

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 15 March 2006

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

9th Meeting 2006, 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 (Highland 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 Fergusson (Galloway and Upper Nithsdale) (Con)

Dr Elaine Murray (Dumfries) (Lab)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Environment and Rural Development Committee

Wednesday 15 March 2006

[THE CONVENER *opened the meeting at 09:49*]

Items in Private

The Convener (Sarah Boyack): I welcome committee members, visiting members, members of the press and members of the public to the ninth meeting in 2006 of the Environment and Rural Development Committee. I remind everybody to put their mobile phones and BlackBerrys on silent and not to sit them on the consoles. No apologies have been intimated from members. I have a note that Alex Fergusson and Elaine Murray are interested in item 2.

Agenda item 1 is items in private. I ask colleagues whether they are prepared to take in private item 6, which will allow us to consider the evidence received to date for our inquiry into developments in the biomass industry. I also ask that we agree to discuss our draft inquiry report in private at future meetings until we agree it, then make our decisions public afterwards—that is our usual practice. Are colleagues happy with that?

Members *indicated agreement.*

Subordinate Legislation

Solway Firth Regulated Fishery (Scotland) Order 2006 (SSI 2006/57)

Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) Order 2006 (SSI 2006/58)

09:50

The Convener: Under agenda item 2, we have two instruments to consider under the negative procedure: the Solway Firth Regulated Fishery (Scotland) Order 2006 (SSI 2006/57) and the Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) Order 2006 (SSI 2006/58). The Subordinate Legislation Committee has considered the two orders and has no comments on either. I understand that Elaine Murray and Alex Fergusson are particularly interested in this agenda item. I do not know whether committee colleagues have any issues they wish to raise on the orders, but I know that the local members have one or two anxieties. I invite Elaine Murray to kick off.

Dr Elaine Murray (Dumfries) (Lab): I want to raise two issues about the orders. One is that the Solway Shellfish Management Association is granted the power to issue licences to cockle fishers. There has been much anxiety in the local community about the way in which the licences have been issued. Only 100 of the 300 cockle fishers have got licences, which has led to a lot of resentment on the part of those who have not received licences. There have been a number of allegations about fraudulent papers being used to obtain licences. I know that the committee cannot do anything about that, but it is an issue of concern.

My second issue of concern is around policing of the fishery. The SSMA will police the fishery when it is opened—as I understand it the Scottish Fisheries Protection Agency will have no role in policing. We have 200 unhappy cocklers, who could be tempted to fish illegally. Obviously, I would in no way condone that, but they might be tempted to fish illegally, and there may be only two SSMA officers to control it. That is possibly a recipe for a certain amount of trouble when the fishery reopens.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): I agree with everything that Elaine Murray has just said. Furthermore, not only were 100 hand-gathering licences issued, but a number of licences were issued for harvesting by boat, and exactly the same problems occurred. I will quote briefly from a letter from a constituent

who did not apply for a boat licence but who wishes to do so:

"I would ... like to point out that the majority of the ... licence holders have not fished on the Scottish Solway for at least a minimum of 14 years".

It is important to emphasise that the letter refers to the Scottish Solway. The writer goes on to say that to him it seems

"ludicrous that the criteria is laid out to accommodate fishermen whom have not been near the Solway for years and exclude the fishermen that have fished here on a daily basis for ... 25 years."

That is part of the problem with how the hand-gathering licences were issued, but it applies equally to the boat licences.

I want to add another issue to the mix. Once or twice in the Parliament I have tried to bring to ministers' attention the fact that, whether we like it or not, much of the shoreline belongs to private owners. There has been a considerable lack of consultation with the owners who, after all, will be affected by fishermen accessing their catches through pick-up points, by vehicles travelling across farmland and so on. There has been a horrible lack of contact with landowners, whose deeds enshrine their right to fish the coastal waters. There is a debate over whether that right includes cockles, which grow naturally in the area. That is a growing problem.

Elaine Murray and I are both aware that the committee cannot do much about the situation at this stage, but we want to lay out the concerns that have been raised locally with both of us, because we may not have heard the end of this.

Mr Alasdair Morrison (Western Isles) (Lab): On Alex Fergusson's last point, I seek guidance from the convener or from the clerks about what the committee can do. Reasonable concerns have been articulated. How can we shed some light on how licences were granted to individual cockle fishers? What assurances can we get on the policing issues that the two members raised? Are Elaine Murray, Alex Fergusson or the clerks able to assist us?

Dr Murray: The only option for the committee is to annul the order, but that would not necessarily solve the problem.

There has recently been a history of poaching in the area. As the SFPA currently has jurisdiction, it can deal with poaching when it is alerted appropriately.

If the fishery does not reopen, the SSMA is likely to go bust, because it is dependent on the money that it gets from the issuing of licences and from the landing of cockles, and it has been waiting for the fishery to reopen for a long time. If the order were annulled we would have to go back to the

beginning and get a new organisation to regulate the fishery. Everything would be put back for a considerable period of time. We would not solve the problem by rejecting the order.

A written answer suggests that the Minister for Environment and Rural Development is inquiring into how the licensing was conducted. I understand from my discussions with the SSMA that it based its decisions on a number of criteria, the most important of which was an ability to prove some sort of link with the fishery, which was dependent on invoices indicating that people had sold cockles from the fishery in the past. The question is whether some invoices were faked. It is easy to write out invoices that make it look as if someone has been selling cockles when they have not been, but providing invoices seems to have been the principal criterion on which the licences were issued. That is one of the bones of contention.

Alex Fergusson: It is some time since cockles could legally be sold from the Solway; the fishery has been closed for many years. Much anecdotal evidence suggests that some of the form filling for applications was not as it should have been.

Mr Morrison: I will be guided by what Elaine Murray and Alex Fergusson say with regard to the order, but is there any way that we can ask those with the power to do so to take remedial action to tidy up the monitoring process?

The Convener: It is clear that neither of the local members wants the instrument to be annulled. From the representations that they have made to the committee, it is clear that they want the issue to be looked into properly. It would seem appropriate for the committee to write to the Minister for Environment and Rural Development asking him to investigate and to take remedial action. He should consider the powers that are available to him, because there is a lot of local disquiet. The issue must be properly investigated so that people can have confidence in the process, which they clearly do not have now.

Maureen Macmillan (Highlands and Islands) (Lab): Members may be aware that an amendment will be lodged to the Police, Public Order and Criminal Justice (Scotland) Bill that will give policing powers to local associations, in conjunction with the SFPA. I presume that that will provide a good opportunity for you to raise issues about policing and the efficacy of what will happen. Local grantees, as they will be called, are to be given powers to board vessels, examine gear and catches, and so on. Some of the concerns that have been raised will be debated when the amendment is discussed.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): I have a point about process. I have a

strong feeling of déjà vu. Sometimes when a Scottish statutory instrument comes before the committee, although there is a concern about it no one wants to take the nuclear option and prevent it from going through. However, there is a need for a debate on this issue.

I do not have a full sense of the issues on this occasion, but matters are being raised that perhaps need further investigation. How can we ensure that, in future, issues to do with SSIs are brought up in advance? It may be that members should contact the committee or encourage their constituents to contact it well in advance so that we can have a proper debate and determine whether we need to lodge a motion to annul. We need to learn from such situations and establish how we can deal with them. This is not the first time that we have been in this position.

10:00

The Convener: The instrument is already in force, which makes things even more difficult. I was keen to invite Elaine Murray and Alex Fergusson along to tell us their concerns. Other members have placed local concerns on the committee's agenda, which is appropriate. Neither member is suggesting that a motion to annul the instrument should be lodged. The question is how we should take the matter forward. I propose that we write to the Minister for Environment and Rural Development about the concerns of Elaine Murray and Alex Fergusson and bring the matter back for the committee to follow up at a later date. What do you think about that?

Dr Murray: I welcome that suggestion. The licences were issued only a couple of weeks ago, but it quickly became apparent that there was a lot of disquiet. At that point, I wrote to the SSMA and to ministers about the concerns that were raised with me. It would be helpful if the committee backed that up with similar correspondence and investigated the issues.

Alex Fergusson: I agree. It strikes me that the minister will appear before the committee next week. I have written to him and I await his reply, but I wonder whether there is an opportunity for the committee to put some of the concerns to the minister in person next week. I am aware that the committee has a huge agenda and, as former convener of the Rural Development Committee, I understand that members will be reluctant to add further items, but a face-to-face session with the minister might bring an urgency that is lacking in written communications.

The Convener: Mark Brough is whispering in my ear. He helpfully suggests that, as the committee has a busy agenda next week, we should ask the minister for feedback on the matter

and circulate it to colleagues. I will then take members' views and decide whether to put the matter on the agenda. That will leave me a bit of flexibility, because there will be no guarantee that the matter will go on next week's agenda. We can ask for a swift response. That might be the best way forward.

Nora Radcliffe (Gordon) (LD): For clarification, are the licences issued for a period of one year?

Dr Murray: They are for five years.

Nora Radcliffe: We cannot do much about it if the first batch has been issued.

Dr Murray: No. I checked that.

Alex Fergusson: I would have seriously considered lodging a motion to annul the instrument were it not for the fact that annulment would have led to a cockling free-for-all on the Solway firth, and the possibility of fatal accidents. We would move heaven and earth to avoid that. I hope that the fact that the order is now in force will mean that that will not happen, although it is not guaranteed.

The Convener: There are a number of points to be clarified. The instrument states:

"A licence shall be valid for a period not exceeding 12 months".

Dr Murray: That is interesting. The SSMA told me that licences are valid for five years, so if they are valid for only 12 months that is surprising. The SSMA certainly seems to think that they are valid for five years.

The Convener: We should clarify that point. It seems that different information has been given.

To summarise, there are issues about the process, issues about the application of the criteria, concerns about the validity of the applications that have been made and concerns that people who have fished the area in the past have been excluded, which surprises people locally.

Alex Fergusson: There is also the concern, which I mentioned, about the lack of consultation with and inclusion of private owners of the foreshore.

The Convener: They are concerned about the implications of access by people who have been given licences.

Alex Fergusson: Yes. The owners need to be included in all the discussions.

The Convener: Okay. I think we have captured all the points. I thank our two colleagues for being eagle-eyed.

To return to Mark Ruskell's point, it is important to get on the committee's agenda local concerns

about instruments that we are considering. In this case, no motion to annul has been lodged, but we want definitive answers and action. Do colleagues agree?

Members indicated agreement.

The Convener: I return to Maureen Macmillan's point about stage 2 of the Police, Public Order and Criminal Justice (Scotland) Bill. As she pointed out, the bill will allow the SFPA to enforce regulating orders such as the one that we are considering. The Justice 2 Committee expects to debate amendments to the bill at its meeting on Tuesday 18 April. Members are welcome to attend that meeting or to pass any comments to the clerk of that committee, Tracey Hawe. We might want to do so, given the discussion that we have just had. That is an appropriate way of feeding our concerns into the system. Given Alex Fergusson's concerns about what might happen in the area, it is vital that the enforcement issues that we have raised are on the agenda when the Justice 2 Committee discusses amendments. Fortunately, Maureen Macmillan is also a member of the Justice 2 Committee. We trust that she will ensure that she is informed about the issues when the Justice 2 Committee discusses them in April.

We could defer the decision on the Solway Firth Regulated Fishery (Scotland) Order 2006 until next week. Alternatively, shall we move on and ensure that we get the response that we seek from the minister?

Members indicated agreement.

The Convener: Do members agree to make no formal comments on either of the orders?

Members indicated agreement.

The Convener: We will have a short suspension to allow the Deputy Minister for Environment and Rural Development and her officials to come to the table.

10:06

Meeting suspended.

10:07

On resuming—

Foot-and-Mouth Disease (Slaughter and Vaccination) (Scotland) Regulations 2006 (SSI 2006/45)

The Convener: Item 3 is also subordinate legislation. The regulations are to be considered under the negative procedure. The relevant extracts from the Subordinate Legislation Committee report have been circulated to members. Colleagues will note that amending

regulations will be introduced to correct an issue that the Subordinate Legislation Committee identified. Last week, we agreed to take oral evidence on the regulations from the Deputy Minister for Environment and Rural Development, because the content relates closely to issues that we are about to discuss at stage 2 of the Animal Health and Welfare (Scotland) Bill. It will be useful to discuss the regulations before we get to the detail of stage 2.

I welcome the deputy minister. I invite her to introduce her officials and make some brief opening remarks, before colleagues ask questions or comment on the regulations.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): I have with me Neil Ritchie, Deborah King and John Paterson from the Scottish Executive and Charles Milne, the chief veterinary officer.

The committee asked me to explain the background to the regulations and how they relate to the Animal Health and Welfare (Scotland) Bill. The foot-and-mouth disease directive was agreed at the European Council in September 2002 and had to be introduced into domestic legislation by July 2004. That was an extremely challenging timetable, given the size and complexity of the legislation. Like other United Kingdom Administrations and several other European Union member states, Scotland has taken longer than expected to finalise the transposition.

We have split the implementing legislation into two parts. Until the Animal Health and Welfare (Scotland) Bill has completed its passage, we will not have the appropriate domestic legal base to meet the expectation in the directive that we should have powers to undertake preventive slaughter and vaccination. Had the bill been enacted, we could have made a single order under the Animal Health Act 1981 but, as it is, we have produced the regulations under section 2(2) of the European Communities Act 1972. The majority of the directive has been transposed through an order under the 1981 act, for which there is no requirement for parliamentary procedure.

The committee asked specifically about the treatment of wild animals and rare breeds. European legislation requires us to respond to finding foot-and-mouth disease in the wild animal population, therefore the Executive must have powers to respond to such a situation. We cannot predetermine how we would deal with an outbreak in the wild animal population, as that would depend on factors such as the epidemiology of the disease, the location and the type of animal infected. Any planned response would have to take into account biodiversity issues, be based on expert advice and be agreed by the Standing Committee on the Food Chain and Animal Health.

The transposition of the directive has allowed us to introduce greater flexibility to support rare breeds. As with wild animals, the Executive is committed to controlling a disease outbreak with as little slaughter as possible. The directive provides for exemption from slaughter for rare breed animals, even on infected premises. We are committed to protecting rare breed animals but, for the safety of other animals, certain conditions must be met if they are to be protected. First, they must be pre-registered on the Great Britain rare breed register—managed by the Rare Breed Survival Trust—which is a list of breeding nuclei of at-risk native species. Secondly, animals will be declared exempt only if a veterinary risk assessment has been carried out, exemplary biosecurity arrangements are in place and it has been demonstrated that the animals pose no risk whatever of further spreading disease.

The regulations are, like the Animal Health and Welfare (Scotland) Bill, important to our preparedness to respond to an outbreak of exotic disease in Scotland. As always, our aim is to respond quickly and robustly to disease and to minimise its impact on the Scottish economy, society and environment.

The Convener: Thank you, minister—we were particularly keen to have clarification of the rare breeds issue, which was raised during stage 1 consideration of the Animal Health and Welfare (Scotland) Bill. Your comments help us to understand the regulations and the requirement on the Executive to put them in place.

As colleagues have no questions—a rare occasion—are we content with the regulations and happy to make no recommendation to the Parliament?

Members indicated agreement.

The Convener: We will have a short suspension to allow the officials to change places—the deputy minister will stay for the next item.

10:13

Meeting suspended.

10:15

On resuming—

Animal Health and Welfare (Scotland) Bill: Stage 2

The Convener: Agenda item 4 is stage 2 of the Animal Health and Welfare (Scotland) Bill. Rhona Brankin, the Deputy Minister for Environment and Rural Development, is tasked with steering us through stage 2 from the Executive's perspective. I welcome her officials.

I will recap on stage 2 procedure so that everybody knows where we are from the start. Members should have before them a copy of the bill as introduced, the marshalled list of amendments that was published on Monday—SP Bill 47-ML1—and the groupings of amendments.

The groupings paper sets out the amendments in the groups in which they will be debated. The running order is set by the rules of precedence that govern the marshalled list. It can be confusing, but members need to remember to move between the two papers. I will call amendments in strict order from the marshalled list—we cannot move backwards; we must always move forwards. The target for today is to reach the end of section 16 of the bill. I will see how we do on that. If we do not make it, it will not be the end of the world.

There will be one debate on each group of amendments. I will call the member in whose name the first amendment in each group is, to move that amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in a group should indicate that they wish to speak to amendments by catching my attention in the usual way. Debate on the group will be concluded by inviting the deputy minister or the member who moved the first amendment in the group to wind up. Only committee members are entitled to vote.

After we have debated the amendments to a section, the committee must decide whether to agree to each section of the bill as a whole. If members want to, we can have a short debate at that point if it would be useful to allow discussion of points that were not raised by amendments. That is not compulsory.

Those are the ground rules for our debate this morning. I hope that they are clear for everybody.

Section 1—Slaughter for preventing spread of disease

The Convener: Group 1 concerns conditions for the exercise of powers of slaughter. Amendment

4, in the name of Richard Lochhead, is grouped with amendments 12, 14, 1, 2, 2A, 10, 6 and 8.

Richard Lochhead (North East Scotland) (SNP): Amendments 4 and 2A, both in my name, are similar. They seek to include in the bill an obligation that the minister, when using the slaughter powers, must consider the impact of their use on Scotland's economy and biodiversity. That debate cropped up during stage 1. The bill will give ministers extra powers to slaughter not only infected animals but any animal that they see fit to slaughter, which could include wild animals or companion animals. That is a concern for many organisations and to members of the committee, so I seek to provide that the minister must consider the impact on biodiversity, which could have implications for the slaughter of rare breeds and species.

I also seek to provide that the minister must consider the impact on the economy, as the slaughter of wild animals on any significant scale—which would be well within the minister's powers under the bill—would have an impact on Scotland's rural tourism industry in particular and its rural economy in general. At stage 1, the minister assured us that any minister would take those factors into account before exercising the slaughter powers. However, there is a common theme in many of the amendments to section 1, in which we are being asked to act on faith and to rely on the minister's word. Of course, we are talking about the current minister's word, but the bill will affect all future ministers should it be agreed to, which is why, in some cases, committee members want those assurances to be in the bill.

Amendment 4 would insert a paragraph into schedule 3A of the Animal Health Act 1981 to ensure that the impact of exercising the slaughter powers on the economy and on biodiversity would be considered.

Amendment 2A seeks to amend amendment 2, in the name of Mark Ruskell, which seeks to ensure that the minister will take veterinary and scientific advice before using the slaughter powers. It would simply add to that amendment a clause to ensure that the minister will take into account the impact of using the powers on the economy and biodiversity.

The committee should support Mark Ruskell's amendment 2, which returns to the general theme of the use of the additional, significant and radical slaughter powers. Although I understand the need for ministers to act swiftly in the event of a disease outbreak, safeguards must be in place to ensure that the powers are not misused or used in error. For that reason, I support the proposal to state in the bill that any action that the minister takes must be taken only after veterinary and scientific advice

has been sought. There is widespread support for that position across the parties, and the committee expressed sympathy for that position in its stage 1 report.

Amendment 6 is similar to my other two amendments in the group. It would insert in the bill an obligation on the minister to take into account the impact of the use of the slaughter powers on the economy and biodiversity.

I move amendment 4.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): Amendment 12 is a simplified version of amendment 2. Given that we have the Minister for Environment and Rural Development's assurances that he would not use the extended powers of slaughter without first consulting the relevant scientific and veterinary authorities, there is no reason why the minister should not want to have that requirement stated in the bill. As we heard in the debate last week, the minister is a reasonable man; however, the legislation will be there in perpetuity and we do not know who might follow him. I cannot understand why the minister would not want to have that provision in the bill.

On Maureen Macmillan's amendment 14, I am not sure that we need to go so far as to require the minister to publish a statement of the reasons for the use of the powers of slaughter.

Mark Ruskell's amendment 2 is comprehensive and I cannot disagree with the thrust of it, but I am not sure that we need to go into so much detail. I think that what is suggested in amendment 12 is enough.

I support Richard Lochhead's amendments. The impacts on biodiversity and the economy must be in ministers' thoughts when they decide whether to use the powers of slaughter. I support the amendments in the names of Richard Lochhead and Mark Ruskell and my amendment 12.

Maureen Macmillan: The committee has expressed concern that there should be transparency in the process by which the minister reaches his decision on whether to order the slaughter of animals instead of, for example, ordering vaccination. The bill will introduce new powers of slaughter about which the committee has expressed concerns. The minister has said that he does not see the need to include in the bill a requirement for him to take into account scientific or veterinary advice because he believes that it would be inconceivable for him to do otherwise. However, we have expressed concerns about what might happen if someone else was minister.

I lodged amendment 14 because there is more than one way to skin a cat. Perhaps I should not have used that expression, given that we are

discussing the Animal Health and Welfare (Scotland) Bill. I would like to withdraw that statement.

It is important that Parliament, the farming industry and the general public know the reason why a minister will exercise the slaughter powers before the slaughter takes place, and that they get an explanation of why slaughter, rather than another method of control, is necessary. I will not list all the details that might be included in such a statement. Unlike some of my colleagues, I do not believe in such lists, because something always gets left out. I would expect such a statement to refer, as appropriate, to scientific and veterinary advice, and to the weight that has been given to economic, environmental or biodiversity factors and to wild animals and rare breeds.

Amendment 14 suggests another way of showing to the public the process that has been followed, rather than stating in the bill that there is a requirement for specific consultation. I trust that the minister will consider that the amendment has some worth and that its implementation would help to allay some of the anxieties that remain about decisions being made without proper consideration of all the consequences.

Mr Ruskell: I think that we agree that ministers need to have wide powers in the event of a disease outbreak, but we are discussing what checks and balances need to be put in place. The concern that we have heard from various stakeholders, including the NFU Scotland, is about contiguous culls of apparently healthy animals. The term "act of faith" has been used. We are putting a lot of faith in ministers, so it is important to include checks and balances in the bill, which is what amendments 1 and 2 would introduce.

I appreciate where Ted Brocklebank is coming from in amendment 12; he wants to insert a simple provision. However, its effect would be that ministers would have to seek veterinary and scientific advice in situations in which animals are deceased, for which I do not see the need. We need scientific and veterinary advice to be brought into play where animals are not affected by the disease, have not been in contact with the diseased animals, have not been exposed in any way to the disease or have been treated with a vaccine.

On Maureen Macmillan's amendment 14, I agree that a statement is useful and I would support it as a part of a package, along with the requirement to take veterinary and scientific advice, but the amendment only half skins the cat. A statement would be useful, but it is only part of the story.

The provisions in Richard Lochhead's amendments on the economy and biodiversity

would be useful, but the important thing is that we ensure that veterinary and scientific advice is taken.

Vaccination is the other side of the coin. When ministers make a decision about slaughter, they will have, equally, to make a decision about vaccination. With amendment 8, I seek to introduce consistency in our approach. Vaccination should be considered on the basis of the same veterinary and scientific advice as is received in relation to slaughter.

Amendment 10 relates to the slaughter of rare breeds and, once again, would provide a check and balance that would be worth introducing. Concerns were expressed in 2001 about the future of the Herdwick sheep breed as a result of contiguous culls in England. I urge members to vote for amendments 1 and 2 and to consider voting for amendment 14, as part of a package.

10:30

Elaine Smith (Coatbridge and Chryston) (Lab): The committee is trying to strike a balance between allowing ministers room to act quickly in emergencies and ensuring transparency. I am interested to hear what the minister has to say about the amendments.

Like Maureen Macmillan, I am a bit wary of lists. For example, in amendment 4, Richard Lochhead lists the economy and biodiversity. Should we stop there or should we start listing things like the possible impacts on the owners of companion animals and so on?

Nora Radcliffe: I reiterate the concern that has prompted the amendments. It is desirable to have in the bill some assurance that what we expect the minister to do will be what the minister does.

The Convener: Minister, could you say something about the powers in the Westminster Animal Health Act 2002? It has been suggested that that contains a different way of dealing with safeguards. Do you have any views, from the perspective of the Executive, on the different approaches that have been taken?

I share my colleagues' view about getting the balance right in the legislation and I accept what Mark Ruskell said, in respect of appropriate checks and balances in the bill, about the amount of work that will have been done by the Executive before the slaughter powers are exercised. It would be interesting to get a sense of your thoughts on how the checks and balances will operate, on consulting of stakeholders on a contingency plan and on the points that Maureen Macmillan made about the possibility of ministers' making statements to set out the reasons for actions that will be taken.

Rhona Brankin: Amendment 4 would place a requirement on ministers to consider the impacts on the economy and, separately, on biodiversity before they could exercise one or more of the slaughter powers to prevent the spread of disease, as provided for in paragraphs 1 to 6 of proposed new schedule 3A of the Animal Health Act 1981.

On the impact on the economy, ministers have already given a commitment, in the contingency plans, to consider how disease-control measures will affect not only the market in general, but society and the environment. Later, I will say more about contingency plans and how our system will differ from the Westminster system.

On biodiversity, any slaughter of wild or feral animals must be on a veterinary risk basis and must first take into account the species and the degree to which that species will be affected by the relevant virus strain. The local circumstances and environment that might give rise to a greater chance of spreading infection have to be considered with regard to the intended timing of slaughter or poisoning and the overall effectiveness of the measure. Wilder feral animals tend to avoid areas in which disturbance by people and vehicles occurs and some animals' and birds' natural grooming behaviour suggests that the risk of spreading disease physically would be minimal.

Experience has shown that the risk of disease dispersal is greater if action is taken against specific wild animals or birds. However, in specific circumstances, European Union legislation can require that wild animals that are infected and which pose a disease risk be slaughtered. The power is, therefore, sought to facilitate the implementation of those obligations. Therefore, I urge the committee to reject amendment 4.

On amendment 12, I am aware of the concerns that members of the committee and others have expressed about the lack of an explicit requirement that ministers must take veterinary and scientific advice before they exercise powers to prevent the spread of disease. I emphasise that although the proposed new powers for new schedule 3A of the Animal Health Act 1981 might be an appropriate component of a disease-control strategy, the exercise of those powers would not be the response of first resort. The first step would be confirmation of the presence of disease through veterinary or scientific analysis. In the initial stages of a disease outbreak, existing powers in the 1981 act enable us to deal with most fast-spreading diseases.

In evidence to the committee and during the stage 1 debate, ministers clarified that before they can discharge their responsibilities in dealing with a disease outbreak they must first establish the existence of the disease, and that the role of veterinary and scientific advice is self-evident in

that context. In any determination of how best to prevent the spread of disease, ministers would necessarily consider the opinions of relevant experts.

If amendment 12 were agreed to, the effect would be explicitly to subject the powers in new schedule 3A of the 1981 act to a requirement to take advice. Given that other powers in the 1981 act are subject to no such requirement, an unintended consequence of agreeing to amendment 12 could be the implication that different powers would be exercised in different ways. The implication might be that ministers would not need to consult before they exercised certain powers. I therefore urge the committee not to agree to amendment 12.

We agree with the principles behind amendment 14. The exercise of the new powers in new schedule 3A would be a matter of substantial public interest and amendment 14 seeks to provide for transparency that would improve understanding of how a decision had been reached, how a decision would be implemented and the benefits that proposed measures would bring. The statement that is envisaged in amendment 14 would not only give the veterinary and scientific justification for a decision, but would encompass the wider stakeholder dialogue that had helped to inform the decision, which would include farming interests and others with an interest in eradicating disease quickly and effectively, such as representatives of the rural economy and rural society. We will consider the matter with a view to lodging an amendment at stage 3. I therefore ask the committee not to agree to amendment 14 and to allow us to consider the matter further.

Amendments 1 and 2 would require ministers to be satisfied on the basis of scientific and veterinary advice that the slaughter of animals, birds or amphibians that

"are not affected with the disease or suspected of being so affected ... are not and have not been in contact with animals, birds or amphibians affected with the disease ... have not been in any way exposed to the disease ... or have been treated with serum or vaccine (or both) against the disease"

was necessary to prevent the spread of disease. The implication of the amendments is that advice would not be required if animals, birds or amphibians were diseased or suspected of being diseased, or if they had been exposed to disease through contact with diseased animals, for example.

Amendments 1 and 2 would require ministers to be satisfied that slaughter was necessary to prevent the spread of disease. However, in the bill the purpose test for the use of slaughter powers in proposed new schedule 3A of the 1981 act is that

the powers can be used

“with a view to preventing the spread”

of disease and when the Scottish ministers think fit. The slaughter powers could therefore be used not just if slaughter was essential to the prevention of the spread of disease, but if slaughter would contribute to prevention of the spread of disease and was appropriate in the circumstances. The purpose test acknowledges that quick action to curb the spread of disease is central to disease control.

Disease spread can be prevented by a range of measures, which include slaughter, and it might be possible to prevent disease spread without the use of slaughter powers. However, such action might not be as effective as slaughter and might mean that more animals were affected before the spread of the disease was arrested.

In previous evidence to the committee and during stage 1, ministers made it clear that in discharging their responsibilities in dealing with a disease outbreak, they must first establish the existence of the disease, in which the role of veterinary and scientific advice is self-evident. In any determination of how best to prevent the spread of a disease, ministers would necessarily need to consider the opinions of relevant experts. For those reasons, I urge the committee to reject amendments 1 and 2.

Amendment 2A would require ministers to take account of the impacts of slaughter on the economy and biodiversity only in relation to the slaughter of animals that were not diseased or suspected to be diseased; that were not and had not been in contact with or exposed to diseased animals; or that had been treated with serum or vaccine against the disease. Animals that were known to be diseased, that were suspected to be diseased or that had been in contact with diseased animals or exposed to disease could be slaughtered without any consideration of the impacts of their slaughter on the economy and biodiversity. Thus, amendment 2A presents only a partial picture of the wide range of factors that must and would be taken into account in all aspects of the disease-control response. For those reasons, I urge the committee to reject amendment 2A.

Amendment 10 seeks to amend section 2. It would place on ministers an expressed statutory requirement to take scientific advice before causing the slaughter of animals or birds of “rare breed or type” that are covered by the section. The implication is that ministers would have to satisfy themselves, on the basis of that evidence, that it was necessary or desirable to slaughter for the purpose of securing, or contributing to the securing of, disease-free status. In practice, during

an outbreak of an exotic disease, rare breed or type animals or birds—if treated or vaccinated—would not be expected to be slaughtered merely to obtain international disease-free status, but would have been vaccinated or treated to live. However, if disease suspicions arose, slaughter would be carried out under the existing powers in the Animal Health Act 1981. I emphasise that the provisions in section 2 provide for flexibility in achieving international disease-free status during a potentially complex exotic disease situation. I therefore ask the committee to reject amendment 10.

Amendment 6 would require ministers to consider the impacts on the economy and biodiversity before slaughtering any serum-treated or vaccinated animals or birds. Proposed new section 16B of the 1981 act will provide for the slaughter of serum-treated or vaccinated animals or birds for the purpose of securing, or contributing to the securing of, disease-free status—potentially to reopen our international markets early for the benefit of our meat and allied industries.

On the impact on the economy, ministers have already given a commitment, in our contingency plans, to consider how disease-control measures affect not only the marketplace in general, but society and the environment. On biodiversity, it is unlikely that during a disease outbreak wild or feral animals would have been treated or vaccinated, given the risk that disease dispersal will disturb of their habitats. Zoo or rare-breed animals, however, may have been vaccinated. Therefore, in their case, daily disease inspection and surveillance would be likely, with the result that only if disease became evident or suspected would prompt action be taken, which would most likely be slaughter, under the existing powers in the 1981 act. It is unlikely that such animals would be slaughtered simply so that we could to obtain disease-free status. I therefore urge the committee to reject amendment 6.

10:45

Amendment 8 would place a requirement on ministers, when seeking to prevent the spread of a disease, to seek the advice of the veterinary and scientific professions before ordering the treatment or vaccination of any animals or birds. Ministers would be required to be satisfied, on the basis of that advice, that it was necessary to treat or vaccinate the animals or birds in order to prevent the spread of the disease. That would apply to the treatment of any animal or bird, irrespective of whether it was exposed to disease, in contact with a diseased animal or bird, or in an infected area. That is a more rigorous requirement than is currently provided in the proposed new section 16(1A) of the 1981 act. Proposed new section

16(1A) would allow treatment or vaccination to be used when the Scottish ministers considered such action an appropriate contribution to preventing the spread of disease, rather than make such action essential or indispensable to the aim of preventing the spread of disease.

It is self-evident that, in considering the policy of exotic disease control in the face of its spreading, ministers must act responsibly. Ministers will be informed by veterinary and scientific advice on the merits or demerits of treatment with serum or, more likely, vaccination of animals and/or birds against a particular strain of the relevant disease. I therefore urge the committee to reject amendment 8.

The convener asked me to deal specifically with what happens at Westminster. I understand that, at Westminster, a specific protocol is examined and consulted on every year. That is a different way of approaching the matter. In Scotland, we have specific contingency plans, which are reviewed regularly; in fact, they can be reviewed three times a year. For example, a contingency plan for avian flu was updated recently. We think that the contingency planning that we have in Scotland, with the consultation and openness around that as well as the additional commitment to increase transparency to Parliament, provides a system that is responsive and in which ministers can move quickly. We develop the contingency plans based on consultation of key stakeholders, and we are able to move quickly when necessary.

The Convener: Thank you. I ask Richard Lochhead to wind up the debate and to state whether he wishes to press or withdraw amendment 4.

Richard Lochhead: I wish to press amendment 4. The debate that the committee is having with the minister over whether an act of faith is required or whether the assurances and safeguards should be provided in the bill is on-going. Although I recognise the minister's concession to Maureen Macmillan on amendment 14 and accept the need for us not to support that amendment but to allow the minister time to lodge a similar amendment at stage 3, I think that many of the other amendments should be supported.

I was slightly confused by the minister's suggestion that, if we were to place conditions on some powers in the bill, those conditions would not apply to other powers in the 1981 act. As far as I can see, the powers that we are discussing concern the slaughter of animals, and the issue that is causing great concern is the proposal for additional slaughter powers in wide-ranging circumstances. The assurances that we seek on the slaughter of animals need to be included in the bill; it is a bit of a red herring to suggest that those conditions would somehow not apply to other

powers elsewhere. I do not think that the argument that the minister has put forward stands up; therefore, I wish to press amendment 4.

The Convener: The question is, that amendment 4 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)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

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

Amendment 4 disagreed to.

The Convener: Amendment 12, in the name of Ted Brocklebank, has been debated with amendment 4.

Mr Brocklebank: I intend to move amendment 12. Like Richard Lochhead, I found the minister's response, in which she cited the 1981 act, unconvincing. The minister says that it is self-evident that ministers would take scientific and veterinary advice, so I fail to understand why that simple provision should not be included in the bill.

Amendment 12 moved—[Mr Ted Brocklebank].

The Convener: The question is, that amendment 12 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)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

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

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

Amendment 12 disagreed to.

The Convener: Group 2 is on slaughter protocols. Amendment 13, in the name of

Maureen Macmillan, is grouped with amendments 5, 17, 11 and 11A.

Maureen Macmillan: Amendments 13 and 17 are probing amendments. The minister dealt with some of the issues when she addressed group 1. I want to find out why we do not have protocols, similar to those that the Department for Environment, Food and Rural Affairs has in place, which outline the factors that are to be taken into account when decisions on slaughter are made. Amendments 13 and 17 propose that such documents should be prepared.

Such protocols could act as safeguards against future unsound decisions. I do not maintain that we should have them just because DEFRA has them, but perhaps the minister could give a more detailed explanation of why we are not being offered them and what safeguards, if any, are being proposed instead. The protocols that are proposed in amendments 13 and 17 are fairly open-ended—I am simply asking for the principal factors that will be taken into account when slaughter is being considered to be put on the record; I am not asking for a list of all the criteria to be provided, as some of my colleagues have done. I would have thought that it would not be too inflexible to have protocols such as those that amendments 13 and 17 envisage.

I move amendment 13.

The Convener: I invite Mark Ruskell to speak to amendments 5, 11 and 11A and the other amendments in the group.

Mr Ruskell: I will deal with amendment 11 first, which proposes to insert in the 1981 act a requirement that a slaughter protocol be produced for Scotland. That act required the production of such a protocol for England and Wales and I see no reason why such a protocol should not be produced for Scotland, which would ensure greater consistency throughout the United Kingdom.

Amendment 13, in the name of Maureen Macmillan, picks out two elements of a slaughter protocol:

“the principal factors to be taken into account”

and

“the means by which a particular decision to exercise the powers may be reviewed.”

However, I would say that that we need a full slaughter protocol. We must be able to examine the purposes for which any power to carry out slaughter will be exercised, as is set out in subsection (2)(a) of the new section that amendment 11 seeks to insert in the 1981 act, and the procedures that will be followed, as is outlined in subsections (2)(c) and (2)(d) of the proposed

new section. If we do not have an understanding of what the procedures are, it will not be possible to challenge them.

At stage 1, a number of members—including Elaine Smith—expressed concern about the procedures that are used to handle situations involving sensitive emotional issues to do with pets, sanctuary animals, rare breeds or wild animals. The fact that we did not have the right procedures in place was a problem during the foot-and-mouth outbreak in 2001; the whole process was slowed down as a result. We need to be clear about the procedures that are to be followed in such circumstances, so we must have in place a protocol for dealing effectively with those sensitive issues right from the outset.

An important point is that amendment 11 would also require that people are given an opportunity to have an input into, and be consulted on, the protocol. I heard the minister's argument on that issue—I will return to it later when we debate contingency plans—but consultation has not always been completely adequate, so it is important that we put in place a statutory requirement for consultation.

Amendment 11A is an option for the committee. As I argued in the previous group of amendments in respect of scientific and veterinary advice, I believe that a rigorous process should also be applied to the slaughter of vaccinated animals. For that reason, amendment 11A provides the committee with the option of applying the slaughter protocol to vaccinated animals as well.

Amendment 5 is an alternative to amendments 11 and 11A, which replicate the law in England and Wales. Amendment 5 draws out the concerns that were reflected in the committee's stage 1 report. As Elaine Smith and others have commented, the treatment of animals that are kept as pets or in animal sanctuaries and of rare breeds and wild animals needs to be handled sensitively. We should ensure that appropriate protocols are put into place for that.

I urge the committee to vote for amendment 11 and to consider amendment 11A. Members should also consider amendment 5 as an alternative to amendments 11 and 11A.

Nora Radcliffe: When the minister responds to the debate, I would find it helpful if she could expand on whether the Executive's contingency arrangements and the DEFRA protocol are really the same thing. I do not really care what the procedures are called as long as they deliver. Will the minister clarify how our contingency arrangements compare with the DEFRA protocol? In what ways are they the same and how do they differ? Perhaps they address the same problem in different ways but with the same outcome.

Elaine Smith: Will the minister talk us through what would happen to companion animals, which Mark Ruskell raised, in the circumstances that we are discussing? If she will not accept the amendments, I ask her to concentrate in her response on why a protocol is unnecessary. The treatment of companion animals has been a concern for many people, including me.

The Convener: I have a couple of questions. Mark Ruskell made a critical point about procedures—indeed, his and Maureen Macmillan's amendments provide a useful opportunity to debate such issues. To what extent is there a substantive difference between a contingency plan and a protocol? I feel that we are perhaps using a contingency plan as a way of addressing some of the issues that Mark Ruskell identified, but some of the procedural issues are critical.

During our stage 1 consideration of the bill, one could sense that people were still dissatisfied with their exclusion from the process during the most recent outbreak of foot-and-mouth disease. There is perhaps a need to give people a sense of the process of consultation that will be involved in a contingency plan and the extent to which that will differ from what has happened in the past.

We need to clarify the next bit of the process and what happens when people have been consulted but are unhappy with the result. That is different from not being consulted at all. How will that be resolved in the contingency plan? For example, given the range of different interests and the different animals and circumstances involved, what will happen when disagreements arise in consulting stakeholders? Will such matters be simply for ministers' judgment? Will ministers publish the reasoning for their judgments on the contingency plans? It would be helpful if people knew that they will be consulted and what will happen to their comments thereafter. That stage in the process will be absolutely crucial if the new set of arrangements is to be successful. I will be interested to hear the minister's answer on those points.

I am grateful to Mark Ruskell and Maureen Macmillan for their detailed suggestions, which allow us to test what should be on the face of the bill and make a judgment about how the contingency plans are meant to work in practice.

11:00

Rhona Brankin: I will deal first with amendments 13 and 17. The danger with the disease control slaughter protocol that is envisaged in amendment 13 is that such a protocol could be too restrictive in what could be a fast-moving disease situation in which the

causative agent may be capable of rapid mutation into a strain that could have different epidemiological characteristics. A protocol that was designed for the known behaviour of the disease agent could prove inadequate if such a mutation occurred. In the time that was required to amend the protocol, the disease could take hold, which could mean that more onerous control measures were required than would be the case if a more flexible approach were taken.

I emphasise that the Executive has a well-developed contingency planning framework for national and local levels. Those contingency plans set out the decision-making process and are subject to regular testing and review. Updated plans are published and widely distributed. Each Executive contingency plan includes a section that is entitled "Disease Response Assumptions", in which the available disease-control options are discussed and the policy on the use of each control method is made clear. That fulfils not only the purpose of the slaughter and vaccination protocols that amendments 13 and 17 suggest, but a wider function of informing plan users of other options that may be used, if the disease situation warrants them. The key point is that a wide range of stakeholders is consulted. Consultation took place recently because of the threat of avian influenza.

As enabling legislation, the bill is intended to cover a wide range of diseases. The options for disease control of several major diseases are set out in detail in the relevant European directives and in the domestic legislation that transposes them. The Executive has a policy of full public consultation on directives and on draft legislation. Therefore, the powers that are available to the Scottish ministers to fight diseases and the controls on the exercise of those powers are clear. In those circumstances, the extra control processes in the amendments are unnecessary.

We are not convinced that the same arguments apply to our undertaking to review amendment 14, which we have discussed. I agree with the principles behind amendments 13 and 17, which appear to seek greater transparency in the use of the slaughter power, and we will consider that in the context of amendment 14. That will help to ensure the appropriate use of the power. I ask the committee to reject amendments 13 and 17.

Nora Radcliffe asked how contingency plans relate to English protocols. The English protocols set out in detail the factors that will be taken into consideration. As I have said, we believe that doing that would reduce our flexibility. The contingency plans set out how the disease-control response will operate and the factors that will guide our considerations, so the factors in the English protocols are in the contingency plans.

The contingency plans include a statement on disease-control options, which fulfils the basic role of a protocol. That explains the available options and leaves us able to respond to a situation.

Elaine Smith mentioned companion animals. Some species—including livestock species—that are kept as pets can be susceptible to exotic notifiable diseases. We must be able to make a full veterinary risk assessment and a biosecurity assessment before deciding whether to exempt an animal from slaughter.

The slaughter of certain animals protocol that amendment 5 proposes would contain a high level of substantive and procedural detail, which would minimise the scope for flexibility in dealing with what are often complex exotic disease situations. As I explained, the Executive has a policy of full public consultation on European directives and on draft legislation. Therefore, the powers that are available to Scottish ministers to fight diseases and the controls on the exercise of those powers are clear. Those controls include derogations to exempt from slaughter certain categories of animals

“provided that such derogations do not endanger disease control”—

that is, there should be exemplary biosecurity. With respect to avian influenza, for example, derogations could apply to

“a non-commercial holding, circus, zoo, pet bird shop, wildlife park, a fenced area where other captive birds are kept for scientific purposes or purposes related to the conservation of endangered species or officially registered rare breeds of other captive birds ... provided that such derogations do not endanger disease control.”

In those circumstances, the extra control process that would be added as a result of agreeing to amendment 5 is unnecessary.

Given that background and policy, I emphasise that animals or birds can be exempted from possible slaughter only on the basis of a veterinary risk assessment. Much depends on the nature of the disease and the virus in question as well as on biosecurity and other measures such as movement tracings being in place not only at the outset of the outbreak, but some time before it. For the reasons that I have given, amendment 5 is unnecessary and I ask members, therefore, to resist it.

I turn to amendments 11 and 11A. I have already explained our views on disease control. The proposed protocol would contain a high level of substantive and procedural detail, which would minimise the scope for flexibility in dealing with what are often complex exotic disease situations. The time that is taken to change, consult on and publish a revised protocol could be detrimental to

effective disease control. Therefore, I urge members to resist amendments 11 and 11A.

Maureen Macmillan: I am grateful for the minister's comments on my amendments. I did not expect to get much comfort and so I am pleased that she said that their spirit will be considered to find out whether it can somehow be incorporated into the legislation. As a result, I seek to withdraw amendment 13.

Amendment 13, by agreement, withdrawn.

Maureen Macmillan: I will not move amendment 14 because of what the minister said about considering lodging an amendment at stage 3.

Amendment 14 not moved.

The Convener: Amendment 1, in the name of Mark Ruskell, has been debated with amendment 4.

Mr Ruskell: I still think that there is a fundamental area of disagreement and that stakeholders, especially those in rural Scotland, will have substantial concerns. Therefore, I will press amendment 1.

Amendment 1 moved—[Mr Mark Ruskell].

The Convener: The question is, that amendment 1 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)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

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

Amendment 1 disagreed to.

Mr Ruskell: Amendment 2 is consequential to amendment 1, so I will not move it.

Amendment 2 not moved.

The Convener: Amendment 2A falls because amendment 2 has not been moved.

Amendment 5 moved—[Mr Mark Ruskell].

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)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

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

Amendment 5 disagreed to.

The Convener: Group 3 is on compensation. Amendment 106, in the name of Ted Brocklebank, is grouped with amendments 107 to 111, 123 and 124.

Mr Brocklebank: As the convener said, this group of amendments deals with compensation. Compensation provisions should reflect a fair valuation of the animal immediately before the outbreak of the disease, slaughter or seizure, as the case may be. The bill should state that valuations will be made on an individual basis and should not be based on tabular or average values.

As the bill is drafted, when ministers slaughter animals, they will have unlimited discretion over the amount of compensation. However, if a live animal is seized under section 7 of the bill, compensation will be its value at that time. There seems to be no rationale for that. If ministers are prepared to compensate on seizing an animal, they should be prepared to compensate in the same way on slaughtering it. To give such wide discretion on valuing compensation for slaughtered animals means that there is no certainty that farmers will be compensated anything other than a nominal sum.

I move amendment 106.

The Convener: Does anyone have any comments?

Members: No.

The Convener: Therefore, I invite the minister to speak to the group.

Rhona Brankin: I will speak to amendments 106 to 111 inclusive, and amendments 123 and 124.

The bill provides that Scottish ministers must pay compensation for animals or poultry, as defined in section 87 of the 1981 act, that are required to be slaughtered in a disease outbreak. As introduced, the bill allows for the rate to be set out in secondary legislation and for ministers, in

setting the rate, to make different provision for different cases and circumstances.

Specifying that the rate must be the market value of the animal on the day before it is slaughtered would restrict ministers to paying that value and nothing else at a time when the market for the animals in question might have plummeted or be non-existent. Under the bill as introduced, ministers would have considerably more flexibility and could look at the normal market value, take an average price over a set period, or provide for compensation at restocking prices, depending on all the circumstances at the time of the outbreak.

Such circumstances can vary greatly depending on the disease, whether it is known or entirely new, and the species affected. For example, a new disease could mean that a wide range of creatures was susceptible. For those reasons, it would be irresponsible of ministers and for the taxpayer, and possibly unduly harsh on the owners of the animals concerned, to agree to the amendments.

In practice, it is also unrealistic to guarantee that, in a fast-spreading disease outbreak, each animal's market value will be assessed on the basis of its value the day before its slaughter. For example, in a poultry disease scenario, a simplified and acceptable compensation formula is the best approach, and so-called table or book valuations are a long-accepted practice.

For all those reasons, I urge the committee to reject amendments 106 to 111.

I turn to amendments 123 and 124. The purpose of section 7 is to provide ministers with powers to seize and dispose of anything that it appears to them might be capable of carrying or transmitting certain diseases. The relevant diseases are those in respect of which a power of slaughter is exercisable under or by virtue of: new section 16B of the 1981 act, relating to slaughter of treated animals; new part 2B, relating to transmissible spongiform encephalopathies; or new schedule 3A, relating to slaughter for preventing the spread of disease. They include, for example, foot-and-mouth disease and diseases of poultry.

Section 7 obliges ministers to pay compensation for those things seized by them that are not carcasses of animals or things produced by or obtained from those animals. Examples could include infected implements or equipment and animal housing or bedding. Section 7 also allows ministers, at their discretion, to pay compensation for seized carcasses or other things obtained from or produced by animals. Examples could include milk or dung. The effect of amendments 123 and 124 would be to require that, where compensation was payable, the amount of compensation would be based on an individual valuation of every item,

to determine its market value immediately before it was seized. That would introduce a heavy and impractical administrative burden that would be costly and time consuming to all concerned.

I urge the committee to reject amendments 123 and 124.

11:15

The Convener: I invite Ted Brocklebank to wind up and say whether he wishes—

Richard Lochhead: I wanted to respond to the minister.

The Convener: I asked members earlier whether they wanted to speak in the debate.

Richard Lochhead: How can we respond to the minister if we are not allowed to speak?

The Convener: You can ask the minister questions, as others have done, or make points to her during the open debate.

Richard Lochhead: I wanted to be supportive of the minister.

The Convener: I saw everybody clock it when I asked the question. I can invite other members to speak at my discretion, but the convention is to let the minister in towards the end of the debate so that she can pick up on all the points raised by colleagues. However, we will get it quietly on the record that you are supportive of the minister—it is not often that I hear that.

Mr Brocklebank: I take on board some of the minister's points, but I believe that the only equitable way to compensate for loss of animals, whether they are seized or slaughtered, is to pay a market value ascertained from individual valuations rather than average or tabular figures. That has two benefits: first, it maintains confidence in the sector and enables farmers to restock quickly once the disease is eradicated; and secondly, it encourages farmers to be co-operative with the state veterinary service and others. That will combine to ensure that any disease outbreak is dealt with quickly and efficiently.

I want to ask the minister a question about the slaughter of fish in fish farms. Are fish farms covered by the legislation? What compensation might be payable in such circumstances?

The Convener: You are meant to have the last word on the amendments. However, I have discretion to invite the minister to say something briefly about the fish farm issue. It might help us.

Rhona Brankin: Disease control in aquaculture is administered under separate legislation, in recognition of the different approach required to deal with disease in an aquatic environment. However, Mr Brocklebank will be aware that, in

advance of the proposed legislation on aquaculture, we have consulted on a discretionary power to provide compensation for the effects of fish disease. That will be introduced in the aquaculture and fisheries bill in June.

The Convener: Ted Brocklebank has the last word. Does he wish to press or withdraw amendment 106?

Mr Brocklebank: I will press the amendment.

The Convener: The question is, that amendment 106 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)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

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

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 106 disagreed to.

Amendment 107 moved—[Mr Ted Brocklebank].

The Convener: The question is, that amendment 107 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)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

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

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 107 disagreed to.

Amendment 108 moved—[Mr Ted Brocklebank].

The Convener: The question is, that amendment 108 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)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

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

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 108 disagreed to.

The Convener: Group 4 is on subordinate legislation procedure. Amendment 15, in the name of the minister, is grouped with amendments 16, 19, 20, 27, 45, 68, 71 and 72.

Rhona Brankin: The amendments are all technical amendments dealing with the procedure for subordinate legislation. They reflect commitments made in the light of the Subordinate Legislation Committee's report on the bill.

Amendments 15 and 19 amend sections 1 and 2 of the bill respectively. Amendment 15 provides that an order made under paragraph 8(1) of new schedule 3A to the Animal Health Act 1981, prescribing the amount of compensation for animals slaughtered under any of the powers of slaughter in that schedule, is subject to class 5 negative procedure, rather than class 7 procedure. Under class 7 procedure, an instrument does not require to be laid before the Parliament. The Subordinate Legislation Committee raised the issue during its consideration of the bill, and we have responded positively.

A similar situation arises with amendment 19, which provides that an order made under new section 16B(6) of the 1981 act, prescribing the amount of compensation for animals slaughtered under the powers of slaughter in section 16B(4), is subject to class 5 negative procedure rather than class 7 procedure.

I will provide background on amendments 16, 20, 27 and 45. When the Subordinate Legislation Committee considered the bill, it recommended that the maximum level of parliamentary scrutiny be applied in each instance where emergency powers are sought. It recommended that the emergency 28-day affirmative procedure should be used only where necessary and with an explanation to the Parliament.

Accordingly, amendment 16 is drafted to require that an emergency order to specify diseases of

animals and describe animals that may be slaughtered under paragraph 6 of new schedule 3A must include a description of the emergency giving rise to the need to use the emergency procedure for the making of the order.

Amendment 20 is drafted to require that an order under new section 16B(2), specifying diseases of animals to which the slaughter power in section 16B(4) shall apply, must include details of the circumstances giving rise to the need for such an order.

Amendment 27 is drafted to require that an emergency biosecurity order must include a description of the circumstances giving rise to the need to use the emergency procedure for the making of the order.

Amendment 45 is drafted to require that an order modifying the list of specified diseases in inserted schedule 2B to the 1981 act must also state the reasons for making such an order to modify the list.

Amendments 68, 71 and 72 relate to section 10, which inserts new part 2B on TSEs—as the committee knows, those are transmissible spongiform encephalopathies—into the 1981 act. Amendments 68 and 71 are technical amendments. The purpose of amendment 72 is to provide that any compensation orders that are made under new section 36V(1) of the 1981 act will be subject to annulment in pursuance of a resolution of the Scottish Parliament. That meets the concerns of the Subordinate Legislation Committee, which it expressed in its report on the bill.

Section 91 of the 1981 act provides that order-making powers are exercisable by statutory instrument. Amendment 68 ensures that the regulation-making powers in new section 36O(1) of the 1981 act are also exercisable by statutory instrument. Amendment 71 is consequential to amendment 68. Given the combined terms of section 91 of the 1981 act and our revision of new section 36O, the provisions in amendment 68 result in new section 36W(1) being superfluous; it is therefore removed by amendment 71.

Amendment 72 removes the exception for compensation orders from new section 36W(2) of the 1981 act. As introduced, new section 36W(2) would provide that all statutory instruments that were made under the new part 2B powers, except compensation orders, were subject to the negative procedure. As the compensation orders would have been made under class 7 procedure, they would not have been required to be laid before the Parliament. The removal of the exception provides that all statutory instruments, including compensation orders, are subject to the class 5 negative procedure. I ask the committee to agree

to amendments 15, 16, 19, 20, 27, 45, 68, 71 and 72.

I move amendment 15.

The Convener: Thank you, minister. I invite colleagues to comment on the amendments in the group.

Nora Radcliffe: I welcome the amendments. Their provisions expand considerably the degree of scrutiny that the Parliament will have over the actions that will be taken under this legislation. That is to be welcomed.

The Convener: As there are no further comments, I think that there is no need for you to wind up, minister.

Amendment 15 agreed to.

Amendment 16 moved—[Rhona Brankin]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Slaughter of treated animals

Amendment 10 moved—[Mr Mark Ruskell].

The Convener: The question is, that amendment 10 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)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

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

Amendment 10 disagreed to.

Amendment 17 not moved.

The Convener: Group 5 is on the extent of powers. Amendment 18, in the name of the minister, is grouped with amendments 74, 75 and 77.

Rhona Brankin: The amendments relate to sections 2 and 11 of the bill. They are technical amendments to clarify the extent of powers. They clarify the powers of entry that are exercisable in connection with the slaughter powers that are specified in new section 62G(2) of the 1981 act; the extent of the purposes for which powers of entry may be authorised under warrant; and the

extent of the powers that are ancillary to the powers of slaughter.

Amendment 18 is consequential on amendment 75. It will remove new section 16B(5) of the 1981 act, as amendment 75 renders that provision superfluous. Amendment 74 will amend new section 62G(2) of the 1981 act to clarify that the power of entry conferred by that section extends not just to entry for the purposes of ascertaining whether a power of slaughter should be exercised and to carry out the slaughter, but entry to take other action in connection with the slaughter.

11:30

Amendment 75 will insert a new subsection clarifying that the slaughter powers in new section 62G(2) of the 1981 act extend not just to the slaughter of the animals, but to any related action to that end, such as rounding animals up. Amendment 77 will make a provision, similar to that which amendment 74 makes, in relation to the power of entry authorised under a warrant. The power of entry that may be authorised will extend to a power to ascertain whether any of the relevant powers should be exercised and a power of entry to exercise any of the relevant powers or take other action in connection with the exercise of the power of slaughter. I ask the committee to agree to amendments 18, 74, 75 and 77.

I move amendment 18.

Amendment 18 agreed to.

Amendment 6 not moved.

Amendment 109 moved—[Mr Ted Brocklebank].

The Convener: The question is, that amendment 109 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)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

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

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 109 disagreed to.

Amendment 110 moved—[Mr Ted Brocklebank].

The Convener: The question is, that amendment 110 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)
Lochhead, Richard (North East Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

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

Amendment 110 disagreed to.

Amendment 111 moved—[Mr Ted Brocklebank].

The Convener: The question is, that amendment 111 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)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

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

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 111 disagreed to.

Amendments 19 and 20 moved—[Rhona Brankin]—and agreed to.

Section 2, as amended, agreed to.

After section 2

Amendment 11 not moved.

The Convener: Amendment 11A is pre-empted.

Before section 3

The Convener: Group 6 is on the national contingency plan. Amendment 7 is the only amendment in the group.

Mr Ruskell: I will summarise where I think we are up to in this debate. The situation in England

and Wales is that there is statutory provision for a national contingency plan and for slaughter protocols, with detail in the legislation. I think that the minister has confirmed this morning that that is not the approach in Scotland. The approach here is to focus on the national contingency plan, and there are elements contained in that contingency planning process of what would be called a protocol in England and Wales. My concern remains that we do not have a light legislative framework in the bill for a national contingency plan to reflect the distinctive Scottish approach. I think that we need one.

Amendment 7 reflects the provisions relating to England and Wales and the need for certain elements of a national contingency plan. I will run through the provisions. There must be a document—a plan—which must be prepared first as a draft. That draft must go to representative persons and organisations, and there must be a process for amending it. The plan must also be laid before the Parliament and published in a way that ministers think fit. Those are all important, necessary statutory requirements.

Members might say that ministers are addressing the matter anyway—the avian influenza contingency plan has just been published—and that they are continually talking to stakeholders about it. I question whether that is a perfect process, however. We know that one of the biggest of the stakeholder groups that will be affected by avian influenza and by the difficult decisions that need to be taken to tackle it is the outdoor organic poultry industry. Unfortunately, that industry was not consulted in the production of the avian influenza contingency plan. I think that that is a problem. If provisions such as those in amendment 7 were included in the bill, it would ensure that those very important stakeholders were required under statute to be consulted about the production of the plans.

I therefore propose a light legislative framework. If the minister feels that it is inappropriate or that it could be improved upon, I will be prepared to withdraw the amendment on the basis that the minister will lodge an appropriate amendment at stage 3, reflecting what needs to be included in a Scottish contingency plan for the various diseases and outlining a statutory process for arriving at that.

I move amendment 7.

Nora Radcliffe: I ask the minister, when she responds, to outline what the statutory requirements are for the contingency planning that the Executive does. We have been told about the statutory underpinning of it, but where is the statutory requirement for contingency plans? It would be useful to know about that.

The Convener: I am interested in the scope of the consultation under the current arrangements. I was not previously aware of what Mark Ruskell has just said, although I was aware of the point that he made about the restrictions and about who had actively been consulted. The issue concerns the publicity around contingency planning. The issues concerning owners of free-range or organic flocks have been covered extensively in the press. I wonder if we could use an example to see how the process would work and to ascertain how people's interests are safeguarded. It would be useful to test that when we are debating whether to amend the detail of the bill as Mark Ruskell suggests we do.

Rhona Brankin: There is no need for the bill to contain a requirement to have a national contingency plan for dealing with the diseases specified in section 32E of the Animal Health Act 1981. Our belief is that Scottish industry stakeholders and others who are closely associated with them prefer an approach that is focused according to disease risk, as has been adopted in the Executive's respective existing contingency plans.

We have already consulted on and published two contingency plans, one for foot-and-mouth disease and the other for avian influenza and Newcastle disease. There is an EU requirement to produce such plans under the relevant directives. Animal disease contingency planning is, and must be, an on-going process, governed by veterinary risk assessment and addressed at the regular stakeholder meetings that my officials hold with relevant interest groups.

For example, the foot-and-mouth disease contingency plan has been revised regularly since 2002 and an updated version of the avian influenza and Newcastle disease contingency plan—which was first issued in October 2005—was issued in February 2006, to reflect changes in our understanding. A further revision is planned shortly to reflect recent Commission decisions. We work closely with poultry keepers on the issue and will continue to do so. As a result of a request from them, specific additional information has been provided in the form of a leaflet for poultry keepers in Scotland. As I said, the Executive's contingency plans include a section entitled "Disease Response Assumptions", in which the available disease control options are discussed and the policy on the use of each control method is made clear. That has the wider function of informing users of other options that may be used if the disease situation warrants that.

In short, the Executive already has in place a requirement for contingency plans, as sought in amendment 7. However, that requirement is more risk-based and flexible, to support rapid and

effective eradication of disease. I re-emphasise that consultation with stakeholders is on-going. In our consultation with stakeholders on avian influenza, organic producers were included in discussions. However, we are conscious that we need to develop links further. The Foot-and-Mouth Disease Order 1983 includes a legal requirement for a plan to exist and similar provision will feature in the forthcoming avian influenza legislation. I reassure the committee that we are absolutely committed to stakeholder consultation—we have engaged in it and will continue to do so.

Mr Ruskell: I hear what the minister says about the EU requirement for a plan, but there is no due process in statute about how the plan is to be arrived at. During stage 1, the minister said that the checks and balances in the process were through judicial review. Unless we have due process in legislation that gives the ministers and their officials protection, any decisions that were taken during a disease outbreak would be wide open to judicial review. People from the organic sector whose livelihoods were threatened by a decision could argue that the ministers' actions were not reasonable and that they had not been consulted. At least if the ministers had to stick to a process, they would be able to check off the actions that had been taken and prove that due process, as laid out in statute, had been followed. It is important that we have a process.

In England and Wales, there are slaughter protocols and a process for national contingency plans, but in Scots law, we have nothing except a statutory requirement for some sort of plan to be produced at some point. That is not robust or helpful enough for the ministers or stakeholders. I intend to press amendment 7.

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)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

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

Amendment 7 disagreed to.

Section 3—Biosecurity codes

11:45

The Convener: Group 7 is on biosecurity codes and outdoor access. Amendment 112, in the name of Ted Brocklebank, is grouped with amendments 114, 115, 117 and 118.

Mr Brocklebank: The only guidance on biosecurity that exists for members of the public who exercise their right of responsible access over farmland consists of sporadic, piecemeal statements that are dotted throughout the Scottish outdoor access code. Given the importance of biosecurity and the potential for members of the public to put it at risk, it is vital to have a separate code of practice on the matter. Such a code would be simply for guidance and would not carry any criminal sanctions. However, it would serve to raise the profile of good biosecurity among members of the public, who might not be aware of its importance to animal welfare and to the livelihood of the farmers over whose land they enjoy responsible access.

I move amendment 112.

Maureen Macmillan: I ask the minister to explain the role that the access fora will play in relation to biosecurity. I believe that it is a matter for them.

Mr Ruskell: I wanted to ask a similar question. Also, I understand that exemptions can be made under the Land Reform (Scotland) Act 2003—for example, a limited right of access can be introduced if there is an outbreak of disease. I would be interested to hear the minister's views on how such exemptions would work.

The Convener: I agree. There is an issue of transparency for people who use the countryside. If there was a significant outbreak of disease, it would be important to make sure that there was proper public information. The key thing is that that information should not confuse people. The publicity about the Scottish outdoor access code has been superb. It has covered a lot of the country and people know what their responsibilities are. Amendment 112 is helpful because it has provoked a debate about how things would work in practice. I am keen to hear the minister's comments on how things would work in practice so that, during an outbreak, people would know their responsibilities in relation to access.

Rhona Brankin: Section 3 provides a power to allow ministers, by order, to issue a biosecurity code that sets out biosecurity measures to prevent diseases of animals. In section 3, "animals" is defined as any kind of mammal except man. The code may also set out measures to prevent the

spread of causative agents of diseases of animals among animals, birds or amphibians or between them and humans. Section 3 also gives ministers a power to make emergency biosecurity orders in the event of an outbreak of certain specified diseases or other emergencies that relate to a disease of animals—for example, the outbreak of a currently unknown disease.

As has been mentioned, the Scottish outdoor access code, which was approved by the Parliament and published last year by Scottish Natural Heritage, provides advice both to the public and to land managers on how people can exercise access rights responsibly. Paragraph 3.33 of the code states:

"If there is an outbreak of a contagious notifiable disease, such as foot and mouth, more detailed advice will be provided by the Scottish Executive."

In that instance, access forums would play an important role by disseminating information and advice from the Scottish Executive. The forums would be important because they would help to make the public aware of where they could continue to take responsible access.

The Executive's relevant disease contingency plans contain detailed information for access takers that is based on appropriate veterinary advice. During a disease outbreak, it will be that information source, rather than a specific outdoor access biosecurity code, that will be the basis for responsible action by all people, whether they be members of the public or land managers. Of course, the detailed information in the contingency plans, which is based on veterinary advice, has to be disseminated.

In the context of amendment 115, it is important to emphasise that subsection (8) of new section 6C of the 1981 act provides that the biosecurity code can apply only to those who own, keep or are in charge of any creature of a kind to which the code relates. I give an undertaking that, when drafting and consulting on biosecurity codes to be made under section 3, the Executive will include organisations that are involved in access rights to ensure that, as far as is possible, guidance is provided on where the responsibilities of animal keepers stop with regard to exercising a right of responsible access to land.

I remind the committee that, in 2002, the Executive published an animal health and biosecurity code that contains general advice for all users of the countryside.

For those reasons, I recommend that the committee reject amendments 112, 114, 115, 117 and 118.

The Convener: Would Ted Brocklebank like to press or withdraw amendment 112?

Mr Brocklebank: I would like to press it. I wonder whether the minister is aware that there are only three references to biosecurity in the Scottish outdoor access code. That backs up my view that the references are fairly sporadic and not specific enough. I do not believe that the code brings together in one place all the advice relating to biosecurity or provides detailed advice on how the public should behave in the event of an outbreak. Those deficiencies in the Scottish outdoor access code support the argument for the establishment of a separate biosecurity code. Therefore, I will press the amendment.

The Convener: The question is, that amendment 112 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)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

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

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

Amendment 112 disagreed to.

The Convener: Group 8 concerns general biosecurity codes. Amendment 113, in the name of Richard Lochhead, is grouped with amendments 21 to 24, 116, 25 and 26.

Richard Lochhead: I will speak to amendment 113 and listen to the minister addressing the bulk of the other amendments. I do not have a fixed view on amendment 116, in the name of Ted Brocklebank, so I will listen with interest to what he has to say in that regard.

We all recognise the important role that biosecurity codes will play in preventing the spread of diseases. I know that there is widespread support for the codes not only in the committee but among the various stakeholders, particularly the farmers, whom this proposal concerns directly.

The purpose of the codes is to prevent the "spread of disease". That means that it is self-explanatory that the disease must therefore be capable of spreading in the first place. For that reason, I wish to qualify the reference to the purpose of biosecurity code measures, which is to prevent the spread of diseases of animals.

Amendment 113 would specify that the diseases in question are infectious or contagious diseases of animals.

The discovery of a new disease that is not infectious or contagious could lead to hysteria in the media and the public domain, which, in turn, could lead the Government to impose new biosecurity codes. That would lead to an additional burden for people who keep animals—particularly farmers—yet the use of a biosecurity code would be disproportionate in the circumstance that I described, as the disease would not be infectious or contagious.

We all want biosecurity codes to be in place, but they must be appropriate and proportionate. Such codes should be introduced for the purpose expressed in the bill, which is to prevent the spread of disease. That means that the diseases covered should be infectious or contagious. The purpose of the amendment is to ensure that that is made plain in the bill. The amendment qualifies the diseases to which we are referring, which I hope would set a standard for the diseases to which we are referring in the rest of the bill.

I move amendment 113.

Rhona Brankin: I will speak first to amendment 113. Section 3 provides a power by order to allow ministers to issue biosecurity codes. The codes would deal with a range of scenarios in respect of particular diseases of animals—as defined by section 87 of the 1981 act—and groups or species of animals, birds or amphibians. Ministers also have the power to make emergency biosecurity orders in the event of an outbreak of certain specified diseases or some other emergency related to a disease of animals, such as an outbreak of a currently unknown disease.

Amendment 113 would prevent the code from dealing with the prevention of diseases that are not contagious or infectious. The Executive's position is that codes should be allowed to include measures to prevent all diseases. I therefore ask the committee to reject amendment 113.

Amendment 21 is drafted to ensure that biosecurity codes can include measures to prevent the interspecies spread of causative agents of diseases of animals, for example from animal to bird. Amendment 21 inserts a new subparagraph into paragraph (b) of section (2) of proposed new section 6C of the 1981 act.

Amendment 22 clarifies that biosecurity codes may include measures for preventing the spread of such agents from animals, birds or amphibians to humans.

Amendment 25 is a consequential amendment that follows from changes that result from amendment 22, which removes the reference to

animals in subparagraph (ii) of paragraph (b) of subsection (2) of proposed new section 6C.

I ask the committee to agree to amendments 21, 22 and 25.

Amendments 23 and 24 relate to the tests and samples grouping that we are still to discuss. They make technical changes to proposed new section 6C, on biosecurity codes, to address current and future developments in the detection of the causative agents of disease. Amendments 23 and 24 clarify that the reference to causative agents in the provision is to causative agents of disease. I ask the committee to agree to amendments 23 and 24.

The bill provides a statutory defence of “lawful authority or excuse” to an offence of failure to comply with a relevant requirement of a code. Amendment 116 would alter that to require that the accused has a “reasonable excuse” for failing to comply. The phrase “lawful authority or excuse” has been used in connection with defences under part 1 of the bill because the terminology is consistent with that used in other provisions of the 1981 act. Although the amendment would not alter the substance of the defence, it could cast doubt on the extent of the defence in other provisions of the 1981 act. The inclusion of the phrase “reasonable excuse” in this instance could imply that in other provisions the excuse does not require to be a reasonable one and that any excuse would suffice. For those reasons, I recommend that the committee resists amendment 116.

Amendment 26 is a technical amendment that clarifies that the emergencies to which the biosecurity code contained in the emergency order may relate are the outbreak of a specified disease or some other emergency relating to the disease of animals as set out in sections 6D(1)(a) and 6D(1)(b) of the 1981 act. The addition of the word “other” makes it clear that an outbreak of disease is considered to be an emergency. I therefore ask the committee to agree to amendment 26.

12:00

The Convener: Ted Brocklebank will speak to amendment 116 and to the other amendments in this group.

Mr Brocklebank: As the bill stands, a farmer will commit a criminal offence if he fails to comply with certain provisions of the biosecurity code unless he has “lawful authority or excuse”. In our view, that is drawn too narrowly. Using the words “reasonable excuse” would provide consistency with the wording in other parts of the bill—for example, the words are used in section 26(2). Lawful authority would clearly be a reasonable excuse.

A failure to record the names of visitors is suggested as an offence in the memorandum on delegated powers. The farmer would not have any lawful authority for failing to record names, but it would surely be unreasonable to expect him to record the names of all visitors who access his land—including people such as horse riders or ramblers—as opposed to recording the names of people who access his working yard. There is surely a reasonable excuse for a farmer failing to record names if he could not reasonably have been aware that people were there, or if those people did not report their presence to him.

The Convener: Would anyone else like to contribute to the discussion on this group of amendments?

Members: No.

The Convener: Minister, do you wish to respond to any of Ted Brocklebank’s points, or do you wish to rest on your earlier comments?

Rhona Brankin: I will rest on my earlier comments.

The Convener: In that case, I ask Richard Lochhead to wind up the discussion and either press or withdraw amendment 113.

Richard Lochhead: I draw the committee’s attention to page 5 of the bill where, just above section 3, is the heading “Prevention of the spread of disease”. Section 3 should not apply to diseases that are not capable of spreading; it should apply only to contagious and infectious diseases. The section gives new powers to the minister, so Parliament and the committee will want to be careful that we give appropriate powers in appropriate circumstances.

Amendment 113 seeks simply to qualify section 3 so that it refers only to the diseases that we are talking about—infectious and contagious diseases. The minister said that the section should apply to all diseases, but that is not the heading that is used. The heading is “Prevention of the spread of disease”, so the section should apply only to diseases that are capable of spreading. We should not give the minister powers over and above those that are required.

I know that farmers and a number of vets support amendment 113, and that is why I was keen to lodge it. I will press amendment 113.

The Convener: The question is, that amendment 113 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)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

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

Amendment 113 disagreed to.

Amendments 21 to 24 moved—[Rhona Brankin]—and agreed to.

Amendment 114 moved—[Mr Ted Brocklebank].

The Convener: The question is, that amendment 114 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)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

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

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

Amendment 114 disagreed to.

Amendment 115 moved—[Mr Ted Brocklebank].

The Convener: The question is, that amendment 115 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)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

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

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

Amendment 115 disagreed to.

Amendment 116 moved—[Mr Ted Brocklebank].

The Convener: The question is, that amendment 116 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)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Smith, Elaine (Coatbridge and Chryston) (Lab)

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 116 disagreed to.

Amendment 25 moved—[Rhona Brankin]—and agreed to.

Amendment 117 moved—[Mr Ted Brocklebank].

The Convener: The question is, that amendment 117 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)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

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

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

Amendment 117 disagreed to.

Amendment 118 moved—[Mr Ted Brocklebank].

The Convener: The question is, that amendment 118 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)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

Ruskell, Mr Mark (Mid Scotland and Fife)

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

Amendment 118 disagreed to.

Amendments 26 and 27 moved—[Rhona Brankin]—and agreed to.

Section 3, as amended, agreed to.

The Convener: I thank colleagues for that. It felt like a marathon slot but, given the nature of the debate, it was important to tease out the issues properly.

Although, on the basis of today's debates, the committee may view this as overambitious, the target that I am setting for next week's meeting is the end of the bill. If we do not finish our consideration of the bill by the end of next week's meeting, we will have one more week in which to finish it. There is still quite a lot of work to do. All amendments to the remainder of the bill should be lodged with the clerks by 12 noon on Friday 17 March. It is important for the Executive, committee members and anyone else who may want a member to move an amendment to ensure that all amendments are lodged by 12 noon on Friday. I hope that everyone is clear about that.

I thank the deputy minister and her officials. We still have two agenda items to get through, but I take it that my colleagues will be grateful if I suspend the meeting briefly before we move on to agenda item 5.

12:08

Meeting suspended.

12:18

On resuming—

Subordinate Legislation

Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (Draft)

The Convener: Agenda item 5 is subordinate legislation. We have a draft order to consider under the affirmative resolution procedure. The Parliament must approve the draft order before it can be made formally. A motion in the name of Ross Finnie invites the committee to recommend to the Parliament that the draft order be approved. The Deputy Minister for Environment and Rural Development will move the motion; I therefore welcome her and her officials back.

The Subordinate Legislation Committee has considered the draft order and has made no comments. Before we debate the motion, our practice is to have a discussion to clarify any purely technical matters or to allow explanation of detail while the officials are at the table. Once the motion has been moved and we begin the formal debate, the officials will not be able to participate.

I invite the deputy minister to introduce her officials and to make any opening remarks that she wants to make. Colleagues will then be able to ask for factual clarification or raise questions about the draft order.

Rhona Brankin: With me are Judith Morrison and Susan Shaw, from the Scottish Executive.

I am pleased to present the committee with the draft Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006. The draft order is made under sections 36(3) and 37 of the Water Environment and Water Services (Scotland) Act 2003.

As members know, the 2003 act was passed by the Parliament to provide a framework for the protection of the water environment in Scotland and to conform to the requirements of the European Union water framework directive, which came into force in December 2000 and established a framework for European Community action in water policy. The directive requires EU member states to put in place systems for the protection and improvement of the status of all their natural water resources, including rivers, lochs, estuaries and coastal waters as well as underground water, with the aim of achieving good status for most waters by the deadline of 2015.

The 2003 act places Scotland in an excellent position to achieve our environmental objectives while safeguarding the social and economic needs of a wide range of water users. During the past

year, we made significant progress in that regard. The Water Environment (Controlled Activities) (Scotland) Regulations 2005—the CAR regime—will take effect on 1 April and will provide a single, consistent framework for the control of all activities that pose a risk to the water environment. For the first time, we will have flexible tools to ensure that a sustainable balance is struck between the protection of water resources and the use of those resources. Last week, we laid before the Parliament the Water Environment and Water Services (Scotland) Act 2003 (Designation of Responsible Authorities and Functions) Order 2006, which is a key step in ensuring that public bodies consider the water environment when they carry out their daily duties. I look forward to having an opportunity to update the committee on wider aspects of the implementation programme as part of our annual report to the Parliament on the matter, which will be produced next month.

It might be helpful if I described the context for the draft Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006. The draft order is part of a range of measures to ensure that existing legislation is updated to take account of the 2003 act and the CAR regime. The CAR regime for the protection of the water environment will supersede disparate controls on pollution prevention and abstraction, such as area-specific controls on irrigation. Therefore, we have carried out a full review, to avoid duplication of regulation. In assessing the steps that would be required, we had the principles of the better regulation agenda firmly in mind.

The draft order is the first product of the review process that I described. It addresses the principal amendments to primary legislation that are required to reflect and integrate the CAR regime. Provisions that are superseded by the new regime are repealed. For example, the provisions in part II of the Control of Pollution Act 1974 that regulate pollution of waters and discharges, including the requirement for consent for discharges of effluent from the Scottish Environment Protection Agency, will be repealed because such activity will be regulated under the CAR regime. If legislation is repealed, we update references in other pieces of legislation. Savings provisions are also made, to preserve certain activities under the pre-CAR system of controls over the water environment or to preserve cross-references to terms used in the enactments that are being repealed, where appropriate. One such example is the preservation of the definition of “tidal waters” in the Rivers (Prevention of Pollution) (Scotland) Act 1951, for the purposes of the Roads (Scotland) Act 1984, because a change in the definition would alter the nature and extent of provisions in the 1984 act and is not required for the purposes of the water framework directive.

Two further statutory instruments, which achieve key aims, were laid before the Parliament last week. The first instrument repeals the Groundwater Regulations 1998, which established the regulatory tools to prevent the pollution of groundwater and implemented the requirements of the EU groundwater directive. From 1 April, such matters will fall within the holistic approach of the CAR regime. The instrument also tidies up various references as a result of changes that we propose in the draft Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006.

The second of the two instruments that were laid last week amends the Waste Management Licensing Regulations 1994 to take account of the 2003 act and the CAR regime. The amendments reduce the regulatory burden and ensure parity of treatment for all water users.

In addition, an order that is being laid before the Westminster Parliament under section 104 of the Scotland Act 1998 makes provision for the integration of the CAR regime with certain reserved matters. The purpose of the order is to ensure that duplication of regulation will be prevented and that legislation that relates to different aspects of the same operation will be consistent and coherent.

The draft Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 is part of a range of measures that we are taking to prevent duplication of regulation and to ensure an integrated and transparent approach to regulation of all activities that impact on the water environment.

The Convener: As members have no comments or questions on technical matters, we will move on to the debate on the motion.

Motion moved,

That the Environment and Rural Development Committee recommends that the draft Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 be approved.—[Rhona Brankin.]

Richard Lochhead: I welcome the draft order, which I am happy to support. I will raise a related matter.

The minister will be aware that Scotland's scientific expertise plays a significant role in examining the relationship of our water environment with wildlife and the environment generally. Will she comment on the disappointing news that the council of the Natural Environment Research Council has announced that, as part of its restructuring of the centre for ecology and hydrology, it will close its Banchory centre in north-east Scotland? That is bad news for the staff first and foremost and for the community in Banchory and the north-east, but it is a big blow for Scotland, given that we should be building and not dismantling our expertise in climate change.

I know that the minister opposed the proposal in the past, but now that NERC has made its decision, will she take action to resist its implementation? As I said, closing the Banchory centre would be a blow for Scotland as well as the staff. We would lose much expertise. A cross-party delegation of MSPs visited the centre just a few weeks ago and was highly impressed by its invaluable work, which relies on its location—it is not just that the centre exists but that it exists where it exists. Will she continue to make representations to NERC and have the decision reversed?

Nora Radcliffe: I endorse what Richard Lochhead said. NERC's decision is regrettable because of the quality of the science at Banchory and because that science is on many occasions site specific.

The potential loss of a sequence of data is also regrettable. Especially now that we are concerned about the effects of climate change, long sequences of data collection are extremely important to establish trends and understand changes.

The closure of the centre is to be deplored. If there is any way to reverse the decision or to find a way to continue the work that is done at the Banchory centre, it should be pursued.

Mr Brocklebank: I associate myself with those remarks. In a previous existence, I worked closely with that scientific establishment. I have every reason to support what Richard Lochhead and Nora Radcliffe said and I support strongly the campaign by Dr Adam Watson, who is a previous distinguished director of that organisation, and his colleagues. Even at this late stage, I hope that the Executive might see reason and change its decision.

I will discuss another aspect of Aberdeenshire—the River Dee. I totally support the draft order and the intention to protect and improve the ecological status of Scotland's water environment while protecting social and economic needs, but sometimes those matters directly contradict each other. I refer to the distressing scenes of salmon that could not get up the Dee two summers ago because, it was alleged, of a combination of factors: climatic forces, and too much water being taken out of the Dee for the expanding communities around it. Does the minister know about that and can she guarantee that it will not happen again?

12:30

The Convener: It is entirely appropriate that members agree to the motion on the draft order, which is important to the raft of policies that need to be in place to protect the water environment.

Given that, last year, we had an extensive debate on the matter that included local members who were concerned about the process, I am pleased to see that things are moving on to the next stage. I strongly support the motion.

Like others, I was concerned by NERC's proposals for the centre for ecology and hydrology and for climate change work; I understand that they also have major implications for the staff not only in Banchory but in Midlothian. Their jobs are not guaranteed. Along with many others, I have made representations to NERC, because I think that responsibility lies with it rather than with the Scottish Executive. In response to Ted Brocklebank, I should point that this was not a Scottish Executive decision. I realise that the point is slightly tangential to the discussion but it is relevant because, as Nora Radcliffe has pointed out, we are talking about the research that underpins the Executive's work on such statutory instruments. That is my tuppence-worth on the matter.

As members have no other comments, I invite the deputy minister to wind up the debate and respond to members' comments.

Rhona Brankin: First, I should point out to Mr Brocklebank that the centre for ecology and hydrology is funded not by the Executive but by NERC, which is not under the Executive's control.

At the request of ministers, Environment and Rural Affairs Department officials contacted NERC to express some concern about what will happen to the research that we sometimes commission from the centre for ecology and hydrology and about discussions on the proposed collaboration between the centre and the Rowatt institute at University of Aberdeen. We recently received a formal letter, stating NERC's intentions, but ministers have not responded to that letter yet. I believe that we have already provided the committee with a copy of our original response; if we have not, I am more than happy to do so. I will also keep the committee up to date with any subsequent responses that we receive. Like everyone else, we have only just heard the news and I have not yet made any response. As I have said, I will keep the committee informed.

In response to Ted Brocklebank, I am concerned by the news that salmon are failing to get up the Dee, and I hope that the CAR regime will deal with such matters. However, if it helps, I will seek further information on the matter and pass it on to him.

On the motion itself, the Water Environment and Water Services (Scotland) Act 2003 and the new CAR regime for protecting the water environment supersede previous disparate controls on pollution prevention and abstraction. The draft order is one

of a series of instruments that, together, will ensure that we regulate in a simpler, more consistent way activities that pose a risk to our water environment. Given that the CAR regime will take full effect on 1 April, it is right that we now remove the controls that it will supersede. The proposed measures will prevent duplication of regulation and ensure an integrated approach, which I believe will be of clear benefit to all water users.

I commend the motion to the committee.

Motion agreed to.

That the Environment and Rural Development Committee recommends that the draft Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 be approved.

The Convener: I thank the deputy minister and her officials for attending the meeting. I welcome her comment that she is happy to pass on to the committee her representations to NERC, which will be circulated to members in due course. Some of us have already received responses from the minister as a result of representations both to her and to NERC.

12:34

Meeting continued in private until 12:50.

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