouped with amendments 282 to 284 and 292.

Elaine Murray: Amendment 281 addresses the problems of seals being wounded because a shot has been taken too far away or in conditions of poor visibility. At stage 1, Professor Boyd of the SMRU highlighted the importance of shooting within a range of 50m and with a properly zeroed rifle in order to minimise the chance of a seal being injured and suffering unnecessarily, rather than being killed outright. A wounded seal might escape before it is reshot, because there is no guarantee that a rifleman will be able to inflict a successful repeat shot immediately. That is particularly true for animals that are shot in water.

Amendment 282 would place a general requirement on marksmen to ensure that care is taken to avoid the known hazards and to attempt to shoot seals humanely. The Conservation of Seals Act 1970 states that the only lawful means of killing a seal is with

“a rifle using ammunition having a muzzle energy of not less than 600 footpounds and a bullet weighing not less than 45 grains”.

The consultation paper for the bill stated that consideration would be given to providing

“an improved and more humane rifle specification via the Scottish Marine Bill.”

However, part 5 does not specify that shooting is the only legal method of killing a seal. It is important that the bill makes it clear that shooting will continue to be the only legal method. The conditions that are proposed under amendment 283 regarding possession of the appropriate firearms certificate and verification of marksmanship and competency make it clear that shooting will be the only permitted method. The proposal that the type of firearm must be specified allows the Scottish Government to ensure that an approved type of weapon is used, but it leaves sufficient flexibility to change a licence condition if a different type of firearm becomes preferable, for example on welfare grounds.

There should be no dubiety about the approved method of killing a seal, as should be apparent

from the text of the bill. It is necessary to provide that the person must have the appropriate licence and marksmanship skills. Verification of marksmanship skills would allow the marksman to demonstrate that he can judge the best time for a shot. For example, a seal is less likely to sink following the shot if it has just taken a breath. It is also essential for a marksman to be able to identify the species of seal that he intends to kill, which relates to an earlier debate.

In its stage 1 report, the committee suggested that the list of conditions that might be specified in the seal licence should include the skill of the marksman, the type of firearm to be used and the marksman's proximity to the target, and that there was a case to be made for some or all of those conditions being mandatory for any licence. The cabinet secretary's response was that

“It is perfectly possible to take into account marksmanship or training and so on as part of the licence conditions. We are considering where to go with that.”—[*Official Report, Rural Affairs and Environment Committee*, 9 September 2009; c 1907.]

Amendment 284 is another measure that is intended to reduce the suffering that is caused by wounding. There have been many reports of seals being shot from moving boats, which increases the likelihood of leaving a wounded animal to die. Advocates for Animals states in its briefing for today's meeting that the Scottish Government has already indicated that seals should not be shot from unstable platforms. I appreciate that there might be some concern over the definition of “a moving boat”, as a boat that is stationary in relatively calm sea might still be described as moving, due to the swell of the water. If amendment 284 were passed, an additional amendment defining the term might be required at stage 3. I understand that, in Sweden, there are conditions regarding the roughness of the sea in relation to who is allowed to shoot seals from a moving platform.

Amendment 292 is a technical amendment that would insert in section 100 a reference to the conditions that are specified in the amendments in the group on seal licence conditions, and would ensure that the standards that are set for shooting in section 99 may also form part of the licence conditions.

I move amendment 281.

Bill Wilson: I add my support to the principle behind the amendments in this group. The committee agreed that issues such as marksmanship, the range of the shot and rifle calibre should form parts of the conditions of the licence. I do not know whether the wording in the amendments is acceptable to the cabinet secretary. If there are any technical problems with them, I would like to hear an assurance that the necessary provisions will be added at stage 3.

Liam McArthur: I echo what Bill Wilson has just said. All the amendments very much reflect the spirit of the committee's stage 1 report. We can tighten up on the regulations in this area, ensuring not only that shooting is a last resort but that it happens only under very specific and prescribed circumstances.

I was interested in Elaine Murray's comment about amendment 284 and the definition of "moving boat", and my concern lies with the practicalities of that. As Bill Wilson is, I am sure that some form of wording can be found to address those technical problems.

Peter Peacock: I echo Bill Wilson and Liam McArthur in my support for amendments 281 to 283 in particular, which are exactly in line with what the committee has sought to do to tighten up licensing arrangements. Like Liam McArthur, and as Elaine Murray effectively conceded, I cannot imagine any circumstances in which a boat is not moving in some way. The definition of "moving boat" might therefore prove to be difficult. The decking around a fish cage might be pretty stable, for example, but it might still be regarded as unstable. That is difficult definitionally, but I strongly support the principle of the amendments in the group.

Alasdair Morgan: I share members' concerns about the amendments. They might have the right spirit, but as Liam McArthur pointed out, shooting should happen in "specific and prescribed circumstances". I am concerned that some of the amendments simply do not set out such circumstances.

For example, amendment 281 refers to

"the requirement that there is sufficient visibility and the sea conditions are such to allow a clear shot to be taken."

We are creating an offence that will be punishable in the courts, but I have no idea precisely how a court would assess such things after the fact or, indeed, how such a provision would be enforced. I suppose one could argue that if a seal was shot successfully there was "sufficient visibility" and if not, that visibility was not sufficient, but that does not seem to be satisfactory. We have to do a wee bit better than that.

John Scott: I agree with almost everything that has been said, but I am not sure that we should be too prescriptive in this matter. After all, it ultimately boils down to a marksman's skill and his reasonable judgment that the conditions are right to take the shot.

On amendment 284, I do not think that one could ever say that the kind of platform that we are talking about, whether it be on a boat, around a fish tank or whatever, would ever be stable but, of course, where else are we going to be shooting

seals? We have to be very careful about this but, as I say, it should come down to the reasonable judgment of the marksman.

Richard Lochhead: Amendments 281, 282 and 284 seek to amend section 99 by making provision in relation to licensing conditions. However, given that seal licence conditions are covered in section 100, we feel that it would be more appropriate to include the relevant provisions in that section. If Elaine Murray is prepared to withdraw amendment 281 and to not move amendments 282 and 284, we will arrange for appropriate amendments to section 100 to be lodged at stage 3.

Moreover, two matters that amendment 283 seeks to deal with are already addressed elsewhere. Section 99(1), which already stipulates that the method of killing must be specified, could be extended to include the type of firearm to be used under licence. Indeed, that would be confirmed as part of the licence process under the appropriate firearms legislation that covers the holding of a firearms licence.

Although the bill does not specifically refer to it, the Government always intended to include a similar requirement on proficiency of marksmanship in the seal licence conditions. As a result, I am happy to assure the committee that marksmanship training will be covered in the seal licence conditions and that the issue will be addressed in a Government amendment at stage 3, in line—of course—with the committee's views. The bill could contain, for example, a provision that would establish a code of practice. If the committee wishes to go down that road, we would be happy to think about a way forward prior to stage 3.

Amendment 292 is consequential on the other amendments.

Elaine Murray: In response to Alasdair Morgan, I point out that the conditions for shooting a seal are required to be set out in a licence. Given that it is not really a question of someone having to prove anything in court, the bill does not have to contain any legal definitions.

Alasdair Morgan: Even though, as you say, those matters are set out in the licence conditions, under the amendment in question—whichever one it is—it will be an offence to fail to comply with the conditions that have been imposed.

Elaine Murray: It is the licence that will be issued by Scottish ministers, not the bill, that will impose the conditions.

Bill Wilson: I presume that you mean that the licence itself will specify that the marksman must be a certain distance away, must shoot in certain visibility—

12:00

Elaine Murray: Yes—and it will specify whatever else is appropriate in the circumstances.

I am encouraged by the cabinet secretary's comment that section 100 might be the more appropriate place for such provisions and that he will consider lodging amendments in that respect at stage 3.

The difference in relation to amendment 283 is that the committee felt that such matters should be on the licence, whereas at the moment the bill provides only that they may be on the licence. I hope that any amendments that are lodged at stage 3 specify that these matters must be on the licence. I will not press the amendments at the moment, because I am encouraged by what the cabinet secretary has said and because there may be a better place in the bill to put these matters. I still intend to return to the matter at stage 3.

Amendment 281, by agreement, withdrawn.

Amendments 282 to 284 not moved.

Section 99 agreed to.

Section 100—Seal licence conditions

The Convener: The next group is on seal licences: requirement to report certain information. Amendment 263, in the name of Robin Harper, is grouped with amendments 285, 264 and 286 to 291. If amendment 285 is agreed to, I cannot call amendment 264, because of pre-emption.

Robin Harper: I do not want to move amendment 263.

The Convener: I must move amendment 263 in order that we can have the debate.

Amendment 263 moved—[Maureen Watt].

Elaine Murray: Amendments 285, 289 and 291 would amend the bill with regard to the requirement to report to ministers on the number of seals taken or killed. Amendment 291 would require licensees to submit every three months reports to ministers on the number of seals killed or taken, as suggested in the committee's stage 1 report. An error in the form of words, "within the specified period" has crept into the amendment as shown on the marshalled list. Those words did not appear on the published daily list—they should not be on the marshalled list version of the amendment. I do not know how they crept in; they might have crept in through cross-references.

Alasdair Morgan: Or sabotage.

Elaine Murray: Yes. Amendment 289 would insert a requirement for a nil return—if no seals are killed or taken in the three-month period, that should also be reported to ministers, which would ensure that licensees fully and accurately report to

ministers whether they have taken or killed any seals.

Amendment 285 is a technical amendment that would replace the term

"as soon as reasonably practical"

with reference to the subsection that would be introduced by amendment 291, which would require quarterly reporting. Much of the current concern about seal killing springs from the fact that there is currently no requirement to account for the animals that are killed. A set frequency for reporting is therefore important.

Amendment 263, which Robin Harper did not want to move, would require monthly reporting, which could have been too onerous, especially if nil returns were required to be reported every month.

Amendment 290 would place a responsibility on the licensee to attempt to recover the carcase—Bill Wilson and the cabinet secretary referred to that earlier—as it may be used for a post mortem or research purposes. I understand that, under the current licensing regime as provided by section 10 of the Conservation of Seals Act 1970, applicants for licenses are requested to attempt to recover the carcase of a shot seal, so that the Natural Environment Research Council—in Scotland's case, it would be the sea mammal research unit—can carry out post-mortem examinations. I think that the cabinet secretary referred to another institute in Inverness that also does that type of work.

Examination of seal carcasses can offer useful information regarding diet. As Bill Wilson said earlier, the examination of the carcase could also provide important information as to whether lactating or pregnant seals were being taken. It is important that the requirement be transferred from the Conservation of Seals Act 1970 into our bill.

John Scott: Amendments 286 to 288 would introduce plurality by changing "seal" to "seal or seals"—nothing more obscure than that. It is possible that more than one seal would need to be reported on. They would also complement Elaine Murray's amendment 291. I support the reasonable reporting period—namely, three months—in that amendment.

Richard Lochhead: I will speak first to amendments 263 and 264, which seek to specify the regularity of reporting on seals that are shot under the licence system. We are not persuaded of the need to report every individual seal that is shot within the timescale that is set out in the amendments. We much prefer the approach in amendments 285, 289 and 291, in Elaine Murray's name. The three-month period that is set out in amendment 291 strikes me as being appropriate,

although it might be better to link quarterly reports to licensing periods rather than to the bill's commencement. If amendment 291 were passed, we might want to amend it at stage 3 to reflect that point. Also, the requirement for a nil return that amendment 289 would create strikes us as being sensible in the context of a three-month reporting framework.

For those reasons, we are content to accept amendments 285, 289 and 291, although we would intend to amend the bill at stage 3 to link quarterly reporting to licensing periods.

It is the intention of amendments 286 to 288 that the requirements of section 100(1)(b) include every seal or seals killed or taken, but there is no need to insert specific reference to "seals". The interpretation order that will govern interpretation of the act will ensure that the references in section 100(1)(b) will be read appropriately. Therefore, the amendments are not necessary. *[Interruption.]* I am sure that the committee paid attention to what I was saying despite the fact that we were being closed into the committee room.

Amendment 290 would require a seal licence condition that

"all reasonable steps be taken to recover"

the body of a seal that is killed under licence. The Scottish Government always intended to include a provision of that nature in the seal licence conditions that will accompany each licence. However, the wording of the amendment might be improved, particularly in relation to the most appropriate scientific roles and responsibilities. Recovered seal carcasses will be examined under the Scottish strandings scheme, which, as we mentioned before, is run by the Scottish Agricultural College in Inverness.

For those reasons, we ask the committee to resist amendment 290, but we are prepared to lodge a similar amendment at stage 3 that will deal with the link to scientific research.

The Convener: In theory, as I moved amendment 263 in order for debate to take place, I could sum up, but I defer to Elaine Murray and ask whether she wants to come back on anything.

Elaine Murray: No, I am happy with the cabinet secretary's comments.

Amendment 263, by agreement, withdrawn.

Amendment 285 moved—[Elaine Murray]—and agreed to.

The Convener: Amendment 264 is pre-empted.

Amendments 286 to 288 not moved.

Amendment 289 moved—[Elaine Murray]—and agreed to.

Elaine Murray: In the light of the assurances that have been given by the cabinet secretary, I will not move amendment 290.

Amendment 290 not moved.

Amendment 291 moved—[Elaine Murray]—and agreed to.

Amendment 292 not moved.

Section 100, as amended, agreed to.

Sections 101 to 103 agreed to.

After section 103

The Convener: The next group is on seal licences: review of operation. Amendment 293, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray: Amendment 293 would require ministers to review the operation of the seal licensing system two years after the provisions of section 98 come into force. In view of the continuing progress in developing increasingly effective alternative methods of deterring seals, it is important that the licensing provisions in part 5—which are exceptions to the main provision that seals must not be killed—should be regularly reviewed. That would ensure that emerging scientific knowledge of seal biology, populations and behaviour and the effectiveness of the seal licensing system are continually reassessed in the interests of conservation and animal welfare. The proposed regular reporting and review would facilitate progress towards achieving the aim of reducing seal killing to a minimum, which is the principle behind section 95.

I move amendment 293.

Richard Lochhead: Amendment 293 would introduce arrangements for review of the seal licensing system. We certainly appreciate the principle behind the amendment, which is in line with our thinking on the need for the seal licensing system to be regularly reviewed and improved, but we have some concerns about the frequency of the proposed review. A two-year cycle would allow little time for the system to be thoroughly tested before it was subject to its first review and not much time between reviews thereafter. It would mean that stakeholders would be consulted one year, notified of improvements the next year and then consulted again the year after that. With the system in an almost continuous state of flux, consultation fatigue would quickly set in. A longer period is required to allow for adequate testing of the new system and full consultation of stakeholders as well as appropriate consideration of any changes and adequate timescales for notifying stakeholders of such changes.

For those reasons, I ask the committee to resist amendment 293. I am prepared to lodge a similar amendment at stage 3 that will provide a longer review period of every five years. I ask Elaine Murray to take that on board and to consider withdrawing amendment 293.

Elaine Murray: I am encouraged by the cabinet secretary's comments. Perhaps two years is too short a period between reviews. I am happy to withdraw amendment 293 if it is intended that a more suitable amendment will be lodged at stage 3.

Richard Lochhead: We will have a busy stage 3.

Amendment 293, by agreement, withdrawn.

Section 104 agreed to.

Section 105—Effect of seal conservation area status: licensing decisions

Amendment 294 not moved.

Section 105 agreed to.

Section 106 agreed to.

Section 107—Power to enter land to protect fisheries or fish farms from seals

Amendment 85 moved—[Richard Lochhead]—and agreed to.

Section 107, as amended, agreed to.

Sections 108 to 116 agreed to.

Section 117—Enforcement of marine protection and nature conservation legislation

The Convener: The next group is on common enforcement powers: marine protection and nature conservation legislation. Amendment 86, in the name of the cabinet secretary, is grouped with amendments 295 and 265.

Richard Lochhead: Amendment 86 will ensure that marine enforcement officers are able to enforce the new seals legislation at sea in support of the enforcement role of the police on land.

Amendments 295 and 265 would allow Scottish enforcement officers to use the powers that are referred to in section 117 against third-country—that is, non-European—vessels as well as foreign warships and vessels that are used by foreign Governments for non-commercial purposes. As the committee will be aware, the UK Government has the lead in ensuring compliance with international maritime laws. The UK Marine and Coastal Access Act 2009 contains similar provisions to those that amendment 265 would delete, and I believe that the provisions are required for Scotland. For those reasons, I ask Stuart McMillan not to move amendments 295 and

265.

I move amendment 86.

12:15

Stuart McMillan: The purpose of my amendments is to provide some consistency with the United Nations Convention on the Law of the Sea—specifically articles 17, 18, 21 and 192. The Scottish boating alliance recognised that the provisions in the amendments might be outwith the powers of the Parliament; nevertheless, it thought that the amendments may provide consistency.

The Convener: Cabinet secretary, do you wish to add anything?

Richard Lochhead: I do not have anything to add to my previous comments. On the theme of consistency in the international sphere, the bill is consistent with the UK act.

Amendment 86 agreed to.

The Convener: Amendment 295, in the name of Stuart McMillan, was debated with amendment 86.

Stuart McMillan: I am happy not to move amendments 295 and 265 if the cabinet secretary will provide further information regarding the situation with the UK act, although I reserve the right to bring the amendments back at stage 3.

Richard Lochhead: I am happy to provide that information.

Amendments 295 and 265 not moved.

Amendment 87 moved—[Richard Lochhead]—and agreed to.

Section 117, as amended, agreed to.

Sections 118 to 122 agreed to.

Schedule 3 agreed to.

The Convener: I sense that members are scenting the home straight.

Sections 123 to 125 agreed to.

Section 126—Further provision about seizure

The Convener: The next group is on common enforcement powers: powers of seizure. Amendment 88, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: Amendment 88 is designed to make the enforcement powers that are available to enforcement officers in the Scottish inshore area the same as those that are available elsewhere in the UK marine area under the Marine and Coastal Access Act 2009. The amendment would allow an enforcement officer to require someone to assist them in carrying out their duties

by, for example, opening a locked door or moving objects.

I move amendment 88.

Amendment 88 agreed to.

Amendment 176 moved—[Richard Lochhead]—and agreed to.

Section 126, as amended, agreed to.

Sections 127 to 131 agreed to.

Section 132—Power to direct vessel or marine installation to port

The Convener: The next group is on power to direct vessel or marine installation to port. Amendment 296, in the name of Liam McArthur, is grouped with amendment 297.

Liam McArthur: Colleagues will recall that the issue was raised with us by the British Ports Association at stage 1 and by the director of marine services in Orkney, Nigel Mills. Under current legislation, powers exist to direct vessels or marine installations into port when it is suspected that an offence has been committed and further investigation is required onshore. However, there is no requirement in the legislation to consult the port concerned. At present, the power is used infrequently, but the expectation is that that is likely to change with the creation of MPAs. It seems sensible and in the interests of both individual ports and enforcement authorities, therefore, for the bill to contain a provision to require a formal dialogue to take place regarding the best options in each circumstance.

At present, fishing vessels tend to be the subject of most orders, but the sense is that that will change with the passing of the bill. If larger vessels—for example, cargo ships—are to be directed to port, the potential disruption to most if not all ports could be significant. Consultation of the sort that is provided for by the amendments would address concerns about that and ensure that proper account was taken of space, health and safety concerns and other relevant considerations.

I move amendment 296.

Richard Lochhead: The power to direct a vessel to port is not new, of course. For example, such a power is given to officers who are operating under the Food and Environment Protection Act 1985, to wildlife officers under the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 and to British sea fisheries officers under the Sea Fisheries Act 1968. The committee might find it useful if I outline how the provisions work.

After consulting the master of the vessel that is being detained and considering the normal practices of good seamanship, the commanding officer of an enforcement vessel always ensures that the selected port is suitable. It is custom and practice that the master of each vessel is responsible for contacting the port before arrival, if that is normally required by the port authority. Many fishing ports are not manned on a 24-hour basis, so no notification can be given to those ports.

Enforcement officers are on board the vessel that is escorted into port, but the responsibility for berthing that vessel still lies with its master. In all cases, shore-based enforcement officers are notified that a vessel is being escorted in.

Similar enforcement practices will be used under the bill. As its track record shows, Marine Scotland compliance is very professional. Its personnel are fully trained and responsible, and the sailors are trained to the highest standards. Amendment 296 would make an unnecessary addition to the bill. We should leave day-to-day management decisions to the professionalism of Marine Scotland compliance. For those reasons, we urge the committee to resist the amendment.

As for amendment 297, the accepted practice is that, when a vessel is directed to port for enforcement purposes, its owner is required to pay port fees under existing ports and harbours legislation. The amendment would add nothing in that respect. Marine Scotland enforcement officers will direct a ship to port only when they have good reason to believe that it has been involved in committing an offence. For those reasons, I urge the committee to resist the amendment.

Liam McArthur: Given what I have heard, I am disinclined to press amendment 296 or to move amendment 297. Although I note that the cabinet secretary says that the normal requirement is to consult the port authority, there might be merit in stating that more explicitly in the bill. However, given the reservations that the cabinet secretary expressed, I will keep my powder dry and might lodge stage 3 amendments.

Amendment 296, by agreement, withdrawn.

Amendment 297 not moved.

Section 132 agreed to.

Sections 133 to 135 agreed to.

Section 136—Duty to provide evidence of authority

The Convener: The next group is on duties and liability of marine enforcement officers. Amendment 266, in the name of Stuart McMillan, is grouped with amendments 267 to 271.

Stuart McMillan: Amendments 266, 268 and 269 are the main amendments and would affect sections 136 and 137. Amendments 267 and 270 are consequential to them.

As those who deal with a marine enforcement officer will not know the officer's status or authority, it is only proper that the officer should have to give evidence of their authority, without needing to be asked. The amendments would achieve that. Amendment 271 would simply add a condition to strengthen section 138(3) and ensure that the utmost professional standards apply at any time that any person listed in subsection (2) undertakes their duties.

I move amendment 266.

Bill Wilson: Stuart McMillan proposes to remove section 136(3). If that subsection remained, the bill could insist that somebody obeyed an order without any evidence whatever of legal authority that the order had to be obeyed. Removing subsection (3) would be a sensible amendment.

Richard Lochhead: Amendment 266 would make it clear that a marine enforcement officer should produce evidence of authorisation before exercising their powers. Marine officers do that anyway, but I am still happy to accept the amendment, although I note that we might have to consider whether further clarification is required at stage 3.

Amendments 268 and 269 would require enforcement officers to state their names and the powers that they propose to use before exercising them. That would put enforcement officers on a similar footing with the police, and we would be reluctant to do that. Enforcement officers are trained to provide the necessary information to shipmasters, and we think that that is sufficient. For those reasons, I ask Stuart McMillan not to move amendments 268 and 269.

On amendments 267 and 270, the bill provides that, if a marine enforcement officer is requested to produce evidence of their authority, they do not have to do so immediately if they believe that it is impractical to do so. Amendment 267 would remove that provision. Similarly, the bill provides that, if a marine enforcement officer is requested to give their name, the power that they are exercising, and the grounds for doing so, or if a person who is assisting an MEO is asked to state the power that they are exercising and the grounds for doing so, they do not have to do so immediately if they believe that it is impractical, and can wait instead until it is practical to carry out such a request. Amendment 270 would remove that provision. We are happy to accept amendments 267 and 270, although we will have to review exactly how they work and propose further amendments at stage 3 if required.

Amendment 271 would make a marine enforcement officer or their assistant liable for civil or criminal proceedings when they exercise their powers without reasonable skill or care. Our opinion is that marine enforcement officers already exercise their power with the highest skill and care and, although I do not think that it is entirely necessary, we are nevertheless happy to accept amendment 271.

Karen Gillon: I understand that the cabinet secretary has just said that he is happy to support amendments 267 and 270, but when the bill was drafted in which circumstances was it envisaged that a marine enforcement officer would not be able to produce such evidence and what would be taken into account in deciding that? I am interested to know that before we agree to remove the provision, because there was clearly a reason for including it in the first place.

Richard Lochhead: It is a question of practical conditions, at sea for example. An enforcement officer might be on a boat in the middle of an investigation when he is suddenly stopped and asked for something. He could give that information then but it would mean that he was disturbed while carrying out his duties. We want to allow him the flexibility to provide that information later.

Bill Wilson: So the later point could be a period of 10 to 15 minutes and not a couple of weeks.

Richard Lochhead: That takes us into a legal debate about how a practical time is defined, but I think that the marine enforcement officers would be sensible.

The Convener: I do not really want to open up the debate again but Liam McArthur has a quick point.

Liam McArthur: If I heard him correctly, the minister suggested that marine enforcement officers are already required to do what amendment 271 proposes as a matter of good practice. That was precisely the reason that the cabinet secretary used for not accepting either of my amendments in the previous group. I will note carefully what he said when the *Official Report* comes out and perhaps throw it back at him at stage 3.

Stuart McMillan: I am pleased to hear that the cabinet secretary accepts amendments 266 and 267. Amendments 268 and 269 would continue the consistency with amendments 266 and 267. I am also happy with the cabinet secretary's comments on amendments 270 and 271. I will press the amendments.

Amendment 266 agreed to.

Amendment 267 moved—[Stuart McMillan]—and agreed to.

Section 136, as amended, agreed to.

Section 137—Duty to state name and purpose, etc

Amendment 268 moved—[Stuart McMillan].

The Convener: The question is, that amendment 268 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Morgan, Alasdair (South of Scotland) (SNP)
Murray, Elaine (Dumfries) (Lab)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 0, Against 7, Abstentions 0.

Amendment 268 disagreed to.

Amendment 269 not moved.

Amendment 270 moved—[Stuart McMillan].

12:30

The Convener: The question is, that amendment 270 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

AGAINST

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 270 agreed to.

Section 137, as amended, agreed to.

Section 138—Liability of marine enforcement officers

Amendment 271 moved—[Stuart McMillan]—and agreed to.

Section 138, as amended, agreed to.

Sections 139 and 140 agreed to.

Section 141—Interpretation of Part 6

Amendments 90 and 91 moved—[Richard

Lochhead]—and agreed to.

Section 141, as amended, agreed to.

After section 141

The Convener: The next group is on modifications of or relating to the Sea Fish (Conservation) Act 1967 and the Sea Fisheries (Shellfish) Act 1967. Amendment 256, in the name of the cabinet secretary, is grouped with amendments 257 to 259 and 298.

Richard Lochhead: The amendments make technical modifications to sea fisheries legislation. The amendments represent the culmination of a process that we have undergone since I gave evidence to you on 9 September at the beginning of stage 1, when I said that I intended to lodge fisheries amendments at stage 2.

The main purpose of the amendments is to resolve a difficulty relating to several and regulating orders granted under the Sea Fisheries (Shellfish) Act 1967. I have also taken the opportunity to make consequential modifications to that act and to the Sea Fish (Conservation) Act 1967, which I will speak to later.

The need for the amendments became apparent when concerns were expressed by the Crown Estate following a legal case in Anglesey in Wales. The outcome of the case was that a proposed marina development in an area covered by a several order could not proceed, which resulted in the Crown Estate having doubts about consenting to such orders in future. The Crown Estate commissioners were worried that, were they to give consent, they might not be able to meet their statutory obligations to generate revenues. On the other hand, several and regulating orders are useful fisheries management tools and there is a need to ensure their on-going use and viability.

Amendment 258 addresses that situation. It modifies the Sea Fisheries (Shellfish) Act 1967 to apply to Scotland a number of amendments that were made by the UK Marine and Coastal Access Act 2009. In particular, it modifies the 1967 shellfish act to provide ministers with powers to vary or modify several or regulating orders to enable development to take place. In addition, ministers may make provision for the owner of the affected area to pay compensation to the grantee of a several order.

Beyond that, amendment 258 also enables moneys that are collected by way of levies or fees by the grantee of a several or regulating order to be used for purposes connected with the regulation of the fishery and not just for the cultivation of the fishery. In addition, the amendment extends persons who may be liable for an offence under the 1967 shellfish act to include the master, owner and charterer of a sea fishing boat.

Amendment 258 also modifies section 3 of the 1967 shellfish act to enable restrictions and regulations made by the grantee of a fishery to be enforced by the relevant enforcement agency. In Scotland, that is the compliance arm of Marine Scotland. The amendment requires the grantee of a regulating order to keep and make available a register of licence holders to assist the Gangmasters Licensing Authority in its duties under the Gangmasters (Licensing) Act 2004.

Amendment 258 modifies the 1967 shellfish act to extend the current protection of private oyster beds to all privately owned shellfish beds and provides ministers with extended powers to specify by order the type of fishing implements that can be used in an area covered by an order. It also modifies the 1967 shellfish act to remove the requirement for ministers to appoint an inspector to carry out an inquiry into a proposed order. Instead, it provides ministers with discretion on whether to appoint an inspector to hold an inquiry.

Amendment 258 also modifies the 1967 shellfish act by removing the requirement to obtain Crown Estate consent for a several or regulating order and instead requires ministers to have regard to the powers and duties of the Crown Estate. It applies increased fine levels of £50,000 for offences relating to several or regulating orders under section 7 of the 1967 shellfish act and makes modifications that are consequential on other amendments in the group.

Amendment 256 modifies the Sea Fish (Conservation) Act 1967 to apply to Scotland a number of amendments that were made by the UK Marine and Coastal Access Act 2009. In the main, those modifications concern powers to enhance our management of stocks. In addition to the current ability for ministers to apply a minimum landing size, the amendment modifies the 1967 conservation act to enable ministers to set, in an order, a maximum landing size or a size range for sea fish. It also extends ministers' current powers to prohibit the use of certain fishing gear from vessels, to apply those prohibitions to persons who fish from the shore.

Amendment 256 also allows ministers to include marine environmental conditions in licences that are granted under the 1967 conservation act and extends their powers to restrict fishing for sea fish by species, by method or during any period, to apply those restrictions to persons who fish from the shore and to set limits on the amount of fish that can be caught during a set period. It introduces increased penalties in respect of offences involving assault or obstruction of sea fisheries enforcement officers, with maximum fine levels on summary conviction of £50,000 and £20,000 respectively, and provides that officers of a corporate body and partners in a Scottish firm

may be liable for offences under the 1967 conservation act. Finally, it makes minor and consequential amendments to modify the 1967 conservation act and the Fisheries Act 1981 in relation to Scotland.

I am getting there. Amendment 257 applies to Scotland further modifications to the 1967 conservation act that were made by the UK Marine and Coastal Access Act 2009. The amendment provides for the prohibition of the carriage of fish that do not meet specified size requirements and makes consequential amendments.

Amendment 298 makes minor consequential modifications and repeals relating to sea fisheries legislation and the Criminal Justice and Public Order Act 1994. It replaces amendment 261.

The amendments primarily address concerns relating to several and regulating orders. In addition, they provide an opportunity further to align fisheries legislation in Scotland with that in the rest of the UK. That does not mean that we are simply adopting a UK approach or UK legislation—Scotland already has a number of the provisions that were made by the Marine and Coastal Access Act 2009. It remains my intention to have Scottish solutions to Scottish fisheries requirements in future. However, the alignment of the Sea Fish (Conservation) Act 1967 and the Sea Fisheries (Shellfish) Act 1967 across the UK will provide some cohesion for the inshore sector. By taking for Scotland certain of the powers that are given to UK ministers under the 2009 act, we will have available to us a broader range of powers to facilitate fisheries management in Scotland.

I move amendment 256.

Karen Gillon: I will not read out the lengthy briefing on the subject that we received yesterday. On first reading, I thought that the amendments were pretty uncontroversial. I read the minister's briefing note and accepted much of the explanation that was given. However, the timing of the amendments and the length of the briefing that we received from the Scottish Fishermen's Federation raise a number of concerns. Might the cabinet secretary consider bringing the amendments back at stage 3, to allow us to discuss them with organisations such as the SFF? Given that the bill will not come into force before stage 3, that would enable us to be better informed and ensure that we make informed decisions.

There is much in the SFF's briefing with which I do not agree, especially in relation to vicarious liability; I accept the points that the cabinet secretary has made on that issue. However, I am not yet convinced by other parts, so it would be helpful if the amendments came back at stage 3, if the cabinet secretary is so minded, to allow dialogue to take place.

Elaine Murray: I invite the cabinet secretary to comment on a couple of more general points in the SFF briefing paper. One that I had not particularly appreciated prior to getting the briefing is that in the Scottish legal system, the right to fish is different from that in the legal system south of the border. In Scotland, there is a public right to fish, which does not exist in the English legal system. In adopting various fishing measures, will we impinge on the public right to fish that has existed in Scotland since 1705? If so, that could affect a wide variety of activities, such as angling and haaf and poke netting in the Solway Firth. Can the cabinet secretary comment on that?

The other general point in the SFF briefing is that the ability to grant several or regulating orders in England and Wales will rest with statutory bodies—the inshore fisheries and conservation authorities—whereas in Scotland that will rest with non-statutory bodies, which are less accountable. That possibly implies that the situation in Scotland needs to be treated differently.

Liam McArthur: Elaine Murray has just highlighted a couple of the substantive issues. I certainly appreciate the reasons why the amendments were lodged late in the day, but it is clear, as Karen Gillon indicated, that they are probably more controversial than was apparent from the cabinet secretary's letter to us. I do not know whether matters can be brokered between now and stage 3. We are in the difficult position of having to accept what appear to be quite technical amendments that are more controversial than they seemed at first.

Richard Lochhead: In an ideal world, we would have preferred not to lodge the amendments so late, but the process allowed for that, and no other vehicle was available to the Government to bring forward the amendments, which largely are a response to developments south of the border with the UK Marine and Coastal Access Act 2009. Of course, there are two aspects: the Crown Estate several orders issue, and amendments to the Sea Fish (Conservation) Act 1967, in light of some of the measures that have been taken down south. We feel that it would be useful if similar measures were available to the Scottish ministers. Of course, if measures on maximum or minimum landing sizes, for example, were to be used, they would be brought to the Parliament.

On the SFF's concern about the public right to fish, which Elaine Murray mentioned, there is always concern in some sectors of the fishing industry about the very existence of several and regulatory orders, because they essentially hive off small parts of the sea and allow those who are given the orders to manage those parts for their own benefit. Some people in the fishing industry have always objected in principle to such orders.

About 12 several orders are in place in Scotland, and we have regulating orders as well, including the one in the Shetland Islands. I think that the other one applies in the Solway.

Clearly, there has always been concern about whether there should be several and regulating orders in the first place. We consulted all key stakeholders prior to lodging the amendments, and a couple of the concerns that members have raised were expressed. However, the bodies responsible for the several and regulating orders very much support what we are doing, because they are concerned that the Crown Estate will not make available future several orders if amendment 256 is not passed. That is, of course, the background to the case down south, in which a developer wants to build a marina. Our amendments are therefore supported by the key stakeholders in that regard.

If the amendments are successful today, I am happy to commit to discussing with members further amendments at stage 3 to address any points of concern that need to be addressed. If we were to leave everything until stage 3, it would be back to square 1 as far as most of the amendments are concerned. However, if there are particular concerns about some of the representations that members have received from fishing organisations, I give a commitment to address them at stage 3, in discussion with members.

12:45

Karen Gillon: I am trying to be constructive. Amendments 258 and 259 are the ones that have provoked the most briefing. I wonder whether the cabinet secretary might consider returning to them at stage 3.

Richard Lochhead: Amendment 258 and—

Karen Gillon: Amendment 259.

The Convener: I will not put the questions en bloc—we will take it as it comes.

Amendment 256 agreed to.

Amendment 257 moved—[Richard Lochhead]—and agreed to.

Amendments 258 and 259 not moved.

Before section 142

The Convener: The next group is on judicial review. Amendment 260, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur: No meeting of the Rural Affairs and Environment Committee on the Marine (Scotland) Bill would be complete without a discussion of the Aarhus convention. It is perhaps

about time that the committee considered a visit to Aarhus—an understated university town in the middle of Denmark has no business arousing so much controversy.

It would perhaps be helpful to the committee if I made clear at the outset my intention not to press amendment 260.

Karen Gillon: Agreed.

Bill Wilson: We accept.

Liam McArthur: Nevertheless, colleagues will find it helpful if I clarify the intention behind lodging the amendment. I share the concerns of many people that introducing a de facto, extensive third-party right of appeal is not sensible or desirable. As members will be aware, however, Lord Gill recently completed a review of the Scottish civil courts, and made a number of recommendations on judicial review. Amendment 260 addresses some of those recommendations, notably in relation to title and interest and expenses.

I am aware that the Marine (Scotland) Bill is not necessarily the place to start amending the law on judicial review in a piecemeal fashion. Doubtless, there will be appropriate occasions to return to that debate in future. However, the bill and my amendment 260 give the cabinet secretary an opportunity to respond on some of the key aspects of Lord Gill's recommendations. In that spirit, I provided the minister with early sight of the wording of my amendment and a note of my intentions to probe the matter, but without pressing the amendment. It would be helpful for my purposes and, I hope, the committee's to hear the minister's views on those recommendations.

I move amendment 260.

The Convener: I give the cabinet secretary an opportunity to comment, whether or not he wishes to take it—it is up to him.

Richard Lochhead: The context of the debate has changed, but I will cut to the chase. Liam McArthur has referred to relevant points made by Lord Gill in his recent "Report of the Scottish Civil Courts Review". All that I can say at this point is that the Government is scrutinising that report, and we will respond to it in due course. I will ensure that the committee is kept up to date regarding that response.

We do not consider the present position to be incompatible with the Aarhus convention, to which Liam McArthur referred. I intend to write to the committee about various points that have arisen at stage 2 in connection with that convention. I have already given that commitment, which I repeat today.

In responding to amendment 260, all that I can really say is that there is no recent evidence that

applications in the environmental field have been rejected by the Court of Session because of a lack of title and interest. The court continues to consider applications for protective costs orders as and when such applications are made. We consider that the availability of judicial review satisfies the requirement under the convention that there be a procedure for testing the substantive and procedural legality of decisions. That is our legalistic response to amendment 260.

As I have said, I will write to the committee on those points, so I welcome the member's statement that he will not press amendment 260.

Liam McArthur: I am not sure that I have managed to achieve my objective in lodging amendment 260. Nevertheless, I remain of the view that I will not press it to a vote.

Amendment 260, by agreement, withdrawn.

Section 142—Crown application

The Convener: The next group is on Crown application. Amendment 92, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: We are on the last lap, convener.

Amendment 92 will simply correct a minor drafting error so that section 142(6) refers to the whole act that will follow on from the bill rather than just to part 7.

I move amendment 92.

Amendment 92 agreed to.

Section 142, as amended, agreed to.

Sections 143 and 144 agreed to.

Section 145—Orders and regulations

Amendment 193 moved—[Liam McArthur].

The Convener: The question is, that amendment 193 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

McArthur, Liam (Orkney) (LD)

AGAINST

Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

ABSTENTIONS

Gillon, Karen (Clydesdale) (Lab)
Murray, Elaine (Dumfries) (Lab)

The Convener: The result of the division is: For 1, Against 4, Abstentions 2.

Amendment 193 disagreed to.

Amendment 93 moved—[Richard Lochhead]—and agreed to.

Section 145, as amended, agreed to.

Section 146—Interpretation: general

Amendments 94, 95 and 177 moved—[Richard Lochhead]—and agreed to.

Section 146, as amended, agreed to.

Schedule 5

INDEX

The Convener: The next group is on interpretation: general. Amendment 252, in the name of the cabinet secretary, is grouped with amendments 253 to 255.

Richard Lochhead: This group of amendments will make changes to schedule 5, which simply provides an index of where terms listed in the bill are defined. Amendments 252 to 255 are consequential on other amendments that have already been discussed.

I move amendment 252.

Amendment 252 agreed to.

Amendments 253 to 255 moved—[Richard Lochhead]—and agreed to.

Schedule 5, as amended, agreed to.

Section 147 agreed to.

Schedule 4

CONSEQUENTIAL MODIFICATIONS

Amendment 174 not moved.

Amendment 298 moved—[Richard Lochhead]—and agreed to.

Schedule 4, as amended, agreed to.

Section 148 agreed to.

Long Title

The Convener: The next group is on sustainable development. Amendment 299, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray: Amendment 299 seeks to replace the term “functions and activities in” with “the sustainable development of” in the long title. Peter Peacock originally lodged the amendment, but a long-standing speaking engagement meant that he withdrew it, so I lodged it in my name.

Two weeks ago, the committee and cabinet secretary accepted a similar amendment—amendment 97—to the general duties. I hope that the committee and cabinet secretary will agree to this amendment to the long title. Members will recall a similar amendment to include the term “sustainable management” in the Flood Risk Management (Scotland) Bill.

I move amendment 299.

Richard Lochhead: A similar amendment was lodged by Peter Peacock and debated on 18 November, and was subsequently withdrawn. As I said on 18 November, I am content to put our commitment to sustainable development beyond doubt. I was happy to agree to amendment 97, which contained a new duty on sustainable development. However, the long title of a bill provides an accurate summary statement of its contents. The current long title does that in a way that amending it in the proposed way would not. Also, the amendment would neither change the meaning of the substantive provisions of the bill nor strengthen in any way the sustainable development duty. We see no reason to support amendment 299. I am sorry to finish on such a sour note, convener.

Elaine Murray: In view of the cabinet secretary’s statement and the diminishing number of members at committee, I seek leave to withdraw amendment 299.

Amendment 299, by agreement, withdrawn.

Long title agreed to.

The Convener: That ends our stage 2 consideration of the bill. I thank the cabinet secretary and his officials for their attendance. I also thank members for their consideration of 299 amendments, completion of which concludes the committee’s direct involvement in the bill. That said, I am sure that all members will continue to be fully and actively involved in the stage 3 proceedings in the new year. I thank the press and public for their attendance.

Meeting closed at 12:57.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

Members who wish to suggest corrections for the archive edition should mark them clearly in the report and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP.

The deadline for corrections to this edition is:

Friday 11 December 2009

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

**53 South Bridge
Edinburgh EH1 1YS
0131 622 8222**

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

And through other good booksellers

Blackwell's Scottish Parliament Documentation

Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

**Telephone orders and inquiries
0131 622 8283 or
0131 622 8258**

**Fax orders
0131 557 8149**

**E-mail orders, Subscriptions and standing orders
business.edinburgh@blackwell.co.uk**

Scottish Parliament

**All documents are available on the
Scottish Parliament website at:**

www.scottish.parliament.co.uk

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille; large print or audio), please contact:

Public Information Service

The Scottish Parliament
Edinburgh EH99 1SP

Telephone: 0131 348 5000

Fòn: 0131 348 5395 (Gàidhlig)

Textphone users may contact us on
0800 092 7100

We also welcome calls using the RNID
Typetalk service.

Fax: 0131 348 5601

E-mail: sp.info@scottish.parliament.uk

We welcome written correspondence in any language.