# ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 14 September 2005

Session 2

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## Wednesday 14 September 2005



## ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE
**22nd Meeting 2005, Session 2**

**CONVENER**

*Sarah Boyack (Edinburgh Central) (Lab)

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)
*Rob Gibson (Highlands and Islands) (SNP)
*Richard Lochhead (North East Scotland) (SNP)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Nora Radcliffe (Gordon) (LD)
Elaine Smith (Coatbridge and Chryston) (Lab)

**COMMITTEE SUBSTITUTES**

Alex Fergusson (Galloway and Upper Nithsdale) (Con)
*Trish Godman (West Renfrewshire) (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:**

Rhona Brankin (Deputy Minister for Environment and Rural Development)
Alex Johnstone (North East Scotland) (Con)
Elspeth MacDonald (Scottish Executive Legal and Parliamentary Services)
Jon Rathjen (Scottish Executive Environment and Rural Affairs Department)
Tommy Sheridan (Glasgow) (SSP)

**CLERK TO THE COMMITTEE**

Mark Brough

**SENIOR ASSISTANT CLERK**

Katherine Wright

**ASSISTANT CLERK**

Christine Lambourne

**LOCATION**

Committee Room 4

# Scottish Parliament

## Environment and Rural Development Committee

*Wednesday 14 September 2005*

[THE CONVENER *opened the meeting at 10:30*]

## Item in Private

**The Convener (Sarah Boyack):** I welcome committee members, the public and the press to the meeting. I have apologies from Elaine Smith; Trish Godman is attending as her substitute. Welcome to the committee, Trish. As this is your first meeting, I invite you to declare any relevant interests.

**Trish Godman (West Renfrewshire) (Lab):** I do not have any relevant interests at all.

**The Convener:** I also welcome visiting members Tommy Sheridan and Alex Johnstone—Alex is making a return visit to his old committee.

**Mr Ted Brocklebank (Mid Scotland and Fife) (Con):** Where he gave an admirable performance.

**The Convener:** Item 1 is to invite members to take item 4 in private. Item 4 is consideration of the Scottish Executive's response to the committee's climate change inquiry report. I suggest that we have a brief discussion on that, as well as on arrangements for next week's debate, in private at the end of the meeting. Are members content with that?

**Members** *indicated agreement*.

## Environmental Assessment (Scotland) Bill: Stage 2

10:31

**The Convener:** Item 2 is the substantive issue for today's meeting—stage 2 of the Environmental Assessment (Scotland) Bill. I welcome Rhona Brankin, the Deputy Minister for Environment and Rural Development, to her first committee meeting as minister. We also have with us Scottish Executive officials. It is a while since we have dealt with a bill at stage 2 and, given that the committee has also been reshuffled, I will just remind people of what we have in front of us and how I intend to take us through the bill.

Members should have in front of them a copy of the bill as introduced and the marshalled list of amendments, which was published on Tuesday. They should also have the procedural supplement to the marshalled list, which gives the groupings of the amendments. The clerks have spare copies of all those papers.

The amendments have been grouped on my authority to try to facilitate intelligent debate, but the running order is set by the rules of precedence according to the marshalled list. Members will have to juggle between the two papers. The procedural supplement sets out the amendments in the order in which we will debate them today, but all the amendments will be called in strict order from the marshalled list; we cannot go backwards and forwards through the list.

I have set the target of completing stage 2 consideration of the bill today. On the strength of the number of amendments that have been submitted, I believe that that is entirely possible, but we will see how we get on.

There will be one debate on each group of amendments. I will call the member who has lodged the first amendment in each group to move the amendment and to speak to the other amendments in the group. Members who are not proposers of amendments in a group will get to speak if they indicate their wish to do so and catch my attention. I will then ask the person who moved the first amendment in each group to wind up. If the deputy minister is not that person and she has something to say that would help the debate, I will hear from her before the final person sums up. Only committee members are entitled to vote.

Before we started this morning, someone asked me about the status of Rosie Kane's amendments. Rosie Kane submitted her amendments before she was suspended from the Parliament for September. The amendments are therefore on the marshalled list, they are competent and any

member is entitled to move them. I have heard that Tommy Sheridan is here to move them. The amendments do not all have to be moved; if they are not, we can just proceed to the next amendment.

After we have debated the amendments, we have to decide whether to agree to each section of the bill. If someone wants to raise an issue of principle, we can have a short debate on each section.

As there are no questions and no clarification seems to be required, we will move on.

*Section 1 agreed to.*

### Section 2—Responsible authorities

**The Convener:** The first group of amendments deals with the responsible authorities to which section 5(4) applies. Amendment 12, in the name of Maureen Macmillan, is grouped with amendments 3, 21 and 13. If amendment 12 is agreed to, amendments 3 and 21 are pre-empted.

**Maureen Macmillan (Highlands and Islands) (Lab):** Amendment 12 has been lodged to clear up confusion, although it might be only in my mind that there is any confusion. It seems that the intention that public functions being carried out by private bodies are covered by the bill is dealt with in part of the bill but not in other parts. Having said that public, sorry, that private—

Sorry, can I start again? You can see how confused I am.

Section 2(1) gives a definition of a responsible authority, which applies as long as a plan that the authority is preparing falls within section 5(3) of the bill and is covered by European directive 2001/42/EC. However, section 2(4) defines a smaller group of bodies that will be required to provide strategic environmental assessment for all their plans and programmes. We asked the minister about that point during the stage 1 debate and when he gave evidence to the committee. He seemed to give the impression that the bill would cover the private sector when organisations were developing plans as part of regulated activity.

I am not exactly sure what is meant by "regulated activity" and private and public bodies are still not sure what to expect from the bill. For example, Highlands and Islands Enterprise noted that a lot of its work is delivered through private bodies and wondered whether the SEA provisions would apply to those bodies if they were not delivering programmes under the European directive. Similarly, Scottish and Southern Energy plc wondered whether an SEA would have been required for the Beauly to Denny line. We still seem not to be terribly clear about what the bill will cover.

Amendment 13, which is a consequential amendment, has been lodged because section 2(4) seems to exclude private bodies entirely and I think that they should not be excluded. I am looking for the minister to give us some criteria for situations in which a private body is undertaking public works. What, exactly, are regulated public works and how can we know when to expect an SEA from a private body?

I move amendment 12.

**The Convener:** Does any member want to speak to amendment 3 in place of Rosie Kane?

**Tommy Sheridan (Glasgow) (SSP):** If I start talking about council tax abolition, just shut me up. Given the past few weeks, I might get confused.

The point that Maureen Macmillan has made has illustrated the fact that there is confusion over what initially started out as a broad definition of who would come under the proposals in the bill and would, therefore, be required to make a strategic environmental assessment. It appears that the bill starts out broad but ends up narrow, effectively excluding private companies from the requirement. Amendment 3, in the name of Rosie Kane, tries to clarify the situation and ensure that the bill will apply to any private body that is exercising functions of a public character. I think that that runs with the general thrust of the bill and I therefore hope that the amendment is accepted.

**Alex Johnstone (North East Scotland) (Con):** In the stage 1 debate before the recess, I made it clear that I would attempt at stage 2 to move against any measure that sought to extend the powers already conferred under the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258), which came into force in July last year. In trying to find a place to insert such a change, I had to explore one or two possibilities. My first inclination was, on advice, to seek to remove section 5(4)(a). I understand that the decision of the convener on removing that paragraph was—if it was reported accurately—that such a move would take out more than 50 per cent of the effect of the bill. I accept and respect that decision, but it indicates the extent to which the bill seeks to extend the powers in the initial regulations. It is therefore my concern to ensure that we try to prevent further gold plating or extension of the regulations beyond what was required originally when they were passed last year.

My amendment 21 seeks to remove section 2(4)(f). The reasoning behind it is to seek to prevent the further extension of the bill beyond what it will already cover. That is a reasonable thing to attempt, given that the paragraph gives ministers the power to extend the scope of the bill to

"any other person, body or office-holder of a description (and to such extent) as may be specified by the Scottish Ministers by order."

Paragraph (f) is therefore extremely open ended and will have the effect of allowing the minister to do anything that he or she sees fit. Although I have complete trust in the existing ministers not to abuse such a power, the nature of the Parliament is such that, at any time in the future, the provision could simply be a loaded weapon for others to use. I seek to amend the bill by removing section 2(4)(f).

**Mr Mark Ruskell (Mid Scotland and Fife) (Green):** I support amendments 12 and 13 in the name of Maureen Macmillan and amendment 3 in the name of Rosie Kane, which try to do broadly similar things. It is important that where private bodies are undertaking the functions of a public character they are covered by the bill and that the bill should not be constrained to a narrow definition of regulatory activity. I think that it is the minister's intention to capture the public actions that private bodies are undertaking, but we need clarity from her on that.

On amendment 21, I believe that we will need flexibility under section 5(4). Ministers will need to clarify in the future exactly what a responsible authority is and they may well seek to extend the list of the responsible authorities that they specify. I will not support amendment 21, but I will support amendments 3, 12 and 13.

**The Deputy Minister for Environment and Rural Development (Rhona Brankin):** I will speak to amendments 12, 3, 21 and 13. The consequences of the amendments are complex, but I will attempt to highlight the most important effects and respond to some of the questions that members asked.

I will focus initially on amendments 12 and 13. I saw no representations during the consultations or committee evidence sessions seeking the removal of section 2(4) and therefore judge that there is no indication of general support for the amendments. The committee stage 1 report picks up the issue of responsible authorities more generally. The response was clear then, as it has been throughout the life of the bill. The bill has always been intended only to lay its additional provisions on the Scottish public sector and it has always been the intention to retain flexibility to extend coverage in the light of experience.

To remove all section 2(4) at a stroke would mean that the extended provisions that are set out in section 5(4) would apply to all United Kingdom public authorities and private companies that exercise functions of a public character; the provisions would apply when those authorities and companies developed plans, programmes or strategies solely for Scotland that were not required by legislative, regulatory or administrative provision.

Concerns have been expressed about the national grid, for example. The bill covers a wide range of plans that are the responsibility of private bodies that exercise functions of a public character where they relate solely to Scotland. Important strategic-level plans will therefore not avoid due scrutiny through SEA.

10:45

The amendments would place additional SEA responsibilities on private companies with functions of a public character that are more extensive than SEA provisions elsewhere in the UK, which would mean that private companies that operate in Scotland would not be on a level playing field regarding SEA provisions with others that operate elsewhere in the UK.

I want to make it absolutely clear that, in opposing amendments 12 and 13, I do not entirely dismiss the notion that the list of responsible authorities at section 2(4) may be extended. That is important. Indeed, the Executive has already opened the way for due consideration of an extension of section 2(4) by including order-making powers at section 2(4)(f) for Scottish ministers to extend the list of responsible authorities at section 2(4). The policy intention is not to make any hasty extension but to propose extension to the list in the light of the early years of operation of the new SEA provisions. Such an approach would require consultation and negotiation with public bodies for any additional inclusions and would be subject to consideration by the Parliament.

The provisions have been laid out in public for some months and extending the list at this time to bodies that have not been consulted about the additional functions would be highly problematic. The power to extend in a measured way the bodies that are covered is in place and I hope that that more measured approach, which will avoid unfortunate impacts on private companies, will be recognised as the wisest route forward. I seek to reassure Maureen Macmillan on that matter.

I turn to amendment 3. The bill provides that, for their private business, all private companies' strategies, plans and programmes are excluded from SEA. The only instance in which a private company may be subject to SEA is where it is exercising functions of a public character—that is made clear in section 2(1). As a result, the provisions of the bill will apply only when a private company is preparing a plan or programme that is required by legislative, regulatory or administrative provision and is doing so in exercise of a function of a public character.

The effect of amendment 3 would be to apply the provisions of the bill to any plans that are brought forward by private bodies exercising functions of a public character that did not arise as a result of a legislative, regulatory or administrative requirement. In itself, that is a highly unlikely scenario. The amendment would, in the unlikely event of its ever applying, place an additional burden on private sector firms that operate in Scotland. I consider that the bill's scope of application is sufficient and that the attempt to burden the private sector by the back door is unhelpful and should be resisted.

It is clear to me that amendment 21 does not reflect the majority view within or outwith the Parliament, because it seeks to restrict the application of section 5(4) of the bill to the bodies that are already listed. The power at section 2(4)(f) allows for additions to the list of responsible authorities at section 2(4). The power is included as a practical provision that may be used if it becomes clear through experience, consultation and negotiation that additions to the list at section 2(4) would be useful, logical and appropriate. Additions to section 2(4) cannot reasonably be made until after the emergence of evidence from the operation of the environmental assessment regime and the power will provide an opportunity to respond appropriately to any need for additions that emerge over time.

I ask the committee to resist the amendments.

**The Convener:** As no other member wishes to speak, I ask Maureen Macmillan to wind up.

**Maureen Macmillan:** I am somewhat reassured by what the minister has said. The Executive's intention that private bodies will be involved in SEA is now clearer. I do not want to overburden the private sector, but we need a steer on the extent to which private sector companies will be drawn into SEA. I note that the minister said that experience will show which private bodies the regime might apply to. I still have some questions about the issue in my mind, but I am prepared to study in the *Official Report* what the minister said. If I still feel that there is a problem, I will wait to pursue it at stage 3, rather than continuing with my amendment today.

*Amendment 12, by agreement, withdrawn.*

*Amendment 3 moved—[Tommy Sheridan].*

**The Convener:** The question is, that amendment 3 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

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

*Amendment 3 disagreed to.*

*Amendment 21 moved—[Alex Johnstone].*

**The Convener:** The question is, that amendment 21 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Gibson, Rob (Highlands and Islands) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**The Convener:** The result of the division is: For 1, Against 8, Abstentions 0.

*Amendment 21 disagreed to.*

*Section 2 agreed to.*

### Section 3—Consultation authorities

**The Convener:** Amendment 4, in the name of Rosie Kane, is grouped with amendments 5, 14 and 15.

**Tommy Sheridan:** I will stand corrected if I am wrong, but I believe that the idea of who should be the consultation authorities was not one of the questions in the original consultation document. Although I do not wish to question the bodies that are already named in the bill, I question their ability to represent all views about human health, local community complaints and other issues that will inevitably arise in the course of disputes.

Amendments 4 and 5 therefore seek to strengthen the list of consultation bodies to provide wider representation of the various issues that will inevitably arise. The credibility of Scottish Environment LINK and NHS Health Scotland speaks for itself as regards the ability of those organisations to articulate wide-ranging community and health-based concerns. I do not think that that question was part of the consultation, but I might be wrong. If it was not, it

should have been because it would have allowed a wider level of support to broaden the list of statutory consultees.

I move amendment 4.

**The Convener:** I call Rob Gibson.

**Rob Gibson (Highlands and Islands) (SNP):** I am sorry—I wanted to speak to amendment 14, which I will do in due course, unless you are to deal with that amendment next.

**The Convener:** I was inviting you to speak to amendment 14.

**Rob Gibson:** Pardon me—I will do that.

**The Convener:** You were next on my list, so you can take the floor. You may also speak to other amendments in the group.

**Rob Gibson:** I will speak only to amendment 14. As I said in my speech in the debate on 16 June, environmental justice involves questions about consultation and subjects other than those that are listed in the bill. We are about to debate health and the impacts on the population, but transboundary effects are also important.

As the bill concerns strategic environmental assessment, we hope that the Scottish Government will approach amendment 14 sympathetically. The amendment would give ministers the power to specify by order other bodies that might be consulted under section 3, with a view to remembering that what we do to the environment here can have effects in other countries. The example that I gave in the debate was of acid rain that fell on Norway. The Norwegians might want to have a say about that.

I expect us to be a much cleaner country in future, but we should nevertheless take account of transboundary effects of how we act. I hope that the amendment can write that into the bill, because the issue would allow the Executive to consult outwith the country's boundaries. Consultation could be with England and Wales or with Northern Ireland.

It is also useful to note that strategic environmental assessment in the nordic countries is dealt with through a network that compares information. Those countries have different standards from us, but England will have different standards from us, too, so it is important to open that route and seek the Executive's support for such consultation as a possible means to include people from beyond Scotland's boundaries. I will be happy to move amendment 14 later.

**Mr Ruskell:** We need some flexibility in the bill. The amendments raise some similarities with the discussion that we have just had about responsible authorities. Ministers need to have the discretionary power to appoint additional consultation authorities as and when needed. We received strong evidence about that at stage 1, not least from the Scottish Environment Protection Agency, which will be a consultation authority and will have to bear the brunt of much of the consultation in the bill's initial years.

In the initial stage of rolling out SEA in Scotland, it will be important to have flexibility, because the consultation authorities that are designated in the bill might not have experience of health and population issues. As Rob Gibson said, transboundary effects are important. We need to understand the concerns of people and organisations in areas that adjoin Scotland. It is important to have the discretionary power that amendment 15 would introduce.

I appreciate the intention behind amendment 4, but I think that Scottish Environment LINK might have an issue with becoming a statutory body. Amendment 5 is helpful, as it names a health body that could be consulted. Amendment 14 is sensible because it teases out transboundary effects. However, we also need the discretionary power for ministers to appoint consultation authorities as and when necessary.

**Richard Lochhead (North East Scotland) (SNP):** I urge Tommy Sheridan to withdraw amendment 4, simply because Scottish Environment LINK has briefed the committee that it does not want to be consulted. I do not think that Rosie Kane has spoken to it about her amendment.

We should support amendment 14 because, of all issues, the environment is the one that clearly has impacts outwith Scotland's boundaries, so it must be dealt with internationally. The amendment is outward looking. If we want other countries to examine the impact of their policies on Scotland's environment, we must lead by example and ensure that we evaluate the impact that our policies have beyond Scotland's borders.

I think that we should support amendment 15, because flexibility is a good thing and because the amendment would allow other people to be consulted.

11:00

**Nora Radcliffe (Gordon) (LD):** I endorse what Richard Lochhead said about putting Scottish Environment LINK in an inappropriate place; I think that that is accepted.

The consultation authorities that are listed are not restricted to their own expertise. It seems to me that they could act as channels for wider consultation. I am not sure whether we want to have a great list of consultation authorities, when a smaller list of consultation authorities could act as

a gateway for consultation as wide as they care to go. I have reservations about putting a great long list in the bill when that may not be necessary.

**The Convener:** Following on from Nora Radcliffe's point, I would like to ask the minister whether the consultation authorities are required to seek information. The two issues that were raised at stage 1 were health and population matters. Two organisations are mentioned, but they might not cover all the issues. What are consultation authorities meant to do when they feel unable to answer such questions? As no other members have questions, I invite the deputy minister to respond to the debate.

**Rhona Brankin:** I shall deal with amendments 4, 5, 14 and 15 together. First, in response to Mr Sheridan's question, I can confirm that there was consultation in December 2003 on consultation bodies.

If I understand it correctly, the concern behind the amendments is that there may be gaps in the knowledge and data of the consultation authorities listed and that the best way to close those gaps is to add further statutory consultation authorities. Amendments 4, 5 and 14 suggest specific bodies, or bodies that cover specific areas of expertise, that might be suitable additions either now or by order; amendment 15 suggests a more general order-making power to add additional bodies.

I should say right away that this is an area that has been given a great deal of consideration and I believe that a clear and effective way forward has been set out. I do not think that the appropriate way to fill any gaps is to make Scottish Environment LINK or NHS Health Scotland statutory consultation authorities. Neither those bodies nor the many other bodies that could be suggested to cover specialist knowledge gaps require statutory status to play a role as data providers and consultees.

Transboundary effects between the UK and other European Union countries are likely to be rare, so it would be disproportionate to add consultation bodies for that circumstance. However, it is important to note that, in any case, section 17(c) already obliges responsible authorities to take account of transboundary consultations, which are carried out under regulation 14 of the UK SEA regulations. In fact, Scottish consultation authorities are named in UK regulations, to ensure that Scotland has a voice in UK-wide plans. It is important to point that out. The three nominated consultation authorities can provide advice and data across a wide spectrum of environmental matters, and it is important to note that too.

There are clear logistical and bureaucratic overheads to extending the list of statutory consultation authorities, so extension is not the best method of closing any possible data and knowledge gaps. Rather, to address the data needs that may arise, the most effective option is to list data sources in guidance, to assist responsible authorities in seeking additional advice where there is a gap in the consultation authorities' knowledge or data.

It is important to remember that the bill already places a duty on responsible authorities to gather data and that that is not limited to the consultation authorities. The convener asked whether they were required to seek wider information and data: yes, they are obliged to do so. I urge the committee to reject amendments 4, 5, 14 and 15.

**Tommy Sheridan:** I will make a very short wind-up speech, convener. I would appreciate it if the minister would send me a reference to the questions relating to consultees on the bill. I am not aware that there was a question on who should be a consultation body.

Given some of the comments, it is clear that although Scottish Environment LINK supports the thrust of amendments 4 and 5, it does not wish to be one of the statutory consultee bodies. I remind members who used Scottish Environment LINK's position that it strongly supports NHS Health Scotland being one of the consultee bodies.

Although I withdraw amendment 4, I will strongly move amendment 5.

*Amendment 4, by agreement, withdrawn.*

*Amendment 5 moved—[Tommy Sheridan].*

**The Convener:** The question is, that amendment 5 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

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

*Amendment 5 disagreed to.*

*Amendment 14 moved—[Rob Gibson].*

**The Convener:** The question is, that amendment 14 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

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

*Amendment 14 disagreed to.*

*Amendment 15 moved—[Mr Mark Ruskell].*

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

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

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

*Amendment 15 disagreed to.*

*Section 3 agreed to.*

### Section 4—Plans and programmes

**The Convener:** Group 3 is on the plans and programmes to which the bill applies in relation to defence. Amendment 10, in the name of Mark Ruskell, is grouped with amendment 11. If amendment 10 is agreed to, I will not be able to call amendment 11 because of a pre-emption.

**Mr Ruskell:** I wish to say at the outset that the actions of the Ministry of Defence have an effect on Scotland's environment. Depleted uranium weapons testing at Dundrennan and low-flying jets are examples of the negative environmental effect in Scotland.

That said, the MOD can sometimes have a positive environmental effect. A recent example is the torpedo testing area off the west coast of Scotland that showed a lot of marine bed ecological regeneration. However, the central point at the heart of amendment 10 is that we should know and understand the environmental impact of the MOD in Scotland. At present, we do not know what it is. If we seek to incorporate the MOD under the mischief of this bill we will start to understand whether the MOD's environmental impact is negative or positive.

Amendment 10 seeks to remove from the bill the exemption on national defence. That does not mean that it would capture all MOD plans and programmes, but it would capture more MOD plans and programmes. At the outset there is a technical drafting question for the minister: she needs to clarify whether the MOD is a responsible authority as defined by the bill.

If the MOD is not a responsible authority it is automatically exempt anyway, in which case we should not have an exemption under this section and we can all vote for amendment 10 regardless of our political position on it. I need clarification on whether the MOD is a responsible authority. If it is, it is important that we vote on amendment 10. It is important that the MOD itself knows what the environmental impact will be of its plans and programmes before it makes a decision on them.

We heard in evidence at stage 1 that the MOD voluntarily carries out SEA on a number of its plans and programmes, so in many ways this is about enshrining some of that best practice into legislation. The other point to make is that SEA does not make the decision for the MOD; it merely reveals what the impact will be of a particular decision on a plan and programme, be that positive or negative.

Amendment 11 offers a choice to committee members. It attempts to narrow down the criteria for when we would not want to consider what the environmental impacts are. When drawing up the amendment, I found it useful to consider the Secretary of State for Defence's policy document "Safety, health and environment protection in the Ministry of Defence", which came out in June, paragraph 2.4 of which defines when the MOD thinks it is appropriate to disapply legislation. It says:

> "I will invoke any powers given to me to disapply legislation only on the grounds of national security and only when such action is essential to maintain operational capability."

That is the key test that Westminster applies, and the form of words I have sought to put into amendment 11 is intended to narrow the criteria that define when it would be inappropriate to consider the environmental impact of a plan or programme: when it is essential to national security and there is a threat to the maintenance of operational capability. The ideal is amendment 10: there is no problem in our considering the environmental impacts of the MOD, whether they are positive or negative. But amendment 11 offers

committee members an option that is based on Labour Party policy at Westminster.

I move amendment 10.

**Rob Gibson:** I put it to the minister that how we are able to view the impact of the MOD is quite important. I thank her for her answer, which I received last night, to my question about Loch Eriboll in north-west Sutherland: the Admiralty chart shows a firing practice area where there are mussel farms, oyster farms and fish farms. The MOD's view is that while it is unlikely that there will be firing practice in the area, it has the right to make that kind of statement on its charts without consultation. The minister thinks that there is no need for consultation. Do we not need to consider the potential environmental impacts of such actions? That is a prime example of why defence and the way in which it is carried out ought to come within the bill's remit.

**Tommy Sheridan:** I want to speak to amendment 6.

**The Convener:** Hang on. We are not on amendment 6; we are debating amendments 10 and 11. Amendment 6 is in the next group.

**Tommy Sheridan:** Sorry, it is in my marshalled list.

**The Convener:** You might have a quick word with the clerks to check that you have the right papers. We are still on section 4, group 3, amendments 10 and 11. One or two points were made to the deputy minister. Would you like an opportunity to deal with some of the questions and to address some of the issues that Mark Ruskell raised, particularly on the where the bill applies, where the UK regulations apply and what the crossovers are?

11:15

**Rhona Brankin:** First, I can make it clear that the Ministry of Defence is a responsible authority.

The exemptions in the bill are few in number and we have sought to ensure the widest possible coverage of SEA and the greatest possible transparency. I emphasise that the sole purpose of exempting plans is to serve national defence and civil emergency, which we recognise are exceptional areas of public policy. In those cases, expediency of implementation is often critical and it is simply not safe or reasonable to compromise either area of operation by imposing a blanket requirement to carry out SEA.

Mark Ruskell seeks to challenge exemptions that are patently—we think—in the best interests of Scotland and that are in operation elsewhere in the UK. As he says, there are good examples of authorities that are engaged in national defence—the MOD, for example—carrying out environmental assessment of plans where it proves possible and safe to do so. We very much welcome that and I see no reason to doubt that it will continue. I cannot emphasise strongly enough that amendments 10 and 11 should be resisted.

**Richard Lochhead:** The minister said that she opposes the removal of the exemption because that would result in the blanket application of SEA. If that did not happen, when would there be any application of SEA in relation to national defence installations?

**Rhona Brankin:** There are examples of the MOD carrying out strategic environmental assessments at the moment. The exemption is only for plans and programmes the sole purpose of which is to serve national defence and civil emergency.

**The Convener:** So the bill covers the MOD except when a plan or programme concerns what the MOD says is national defence or civil emergency. The bill would not prevent the MOD from carrying out an SEA on a plan or programme; it would just not require it to do so.

**Rhona Brankin:** Absolutely. There are examples of that kind of work already.

**Nora Radcliffe:** If the MOD argued that a plan or programme was exempt, would it still have to be registered or pre-screened so that it could be challenged if people felt that inappropriate use was being made of the exemption?

**The Convener:** The issue is who decides what constitutes national defence and whether a plan or programme is reported to ministers—whether it is registered so that you can take a view on the matter and perhaps disagree. We presume that that is what would happen—are we right?

**Rhona Brankin:** Ministers would then take a view on it.

On the broader issue, the MOD is currently carrying out SEA of land use plans. That is an example of good practice that we would encourage. That sort of work is already going on.

**The Convener:** I will allow a couple more questions on this issue for clarification, as it is important that we understand how the bill is intended to work and what the potential impacts of amendments are.

**Nora Radcliffe:** I am trying to think that last point through. The MOD is a responsible authority, so all its plans, proposals, strategies and so on have to be screened—they would all come within the ambit of the bill. As I understand it, the MOD could exercise the power of exemption, but there would be an opportunity for ministers to challenge that.

**Mr Brocklebank:** Perhaps the minister can clarify something for me, as I am relatively new to the bill. She says that, in the event of a challenge, ministers would decide, but defence is a reserved matter. Which ministers would make the decision—UK ministers or the Scottish ministers?

**The Convener:** I believe that Mark Ruskell has another point of clarification.

**Mr Ruskell:** Does not the minister acknowledge that the MOD would not wish to carry out an SEA in circumstances in which

"national security and the maintenance of operational capability"

were under threat? If the key question is how we define when the SEA legislation should be disapplied, does not she agree that amendment 11 provides a good definition in that respect? If not, is there another reason why we would seek to disapply it?

**The Convener:** We have probably had enough points of clarification for now.

**Rhona Brankin:** On the question whether UK or Scottish ministers would be involved in decisions on challenges, that would depend on a plan's geographical aspects.

**Mr Brocklebank:** So would the case of Loch Eriboll be decided by Scottish ministers or at Westminster?

**Rhona Brankin:** Scottish ministers would be involved in that decision.

**The Convener:** Is that because it would be subject to an environmental assessment under Scottish legislation?

**Rhona Brankin:** Absolutely. It all depends on geographical location.

As far as amendment 11 is concerned, the courts would recognise "national defence" as a sound definition. [*Interruption.*]

**The Convener:** This is all going on the record.

**Rhona Brankin:** I have emphasised that the sole purpose of exempting plans and programmes is to serve national defence and civil emergency. The courts would consider that to be a sound definition.

**Mr Ruskell:** Very briefly, on that point—

**The Convener:** Are you seeking a point of clarification or winding up on amendment 10?

**Mr Ruskell:** I want to wind up.

**The Convener:** Great. I want to check first that members have no further points of clarification. I know that the process seems slightly hesitant, but I would rather that everything was on the record. Members will be able to reflect on the matter as we go into the vote and at stage 3, but we should use this opportunity to explore the issue.

Are members happy to move on? Does anyone have another point of clarification?

**Maureen Macmillan:** Is the minister saying that

"national security and the maintenance of operational capability"

are not legal terms, but that national defence and civil emergency would be understood in a certain way at a court of tribunal?

**Rhona Brankin:** Yes.

**Maureen Macmillan:** So the terms of amendment 11 are much woollier and no one can be absolutely sure of what they mean. [*Interruption.*]

**The Convener:** Can everyone calm down? Did the minister say yes or no to Maureen Macmillan's direct question?

**Rhona Brankin:** I simply repeat what I have already said: national defence and civil emergency are clear and sound definitions in court.

**The Convener:** I call Mark Ruskell to sum up the debate and to indicate whether he wishes to press amendment 10.

**Mr Ruskell:** Can I speak to amendment 11 after I have dealt with amendment 10?

**The Convener:** No.

**Mr Ruskell:** Do you want me to sum up the whole group?

**The Convener:** I would like you to sum up the whole debate.

**Mr Ruskell:** I am not going to say anything more about amendment 10.

The definition in amendment 11 is not woolly at all. It is a policy statement by the Secretary of State for Defence that sets out how the MOD operates in the UK. We will probably need to revisit the issue at stage 3 once we have investigated how the terms "national security" and "operational capability" are legally defined. That said, I intend to press amendment 10 and to move amendment 11.

**The Convener:** The question is, that amendment 10 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Gibson, Rob (Highlands and Islands) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

**ABSTENTIONS**

Lochhead, Richard (North East Scotland) (SNP)

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

*Amendment 10 disagreed to.*

**The Convener:** As amendment 10 has been disagreed to, amendment 11 is not pre-empted.

*Amendment 11 moved—[Mr Mark Ruskell].*

**The Convener:** The question is, that amendment 11 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

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

*Amendment 11 disagreed to.*

**The Convener:** Group 4 is on financial or budgetary plans and programmes to which the bill applies. Amendment 6, in the name of Rosie Kane, is in a group on its own.

**Tommy Sheridan:** I apologise for pre-empting this discussion; I thought that we were going to deal with amendment 6 along with the previous group.

Any cut in or reallocation of resources in the Scottish Executive's budget can have quite significant environmental impacts. If the Executive were to announce an increase or a decrease in, for example, the warm homes investment, that would have an environmental impact that should be assessed accordingly. Amendment 6 attempts to ensure that there is improved scrutiny, accountability and transparency in relation to spending allocations and programmes and that they are all pre-screened to ensure that an environmental assessment will be undertaken. The situation would be similar to that which exists with regard to human rights compliance. Why do we not have the same attitude in relation to environmental assessments and spending programmes? I seek the committee's support to ensure that budget allocations and spending plans are not excluded from the bill.

I move amendment 6.

**Mr Ruskell:** I support amendment 6. I do not think that financial and budgetary plans and programmes should be automatically exempted. Tommy Sheridan gave a good example of a spending programme that would have an environmental impact, but there are others. For example, money that was allocated for rail freight activities could have a positive environmental impact. Similarly, the route development fund is a financial plan that amounts to £12.4 million. We need to understand what the environmental impact, positive or negative, of that fund might be.

**Rhona Brankin:** The bill is targeted at plans and programmes with significant environmental effects. That helps not only to ensure environmental protection, but to husband the resources that are required for the assessments. I know that that has been a concern of this committee and others.

Amendment 6 would direct those precious resources towards SEAs for financial plans and programmes. That would be futile, because such plans are not a practical or meaningful subject for an SEA. Rather, the plans and programmes leading to and arising from the allocation of funds in financial and budgetary plans contain the proposals on which an SEA can be meaningfully carried out.

The amendment is misguided, because it seeks to plug a gap that does not exist. It could direct time and money towards the consideration of plans and programmes that, by their very nature, will not give rise to significant environmental effects. I urge the committee to resist amendment 6.

**Tommy Sheridan:** It is presumptuous of the minister to talk about plans that do, or do not, have significant environmental impact or effect. If the programmes have not been pre-screened, how are we to know whether they will have such an impact? The purpose of amendment 6 is to ensure that all spending plans are subject to such an assessment. Obviously, there would be cost implications in doing that but, if we treasure the environment, we have to invest money to protect it. However, once the system had been set up, the costs of the worthwhile practice would diminish.

11:30

**The Convener:** The question is, that amendment 6 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

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

*Amendment 6 disagreed to.*

*Section 4 agreed to.*

### Section 5—Qualifying plans and programmes

**The Convener:** Group 5 is on pre-screening. Amendment 16, in the name of Mark Ruskell, is grouped with amendments 7 and 18 to 20.

**Mr Ruskell:** Amendment 18 seeks to drop section 7 on pre-screening. Amendments 16 and 19 are consequential. Amendment 20 would move the useful power that ministers have to modify schedule 2 to another part of the bill, so that we do not lose it.

I am having trouble understanding why we need a two-stage screening process. Why do we need pre-screening? We seem to be trying to coax the responsible authorities out of their shells to engage with the SEA process, but I do not think that that is needed. If it is done properly, screening will do what it says on the tin: it will screen out those plans and programmes that have an environmental impact and those that do not. If screening is done openly and accountably, it will be effective.

In the stage 1 debate, I mentioned that "minimal effect" could turn into a weasel phrase. The minister's response to the committee to clarify the phrase "minimal effect" demonstrates that:

> "The very wide gap between minimal and significant is covered by the screening process; minimal should be seen as a difficult test to meet and is always assessed in the context of each individual plan."

That is not clear, minister. To use your argument on national defence, I do not think that there is an accepted definition of the phrase "minimal effect", so it should not be in the bill. I support amendment 7 in Rosie Kane's name.

I move amendment 16.

**Tommy Sheridan:** As far as I am concerned—and as far as environmental organisations are concerned—there is no legal definition of the phrase "minimal effect". Mark Ruskell illustrated that. The opening of an opencast mine in one part of a community may have a minimal effect on someone who lives a couple of miles away but not on someone who lives a couple of hundred yards away. Therefore it is ridiculous to use the term "minimal effect" in legislation that is supposed to be robust. The phrase "significant effect" is recognised and legally robust; it should be retained. I appeal to the committee to support the removal of the term "minimal effect".

**Nora Radcliffe:** The difficulty with pre-screening is whether we have any control over how people decide what falls under pre-screening and what does not. The fact that we have established recording of anything that is pre-screened means that it is subject to scrutiny, so the phrase will define itself in time through case law. The weakness was in having pre-screening that was not scrutinised. The minute that scrutiny is brought to bear, it is just a matter of semantics whether there is a single screening process or a process that is divided into pre-screening and screening. The critical issues are having the opportunity to scrutinise the decision and the end of the spectrum at which it belongs.

**Mr Brocklebank:** To help me in my ignorance—I was not here when the process was debated—will the minister explain why two screening processes are necessary? We are trying to cut bureaucracy and red tape. If we are talking about a reasonable screening process, does that not preclude the need for a pre-screening process?

**The Convener:** I seek reassurance on the extent to which the Executive intends to use guidance in this area. At stage 1, we discussed the extent to which local authorities would engage with the process in a meaningful way. Those of us who were persuaded by the principle of pre-screening were persuaded on the basis that it would take out issues in which there were no significant environmental impacts. The caveat was that we wanted there to be a way of registering what had been screened out, so that members of the public could see that and could complain if they believed that there had been a ludicrous use of the pre-screening process.

I agree with Nora Radcliffe that there is an issue of public transparency. Local authorities will need guidance on your interpretation of the terms "significant" and "minimal effect" as they are used in the bill. The interpretation of those terms is critical. To what extent do you intend to use guidance or to provide written examples that people can see? What issues do you wish to raise on the record, before the committee, to help in that process?

**Rhona Brankin:** Amendment 18 seeks to remove the pre-screening provisions from the bill. Amendment 7 seeks to modify the pre-screening

provisions so that they apply only to plans and programmes that have no effect on the environment. If the committee resists amendment 18, as I suggest that it should, amendments 16, 19 and 20 should also be rejected, because they are consequential to amendment 18.

As members are aware, pre-screening—self-exemption by responsible authorities for plans and programmes with no or minimal environmental effects—is intended to reduce any unnecessary burden on responsible authorities. Pre-screening will avoid public funds being wasted by targeting resources effectively at plans and programmes with significant environmental effects. I have been asked about the definition of "minimal effect". That is a hard test to meet and we believe that any likely significant effects will be caught by the legal definition in the bill. If there is any doubt about a plan, it will be subject to assessment.

The convener asked about guidance, which is an important point. Guidance in this area will need to be issued and we will ensure that it comes forward. There should be as much clarity as possible in the area. Basically, the intention is to reduce any unnecessary burden on responsible authorities.

The concerns that underpin the amendments to modify or remove pre-screening are misplaced. The pre-screening exemption simply exempts plans where SEA would serve no useful purpose. Moreover, it is carefully restricted to apply only to those plans and programmes that are described at section 5(4). The majority of respondents to the public consultation—especially local authorities—agreed that pre-screening is an entirely appropriate administrative tool.

Amendment 18, which seeks to remove pre-screening entirely, is inappropriate and would remove a valuable mechanism for ensuring the proper use of time and resources. In the unlikely event of pre-screening being applied inappropriately, the provisions in section 11 empower the Scottish ministers to direct that an SEA be carried out.

Amendment 7 seeks to remove from the pre-screening provision those plans and programmes that have minimal environmental effects. Again, the amendment would direct resources at plans and programmes with minimal environmental effects, when the purpose of the bill is to target resources at plans and programmes with significant environmental effects. Therefore, I ask members of the committee who are concerned about husbanding SEA resources to disagree to amendment 7.

To summarise, pre-screening is a valuable and sensible resource-saving provision that has been widely welcomed, and Scottish ministers' powers to direct that an SEA is prepared provide a safety net. Modification or removal of the valuable pre-screening provisions—as proposed by the group of amendments—is therefore unnecessary and would serve only to increase the resources that are required for SEA. I strongly urge the committee to disagree to the amendments in the group. However, if amendment 18 is agreed to—I strongly urge members not to agree to it—I agree that amendments 16, 19 and 20 should be agreed to as consequential to it.

**Mr Ruskell:** I was interested in what the minister said about ministers' powers under the bill to direct an SEA to be carried out. The proof of those powers will be when the act comes into force and SEA starts to roll out across Scotland. The committee will have to scrutinise in great detail what happens when the bill becomes law.

I am still not entirely convinced that pre-screening is a useful addition that will meaningfully lighten the burden of responsible authorities. Therefore, I want to press amendment 16.

**The Convener:** The question is, that amendment 16 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Gibson, Rob (Highlands and Islands) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

**The Convener:** The result of the division is: For 2, Against 7, Abstentions 0.

*Amendment 16 disagreed to.*

*Amendment 13 not moved.*

*Section 5 agreed to.*

*Schedule 1 agreed to.*

*Section 6 agreed to.*

### Section 7—Exemptions: pre-screening

*Amendment 7 moved—[Tommy Sheridan].*

**The Convener:** The question is, that amendment 7 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

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

*Amendment 7 disagreed to.*

**The Convener:** Group 6 is on pre-screening procedure. Amendment 1, in the name of Rhona Brankin, is grouped with amendment 17.

**Rhona Brankin:** Amendment 1 will require responsible authorities to notify pre-screening decisions to the consultation authorities. The administrative consequence will be that a full list will be available to Scottish ministers. The pre-screening information could then be collated and made available to the public, which will effectively create a public register.

Amendment 1 is drafted to maintain the administrative light touch that pre-screening was intended to provide while providing the degree of transparency that consultees and the committee have sought. Any additional requirement to provide for further pre-screening justification would increase bureaucracy and run the risk of simply replicating the full screening process.

I understand that there have been concerns about the register and would be interested to hear members' views about amendment 1. It seeks to facilitate the creation of a register but, if members remain concerned that it does not fully meet their requirements for a register of pre-screening cases, I would be prepared to withdraw it and to produce a more specific amendment at stage 3.

As amendment 17 would almost duplicate the full screening provisions, we think that it would undermine the achievement of a light-touch approach and would render pre-screening more bureaucratic than is necessary. The key purpose of pre-screening is to target resources at plans and programmes with significant environmental effects. Amendment 17 would direct resources inappropriately at plans and programmes that have no or minimal environmental effects and would place an unnecessary burden on responsible authorities.

I emphasise to the committee that pre-screening is an important measure that is designed to ensure that authorities focus their resources on plans that will have significant effects. Amendment 1 is a positive response to the concern about transparency and, if it were agreed to, would mean that the benefits of section 7 would not be lost.

I am grateful to the committee for highlighting the issue and I ask it to agree to amendment 1 and to reject amendment 17. However, I have made it clear that I am prepared to listen carefully to the arguments that the committee makes on amendment 1.

I move amendment 1.

11:45

**Mr Ruskell:** I would rather that we did not have pre-screening but, if we are to have it, it needs to be conducted in an open and accountable way. At stage 1, the committee heard strong evidence about the need to publish a register. The intention of amendment 17 is to meet that need. It appears that the Minister for Environment and Rural Development shares that intention, given that in response to our committee report, he said:

"The ERDC states that a published pre-screening register would be valuable. I agree and the Executive now intend to bring forward an appropriate amendment at Stage 2."

We are now at stage 2 and, although I welcome the intention behind amendment 1, the register that it would result in is not the same as a published register of pre-screening decisions.

I welcome the fact that the minister has said that she is prepared to withdraw amendment 1 and to revisit the issue at stage 3. I make a commitment not to move amendment 17 if the feeling among committee members is that we want to revisit the matter through an Executive amendment at stage 3.

**Nora Radcliffe:** What bothers me about amendment 17 is that it would perhaps ask too much of responsible authorities in relation to plans, programmes and so on that would be pre-screened. The whole point is that too much time and energy should not be spent on that process. The protection against pre-screening being misused makes it clear which plans, programmes and so on will be treated in that way. Although amendment 1 goes part of the way towards addressing the weakness of there being no public record that would enable such decisions to be challenged, I do not think that it goes far enough. I would welcome amendment 1 being withdrawn and amendment 17 not being moved. We need an amendment that both fulfils the light-touch criterion and provides an accessible, public source of information for people who wish to challenge any decision to use the pre-screening process.

**Richard Lochhead:** I support the sentiments that have been expressed by Nora Radcliffe, Mark Ruskell and, indeed, the minister. Transparency is important and, if any kind of register is to be published, the consultation authorities should be notified. However, in addition, a list should be

published on the Executive's website for anyone to look at. In seeking a response to that idea, I am planting a seed in the Executive's mind about any amendment that it brings back at stage 3. The public and others, not just the consultation authorities, should have simple, easy access to any register.

**Maureen Macmillan:** My point is on the same issue. We would want a provision added to amendment 1 to say that the register will be placed on public record. That would make it clear that people would be able to access pre-screening decisions.

**The Convener:** I agree with all my colleagues. At stage 1, we were really looking for transparency. All of us, including researchers and representatives of the community, go to the internet to find out what is happening about anything. A clearly defined and easy-to-reach page on the web that gave a historical record of who decided what would help those who were monitoring the effects of the act. It would help to ensure that the right balance of judgments was being made.

Fewer people have spoken on Mark Ruskell's amendment 17. It could go too far, but I have been thinking about the process. An authority decides to pre-screen something, which is recorded on a register, and then a member of the public disputes it. I want to test how the process would work from there on in. I guess that the person or organisation that is doing the disputing would then make representations to the authority and, if they did not like the answer that they got back, would then make representations to the minister to say that something has been pre-screened inappropriately and they believe that there would be a significant environmental impact. Am I right in thinking that, at that point, the minister would decide whether to pursue the matter further and would ask the responsible authority for further information, or would direct that a full screening process should be carried out on that particular issue? I want to have that on the record because it is important that we understand how the bill is intended to work, and members of the public and interest groups need to see how all the provisions will work together. I welcome the suggestion that we think about the matter and come back to it at stage 3.

**Rhona Brankin:** I would be more than happy to come back at stage 3 with clarifications on the register.

The convener is correct in her interpretation that ministers can require an authority to carry out a screening if they think that the responsible authority has acted inappropriately.

I re-emphasise that there is a major difference between what I am trying to achieve by way of a register and what Mark Ruskell is trying to achieve. Amendment 17 would almost mean another screening process. As the convener suggested, the register would contain basic information on the decisions that have been taken and who has taken them. It is important that that information is available. I am happy to consider the register again and to return to the subject at stage 3 if that is what the committee wants. Therefore, I am prepared to withdraw amendment 1.

**The Convener:** The minister has offered to withdraw amendment 1. On the basis of the commitment that we will return to the issue at stage 3, are members happy to let the amendment be withdrawn?

*Amendment 1, by agreement, withdrawn.*

*Amendment 17 not moved.*

*Amendment 18 moved—[Mr Mark Ruskell].*

**The Convener:** The question is, that amendment 18 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Gibson, Rob (Highlands and Islands) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

**The Convener:** The result of the division is: For 2, Against 7, Abstentions 0.

*Amendment 18 disagreed to.*

*Section 7 agreed to.*

## Schedule 2

### CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

**The Convener:** Group 7 is on the criteria determining likely significant effects. Amendment 8, in the name of Rosie Kane, is grouped with amendments 22 and 23.

**Tommy Sheridan:** The Executive does not yet have national targets on emissions or recycling, despite the consistent calls from the environmental movement for it to do so. Amendment 8 would force the Executive to include such targets, which would be widely welcomed. I invite the committee to support the amendment.

I move amendment 8.

**Mr Ruskell:** I will press amendment 22. There are probably differing opinions among committee members about targets; some like them and some do not. I like targets, because I think they are important in ironing out contradictions that can occur in Government policy. As we move into an era in which we are tackling climate change, we need desperately to join up policy and to get targets followed through into all plans and programmes. I appreciate the intention behind amendment 8, but I believe that there are other national environmental targets that we might want to include. I offer amendment 22 as an alternative to amendment 8.

Amendment 23 is a sensible amendment. We understood from our evidence taking on the Nature Conservation (Scotland) Bill that local sites are often the jewels in the crown of our biodiversity, so it is important that we protect them. There is also an issue about wind farm planning and local landscape designations. It is important that we recognise local designations within the SEA process. I will support Nora Radcliffe's amendment 23.

**Nora Radcliffe:** I am tempted to say ditto. Mark Ruskell said it all. It is important that we recognise the value of wildlife sites, local nature reserves and areas of landscape value. Including the word "local" would ensure that such sites are encompassed by the bill.

**Richard Lochhead:** I support Nora Radcliffe's amendment 23, which I think makes perfect sense. I have questions about amendments 8 and 22. My reading of schedule 2, line 22, is that Community legislation is relevant—I presume that that means legislation of the European Union. The two amendments talk about national targets. This is just a technical point, but perhaps schedule 2 is the wrong place for the amendments.

**The Convener:** Clarity on whether we are talking about Scottish targets or EU targets and on the application of any targets in the bill would be helpful. I invite the minister to comment on the questions and points that members have raised.

12:00

**Rhona Brankin:** Thank you. Amendments 8 and 22 seek to amend the list of criteria in paragraph 1 of schedule 2 to add specific environmental targets. Schedule 2 sets out in considerable detail the criteria that must be taken into account when determining the likely significance of effects on the environment. The schedule is in two paragraphs. The first focuses on the general characteristics of the plan and the second sets out the criteria for more detailed consideration of the effects and the area that is likely to be affected.

It would be inappropriate to make the suggested amendments to paragraph 1 of schedule 2, and paragraph 2 would be the best place for any requirement to consider environmental targets. However, paragraph 2(f) already requires that particular regard should be given to

"the value and vulnerability of the area likely to be affected due to … exceeded environmental quality standards or limit values".

Therefore, the bill makes provision, albeit in different language, to achieve the intention behind the amendments. Amendments 8 and 22 are unnecessary and inappropriately placed, so I ask the committee to resist them.

Amendment 23 also relates to schedule 2. When the likely significance of effects on the environment is considered, particular regard is to be paid to

"the effects on areas or landscapes which have a recognised national, Community or international protection status."

Amendment 23 would add areas or landscapes with recognised "local" status to that list. The committee should resist the amendment not because what it suggests is not valuable or valid, but because the concerns of the member who lodged the amendment—if I understand them—are already addressed by schedule 2. The term "national … protection status" derives from the SEA directive and encompasses all domestic legislation. Therefore, protection areas that are provided for in domestic legislation, such as sites of special scientific interest, conservation areas and protected trees, are encompassed by schedule 2. That means that amendment 23 would have no clear legislative effect beyond the current provision.

Paragraph 2 of schedule 2 requires responsible authorities to have regard to

"the value and vulnerability of the area likely to be affected due to … exceeded environmental quality standards or limit values".

That means that the standards and limits relate to the area that is likely to be affected. Those standards and limits may apply locally, regionally, nationally or internationally.

I hope that that reassures the committee and I ask it to resist amendment 23. The position will be made clear in guidance.

**The Convener:** That was helpful. The points are relevant to our climate change report. Should the Executive set emissions targets, would paragraph 2(f)(ii) of schedule 2 cover them, because they would be limit values or environmental quality standards? Would something such as a local nature reserve be swept up because it had a recognised protection status?

**Rhona Brankin** *indicated agreement*.

**The Convener:** I just wanted to clarify that for the record.

Does Tommy Sheridan want to press or withdraw amendment 8?

**Tommy Sheridan:** I will press amendment 8. Some six years into the Government, we still do not have the targets that many of us thought we would have after a couple of years. I take some of the points that the minister made with a large pinch of salt. The amendment is placed appropriately and I will press it.

**The Convener:** The question is, that amendment 8 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

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

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

**ABSTENTIONS**

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

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

*Amendment 8 disagreed to.*

**The Convener:** Does Mark Ruskell want to move amendment 22?

**Mr Ruskell:** Given what the minister said about the definition in paragraph 2(f)(ii), I will not move amendment 22.

*Amendment 22 not moved.*

**The Convener:** Does Nora Radcliffe want to move amendment 23?

**Nora Radcliffe:** In view of the clarification that the term "national … protection status" encompasses all domestic designations and the assurance that that will be made clear in guidance—because it is not clear on a first reading—I am happy not to move amendment 23.

*Amendment 23 not moved.*

*Schedule 2 agreed to.*

**Section 8—Exemptions: screening**

*Amendments 19 and 20 not moved.*

*Section 8 agreed to.*

**Section 9—Screening: procedure**

**The Convener:** Group 8 is about screening and the settlement of disputes. Amendment 9, in the name of Rosie Kane, is in a group on its own. Would any member like to speak to and move the amendment?

**Tommy Sheridan:** I will, convener.

As far as we can tell, the bill requires Scottish ministers to act as arbiters in the event of a dispute between consultation authorities and responsible authorities even if the ministers are the responsible authority. If that is true, it clearly represents a conflict of interests. We think that an independent body would be required to act as arbiter on that and other occasions. It is reasonable to propose that an independent body be established to act as arbiter in any such disputes.

I move amendment 9.

**Mr Ruskell:** I accept the point that Tommy Sheridan makes. There is a need for an independent arbitration process. The ideal would have been for the bill to establish an independent body, as there is a need for co-ordination and monitoring of not just SEA, but project-level environmental impact assessment as well. I support the intention behind amendment 9.

**Nora Radcliffe:** I have qualms about creating yet another quango. We keep saying, "Let's have another body." The protection is that Scottish ministers are answerable to the Parliament and to the committee. The system has checks and balances that would prevent a conflict of interests from arising.

**Richard Lochhead:** I have mixed views about amendment 9. I support the principle of having an independent overseer, but I wonder whether a new body should be created or whether an existing independent body could be appointed. If the latter, who should that be? I feel that there is a lack of information.

Mark Ruskell's amendment 24 concerns the establishment of the gateway within the Government. However, according to Scottish Environment LINK, the creation of a new, independent body could bring many roles together in a new commission. I am not sure where we are going with the issue. A new gateway is proposed within the Government; Scottish Environment LINK proposes the creation of a new commission with a number of roles; and amendment 9 talks about the creation of a new independent body. There may be a case for an independent overseer but, in time for the stage 3 debate, we need more information from those who have lodged the amendments about the nature of any body—whether new or existing—and what other roles it

would have, so that we would not just be creating another quango, although that might be a good idea in terms of the rationalisation of existing quangos. I think that the issue needs more debate.

**Rob Gibson:** Can the minister clarify whether any of the actions would be subject to judicial review in the courts?

**The Convener:** That is a good question.

In respect of amendment 1, I was keen for there to be proper registers and transparency so that, when there is a dispute, the matter goes before the minister. More thought could be given to what advice the minister gets at that point, but I see the decision as ultimately a ministerial one. As ministers can be held to account, I am quite happy with what the bill proposes. However, there are wider issues about the involvement of the gateway that we should perhaps think about.

Minister, you have been asked a couple of direct questions and you have been asked to give clarification. Would you like to respond?

**Rhona Brankin:** Amendment 9 would require that determinations on disagreements should be made by an independent body instead of by Scottish ministers. In answer to one of the direct questions, of course decisions by Scottish ministers would be subject to judicial review.

Amendment 9 does not identify which body would have that duty. Therefore it would be necessary to identify an existing body or to create a new body. Either option would require new statutory provisions and would be a significant and unnecessary drain on resources.

More important, the amendment represents a disproportionate and potentially costly response to what is generally considered to be a remote risk of conflict. Most respondents in the consultation supported that view. They agreed that Scottish ministers should make the determination in cases of disagreement, as that was the least bureaucratic option. It is important that we take that approach, so I ask the committee to resist amendment 9.

**Tommy Sheridan:** I ask those members who suggested that the amendment and the matter that it raises are worthy of further consideration to support amendment 9, as that will ensure that there is more debate at stage 3. There is a need to distinguish between a quango, which is a quasi-governmental body, and an independent body—they are not one and the same. We are talking about a body independent of Government, not an arm, long though it may be, of Government. It will not be acceptable to communities at large if the Scottish Executive is the arbiter in disputes between the various authorities, as the Executive itself may be involved in the dispute. I believe that there is a need for an independent body, so I will press amendment 9.

**The Convener:** The question is, that amendment 9 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

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

*Amendment 9 disagreed to.*

*Section 9 agreed to.*

*Sections 10 to 13 agreed to.*

### Section 14—Preparation of environmental report

**The Convener:** Group 9 is on the preparation of environmental reports. Amendment 2, in the name of the minister, is in a group on its own.

**Rhona Brankin:** Amendment 2 is, I hope, straightforward and non-contentious. It is a small technical adjustment that is intended to ensure that responsible authorities are clear that the environmental consequences of reasonable alternatives in the plan in question are to be considered and included in the environmental report.

The inclusion of the word "any" in section 14(2)(b) was intended to exhort the responsible authority to consider any reasonable alternatives, whatever they might be. However, there is a concern that it might have the opposite effect; it could be understood to allow the responsible authority to assert that there were no reasonable alternatives and therefore not include any information on reasonable alternatives in the environmental report.

Our intention is to require plan makers to identify, describe and evaluate reasonable alternatives. The amendment would put that beyond doubt. I hope that members will agree to this minor adjustment to the bill.

I move amendment 2.

*Amendment 2 agreed to.*

*Section 14, as amended, agreed to.*

*Schedule 3 agreed to.*

*Sections 15 to 19 agreed to.*

**After section 19**

**The Convener:** Group 10 deals with the SEA gateway. Amendment 24, in the name of Mark Ruskell, is in a group on its own.

12:15

**Mr Ruskell:** At stage 1, the evidence that we received on the need for an SEA gateway was perhaps stronger than the evidence that we received on the need for an independent body. I believe that we need to ensure that the future, long-term existence of the SEA gateway is safeguarded in the bill. That does not mean that the bill should provide a straitjacket for the gateway's future role, but it should provide a light framework that allows the gateway to evolve. That is what amendment 24 tries to do.

Let me just go through some of the elements of the amendment, which is quite detailed. First, the amendment provides flexibility by allowing for the gateway to be managed either by a single person or by a team. Essentially, the gateway would co-ordinate environmental assessment activities and act as a central point for them. In an important sense, it would maximise efficiency by offering support and advice—advice that would change over time—on best practice for rolling out SEA.

In addition to hosting the pre-screening register, one of the gateway's functions could be to co-ordinate training. The Executive's proposals on training would fit nicely into my suggested framework for the SEA gateway, so the gateway could ensure that those proposals were implemented well. Given the importance of ensuring that training does not continually reinvent the wheel, the gateway could ensure not only that people are up to speed with current training, but that training reflects best practice.

The gateway could also assist in ensuring consistency of reporting and in monitoring. At stage 1, we received some strong evidence on the need for monitoring, especially from Dr Elsa João. She said:

"we should check that the mitigation and enhancement measures are working and see whether we are getting better plans, whether human health and biodiversity are improving and whether air pollution is decreasing. We want to achieve those things, but if we are just producing reports and not checking them out, what is the point?"—[*Official Report, Environment and Rural Development Committee,* 20 April 2005; c 1774-5.]

It is important that we have monitoring, so we need to establish the gateway to provide that role.

The SEA gateway could provide a useful overview for ministers, especially in debates such as the one that we have just had over consultation authorities. For example, the gateway could recommend additional consultation authorities for SEAs. If the gateway had an overview for such issues, that would be useful for ministers when they use their powers under the bill.

The risk is that SEA ends up being rolled out inconsistently, as the bill currently provides no mechanism to ensure effective co-ordination. I therefore recommend that the proposed light framework should be introduced through the bill.

If members need an example of the damage that is done by the failure to provide a co-ordination mechanism, they need only look at the way in which community planning was rolled out under the Local Government in Scotland Act 2003. At first, a community planning task force was set up to ensure co-ordination in the community planning process. When the task force folded, it was turned into a community planning implementation group. When that folded, the Executive set up a website to provide advice notes, but the website has not been updated since 2004.

When the Local Government in Scotland Act 2003 was going through the Parliament, ministers made the following commitment at stage 2:

"We have not altered our view that the key focus for community planning is at the local level, but the success of the community planning process will also be dependent on strong links between national, regional and neighbourhood levels of governance."—[*Official Report*, *Local Government Committee*, 12 November 2002; c 3449.]

That commitment was on a co-ordination issue regarding community planning, but it is similar to the issue of SEA and the need for a gateway. There is a precedent and we should not make the mistake that was made in the 2003 act. We should ensure that there is a light framework that does not constrict the role of the gateway but safeguards its long-term sustainability.

I move amendment 24.

**Maureen Macmillan:** The committee wants a gateway. I ask the minister how we will get a gateway and ensure that it is maintained if that is not specified in the bill.

**Nora Radcliffe:** I endorse that. We all regard the gateway as a critical part of the mechanism to ensure that SEA rolls out in a coherent, standardised way and that good practice is shared so that support is given to people who do SEA for the first time. SEA is not a new concept, but a lot of the people who will apply it are not used to the process. There are strong arguments for a single point of contact for information, guidance and help.

The committee regards that as an important part of the whole set-up and I am keen for it to be protected. It seems to me that including it in the bill is one way of protecting it, but I am prepared to listen to what the minister has to say. If we can achieve the same result without including it in the bill, that is fine, but I think that including it is the best way of ensuring that the set-up exists and continues to exist.

**Mr Brocklebank:** I was not a member of the committee at the time, so I am not au fait with all the arguments or with why it was felt that a gateway was necessary. I listened with some interest to Mark Ruskell's arguments, but I have to say that I remain unconvinced. To me, the proposal sounds like further bureaucracy in relation to a bill that many people see in any case as gold plating legislation that is already in place at the European level. Unless there are convincing arguments for it, I will oppose the gateway.

**The Convener:** Like colleagues, I was very much in favour of the gateway when we discussed the matter at stage 1 and it was set out in the consultation. We have a difficulty. I cannot support amendment 24, because it suggests that the gateway would act as an arbiter in disputes and I have already voted against that idea this morning, but I take the point that during the passage of the Local Government in Scotland Bill there was an expectation that the task force would exist for some time. It is partly about managing expectations.

I say to Ted Brocklebank that, at stage 1, we discussed the fact that the bill represents a big shift in culture and in the way in which authorities organise themselves and carry out strategic environmental assessment. The Executive has initiated a series of pilots in various organisations, so we regard the matter as work in progress. There is a question over how long we expect the gateway to exist. Will it be there for ever? I certainly think that it will exist for more than three years. It will probably exist for five years, but will it be longer than that? There is a range of views out there, but we are stuck. Because the gateway is not mentioned in the bill, it does not feel like a permanent commitment. Perhaps we need to debate whether it should be a permanent commitment, or whether we would be happy if the gateway were in place for a set period of time and then disappeared.

In Mark Ruskell's remarks, and in the lobbying that we have had from certain organisations, there is a fear that the gateway could wither on the vine within a year, a year and a half or two years. I cannot support amendment 24, not least because of the technical issue. It may be that I will not want the gateway to be mentioned in the bill, but nothing has come from the minister to provide reassurance over the concerns that we raised in our stage 1 report. I would like the minister to suggest how she thinks we might deal with the issue. It is a live issue for us to reflect on in advance of stage 3. There must be a way to think about the purpose of the gateway—to provide advice and guidance to ministers and, crucially, to those who implement SEA. It is a step up from where we are now, so I will be interested in the minister's reflections on all our thoughts.

**Richard Lochhead:** I will vote for the amendment on the understanding that there is a likely case for lodging related amendments at stage 3. I understand from previous deliberations in committee that there is a lot of sympathy for the gateway. We see a need for it and our tactic should be to support the amendment.

I have a couple of concerns that have been expressed by others about the role and lifespan of the gateway. Paragraph (c) of subsection (2) in amendment 24 provides that one of the gateway's proposed functions is as an arbiter in disputes. That is not appropriate. However, if we vote against the amendment, it will disappear, so the best way forward for us is to vote for it and then look for amendments at stage 3 to fix those bits that we do not like.

**The Convener:** Minister, you have a range of thoughts in front of you.

**Rhona Brankin:** Absolutely.

I note that the committee's stage 1 report recommended that we give further consideration to having a light framework for the role of the SEA gateway. It is important to say at the outset that the role of the gateway is important. I need to reassure everyone that we will continue to review and develop the gateway role. It is an innovative concept. The idea was well received throughout consultation on the bill and in the early months of its operation. However, providing for the gateway in the bill is not the right way forward. It needs to be free to develop—as indeed it has done already—and to be flexible and responsive to need.

Behind amendment 24 is a concern about the quality and monitoring of SEA. We have already seen around 20 cases begin under existing regulations and the gateway plays a valuable role in the good administration of those cases.

The bill has many quality safeguards in place and we believe that it is a model of transparency. Detailed criteria are set out to ensure that the content of the environmental report covers all the appropriate aspects of the environment. The scoping stage and consultation, both with the public and the statutory consultation authorities, will ensure scrutiny of detail. The responsible authorities must set out their proposals for

monitoring in a way that enables them to take any appropriate remedial action if unforeseen adverse effects are identified. Amendment 24 would create an overly rigid bureaucracy and put at risk the very benefits that we all believe are so important.

I reassure members that the Executive has a clear intention to continue with the gateway. That is evidenced by the fact that the Executive has already assigned to the gateway a number of long-term functions, such as the management of the pathfinder project—in effect a review of SEA practice. Other functions include the on-going development of guidance and templates, the gathering of SEA statistics, advice provision and liaison with the consultation authorities. It is important that gateway functions can develop in response to need and in the light of experience. The gateway is here to stay, but I give the committee an assurance that if we were to seek to change that position, we would come back to the committee before doing so.

12:30

**Mr Ruskell:** I sense that the mood of the committee is that we want the gateway to be enshrined in the bill. There are debates about the timescale—about how long an SEA gateway should remain in existence. I appreciate the point about framing the amendment in such a way as to allow the gateway's functions to develop over time. I have tried to do that. I also take on board the issues regarding paragraph (c) of subsection (2), which does not sit comfortably with some members. On Richard Lochhead's point, I do not want this issue just to be dropped at stage 3, so I will press amendment 24 at this stage. However, I would welcome further amendments at stage 3 to take out non-passable sections of the amendment.

**Nora Radcliffe:** Can I get a quick clarification of the process?

**The Convener:** No. The process is that I will invite you to vote for or against amendment 24. The chance for clarification—

**Nora Radcliffe:** The clarification I seek is whether, if amendment 24 falls now, that precludes its being lodged at stage 3.

**The Convener:** No. That becomes a judgment call for the Presiding Officer. Members must decide now how they want to vote on amendment 24.

The question is, that amendment 24 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

**AGAINST**

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

**ABSTENTIONS**

Radcliffe, Nora (Gordon) (LD)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 1.

*Amendment 24 disagreed to.*

**Before section 20**

**The Convener:** Amendment 25, in the name of Nora Radcliffe, is in a group on its own.

**Nora Radcliffe:** An annual report on how the implementation of the act was progressing would be a useful mechanism for keeping tabs on what is a wide-ranging piece of legislation. The bill in itself is not groundbreaking as it deals with something that already happens in other places. However, if it were passed, many people would have to implement provisions with which they had previously never dealt. Therefore, an annual report would be a useful mechanism for checking that the act was being implemented correctly and that how it was working out in practice reflected what we had hoped for.

I lodged a similar amendment in connection with the water framework directive. The purpose on that occasion was slightly different because we were implementing something over a long timescale and I thought that it was important to show that we had passed milestones on the way to the end of the implementation, so that we did not end up with everything being back-loaded. On this occasion, I am trying to find a way of focusing on how the legislation develops and providing an early warning if it does not develop as we want it to. An annual report would be a useful mechanism for keeping an eye on an important piece of legislation that could have far-reaching, beneficial consequences. I want to ensure that the legislation is as beneficial as it can be.

I move amendment 25.

**Mr Ruskell:** We are in new territory with the bill. There are a number of unknowns and the committee has sought clarification on many areas during stage 2. All of that points to the need for Parliament to monitor carefully the roll-out of the legislation. I believe that an annual report would be an important part of doing that, so I support amendment 25.

**Rhona Brankin:** I am grateful for amendment 25's helpful suggestion. However, I ask members

to resist the amendment because I think that setting in legislation a requirement for an annual report that is ring fenced to the issues in the amendment would in time make such a report less helpful. Rather, I propose that a report be produced in early 2007 that presents a wide-ranging review of the early operation of SEA. That will give us time to see enough cases and comment more usefully on the operation of SEA. The experience of using SEA templates and of the on-going pathfinder project will add further value to any report. At that time, the need for a further report could be considered and agreed on.

Every screening, scoping and environmental report will be publicly available. Consultations and the report on how views were taken into account will also be in the public domain. SEA is a new and important part of how we better protect Scotland's environment, and it is right that Parliament wants to be fully informed of how it is working in practice.

Although I ask the committee to resist the amendment, I welcome the thinking behind it and guarantee to report in early 2007 on the operation of SEA. Many quality safeguards are already included in the bill, and I believe that it is a model of transparency. Detailed criteria are set out that ensure that the content of the environmental report covers all the appropriate aspects of the environment. The scoping stage and consultation, both public and with the statutory consultation authorities, will ensure scrutiny of detail. Responsible authorities must set out their proposals for monitoring in a way that enables them to take any appropriate remedial action if unforeseen adverse effects are identified.

We are strongly in favour of an annual report for years to come. I have suggested a report in early 2007, which is the right time for a first report. If members prefer to set a further reporting requirement for a few more years, I would be happy to discuss further before stage 3 whether that can be agreed administratively, or whether an amendment is more appropriate. I hesitate about an amendment only because specifying the contents of any report might constrain it unhelpfully in scope.

I ask for amendment 25 to be withdrawn, on the basis that I am happy to discuss further before stage 3 whether we can reach an agreement on the matter.

**Nora Radcliffe:** I seek leave to withdraw the amendment, because that will allow us to come back at stage 3 with something that meets the requirements of both the committee and the minister. Having an annual report is a useful mechanism for allowing the committee and the Parliament to review what is happening. If the Executive is not happy with the wording of amendment 25, I would like to come back at stage 3 with acceptable wording.

*Amendment 25, by agreement, withdrawn.*

*Sections 20 to 25 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill. I thank the minister and her officials for their work with us this morning. We will now reprint the bill, as amended, which will be available from tomorrow in the document supply centre. If members are keen to lodge amendments for stage 3, the clerks' doors are now open. That will be announced in the *Business Bulletin* tomorrow. The deadline for lodging amendments will be announced as soon as we know the exact time of stage 3, which is expected to be after the October recess. There is some time for reflection and interpretation of the *Official Report*.

# Work Programme

12:39

**The Convener:** Item 3 is our forward work programme. Members have received an update on the programme and an indication of the likely work of the committee in the period from September 2005 to January 2006. It is worth drawing members' attention to the legislative timetable. Shortly we will deal with the Environmental Levy on Plastic Bags (Scotland) Bill. We expect to complete the stage 1 report on the bill before Christmas, with the stage 1 debate taking place sometime in the new year. I remind members that the Parliament has agreed that we will complete stage 1 by 27 January, which is a tight timetable for us.

We have completed stage 2 of the Environmental Assessment (Scotland) Bill, and the stage 3 debate will take place after the October recess.

To the best of our information, we will deal with the proposed animal health and welfare bill and will receive a paper on stage 1 scrutiny as soon as the bill is introduced. We are likely to have about five meetings on the bill in November and December—possibly more in January—to take oral evidence. A stage 1 report will be made sometime in the new year, possibly in January or February.

That will be in the *Official Report,* so it will give external organisations and members of the public a sense of what we will be doing.

Our next item is to consider and agree our approach to pre-legislative scrutiny of the proposed crofting reform bill. There are two things to draw to members' attention. The first is that the committee must agree to take evidence at stage 1 outwith Edinburgh in areas that are affected by the proposed crofting bill. I do not know whether we would be the first committee to do that at stage 1 of a bill.

**Mr Alasdair Morrison (Western Isles) (Lab):** No, we did it for the Land Reform (Scotland) Bill.

**The Convener:** Okay, so it would not be a first.

**Rob Gibson:** We would be the first committee to do it for a crofting bill.

**The Convener:** Thank you for that useful piece of information. It would be good practice for us to get out into the localities that will be affected by the bill. Having talked to members of all parties, I know that there would be sympathy for that.

The second thing to draw to members' attention is the fact that I propose that we take evidence on the proposed crofting bill on 2 November. There has been quite an extensive public debate about the principles that are suggested for the bill. It would be in the public interest for the committee to flush those issues out formally with the minister.

Members are invited to note that we have a draft proposal from Mark Ruskell for a bill on greenhouse gas emissions targets. That might come to the committee.

**Mr Ruskell:** One day.

**The Convener:** Is the committee content for the Local Government and Transport Committee to consider the proposed Sewel motion on the UK Civil Aviation Bill? It is being sent to that committee by the Parliament. We have an interest, as there are suggested emissions targets for airports in the bill, which are within the remit of our climate change report. We will keep an eye on that debate, but are members happy for the Sewel motion to go to the Local Government and Transport Committee?

**Members** *indicated agreement*.

**The Convener:** We may want to discuss the next item further. It is stage 2 scrutiny of the 2006-07 environment and rural affairs budget. My report contains a few suggestions as to how we might deal with that item. One of our objectives will be general scrutiny of the figures for 2006-07, longer-term trends and changes that have taken place since the estimates for 2006-07 were set out. We definitely need to keep a long-term perspective of what is happening in the budget, which is why I suggest that the committee should have a briefing on it. It will be difficult to scrutinise the budget this year, but I think that we should have one session on it and get advice from the Scottish Parliament information centre and Professor Arthur Midwinter. I would not like us to lose track of the issues that we have raised year on year.

I invite colleagues to reflect on how much further they want to go on the budget this year. My report makes a number of suggestions, including getting information on efficiency savings projects with regard to reform and administration of the common agricultural policy; the Forestry Commission; the Scottish Environment Protection Agency; and Scottish Natural Heritage. We might want to get a report from the minister on that issue and see whether we want to pursue our scrutiny of any of those projects. It might be difficult, as we do not have a huge amount of time. Nevertheless, it would be useful for us to undertake some meaningful scrutiny of the budget.

**Nora Radcliffe:** It is a good idea to ask for some more information about some of those things and then narrow our focus. We do not have time to cover the whole gamut, and it would be useful to get a little bit more information to allow us to focus.

**Richard Lochhead:** I agree with what Nora Radcliffe says. Once we move to the second stage, we will have identified which agencies we want to take evidence from. SEPA should perhaps be top of the list, given the fact that it had a public spat with the Minister for Environment and Rural Development over its budget and its inability to meet the new responsibilities that it has acquired over recent years from within its current budget.

**The Convener:** The issue of efficiency savings and how they affect an organisation's operation is of interest to us.

12:45

**Rob Gibson:** It is important that we deal with SEPA, because there are knock-on issues regarding development constraints and Scottish Water, in which SEPA has a considerable role. We need to find out whether SEPA has enough personnel on the ground to deal with that, which would fit into our previous scrutiny of Scottish Water's activities.

**The Convener:** So there is broad agreement to have a session in which we examine those issues, and to commission information from the minister on the four areas that we have suggested with a view to exploring them in more depth. However, it has already been suggested that SEPA might be an issue for us to consider in depth.

We need to consider and agree further action on petition PE653, on the Scottish Agricultural College. Long-standing committee members will remember that it was the first issue that we debated as a new committee in 2003. We never formally completed our consideration of it. Do members agree that we should write to the minister asking for an update, to enable us potentially to close the petition?

**Nora Radcliffe:** It is important to get an up-to-date statement of the position, so that we can formally close the petition or pursue any issues that arise.

**Mr Ruskell:** I should declare an interest in that I used to live on the Craibstone estate and I am a graduate of the SAC. It is important to write to the petitioners to get an update from them on where they see things developing on the estates and on whether their concerns have been in any way addressed in the intervening period.

**Maureen Macmillan:** Will Charlotte Gilfillan still be a student? I am concerned that if she was a student she may have graduated and gone by now. Do we have any other contacts?

**The Convener:** Mark Brough has indicated that we may have a list of names. We can pursue that and see whether somebody is still out there.

The next issue is to consider whether to seek oral evidence from the minister in advance of the December agriculture and fisheries council, and whether—as we discussed at our away day—we should commission research on fishing stocks from SPICe to summarise the current state of play to inform that discussion. Are members happy with that?

**Members** *indicated agreement*.

**The Convener:** We will programme that.

We are pretty swamped by legislation. I propose to update members about every six weeks, so that we can programme future inquiry work and add to our agenda issues to which members feel the committee needs to give attention. We can also consider what we will do in October, which will be our first opportunity to add new topics. We might want to address particular issues after our climate change report. We have already talked about biomass, biofuels and forestry, and the energy report that was commissioned by the Scottish Executive. They are in the background, but we could formally come back and explore those and other issues that members may have. Do colleagues agree?

**Members** *indicated agreement*.

**The Convener:** Thank you. That completes all our on-the-record discussions today. We move into private session.

12:48

*Meeting continued in private until 13:08.*

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