

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 25 May 2005

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

15th Meeting 2005, 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 ALSO ATTENDED:

Jackie Baillie (Dumbarton) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Joyce Carr (Scottish Executive Environment and Rural Affairs Department)
Lewis Macdonald (Deputy Minister for Environment and Rural Development)
Andrew Scott (Scottish Executive Environment and Rural Affairs Department)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Christine Lambourne

LOCATION

Committee Room 5

Scottish Parliament

Environment and Rural Development Committee

Wednesday 25 May 2005

[THE CONVENER *opened the meeting at 09:48*]

Water Environment and Water Services (Scotland) Act 2003: Annual Report 2004

The Convener (Sarah Boyack): I welcome members, visiting members, the public and the press to the 15th meeting in 2005 of the Environment and Rural Development Committee. I remind people to switch off their phones. No apologies have been received.

Item 1 on the agenda is consideration of the annual report to the Scottish Parliament on the Water Environment and Water Services (Scotland) Act 2003. When we debated the Water Environment and Water Services (Scotland) Bill, the committee and Parliament agreed that the Executive should report to Parliament on progress on implementation of the water framework directive. We considered such a report last year.

Lewis Macdonald, the Deputy Minister for Environment and Rural Development, is here and is accompanied by officials. We will have the opportunity to run through what has happened in the past year—it is now two years since the bill was passed—and to ask what progress has been made. I invite the deputy minister to make opening remarks, after which he will take questions from members.

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): I will be brief in introducing the second annual report on the Water Environment and Water Services (Scotland) Act 2003, which was passed by Parliament both to provide a framework for the protection of the water environment in Scotland and to conform to the requirements of the European water framework directive, which came into force five years ago and established a framework for European Community action in water policy.

The Water Environment and Water Services (Scotland) Act 2003 transposed the directive into Scots law. The act applies to all waters in the natural environment—all rivers, lochs, estuaries, coastal waters up to 3 nautical miles from the coast and groundwaters. Its purpose is to protect and improve the ecological status of the water

environment in Scotland, while supporting the social and economic interests of people who depend on that water for a living.

As the committee knows, the 2003 act requires that we submit an annual report to Parliament setting out our progress in implementing the act's provisions. The 2004 report, which is before the committee, highlights some important developments. Perhaps the most significant relate to our understanding of the pressures to which our water environment is subject. Work analysing the impact of human activity on Scotland's water resources was completed and published in 2004, and is referred to in the part of the report that deals with impacts and pressures.

For the first time, we have a comprehensive and authoritative picture of the pressures on our valuable water resources. We now know that 45 per cent of water bodies are under pressure from activities ranging from dams and abstractions to point-source pollution and alterations to the beds of watercourses. The act that Parliament passed mirroring our European obligations requires that, having established the nature of the pressures and impacts, we take action to address those issues in a proportionate way.

The report sets out clearly the next step that we are required to take, which is to introduce controlled activities regulations. Later this morning, we will discuss the draft Water Environment (Controlled Activities) (Scotland) Regulations 2005, which have been developed over a two-year period through extensive consultations with the national stakeholder forum. The forum involves the whole range of industries that depend on our water resources to make a living. The regulations combine our most up-to-date knowledge of the water environment with a pragmatic approach to managing the impact of our everyday activities. They ensure that we will be able in next year's annual report to report adequately on progress that has been made on improving and protecting the water environment.

The 2004 report is an important publication. It provides a useful brief summary of the progress that was made during the year and points the way ahead to what more needs to be done to put the Water Environment and Water Services (Scotland) Act 2003 fully into effect.

Maureen Macmillan (Highlands and Islands (Lab): My question is about point 6 in section 2 of the report, which deals with responsible authorities. During consideration of the Water Environment and Water Services (Scotland) Bill, there was much discussion about who would be responsible for what. The point was made that, although the water division of the Environment and Rural Affairs Department was being very responsible, it was not clear that the same was

true of the agriculture sections. At the time, the Executive undertook to do more joined-up working. How has that progressed? Are other Executive departments examining how they may ensure that the ideals that are enshrined in the 2003 act are upheld?

Lewis Macdonald: Under section 2 of the 2003 act, we are required to designate responsible authorities and the enactments that must be complied with under the act. Internal discussions are under way across the Executive between the parts of the Executive that have responsibility for the act.

This year we will publish proposals for designating relevant enactments and responsible bodies. They include the Forestry Commission Scotland, which is a good example of a body that is part of the Executive but which must address those responsibilities. I hope that, in next year's annual report, we will be able to give an account of the work that has been done.

Members will be aware that separate work is being done on proposals that relate to diffuse pollution, which is probably the biggest single concern in relation to agriculture.

Maureen Macmillan: I was thinking more about land management contracts, which could be used, for example, to encourage the creation of wetlands on farmland by reclaiming salt marshes from the sea. Is that in ministers' minds at all?

Lewis Macdonald: It is certainly in ministers' minds, although I am not sure what stage of the process we are at. [*Interruption.*] My officials point out to me that we are still considering how best to do that. There is a wider agenda on land management contracts, much of which is still under discussion, but the 2003 act points us firmly in the direction that we should seek to promote such measures.

Nora Radcliffe (Gordon) (LD): I have two substantive questions, but I would first like to raise an issue that puzzles me. The second paragraph on page 15 of the annual report states that cost estimates

"peaked at over £15 million",

but further down the page, the report states that they

"have been reduced by £25 million."

I assume that one of those figures must be a misprint.

Lewis Macdonald: I had another look through the report yesterday evening: that figure jumped out at me, too. The figure of £25 million is for a five-year period. The original estimate was £15 million a year for five years, but after the work that we did to encourage the Scottish Environment

Protection Agency to find ways to reduce the overall cost impact, the estimate was reduced by £5 million a year, which comes to £25 million over five years.

Nora Radcliffe: That clears that up.

The report points out the massive diversity throughout Scotland in impacts and geographical status. Will more localised sub-river-basin planning take place as part of the overall river basin management plan, for which the whole of Scotland is taken as one river basin?

Lewis Macdonald: Plans will have to be put in place for each of the catchments within the Scotland river basin. That describes accurately the position that we must reach by 2009.

Joyce Carr (Scottish Executive Environment and Rural Affairs Department): SEPA's strategy, which will be published later this year, contains a proposal to have about eight or nine sub-basin plans that will feed into the national plan.

Nora Radcliffe: Right. Page 11 of the annual report states that, when SEPA considered drinking water protected areas, it did not have enough information on private water supplies. Do local authorities hold that information?

Lewis Macdonald: We are seeking to introduce provisions under which local authorities will have to register private water supplies. The status quo is that the information that councils have on that is patchy. We want to ensure that the system is standardised, but that is a slightly separate process, although it is relevant.

Nora Radcliffe: I imagine that, if SEPA prepared the register of private water supplies, it would be allowed to charge for cost recovery. Will local authorities have the same option and, if not, how will the work be funded?

Joyce Carr: You are right that SEPA would be able to charge for that. Our colleagues have made provisions with the local authorities. I am not sure whether the authorities are to get extra funding, but there have been discussions to ensure that sufficient funding is available. We felt that it was more proportionate to have that process in place rather than to have private individuals pay for registration. We deliberately ensured that there will be minimal cost to individuals who have private drinking-water supplies.

Lewis Macdonald: The draft regulations and the measures that have been taken under the 2003 act, on which we have reported in the annual report, will not directly impose costs or registration requirements on small-volume abstractors.

Nora Radcliffe: So some public body will pick up the tab.

10:00

Mr Mark Ruskell (Mid Scotland and Fife) (Green): You will be aware of our climate change inquiry report, which was published last week, and the need to climate-proof policy decisions. What thinking have you given to the impact of climate change on our water resources? How do you intend to adapt to some of the changes that are coming?

Lewis Macdonald: It is implicit in everything that we are doing under the 2003 act that we recognise that there is a process of change. We are seeking to put in place a robust regime that will protect the water environment both against human activity—or the potential negative impacts of human activity—and against other changes that are preventable. For example, one of the important areas that are touched on in the report relates to flood prevention planning. As you know, the flood prevention proposals that we expect from local authorities must, in every case, include provision for the impact of climate change. Clearly, a process will be required to consider the needs of flood prevention schemes against the requirements under the 2003 act. Part of that interface will be the requirement that the flood prevention schemes must have built into them a provision for climate change. That same principle applies across the board.

Mr Ruskell: Let us return to Maureen Macmillan's point about land management contracts. Do you see an opportunity to adapt to climate change effects through LMCs?

Lewis Macdonald: Land management contracts give us a great opportunity to consider the whole range of environmental action and provision that we need to make in relation to the management of land. As I said in response to Maureen Macmillan, the process of working out how that can be done continues. Climate change is clearly one of the impacts on the environment that we will need to consider.

Mr Ruskell: I have one more quick question. On page 16 of the annual report, you talk about remedial and restoration measures, which are quite important. In my community, there is a salmon ladder that is in a poor state of repair, which probably inhibits the movement of fish upstream at certain times of the year, but it would probably cost a lot to upgrade that salmon ladder. What measures might you introduce to help to bring about targeted remedial and restoration works to improve our water environment?

Lewis Macdonald: It is important to emphasise that such measures must be—to use the word that Mr Ruskell used—targeted. They must make a difference and they must be proportionate. There is no point in our requiring measures to be taken

that are simply unaffordable or that do not relate to the scale of the problem. They must also be cost effective, and the judgments about their cost effectiveness will be for ministers to make rather than for any of our implementing agencies. We will make a judgment on what scale, level and type of remediation is affordable, proportionate and effective.

It is too early for me to give more specific answers. In looking at remediation and restoration measures, we are looking to 2012. The point of introducing regulations at this stage is to give businesses the time and the opportunity to make the capital plans that they will require once they have seen the measures that are to be implemented under the river basin management plans in 2009. Between now and 2009, there will be a process of identifying what measures need to be taken. Then, between 2009 and 2012, businesses will be required to make those investments, having had the time and opportunity to plan for them.

Mr Ruskell: Might there be something tangible in next year's report for us to look at?

Lewis Macdonald: There may be a further indication. In next year's report, there will be responses to the consultation on charging, which, in the short term, is probably a more pressing issue for businesses in relation to the licensing process.

Page 4 of the annual report gives some indication of the timetable that is required. You will see that we are looking to publish a work programme for producing the river basin management plans next year. We are looking to begin the process of overviewing the management issues in each river basin in 2007. It will be important that we work with businesses that have an interest in the water environment and on which the plans will impact. They will have to look forward to the kind of remediation measures that they will be required to take. It is important to emphasise that there will be full consultation and that the issues will become clearer in the next year or two.

Rob Gibson (Highlands and Islands) (SNP): Let us turn to the principle of sustainable development that is promoted by the 2003 act. In addition to environmental benchmarking, has any analysis been made of the economic and social impacts of water systems?

Lewis Macdonald: Environmental and social impacts are of key importance. The 2003 act is founded on a sustainable development approach. In other words, the Water Environment and Water Services (Scotland) Act 2003 requires us, as the responsible Government and the agencies that act on our behalf to take into account social and

economic as well as environmental considerations. That is clearly the starting point. In considering what measures follow from the act and the Water Environment (Controlled Activities) (Scotland) Regulations 2005 that implement the act, the consultation will focus on social and economic impacts as well as on environmental considerations.

It is a matter of getting that balance right, and that includes assessments of proportion. In response to an earlier question, I made the point that interventions and responses must be proportionate. It is in that area that the social and economic considerations will be taken into account. What we will require businesses to do will have to be proportionate to their impact and to social and economic considerations. There is no point in requiring a business to be more responsible in looking after the water environment if that business is no longer there to look after it. The proportionality of requirements is central.

Rob Gibson: You have inherited a water environment that includes hydroelectric dams. Hydro dams were mentioned in the climate change inquiry, and the condition of those dams is something that we know little about, although they could have a major impact on water systems. Can you tell me a bit about that?

My second question is about distilleries and the lades that lead water off, and which have done so for 100 years and more, in some cases. Are those lades seen as a natural part of the inherited water environment?

Lewis Macdonald: I do not think that we could describe either dams or lades as natural parts of the environment; nevertheless, they are a part of the environment.

Rob Gibson: I used the word “inherited”.

Lewis Macdonald: Yes, I think that “inherited” is right. The process that we will undertake under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 will involve SEPA acting on our behalf as the licensing authority. SEPA will work with hydropower companies and distilleries to assess the state of their assets and those assets’ impact on the environment. We are not starting from the basis that the infrastructure that exists is a problem; our starting point is that they exist. However, we will look to businesses that operate that infrastructure to ensure that it is in good condition and that it remains in good condition to carry out its functions. The assessment process for a hydro dam will be significantly greater than the assessment process for a distillery lade, because the impacts of a hydro dam on the water environment are significantly greater than the impacts of a distillery. Nonetheless, all infrastructure that has an impact

on the water environment and which may have a substantial impact will be considered closely.

We expect that, where a hydro scheme, for instance, is having a continuing damaging impact on the water environment—not simply by being there, but if remediation is required to mitigate a damaging impact—that will be addressed under the remediation measures that I was asked about a moment ago. However, the golden rule of proportionality and cost effectiveness will be applied in such cases. The same will apply to any remediation measures that may be required of the whisky industry in some cases, although distilleries have a much smaller effect on the water environment.

In the case of industrial operations that use a lot of water but have very little impact on the water environment, the assessment under the licensing procedure may demonstrate that the impact is not even sufficient to continue to require licensing. In that case, a licence will no longer be required once the assessment has been made. It is important to make the point that there will be some industrial-type operations that have a significant impact and in respect of which remediation may be required, but that must be cost effective. There will be other operations whose impact is not significant; therefore a licensing requirement will not continue once the assessment has been made.

Rob Gibson: That is fine for just now. I presume that we will get more detail in the next report as you flush out what needs to be done and what requires remediation.

Lewis Macdonald: Yes.

The Convener: We will slide swiftly past that pun.

I have a couple of questions about sustainable flood management, which is one of the issues that emerged when we were debating the Water Environment and Water Services (Scotland) Bill. There was concern at that time that because we were making action on flooding a priority, there was a danger that we would go for concrete solutions rather than more natural management approaches. Two years on, do you have a feel for how local authority flooding schemes are being developed and whether the concerns that were expressed have come to fruition?

Lewis Macdonald: There have been interesting developments over the past two years; as I am sure members of the committee are aware, the level of support that the Executive provides to flood alleviation and prevention schemes has been increased significantly. At the same time, consideration of climate change has been built in as a requirement in planning such schemes. We are encouraging and we are seeing increasing signs from local authorities of soft engineering

options, such as—to refer back to Maureen Macmillan's question—creating, or in some cases recreating, wetlands to absorb floodwater, rather than relying entirely on concrete solutions, which is the traditional method. The scheme that I opened recently at Lhanbryde in Moray has elements of both the hard engineering solutions in the settlement and soft engineering solutions up stream. As far as we can judge from what is coming forward from councils, we will see increasing emphasis being placed on the soft engineering solutions, as opposed to the hard engineering solutions.

The Convener: That is good to hear, because we were concerned about that a couple of years back. I do not see any members indicating that they want to ask questions, so I will make a final point—Maureen Macmillan has been prompted into putting up her hand. Both Mark Ruskell and Maureen Macmillan asked you about land management contracts, which you said were under discussion and which came up in our common agricultural policy reform inquiry and our climate change inquiry. It is fair to say that if you were to incorporate the suggested approach in tiers 2 and 3 of the land management contracts, you would have the full support of the committee. We encourage you to take that on board. The issue came up in passing when we debated the tier 1 regulations. We are keen to see the Executive take that forward. You have our support in advance of your doing anything.

Lewis Macdonald: That is very helpful. It is always good to have committee backing; it is an advantage.

The Convener: We also want to be consulted nearer the time.

Lewis Macdonald: Of course.

The Convener: Maureen Macmillan has a quick question.

Maureen Macmillan: The committee insisted that planning permission for fish farming be included in the Water Environment and Water Services (Scotland) Bill. Is everything going smoothly? I note what you say in section 20 of the annual report. Have any difficulties arisen?

Lewis Macdonald: I would not say that there have been difficulties, but there are complex issues to address in relation to marine fish farms, because we are venturing into new waters, so to speak. We are still on course to introduce the necessary secondary legislation next year.

The Convener: Okay—that wraps everything up. I thank the minister and his officials for bringing us up to date on implementation of the act and I look forward to next year's annual report.

Subordinate Legislation

Water Environment (Controlled Activities) (Scotland) Regulations 2005 (Draft)

10:14

The Convener: Our second agenda item is subordinate legislation. We have before us one instrument that is subject to the affirmative procedure. Parliament must approve the draft instrument before it can be made. We have before us a motion in the name of Ross Finnie, inviting the committee to recommend to Parliament that the draft instrument be approved. Members have a copy of the instrument, the policy statement and the regulatory impact assessment.

The Subordinate Legislation Committee has considered the draft instrument and made brief comments on it; members have a copy of its report. Before we debate the motion, we will have our usual technical clarification session, which will enable us to go into detail on the technical issues while the officials are at the table. I know that there has been a lot of lobbying on the regulations and members have heard many representations, so I imagine that they will have a lot of detailed questions and points to raise with the minister before we get to the point of the debate.

Does Alex Johnstone want to raise a point of order?

10:15

Alex Johnstone (North East Scotland) (Con): I would like to take the opportunity to ask for clarification on the nature and extent of the consultation that took place, particularly with elements of industry, before the preparation—

The Convener: Sorry, Alex. Before we debate the content of the regulations, we will take an opening statement from the minister, as we always do, on why the Executive proposes to introduce them. After that, I will take your point first, as you have delicately got into the queue; I will then open up the discussion to the other members around the table.

Lewis Macdonald: I am pleased to present the Water Environment (Controlled Activities) (Scotland) Regulations 2005. They follow neatly from our previous discussion because they are the means of implementing the next steps that we require to take under the Water Environment and Water Services (Scotland) Act 2003. The regulations introduce controls over activities that are liable either to pollute the water environment or to have other impacts on it through abstraction, impoundment or the artificial recharge or

augmentation of groundwater. They also cover building, engineering and other works that are likely to have a significant impact on the water environment.

I know that Alex Johnstone is about to ask me about consultation. The most important thing about the regulations is that they reflect the consultation. They take forward regulation on the basis of three tiers or levels. The first tier is low-level activities that have the least impact on the water environment—Nora Radcliffe mentioned those earlier. There are estimated to be about 50,000 incidents of such activities. Typically, they involve a farm or a small business abstracting water for local purposes or discharges from septic tanks. Those low-impact, low-volume activities will be covered by provisions that are based on general binding rules. Those rules are the lightest touch of regulation and individuals will not be required to notify the activity to SEPA. The regulations simply require the individual to follow rules, which are in the public domain, on how they should carry out those activities.

Secondly, there are more than 80,000 instances in which environmental impacts are relatively low but where there may be cumulative impacts. In such cases, the regulations require activities to be registered with SEPA. That involves a simple registration process and a registration fee. As members know, the fees are separate from the regulations. There will be consultation on the fees during the summer, but there will not be a continuing cost to the operator.

Thirdly, there are about 15,000 instances that will require a licence from SEPA—that represents about 10 per cent of the total number of activities that impact on the water environment. The regulations give SEPA wide-ranging flexibility to tailor licences to take account of individual activities on a pragmatic basis, but we expect that many of the activities will conform to a standard set of conditions. It is clear that there will be some more complex cases for which specific requirements will be necessary.

The purpose of the regulations is to provide a framework within which we balance the protection of the water environment with the social and economic needs of those who depend on it. We have worked closely with stakeholders in the development of the regulations and we bring them forward on that basis.

Our European obligations require us to take action to improve our water environment within legally binding deadlines, which, as I mentioned, are set out in the report that is before the committee today. In setting out the regulations, we seek to provide a clear path for the action that all those who are involved must take to deliver balanced and proportionate responses to the

challenges of the water environment, according to the timescales that exist throughout Europe.

The Convener: Thank you. Alex, are there any points that you want to follow up on the consultation?

Alex Johnstone: The reason why I wanted to mention the consultation process is that, as you mentioned, convener, there has been an unusual amount of input into it and I detect that the group that broadly represents industrial users of water is concerned that, although it was involved in the consultation, it did not get as much out of the process as it would have liked.

The specific reason why most of the people who contacted me are concerned is the nature of the charging scheme to which they are likely to be exposed. A letter that has, I believe, been sent to all members of the committee suggests that the proposed charging scheme—which, under the draft regulations, SEPA will implement—is simply a tax on water use. The letter suggests that the Executive is proposing to use volume as a surrogate for risk and that that demonstrates a lack of commitment to the use of a risk-based system. That is not necessarily my view, but it is concisely put in the submission that I received.

The tiered nature of the charging system means that the cost appears to fall on the larger users. The system reflects not the risk that users present, but the amount of water that they use. I ask the minister whether he thinks that larger users were listened to adequately during the consultation. Does he agree that it would be appropriate to use the limited time that is available to enter into further consultation before the regulations are implemented?

Lewis Macdonald: I am happy to respond to those points. The consultation process was comprehensive. It engaged closely with the Scotch Whisky Association, the major hydropower operators and a range of other industry interests. People who have good reasons to want to be close to the process have indeed been engaged in it.

Yesterday, I met the Scotch Whisky Association to discuss the concerns that it has highlighted with members of the committee and that it brought to my attention. I was able to tell it a number of things about the way in which we will take the regulations forward—they are important points, which people should understand in considering the regulations. We are taking a risk-based approach. We have defined small-scale users as very low risk and we have therefore removed them from the requirements for registration or licensing. The two tiers of registration and licensing that we have put in place are also intended to reflect risk. Clearly, there must be some trigger mechanism or method

by which we define which of the large and medium-scale users we require to have a licence.

Alex Johnstone: Are you confident that risk is directly proportionate to volume?

Lewis Macdonald: No. We are not saying that. You anticipate my next sentence.

We need a trigger to define in which cases a full licensing assessment will be required. The best available trigger is volume, but we recognise that there are low-volume users who pose a greater risk and high-volume users who pose a low risk. All high-volume users will be required to apply for a licence and will thereby be subject to an assessment. That assessment will allow SEPA to judge whether there is a continuing requirement for a licence. If there is not, the business will not need to renew its licence.

A business that uses a high volume of water will be assessed to determine whether it has a significant impact on the water environment. If the assessment shows that it does not have a significant impact, it will no longer be considered to be in that category. A simple registration, which is part of the licensing assessment, will suffice thereafter. Businesses that ought not to be caught but that need to be assessed because of their high-volume use should have no fears about becoming entangled in on-going costs. That will not happen.

The Convener: All members have indicated that they have questions for the minister. I will try to get round to everyone within the time available.

Nora Radcliffe: I have a follow-up question.

The Convener: All members may have follow-up questions. I will have to be brutal and to take questions from members in the order in which they indicated that they wanted to speak. The next person on my list is Karen Gillon.

Karen Gillon (Clydesdale) (Lab): I have been remote from this process and have only read papers, instead of meeting people. The papers suggest, minister, that you are proceeding with undue haste, that there is no requirement for regulations to be introduced now and that there is time for further consultation and dialogue. However, in its paper, SEPA suggests that the legal advice is that since April this year we have been liable for any new pollution that is caused. Can you explain why the regulations have been brought forward at this time and why they need to be implemented at the speed at which you suggest?

Lewis Macdonald: SEPA is required to put in place a monitoring regime by next year. Under article 9 of the European water framework directive, it will be required to recover its costs when it does so. The regulations have been

brought forward now so that from 1 April next year we can have in place a licensing arrangement that allows SEPA to carry out assessments and monitoring and to recover its costs. That is part of the timetable that governs the process.

The wider timetable is laid out in the report and the 2003 act and indicates what we need to do on a stage-by-stage basis. The feedback from the stakeholders that we consulted, which included a range of industries, was that the earlier the framework was put in place, the more readily they would be able to conform to it and to plan the capital investment that they will need to make. That was the view of industry, in particular.

In the previous discussion, I was asked what remediation measures will be required and what account will be taken of the social and economic impacts of those measures. Any remediation measures that are required of large industrial operators are liable to cost them a bit of money. The more time they have to plan capital investment programmes to meet those costs, the better. Stakeholders told us to proceed quickly and to put in place a framework so that they could know as early as possible what they needed to do and could plan their expenditure accordingly. That, plus the requirement for SEPA to monitor and assess by next year, is the driver for the timetable.

Jackie Baillie (Dumbarton) (Lab): I thank the convener and the committee for giving me the opportunity to ask about the draft regulations. I welcome the minister's comment in the earlier discussion that interventions must be proportionate to impact. I want to focus on that point, especially in relation to licensing.

Given your history, minister, you will be very aware of the Hampton review and the reports of the better regulation task force, which emphasise the need for regulation to be risk based and proportionate. I am slightly confused because you have indicated that licensing precedes risk assessment. I fear that such a blunt instrument and blanket approach will catch absolutely everything, as it is based on an arbitrary trigger that is not contained in the regulations. I am worried that we are doing things in reverse order.

Do you think that the regulations are proportionate, given that you have a blanket licensing scheme that will be put in place before risk is assessed? Logic suggests that the position should be reversed. It would fit better if you dealt with risk first and targeted licensing at those businesses that could have an impact on our water environment. To what extent has the proposal been assessed against the recommendations of the better regulation task force?

10:30

Lewis Macdonald: You will see from the policy statement that accompanies the draft regulations that they reflect the Hampton approach and seek to be risk based and proportionate. That is why the great majority—90 per cent—of activities that impact on the water environment will not have to go through a licensing process. That meets nine tenths of your question, although it does not meet the other tenth, which is the area on which you would wish me to focus.

I have two comments on the large-volume users that will require licensing. First, if the draft regulations proceed, the licensing process in the six months from October to March will be for transfers of existing consents only. For example, consents under the Control of Pollution Act 1974 will have to be transferred. However, from 1 April 2006, a risk assessment will be made on application for licence.

It would have been useful if, for some industries, we had been able to gather data to form the basis of assessment prior to the licensing scheme coming into play. At our behest, SEPA met the whisky industry about five years ago to pursue an approach of agreement and to seek provision, by the industry to SEPA, of data on abstraction volumes. Unfortunately, few data were forthcoming at that stage. When SEPA commissioned a survey of abstractions by Faber Maunsell in 2003, there was a low level of response from distillers. Likewise, there was a low level of response when SEPA wrote to distillers again in 2004.

At this stage, a year away from the point at which SEPA needs to have monitoring and assessment in place under the European legislation, it has complete data on only 15 distilleries and partial data on a further 12 out of a total of 110. It would be good to be able to gather all the data on a voluntary basis, but if the data are not available for one reason or another, the assessment process will simply provide a basis on which assessment can be made and licences can be issued or otherwise, as the case may be. It must of course be said that several whisky distillers—although not all of them—have co-operated helpfully in the process.

Maureen Macmillan: When the Transport and the Environment Committee considered the Water Environment and Water Services (Scotland) Bill, the whisky and hydroelectric industries made representations on it. They were concerned about the impact that the bill would have, but they were assured that a flexible approach would be taken. In the run-up to our consideration of the draft regulations, those industries sent us submissions that show that they certainly do not feel that a flexible approach has been taken. I hear your

comment that not all distillers have taken the chance to provide data to SEPA, but what have your relations been with the hydroelectric companies?

Lewis Macdonald: The hydroelectric companies have been involved in the stakeholder consultation process. Clearly, if we considered the incoming regime from a hydroelectric company's point of view, we would accept that it may have some significant longer-term impacts, whereas, by contrast, the whisky industry might feel that it will have no significant longer-term impacts, given the limited impact that the industry has on the water environment. The hydro industry has been engaged throughout the process. Indeed, Peter Donaldson of Scottish and Southern Energy wrote to my officials last year to congratulate them on the extensive consultation process and the extremely competent and easily read consultation document that they had produced.

All the key stakeholders have been engaged throughout the process, but concerns have been raised. As I said, yesterday I met representatives of the Scotch Whisky Association; I heard directly about its concerns and sought to address them. Should hydropower companies wish to have further discussion with me as the regulations are rolled out, I would be happy to engage in that. However, nothing in the licensing process ought to be surprising to the hydropower companies, given that they were at the meeting of the national stakeholder forum in February, which considered what proved to be the final draft of the regulatory impact assessment that relates to the draft regulations.

Maureen Macmillan: Yet the companies are writing to us saying that the act would lead to a reduction in renewable energy produced by existing hydro stations.

Lewis Macdonald: If people believed that the Water Environment and Water Services (Scotland) Act 2003 went against renewable energy, they would not have voted for it. People voted for it because they acknowledge that a regime that protects the water environment is entirely compatible with hydropower, as long as the approach to remediation measures is proportionate, relates to cost effectiveness and recognises the importance of the social and economic impact of the industry.

I emphasise that when ministers, not SEPA or any other authority, make the judgment about what is a cost-effective measure to be required of a hydropower operator or anyone else, they will do so on the basis of social and economic as well as environmental considerations. If your question reflects a need on the part of the hydro industry for reassurance that we see hydropower as very much part of the future of energy and renewable

energy in Scotland, I can provide it—we indeed see it in that way.

Maureen Macmillan: So the industry will not be unduly penalised.

Lewis Macdonald: What we will require of the industry in order to conform to the 2003 act and to regulations under it will be proportionate and will reflect economic and social as well as environmental considerations, which are part of the sustainable development equation.

Mr Alasdair Morrison (Western Isles) (Lab): I would like to clarify a number of points. First, I might have missed something—in which case I apologise for my own deficiencies—but I do not fully follow how the licensing regime helps the environment. Secondly, you have outlined clearly how your department has worked closely with stakeholders. Again, I fail to reconcile that statement with the reasonable lobbying that we have had over the past 48 hours from people who are not given to outbursts of hysteria. The third point that I was going to make was made succinctly by Jackie Baillie. The fourth point relates to what you said about the licensing regime and SEPA being given wide-ranging flexibility. I would appreciate clarification of exactly what that means. The final point relates to what you said about ministers making the final judgment. I am trying to reconcile that statement with the fact that SEPA is the enforcing agency.

Lewis Macdonald: You have asked a number of good questions. I will start with the last one, about charging. Yes, SEPA is the enforcing agency and this summer it will consult on the charging scheme. However, in doing so, it will seek to come up with a proposal that it will put to ministers. Ministers will make the judgment, bearing in mind the need for proportionality and the impact of the charging scheme. Under article 9 of the European directive, SEPA is required to recover its costs. We will seek to ensure that the scheme that it puts in place achieves that in a proportionate way.

Secondly, you asked the fundamental question: what will be the impact of the licensing scheme on the environment? That goes back to the fundamental principles of the act and the directive. The licensing process will permit an assessment of the impact on the environment of the activities of all the operators that apply for a licence. In the first instance, that will be all the operators that are, for example, abstracting 50m³ a day from the water environment and other operators that are liable to apply for a licence. That assessment will, in turn, inform the conditions that will be placed on the licence for that operator in the future, should the assessment demonstrate that the operator will continue to be required to be subject to the licensing regime.

As I said in answer to an earlier question, in some cases the assessment may conclude that there is no requirement for an operator to continue to be subject to the licensing regime because of the low impact or low risk of impact of its activity on the water environment. Such an assessment will give the operator the green light to continue to do what it is doing. Its activity will be registered, but it will not be required to meet a continuing set of licence conditions.

The overall aim of the regulations is to allow us to understand the impact of human activities on the environment. As I said under the previous agenda item, the assessment that was completed at the end of last year of impacts and pressures on the water environment came to the conclusion that 45 per cent of our water bodies in Scotland are impacted on in some way. Clearly, some of those impacts will be less significant than others.

The licensing process provides a statutory basis for assessment. It would be nice to do all these things on a voluntary basis, but experience shows that a statutory basis allows cost recovery and enables the assessments to be comprehensive, comparable and consistent across all the users. Such assessment will, therefore, guide what remediation or maintenance conditions are required.

The conditions on the licences—just like the longer-term remediation measures that I was asked about earlier—will reflect decisions about cost effectiveness and proportionality. Those will, again, be decisions for ministers to make rather than for SEPA or anyone else to make.

Does that answer all your questions?

Mr Morrison: I also asked about flexibility.

Lewis Macdonald: I knew that there was another point. Yes, there is flexibility. Partly, that relates to the volume issue. As you will see, the volume of abstraction is not written into the regulations. That is deliberate; we need to be able to give SEPA the discretion to remove quickly from the licensing regime those activities that ought not to be within it because they are not having a significant impact on the water environment. Equally, however, SEPA must be able to upgrade those low-volume impacts that pose a significant risk to the water environment. There is a degree of flexibility to allow a proportionate, risk-based approach to the licensing of individual enterprises.

Mr Morrison: Can you say more about abstraction volume not being part of the whole mix?

Lewis Macdonald: The regulations define smaller-scale enterprises that do not even need to go through the registration in relation to volume; they do not specify those enterprises that will

require to apply for a licence. Any business that abstracts more than 10m³ a day will require to make an application, after which SEPA will either issue a licence to that business and go through the full assessment process or simply register the business's activity.

Richard Lochhead (North East Scotland) (SNP): Members have made some good points, and I would like to pursue a couple of them further. Do you accept that we are getting a bit of a mixed message? We are told that the Executive is willing to cut regulation; yet, at the same time, you accept that you may introduce a licensing scheme that may not be necessary. As members have mentioned, we have received representations from the whisky industry, among others, saying that there are better alternatives.

As an alternative, the whisky industry suggests that there could be a code of practice. I presume that that could include an obligation to supply the necessary data to SEPA that you say that you have not been able to get so far. That might help to assess the industry's impact on the water environment. Would not that be a feasible alternative, if the industry was on board for that?

The committee has only a short time in which to consider the draft regulations—they have come before the committee on 25 May, and we are told that we must reach a decision on them by 30 May. The committee will not have the opportunity to take further oral representations from the various sectors that have contacted us. Would it be a problem for the Government to withdraw the draft regulations and bring them back in a few weeks' time, after the committee has had the opportunity to take oral evidence from the various players? As other members have said, there seems to be a bit of flexibility in the timescale. Would giving us that breathing space so that we can fulfil our duties properly really cause a problem?

10:45

Lewis Macdonald: I will answer the second of your three questions, on the code of practice, first. Had the Water Environment and Water Services (Scotland) Act 2003 made provision for a statutory code of practice, that would be an option; however, as no such provision was built into the act, that option is not available to us. I have described our concern that we need to have something in place that has statutory force in order to make the thorough assessments that we require. A voluntary code of practice would not deliver the data and detailed assessment of individual operations that we require. There might have been an opportunity, two years ago, to consider including in the bill a provision for a code of practice; however, the issue was not raised at that time, as far as I am aware, and that was not done.

Your first question was on the licensing process and whether it will be proportionate to risk. We are introducing licensing because it allows us to make the kind of assessment that we need to make in order to determine whether an operation is impacting in a significant way on the water environment. To address the concerns that some people have about the process, in assessing the impact of operators on the water environment I will look to SEPA to give consideration first to those operations that may be borderline. In other words, for operations that appear likely not to pose a significant risk to the water environment, I would want the assessment to be made quickly. An operation that does not have a significant impact on the water environment should not be subject to the assessment and licensing process for any longer than it needs to be. In such circumstances, the conclusion that the company is not required to remain in the licensing process should be reached quickly.

I hope that our approach will address the concerns of the whisky industry and other operators that believe that their impact on the water environment does not justify their involvement in a long and complex process. I want those assessments to be carried out quickly and I want operations that are judged not to be subject to the licensing regime to be removed from it as early as possible. Most of the prospective licence holders are content with the proposals, although, as we know, some industries are not. We want a quick turnaround in those cases in which we and the operators themselves believe that there is little impact on the water environment, in order that they should not face unnecessary bureaucracy or cost.

I think that my previous point relates to your third question, about the timescale. We could, of course, put off the implementation of the draft regulations; however, that would not make life easier for the vast majority of those who are involved, who have told us that they want certainty and quick movement in order that the framework can be put in place as early as possible and they can begin to plan what they need to do to adapt to that framework. If we were not to push forward with the draft regulations at this stage, because of the parliamentary timetable and the fact that we are nearly at the end of May—after which the Parliament will sit for only another four or five weeks—the transition of existing consents under the Control of Pollution Act 1974 to licensing under the Water Environment and Water Services (Scotland) Act 2003 could not take place as early as we would want. We are keen to keep up the pace to meet the timetable that is set out in the 2004 annual report, which the committee has considered this morning. For the convenience of operators as much as anything else, it would be

advantageous if we were able to put in place transitional arrangements on 1 October. That would allow the more permanent licensing arrangements to be put in place on 1 April, as scheduled.

Richard Lochhead: I have a brief question about the relationship between the volume of abstraction and risk to the environment, on which other members have touched. Do you believe that the whisky industry has an adverse effect on the water environment?

Lewis Macdonald: The process of finding the answer to that question is the process of assessment under the licensing arrangements. That is the fundamental point. It is clear that the volume of abstraction is significant for every distillery, but the level of impact on the wider environment will vary. I suspect that the assessments will show that in some cases most of the water goes back to more or less the place that it came from, with relatively little change. However, that may not be true in every case. The purpose of the licensing assessment is to allow SEPA to have access to the data that it needs in order to make an informed judgment. If its conclusion is that an operation does not require licensing because it does not pose a significant risk to the environment, continuing licensing of the operation will not be required. However, if the conclusion is that a distillery is having an adverse impact on the environment, for one reason or another, or that there is a significant risk that it will do so, conditions will be set in the licence in order to mitigate that environmental impact.

Richard Lochhead: Are you saying that it is virtually impossible for you to withdraw the draft regulations, to give the committee an opportunity to take oral evidence next week, and to bring them back before Parliament before the summer recess?

Lewis Macdonald: I am not saying that it is virtually impossible for us to do what the member suggests. I am saying that we are keen to keep to the timetable, to give the vast majority of businesses on which the water environment requirements will have an impact the maximum opportunity to adjust their forward plans.

Richard Lochhead: So it is possible for you to withdraw the draft regulations and to bring them back before the summer recess.

Lewis Macdonald: It is possible for us to withdraw the draft regulations and to lay them again before the summer recess. However, if we did so the Parliament would not have an opportunity to scrutinise the draft regulations within the 40-day period.

Richard Lochhead: So we have no options.

Lewis Macdonald: There are always options. However, from the point of view of effective regulation, we are keen that the draft regulations should proceed according to the timetable.

Richard Lochhead: Effective parliamentary scrutiny is also an issue.

The Convener: We will return to that issue before the start of the formal debate. Three members still have questions. I have let this part of the meeting run on for slightly longer than was planned because of the range of representations that were made and because all members had questions for the minister. We are going over some old ground, but from the point of view of scrutiny it is not a bad thing that we should all know exactly what the position is.

Nora Radcliffe: The minister has said that operators in the licensed category may be moved out of it, and that operators that are merely registered may be required to become licensed. The sticking point has been that volume is seen as an arbitrary point of shedding, if you like, between the two categories. That objection would be overcome if it were felt that operators were being moved into the licensed category for site or activity-specific reasons, rather than just on the basis of volume. If we approve the draft regulations, is there a technical way in which we can ensure that all operators are registered before consideration is given to whether they should be licensed?

Lewis Macdonald: As the member knows, the regulatory impact assessment considered a number of different options, such as registering all users. The process of assessment of impact is the key. We opted for the approach that we have taken because we want to minimise the number of businesses that are required to undergo assessment, when we think that their impact on the water environment will be low. By having the regulations exclude all operators that use less than 10m³ of water a day and indicating to SEPA that it should approach the question of which operators it needs to assess on the basis of volume, we exclude 90 per cent of operators that have an impact on the water environment.

Our approach is deliberate and is intended to be of assistance by excluding as many people as we reasonably can without putting the water environment at risk. That is the fundamental balance that we seek to strike. As I said, we have made provision to ensure that, if somebody is caught in the scheme but has a minimal impact on the water environment, they will be taken out of it as quickly as possible. It is worth saying that, if such operators have paid a licensing cost, that should be rebated as far as is reasonably possible. If an operator needs a licensing assessment, but the assessment shows that there

is no need for licensing, we will seek to rebate the cost, as far as we can and in conformity with the European directive on cost recovery, which we must abide by.

Nora Radcliffe: If a person is required to go into the licensed category and must, for example, fit metering, are you saying that any expenditure would be reimbursed if they are then taken out of the licensed category?

Lewis Macdonald: No, I am not. The assessment should indicate at an early stage whether it is appropriate for the operation to be within the licensing regime.

Nora Radcliffe: The difficulty will obviously be at the outset, when it is decided who should be licensed and who should be registered. People feel that they might have to be licensed even though that is not reasonable, given their activities. You have still not answered my question. Leaving aside the people who do not need to be registered on a volume basis, is it possible to require everyone else to be registered and then to go through them and say that certain people have to be licensed and certain others do not? Can that be done, technically, if we agree to the draft regulations as laid?

Lewis Macdonald: Let me understand the question. Are you asking whether we will require all large-volume operators to apply for a licence?

Nora Radcliffe: No. My suggestion is that, given that anybody who uses less than a certain volume will be under the general binding rules, everyone else could register and we could then decide whether they have to be licensed. In other words, instead of putting those that remain in two camps at the outset, we could put them in one camp and then move some out.

Lewis Macdonald: I will turn to my officials on the issue, although I think that, in a way, we intend to do that, although the other way round. Operators will make licence applications and SEPA will say whether the full process is needed. Is that an accurate description?

Joyce Carr: It is. The thresholds that are set out in the policy statement are a preliminary risk assessment in their own way, based on volume. We had to determine how to split the various categories, which is why we came up with the proposal. In by far the majority of cases of people who will be required to apply for a licence, it is expected that they will need a licence, but a small minority are rightly concerned that they will not need a licence. We have asked SEPA to tackle those people first, in order to determine the risk to the water environment.

Nora Radcliffe: So you have all the potential licensees in one camp, but they will not be

required to do anything that involves a cost until they have been assessed, after which they could drop out of the licensed category.

Lewis Macdonald: To be assessed, they will have to provide the data that allow the assessment to be made. In a way, that is our fundamental challenge. We are required to make an assessment of environmental impact, but we cannot do that without data. I entirely understand why small operators have been unwilling to provide data voluntarily. The draft regulations will simply put in place a mechanism that allows us to obtain the data, which we can then use as the basis for our judgments. We need the data in order to conform to the 2003 act and the water framework directive.

Nora Radcliffe: So you cannot require data from registered operators.

Lewis Macdonald: The application that people make for a licence will be followed up by an exchange between the applicant and SEPA as to what further information is required.

Joyce Carr: It would not be appropriate to require all those who register at the right level to provide that level of data—that would become disproportionate.

11:00

Andrew Scott (Scottish Executive Environment and Rural Affairs Department): It is worth saying that the reason why we have taken the approach that we have taken is that we want to minimise the number of people who are obliged to provide a lot of information. The reason why we do not require every company to register and then look only at some of them is that we would need to ask everyone who was registering to provide large amounts of information. We have reduced the number of people who have to do that by saying that only if companies are abstracting more than 50m³ do we require them to provide more information on their abstraction requirements. We have taken that approach to keep down the information requirements on the generality of abstractors.

Nora Radcliffe: Okay.

I want to ask about a couple of other areas, one of which is a small detail. I might have got the answer through reading the paper, but it is probably easier to ask a question. In applying for a licence a responsible person has to be identified. Does that have to be a named individual or can it be the manager?

Lewis Macdonald: For partnerships, companies and corporations it can be the legal person. Only in the case of a friendly society, for example, would a named individual have to be identified, as is generally the case in Scots law.

Nora Radcliffe: My other point was that the SEPA paper talked about the European exercise to check member states' definitions of good status. What input do we have into that cross-Europe exercise?

Joyce Carr: We have contributed a number of sites as being potentially on the borderline between good and moderate status, as have all the other member states. An exercise is going on throughout Europe to identify exactly where the boundaries would be, to ensure that the sites are all being judged on a similar basis.

Nora Radcliffe: Good status means—to paraphrase—with no interference with the environment whatever.

Joyce Carr: With very minor interference.

Nora Radcliffe: Rob Gibson made a point about things that have been happening for a long period of time such that the environment has been changed. In such circumstances, that becomes the status quo. Where do those circumstances fit into the definition of good status?

Lewis Macdonald: The requirement to remediate will not necessarily require the achievement of good status in every case. There would not be a requirement to achieve good status if that was not proportionate or did not take into account the social and economic impact. For example, to return to the question about hydro power, under the directive and the act, ministers have discretion to require less than good status when that is socially and economically justifiable.

Rob Gibson: SEPA says in its letter to us that "there are over 6600km of river at risk due to abstractions."

About a third of that is due to

"canal water supply, food and drink manufacturing, fish farms and paper mills."

How much of the river system is affected by whisky distilleries?

Lewis Macdonald: I do not know the statistic off the top of my head. There are about 110 distilleries, and you can assume that each abstracts water from somewhere. I cannot give you a number of kilometres.

Rob Gibson: So, although that is an important question, there is not really an answer to it.

Lewis Macdonald: We want to make the assessments in order to get the answer to such questions.

Rob Gibson: It is particularly important to know the impact of whisky on our economy and river systems. In a small river there could be a large proportion of effort at one time of year but not at another. We have to hope that you will make the

risk assessments proportionate. It seems to me that there are contradictions between the policy statement and the regulatory impact assessment documents, which I am concerned about. For example, if you are going to measure volume, can you tell me where? Is it going to be measured at the point at which water leaves a river to go into a lade at a distillery?

Lewis Macdonald: It is measured at the point of abstraction from the water body.

Rob Gibson: But 90 per cent of the water is being borrowed—it is not being used in the process. Why has the decision been made to do the measuring at the river, rather than at the point at which it enters the distillery?

Lewis Macdonald: What matters is whether the abstraction has an impact on the environment. That can be judged only on the basis of the assessment of the full data that we will require under the draft regulations. There has to be a measurement of something. There is a clear consistency in measuring the scale of abstraction for all users at the point at which water is abstracted from the natural watercourse. There is a clear logic to choosing that point, because it is the first point at which the operation impacts on the natural environment.

Rob Gibson: How much of a clear logic is it, given that you admitted earlier that many mill lades and so on are part of the inherited environment? You are intervening in a natural part of water flow by taking the decision to have the measurement made at the point at which water is abstracted from the river, rather than at the point at which it enters the distillery.

Lewis Macdonald: The lade is not quite part of the natural environment, although it is, as you say, in situ. That is something to be taken into consideration. Nevertheless, under the 2003 act we are required to ensure that we measure impacts on the natural environment, which must include the impacts of existing operations.

It is important to stress that, under both the transitional arrangements and the initial licensing arrangements, on 1 April 2006 there will not be a requirement on a licence applicant to change its operations. The initial conditions will be designed to ensure that there is no deterioration in the condition of the water while the assessment of impact on the environment is conducted.

Rob Gibson: Do we expect the whisky industry to have a major impact on the water environment?

Lewis Macdonald: If we knew the answer to that question, we would not need to make the assessments. We need to make the assessments to come to a conclusion, recognising that the impact of one whisky distillery may be different

from the impact of another, depending on the process of abstraction, on the process of returning water to watercourses and on the content of that water at the point of return. The answer may well be different for different distilleries; that is why we need to assess each operation on its own merits.

Rob Gibson: Indeed, but page 15 of the policy statement says:

"If a simple description of the type of activity would normally provide the information SEPA needs to assess the risk of cumulative impacts, then SEPA will authorise such activities by registration."

Just above that, the policy statement says:

"SEPA will base such decisions on generic assessments carried out for types of activities."

That seems to contradict your statement that each individual distillery would be assessed separately. I am concerned that we are being presented with draft regulations that rely on your interpretation of such things. At the 11th hour, the committee is quibbling about the wording of the policy statement and looking at the draft regulations to find some way of carrying out those assessments. I find that unsatisfactory.

Lewis Macdonald: The decision about what requires to be assessed in order to measure whether it has an impact on the environment must be taken at some point along the scale. We believe that it is proportionate to have a provision that excludes 90 per cent of water users from the requirement to enter the full licensing process and have an assessment done. We take the view that large-volume abstraction at least raises the possibility of significant impact on the environment, certainly to the point at which that needs to be properly assessed before a judgment can be reached.

The Convener: Can I follow up Rob Gibson's question, to get some clarity? Once the assessment process has been carried out, a blanket approach will not be taken to every distillery. I presume that, once the assessment has been done and SEPA has the information, different potential actions will flow from that. Rob Gibson's question is fundamental and links to Maureen Macmillan's earlier point about mill lades, which are now seen as part of the natural environment because they have been there for a long time. To what extent will the licensing scheme have an impact throughout the whisky industry? To what extent is it about assessing what is there already and keeping tabs on it, and to what extent it is about saying to the existing whisky industry, "We expect you to change and make significant investments"? That is at the heart of the nervousness around the table. What do you expect and what discussions have you had with SEPA?

Lewis Macdonald: I agree that that is at the heart of the issue. The judgment is that any large-volume industrial user of water will potentially have an impact on the water environment—certainly, to the degree that that needs to be properly assessed. Those large-volume users will be required to make an application to allow that proper assessment to take place. The clear intention—I state it very clearly to the committee—is that those applicants will be assessed during the subsequent two-year period to determine whether they have a significant impact on the environment and should be required to continue in the licensing regime. My intention is that users that are borderline, which may include many operators in the whisky industry, should be assessed early, so that they have clarity as soon as is reasonable.

Where it is discovered that an operator, in spite of abstracting a large volume of water, is not having a significant impact on the environment, that operator will not be subject to continuing licensing conditions and requirements. Where an operator is having a continuing impact on the environment, it will be subject to conditions in its licence, and remediation measures may, potentially, require to be taken. The judgment about whether such measures are necessary will be made by 2008. If an operator—whether it is a distillery or whatever—is required to take remediation measures, that will allow it adequate time to plan and put those measures in place.

Mr Ruskell: I will strike a slightly different note from that of my colleagues. The consultation has resulted in a significant streamlining of the draft regulations. I want to ask about the general binding rules, under which some significant works now appear. Those include the laying of pipelines under rivers and the dredging of quite small burns. Such works on their own might not have a significant effect but, in combination in a catchment area, they could have a significant cumulative effect. How will you ensure that such effectively unregulated activities, which do not come within the view of SEPA, will be regulated?

Lewis Macdonald: You are correct that such works do not have to be notified to SEPA because there is no requirement to register them. However, SEPA has a general duty to maintain the water environment—that is part of the provisions in the 2003 act. If SEPA comes to the view that a number of small activities have a cumulative impact, it may step up the level of notification that is required. In other words, if SEPA takes the view that an activity that is subject to the general binding rules is having a larger, disproportionate impact on the environment, it can require the operator to register or to apply for a licence, should that be appropriate. There is flexibility in both directions. The arrangements allow SEPA to exclude large-volume operators that have a

minimal impact on the environment and to include small-volume operators that have a disproportionately large impact on the environment.

Mr Ruskell: Okay. That reassures me.

The Convener: Everybody else has asked a pile of questions and now I would like to ask you one or two, minister. I have been listening carefully to what has been said about our choices for complying with the legislation and I have read through the options in the policy statement. It is a pity that the policy statement does not analyse the issue of the code of conduct that we could have had and say why that option was ruled out. The industry has made it clear that that would have been its preferred option, although you have clarified why it would not now be suitable—as you say, it would need statutory underpinning.

I want to ask about fairness. You have told us that 15 distillers gave full information to SEPA, that 12 gave partial data and that the rest did not give any information. From discussing the issue and from reading the paperwork, I think that a lot of industrial concerns are worried that they will enter a licensing process without any sense of how long they will be in that process.

It is possible to be a big operator without damaging the environment, but it could take SEPA quite a while to go through the assessment process and the operator would have to register and keep paying for a licence every year until SEPA carried out the assessment. That seems unfair on those companies that have provided the information up front and have attempted to comply with the regime when providing the information was voluntary rather than a statutory requirement. You have talked about the process of dealing with different operators. Surely companies that have given all the data up front could be dealt with a lot more quickly. It seems unfair that they would have to sit in a queue for three years, given the vagaries of how the process has operated.

Many of the concerns that have been brought to us are about the way in which assessment will happen, about timescales and about money. In some ways, the amount of money involved is not huge for a big operation. However, if a company has several impoundments and several abstractions, it might have to pay separately for each of them for an indefinite period.

People want to move ahead, but there is uncertainty and a sense that companies will have to pay for an indefinite period. That has struck a chord with some in the industry, who think that that approach is unfair and who would have preferred a different one. I take your point that the approach that they would have liked is no longer an option. In a sense, that relates to SEPA, but many

people's anxieties are driven by the fees and costs, on which we do not have information in front of us today.

Moreover, as Maureen Macmillan said, the hydroelectric and whisky industries are worried about what they might be asked to do after the assessment. I am not clear about how your ministerial reassurances will play out in practice, given that SEPA will do the work.

11:15

Lewis Macdonald: That is a fair point. I see no reason why SEPA should not act quickly in relation to those companies and operations about which it already has the data that it needs. As I said, we expect it to make assessments across the board in the two years before the next European deadlines kick in in 2008. I have already said that I look to SEPA to deal with borderline cases early in order to reduce costs and uncertainty for those large-volume operators that might prove to be low risk. There is no reason why SEPA should not give priority to those operations on which it already has all, or a good deal, of the data that it requires. I hope that that addresses your point.

SEPA is the body that is responsible for implementation, but it will be subject to guidance and, if need be, to direction from ministers. I expect SEPA to make provision for rebates or discounts where an operation has been brought within the licensing regime and proves to be low risk. Again, I hope that that meets some of the concerns that have been expressed in relation to particular operations.

The Convener: It has been suggested to me that, although the regulations are meant to be a proportionate response, paragraph 22 in part 3 of schedule 10 means that everybody will have to go through the process. It has been suggested that the draft regulations do not reflect what is intended.

Lewis Macdonald: Did you say paragraph 22 in part 3?

The Convener: I refer to paragraphs 22 and 23. The issue is how paragraph 23 impacts on the people who are referred to in paragraph 22, who have to apply for authorisation under the regulations. You say that not everybody will be swept up in that, but those paragraphs will trigger a much larger number of people being swept up in the licensing process.

Lewis Macdonald: That takes us back to a point that we discussed earlier. There will be a requirement on all operators to make an application, but a judgment will be made quickly on whether they require a licence or whether

registration is adequate. In the first instance, the judgment will be based, as a shorthand, on volume, which will exclude most applicants from needing to complete the licensing process. Part 3 of schedule 10 accurately describes the process that will be required. It conforms to regulations 7, 8 and 9 and produces that effect.

The Convener: Okay. That was probably the longest clarification session that we have ever had, but given members' concerns it would not have been right to have acted differently. Should we move on to our discussion? Richard, are you wanting to propose that we ask the minister to withdraw the regulations?

Richard Lochhead: There are concerns about the impact of the regulations on the whisky industry and the hydroelectric sector, both of which made representations to us, along with others. Those concerns are shared by members of the committee. I am not convinced that withdrawing the regulations would have a substantial impact, given the timescale. There are also implications for parliamentary scrutiny. Today is 25 May and we have been told that we must take a decision by 30 May. I am sure that members are keen to hear the industries' responses to what we have heard today from the minister; we need some time to do that. No matter what we decide today, at some point we will have to take oral evidence from the people who have made representations to the committee. I would be happy to move that we recommend that the regulations be withdrawn.

The Convener: I invite comments from other colleagues.

Alex Johnstone: When the Water Environment and Water Services (Scotland) Bill was passed some years ago, it became inevitable that we would have regulations of this nature. I presume that all members of the committee believe that such regulations are required and will meet with the committee's approval at some point in the future. However, having read the submissions and heard today's discussion, I have the impression that the regulations as presented are somewhat immature and that they have been laid before Parliament prematurely. I would like to have more time to deal with the issue.

Karen Gillon: I understand what members are saying. However, I am not convinced that the industry will ever be happy with the proposals, regardless of how much discussion we have. I am not sure what would be the point of withdrawing the regulations. Having listened to the debate, I think that we are in this situation because the industries did not provide the necessary data in the first place. That is partly their responsibility and partly SEPA's. Questions must be asked about the powers that SEPA has to get information relating

to its environmental role. I do not know whether, if it withdrew the regulations and returned to the issue at another time, the Executive would come up with different regulations that would take the whisky industry, which seems to be at the core of the problem, out of the regime.

Initially, I was sympathetic to Nora Radcliffe's proposal that all operators should first be subject to registration. However, the minister suggested that that would involve placing a far more onerous burden on many more industries, in order to sort out the problems of one industry. If we required all operators to be registered, we could end up being lobbied by many more industries than are currently lobbying us about licensing. I am not sure whether bringing back the regulations at a different time would provide us with a different solution.

My concerns are at the other end of the scale. I am worried that we do not have enough mechanisms to bring about improvements in businesses that are causing pollution. I seek reassurances from the minister on that issue at a future date. SEPA's record on the matter is not consistently good.

Rob Gibson: I am concerned that we are expecting SEPA to do the work in a short time. Despite the fact that the agency is extremely overstretched, we have received no indication of whether new resources will be available to enable it to do some quite exacting work. SEPA will be required to assess the conditions in which major parts of our economy, such as the whisky and renewable energy industries, work and affect the water environment.

Based on the evidence that I have seen, I have serious doubts about the regulations. I do not have the advantage of having been involved in creating the legislation—I am looking at the issue from my current position. I am confident that we can proceed properly and quickly and that the Government has presented the regulations in a fashion that will allow it to get co-operation. I do not know in detail which distillers have or have not provided information, but I understand that much of the information was made available by the Scotch Whisky Association and Diageo.

That is a side issue, however. We must ask ourselves whether, given the short time that we have had to consider the regulations, we can say with our hands on our hearts that they should be referred to the Parliament for approval. I do not think that we can. It is not often that I say that. However, I believe in strict environmental legislation and, as Alex Johnstone said, the regulations have to be applied in the future. I am completely unhappy with what I have heard today.

Nora Radcliffe: Regardless of whether we should go ahead with the regulations, nobody has

asked what happens to everything that has been the subject of previous regulations and which will have to transfer. I am worried about the impact of having a gap between where one set of regulations stops and the next set begins. We have concentrated on one small, albeit important, aspect of the regulations and I feel somewhat reassured about how the regulations will be handled in that respect. Nevertheless, we should not forget that that is not the sum total of what the regulations will do.

Maureen Macmillan: I was on the Transport and the Environment Committee, which was the lead committee on the Water Environment and Water Services (Scotland) Bill. I knew that the regulations would come along and that there were concerns within the whisky industry and the hydroelectric companies four years ago. I was, therefore, glad to hear the minister say that there would be flexibility and that socioeconomic factors would be taken into account. When the whisky industry spoke to me, it was concerned about flexibility. Another issue is how much it would cost the whisky industry to meter its water usage. I was given the figure of around £40,000 to £50,000. I would like to put that to the minister, to see whether he recognises it as being a realistic estimate. However, having received reassurances from the minister about flexibility, I am much happier about the direction that the regulations have taken.

Mr Ruskell: I would have great concerns if the regulations were not put in place by October. If that happened, the industry would face real problems, as it needs the time to adapt and to make the transition from the existing regulations to the new ones. Our scrutiny has come at the end of an extremely lengthy process that has involved all stakeholders, including the whisky industry. Indeed, as the minister said, there have been substantial revisions to the scheme over that period. In an ideal world, I would like greater parliamentary scrutiny, but I would have serious concerns if that put back the October implementation date. I do not think that that would be in the industry's best interests.

The Convener: Do any other members of the committee have a point that they want to make? If not, I invite Jackie Baillie, as a visiting member, to make a brief comment.

Jackie Baillie: Thank you, convener. I did not realise that you were going to allow supplementary questions, otherwise I would have asked more.

The Convener: I realised that afterwards.

Jackie Baillie: Yes, but there you go.

Cost is a secondary consideration. The real issue is a matter of principle regarding the burdens that will be put in place and whether they are

reasonable. Way back in 2001, SEPA said that there was no need to impose an unnecessary administrative burden on the vast majority of distillers, which do not cause environmental damage, and that it would seek to apply whatever was to be applied in a selective manner. We should see the industry's concerns in that context.

Licensing is a blunt instrument; it is not subtle. That is my starting point. Although the minister has proposed some helpful measures in mitigation, I had hoped that he would go further. I wonder whether, for the committee's consideration, he would commit to meeting the whisky industry specifically to discuss whether the proposed licensing scheme would work as it is intended to work. If it was decided that it would not, I hope that he would consider amending the regulations. That would deal with the issue of the bulk of people needing the regulations to be in place and it would show sensitivity to the genuine concerns of the whisky industry. That would be a useful way forward.

The Convener: That was reasonably brief.

Richard Lochhead has suggested that the minister should not move the motion to approve the regulations. It is within the minister's gift not to move the motion if, having listened to what has been said around the table, he chooses not to do so. If he chooses to move the motion, there will be a formal debate on it. Are members clear about that? That is the correct procedure.

Lewis Macdonald: Having listened to the representations that have been made, and being willing to provide assurance that, of course, we will maintain a dialogue with the stakeholders, I intend to move the motion that the committee recommend that the draft regulations be approved.

11:30

The Convener: Okay. We move to a formal debate on the motion. I invite members to think about what they might want to say in the debate and I ask the minister to speak to and move motion S2M-2748.

Lewis Macdonald: This exchange of information has laid out clearly the purpose of and requirement for the draft regulations. The regulations will implement our European obligations and give businesses and stakeholders that have an impact on and make a living from the water environment the opportunity to make whatever adjustments will be required between 2006 and 2012. The regulations are proportionate and risk based. They exclude the great majority of those who have an impact on the water environment from the requirement for a detailed assessment and they make provision for a detailed assessment of all high-volume users. As I

have said, we will ensure that the consequence of that detailed assessment will be rapidly reflected in the requirements that are placed on individual operations that are covered by the regulations.

On that basis, I believe that the draft regulations will be of assistance. I am happy to give an undertaking that the Government will continue its dialogue with the whisky industry and other interested parties about the impact of the draft regulations on them. We will ensure that the undertakings that I have given today—on the guidance that I will give to SEPA about how operations are to implement their obligations—are carried through in a way that is fair and proportionate. I cannot predict the outcome of assessments that SEPA will be required to carry out on individual operations, but I assure the committee that, where an operation has a minimal or low-risk impact on the water environment, no unnecessary burdens will be placed on that operation. I also assure the committee that those assessments should be carried out quickly, especially for borderline cases, once the licensing arrangements are in place.

I move,

That the Environment and Rural Development Committee recommends that the draft Water Environment (Controlled Activities) (Scotland) Regulations 2005 be approved.

Richard Lochhead: I think that we should not approve the draft regulations for two reasons. First, we should consider the interests of parliamentary scrutiny. The committee is acting on behalf of the whole Parliament and I do not think that we have had enough time to scrutinise the regulations. Time and again, regulations come before us that we feel we just have to approve because of the lack of time to take evidence and because everything would fall if we did not approve them. We should not approve the draft regulations. We should ask the minister to take them away and bring them back after we have had the time to give them further parliamentary scrutiny by taking oral evidence from those who have made representations to us, who in turn will have had time to reflect on what the minister has said today. That would give the committee the opportunity to suggest amendments to any future draft.

I do not think that the roof would fall in if the draft regulations were not approved today. In three or four months' time, we would have better regulations before the committee, which would be properly scrutinised on behalf of the Parliament. Those regulations would, I hope, meet the objectives of the 2003 act, which the minister tells us are to protect the water environment—an objective that we all support—and not to impose too much regulation on the users of our water

environment. The subject of committee members' concerns is that, as we have heard, the licensing scheme is to be introduced where it might not be necessary.

We all value the role of the whisky industry in Scotland, as well as that of the hydroelectric sector and those other sectors that we have mentioned today. We have a duty to them to ensure that we scrutinise legislation properly and that any regulations that are approved will not have an adverse impact on their operations. That is especially true in the case of the whisky industry. Much of the discussion today has focused on the fact that, as the minister accepts, there is no evidence to suggest that the industry has an adverse impact on the water environment. For example, we know that 90 per cent of the water that is taken by the whisky industry is simply borrowed from, and returned to, water courses.

The committee has more work to do on the issue. Irrespective of the outcome of today's vote, we should take oral evidence from representatives of the industries concerned so that we can hear their responses to what the minister has said today.

Alex Johnstone: In the interests of Scotland's water environment, which is a matter of concern to every citizen in Scotland, it is essential that statutory instruments such as the one before us today are subject to an appropriate level of parliamentary scrutiny and that they ultimately receive the support of us all. I am concerned that an identifiable stakeholder group within the process has felt it necessary to make so many representations to committee members. If we are to serve Scotland's environment as we should, we need to take everyone along with us and to ensure that proper consultation has taken place. In my view, taking all the stakeholder interests along with us is of greater importance than sticking to a time limit. Therefore, I will oppose the motion to approve the instrument.

Mr Morrison: During today's detailed discussions, the minister has mentioned the two important words of flexibility and dialogue. On flexibility, there is some delicacy about the role of SEPA, which will both provide advice to ministers and monitor and enforce the regulations. However, on the question of the ministers' role in the appeal process, the minister stressed that the final judgments on a wide range of issues would be made by ministers.

On dialogue, I concur with what Alex Johnstone said. Frankly, it is not an ideal way for Government to conduct its business that the minister and his officials should meet the chair of the Scotch Whisky Association only on the eve of this meeting. I seek an assurance from the minister that his officials will get their act together to ensure

that meaningful consultation and dialogue take place in the proper context rather than in a rush on the evening before the meeting at which the matter is to be decided. Seeking that brief point of assurance—I see that the minister is nodding, which is always helpful—I will end my remarks.

Nora Radcliffe: Frankly, I do not see what difference we would make by postponing our approval of the regulations, as it is unlikely that any new set of draft regulations will be substantially different. As I said earlier, there are other reasons why the regulations are necessary. Also, I am not sure that we would get anything extra from oral evidence that has not been raised in the detailed written submissions that we have discussed, scrutinised and debated at some length this morning.

All the stakeholder groups accept that licensing is necessary, so the debate is about the way in which that is implemented. People have been slightly taken aback at the way in which it has been proposed that people will be arbitrarily divided into those who will initially be required to apply for a licence and those who will not. However, we have been assured about the speed of implementation, so people should not be placed under unnecessary obligations for longer than is necessary.

Ultimately, there is no way of getting round the necessity for information on which decisions can be based. If the only way of getting that information is through the licensing application process, putting off the implementation of the regulations for three or four weeks will still leave us with the same conclusions. I see no advantages in doing that. Given all the other reasons for the regulations, the advantages of proceeding with them today outweigh other considerations.

Mr Ruskell: In the long term, the regulations are vital for our economic competitiveness. The image of many Scottish industries, including the Scotch whisky industry, is built on the health of Scotland's water environment, so it is important that we push ahead with the regulations, which will not place prohibitive costs on the whisky industry. As the minister said, identification of the status of a high-volume user is a trigger to ensure that a risk assessment takes place. That may well lead to an exemption if it is found that an activity does not have significant environmental impacts.

I take on board Jackie Baillie's point that risk assessment should precede rather than follow licensing. However, we must realise that we are in transition from one set of regulations to another. The new regulations will enable us to make that transition. It is difficult, but it must be made. The sooner we can do it, the better for our economic competitiveness and Scotland's environment.

Difficult issues relate to hydro power. Ministers must balance the local environmental impact with the global environmental impact. However, I am reassured by the minister's comments that remediation measures will be proportionate and that socioeconomic impacts will be considered.

We have scrutinised the regulations. We have heard vocal representation from one industry body, whose concerns have been voiced and answered repeatedly this morning. We are ready to approve the regulations.

Karen Gillon: The speed with which we must consider regulations raises issues. At some point, we might want to take up with the Procedures Committee whether the current parliamentary timescales are adequate for the processes that committees require to follow, particularly when they are in the middle of considering a bill or carrying out an inquiry, as we were. At one point, the number of issues that we were running with was cumbersome. Perhaps we need to examine that.

However, there is nobody at the table who does not know the issues, the pressure points and the concerns. Given the time that we have just spent on questioning and cross-examining the minister and the time that other members have spent in the past week on discussing with industry representatives their concerns, which members have reflected, to suggest that effective scrutiny has not taken place is to devalue the committee process. The minister has been scrutinised effectively. On the basis of the information and the evidence that we have, it is for us as politicians to take a decision and to stand by it. The Parliament can either support or oppose our decision.

It is not always possible to take all stakeholders with us. Sometimes, regardless of how much consultation and dialogue has taken place, some people will not be happy with what we decide. Nevertheless, we must still make decisions. I am simply not convinced that withdrawing the regulations or voting not to recommend that they be approved would mean that regulations that were produced in October or next year would be substantially different from these regulations.

An issue arises for the whisky industry. Jackie Baillie has suggested a possible way forward. If the regulations need to be amended and the system proves to be unduly cumbersome and bureaucratic for the whisky industry, I hope that the minister will be prepared to produce amendments. I am not convinced that they will be needed, given what the minister has said about flexibility, but that assurance from him would be useful.

I seek further reassurance from the minister about the lower end of the scale, where my

primary concern lies. People who damage the environment on a smaller but no less harmful scale might not be picked up on an appropriate timescale. Will the minister reassure me that SEPA will be instructed to monitor closely those who fall under the general binding rules, so that if cumulative impacts occur, they will be moved quickly up the scale? That will ensure that regulation is increased on small rivers and small streams where, for example, many septic tank outflows or many operations are causing problems.

With those caveats, I will be happy to support the regulations. I look forward to the minister's response.

11:45

Rob Gibson: Each contribution has raised further questions about the process and the likelihood of the system being effective when it is put into practice. The industries that have lobbied us have a strong claim that they, like all of us, require a clean environment—there is no argument about that—but there has been a problem with interpreting the policy statement and the regulatory impact assessments and trying to match up what they say.

Obviously, such instruments can be amended in due course, but we are being asked to go down a route that will involve risk assessment to some extent and that will cost quite a lot of money, although we are not entirely clear that things will be done in the best fashion. Serious discussions on the implementation of the regulations might well lead us to think that previous approaches that resulted in the primary legislation are not the best way forward. The committee is now considering the matter in its scrutiny role as a result of concerns about how the minister has interpreted the primary legislation and how that will affect some of our most important industries. I will support Richard Lochhead. I am greatly concerned that, in addition to the industries that have lobbied us, other people might now want to comment in detail on what has been said in today's exchanges.

The Convener: As no other colleagues want to speak, I will make a couple of points before the minister says something.

I agree with Karen Gillon. We are where we are. In some ways, I would have liked to have had a much longer debate today, but we must get on with things so that the vast majority of water users are clear about their position and so that there is a light regulatory touch for them. However, I would like the committee to discuss the bigger water users in the future. We have explored how the regulations will work with the minister and I am

happy, but I understand the points that Alasdair Morrison, Jackie Baillie and Richard Lochhead have made. The committee should return to the matter and consider how the regulations are being implemented. We can do so later this year or we can wait until next year's annual review of the water environment legislation. Perhaps in the autumn, I will seek colleagues' views on when that might be most appropriate.

It would be useful for the committee to receive feedback from the minister after the further discussions to which he has committed himself with the whisky industry and the hydro industry. Those industries are worried about the uncertainty and they fear what might come from the regulations and the licensing regime. Earlier, I mentioned those who have already given information in good faith and still have to go through a licensing process. It is important to record in the *Official Report* that some people have done what SEPA asked them to do, but the problem is that some have not, which means that there will be a slightly tougher regime than people would have preferred, particularly with respect to the code of conduct.

I am interested in flexibility. I have read SEPA's report and the representations that we have received and I listened to the minister, but I am not clear about exactly where the dividing lines are between the policy framework and the implementation and operational side for which SEPA has responsibility. It might be useful for the committee to return to that matter.

Members asked about sustainable development, how environmental, social and economic impacts are weighted and the judgments that the minister will have to make, and I would like the committee to return to that issue. All members have said that they want a high-quality water environment that is in line with what European regulations require, but we also want to achieve that environment in such a way that our industries can cope and plan ahead. I think that Mark Ruskell spoke about timescales.

I am more than happy to support the regulations but, for the *Official Report*, I would like the minister to state his commitment that he is happy to meet the industries and to return to the committee. Obviously, we can require him to do so, but we would prefer him to volunteer to have discussions and to come back to us with his thoughts about how the licensing process will take effect. He has made useful comments on that issue, but we would like the industries to understand matters and we would like to know how matters will be progressed with SEPA.

Lewis Macdonald: I am more than happy to engage in continuing dialogue with the industries that you mentioned. Alasdair Morrison asked

about dialogue thus far. Officials have maintained a dialogue, and I will ensure that dialogue continues at official level and ministerial level. We want to ensure that we take stakeholders with us and that if they are not entirely persuaded of the case for proceeding in the way in which we do, we continue to receive feedback from them so that we are able to implement what we must implement in the most effective way.

It is clearly in everybody's interests that the information that is required to assess impact on the environment be made available readily and assessed speedily. I assure the committee that I will deal with SEPA accordingly and will require the agency not only to make early assessments of the environmental impact of activities in the water environment, but to do so with the minimum impact on the whisky industry and other industries.

On the way in which SEPA treats licence applications, there is clearly some room for manoeuvre in guidance that I can issue to ensure that the process is flexible and does not impose new burdens. I am happy to assure the committee that I will seek that outcome. Guidance can also be provided on the cumulative impact of small-scale activity and, as part of the river basin management process, which drives much of this policy, we will examine the cumulative impact of activities large and small on river basins.

I assure the committee that that will form part of our approach to the matters that we have discussed. We will, of course, continue dialogue and our own active assessment. SEPA has responsibilities in the matter, but the primary responsibility lies with ministers and our officials. We will maintain active oversight of the introduction of the new regime and the implementation of the regulations.

The Convener: The question is, that motion S2M-2748, in the name of Ross Finnie, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Boyack, Sarah (Edinburgh Central) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Lochhead, Richard (North East Scotland) (SNP)

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

Motion agreed to.

That the Environment and Rural Development Committee recommends that the draft Water Environment (Controlled Activities) (Scotland) Regulations 2005 be approved.

The Convener: We will report to the Parliament that we have agreed to the motion.

I will make one other point. From talking to the clerks, I understand that the Subordinate Legislation Committee is considering its approach to a review of the way in which the Parliament handles subordinate legislation. I am not insensitive to the points that Richard Lochhead made about the frustration that we sometimes feel with the timescale for such scrutiny and, as ours is one of the big committees that deal with a lot of subordinate legislation, I would like us to take soundings within the committee and think about the pieces of subordinate legislation that have been dealt with effectively and those with which we found it more difficult to deal. The committee's views and experience should be fed properly into the Subordinate Legislation Committee's review, so I commit to speak to Sylvia Jackson, the convener of that committee, and find out what the timescale is so that we can consider a paper to capture the thoughts of members about our preferences for dealing with subordinate legislation. Do members agree to that?

Members indicated agreement.

The Convener: I hope that that will be helpful.

I thank everyone for attending. I ask the minister and his officials to leave. As we agreed at our previous meeting, we will discuss our stage 1 report on the Environmental Assessment (Scotland) Bill in private.

11:54

Meeting continued in private until 12:52.

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