

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 8 December 2004

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

29th Meeting 2004, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Mr Mark Ruskell (Mid Scotland and Fife) (Green)

COMMITTEE MEMBERS

*Rob Gibson (Highlands and Islands) (SNP)

*Karen Gillon (Clydesdale) (Lab)

*Alex Johnstone (North East Scotland) (Con)

*Richard Lochhead (North East Scotland) (SNP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Mr Alasdair Morrison (Western Isles) (Lab)

*Nora Radcliffe (Gordon) (LD)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

Janis Hughes (Glasgow Rutherglen) (Lab)

Jim Mather (Highlands and Islands) (SNP)

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

Eleanor Scott (Highlands and Islands) (Green)

*attended

THE FOLLOWING GAVE EVIDENCE:

Ross Finnie (Minister for Environment and Rural Development)

David Wilson (Scottish Executive Environment and Rural Affairs Department)

THE FOLLOWING ALSO ATTENDED:

Lewis Macdonald (Deputy Minister for Environment and Rural Development)

Mr Jamie McGrigor (Highlands and Islands) (Con)

CLERK TO THE COMMITTEE

Mark Brough

ASSISTANT CLERKS

Chris Berry

Catherine Johnstone

LOCATION

Committee Room 2

Scottish Parliament

Environment and Rural Development Committee

Wednesday 8 December 2004

[THE CONVENER *opened the meeting at 10:01*]

Item in Private

The Convener (Sarah Boyack): Good morning. We do not have the whole committee here, but I do not have any apologies and I do not know how long I would have to wait until everybody turned up. We have a full agenda this morning so my view is that we should crack on and colleagues can catch up when they arrive.

I welcome the members who have arrived, the press, members of the public and the huge ministerial team that I can see at the back.

Under agenda item 1, I seek the committee's permission to take item 6 in private. Item 6 is on my paper on climate change and I seek to take it in private because we will discuss potential witnesses and the order in which to take them. Are colleagues happy with that?

Members indicated agreement.

The Convener: We will ensure that what we agree is minuted and put on the web so that interest groups and members of the public can see exactly what the work will involve.

Subordinate Legislation

Plant Health (*Phytophthora ramorum*) (Scotland) Order 2004 (SSI 2004/488)

Sea Fish (Marketing Standards) (Scotland) Regulations 2004 (SSI 2004/498)

10:02

The Convener: Item 2 is subordinate legislation. We have two instruments to consider under the negative procedure. The Subordinate Legislation Committee has considered both instruments and members have an extract from its 41st report. It commented only on the Plant Health (*Phytophthora ramorum*) (Scotland) Order 2004. Do colleagues have any comments on the instruments?

Members indicated disagreement.

The Convener: Is it agreed that we are content to make no recommendation to the Parliament?

Members indicated agreement.

The Convener: Super.

Scottish Environment Protection Agency (SEPA) and Sustainable Development, Statutory Guidance to SEPA made under Section 31 of the Environment Act 1995 (SE/2004/257)

The Convener: We move on to consider draft statutory guidance to the Scottish Environment Protection Agency made under Section 31 of the Environment Act 1995. The guidance is subject to annulment in the same way as a negative instrument, so we could recommend to Parliament that the guidance should not be given. The Subordinate Legislation Committee has considered the draft guidance and members have a copy of that committee's 42nd report. Do members have any comments on the draft guidance?

Mr Mark Ruskell (Mid Scotland and Fife) (Green): As I understand it from the guidance, SEPA has two roles. It has a regulatory role, but it also has a role in promoting environmental excellence beyond the compulsory regulatory standards. In reading the guidance, I was a little concerned that in some ways that role is capped because SEPA has to consider costs—and the need to avoid imposing excessive costs—all the time and I wonder whether that holds it back in pushing for environmental excellence. Although we strive for the best available technology not entailing excessive costs, or BATNEEC, I am concerned that we might end up with CATNIP: the

cheapest available technology not involving prosecution.

I notice that option 8 in the guidance states that voluntary environmental improvements that are in excess of the regulatory requirements can be promoted, but that is dropped in the summary. I want to be reassured that we will make progress with the environment, not just using the basic environmental regulations but ensuring that the guidance gives SEPA a free hand to push environmental standards even where they lead to extra cost.

The Convener: We can pass that on to the minister.

I had a very positive feeling when I read through both the main report and the summary of actions at the end. The guidance is specific about the kind of things that SEPA needs to do to raise environmental standards and it is also quite crunchy in its thinking about how SEPA should implement sustainable development.

An aspect of the guidance that I am particularly keen on is the reference to SEPA working with industry and with local institutions to try to help them to raise their game. We have not seen SEPA do that previously. The guidance picks up issues such as odour and noise, where those are subject to regulation. Odour has been a big concern of the committee in our discussion of the petition that we received on sewage treatment works.

I was glad that it is made explicit that SEPA should have links with planning authorities

“to ensure that land use planning and environmental protection controls work coherently together.”

We have had concerns about that in respect of, for example, the wider environmental impact and health impact of opencast coal mining. Some issues cut across the two systems.

The other issue that is worth drawing to people's attention is the specific requirement that SEPA should provide advice to planning authorities to avoid development in areas where flooding risks make it unsustainable. That topic has been sitting around on the committee's agenda. We have certainly picked it up in the annual review of the implementation of the Water Environment and Water Services (Scotland) Act 2003. The fact that there is now a much greater emphasis on the matter is important.

Mark Ruskell made a point about cost effectiveness and whether SEPA should go for the cheapest solution. I would pick out action 24, which is about SEPA trying to think about how it is organised to deliver sustainable development. Action 24 suggests that SEPA should demonstrate best practice on matters such as waste, energy and travel, and report publicly on its progress.

The guidance moves SEPA forward. What interests me is whether such guidance might roll through to other Government organisations that have sustainable development as one of their statutory responsibilities.

I take Mark Ruskell's point that we can be critical about some of the guidance, but in other ways it represents a big step forward. We should keep a close eye on where it goes. There is an 18-month timetable for a plan to be produced. I hope that the committee will examine the plan.

Nora Radcliffe (Gordon) (LD): I endorse everything that the convener said. SEPA will have to publish its own internal guidance on the assessment of cost and benefit, so it is a conscious and transparent process. There are safeguards.

Karen Gillon (Clydesdale) (Lab): Much of the guidance is laudable. I would be interested in having more information from the minister. I would like to know how, under action 14, SEPA will use its statutory powers to protect vulnerable communities from excessive environmental burdens. It is all very well to say that on paper, but what does it mean in practice? I would welcome more information on how those powers will be implemented. People who read that will see the use of powers in that way might help their community, but exactly what it means for them is less certain.

The Convener: I picked up on action 18, on planning authorities. That is an example of how that might be done in practice through making the link between environmental planning and environmental health.

Rob Gibson (Highlands and Islands) (SNP): I have a follow-up point on that issue, in relation to problems that exist in identifying housing sites in very rocky areas. There must be the best possible co-operation between the planning authorities and SEPA in order to identify sites at an early stage. The provision of affordable housing in remote areas is hindered by the difficulty of finding suitable sites. We want SEPA to be proactive on that matter.

The Convener: Are you suggesting that SEPA should identify geological constraints?

Rob Gibson: I think that it should. Examples from Lochinver and Assynt spring to mind, but there are many others. In order that people can live in parts of the world where the rocks are at the surface and there is very little soil, we must look to SEPA to be proactive in helping ahead of time. That co-operation with the planning authorities is essential.

Maureen Macmillan (Highlands and Islands) (Lab): Action 15 states:

"SEPA will seek to encourage and inform public participation in decisions affecting their environment and sustainable development."

That could be a useful tool to address some of those concerns. As Rob Gibson said, the Highlands are either a rock or a bog and it can be difficult to find a place for a house between the two. However, do not quote me on that.

The Convener: My suggestion is that we ask the clerks to send ministers a copy of the *Official Report* so that they have our comments for their information. It will be helpful if they can then get back to us on any issues that have been raised.

Are members happy to note the draft guidance and not to make any recommendations on it to Parliament?

Members indicated agreement.

Water Services etc (Scotland) Bill: Stage 2

10:10

The Convener: Item 4 is stage 2 consideration of the Water Services etc (Scotland) Bill. I invite members to declare any interests that they need to bring to the attention of Parliament.

Karen Gillon: I am a member of Unison, so I put that registered interest on the table.

The Convener: I welcome the Deputy Minister for Environment and Rural Development, Lewis Macdonald. He will steer us through the bill today, as he has a series of amendments. I also welcome his officials.

The committee has not dealt with a bill at stage 2 for some time so, for the record, I remind members how we handle such matters lest we get ourselves tied up with the procedure. In front of them, members should have a copy of the Water Services etc (Scotland) Bill as introduced; the first marshalled list of amendments, which was published yesterday; and the groupings of amendments. On my authority, the amendments have been grouped into a logical order to facilitate debate. However, the running order of the amendments is set by the rules of precedence that govern the marshalled list. Therefore, we need to move through both the groupings paper and the marshalled list. All amendments will be called in strict order—we can move only forwards, not back and fro—as we go through the marshalled list. Our target today is to complete consideration of sections 1 to 11, together with schedules 1 and 2.

We will debate amendments group by group. Today, the first amendment in each group is in the name of Lewis Macdonald, who has the lion's share of the amendments. I will call him to speak to all the amendments in the group and to move only the first amendment. After that, other members who wish to speak can catch my attention in the usual manner. Only one amendment has been lodged by a committee member—Rob Gibson—and I will ensure that he is given the opportunity to speak during the debate. For winding up the debate on each group of amendments, I will invite the minister to make any comments that he may have, although my reading of the amendments suggests that that may not be necessary in every case. I remind everyone that only committee members can vote on amendments.

As well as considering the amendments, we must decide whether to agree to each section of the bill. Therefore, we may have a short debate on each section to cover any issues that have not

been raised in amendments. That is the general outline of how we will go through things today, so I will now get my marshalled list organised and we will begin.

Section 1 agreed to.

Schedule 1 agreed to.

Section 2 agreed to.

Section 3—Determinations relating to provision of certain services

Section 3 agreed to.

The Convener: Group 1 is on the water customer consultation panels and the representation of customers. Amendment 1, in the name of the minister, is grouped with amendments 2, 2A, 19, 21, 24, 26 and 29 to 35.

10:15

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): It is useful to begin with this group of amendments, because of their significance. They relate to water customer consultation panels and the proper representation of customers. The various amendments in my name make a coherent set of changes. They are designed to strengthen the representative functions of the panels, making provision for them to influence the water industry's policy framework and providing for the convener of the water customer consultation panels to handle complaints from individual customers, while ensuring that the appropriate powers and safeguards are in place.

As was indicated at stage 1, we have considered the implications of the proposed new regime on the panels. We consider it right for the panels' role to be expanded and for them to be given a strong voice, both to influence policy and to deal with individual complaints. It is important that those who have been given responsibility for taking key decisions about the industry listen to the panels' voice.

Many of the critical provisions lie in amendment 2, which enters into some detail. The first part of amendment 2 seeks to strengthen the role of the panels. It provides that they will represent the views and interests of all customers—domestic and non-domestic—who use the public water supply and sewerage systems. That includes non-domestic customers who are not direct Scottish Water customers; it excludes the licensed providers, which will be brought into being by the bill. That provides the right balance, allowing all those who use services—the ordinary domestic and non-domestic customers—to be represented.

Under the bill, Scottish Water will continue to

provide water and sewerage services and will be responsible for their physical provision to all customers and for dealing with domestic customers in every respect. The proposals will allow the convener of the panels to deal with complaints about services from customers of all kinds. We want the panels to have an input into the charge determination process and, in doing so, to be able to speak for all users of the public water and sewerage systems.

New section 2(4) of the Water Industry (Scotland) Act 2002, which is added under amendment 2, ensures that a panel can

"publish reports on any matter it considers relevant to the interests of"

customers, and that it can direct recommendations to Scottish Water, to the Scottish ministers or to any of the industry regulators. New section 2(5) of the 2002 act would require those people to whom recommendations have been made to respond to them.

New sections 6A, 6B and 6C of the 2002 act cover a number of important matters. New section 6A gives the convener of the panels a duty to investigate customer complaints and a right to request information from Scottish Water in relation to that duty. It is important that it is the convener who is given that responsibility, rather than the panels. We believe that placing complaints in the hands of the representative consumer body strikes the right balance, allowing panels to continue to focus on their wider representative functions as the convener deals with individual complaints. We hope that that will provide customers with greater clarity as to how complaints may be dealt with.

New section 6B of the 2002 act requires the convener of the panels to submit an annual report to ministers, which is to be laid before the Parliament, enhancing the accountability of the panels. New section 6C provides for a statutory memorandum of understanding between the water industry commission for Scotland and the panels. That responds to a specific recommendation that the committee made earlier and we believe that it will work in the interests of customers.

Amendment 2 and the consequential and associated amendments take forward and put into practice the commitments that were given towards the end of stage 1. I hope that they will attract support on that basis.

I will say a word or two at this point about amendment 2A, in the name of Rob Gibson, as it will be the subject of some discussion in the debate on the grouping. I have sympathy with the view that a snappier title than convener of the water customer consultation panels could have been found. Although I can see the argument for a snappier title, I am not persuaded that that needs

to be done in statute. I therefore do not support amendment 2A.

The wording of amendment 2A would see the title being limited to the consultation panels' function of dealing with individual complaints. The Executive's view, which I know is shared by the committee, is that panels should be a one-stop shop for customers and should be recognised and identifiable by customers not only in regard to their complaint-handling process but in regard to the other inputs that they make.

There is no requirement for a different title to be laid down in statute. Members may be aware that the English equivalent body has one title in statute, which is rather formal, and another in general use, which is a little bit more recognisable and, indeed, snappy. Although I do not recommend support for amendment 2A, I have some sympathy with the purpose behind it. If Mr Gibson were minded not to move amendment 2A, I would be happy to consider the matter further before stage 3 and see what we can do to respond to the purpose that lies behind the amendment.

Members will see that there are a number of other Executive amendments in the group. In order to allow full debate on the grouping, all that I will say is that they are in line with amendment 2. The intention behind them is that they reinforce the provisions of amendment 2 throughout the bill—where that is required.

I move amendment 1.

Rob Gibson: I thank the minister for his words on the snappy title issue. In paragraph 7 of its response to the committee's stage 1 report, the Executive says:

"We also welcome the Committee's recommendation that clear guidance should be made available to customers on the complaints process, both as handled by the Convener but also in approaching Scottish Water. The Convener sees this type of information provision as a valuable function the Panels could supply and we would look forward to him providing this in the future."

The committee is agreed that that is precisely what we want to happen. At our last committee meeting, we discussed the need to have a snappier title. Someone has to start the process and I had hoped that the imagination of the Executive would be brought to bear in that respect. It is a pity if that is not going to happen. I am minded to hear the views of other members, after which I will consider my approach.

Nora Radcliffe: First, I will speak to amendment 2A. I agree with everything that Rob Gibson says, but a title is not something that we need to put into primary legislation. It is better for it to happen outwith the bill process if for no other reason than that Scottish ministers might be skilled in all sorts

of ways but not necessarily in finding snappy titles for things.

I have a point of clarification. I assume that if we are moving section 3 to after section 19, all the things that are introduced after section 3 move as a consequence and come after section 19. Is that right?

The Convener: Amendment 1 does not change the position of anything else.

Nora Radcliffe: Right. So, when we move section 3, everything that goes in after section 3 goes in after that section in its new position after section 19. The clerk is indicating that that is not the case. If only section 3 moves, all the stuff that comes in after section 3 stays between sections 2 and 4. Is that right?

The Convener: Yes.

Nora Radcliffe: Thank you.

The Convener: I am glad to see this full group of amendments because a few weeks ago we had a useful discussion about seeking supplementary evidence from a variety of interests including Scottish Water and consumer organisations on the issue of how complaints should be dealt with. At the time, we were assured that the process would be resourced adequately and monitored. That will need to be kept under review, but the process that these amendments seek to introduce should be a step forward.

Rob Gibson has raised a pertinent point about what the system will be called. I take the minister's point that it does not need to be set out in statute, but I am prepared to accept his offer to come back at stage 3 after reflecting further on the matter. Rob has made his point quite effectively in amendment 2A and I hope that at stage 3 the minister will come up with something that is close to the spirit of Rob's suggestion. Perhaps they should have a mini-competition. The issue needs to be addressed if the bill is going to set out the complaints process and the panels' more proactive role. I take the minister's point that amendment 2A is not necessarily the way of doing that, but nevertheless it needs to happen.

Lewis Macdonald: I am very happy to exercise the Executive's corporate imagination and discuss the matter with the convener of the panels and panel members. I will come back at stage 3 with some imaginative suggestions.

The Convener: Rob, you can tell us what you want to do with amendment 2A when we reach that point in the marshalled list. I want to keep everything in a strict order so that I do not get lost.

Amendment 1 agreed to.

After section 3

Amendment 2 moved—[Lewis Macdonald].

The Convener: I call Rob Gibson to indicate whether he will move amendment 2A.

Rob Gibson: Given the minister's assurance that he will reflect on the matter, I am happy not to move amendment 2A.

Amendment 2A not moved.

Amendment 2 agreed to.

Section 4—Public water supply system: offences

The Convener: Group 2 is on the limitation of regulation-making powers with regard to offences relating to public systems. Amendment 3, in the name of the minister, is grouped with amendment 4.

Lewis Macdonald: Amendments 3 and 4 seek to respond to an issue that was raised by the Subordinate Legislation Committee and are intended to put beyond doubt the prohibitions that the bill seeks to establish.

Members will recall that sections 4 and 5 seek to create new offences that will prohibit common carriage and unlicensed retail competition for non-domestic premises that Scottish Water serves. They also seek to provide an order-making power to modify those offences that would, for example, prescribe circumstances in which the offences do not apply. That position is quite clear. However, the Subordinate Legislation Committee expressed concern that the powers might be used to circumvent the bill's objectives or to disapply one or more offences in the bill. Obviously, that would nullify the bill's purpose.

The Executive's view is that it is not possible to use secondary legislation to overturn the stated purpose of primary legislation, because in such cases the courts will always ask about the Parliament's intention in passing a particular piece of legislation. In that respect, I think that the Parliament's intention is clear. That said, amendments 3 and 4 make it clear beyond any doubt that the order-making power can be used only in a manner that does not prejudice Scottish Water's responsibility for providing core water and sewerage services through the public networks. The amendments seek to reinforce the offences that sections 4 and 5 set out and provide that they may be modified only in a way that does not detract from Scottish Water's responsibility for the networks and the provision of services to domestic households.

I move amendment 3.

Alex Johnstone (North East Scotland) (Con):

I want to give a brief explanation of my position. The minister is aware that I am opposed in principle to the prohibitions in the bill. However, given the will of the Parliament, I feel that, on balance, amendments 3 and 4 will improve the bill as it stands. Therefore, I will not oppose them.

10:30

The Convener: As no one else wants to make such fulsome comments, I invite the minister to wind up. I am not sure that he needs to say much.

Lewis Macdonald: I am pleased to have unanimous support for the proposed changes.

Amendment 3 agreed to.

Section 4, as amended, agreed to.

Section 5—Public sewerage system: offences

Amendment 4 moved—[Lewis Macdonald]—and agreed to.

Section 5, as amended, agreed to.

Section 6—Licence authorisation

The Convener: Amendment 5 is grouped with amendments 27 and 28.

Lewis Macdonald: Amendment 5 seeks to change section 6 and amendments 27 and 28 seek to change section 20. The amendments are somewhat technical, but they are nonetheless important. They seek to ensure that arrangements can be made between a customer and a licensed retail provider as conveniently as possible.

Section 6 provides for licences to be granted authorising a water services or sewerage services provider to make arrangements with occupiers of premises to retail services to them. However, where premises are unoccupied, the owner may wish retail arrangements for water and sewerage services to be put in place. Amendment 5 will ensure that that would be possible. For example, where a newly built office block does not yet have an occupier, the proposals in amendment 5 will ensure that the owner of the block could make arrangements for water and sewerage services in advance of occupation.

Section 20 defines "eligible premises" for the purposes of retail licensing as those that are connected to the public water supply or sewerage system, but which are not a dwelling. Amendments 27 and 28 will amend the definition to enable premises that are to be connected to the public networks, as well as those that are already connected, to be eligible for supply on the basis of retail competition, as long as they are not a dwelling. The amendments will give an owner or an occupier the required flexibility to make

arrangements in advance of the premises being connected.

I move amendment 5.

Amendment 5 agreed to.

Section 6, as amended, agreed to.

Sections 7 to 11 agreed to.

SCHEDULE 2—LICENCES AND COMPLIANCE: FURTHER
PROVISION

The Convener: Amendment 6 is grouped with amendment 36.

Lewis Macdonald: Again, amendments 6 and 36 respond to an issue that the Subordinate Legislation Committee raised in relation to an order-making power in subparagraph 1(7) of schedule 2, which amendment 6 will remove. Our intention in providing the order-making power was to recognise that flexibility might sometimes be required to streamline the licence application procedure, particularly in making representations about an application—for example, in relation to the initial application by Scottish Water's retail subsidiary, which will be established under section 12.

The order-making power, as it is currently drafted, is drawn somewhat widely and we are happy to make specific provision in section 12 for procedures to be modified in relation to the first application for a licence by Scottish Water's retail subsidiary only. I hope to bring an amendment to section 12 to the committee next week.

In the meantime, amendment 6 will simply remove the general order-making power and the redundant reference to it in the bill to allow the subsequent amendment to be lodged next week. It is fairly technical and is intended to make it clear that the power relates only to the setting up of Scottish Water's retail subsidiary body.

I move amendment 6.

The Convener: That sounds like quite a technical but important piece of tidying-up work. I do not see any member requesting to speak—we are all totally convinced by that explanation.

Amendment 6 agreed to.

The Convener: Group 5 is on the licensing process and appeals regarding applications and transfers. Amendment 7, in the name of the minister, is grouped with amendments 8 to 10 and 14 to 18.

Lewis Macdonald: The amendments concern the appeal provision that is part of the procedures for applying for, transferring or modifying the conditions of a retail licence under schedule 2. The bill includes provisions for an applicant to appeal, for example, against the refusal of a

licence application; against the conditions in a licence; or against the refusal of consent to transfer a licence. Provision is also made for Scottish Water to appeal against the granting of a licence to another body that it feels ought not to receive that licence.

We are keen to ensure that such appeals should be only

“on a question of law”

and that the courts should have the appropriate power to review the legality of decisions that are made in that regard without necessarily having to go back to look at all the merits of the application or to consider technical matters that a court of law would not wish to drift into if it were not required to do so. Amendments 7 to 10 and 15 are intended to achieve some clarification and to give the courts an appropriate degree of scrutiny in relation to licensing decisions that are taken by the water industry commission.

Amendment 14 is a drafting amendment and will make no substantive difference; it simply tidies up the language a little bit.

Amendment 16 will give Scottish Water a right to appeal against a decision by the commission to grant consent to the transfer of a retail licence. Again, that makes consistent the provision that applies between the initial granting of a licence and the transfer of a licence from one body to another. We intend to ensure that Scottish Water has the same rights of appeal as the applicant if it is not happy with the commission's decision. However, the amendments will ensure that such appeals are on questions of law only. The other amendments in the group are consequential to that purpose.

I move amendment 7.

Amendment 7 agreed to.

Amendments 8 to 10 moved—[Lewis Macdonald]—and agreed to.

The Convener: Group 6 is on sustainable development. Amendment 11, in the name of the minister, is grouped with amendments 23 and 25.

Lewis Macdonald: Perhaps we are back in more interesting territory for committee members. The intention is to make additional provision to ensure that the principle of sustainable development is fully embedded in the new regulatory framework that will be established by the bill. There was some debate on that in the committee at an earlier stage, and we are keen to confirm that sustainable development should guide the work of all those who are involved. I hope that our amendments will achieve that to the satisfaction of the committee.

The framework that is established in the bill will ensure that the water industry commission must

take full account of the existing duty on Scottish Water regarding sustainable development. In our amendments, we wanted to provide further reassurance of that and some explicit application of that to retailers in the bill. Amendments 23 and 25 require the two policy documents that will guide the commission in determining Scottish Water's charges to have regard to Scottish Water's sustainable development duty in relation to new section 29D of the 2002 act and new section 56A of the 2002 act. For example, in setting Scottish Water's investment objectives, ministers will also have regard to the contribution that reduced water usage could make to sustainable development. That is a good example of how the requirement on ministers will apply.

Amendment 11 addresses the new issue of ensuring that licensed providers that are established under the bill should also make a contribution to sustainable development. It places that requirement on Scottish Water's retail subsidiary and on other retail providers. We believe that retail providers have a valuable role to play in the promotion of the efficient use of water by their customers, and we want to ensure that they play that role. Amendment 11 provides powers to enable ministers to issue guidance on the contribution that licensed providers should make to sustainable development, which is equivalent to the provision in section 51 of the 2002 act that enables us to issue sustainable development guidance to Scottish Water. The water industry commission is required to have regard to that guidance in setting licence conditions, which will ensure that those are binding requirements on licensed providers.

Taken together, the amendments provide the effective mechanism that we want to ensure that sustainable development is at the heart of the bill, as it is at the heart of our approach in general.

I move amendment 11.

Mr Ruskell: I welcome the Executive's three amendments on sustainable development, which reflect the concerns that have been expressed in the debate that we have had in the committee. I believe and hope that amendment 11 will create a level playing field for the new retail entrants and Scottish Water, but I seek some clarification in that regard. Subparagraph (1) in amendment 11 talks about

"how water services and sewerage services providers might ... reasonably contribute to the achievement of sustainable development."

Does that mean the same as what is stated in section 51(1) of the Water Industry (Scotland) Act 2002—that

"Scottish Water must, in exercising its functions, act in the way best calculated to contribute to the achievement of sustainable development"?

Do

"reasonably contribute to the achievement of sustainable development"

and

"act in the way best calculated to contribute to the achievement of sustainable development"

mean the same thing? I am trying to clarify whether there is a genuine level playing field in the duty that will be placed on the new retail entrants and on Scottish Water.

The Convener: I, too, would like to add one or two comments. Mark Ruskell is right. We explored this issue in some depth at stage 1. We need to get some clarification from the minister and think about how the provision would work in practice across the industry. When we visited Wales recently, we explored the issue with the water company there, Dwr Cymru. It was interesting to get a slightly different take on the issue and to see a slightly different set-up regarding sustainable development. I am pleased that amendment 11 has been lodged as it clarifies the bill's aim, and I hope that the minister will be able to give Mark Ruskell the reassurance that he seeks about the interpretation of the wording.

I was pleased to see that, in the covering letter to the bill, which Ross Finnie wrote to us before stage 2, water conservation was picked up as an issue that you expect both Scottish Water and new retail entrants to think about in the provision of services. That angle on sustainable development will be a major issue in the future.

I am pleased about your general response on water conservation and sustainable development and I am particularly pleased to see a detailed amendment that I hope will clarify matters both for Scottish Water and all potential future entrants to the market.

No other members want to ask questions, so I invite the minister to respond to Mark Ruskell and me.

10:45

Lewis Macdonald: I am happy to do so and to confirm that the intention is to achieve a consistent regime across the board. Section 51 of the 2002 act and amendment 11 set out clear requirements for Scottish Water and retailers to take action to contribute to the achievement of sustainable development. The two provisions are worded slightly differently and the committee might well take the view that the duty on Scottish Water is a little more emphatic than is the requirement on retail providers to "reasonably contribute" to

sustainable development. That is because Scottish Water is the fundamental service provider and is responsible for the networks, the infrastructure, the water treatment and so on. Therefore its duty is clear and must apply across the range of its functions. Retail bodies do not have quite the same degree of influence on sustainable development, so the law will require them to make whatever contribution is reasonable for them as retail providers. That is in recognition of the fact that the direct impact of a retailer is less than that of the network provider.

In practice, both section 51 of the 2002 act and amendment 11 provide for guidance to be issued by ministers. We expect that the ministerial guidance that is issued to Scottish Water and the guidance that is issued to retailers will at least be consistent and, in many cases, will be identical when identical functions are being delivered. Amendment 11 will allow clear guidance to be issued by ministers to place requirements both on retailers through the licence conditions and, as at present, on Scottish Water, to deliver sustainable development in the range of policy decisions that are made.

Amendment 11 agreed to.

The Convener: Group 7 is on licences and procedures for transfers. Amendment 12, in the name of the minister, is grouped with amendment 13.

Lewis Macdonald: Amendment 13 relates to instances in which a licence might be transferred between one operator and another. The amendment will ensure that the procedure for transferring a retail licence to another holder is consistent with the process for applying for such a licence in the first place. It does that by applying the procedures in paragraph 1 of schedule 2 in relation to original licence applications to transfer applications in paragraph 3, replacing specific provision for transfer applications. It also provides that

"Any applicant for consent to a transfer of a licence who knowingly or recklessly makes a statement, in connection with the application for consent, that is false or misleading in a material particular is guilty of an offence"

and for the penalties to apply on conviction. That is consistent with the existing provision in paragraph 1. The intention behind amendment 13 is simply to achieve consistency. Amendment 12 is consequential to amendment 13.

I move amendment 12.

Nora Radcliffe: I have a point about semantics. I presume that "knowingly" and "recklessly" are both included so that if someone takes a flier at not knowing, they are still caught by the law.

Lewis Macdonald: Yes. That is a general legal provision to cover someone acting in a criminal manner knowing it to be criminal, or acting recklessly regardless of whether they know it is criminal. Both would attract punishment in the same way.

Amendment 12 agreed to.

Amendments 13 to 18 moved—[Lewis Macdonald]—and agreed to.

Schedule 2, as amended, agreed to.

The Convener: That completes day 1 of stage 2 consideration of the bill. Given the number of amendments that were lodged for today and the progress that we have made, which I have to say has been efficient, I suggest that the target for day 2 should be to complete stage 2 consideration. I have not received any indication that colleagues have hundreds of amendments waiting to be lodged. We should be able to work through stage 2 in an orderly manner next week. We intend to complete consideration of all the remaining sections and schedules. If we do not, we will still be able to have day 3 of stage 2 before Christmas. If members have amendments to the rest of the bill, they must lodge them by 2pm on Monday 13 December so that we can consider them on the Wednesday morning. I thank the deputy minister and his officials for coming along and providing clarification, which has helped us to get through business efficiently this morning.

We expect the Minister for Environment and Rural Development, who is currently in Cabinet, at 11.30. I suggest that we move on and take item 6, on climate change, which we agreed to take in private. Any members of the public and press who want to be here for our discussion on fisheries with the minister should come back at 11.30. We might need to take a seriously long comfort break, but that way, everybody knows what we are doing.

10:51

Meeting continued in private.

11:36

Meeting continued in public.

European Union Agriculture and Fisheries Council (December 2004)

The Convener: Agenda item 5 is the December 2004 meeting of the European Union's agriculture and fisheries council. I welcome the Minister for Environment and Rural Development and thank him for coming. The committee agreed to take evidence from him on fisheries issues in advance of the council meeting later this month, at which I understand important decisions will be taken. The discussion is part of a series and is all the more topical because of a report that has been released this week, so this is an important time to discuss fisheries.

We do not have a detailed, finalised agenda for the council meeting, but we have a note from the Executive that lists the key issues that are expected to be considered. I invite Ross Finnie to introduce the official who accompanies him and to give us a brief opening statement, after which members will ask questions and make comments.

The Minister for Environment and Rural Development (Ross Finnie): I am joined by David Wilson, who is the head of the fisheries and rural development group in my department.

I am grateful for the opportunity to discuss the forthcoming talks. My department and I are in contact with the fishing industry, environmental groups, stakeholder groups and community groups throughout the year. Because tremendous importance has—rightly—been attached to the topic in recent weeks, we have intensified our consultation of those groups.

As our note says, the key issues that will be discussed at the council include the annual discussion on total allowable catches and the quota regime, any amendments to the effort control regime and what, if anything, we do about elements in last year's annex V, which included a special haddock permit scheme as part of the cod recovery plan.

The committee is well aware that the background is the state of stocks. Two important reports on that have been issued: the annual International Council for the Exploration of the Sea—ICES—report on its continuing investigation into the state of stocks and the annual review of the ICES report that the EU's scientific, technical and economic committee for fisheries—STECF—undertakes. That review examines some of the raw data and attempts to provide a broader picture.

From a Scottish perspective, the most crucial element is that cod stocks remain below their safe biological limits. We cannot get away from that fact. As we operate what is broadly known as a mixed fishery, that has serious ramifications in so far as latent risks exist of catching cod at the same time as we prosecute haddock, whiting, prawns and monkfish, some of which are other key stocks for the white-fish fleet.

The other message is that stocks of the pelagic fishery are in a reasonable state, but there has been some decline in terms of the scientific evidence, particularly in relation to mackerel, and there is clear guidance from the scientific reports that the total allowable catches and quotas for mackerel ought to be reduced.

On the other hand, the STECF report indicates that, on any view, some of the measures that have been put in place—to which Scotland has made a huge contribution over the past few years—are showing signs of having some effect, and that therefore there is no need for radical change or elaborate tightening up of the measures. The recommendation is rather that we should build on those measures.

On stocks other than cod, the haddock stock is in a good state, although again the scientific evidence points clearly to the fact that, even in relation to the single-year class of 1999 that supports that stock, it is now beyond its peak, and we have to be careful not simply to ramp up the quota in relation to that stock. There are, however, more encouraging movements, particularly in terms of nephrop and monkfish stocks. Therefore, although there are problems with mackerel stocks, the other pelagic species are in good order.

The deep-sea fisheries analysis is not encouraging, and we have to be careful about what we do. As part of taking that information as the baseline, we have continued as a department to meet fisher interests, environmental interests and community interests. In the past four or five weeks in particular we have had an extended range of visits. We are trying hard to construct a range of positions on which we are prepared for the December council meeting. I do not want to go into all the detail on that, because I wish to retain some of my negotiating tactics for handling the Commission.

One thing I will say is that in the next few hours we are expecting the release of a report from the Commission, the final details of which we have not seen. The report was prepared on the back of the raw data from ICES; that is unfortunate because it does not take and cannot have taken account of the STECF report. Perhaps it is just a question of timing. As we understand it—there have been extensive public leaks over the past 48 hours—the report is likely to suggest closing some areas.

Regrettably, the scientific evidence for that is seriously queried by the STECF report, which is the Commission's own report. We have some difficulties with that proposition, which is why, from a negotiating stance, I am much more content to rest on the combination of the ICES and STECF reports.

We have had constructive engagement with all aspects of the fisheries. In Aberdeen, I was pleased to receive further community representations, as I also did in Peterhead and Banff. I shall be in Shetland on Monday, before I go off to the Commission for the final meetings later in December.

We have tried hard to put the talks into context. I believe that there are grounds for coming away from the talks with a management regime that allows our fisheries better to prosecute stocks that are not in danger. It will still protect the environmental considerations of the stocks that are under threat, but it will allow us to improve quotas in some areas where the scientific evidence clearly justifies it.

I am happy to take questions from the committee.

The Convener: Thank you. I welcome to the committee Jamie McGrigor, who has joined us as a member who is interested in this topic.

11:45

Mr Alasdair Morrison (Western Isles) (Lab): First, I wish Ross Finnie and his team of officials the very best for the important weeks ahead, particularly as they negotiate on our behalf at the agriculture and fisheries council meeting towards the end of December. Like all rational politicians, I fully appreciate the sensible approach that has been taken by Executive ministers, whereby they do not spew forth details that would betray their negotiating position prior to council meetings. I am sure that we will be subject to the usual barrage of inane requests for such details prior to the negotiations in Brussels, but I am sure that the minister is more than capable of dealing with them.

I agree with the overview in relation to nephrops and monkfish and I am sure that Maureen Macmillan and Jamie McGrigor will make similar points on the prawn fisheries. We know that prawns are being harvested sustainably and, as the minister is aware, representatives of fishermen on the west coast are seeking an increase in the quota for nephrops. I hope that there will be such an increase, which can be argued for logically on the basis of sound science, and that we can secure a good deal for our fishermen and processors while keeping the objective of sustainability at the forefront of our thinking.

I also agree with Ross Finnie's comments about stakeholders and the way in which they are able to engage in the process. There are good, robust systems whereby fishermen's organisations and community interest groups can regularly feed in their concerns and highlight areas that they want to be dealt with. That is an excellent model of sensible dialogue and stakeholder involvement.

My plea on behalf of my constituency is simply that we must try to secure an increase in the nephrops stock. My other plea is to politicians from other political parties, particularly the toy-town nationalists who have a tendency to pop up in Brussels during the negotiations. They believe that they are supporting Scottish fishermen but their efforts in the past few years have done nothing to support fishermen and everything to destabilise delicate negotiations. I hope that they will remain tied up in Scotland, that they will not appear in Brussels and that they will engage sensibly and semi-coherently in the important negotiations. As I said, I wish the minister the very best.

The Convener: Does the minister want to respond?

Ross Finnie: I welcome Alasdair Morrison's support. I hope that we have a rational and sensible approach to what are difficult negotiations. He is right on the specific issue of west of Scotland nephrops in that we, the Scottish industry and others have submitted scientific data that have largely been accepted—particularly the STECF report, which recommends an increase in the TAC—and we are in advanced discussions with the industry. If we obtain an increase, there will have to be some management arrangement so that we can adequately demonstrate to the Commission that we will manage to constrain certain elements of the effort in those areas and keep to the reported minimum bycatch levels, particularly in relation to cod.

Richard Lochhead (North East Scotland) (SNP): Today, unlike some other members of the committee, I will try to earn my wages as a member of this committee and a member of the Parliament and hold the minister to account.

I am sure that the minister will agree that, for fishermen and others whose jobs depend on fishing, not to know whether they will have a livelihood from year to year is no way to run a fishing industry. Their Christmas is ruined every year by the way in which the negotiations are conducted annually in the run-up to Christmas and the new year. I am sure that he is also aware that many fishing communities feel as if they are standing at the edge of a cliff and that the EU and the common fisheries policy might be about to push them over the edge. That is the last thing that we want to happen at the talks next week, and I am sure that we all want to get behind the

minister and make sure that he secures a good deal for Scotland's fishing communities.

I am sure that the minister shares the objective of securing access to the many stocks that are abundant, given all the doom and gloom that we have heard in recent months, which suggested that many stocks are not in good shape. Some stocks, such as haddock stocks, are at record-breaking levels and others, such as nephrops and pelagic stocks, are extremely healthy. They are valuable to the Scottish fishing community. Perhaps we can also use today to send out not only a positive message of hope to the fishing community but a message to Scotland and consumers that there are many healthy stocks that have been looked after by the fishing fleet and which can be fished.

As well as securing access to the abundant stocks, we also have to avoid any further draconian restrictions that are unfair and unjustified and which are imposed only on the Scottish fleet and not on other fleets that fish the same stocks in the same waters.

One of my biggest concerns relates to the proposal for closed areas. We all await the announcement that the minister said the Commission will be making today and that he understands will propose closed areas. Can he shed some light on the kind of closed areas that we are talking about? Are we talking about areas that will be closed permanently, areas that will be restricted or something else? What kind of closed areas would he support and what kind would he not support? Many people in the fishing communities, conservation lobbies and so on would agree that there is a case for real-time closures when juvenile stocks are caught in the nets and that, in some cases, there is a case for seasonal closures. However, such closures have to be thought out over a period of months and perhaps that is what we should be concentrating on just now. For that reason, will the minister give us an outline of what he understands the closed areas to be and which ones he would support?

Ross Finnie: I do not think that the present difficulties of the Scottish fishing fleet can be entirely attributed to the common fisheries policy; I think that science indicates that they can be attributed to the fact that cod stocks are below their safe biological limit. It is not sensible to ignore that fact, which is exacerbated by the fact that we operate a mixed fishery. Regardless of the scientific reports on haddock, nephrops and most of the pelagic stocks—with the exception of mackerel—we have to recognise that, in the commercial fleet, we have to have in place a management system that takes due cognisance of the science relating to cod.

In terms of measures that are imposed on the United Kingdom, we have to understand that our entitlement to prosecute fisheries in the North sea equates to 70 per cent—or more, depending on which stock we are talking about—of all the available white-fish fleet. There is no member state that has more than about 10 or 11 per cent, and one or two of those member states do not prosecute that fishery. Therefore, it is not at all surprising that, in a system that is coherent and controllable, the element that has in excess of 70 per cent of the quota is also the element that has to bear the biggest brunt of the management effort.

I am not entirely clear what the proposals will be with regard to closed areas. One of the suggestions that I am not at all happy about is that we define a wholly closed area based on the earlier ICES advice. That advice does not support the location, duration or the definition of a closed area. However, I accept that there is an argument for having restricted areas, particularly real-time closures, which Richard Lochhead talked about, and closures in spawning areas. Indeed, the newly formed North sea regional advisory council will make it clear that it, too, is interested in management measures that would incorporate such closures. We can consider such measures but I find the more draconian closure, which seems to be based on the initial ICES advice but which is not supported by subsequent advice, not to be necessary.

Alex Johnstone: This is the sixth year during which I have watched this process. On this occasion, I am led to ask a question that is simplistic but needs to be asked of the minister. Why negotiate at all? Is it not the case that we have some of the best science available in this country? I take the view that the minister is perfectly capable of making judgments—perhaps significantly better ones than some of his colleagues in the European Union are capable of making—based on that science. Would it not be better if we withdrew from the CFP and the minister became responsible for the decisions?

Ross Finnie: No. You quite simply make the false assumption that the fish in all the fisheries that we prosecute always reside in our territorial waters, but they do not. Fish, curiously enough, move about. They swim about in the northern North sea and the southern North sea, and we therefore cannot assume that we have the sole right to determine how we will manage those fisheries. A sensible approach to the conservation of the marine biological resource, which must be broadened over time, is not capable of being delivered by a single member state; it requires international co-operation.

Even if your dream of coming out of the common fisheries policy were ever to be horrifically imposed upon us, we would still have to negotiate as we do in the EU-Norway talks and the supplements to those about the Icelandic, Faroese and Russian waters. Our pelagic fleet operates in international concerns, so we could not even say that we would not negotiate on the activities of our own fishing fleet. We have to be part of the international negotiation, because there are swap arrangements between the EU and the Norwegians. We are part of those arrangements and benefit from them through access to haddock and, in former years, cod stocks; if the cod stocks recover, we will need access to them.

I do not agree with your proposal. Fisheries management and marine ecological management are classic cases of matters that, to be effective and controlled, require international action. I have always made it clear that some of the ways in which the EU has gone about that management have been far from perfect. I do not go into the negotiations with blind eyes saying that the EU has made a perfect job of fisheries management, but I am clear that, at the root, it is impossible to achieve management of a marine biological resource through a single member state acting on and, more particularly and more likely, in its own self-interest.

Alex Johnstone: I compliment the minister on his faith. He is demonstrating the patience of Job in this matter.

The Convener: We will not ask him to respond to that.

Mr Jamie McGrigor (Highlands and Islands) (Con): For the past three days, radio reports in the morning have been dominated by the report of the Royal Commission on Environmental Pollution that all our fish stocks are in a very bad way and its recommendation that one third of our waters in the North sea, the Irish sea and the Atlantic be closed.

Minister, you have already said that you prefer to rely on the ICES science, but the point is that the royal commission's report could not have come at a worse time—just before the fisheries council—and that it has painted our fishing fleet in an extremely bad light. Will you go to the media, stand up for our fishing industry against the report and say what you think? The report has done much damage to our fishing fleet and, I presume, to your case in the EU negotiations.

Ross Finnie: I am sorry that Jamie McGrigor listens to the radio in the morning only. Patient and diligent radio listeners later in the day will have been bombarded by my dulcet tones on the subject.

The royal commission's report is a bit like a football match: it is in two parts. Its first 50 or 60

pages make a case with which I do not disagree—in fact, I have been talking about it for some time—namely, that the fisheries debate should be broadened and put in the context of marine management and the conservation of the marine biological resource. It is difficult to disagree with the first 50 or so pages—that is certainly the case for me, because I happen to think that that is the way in which we should progress our fisheries management, which is too narrowly focused at the moment. It is a huge report and although it formed part of my bedtime reading, it is full of references—there are more than 700 references in it—to other reports that must be looked up to find out why certain conclusions have been reached, which makes it difficult to read.

12:00

However, there appear to be one or two inconsistencies—or there appears to be incompleteness—in the report's specific proposals. For example, in its call for further decommissioning, it does not acknowledge all the decommissioning that has taken place in the Scottish fleet. Therefore, I am not clear whether the royal commission means that the Scottish fleet should be decommissioned by 65 per cent or whether the total—using 2001 as a baseline—should be 30 per cent. I must investigate that matter further. Quoting that figure is not helpful. The report also talks about making greater use of effort management, but it does not acknowledge, or make concessions for, the fact that we are already operating a cod recovery plan that is predicated on setting an effort reduction of 65 per cent as a target to deliver that plan. There are therefore inconsistencies.

What the report says about closed areas is also in two parts. The argument as to why partially closed areas or totally closed areas should be used is very scientific, well rehearsed and well made. However, having told us that the royal commission wants to apply closed area measures to specific species, why does the report then totally ignore the fact that one must consider the whole north North sea and the south North sea and apply those measures where the stocks are wholly engaged? I made that point earlier. I am puzzled as to how a total can be arrived at that shows that 30 per cent of the United Kingdom fishery will deliver the results. I need to do more work on the matter. I have made clear those reservations, which are in the public domain, and I repeat them this morning. I have also made it clear that I wish to proceed on the basis of the solid evidence that has been produced by ICES and STECF.

Maureen Macmillan: I want to ask about days at sea, which were a contentious issue last time.

The number of days at sea that were allowed was relaxed as progress was made over the year, but the situation was particularly difficult for the Shetland fishery, as people had a long way to travel to reach fishing grounds. I had the impression that the number of days at sea that we were allocated somehow related to the European Commission's perception of the number of our illegal landings or to people fishing where they should not fish. I do not know whether that is too simplistic a connection to make. When ICES briefed us last week, it factored in the black fish that it thought would have been taken over the year. Do we now have a better record on issues such as black fish landings? If we do, will that help in the negotiations?

Ross Finnie: The days-at-sea calculation is baselined on 2001 figures, which are then annually adjusted. Each year, all the days at sea by vessels that have prosecuted cod are added up. That total is then divided by the total number of vessels on the log sheets, which gives the average number of days at sea for a Scottish vessel. The figure is then reduced by 65 per cent in relation to the 2001 baseline in order to get to the 65 per cent effort reduction. The 35 per cent that has been achieved as a result of decommissioning that percentage of vessels is then added back.

On the implications in relation to black fish and whether things are better or worse, if I knew that, I would be able to tell how many people I had put in court. Catching black fish is, of course, illegal and therefore I am not at all certain as to its extent, which certainly varies.

All the anecdotal evidence from the Scottish Fisheries Protection Agency and my discussions with fisheries people, industry representatives and processors leads me to believe that the problem varies depending on the species. In the case of haddock in particular, on the face of it, levels ought to be down. It looks as if we will have an undershoot of the haddock quota, particularly in the haddock permit scheme areas. That would seem to indicate a commensurate reduction in black fish landings.

The issue is extraordinarily difficult. The whole purpose of trying to obviate the system means that ministers cannot readily get a handle on what is happening. If we could, I would be much happier—it would make things much easier.

If people are arguing for higher quotas and yet under-recording their landings, the situation can become counterproductive. In certain species, the calculation for the health of the stock is crucially dependent on knowing how much has been harvested. If people under-record their harvesting figures, they are, by definition, giving the impression that the available stock is smaller than

it might be. As I said, it can be counterproductive to engage in that activity.

David Wilson (Scottish Executive Environment and Rural Affairs Department): I just want to reinforce what the minister said about black fish. The scientific advice from ICES shows its concerns about unrecorded landings, as can be seen in its report. One of the points that the minister made concerned the subsequent scientific advice from the STECF on the interpretation of black fish landings. In other words, what regard should be given to that piece of information? The general sense of the advice is that black fish landings are less of a problem than the initial scientific advice had indicated, which is good.

Over the past year, in addition to the haddock special permit regime, we have had a tightening of the enforcement controls on the industry, particularly in the North sea. We have had a number of Commission investigations and assessments in which people from the Commission have come across to look at the controls that we have put in place. The visits have gone well, in the sense that the Commission is now reassured that we have put the systems in place. One of our key arguments is that black fish landings, particularly of cod, are much less of a concern than has been the case in the past. That should put us in a good place to negotiate better arrangements and to resist some of the closed-area proposals that the Commission has put on the agenda for the forthcoming negotiations.

Mr Ruskell: I welcome the Executive's general approach to fisheries management, as it does not deny the ecological reality of the state of our marine fish stocks.

I would like to push you on a couple of points, minister. The first relates to the industrial fisheries and, in particular, the fishing of small species such as sand eels. From my perspective, if the ecology of the North sea is a house, industrial fishing is the equivalent of knocking away its foundations. What approach will you take to industrial fishing in the forthcoming negotiations?

My second point concerns decoupling. Of course, the decoupling of haddock and nephrops from cod is vital in building the case for a sustainable quota. How effective has that been over the past year? I am thinking in particular of the fact that there has been a low uptake of haddock permits.

I have a further point about closed areas. I understand your reluctance on the issue, but I think that we share the opinion that closed areas will have a role to play at some point. How do we move towards the introduction of closed areas in Scotland? I am sure that, in time, the fishing

community will support the use of closed areas, as is the case in New Zealand.

The Convener: Minister, when you are answering the part of the question that deals with sand eels, will you pick up on the Norwegian aspect of the issue? I understand that the Norwegian fisheries and how they are controlled play a big part in all of this. I assume that Norway is also taking part in the EU negotiations.

Ross Finnie: My position has been to oppose any extension to, and to argue for reductions in, the industrial fishery. I have taken that position consistently. I find it difficult to understand how that stock can be prosecuted to the extent that it is at present, particularly when the reason for doing so is not even for human consumption. There is a whole raft of reasons—environmental and ecological—why we need to retain that source of food.

That position is shared by the United Kingdom Government and has consistently been its negotiating position. It is regrettable and curious that the nation states that prosecute the industrial fishery are almost as passionate about doing so as we are about trying to preserve a fleet that is engaged in catching fish for human consumption. However, the arguments are slowly but surely beginning to dawn and recommendations from the EU-Norway talks for substantial reductions in sand eel fishing will percolate down into discussions in Europe. We will certainly support such reductions and press the case as hard as we can.

On the evidence in relation to decoupling measures, observations of bycatch have been reasonably successful, although we have concerns about some areas. We want to minimise bycatch to try to achieve a position in which a non-targeted fishery can achieve a bycatch of less than 5 per cent of the catch. I am not suggesting that that is perfect, but we are moving in the right direction. I am quite happy about the scientific community's observations and the industry's co-operation and support for the approach.

I will support closed areas if there is a clear scientific basis for them. As I indicated in my answer to Richard Lochhead, I acknowledge in particular that partially closed areas can aid the management of stock assessments and spawning through real-time closures, particularly in areas where immature fish are found. However, the approach must not be based on the generality of the science. The RCEP report articulates the general scientific evidence well, but it does not articulate the specifics as successfully—indeed, its case becomes weak when it says, "We need to talk about specific species and specific scientific evidence."

I am not opposed in principle to limited closed areas and it is interesting that the North sea regional advisory council, which was recently established, is not opposed in principle to limited closed areas either. However, closures must be based on scientific evidence, rather than on the argument that I suspect will be put, which will suggest that, because the haddock permit regime has not gone sufficiently well according to ICES, we should abandon the regime and close areas. That would not be a good way of handling fisheries management. If we are to be successful in conserving the marine ecology, participants from across the spectrum must buy into the measures that are taken. There must be a rationale and a scientific basis for closed areas.

Rob Gibson: Is it your intention to find another means of dealing with catching cod that will enable you to scrap the much disliked permits system?

Ross Finnie: Many issues have arisen since before the summer and in the more intense discussions that have been taking place, but in relation to the issue that you raise I think that everyone at this meeting and in the industry understands the disadvantages of the system. We have had many discussions in which we have invited people to start with a blank sheet of paper. However, we have asked those people to understand that the management regime must be credible not just to the European Commission but to the scientists who advise the Commission and to member states that have an environmental agenda that is even tighter than ours.

Although the operation of the permit system has been criticised, the system was instrumental in securing a substantial increase in the haddock quota and in providing a mechanism for securing additional days at sea, on the basis of a minimum bycatch. The theory behind what the system tried to secure remains reasonably sound. The practice—the management and the enforcement of the system—is more difficult.

We are preparing a paper to submit to the Commission, which we have been working up in collaboration with the industry. For long enough, the position has been that, from one point of view, the glass is half full and, from the other point of view, it is half empty. Unfortunately, those opposing views could not be brought together to make a full picture. Although the industry is opposed to the current permit system, it is much more aware of the need to put in place a management measure that will command the confidence to enable us to secure total allowable catches and quota regimes that are more consistent with our other ambitions. However, we cannot ignore the need to address the cod problem.

12:15

Karen Gillon: My first question is about black fish. How many prosecutions have there been for illegal landings? Has the number increased or decreased over the past few years? What is the minister's understanding of the situation regarding monkfish stocks? What is the scientific advice on that and will it have implications for the Scottish fleet? How will the North sea RAC feed its views into this year's deliberations and will that have a beneficial impact on consultation with the industry?

David Wilson: I do not have the details on the number of prosecutions with me. We can provide the committee with a note that sets that out.

Ross Finnie: That is not one of the many pieces of information that we have brought with us. We will supply it to the committee.

David Wilson: I have one point to make on the subject. Although, overall, the number of prosecutions has remained at a reasonable level over the past few years, the number of referrals has risen sharply during this year, as a result of some of the tightenings that I mentioned earlier. That has not fully worked its way through the system to produce an increase in the number of prosecutions, but it might well do so. We can set that out in a separate note.

Ross Finnie: The monkfish stocks are a vexed issue for certain parts of the Scottish fleet, especially those in the Shetland area. The ICES report indicates that the scientists are extremely concerned that their methodology does not appear to be allowing them to get a better handle—to use an unscientific term—on the nature of that stock. No one who has reviewed the science or who has been part of the joint observations that have been made by science, industry and others can square the level of catching that is taking place in certain areas with the prognosis that the stock should be pursued on precautionary basis.

On the basis of that broad picture, the STECF report indicates that there is a case for increasing the monkfish quota. However, given the concerns that levels of discard have increased, we are discussing with the industry how to avoid an increase in effort in that fishery so that, if we were successful in obtaining an increase in the quota, the people who prosecute that fishery would be the beneficiaries. If we can reduce discards, we hope that monkfish fishermen would enjoy an increased income and there would not be displacement from other fisheries just because there had been an increase in the quota. That is an important management measure that we will have to deliver to the December council. On the back of that, we should be able to argue successfully for an increase in the monkfish quota.

Karen Gillon: What about the RACs?

Ross Finnie: My apologies. Even though they are in the early stages of life, the RACs have been asked to prepare a report for the Commission on their general view of, and approach to, the December talks. We have seen only a rough draft of their report; we are waiting to receive the final version. However, from what we have seen, the report is a constructive and well-written piece of work. It makes the point that I covered earlier, that the RACs do not close their minds to partially closed and restricted areas, provided that the science supports that. It makes the case for having different regimes, which I hope will prove to be constructive. Given its tone and tenor, I think that the report will make a valuable contribution to the debate over the next three weeks. I am pleased that the RACs are up and running and that we can point not just to the scientific advice but to the input of views from a wider community.

Karen Gillon: Could the note on prosecutions be given to the convener so that it can be circulated to committee members?

Ross Finnie: Yes.

The Convener: It will be distributed in the next mailing to members.

I will take brief supplementary questions, but I do not want closing statements from Opposition spokespeople.

Richard Lochhead: To help the industry to become more economic and to ensure supplies for the processors, the fishermen who are fishing the abundant stock such as haddock need enough time at sea to catch the quotas. Will the minister indicate whether he is seeking more time at sea for those vessels? If they get more quota, will that quota go to the fishermen who are active at sea, rather than to fishermen on shore?

Ross Finnie: It is difficult to split out effort controls in a mixed fishery. There are issues, as there were last year, about having a carrot and a stick in relation to the demonstration of minimum bycatches. That issue is on the table. Any general increase must be considered on that basis.

During the EU-Norway talks, considerable concern was expressed at the fact that the class of 1999 is now beyond its peak. Norway sought a substantial reduction in what has become a substantial haddock quota. I do not think that there are any prospects of an increase, given that the EU-Norway talks are 99.9999 per cent settled. In fact, I think that 13 to 14 per cent reductions will flow from the EU-Norway talks. The coastal states share the view about starting to rein back on the haddock stock. The question of to whom that will apply relates to the issue of how many skippers who had been engaged in decommissioning will

have to dispose of any of their entitlement or rights to quota at the end of this year. I hope that those skippers will have to do so, because that would go quite a way towards answering Richard Lochhead's question, in the sense that the skippers will themselves have to give up the quota.

David Wilson: I will give a bit more detail on the decommissioning scheme. The owners of the vessels that have been decommissioned as part of the programme over the past couple of years have, by the end of this year, to dispose of the quota that they used to have. Basically, that means that they have to transfer it. That might mean transferring the quota to another person or to someone in a producer organisation to work through.

At this point—at the time of the December council—we do not have any mechanism to change the way in which quotas are allocated. We will shortly be commencing a review of the quota management rules overall, which will look into the issue. The matter is not on the December council agenda, however; it is for member states to deal with. We need to go through a process to examine the issue carefully.

Mr McGrigor: Why do you think that Iceland and the Faroes have thriving fishing industries, whereas ours here in Scotland is in such an unhappy state?

Ross Finnie: That is not entirely true, of course, is it? That is a nice general statement, but you are not telling me that our pelagic fishery is in a terrible state. You are not trying to tell me that our inshore fishery is in a terrible state. The only—but crucial—part of our fishery that is in a difficult state is our white-fish fishery. That is because the most cod-rich areas in the North sea are right in the middle of Scotland's traditional fishery areas. That is a fundamental, difficult problem, but we are all trying to manage it. It is not a problem that is faced by the Icelanders or the Faroese. It is most unfortunate, but it is a fact of life.

Jamie McGrigor should look at the maps of the North sea, at the landing records and at the data that tell us where the most cod-prolific areas are: they are right in the middle of Scotland's fishing areas. That is the fundamental reason for the problem, which we have to confront. It is nothing to do with who owns, runs or manages things. If there was a cod area 20km off the coast of the Faroes and the Faroese had to deal with a similar problem, they would be having a not dissimilar debate about how to manage a fishery that is below its safe biological limits.

The Convener: I thank colleagues for that—I think that members applied themselves before today's meeting and did their homework. Equally, I

thank the minister for doing his homework and for answering all our questions in such depth. I wish him good luck in his negotiations on behalf of the Scottish fishing industry.

I remind colleagues that we have a debate in the chamber tomorrow on a topic of which I am sure they are all aware.

Meeting closed at 12:26.

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