

# **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE**

Tuesday 14 December 2004

Session 2

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## LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

29<sup>th</sup> Meeting 2004, Session 2

### CONVENER

\*Bristow Muldoon (Livingston) (Lab)

### DEPUTY CONVENER

\*Bruce Crawford (Mid Scotland and Fife) (SNP)

### COMMITTEE MEMBERS

\*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

\*Dr Sylvia Jackson (Stirling) (Lab)

\*Michael McMahon (Hamilton North and Bellshill) (Lab)

\*Paul Martin (Glasgow Springburn) (Lab)

\*David Mundell (South of Scotland) (Con)

\*Tommy Sheridan (Glasgow) (SSP)

\*Iain Smith (North East Fife) (LD)

### COMMITTEE SUBSTITUTES

Bill Butler (Glasgow Anniesland) (Lab)

Colin Fox (Lothians) (SSP)

Mr Bruce McFee (West of Scotland) (SNP)

Mr Brian Monteith (Mid Scotland and Fife) (Con)

John Farquhar Munro (Ross, Skye and Inverness West) (LD)

\*attended

### THE FOLLOWING ALSO ATTENDED:

Robert Brown (Glasgow) (LD)

### THE FOLLOWING GAVE EVIDENCE:

Jess Barrow (Age Concern Scotland)

Jacqueline Conlan (Scottish Executive Finance and Central Services Department)

Tony Cox (BT Wholesale)

Domhnall Dods (UK Competitive Telecommunications Association)

Jim Ferguson (Age Concern Scotland)

Rodney Grubb (National Joint Utilities Group)

Ewan Jones (Mobility and Access Committee for Scotland)

Ken McKenna (Scottish Executive Finance and Central Services Department)

Roderick McLeod (Mobility and Access Committee for Scotland)

Nancy Saunders (UK Competitive Telecommunications Association)

Tavish Scott (Deputy Minister for Finance and Public Service Reform)

Frank Stewart (National Joint Utilities Group)

John Taylor (National Joint Utilities Group)

Stephanie Veitch (Scottish Youth Parliament)

Ross Watson (Scottish Youth Parliament)

### CLERK TO THE COMMITTEE

Eugene Windsor

### SENIOR ASSISTANT CLERK

Alastair Macfie

### ASSISTANT CLERK

Euan Donald

### LOCATION

Committee Room 4



## Scottish Parliament

### Local Government and Transport Committee

*Tuesday 14 December 2004*

[THE CONVENER *opened the meeting at 14:10*]

### Transport (Scotland) Bill: Stage 1

**The Convener (Bristow Muldoon):** We have a heavy agenda today: five panels will give us evidence on the Transport (Scotland) Bill, which will be followed by consideration of the Gambling Bill and of how we will deal with a Sewel motion on the Railways Bill. I encourage all members to focus their questions and contributions so that we can make progress through the agenda.

With respect to our first two panels of witnesses in particular, I pass on apologies from three committee members, who must leave for other parliamentary business for part of the meeting, which is unfortunate but unavoidable: three of us must give evidence to the Parliamentary Bureau on matters that Parliament will consider in due course. To the witnesses who will be giving evidence then, I apologise on behalf of myself, Tommy Sheridan and Sylvia Jackson.

I welcome our first panel, comprising Roderick McLeod and Ewan Jones, who are members of the Mobility and Access Committee for Scotland. We look forward to your evidence on the Transport (Scotland) Bill. Before giving you the opportunity to make your introductory remarks, I hand over to my colleague, Bruce Crawford, who is deputy convener of the committee, so that we do not interrupt proceedings later, when I have to leave.

**The Deputy Convener (Bruce Crawford):** Good afternoon. Do you wish to say anything on the Transport (Scotland) Bill to begin with, or would you prefer to go straight to questions? It is up to you.

**Ewan Jones (Mobility and Access Committee for Scotland):** We will take a minute or two to make comments first.

**The Deputy Convener:** On you go.

**Ewan Jones:** We will make a few scene-setting points then hand over to the committee and try to answer any questions.

The Mobility and Access Committee for Scotland welcomes the opportunity to give evidence to the Local Government and Transport Committee on the proposals in the Transport (Scotland) Bill to introduce a national concessionary fares scheme

and to establish statutory regional transport partnerships.

Margaret Hickish and Trevor Meadows, who are members of MACS, gave evidence to the committee previously, during its inquiry into the effectiveness of the Transport (Scotland) Act 2001. Our position statement, which was submitted then, questioned the focus of concessionary fares. Our statement highlighted the range of issues that must be addressed if transport is to be accessible to all disabled people.

There is no point in providing a concession, either through a national scheme or a local scheme, if people cannot access the services. We believe that a national concessionary fares scheme should bring about a consistent approach, which would be welcomed by all passengers and would avoid the problems that are currently experienced by people who travel from one local authority area to another. Experience also shows that such schemes are likely to draw the wrong people on to public transport, in so far as they draw relatively affluent older people out of cars and on to public transport outside the rush hour, which does not lead to improvement in social inclusion. As the current group of mobile concessionary pass holders becomes less mobile—it is recognised that disability increases with age—they will find their concession to be less of a bonus if they are not able to use public transport.

We believe that the Executive's policy goal should be to achieve inclusive transport, and that the key issues that must be addressed if that goal is to be realised are access, information, customer service and affordability. All those factors must be addressed to provide inclusive transport for all the people of Scotland.

On the proposals for statutory regional partnerships, our view is that a founding principle of each partnership should be to embrace inclusive transport. We recommended that the regional transport partnerships take account of the forthcoming MACS publication on guidance on developing transport strategies, "Transport Strategies: Planning for inclusion". It is due for publication very soon, and has already been copied to staff in the Scottish Executive. It will be circulated to local authorities by the Executive, along with guidance on development of local transport strategies.

The structure of the regional transport partnerships could have a significant impact on their ability to deliver improvements in benefits to disabled people. We are concerned that each partnership should take proper account of the needs of disabled people in its area. For that reason, we consider that disabled people should

be represented among the external members of each regional transport partnership.

We are considering the specific questions in the Executive's consultation and will be pleased to give more information on our likely responses.

**The Deputy Convener:** Thank you very much.

**Michael McMahon (Hamilton North and Bellshill) (Lab):** There have, during our scrutiny of the bill, been a lot of discussions so far about the shape that regional transport partnerships will take. We have discussed the balance between democratically elected representatives and other people. How could an organisation such as MACS participate in an RTP? Do you have concerns about your ability to do so?

14:15

**Ewan Jones:** We looked at the potential make-up of regional transport partnerships and considered the number of council representatives and external representatives. We feel that it might be useful for certain organisations to be represented on RTPs, but we also believe that that might become difficult because of the number of people who are likely to be involved. That would impact on the size of the partnerships because a great number of competing organisations would want to be represented. We believe that it is more important to ensure that nominations for external members of partnerships are not made only by local authorities, but that certain organisations such as MACS, Inclusion Scotland and the Community Transport Association are able to nominate people. Although members of the partnerships would be there as individuals because of their personal expertise, they would come from a broad range of sectors to ensure the widest possible breadth of expertise.

**Michael McMahon:** Your written evidence states:

"The structure of the RTP could have a significant impact on its ability to deliver improvements, which would benefit disabled people."

What benefits do you think RTPs could bring to disabled people? Could they deliver those benefits if there is no representation from the disabled community on those bodies?

**Ewan Jones:** The RTPs would have more of a struggle to do that if there was no such representation on them. We realise that a lot of different groups and organisations will want to bring their influence and expertise to bear.

On the structure of the partnerships, the board itself—the formal partnership—will have to be relatively small in order to contain an appropriate number of people to take business forward. We feel that a mechanism is needed—perhaps a

stakeholders forum or something similar—so that other organisations and people who have different views can feed into the process. Accessibility and inclusion must be at the heart of the partnerships right from the off.

**Michael McMahon:** Has the bill enough scope to allow RTPs to connect in some way with the type of forum that you suggest? If the RTPs do not have a duty in statute or in regulation to consider representations from groups such as MACS, is there scope in the bill that gives you confidence that they will engage with you and deliver transport in a way that will benefit the people whom you represent?

**Ewan Jones:** There is scope to ensure that the level of representation of disabled people can be addressed properly, although we would be more comfortable that that would definitely happen if there were a statutory duty. There is, however, also potential for some of the arrangements and structures that would benefit disabled people and provide accessible transport in Scotland to be missed.

**Michael McMahon:** So there is room for hope but not for real confidence.

**Ewan Jones:** There is room for more than hope. I would not say that there is no room for confidence, but transport is an issue that a number of people on MACS and the organisations that are involved in MACS have worked on for many years at local and national level. There are still big gaps in accessibility in public transport, in planning and strategies for public transport and in how concessionary fares schemes are set up. We are pushing for as much accessibility as possible to be built in at the start.

**Roderick McLeod (Mobility and Access Committee for Scotland):** I will add a little more. Our view of the arrangement is that there will be three tiers: transport Scotland, the strategic regional partnerships and the local authorities. We hope that the role of the first two will be to establish overall principles in provision of transport rather than to decide where a bus stop will go, which is the role of the local authority.

When local authorities get together with outsiders in an RTP, they will have the opportunity to consider the bigger picture. RTPs will obviously have a role in relation to joined-upness, which we are concerned about for all passengers. In the present system, the fact that journeys do not always take place within a local authority boundary poses a difficulty. We hope that the creation of RTPs will have a positive impact, but I echo my colleague's point that one of the key roles of the RTPs should be to improve opportunities for people to travel in their region. If the RTPs do that, social inclusion will be built in on the ground.

Existing council transport divisions are already loaded down under the great burden of all the practical and down-to-earth things that they have to do. It would be great to have a body that could sit back and examine a whole area to identify whether any group of passengers has a serious problem.

**The Deputy Convener:** Given that that is your view, would MACS support having a statutory right to be consulted on drawing up of RTPs, as a way of guaranteeing that people from the disabled community have a chance to influence how the strategies turn out?

**Roderick McLeod:** That would be essential. At the moment, we have the opportunity to look at the strategies that the existing voluntary bodies produce. We write to them to ask whether we can look at their strategies, but we have no statutory right to do so. They have all been willing to share their strategies with us and a number have offered to talk to us about them so that we can learn from each other about difficulties in developing such documents. There might be a need for statutory provision, although I hope that we would be consulted without having to resort to statute.

**Paul Martin (Glasgow Springburn) (Lab):** In your opening statement, you mentioned that although implementation of a concessionary fares scheme was all very well, accessibility should be a crucial element of such a scheme. Should the Executive legislate to ensure that public transport is accessible?

**Ewan Jones:** Yes, the Executive will have to legislate in certain areas. There are two elements to access. There is the physical accessibility of bus and train services and so on, but other questions of accessibility that need to be considered include whether services are close enough to allow people to access them and whether people can access the information that they require to be confident about organising and booking transport.

In work in which I have been involved in the past, much consideration has been given to the mechanics of concessionary fares schemes and to whether they work. In my view, that has concentrated on assessing whether such schemes work for the people who use them rather than on asking how we get to the people who do not use them. That theme has come through in the work that I have been doing in Scotland for the past 10 to 20 years. I still come into regular contact with community transport groups that organise services for people who are entitled to concessionary fares, but have no services to access. They end up paying to use community transport, for example, when they could use a free scheme if there were services on which they could use their concessionary passes.

Certain types of service automatically attract access to concessionary fares schemes, whereas others do not. One way of making progress on that would be for the Scottish Parliament to legislate to extend the types of service that can automatically access concessionary fares. Different types of community transport, such as dial-a-ride and car schemes, which provide transport for many people who cannot access existing schemes for geographical or financial reasons, could be included.

**Paul Martin:** So you think that there is a strong case for some form of legislation—if not catch-all legislation, legislation that is specific to special services.

**Ewan Jones:** The legislation should be broader than that. Rather than be specific to individual services, it should be about how different service providers could access concessionary fares schemes and be reimbursed for carrying passengers who have concessionary passes.

**Roderick McLeod:** Further to that, the idea that we can legislate to say that everything should be accessible is fine, but we have to be realistic. We work in a world in which many transport services are provided by commercial operators. We have great difficulty convincing coach operators that they should ensure that every coach has a space on it for a wheelchair user. Wheelchair users are an important part of the disabled community; their needs are quite difficult to meet because of the nature of the vehicles that we have had in the past. There is not a huge number of wheelchair users—although everyone assumes that there is because every disabled sign shows a picture of a person in a wheelchair—but they are important. The coach operators say, “There’s no way we’re doing that. We’ll have to take out four seats, put in expensive equipment and park beside a 3m-wide kerb to enable that equipment to work properly. This isn’t going to work.”

Legislation is fine, but we must consider the commercial realities and the amount of money that the Scottish Executive has at its disposal to spend. We must decide on the best ways to spend the money. In that regard, a national concessionary fares scheme is definitely not at the top of our list, because what really prevents social inclusion are practical things such as people’s inability to get to the shops, the bingo, the kirk and the places where their friends are. Those places might be only three or four streets away but, if you cannot walk more than 50m—which is not uncommon for people over the age of 80—going that far is difficult if there is no bus service or if the nearest bus stop is half a mile away.

However cheap fares are, if the nearest bus stop is half a mile away, you will need a taxi to get to

that bus stop, which changes hugely the expense involved in the process.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** I want to raise the issue of the national concessionary fares scheme as it may apply to ferry transport. As we know, the plan is that the scheme will be for senior citizens and people who have disabilities and that it will apply to off-peak bus travel. However, the view has been put by some witnesses and committee members that senior citizens and people who have disabilities who live on islands will have to catch ferries in order to benefit from the scheme. Some of us hope that, when the announcement is made about the details of the scheme—which is expected to be this week or next week—we will be told that the scheme will be extended to ferries, whether the concession is that the journey will have no charge, be half price or whatever. Does MACS share that view?

**Roderick McLeod:** I should declare an interest, in that I am an Orkney Islands councillor and therefore have a particular view on this matter.

Orkney has taken the opportunity to add to the statutory bus concession scheme a limited number of free trips to the Orkney mainland for our elderly and disabled people who live on the other islands. However, there is no such scheme for getting from the mainland of Orkney to Scotland by NorthLink Orkney and Shetland Ferries Ltd, for example. I agree entirely that the concessionary scheme should be available on the means of transport to which people have access—we do not yet have buses that go across the Pentland firth. Although none of my fellow MACS members lives on an island, I think that they would support me in this regard.

**The Deputy Convener:** Your submission says:

“There will always be a place for concessionary fares”.

Obviously, the bill allows for different management schemes to be employed for national concessionary fares schemes. What shape of management scheme would you prefer and why?

**Ewan Jones:** That is not an issue that MACS is desperately worried about. The key points for us are accessibility of the schemes in terms of how they are managed, how reimbursements are applied and the relationships between transport providers and local authorities, regional transport partnerships or whoever will administer a national scheme. From our point of view, the most important thing is that services become more accessible and that a wider range of services—I mentioned community transport and Roddy McLeod mentioned ferries—are available for people to use as part of a national concessionary fares scheme.

**The Deputy Convener:** Would you like to make any further points? Perhaps you expected to be asked about areas that you have not had a chance to talk about.

14:30

**Roderick McLeod:** One of the issues that concerns MACS is the quality of information and research on which the committee, your colleagues in Parliament and ministers make decisions. We are concerned about some of the research that was done early in the introduction of the concessionary fares scheme. For example, the Scottish Executive surveyed people who were using buses and people who were waiting at bus stops. I am sure that that research is valuable and that it told us something, but it does not tell us about people who are not using public transport concessionary fares.

The Scottish Executive is just about to embark on a new research exercise, supported by MACS. We have been involved with the Executive in specifying the details of the research, which will examine barriers to travel. We know a bit about that, but we do not know it all. We know that affordability is one of the barriers, but for local travel affordability is not the big issue—the big issues are practical matters.

If I may make a practical suggestion, members should all rent a granny or a granddad. Maybe not—some of you may already be grannies or granddads, but I will not delve too deeply into that. However, you need to rent one, preferably one over the age of 75 or 80, and take them on a trip by public transport. Try it a few times and see how you get on. If every member of Parliament, every councillor and every senior member of the Scottish Executive did that, we would have a huge improvement fairly rapidly.

**The Deputy Convener:** We are about to hear from witnesses from Age Concern Scotland, who I am sure will support that view. Thank you for your useful evidence.

I wish a good afternoon to Jess Barrow and Jim Ferguson. I hope that you are well; I have not seen you for a long time. Thank you for coming to give evidence on the Transport (Scotland) Bill. Do you have any opening comments or would you like to go straight to questions?

**Jess Barrow (Age Concern Scotland):** I have a few comments to make. First, we would echo much of what MACS said. Many of the issues that it raised are pertinent to older people as well, so please forgive me if I cover the same ground, but some of the points are worth repeating.

I have with me Jim Ferguson, who is secretary of Perth and Kinross pensioners forum, which



receives an awful lot of inquiries on transport and transport issues. He will be able to bring in some valuable practical experience.

Age Concern Scotland is a national voluntary organisation that works throughout Scotland. We are an umbrella body, but we have local staff and local member groups, of which Perth and Kinross pensioners forum is one. We also have a growing individual membership and we run the Scottish helpline for older people, which is funded by the Scottish Executive. Those are all sources from which we get information on the issues that we raise.

Transport is among the key issues. As far as the helpline is concerned, the problem is often transport to access health services or to visit people in care homes. Calls tend not to be about public transport or concessionary travel, although they are issues. Inquiries often come from people who can no longer use public transport for various reasons. Transport is consistently a key issue for older people, along with income, housing, health and care. However, it is important to remember that transport is integral to all those other issues, and that it relates closely to all social issues that affect older people.

Free local bus travel has revolutionised life for older people in Scotland—it is enormously popular. We differ slightly from MACS in that we whole-heartedly endorse it. For those who can use it, it has been fantastic and everybody who uses it really appreciates it. The scheme's introduction has sent out a powerful and positive message to older people in Scotland and has led to more active involvement in society and less isolation. The committee will have seen the research that shows that there has been a massive increase in the number of journeys made for hospital visits, which is quite important.

However, we need a national scheme. We need to tackle the issues, the confusion and the difficulties that have arisen. Those have been caused by various different things, but much of the confusion has been around cross-scheme travel. People have had really awkward experiences of having to make two separate journeys to go from one place to another, with one journey being part of the free scheme, after which the passenger must get off the bus and wait for the next bus, on which they must pay for the journey. There has been much confusion about that and we are now beginning to see bus operators act more pragmatically, although they are bending the rules slightly in that the rules say that someone who makes a cross-boundary journey must pay for the full journey. People did not understand why they could not just pay for the bit that was in the area where they were not entitled to free travel.

Among the other issues that came up and which should be addressed is that of people needing to book ahead to travel and having to pay for that. That affects mainly Scottish Citylink Coaches Ltd journeys because they tend to be long-distance journeys for which booking ahead is often necessary. If someone makes a day trip and there is only one bus back from where they go, they want to be certain that they will get a seat on that bus, so they want to be able to book. Initially people could not book such journeys, but after consultation of organisations including Age Concern Scotland, Citylink imposed a booking fee of £2.50 to cover the costs of booking—although I believe that it has reduced that fee to £1. Even so, people quite rightly felt that that was not free bus travel. We must address that and enable people to be sure that they can get a seat on return bus journeys.

One of the other difficulties with operation of the scheme is very much down to drivers' attitudes. Older people are frequently asked to wait until so-called fare-paying passengers are on the bus first, which is utterly unacceptable. It does not appear to be the policy of the bus companies, but it is happening in practice. Jim Ferguson's experience will back that up.

**Jim Ferguson (Age Concern Scotland):** We find that, in some ways, the devil is in the detail. Bus drivers seem to look on older people who get concessionary travel as a lesser breed. Once the paying passengers are on the bus, the drivers let on the people who are getting concessionary travel. That is unacceptable and we hope that the bus companies will try to stamp it out. We are not saying that it is the policy of the bus companies; it is not, but it certainly happens.

**Jess Barrow:** The other thing that we have to consider—in this I agree completely with what MACS said—is that all aspects of transport are important whether it is public, private or community transport. Older people rely on a variety of different methods of transport, as we all do.

To echo what MACS said, the three key issues are availability, accessibility and affordability. Availability of services is critical—free bus travel is of no use whatever if there are no services. That is true whether people are isolated in rural areas or in urban areas. Out of the window we can see Dumbiedykes, which is poorly served by public transport and has one of the highest proportions of older people compared with similar estates in Edinburgh. We have to acknowledge that there is isolation in urban areas as well as in rural areas. In some suburban and semi-urban areas there might be very poor access to bus services. We have to make sure that the services exist for people to use.

Another issue that has come to Age Concern Scotland over the years is the difficulty that occurs when services are changed. Suddenly, out of the blue, a bus company will drop a lifeline route. It is entirely understandable that a bus company will drop a route that is not profitable, but that can have a devastating effect on the people who depend on that bus to enable them to go shopping, to visit friends, to go to the doctor or to engage in any way with the outside world. Those issues are critical.

We also need to remember that sustainability of communities and of independent living for older people can depend greatly on public transport services, yet those services can be easily withdrawn and changed.

Often, when older car users cannot use their cars any more, they find that they have to move house because they need to live close to public transport services. If a service comes under threat or change—I am talking about even a slight deviation to a route—the result can be devastating to those who depend on it. Car travel is important, particularly in rural areas, where older people are very dependent on it. Rural areas have a higher proportion of older people who are likely to use cars to get around.

I am aware that the next issue that I want to raise is probably outwith the scope of the bill. However, as it is of critical importance, I will mention it to the committee. I refer to the price of petrol in rural areas, which is an issue that significant numbers of our members have raised. They are concerned about the cost of petrol, as any slight increase in the cost of transport—whether public or private—can have a significant impact on a pensioner who is struggling to get by on a pension.

I have mentioned transport that is needed to access health services and to visit hospitals, care homes and so forth. That issue is particularly difficult for older people. We must remember that the need to access health services increases at a stage in life when ability to access public and private transport decreases and when transport becomes increasingly difficult to use. It is the time of life when someone is more likely to need to visit a loved one—a family member or whoever—in a care home or hospital, or when they themselves might have health appointments. The issue is another of the important issues that significant numbers of our members have raised.

A lot of older people are involved in community activities throughout Scotland, whether in visiting day centres, attending lunch clubs and participating in bingo, tea dances or whatever. Transport is key to those services: it is of no use at all if it does not get people to their day centre, bingo hall or wherever. Many such services are

dependent on a local community transport scheme or on having a centre minibus that gets people to and from the places where they want to go. It is critical that the Local Government and Transport Committee consider the need for and the importance of such transport schemes.

I move on to address issues of accessibility. It is good to see the advance that has been made over recent years in low-floor buses. However, the improvement is not always welcomed by older people, as some find the buses more difficult to negotiate. The design can mean that it is not always easy for an older person to make their way to a seat. Not only is design an issue, poor driver training can mean that drivers move away from bus stops more quickly than they should. They do not realise that that can make things difficult for older people—indeed, people can be put off using buses; they can become frightened of using them. Driver training is critical.

Among the other issues that the MACS witnesses raised was information. Information, too, is vital to older people so that they can access accurate, up-to-date timetable information in a font size that they can read. It staggers me that bus timetables and other such information are usually produced in such a small type-face that people cannot read it. For example, I noticed that the display screens at Waverley station have changed. The type-face has shrunk and the screen has become terribly difficult to read. I cannot understand why transport providers do not address such critical issues.

**The Deputy Convener:** Thank you. We will move to questions from members. If, at the end of the session, Jim Ferguson has a point that he wants to raise, I will let him in at that point.

**Michael McMahon:** Does Age Concern feel that it will be able to make an input to the regional transport partnerships? Do you envisage any difficulties with the establishment of the RTPs that could impact adversely on Age Concern's ability to get the accessibility to and accountability of public transport that it seeks? I put a similar question to the first panel, whose members represented the disabled community.

**Jess Barrow:** That will depend very much on the RTPs' priorities and on the voices to which they listen. It is critical that the RTPs listen properly to passengers and potential passengers and that they take the wider view. Some kind of community involvement will be important. It is difficult to say which of the diverse representative organisations for older people the RTPs should listen to, but it is important that they listen to the voices of public transport users.

**Michael McMahon:** Will the bill create the regulatory environment in which that will happen?

14:45

**Jess Barrow:** I am not entirely sure. We will need to wait and see.

**Michael McMahon:** For example, do the existing transport bodies engage with users satisfactorily or must the bill improve on the current situation?

**Jess Barrow:** A significant improvement is required, as there is not enough consultation at the moment with older people who are users of public transport. Some bus companies are good at talking to organisations—for example, Citylink has recently talked to Jim Ferguson's organisation—but they are not as good as they should be in implementing some of our suggestions. Jim Ferguson might want to add to that.

**Michael McMahon:** I do not mean to put words in your mouth, but does the bill perhaps need to ensure that it improves on whatever level of communication exists at present?

**Jess Barrow:** Yes.

**Paul Martin:** The bill allows for a number of different management systems for the national concessionary fares scheme. Would you welcome the development of one scheme for all Scotland to replace the clutter of various schemes that run at the moment?

**Jess Barrow:** Yes, we certainly would. A great deal of confusion has been caused by the current variety of schemes because of the differences that exist between one scheme and another. We would welcome one national scheme that was the same throughout Scotland. It must be simple for people to understand and to use.

**Paul Martin:** Have you a particular idea in mind?

**Jess Barrow:** It would be great if the scheme had one standard bus pass that was the same across Scotland.

**Paul Martin:** It is as simple as that.

**Fergus Ewing:** As we all know, it has been announced that the concessionary fares scheme will apply to bus travel. Jess Barrow mentioned that the existence of the scheme will be of little benefit in areas where there are no bus services. Generally, although not exclusively, rural areas tend to fall into that category. Such areas tend to have train connections to the major population centres, such as Inverness and Aberdeen, which serve a rural hinterland. Should the scheme be extended to rail travel? Would it be an advantage to have a simple single national scheme that applied to all types of public transport? Would such a scheme be better than one that applies purely to bus travel? If so, would that justify the development of a concessionary scheme for all

forms of public transport that is not entirely free, rather than an entirely free concessionary scheme that applies only to buses?

**Jess Barrow:** That is a difficult question to answer. It would be wonderful if older people received free travel on all forms of public transport in Scotland, but I recognise that that might not necessarily be feasible. In certain areas, it is critical that people have access to the scheme. Where there are no bus services and the ferry is the only method of transport available, people should have access to the scheme.

The issue comes back to the question of the policy intention behind the concessionary travel scheme and whether that is to enable people to get out and about and to play a fuller part in society. That is the critical question that needs to be answered. Once we are clear about the policy intention, it will be easier to come up with solutions.

**Jim Ferguson:** There are some very rural areas within the boundaries of Perth and Kinross Council area. Many older people tell us that, unless they get reasonable travel facilities, they will need to move house. Once the car is taken away from them—and nowadays it is taken away; it is not given up lightly—they are even more isolated than they were before. We really need the rail or road transport facilities to be there.

**Fergus Ewing:** But you favour the scheme being extended to ferries in any event.

**Jess Barrow:** Yes.

**The Deputy Convener:** Can I just pick up on that last bit? I think I know what Fergus Ewing was trying to get at. If the scheme was extended so that there was one pass for ferries, trains and buses, and if there needed to be a compromise because of cost-envelope issues, would you prefer a concessionary scheme that meant that travel on the buses was not free but was—I am using an arbitrary figure—a quarter of the fare, which allowed everybody to travel by train for a quarter of the fare also? Would that be preferable to a scheme that provided free transport on the buses but no concession on the trains?

**Jess Barrow:** The principle of free bus travel has been adopted and has been widely welcomed by older people throughout Scotland. I do not think that it would be acceptable for the Executive to backtrack on that. Where there is no alternative, there ought to be free access to public transport—for example, free access to ferries. There are alternative bus routes to most of the train routes.

**The Deputy Convener:** Okay. That is quite clear. I think that, in conclusion, Jim Ferguson has a specific point to raise with us.

**Jim Ferguson:** Yes. It is a plea to the people who look after the bus and rail terminuses to provide older people with the facilities that they require at the terminuses. Some of the facilities are absolutely abysmal at present.

**The Deputy Convener:** How do you see that being addressed through the Transport (Scotland) Bill?

**Jim Ferguson:** Local authorities look after some of those areas. We need them to update the facilities that are provided.

**The Deputy Convener:** I do not think that we have any more questions. Thank you very much for your evidence. I hand the convenership back to Bristow Muldoon.

**The Convener:** Thanks very much for handling those two sessions, Bruce.

We move on to our third group of witnesses. I welcome three representatives from the Scottish Youth Parliament and one from Argyll and Bute youth forum. Ross Watson is the chair of the transport, environment and rural affairs committee of the Scottish Youth Parliament; Morven Neil is a member of the Scottish Youth Parliament; Stephanie Veitch is a member of the Scottish Youth Parliament; and Kevin Smith is a member of the Argyll and Bute youth forum. I invite Ross Watson to make some introductory remarks about the views of the Scottish Youth Parliament on the Transport (Scotland) Bill. After that, we will move on to questions.

**Ross Watson (Scottish Youth Parliament):** Thank you for giving us the opportunity to come here and speak to you guys. The transport, environment and rural affairs committee of the Scottish Youth Parliament has raised three main issues regarding transport, which we would like to discuss. The first is uniformity of reductions on ferry fares and, in some cases, the introduction of a concessionary fare for all young people aged between 16 and 25, regardless of whether they are in full-time education, through the use of the Young Scot card. The second is the cost and regularity of buses in rural areas. The third is free transport to school for all pupils.

Stephanie Veitch has compiled an excellent set of evidence to show that recommending concessionary fares on all ferries for all young people is an essential move for your committee to take. I hope that that information was sent to you prior to the meeting. There is no hard evidence to back up our play for cheaper, more regular bus services in rural areas; however, the fact that so few young people use the services is evidence enough. On free transport for all school pupils, all pupils are entitled to free education and that should include getting to school and back again. We believe that a blanket concessionary travel

scheme should be set up to cover all modes of public transport for young people aged between 14 and 25. The discount would be set at 30 per cent on production of a Young Scot card.

I ask Stephanie Veitch to say a few words about ferry travel.

**Stephanie Veitch (Scottish Youth Parliament):** A few months ago, we asked First Minister Jack McConnell how it can be that a Government-subsidised company such as Caledonian MacBrayne will not allow Young Scot or dialogue youth discounts for travel, even though those are Government-subsidised schemes. Before that, we had been confronting CalMac about getting an under-25s discount for years.

The aim of spending in the transport portfolio is:

“To promote economic growth, social inclusion and health and protection of our environment through a safe, integrated, effective and efficient transport system.”

If CalMac were to offer young people discounts, all those criteria could be met, so what does it have to lose?

**The Convener:** I thank Stephanie Veitch and Ross Watson for those introductory remarks.

**Michael McMahon:** I am not uninterested in the points that Stephanie Veitch and Ross Watson have made—other committee members will ask questions about those—but I am more interested in what they did not talk about: the regional transport partnerships. We have taken a lot of evidence on accessibility, which has led us to believe that concession schemes and similar issues must be addressed. One of the ways of doing that is through the regional transport partnerships. Will RTPs offer a way for young people to have their voices heard, so that the issues of concessions and availability that the witnesses are raising will be addressed?

**Ross Watson:** I have to confess that I do not know how regional transport partnerships operate.

**Michael McMahon:** They do not exist yet, and we are talking about how we can set them up. If you, as young people, are not being listened to, would a statutory body such as a regional transport partnership—something that brings local authorities and other agencies together to consider transport issues—be the type of forum in which you would have a voice?

**Ross Watson:** We would if we were given a voice. Young people are invited on to many such committees, but it is often a case of bringing in a token young person. If a young person were involved and making valid points that were taken on board, that would be a positive step forwards.

**Michael McMahon:** From your experience of talking to the bodies that currently run transport in Scotland, is your voice listened to?

**Ross Watson:** Not significantly.

**Michael McMahon:** I imagine, then, that your primary concern would be that whatever bodies are set up, whether regional transport partnerships or not, give you a voice. Are you confident that any such agency could give you the voice that you are looking for?

**Ross Watson:** If regional transport partnerships are a new scheme and start off with young people being part of them, that would have to be a good thing. If a young person is invited on to the board of an existing system because of comments that a young person is needed on it, the invitation is often regarded as a token gesture, but if they were part of the system from the start, it would work.

**Paul Martin:** Your CalMac ferry proposal is interesting. You said in your opening statement that it would promote economic growth, social inclusion, health and environmental protection. Will you go into the specifics of how it would promote economic growth, for example? That might speak for itself, but what do you envisage would be the specific economic boon of under-25s receiving discounted access to ferry journeys?

**Stephanie Veitch:** As I have written in our submission, it would make it cheaper for under-25s to come home from and return to university, thus maintaining and promoting the economic growth of the island communities.

**Paul Martin:** Would there be health benefits to the change? At the moment, some people will not use the ferry service as a result of there being no concessionary allowances. Is that your concern?

**Ross Watson:** The point about economic growth is that young people do not have a lot of disposable income to do things. Many young people would like to go to the islands, but the cost of taking ferries makes that difficult. The islands almost exclude themselves from sources of income from young people who want to visit the islands or who live on the islands and are trying to get back to them, because people will stay on the mainland.

**Paul Martin:** I would like to confirm what you are saying. Is the issue more about young people making their way to the islands than about those who live on the islands being able to go back and forward to the mainland?

**Stephanie Veitch:** Not necessarily, because the major health and education services for island communities are on the mainland.

**Paul Martin:** So the main issue is to do with health. You want to promote health, well-being

and social inclusion and you mainly want island communities to benefit. Ross Watson digressed a wee bit in talking about people on the mainland benefiting too.

**Ross Watson:** Yes.

**Paul Martin:** I have a final question. Is the issue not simply about the Government being involved in the subsidy, but about operators being more creative in assisting young people? Should companies that are involved in delivering transport be more creative in assisting young people and accepting that there is a market out there among young people?

15:00

**Ross Watson:** NorthLink gives 10 per cent discounts to young people in full-time education who are travelling to Orkney and 25 per cent discounts to students travelling to Shetland. On the point about the Government subsidising a feasibility study involving CalMac and NorthLink, CalMac's argument is that there is nothing to prove that a reduction in fares for young people will bring any business benefit to it. It has no interest in considering the matter. It would help if the Executive funded a study to examine the matter.

**Paul Martin:** Are you saying that big business should sit up and take notice of young people out there and the need to deliver a service to them?

**Ross Watson:** Yes.

**The Convener:** I understand that the Scottish Executive is proposing a concessionary scheme to young people in full-time education and not a concessionary scheme for all young people under 25, which you are arguing for in relation to CalMac. What would be the justification of giving a concessionary fare to a young person in their early 20s who is in a well-paid job, but requiring a person who is over 25 and in a less well-paid job to pay the full fare?

**Ross Watson:** That is a valid point. However, young people who have poorly paid jobs vastly outnumber those who have well-paid jobs, especially in the Highlands and Islands. The majority of young people with well-paid jobs are probably in the central belt and the cities.

**The Convener:** Would it be fairer to propose a concessionary fare for those who are in full-time education and for those whose income is below a certain level, as opposed to a blanket concession, irrespective of income level?

**Ross Watson:** But how would that proposal be enforced?

**The Convener:** The system could be applied in the same way as other means-tested systems are applied.

**Ross Watson:** We mentioned anyone under the age of 25. An easy way of applying the proposals to those people, regardless of whether they are rich or poor, would be through their having the Young Scot card.

**The Convener:** I have one more question about the proposals in your submission. It is suggested that there should be free bus travel to and from school for all young people in full-time education. Could not that militate against efforts to encourage people to get to and from school by healthier means? In respect of overall health benefits, it might be a better option for young people who live a mile or a mile and a bit away from school to walk to and from school rather than get a free bus service.

**Ross Watson:** That is an excellent point, but I lived 11 miles away from my school, as did the majority of people who went to that school. We are not discussing young people's health, which would be a separate discussion.

**The Convener:** Someone who lived 11 miles from their catchment school would be entitled to free travel to and from school, because the law stipulates that free travel should be provided for pupils who live further than a certain distance from their school. However, for perhaps thousands of young people who live relatively close to their school, walking to and from school might be a better option. The committee has heard in the past that a very small proportion of young people walk or cycle to school and a high proportion travel on a bus or other form of motorised transport. It might be better for society if we could rebalance that—there would be an impact on congestion as well as on health.

**Ross Watson:** That is an excellent point.

**Iain Smith (North East Fife) (LD):** In your opening statement you said that young people do not use the bus as much as perhaps they should. What are the main reasons for that? Affordability might be one reason, but are there other factors that impact on bus use?

**Ross Watson:** The frequency of buses is a problem. In my village, one bus per day goes north and one bus per day goes south, so it is just not practical to use the bus.

**Iain Smith:** I recognise the problem. I am from a rural community too and I think that there used to be a bus every two hours until 8 pm, when the service stopped running, so if we wanted to go out, we had to go early.

If the Executive were to put money into improving travel opportunities for young people,

should it invest in concessionary fares or in trying to increase the frequency of bus services in communities that do not have a regular bus service?

**Ross Watson:** That is an interesting question. I am not sure. Concessionary fares would benefit more young people throughout Scotland than would increasing the frequency of buses in rural areas, so that would be the way to go if the Executive wanted to help all young people in Scotland.

**Tommy Sheridan (Glasgow) (SSP):** I have a couple of short questions. Does the Scottish Youth Parliament have the capacity to ascertain whether the problems with bus use throughout the country are based on geography or on other matters, such as coolness? I suppose that some young people think that public transport is not cool. Are the Youth Parliament's resources too limited to carry out such a study?

**Ross Watson:** It would be possible for the Youth Parliament's transport, environment and rural affairs committee to run a survey of members of the Youth Parliament, which asked how they use public transport. We could do that quite easily; it would not be outwith our capabilities at all.

**Tommy Sheridan:** If you are able to do that, will you send the results to the Local Government and Transport Committee? When it asked young people in Dumfries about their use of buses, they gave a mixed response. They said that they used buses when they had to use them for school, but if they were going out at night to a nightclub or another facility, the bus was regarded as the very last option. The committee is concerned to make the bus the first rather than the last option.

Has your committee been involved with Glasgow City Council? A couple of years ago, the council conducted quite a widespread survey of young people, the results of which suggested that a lack of transport was one of the biggest problems in relation to the use of facilities in Glasgow. Could you liaise with the council to try to develop a strategy that ensures that facilities can be used? Glasgow is different from rural areas, but even in Glasgow people are sometimes isolated on housing schemes if there are no facilities on their doorstep.

**Ross Watson:** We can certainly consider that. Our committee covers transport, the environment and rural affairs and some 95 per cent of its members are from rural areas, but recently two or three members from Glasgow have joined the committee.

**Fergus Ewing:** I will ask about a slightly different matter. I know that you are in favour of the extension of the concessionary fares scheme to include ferry travel and broadly support a

concessionary scheme for young people, in particular for under-16s and for students, who already receive discounts. We all hope that students will have, and will take up, the opportunity to travel widely, particularly to Scotland's islands. If there is a clear, simple concessionary scheme that is extended to ferries and which applies to students—at 50 per cent of the cost, for example, or even for free—to what extent would that stimulate people of around your age to travel more and to travel where they would not previously have thought of travelling? Would a concessionary scheme of itself be a stimulus to younger people that would give them a chance to get out and about and see more of Scotland, particularly of our islands?

**Stephanie Veitch:** Of course it would. As a student myself, I know that times are hard with money. If you want to go and visit the islands, the cost of going to some of the further afield islands by ferry is outrageous. If you wanted to go and see different places in Scotland as part of your studies or even outwith your studies, a discount would certainly be an incentive to go. You would have more money to spend on the island if you did not have to pay so much getting there, and you would probably go to visit different places and see more of the island.

**Fergus Ewing:** I think that it was you who mentioned that members of the Scottish Youth Parliament have been lobbying CalMac for years to try to persuade it to adopt a more youth-friendly policy. Is that correct? If you are able to—if you have been involved or if you know what other people have been doing—can you describe what efforts have been made by members of the Scottish Youth Parliament to persuade CalMac to adopt a more friendly approach to concessionary youth travel?

**Stephanie Veitch:** The Scottish Youth Parliament and Argyll and Bute youth forum, of which I, like Kevin Smith, am a member, have both been involved in that. The youth forum and our development workers have been pushing CalMac to do that.

**Ross Watson:** The Scottish Youth Parliament has really stepped in at the last moment, has it not?

**Stephanie Veitch:** Yes.

**Fergus Ewing:** Well, you are ahead of the seniors' Parliament, because I do not think that we have stepped in at all. More power to your elbow.

**The Convener:** Those are all the questions that we have. I thank Kevin Smith, Ross Watson, Morven Neil and Stephanie Veitch for their evidence this afternoon.

Our next group of witnesses represents the national joint utilities group and will present further evidence on the Transport (Scotland) Bill. I understand that they will concentrate mainly on the road works aspects of the bill. I welcome Frank Stewart, who is the engineering build services manager for Thus plc and chairman of NJUG; John Taylor, who is the Government relations manager for National Grid Transco plc; and Rodney Grubb, who is representing Scottish and Southern Energy plc. I believe that Frank Stewart will make an opening statement on behalf of NJUG.

15:15

**Frank Stewart (National Joint Utilities Group):** Good afternoon and thank you for giving us the opportunity to address the committee.

The national joint utilities group represents gas, water, electricity and the telecommunications industry on matters relating to street and road works. We welcome the Scottish Parliament's resolve to reduce congestion on Scotland's roads. In fact, we would go further than that: we are happy to work with the Scottish Parliament, the Executive and local authorities to that end. Scotland's and the United Kingdom's roads do not only carry vehicles; they are the conduits that allow us to provide essential services to our customers throughout Scotland and the UK.

There are only three reasons why we excavate roads. The first is safety, the second is to maintain the security of supply and the third is to provide services to our customers. As I said, we welcome the Scottish Parliament's resolve to reduce congestion, but our main concern about the bill as written is that the cost to utility companies to provide essential services will increase considerably if all the proposals become law. The entire problem of congestion must be considered, not just one small aspect of it. A few years ago, the then Department for Transport, Local Government and the Regions commissioned a report—it may not have been published—which said that 65 per cent of congestion is caused by the sheer volume of traffic; 25 per cent is caused by road accidents and incidents; and 10 per cent is down to road and street works, half of which are attributable to utility companies and half to local authorities or roads authorities. We must consider the problem in its entirety, but the bill addresses the cause of only 5 per cent of congestion and that is a great concern for us. The main thrust of our argument is that we want a level playing field to be established.

**Michael McMahon:** In the evidence that we have taken so far, we have established that utility companies and the construction engineering sector are not responsible for the majority of

congestion problems. However, how could the bill be used to address those problems? The evidence has revealed concern that the bill appears to be skewed towards dealing with a small part of the problem. How can we remove that bias?

**Frank Stewart:** The bill provides an excellent opportunity to deal with a problem that affects us all—we all have to travel on the roads. The main step would be to establish a level playing field. The codes of practice that will be produced under the bill and those that have been produced under the New Roads and Street Works Act 1991 should apply to all organisations that excavate in Scotland's public roads. That would be one step.

I have no suggestions about how to deal with the major concern, which is the sheer volume of traffic. I am sure that most people who are present would agree that, as a motorist, if there is an opportunity to use a vehicle to go somewhere, one does so.

**Michael McMahon:** This will be a difficult question to answer, but if the problem is largely down to the volume of traffic, why does the perception exist that the utility companies are responsible for the majority of the problems?

**Frank Stewart:** I can answer that fairly simply. An Executive press release in January of this year stated that utility companies were responsible for 93 per cent of road works in Scotland. That is totally erroneous—they are probably responsible for 93 per cent of recorded road works, but utility companies have to record all their works on the Scottish road works register, whereas other bodies do not have to do so, which throws the situation out of kilter.

**Michael McMahon:** Do you believe that the debate was led down that road by "Scotland's Transport—The Regulation of Utility Company Roadworks: A Consultation"?

**Frank Stewart:** The press release was a forerunner to the consultation document.

**Rodney Grubb (National Joint Utilities Group):** I want to add to what Frank Stewart said. Figures on how much work is happening on the street are available from Susiephone Ltd, but the problem is that, on the whole, only the utilities give information to Susiephone. Perhaps the perception has built up because, although facts and figures can be recovered from a system, they cannot be obtained from local authorities, so there is nothing to back up how much work local authorities are doing. That does not help.

**Frank Stewart:** The perception is that all works are recorded by Susiephone, but I know of only one local authority—West Lothian Council—that records 100 per cent of its works. Some councils record none at all and the rest are somewhere

between the two, so the situation is pretty haphazard. Until the register records every road work in Scotland—every time a spade is put into the ground—we will not get the exact figures.

**Michael McMahon:** You are not asking for the bill to be amended so that it is not seen as a hammer to crack a nut. You would like whatever measures are introduced to address the utility companies' role to be extended to everyone who has the capacity to cause congestion through road works.

**Frank Stewart:** That is exactly what I am saying.

**Rodney Grubb:** Someone asked earlier how awareness can be increased. If everyone who does road works gets involved, the figure will double. The figures that we are going on state that 5 per cent of congestion is caused by utilities. If we were to include local authorities, we would double the figure to 10 per cent. That might still be a small figure, but we would be capturing a larger amount of the work.

**Michael McMahon:** Would you like that larger amount of work to be captured?

**Rodney Grubb:** Given that we are talking about reducing congestion and being more effective, we have to know what all the works are.

**The Convener:** You mentioned the way in which West Lothian Council works. From previous discussions with West Lothian Council and some of the utilities, I was aware that West Lothian Council recorded its works in the register. I believe that there are other ways in which the council works constructively with utility companies in co-ordinating works. Will you expand on that? Do you think that that way of working could be replicated throughout Scotland?

**Frank Stewart:** There are four situations in Scotland. Certain local authorities have introduced, or are introducing, what they call a considerate contractors scheme. One of those schemes has been running successfully in Aberdeen for three to four years. West Lothian is next; it is ready to launch its scheme on 1 January. The City of Edinburgh Council and Glasgow City Council schemes will probably start some time in 2005. We think that those are excellent schemes, which provide a great way of co-ordinating works and ensuring a spirit of co-operation between roads authorities and utility companies, which we welcome with open arms.

**Bruce Crawford (Mid Scotland and Fife) (SNP):** You obviously took a lot of heat at the beginning of this process, during the consultation, which I feel coming at us. If you have found yourselves in that situation, that is regrettable.



A fair chunk of the utilities work that you undertake must come from the Scottish Executive. For example, Scottish Water, which is in effect an arm of the Scottish Executive, undertakes such work. Has any work been done on that, given where the process started?

**Frank Stewart:** The short answer is no. What you said is quite right. As much as 60 per cent of the work on roads in Scotland, as far as utilities are concerned, is done by Scottish Water. Scottish Water is treated like any other utility—no exceptions are made for it and there are no differentials. It just happens to be the biggest undertaker of work.

**Bruce Crawford:** So it is a bit rich for whoever made that comment in the press release to criticise utilities when most of the work emanates from Government. Perhaps that says everything about the climate in which we live.

**John Taylor (National Joint Utilities Group):** I cannot speak for the water utilities, but perhaps I can draw a parallel between the water and gas utilities. We are going through a major replacement programme. After all, some of the plant has to be replaced; it is 100 years old and is deteriorating. Obviously, we are replacing the plant for safety reasons, but the water industry carries out work to stop water leaks and for other environmental reasons. That massive programme has to be undertaken to maintain a secure supply, which generates its own workload. We have a 30-year programme of essential works, and I believe that the water industry's programme is based on a longer period.

**Bruce Crawford:** I believe that you agree with the Health and Safety Executive on the works that will be carried out. As a result, those works are partly Government driven.

**John Taylor:** Yes.

**Bruce Crawford:** That is interesting.

I suppose that the real question is how we manage this situation better in the future. In your written evidence, you say that you support the introduction of a road works commissioner and that you look forward to collaborating with that department. However, the roads authorities and utilities committee (Scotland) has said that such a commissioner might not be needed and that it could undertake the task if it were given such a statutory responsibility. Do you have any preference about which course should be taken, provided that the whole matter is managed properly in future?

**Frank Stewart:** We do not have any preference per se, but we certainly see both sides of the argument. If nothing else, a commissioner would be an independent arbiter. For example, we would

not have to approach a roads department for a decision, which might leave us second best.

We are not diametrically opposed to RAUCS, which is made up of representatives from utilities and roads authorities. I understand the roads authorities' position on this matter. However, we support the introduction of a commissioner post, as long as it is properly filled and resourced.

**Bruce Crawford:** That was my next question. It has been suggested that, given the resources that will be available, the commissioner's office will have a light touch to say the least and will in any case have to rely heavily on local authority work and information. Could any changes be made to the roads commissioner's resources and proposed powers to strengthen the role?

**Frank Stewart:** I understand that the department will not have many staff. If that is the case, I cannot see how a commissioner and perhaps two assistants could examine the whole problem in Scotland. Many more people will need to be involved. If the Executive is paying only lip service to the matter, it will be a waste of time and money.

**Bruce Crawford:** RAUCS has said that it could do this work for about £600,000, which is almost the same amount that the Executive has set aside to fund technical upgrades for the road works register. That does not take into account the additional administrative costs for the commissioner and his couple of staff. I think that other committee members share my view that it is difficult to strike the right balance on this matter. Do we put additional resources into funding a road works commissioner—which, given the amount, ain't going to have a lot of teeth—or do we put our money more smartly into RAUCS and let it do the job? I should say that "more smartly" is my term. You are saying that it is a fine balance, but that you would welcome the introduction of a road works commissioner if the office were properly resourced.

**Rodney Grubb:** If it were properly resourced and, as Frank Stewart pointed out, independent. No matter whether we are talking about a commissioner or whatever, we need someone independent to examine the work of utilities and local authorities and come up with some real evidence. We need to find out how much and what sort of work is being done and who is doing it. If we are going to reduce congestion, we need to work together. We should be trench sharing. Any new build—industrial or commercial; a factory or a housing estate—requires the basic services.

**Bruce Crawford:** Does not RAUCS provide a model for roads authorities and utility companies to work together? If that committee were to be

given statutory power and a statutory responsibility for being fair to both parties, would that not work?

**Rodney Grubb:** I think that that would work, but we must have the figures as well. We lack the evidence to say, for example, "Here's who is doing the work and here's how long it is taking to do." We need somebody to consider the benefits of trench sharing and the one-in, all-in approach. Nobody is doing such work. We need an independent body to do it.

15:30

**Paul Martin:** Sections 18 and 19 of the bill deal with directions on the timings of road works and the placing of apparatus in roads. Your written submission says that the bill should allow exemptions for emergency work. Can you elaborate on that and give us further details about the kind of emergencies that you mean?

**Frank Stewart:** One of our greatest concerns is the bill's directions on timings and the placing of apparatus. The bill does not seem to make any provision for emergency work being done on, for example, gas leaks and large water bursts, for which we could go in and do a repair as quickly as possible. Currently, if there is a serious gas leak or large water burst, we can go in immediately, without notice, to try to rectify the situation, although we must give retrospective notice. The bill seems to take away that right. We are also concerned about the bill's possible impact on customer connections. Our fear is that the bill's provisions would mean that we would have to tell customers that we could not give them a service for six months or whatever. That approach just does not work in the modern world.

**Paul Martin:** You say that the need to reconnect a supply is an issue of public concern. However, you will appreciate that the effect that such work has on road users is also an issue of public concern. Roads authorities feel that utility companies are sometimes inconsiderate in how they do their work and how long they take. For example, it is common to see a work site on a partially closed road around which there is not much activity. When I think about utility companies' work, I think about utilities taking over half a street and just leaving things there until it suits them to connect a service. Even after that has been done, there is an issue about utilities reinstating a road to its original condition. Do you appreciate that there must be legislation to deal with such situations and to ensure that utility companies do not have the free rein that they have perhaps had in the past? Do you accept that there is an argument for such legislation?

**John Taylor:** When there are gas escapes, we do not necessarily get informed about the most

serious one first. For example, a team can go out to a gas escape and make it safe, but before the team can complete the work on the gas main, news about a more severe gas escape comes in, which must be prioritised. The team must then go and deal with that escape before it can come back and complete its work on the first job. Therefore, because work is prioritised for safety reasons, work on some repairs can be left incomplete. That does not mean that the work has been forgotten about; it just means that it is done according to a list of priorities, but it is usually done to a tight timescale. Occasionally, a specialist bit of kit that is needed to do a repair has to be ordered, which can delay the completion of the repair. However, we are talking about a delay of days rather than months or years—just a short timescale. To sum up, we prioritise work and deal with the most severe problems first.

An additional problem arises because some of our plant is old. For example, after a repair is done on a main, we realise sometimes that we will have to return in the near future to replace the main because it has deteriorated to such an extent. We do not postpone such work for long. If we did so, we would be in and out doing maintenance work all the time. There comes a point when it is sensible to devise a programme for completely replacing such a pipe.

**Paul Martin:** Are you saying that you want a free rein to do emergency work as you please? If not, are you saying that you want regulation of such work?

**Frank Stewart:** Absolutely. I would not advocate our having a free rein for anything like that. Of course emergency work must be controlled, but it must also be realised that certain circumstances must be reacted to immediately. That takes us back to the word "perception". The perception is that some utilities come, open up the road and leave it for ever just for the sake of leaving it. However, there are a lot of reasons for excavations remaining open, including the curing of the materials that are used in a concrete-type situation and the venting of a shaft that has had a gas leak in it.

**Paul Martin:** Is there a need for public information to be provided about a work site, perhaps on a website? Is there an argument for providing information in that way to deal with some of the problems of perception?

**Frank Stewart:** I would agree with that, yes.

**Rodney Grubb:** Our concern with the bill as it is drafted is that, when it comes to the placing of our apparatus, there are no exemptions. We have a concern that exemptions regarding the placing of apparatus have been removed from what is in the 1991 act.

**Dr Sylvia Jackson (Stirling) (Lab):** Is it the case that, because you are a private sector organisation, you do not include Scottish Water among your members?

**Frank Stewart:** Scottish Water is included. Its membership is through Water UK.

**Dr Jackson:** Okay. I was not sure about that.

My next question follows on from what Paul Martin asked about a moment ago. If the provision for emergency work is not included in the bill, what kind of delay could there be on something that has to be done as a matter of emergency? The biggest issue might be what constitutes an emergency. Will you have a go at defining that? In your submission, you talk about

“emergency, urgent and customer connections.”

How do you define those in terms of emergency measures?

**Frank Stewart:** The simple definition of an emergency situation is one in which there is danger to life and limb.

**Dr Jackson:** So, if there was a delay to the work—

**Frank Stewart:** Exactly. If something happened after 6 o'clock at night, would we have to wait until 9 o'clock the next day to get permission from the roads authority to open up the road? That would be absolutely abhorrent. That is a horror story, as far as I am concerned.

**Dr Jackson:** Absolutely. You say of sections 18 and 19 that there

“could be serious implications for the cost of services, the timely delivery of services, and the quality of the local environment.”

Can you expand on that a little and talk about some of the implications?

**Frank Stewart:** The timing issue arises with regard to people asking for our services. Because of the current climate in the commercial world—you are probably more aware of this than I am—if a company is not prepared to provide a service yesterday, or certainly two days in advance, no one will come to that company. As far as the positioning is concerned, it may well be that we have apparatus in a certain street off which we would tap to go to a customer. According to the bill, there could be instances in which that would not be allowed.

**John Taylor:** We have a licence condition that is laid down by the Office of Gas and Electricity Markets, which dictates the standards of service that we have to meet in giving people gas supplies and so on. We stick fairly rigidly to those standards. There are issues there.

A lot of consideration goes into the planning of the work and the locations where we put plant. We have highly trained engineers who, before we even put a spade in the ground, have done a lot of detailed research to ensure that the most sensible route has been taken from an engineering point of view. They take into account the impact on traffic and other conditions—the environmental impact, the situation regarding neighbours, and so on. That is all taken into account when the work is planned. The standard of service is of key importance.

There can be situations in which people have increased their gas or electricity usage, which means that we have to reinforce the system to ensure the security of the supply. In other words, the system that is in the ground is not sufficiently large for their requirements and, from time to time, has to be upgraded. Occasionally, there can be a request for a supply within 28 days. There is sometimes a delay, but we like to avoid that, especially with regard to businesses, which are trying to invest and generate employment.

**Dr Jackson:** Bruce Crawford asked you about the road works commissioner. How do you think that that role could help you, given the explanation that you have just given?

**Frank Stewart:** The issue is the independence of the role. If, for example, there was a dispute with regard to the placing of apparatus or the timing of a job, the road works commissioner would probably be in a position to arbitrate and give a fair ruling. He would not come down on our side all the time, but he would certainly provide an independent ruling.

**Rodney Grubb:** Much of the work that we do causes inconvenience at the time. We accept that—it is the nature of the work that we do on the public highway. Much of the work that we do is short term. We are putting in assets, and the asset life of the new equipment that we install could be as long as 30 years. We might go in to do a month's or six weeks' work. We appreciate that there is disruption at the time. However, the benefit of that short-term work is a long-term gain, because new assets and infrastructure are going into the ground. That must be considered as part of the context.

**The Convener:** Fergus Ewing has questions on the issue of local authorities and fixed penalties.

**Fergus Ewing:** Yes. I am sorry that I was not able to be here for the earlier evidence.

Mr Stewart knows about my concern on the following question. I want to ask about the treatment of utility companies as opposed to local authorities, in particular in relation to the system of fines that the bill proposes. The fines or penalties would apply to the utilities, but not to local

authorities. In the course of hearing previous evidence, as the present witnesses may know, I proposed that there be a level playing field and that, if there is to be a system of fines and penalties, that system should apply to all. Does NJUG agree with that?

**Frank Stewart:** Absolutely. However, we understand the difficulties involved; I do not suppose that we could have a situation in which the local authority was imposing fines upon itself. It is a matter of concern to us that the bill is being seen as a revenue-raising opportunity. I really do not know how it could be worked in another way, other than introducing a points system, under which points could be awarded against utilities and roads authorities.

**Fergus Ewing:** I could be wrong, but my recollection is that only the AA Motoring Trust representative has come out and said that fines would be a useful source of revenue. As far as I know, the civil servants and the minister have not owned up to that—not that I would suggest that civil servants are ever guilty of anything, you understand. The bill does not set out how the system would operate, but I believe that NJUG and similar bodies have given some thought to how a system of fines might best work. How do you think that a system that uses penalties—sticks, rather than carrots—could best operate so as to achieve the objectives of having road works carried out as swiftly and efficiently as possible, with the least disruption to road users?

**Frank Stewart:** It is a very difficult question. We have discussed it, but we have not reached a conclusion. That is also a continuing argument in England—in relation to the Traffic Management Act 2004—where the situation is similar. Utilities will be fined, but highways authorities will not. Our suggestion is that, certainly for the first two years of the eventual act's application in Scotland, a points system or assessment system could be implemented in order to ascertain exactly where the problems lie. That takes us back to our first point about a level playing field, and having a register that records all works, not just utility works.

15:45

**Rodney Grubb:** As the bill stands, the proposed fines are administration fines. They are for not notifying that we are carrying out works or that we have completed works. We recognise that it is not our operators whom we need to train, but our project managers, so that when we start works the notifications go out.

**Fergus Ewing:** To put the question another way, it would be slightly ludicrous if local authorities were fining themselves. Clearly, that

would not work. I was puzzled by the fact that, in your written evidence, you come out in support of the road works commissioner. I thought that you would tend towards the argument that your support would be conditional on the road works commissioner being the independent person in charge of a regime under which there were the two elements of a level playing field and the road works register applying to everybody, local authorities included. If you did not have a level playing field and/or local authorities were not required to submit information to the register in the way that you were, would you still support the road works commissioner?

**Frank Stewart:** The position would be a waste of time. There is no point in having someone who is looking at one small section that accounts for 5 per cent of congestion.

**Fergus Ewing:** Because 95 per cent of the causes of congestion would be outwith the power or remit of the road works commissioner.

**Frank Stewart:** Absolutely. If the bill is genuinely to address congestion, the problem has to be examined in its entirety.

**Rodney Grubb:** We talked about local authorities not fining themselves, but Scottish Water is a public body and it is on one side of the fence with us.

**Tommy Sheridan:** Last Friday, I witnessed a council direct labour organisation van being given a parking ticket in Glasgow city centre, so the idea that one arm of a local authority cannot penalise another arm is wrong. We could have a system that is applied to the roads authority by a local authority of which it is part.

Our desire is to address the real problems. One problem is the length of time that road works take to be reinstated—I take on board Rodney Grubb's point about the long-term nature of the issue. Even more important is the problem in the minority of cases when reinstatement work is not up to standard. There has to be a penalty system as a spur to the industry to ensure that it gets things right first time. Do you agree with that general position?

**Frank Stewart:** I agree 100 per cent. I have always advocated that those who offend should be punished. It is as simple as that. However, there must be a level playing field. I agree with what you said about one side of a local authority being able to fine or impose restrictions on another section, but there must be an independent arbiter, such as another totally divorced part of the authority.

**Tommy Sheridan:** Other witnesses from the private sector indicated that they would be willing to help to ensure that a robust system was introduced on the back of the bill, because right

now the bill is not good enough, as it does not delineate exactly what we are talking about. On behalf of NJUG, are you willing to say that you will co-operate in developing a robust system, as long as it is applied evenly?

**Frank Stewart:** Absolutely. We have never shied away from that. We are happy to work with anyone—for example, the Scottish Executive, the Scottish Parliament and local authorities—to address the problem.

**John Taylor:** The convener mentioned work in West Lothian. That authority's considerate contractor scheme is the model that proves that people can work in partnership to deal with issues and plan work. There are examples of when we have delayed work and the authority has delayed work to make sure that all the work is co-ordinated. Where there were failures, people went out and identified who was at fault, whether it was the utilities or the local authority; they sat down and got to the bottom of the problem.

A failure of reinstatement costs us a lot of money, so it is not in our interests to do it wrong. We spend a lot of time training our staff to make sure that it is done correctly, although we accept that there are occasions when we let people down. We are always working to improve our standards and we now ensure that people are not just trained but continually assessed—we ensure that they are up to standard, know all the modern techniques and can apply them, so that there will be fewer reinstatement failures in the future.

**Frank Stewart:** To give another example, NJUG supplies the utilities' view to all the working parties on codes of practice and working practices that are set up throughout the UK under the New Roads and Street Works Act 1991. Obviously, we agree with the codes of practice when they are issued, because we are part-authors of them. We do not condone bad practice; we encourage best practice at all times. Some of the codes, such as the safety code of practice, which is a small book that can be carried by every operative, identify almost every situation that a worker is likely to come across in an excavation-type scenario. They give examples of how to lay cones, where to put signs and where to place vehicles. As far as we are concerned, those codes must be adhered to.

**The Convener:** That brings us to the end of our questions. I thank the three representatives from NJUG for their attendance.

Our final panel today is made up of representatives from the UK Competitive Telecommunications Association: Domhnall Dods, the head of regulatory affairs at Thus plc and director of UKCTA; and Nancy Saunders, from Kingston Communications Ltd, who is a director of UKCTA. We also have with us Tony Cox, head of

policy and public affairs at BT Wholesale. I believe that Domhnall Dods intends to make some opening remarks on behalf of the organisation.

**Domhnall Dods (UK Competitive Telecommunications Association):** Thank you for allowing us the opportunity to give evidence to the committee. I will start by explaining what UKCTA is and why there is a representative of BT with us. UKCTA is the regulatory trade association for the competitive part of the industry other than BT and the mobile operators. It is a significant indication of how seriously the industry takes the Transport (Scotland) Bill that representatives of an organisation such as UKCTA, whose *raison d'être* is to counter the power of "evil" BT, are sitting here beside someone from BT—that is meant in the nicest possible way. It is helpful for members of the committee to understand that we are taking the bill extremely seriously; it is one of our top concerns at the moment.

The points that we want to make could be summed up briefly, after which we can drill down through the questions that committee members might have. I will try to rattle through our points as quickly as possible.

First, Scotland's roads are not only conduits for road traffic, whether cars, bicycles or pedestrians. They are also conduits for the many essential services that we all take for granted. As representatives of the telecoms companies, we are naturally concerned about that service. However, none of us could exist in the way that we do these days without the other essential services—gas, water, sewerage and electricity. Our concern is that their needs have not been adequately reflected in the discussion that led up to the introduction of the bill or in some of the thinking that lies behind the bill.

I suggest that committee members ask their constituents whether they would prefer to have five minutes knocked off their journey home in the evening or to have electricity, water and so on. If that choice had to be made, I know how I would vote. Given that I am looking at my constituency MSP, who is the convener, I am able to tell him that directly.

Secondly, the utility companies in general, and telecoms companies in particular, undertake works for two reasons only: security of supply and customer service—either new or upgraded—connections. Clearly, for the gas and electricity companies, the need to undertake works also involves questions of safety. The telecoms industry—indeed, by definition under legislation—cannot have emergency situations, as our optical fibre poses no threat to life or limb.

For us, works are not done for fun—indeed, they are done at great cost. Frankly, we would rather

not be involved in digging up the roads. Sadly, current technology means that we have to do so, but we try to complete the works as quickly as possible. We are under enormous commercial pressure to do that, particularly those of us on the non-BT side of the industry, who are struggling to catch up in terms of profitability—indeed, some of us are still trying to break into profitability.

Thirdly, many of the measures in the bill will increase the costs of what are essential works. As I said, we dig up the roads not for fun, but because our customers—Scottish businesses and Scottish consumers—demand supply. The proposals will serve only to increase our costs. Tony Cox and I were discussing the matter before we came into committee. He represents probably the only telecoms company that has the luxury of considering whether it will pass on such costs to its customers. For those of us who do not as yet make a profit, the costs will have to be passed directly to our customers. However, even for a profitable company such as BT, the extra costs are similar to increases in the cost of diesel or electricity—if costs go up, BT has to pass them on to its customers. Any business that faces an increase in the cost of doing its business has to pass on the costs to its customers.

Our final concern is that, for the bill to be completely effective and for it to tackle comprehensively the congestion problems on Scotland's roads, we have to look at everyone who conducts road works and at all the causes of congestion. According to the best figures that the Executive or the United Kingdom Government has, road works account for only 10 per cent of all congestion. Sixty-five per cent of the cause of congestion is down to sheer traffic volume—too many of us are driving around on our roads—and 25 per cent is caused by the incidents that result from those of us who bump into each other, break down or whatever. As I said, only 10 per cent of congestion is down to road works and, of that figure, there is a 50:50 split between the utility companies and the public sector—Executive and local authority—works.

If the focus of the bill is on the utility sector, the Parliament will tackle only 5 per cent of the causes of congestion. We question whether that is the most effective way in which to do things. If the Parliament thinks that road works are an issue that needs to be tackled, we suggest that it should include all road works—there should be a level playing field.

**The Convener:** Thank you for those introductory remarks. I assure the panel that I did my bit to cut congestion today by coming to the Parliament by train.

**Dr Jackson:** The subject of my question is an issue that is dear to my heart as the convener of

the Subordinate Legislation Committee. In your submission, you say:

“Until detailed regulation or regulatory impact assessments are available, it is difficult to provide in depth analysis of the impact on industry of the legislation.”

Are you suggesting that, in addition to the regulatory impact assessments, the Executive should publish draft regulations as soon as possible? Is that what businesses need to become more fully aware of the impact of the bill? How detailed will those draft regulations need to be in order to allay your fears?

16:00

**Tony Cox (BT Wholesale):** Thank you for the question, although it is difficult to answer, given that we are looking at the impact that the bill will have on our businesses. I return to the point that Domhnall Dods made about the impact of road works on congestion, as that has to be the starting point for any answer to the question.

We are saying that we are a very small contributor to the problem of congestion on the roads. I would go further than that and argue that we are part of the solution rather than only part of the problem. Some of the services that we provide enable people either not to travel at all or to make sensible choices about when they should travel.

On your question about the level of detail that we require to see, our main concern at this stage is that because of the lack of detail it is difficult for us to gauge the impact on our costs—not only our costs but the costs to our customers. I am not talking only about direct costs. Domhnall Dods mentioned the possibility of passing on costs to customers. That is a direct cost, but there are also other costs. If a delay to the service means that companies cannot take a new high-speed connection to a small business, that could have real costs on their on-going business.

Until we know the details of any exemptions to the three-year moratoriums on digging up roads and the exceptions that will be provided for, we cannot comment on the costs. All that we can do is raise a flag now and say that the matter is of real concern to us. There is a real danger that the proposals will affect the way in which businesses operate, but we cannot give you the detail because we do not know what exemptions would apply and how they would work in practice. I know that that is not a full answer to your question.

**The Convener:** I understand that the Executive's intention is to publish the regulations before the bill is passed in order to allow the committee and the Parliament to have sight of them. Would it be possible for BT, UKCTA and your colleagues from NJUG, who are watching proceedings from the public gallery, to evaluate

the impact on your businesses once the regulations are produced?

**Tony Cox:** That would certainly be possible. We would welcome the opportunity to do that.

I had some experience of the lobbying activities that we undertook south of the border on the Traffic Management Act 2004. I do not want to come across as being completely negative, because one of the advantages of the system here is that this committee is taking the time and effort to consult industry and other interested parties at this early stage. I welcome that aspect of the process, although it is also important that, as you suggest, we should be consulted on the detail when the regulations are produced. At that point the true costs and, I hope, the benefits of the proposed measures will be evident.

**Dr Jackson:** To what extent have you been consulted so far, apart from appearing before the committee?

**Tony Cox:** I am not sure whether this is the right way to put it, but I feel that in some ways we have taken the initiative because we have contacted a number of members of the Scottish Parliament. We—not only I, but a number of my colleagues and people from the industry—have had useful meetings with MSPs about the bill. There has been some consultation, but I think that I am right in saying that this is the first formal hearing or series of hearings that we have had. Of course, we have also submitted written evidence.

**Bruce Crawford:** I know that you have met a number of MSPs. Have you met Executive officials and ministers? Have you had a chance to discuss the matter with them?

**Domhnall Dods:** We briefly met officials. It is fair to say that Executive officials were reluctant to meet us until the bill was published. We were able, through the good offices of the Confederation of British Industry, to secure a meeting with the minister. That was very helpful to us, because at that stage we were completely in the dark about what was coming. The attitude had very much been the same as that which we had experienced south of the border: "There will be a bill and you will have to wait and see. You will get what you get when you get it." That is not satisfactory, but we are where we are now. We have met the minister and that meeting addressed many of our fears, although we still have concerns about some of the provisions in the bill. You have received our evidence about those concerns.

**Bruce Crawford:** Your evidence focuses on some of the negative impacts, in particular proposals that could impact on your customers by creating additional costs and causing them to experience a delay in receiving new services. I am not sure which one of you made the salient

comment that, through the services that you provide, you give people the opportunity to use roads less. I presume that that is where technology such as broadband comes in, as it enables home working. Can you give an example from the broadband sphere—in which there is huge demand from customers—about the delays, if any, that may arise in servicing customers as a result of the bill? Is there anything positive in the bill?

**Domhnall Dods:** Like other witnesses, we welcome the creation of a road works commissioner. We are pushing for such a measure south of the border. It does not make sense to have a system of fixed-penalty notices under which one of the poachers—the local authority—also wears a gamekeeper's hat. We welcome the creation of an independent office to ensure that the system is applied fairly and equally.

We have a lot to be proud of in Scotland. South of the border, people are crying out for something like the Susiephone system and the Scottish road works register, which are great tools to aid co-ordination. Until now, that register has been on a voluntary basis. Every local authority and the majority of the utilities are now on the system, but not all local authorities record their works on the register. One positive development in the bill is that the register will be put on a statutory footing and all organisations will be required to register their works. In preparing our evidence, we found that West Lothian Council recorded around 7,500 works in the register. Clearly that council makes good use of the system. However, Dundee City Council and Stirling Council recorded no works and Glasgow City Council recorded very few. The uniform use of the system will, for the first time, give us a true picture of who is carrying out road works in Scotland.

**Bruce Crawford:** Might the bill have a negative impact on the broadband services that you provide?

**Domhnall Dods:** Broadband is a misunderstood term. People tend to think of broadband only as the ADSL-type service from AOL, BT or Wanadoo that is done through BT local exchanges. Our concern is not so much about that present generation of services as about the broader-band services, which seems to be the new term that is emerging. That will involve linking high-capacity networks throughout the country with, in the first instance, business customers, who will be able to pay for the service. However, who can tell what will happen in future? Fibre-optic cables may go to people's homes. If we put in place measures under which a road that has been resurfaced cannot be dug up to connect a customer regardless of whether the customer needs that to

open a new office or provide a service, that business will be hamstrung. It will either relocate or go to BT, which would have an anti-competitive effect. It may not even have that choice. All sorts of problems could arise.

**Nancy Saunders (UK Competitive Telecommunications Association):** Another issue is the increasing interest, or re-interest, in local loop unbundling. Some large internet service providers have just started major plans for local loop unbundling but, as they do not have backbone networks, they will need to put some sort of network in place to backhaul from the BT local exchanges. If those companies cannot dig up roads, they will not be able to do that.

**Bruce Crawford:** Forgive me, but I cannot recall seeing many of those comments in your evidence. It might be useful if we could have an expansion of those comments in writing. On the one hand, the Executive states that its main priority is to grow the economy, but you are telling us that the bill might have a dragging effect on the economy. From what I hear, I think that that might be right. We must know about that if we are to understand the bill's full implications before we start taking decisions.

**The Convener:** For information, I point out that the Enterprise and Culture Committee is also taking evidence on the bill. I imagine that it will concentrate heavily on the economic issues, but I am happy for the witnesses to respond to the point.

**Domhnall Dods:** We have just come from today's Enterprise and Culture Committee meeting, at which a representative of NJUG covered most of the issues—there were few left for us to cover. In our evidence, we may not have said directly that the bill will create a drag on the economy, but the concerns are there for all to see.

For example, we are concerned about the powers to direct the timing and locations of works. If a business orders a service from me—for example, if the Royal Bank of Scotland wants to open a major new data centre—it will want diverse suppliers to come into its building at different points, for security reasons. It might want several suppliers, because it will not want to put all its eggs in the BT basket, or the Thus basket, or the Kingston basket. Such customers want services from umpteen different people. If we say, "We are really sorry, but the local authority has banned us from working on this road for the next three years because it has resurfaced it," the customer will have a problem, we will have a problem and Scotland's economy will have a problem.

If there were exemptions to the powers in relation to connecting to a customer, we would not have that problem. I keep using banks as an

example because my company works with many banks and they are the bane of our—I mean that they are at the top of our concerns. I nearly used the wrong word.

**Bruce Crawford:** The holes are the bane of your life.

**Domhnall Dods:** Yes, the holes are the bane of my life. If an existing supply to a bank is damaged somehow and becomes faulty, the bank will want the problem to be fixed. I am contractually bound to fix the fault within hours, not days, months or years. If the local authority says, "We would love to let you repair the circuits into the Royal Bank's building, but you are banned from digging there for the next three years," I will be in breach of my contract and the bank's customers will be unable to access services. When we look beyond what appears to be a reasonable proposition, a host of problems appears.

The convener and I have spoken about this: the local authority resurfaced the main thoroughfare through Livingston, in the convener's constituency. The council did a wonderful job, monoblocked the road and made it look fantastic. It asked us all to refrain from digging it up and we agreed to that on a voluntary basis as we had no plans to dig there. During the period of the ban, however, the council ordered a service and wanted a big, fat internet pipe. We said, "We would love to help, but can we come back next year?" The local authority said, "No. We need the pipe now." When the chickens come home to roost, local authorities understand as much as any other customer does what it means to want service. That illustrates perfectly the need for exemptions to some of the powers in the bill.

**Bruce Crawford:** That is useful.

**Iain Smith:** The multiple digging-up of roads causes frustration: one person digs up a road one day, then someone else digs it up the next day and so on. The submission from UKCTA refers to the problems that are caused by trench sharing, which I accept. It also mentions the sharing of ducts, which I would have thought would make it easier to carry out work without digging up the road again. The submission says:

"the sharing of ducts raises further issues of network security, integrity and quality of service".

Will you expand on that? Lay people such as me thought that sharing ducts would be a good way of reducing, first, your costs and, secondly, difficulties for the public.

**Domhnall Dods:** Tony Cox and I both have a view, so perhaps we should give an answer in two parts.

We were not suggesting that we are anti-sharing. I can give you a list as long as my arm of



companies with which we have shared—they include the company that Nancy Saunders represents. When we dig trenches to roll out our backbone networks, it makes sense to share the trench, because that cuts our costs. Rather than each company having to pay a contractor separately, we pay a single contractor. That can mean that the trench is slightly bigger and remains open for slightly longer, so a balance must be struck.

We won an award from the City of Westminster Council for sharing an enormous trench with seven other operators. We could have opened and refilled the hole in a day to complete our work, but the trench was open for three weeks and took up two lanes round Hyde Park Corner. The trench completely snarled up the traffic in London, but, perversely, we won a prize because we had complied with a perfectly laudable initiative to make operators share trenches.

**The Convener:** Were you participating in a well-known beer advert at the time?

**Domhnall Dods:** No.

We can and do share ducts. We can and do sell ducts. We install more ducts than we need when we dig a hole because we do not want to dig the hole again. Sharing ducts makes things easier, but of course we must still dig to get access to the duct in the first place, so sharing does not eliminate digging.

Serious business users, such as banks, have high and strict demands about security and integrity of supply. Such businesses would not be happy if we guaranteed them 99.89 per cent availability but then opened our ducts to people over whom we had no control. Other users would not be contractually bound to us, so there are issues in that context. We are not saying that sharing cannot happen and never happens; we are saying that there are sometimes limits to what can be achieved. Those limits are not necessarily imposed by us; they can be imposed by customer expectations.

**Iain Smith:** Is your concern to do with the security of the supply when someone else is working on the duct—the old putting-the-spade-through-the-cable sort of thing?

**Nancy Saunders:** You would be amazed how often that happens.

16:15

**Domhnall Dods:** There have been cases in which customer supply has been interrupted because someone has unlawfully decided to share our duct. Some people who are not even telecoms operators dug into our duct in Aberdeen in order to run a supply between two offices. That came to

light because they had damaged a customer's supply. That was an unauthorised use but I am sure that they did not deliberately try to damage the supply. Even if someone had been in there lawfully, they could have caused a problem.

**Tony Cox:** Iain Smith started out by saying that the perceived problem is that one utility company digs up the road, then another one does and then another one does. I always think that that argument is strange because my perception of roads is that one car comes along, then another comes along and then another. The serious point that I am making is that the principal cause of congestion is the volume of traffic. From our perspective, this debate is about proportionality. We agree that it is right to make efforts to improve the situation with regard to any form of congestion. We particularly agree with the point about co-ordination and the requirement to complete works to a good standard. Those are valid points, but I do not think that we should overlook the fact that road works, whether they are conducted by the highways authorities or by us, are not the main cause of congestion and that the volume of traffic is.

If the roads were being used to the capacity for which they were designed, the addition of road works would make little difference to congestion levels. We only have a problem because there is a problem of over-demand in road use.

**Nancy Saunders:** The convener talked about the television advert in which gas, water and telephone companies share the same trench. In practice, that would not happen because all those utilities have to be at different levels. You cannot have a water main near the surface of the road, which is where telephone cables generally go. Even though it would be nice to share trenches with our utility partners, it is not practical to do so, for many reasons.

**Paul Martin:** The issue of the banking industry requiring special security is a specific example, but there will be other situations in which we should be encouraging organisations to share ducts. I would argue that, even given the security issue, technology should allow us to enable banks to share ducts anyway.

Why are we allowing those customers to be so precious about the issue? You are trying to make the case that road works are not the source of inconvenience and traffic problems, but I have to say that that is not the perception. We want to minimise disruption so surely we should not be allowing clients to be so precious. When I got broadband installed, I do not recall being precious about where the duct came in. Duct sharing is not a big issue for every business that wants broadband installed, is it?

**Domhnall Dods:** I will not get into a discussion of how one negotiates with major banks—that way lies trouble.

The key word that you used was “perception”, as the perception is not matched by the reality. People have an idea that companies run around digging up roads willy-nilly wherever they feel like it and without regard to anybody, that there are no statutory controls and that we just do not care. That is absolutely not the case. As I said already, our industry is not in the healthiest of financial conditions, if I can put it that way. We would do anything to avoid digging up a road, because it costs a lot of money. We dig to respond to a customer’s order for service. If customers demand certain levels of service we have to find a way of guaranteeing them. That can mean—I am thinking of the banking example—ensuring security of supply. The customer might want diverse routing and will have back-up generators and the full panoply of resilience.

I return to the point about perception. The best figures available, which, sadly, are UK-wide figures rather than Scottish ones—although I do not see why Scotland should be radically different—show that 65 per cent of congestion is down to too many of us driving around, 25 per cent is down to us bumping into each other and 10 per cent is down to road works and street works, which are split 50:50 between us and the public sector. Utilities therefore cause 5 per cent of the problem at most. I take your point that the perception is perhaps different, but that is the reality. Some time ago, we called on the Executive to carry out research into the facts in Scotland, but, sadly, that has not happened and we are now facing a bill. The reality is not quite as extreme as people perceive it to be.

**Paul Martin:** From where is the research that gave us the figure 5 per cent?

**Domhnall Dods:** It was from the Transport Research Laboratory, which was part of the former Department of the Environment, Transport and the Regions in London. We can and do share wherever possible on a backbone network—on trunk roads, for example—because that makes sense. However, if I am connecting to a major customer and my guys have gone in and fought hard to win the business, the last thing I am going to do, much as I respect my colleagues who are sitting either side of me, is offer to take them up to my newly won customer, because that is commercial suicide. There are limits to where I will share.

**Michael McMahon:** Everyone who has spoken to us has expressed a desire to have a level playing field, to which the witnesses have alluded this afternoon. However, the UKCTA written submission argues for:

“extending the various provisions that penalise private sector companies that infringe the Act to those in the public sector.”

That is fair enough. You are asking for the level playing field, but how would that benefit road users?

**Tony Cox:** If you are arguing that the measures in the bill are going to improve the situation with regard to congestion caused by utility companies, it follows that applying the same measures to the road works carried out by highways authorities would have similar benefit. If the purpose is to improve the congestion situation—albeit that utilities are responsible for a relatively small component of that—it seems sensible to apply the same rules to all those who dig in the road. That is our basic contention.

**Domhnall Dods:** I would argue that the bill might have a greater effect on the other undertakers. We are already under huge commercial pressure to get the job done quickly, because until the job is done and the customer is connected, we are paying a contractor but are not being paid by our customer. Until the work is done, we have an unhappy customer. Public bodies do not face the same commercial pressure, which is understandable, so arguably there is an even greater need to give them an incentive to work harder and faster.

**Michael McMahon:** So it is all about incentives. How do you give your contractors an incentive to reinstate the roads as effectively as they should?

**Domhnall Dods:** As an industry we have taken part in a voluntary coring programme. We accept that there is a problem with the quality of reinstatements. It makes no sense for us to allow poor-quality reinstatements because we are paying the contractor to do a good job. If they do not do a good job we get a bad name, your constituents write to you, you give us a hard time and we will have to pay the contractor to go back and do the job again. We want to address the quality issue. A voluntary scheme has been developed and a national coring programme is under way to address the problems. We address the problems through our contracts, in which we can include penalties. If contractors fail to meet standards, we do all the usual things that one can include in the terms of a contract—either we do not pay them or they pay damages. A range of measures can be applied.

**Michael McMahon:** Do you think that the bill will help to achieve higher-quality reinstatements?

**Domhnall Dods:** To be honest, the bill will not help us to achieve any more than is being done at the moment. We want an incentive or encouragement to apply to all undertakers of street works. It is arguable that it makes no sense

to require the public sector to pay fines—that would just mean the same money going round in circles—but other options could be considered.

For example, a number of considerate contractor schemes are already in operation in places such as Aberdeen, where a scheme has operated very successfully, and in West Lothian, where an awful lot of work has been done recently to set up a new scheme. Indeed, I gather that West Lothian's scheme will be taken on board in Glasgow as well. Although many people are sceptical of such schemes, which they think are just another badge that we stick on our vans, the schemes encourage—believe me—a great deal of pride in the job. No utility company or local authority wants to be named and shamed as an organisation that has consistently done a bad job. No one likes being in the position of being held up to public criticism and ridicule. The considerate contractor schemes have been very effective.

Another suggestion is to have a similar scheme that is based on points. If a company were to fail to do a good job, it would incur a number of points, and if the total number of points reached a certain threshold, fines would start to kick in. I am not convinced that fining everybody straight away is necessarily the way ahead.

**Paul Martin:** The UKCTA submission raised the concern that the requirement to resurface the entire width of a road might result in a 385 per cent increase in the cost of a telecoms installation. Will you elaborate on how that figure was arrived at?

**Domhnall Dods:** The figure comes from real-world experience.

In England, a similar power that was introduced under the Traffic Management Act 2004 has caused a great deal of anxiety about how it will work. However, the power down south is a little less extreme than the power that is proposed in the Transport (Scotland) Bill. For example, if we had dug up 10m of the Royal Mile in front of the Scottish Parliament building, a power such as that in the 2004 act could require us, at an unknown point in the future, to come back and resurface either half the width or the full width of the Royal Mile for that 10m. However, under the proposal in the bill, even if we had done a perfectly good and lovely job of digging up 10m outside the Parliament's front door, we could be required to resurface the road from outside the Ensign Ewart at the top of the Royal Mile all the way down to the bottom, or any part thereof. That seems completely insane.

The proposed power in the bill will also be without limit of time. One has to feel for BT, which has been around for 100 years. If BT has ever dug up the Royal Mile, it could be required at any time

to come back and resurface the whole street, or to contribute to the cost of doing so. How are we to work the cost out? How is a company supposed to price a service to its customers? If a customer orders a service from us, we will need to explain that, although the contract states that the job will cost £X, we will reserve the right to come back at any time in the future to ramp up the cost so that we can recover the unknown proportion of the cost that we might incur for resurfacing the whole street.

The 385 per cent figure comes from a real-world example. In England—in Leeds, I think—my company voluntarily offered to cover resurfacing costs, which were 385 per cent of the installation cost.

**Paul Martin:** Do you accept that the roads have sometimes looked pretty poor as a result of utilities carrying out work on them? Do you accept that the proposal has some purpose, because some utility companies have not always reinstated roads to the proper standard when they have gone about their business?

**Domhnall Dods:** I do not accept that the proposed power is required to deal with poor-quality reinstatements. Under existing powers, a utility that does not reinstate a road properly can be made to come back to do so. There is also a guarantee period in which we might be required to perform such an undertaking.

**Paul Martin:** Is not there technical evidence to show that the required finish for current reinstatements is not what it should be?

**Domhnall Dods:** Real-world experience shows that, in many cases, the reinstatement is of a better quality than the surrounding road. That was confirmed to me by Department of Trade and Industry officials, so it is not from a biased source.

**Paul Martin:** Have you technical evidence to back that up that we could get access to?

**Domhnall Dods:** I will certainly try to find some for you but, hand on heart, I cannot say at the moment whether I can provide that.

**Tony Cox:** It is quite right that we should be required to reinstate a road that we need to dig up to provide a service. If we are found to fall short in reinstating the road, it is right that we should be summoned back and made to do it properly. There is no question about that. The question is whether the provisions will be used as a rationale for extending our work and turning us into street resurfacers, which would be a step too far.

16:30

**Domhnall Dods:** As I said, I have no qualms—and no reasonable operator would—with the idea

that, if we have not done a good job, we can be brought back and made to do it properly. That is entirely reasonable and there is legislation that makes us do that at the moment, but I cannot accept the idea that, if I have reinstated one part of the road, I could somehow be required to redo the whole road, which has nothing to do with me because I have never been near it.

**Paul Martin:** You made the point earlier that you do not open up a road unless you need to, but I argue that, if the industry was more intelligence led in the way in which it went about its business, you could prevent a number of roads from being opened up. There are bound to be occasions on which you have opened up roads when you should not have done or when it could have been prevented in some way. Would the bill prevent such work?

**Domhnall Dods:** No. I do not think that it could.

**Paul Martin:** How about some forward development and considering where things could be done that were not done in the past?

**Domhnall Dods:** Unless the Parliament passes a law that requires Scottish businesses and consumers to tell us months and years in advance where and when they will want services, road works cannot be prevented. The telecommunications industry is unlike the gas, electricity and water industries, which have long-term programmes that have been planned long ahead. They know where services will be required and when mains replacement programmes will be required. For example, the Health and Safety Executive requires National Grid Transco to have a 30-year rolling replacement programme for gas mains. As a telecoms operator, I have no idea where my next order will come from. I do not know and cannot predict when company X or Y will order services and what they are going to order. I do not accept that we can prevent roads from being opened up unless the Parliament is prepared to pass a law telling businesses and customers to have a five-year plan for where they want services.

**Paul Martin:** Do you have no idea at all where the business will come from?

**Nancy Saunders:** We can have an idea with backbone networks, but we do not build a backbone network unless there is a bunch of customers at the end of it and we have critical mass. The industry is very much customer driven.

**Domhnall Dods:** If we were still in the era when companies were digging speculatively—perhaps the late 1980s and early 1990s—we could prevent road works, but those days are long gone. The industry is not digging speculatively and our backbone networks are in place; we now have to connect customers to get a return on the

investment. My company has invested upwards of £280 million in Scotland's infrastructure and it now needs to generate a return on that for its backers; to do that, it needs to dig to customers to connect them. The question would have been great 14 years ago, but those days are gone.

**The Convener:** When I spoke to one of the other utility companies it explained to me how it tried to go about what might be described as minimally invasive installation of services by digging holes at interim points and piping the services through. Can—does—the telecoms industry undertake that procedure?

**Nancy Saunders:** It has been tried.

**Tony Cox:** It has been tried and, to the extent that it makes economic and practical sense—that is, to the extent that we are able to do it—we will do it. As we said earlier, we do not dig up the roads for fun, so if there are cheaper ways of achieving the same result, we will use them, and non-invasive techniques would normally be cheaper methods, so we are considering new, non-invasive techniques.

We were asked whether the bill provides an additional incentive. I do not see anything in it that does so, but there are commercial pressures to consider other ways of doing things. A new technology that might provide a partial solution—and, to some extent, already does so—is radio connectivity. If we are providing a wireless service, we do not need to dig up the road, so that technology has potential. However, for a lot of applications, we are not at the stage at which such a service will fit customer requirements. Those are normal commercial pressures, and I do not see anything in the bill that directly encourages such solutions.

**Nancy Saunders:** One of the main problems with using non-invasive techniques is that when one uses what we call a mole to scurry through the earth, one has to be very careful that it does not scurry through someone else's fibre. At the moment, one of the main problems with radio technology is the lack of spectrum for proper broadband services.

**Domhnall Dods:** The non-invasive technologies are there, but it is ironic that the areas in which one would want them most—in other words, the areas in which there is most risk of congestion—are those where there is most infrastructure in the ground, which means that they are least able to be deployed. In one case in which we tried to use a mole, it got deflected by a stone or a rock and came up and breached the surface of the A9, which caused congestion.

**Tony Cox:** In many cases, we can lay new cable and new fibre through existing ducts. That happens at present—that contribution to reducing

road works is already being made. Obviously, we do that whenever we can.

**Fergus Ewing:** I am grateful to Mr Dods for highlighting yet another reason why the A9 should be dual carriageway between Perth and Inverness. If that were the case, such disruption would not be so burdensome.

I want to ask about a different matter. We have heard that the days of gratuitous investment have gone and that, from now on, road works will be stimulated by repairs to existing fibre or by new customer demand. Basically, the process will be demand driven. I do not know from your written submission—although I might not have picked up your views—whether you anticipate that the quantity of street works occasioned by the members of UKCTA and, separately, by BT will be similar to, less than or more than the quantity of such works that have taken place in the past. I do not have a picture of whether we are facing an escalation in the amount of work.

I realise that you may find that difficult to comment on, because it would involve saying how well you think that your businesses will do in future. Are you able to say what extra volume of street works might arise if the potential demand that you have identified suddenly materialised as a result of broadband and ISPs having to get involved in new road work activities? What volume of extra works might arise in such circumstances? I know that that is a very difficult question to answer, but it would be useful if you could give a broad indication of what we are looking at.

**Domhnall Dods:** While you were asking the question, Nancy Saunders commented that it is impossible to say. It is very hard to predict the volume of such activity, but we can examine the trends on customers' bandwidth requirements. In this country, broadband uses a 512K connection—you must forgive me for using some technical jargon—which is about 10 times the speed of old-fashioned dial-up modems. If one mentions that in other countries, one is laughed at. We have a substantial operation in the Netherlands, where people ask us why we do not have 10 megabit connections, why we are not downloading DVDs and watching films and why we do not have all the wonderful services that they have. All that we can say for sure is that the demand for bandwidth will continue to rise.

There is a great deal of talk in the industry about the provision of fibre optic to the home. Fibre optic is the technology that is used to deliver services to the Parliament building, for example. Sadly, the only way of delivering fibre optic technology to people's homes is by digging up their paths or their gardens. The Office of Communications is promoting local loop unbundling as an effective way of promoting competition and delivering the

benefits of competition more widely to the market. As Nancy Saunders has mentioned, that will involve some further digging. I do not know whether the overall volume of work, but will be higher or lower.

The backbone networks are in place and, as Tony Cox said, it is always possible to haul the fibre out, stick some more stuff down and put more boxes on the end of it. The clever people in the back rooms are always coming up with new ways of squeezing more data down the cables. We can probably say that, for the foreseeable future, backbone networks will not be getting dug up, but there may be an upsurge in the number of customers that are connected.

**Tony Cox:** I agree with what my colleagues say. Fergus Ewing's question is difficult to answer. The best prediction is probably that the volume of works will be about the same. I should add that BT is embarking on a programme of assessing the design of its entire core network, with a view to upgrading it and changing it to an internet protocol-based network. That does not mean that we are going to be digging up the roads, because we will not need to. As Domhnall Dods said, we can put new equipment in exchanges. However, there are likely to be some occasions when we need to dig up the roads. The best guess in the telecoms sector is that the amount of road works will be about the same.

**Domhnall Dods:** I can give a bit of context about something that it occurs to me that I have not yet mentioned.

I am a motorist and a cyclist and the type of road works that bother me are the ones where the cones are left out all weekend and no one is digging. We have some works in Livingston at the moment that have been scheduled for more than a year. That is the sort of thing that annoys me.

However, such situations are not what we in the telecoms industry are talking about. I am not an engineering person but I went out with my digital camera to take some time-stamped photos so that I could show politicians what we are talking about. I was astonished because the guys who are out there doing the work are digging trenches and then filling them in; they are rarely left open overnight. We are talking about works that take only very short periods of time to complete. Subject to trench sharing, if one operator is involved the typical telecoms trench is the width of a piece of A4 paper, and it is dug and filled in within one day. When I went out at 8 o'clock in the morning, the guys had started digging—they had done a couple of hundred metres already. I went back at 2 o'clock in the afternoon and they had gone—not only had they filled the trench in but they had cleared up and gone.

Our colleagues in gas, water and electricity might have to dig some bigger holes, but members might want to consider exempting minor works. In our industry, we are not talking about the huge great holes that, because water pipes are bigger and have to be deeper, our colleagues at Scottish Water might have to dig.

**Tony Cox:** Going back to one of the earlier questions about the details of the proposals, this is another area in which there is no detail. We will be looking for proportionality in increased fines, decriminalisation and the imposition of penalty notices when we get things wrong, given the impact on congestion that is caused. As Domhnall Dods said, our jobs are frequently very small and of relatively short duration and might well be on minor roads where congestion is not an issue. That is why we are looking for proportionality.

**Fergus Ewing:** I have another question that arose from the written evidence under the heading "Telecoms as part of the solution". I was intrigued by the reference to a report by BT that concluded that

"more widespread use of broadband to enable flexible working could eliminate 14.5 billion miles of journeys per year throughout the UK – equal to some three years' growth in car usage."

That very dramatic statistic seems to suggest that access to broadband is good for congestion and takes people off the roads because they can work from home. That is the basic idea. How was that apocalyptic figure of 14.5 billion miles arrived at? I presume that it was plucked out of the air.

**Tony Cox:** Not at all. We examined the impact of broadband, although this is about more than broadband. Broadband has meant a step change in people's ability to work from home, and communications play a role in that. I do not think that we should forget that the other infrastructure providers are essential to that as well—we cannot have broadband if we do not have an electricity supply, and none of it is a lot of use if there is no water supply, too.

We examined the current take-up and use of broadband and the number of people who are home workers and flexible workers at present across the UK as a whole. The figures suggested that approximately 7.5 per cent of the workforce is working from home. We compared that figure with other countries that are further ahead than we are in flexible working, particularly the Scandinavian countries, where about 15 per cent of the workforce works from home. To blow BT's trumpet for a moment, we encourage home working where it makes sense and where it is possible, and we are up to that level of about 15 per cent.

If we extrapolate that 15 per cent and consider the impact on commuting, travel to meetings and

so on, we come up with the figure of 14.5 billion miles. However, that is not the end of it. It is not just about flexible working and home working; there is a real net benefit from home shopping, for example. A lot of people point out that there will still be delivery vans, which is true, but there is still a net benefit. We have commissioned work on and carried out studies into this area and the figure that we have given is based on evidence. It is only one extrapolation, but we believe that the result is achievable.

It all comes back to the principal cause of congestion, which is basically the volume of traffic on the roads. Instead of telling people that they cannot travel, we need innovative methods of reducing traffic. After all, people will always need to travel. Some jobs are not so open to flexible working or home working; however, such approaches should be encouraged for those that are. That would make a lot of sense for the whole economy.

16:45

**Domhnall Dods:** We can extend the point beyond home working and flexible working to include, for example, videoconferencing and audioconferencing. Indeed, we make very extensive use of such facilities. For example, I used to spend every week slogging up and down to London, where the bulk of our industry is based. Instead, I now have videoconferences and audioconferences. People are much more receptive to those technologies, even to the extent that, although my head office is in Glasgow, I rarely slog along the M8. I simply turn the television on in a corner of one of our meeting rooms and have a videoconference. There is a whole range of similar measures that we can think about.

**Tony Cox:** In 1998, it took an average of 51 minutes to travel the length of the M8 corridor in the rush hour. It now takes 64 minutes. As a result, Domhnall is benefiting himself and everyone else by not making that journey so often.

**Tommy Sheridan:** I am a wee bit surprised by your attitude to the introduction of a penalty scheme. I do not know whether you heard the earlier witnesses or have read some of the evidence that we have received from other private contractors. However, everyone seems to be of the opinion that, as long as there is a level playing field for everyone involved in road operations, they have nothing to fear from a penalty scheme. Indeed, they welcome it.

I was interested to note that the word "proportionality" was used this afternoon. I wonder whether Tony Cox would, for example, proportionately reduce the cost of installing

broadband in a low-income household. In any event, if your record of road reinstatement is so good, you must surely have nothing to fear from a robust penalty scheme.

**Tony Cox:** Absolutely. If it seemed that we were against the application of penalties for doing something wrong, we were giving the wrong impression. Reinstatement is the classic example in that regard. It is perfectly legitimate to be given a penalty for not reinstating roads to a particular standard and we should be required to pay that. I must point out that we are already subject to such schemes.

That said, on proportionality, if the problem is congestion, proposals to extend a scheme should take it into account that something that goes wrong on a road where congestion is not an issue should be subject to a lesser penalty. I am not saying that no penalty should be levelled, even in that situation, but we need to address the real issue and concentrate our efforts on where the congestion problem is worst.

**Domhnall Dods:** At the Enterprise and Culture Committee meeting upstairs, we discussed what might happen with a simple error that had no impact on congestion. For example, if I put a notice on to the Scottish road works register that says that I will be digging outside 100 the Royal Mile, but in fact I will be digging outside 101 the Royal Mile, that is technically a finable offence. We feel that it is disproportionate to receive a fine at level 5 on the standard scale for such a little keyboard slip. I am sorry if we have given the impression that we are against a penalty scheme, but I feel that we need to make the penalty fit the crime.

I am worried that I might have given the wrong impression when I mentioned points systems and considerate contractor schemes. I was simply trying to counter the argument we often hear when people say that schemes should apply to everyone that the public sector cannot pay for the public sector's errors and that the money will simply go round in circles. We could try to get round that with points systems, naming and shaming measures and so on. Other options can be explored.

**Tommy Sheridan:** That response is helpful because I felt that, particularly with your example of a points scheme, you were giving the impression that you were trying to avoid the type of penalty scheme that has been mentioned. I must signal some caution about basing your argument on the difference in effect on congestion between work on minor roads and work on major roads. What most people get angry about is not just the congestion but the idea of someone digging up a road and not fixing it right. Whether it is a minor road or a major road does not really matter for the local community. The local

community might suffer more than the wider community. There is a principle here, which the committee is trying to identify. As I said earlier, it is in only a minority of cases that a contractor does not reinstate a road properly, but when that happens, it should be properly punished. If you accept that, that is fine.

I would caution Domhnall Dods—I am sorry if I am pronouncing your first name incorrectly; it is a unique first name—who gave an example involving the Royal Mile that was not helpful. Later, you gave an example of non-invasive techniques and talked about a very real example where an attempt to enter the network under one part of the A9 ended up causing damage elsewhere. You would obviously be responsible for the reinstatement of that portion of the road. As far as the bill is concerned, it is important to consider the fact that creating a hole in one part of the road network might, through structural problems, affect another part of it. You must have a certain level of responsibility for that. That is not to turn you into road reinstaters or resurfacers. The provision on that is included in the bill as a precaution.

**Domhnall Dods:** If there were evidence that we had destroyed or seriously damaged another part of a road, we could accept the logic that we would be required to repair it. However, the power in the bill would not cover that, as it is simply a power to resurface. I am not an engineer, so do not press me too hard on the details of this, but a requirement is not being made to completely reconstruct the substructure of the road; it is about a skim of the surface and putting the tarmac back. That is an aesthetic measure, not a structural one. I can accept what you say in theory and I am not educated enough to argue over whether that is a sufficiently realistic scenario, but the bill would not resolve that issue. The bill proposes an aesthetic measure to make the road look nice again, all with the same shade of tarmac, but it does not provide a structural solution.

**Tommy Sheridan:** Let us be clear about the whole idea of a road works commissioner and a more robust regime. If anyone involved in road deconstruction were to cause structural problems, we are very much of the opinion that that should be identified at an early stage. The bill is not about trying to get you to resurface the whole of the Royal Mile despite the fact that you have been operating on only 10m of it; it is about trying to get you to reinstate that 10m to the highest possible standard. If that requires a slightly broader area of resurfacing for the sake of consistency, I would hope that contractors would accept that.

**Domhnall Dods:** It is helpful to have that clarification as to the Parliament's intention. However, the bill does not say that. The provisions apply in perpetuity. They are without a limit of time

or a geographical limit. Let us say that I am selling you a service for a certain amount a month; if the digging accounts for 80 per cent of my costs, and if those might be nearly quadrupled in 20 years' time, how am I supposed to price that service? That would not be satisfactory for you, nor would it be satisfactory for me.

**Tommy Sheridan:** Appropriate amendments may be submitted.

**The Convener:** That brings us to the end of our evidence taking on the Transport (Scotland) Bill. I thank Domhnall Dods, Tony Cox and Nancy Saunders.

16:54

*Meeting suspended.*

16:58

*On resuming—*

## Gambling Bill

**The Convener:** Item 2 is on the Gambling Bill, which is a United Kingdom bill. I will explain the process that we intend to follow in a second.

First, as the convener of the committee, I want to raise an issue of concern about a letter that appeared in *The Herald* this week from Fergus Ewing MSP, who is a member of the committee. Much in the letter is political debate, which I may disagree with, but the specific issue of concern that I want to raise is that it misrepresents the decision that the committee took at last week's meeting. Specifically, I refer to the statement that

"It was not the committee but its Labour and Liberal members who voted to hand over powers on gambling to London Labour."

That is a factually inaccurate statement. When the committee considered the issue last week, it had a debate on the scrutiny that it would apply to the Sewel motion that was being lodged by the Executive; it did not vote on whether to approve the Sewel motion. Personally, I think that it is a discourtesy to members of the committee and does a disservice to the Parliament when members of committees make statements that are inaccurate. I know that Mr Ewing wishes to respond on the issue, and I hope that he will clarify his position.

**Fergus Ewing:** Convener, you did not inform me that you were planning to raise the matter; otherwise I would have been happy to discuss it with you. I really do not want to curtail the opportunity that we have for questioning the minister. Further on in the letter, I say that the matter will be decided when the full Parliament considers the Sewel motion. That is the correct position, as we all know. I hope that that clarifies matters and that we can move on. I would have been happier if you had given me notice that you were planning to raise this rather personal matter. You replied to the letter in *The Herald* today. I take issue with what you said, but that is politics.

**The Convener:** I have no problem with members of the committee making political points in the media; what I have a problem with is members of the committee making points that are factually inaccurate in the media. That is a discourtesy to other colleagues on the committee and does a disservice to the Parliament. I hope that we do not have any further examples of factually inaccurate statements being made about decisions of the committee.

**Fergus Ewing:** Convener, you have quoted selectively from a letter and I have pointed out



that, later on, the letter states that the Sewel motion—

**The Convener:** I do not intend to get involved in a debate about this.

**Fergus Ewing:** May I finish?

**The Convener:** No. I wish to move on.

**Fergus Ewing:** You have raised a personal matter, convener. I think that I have a right to reply.

**The Convener:** Will you please respect the authority of the convenership, Mr Ewing? I gave you the opportunity to respond. I am disappointed that you did not respond by apologising to members of the committee. You had the opportunity to respond and you will have the opportunity to make your political points later. If members of the committee make references to decisions that the committee has made, I expect those to be based on fact.

Let us move on to the UK Gambling Bill. We have with us the Deputy Minister for Finance and Public Service Reform, Tavish Scott MSP, and his supporting officials from the Scottish Executive. I will set out to members the way in which I intend the committee to handle this business, which follows on from a decision that the committee made last week. Members will be aware that there is no formal procedure for the consideration of Sewel motions in committees. However, at the meeting last week, we agreed how we would handle this Sewel motion and the arrangements are set out in the committee's papers.

First, I will allow the minister to make an introductory statement, outlining the context of the Sewel motion and the Executive's justification for using the Sewel motion arrangements. I will then allow a question-and-answer session, at which point either the minister or the officials who are supporting the minister will respond to members' specific questions. I urge members not to move into the political debate at that point, if they can avoid it. I intend that part of the process to be questions and answers only.

We will then move into a debate on the Sewel motion, which has no formal status in the Parliament's standing orders. The decision on the motion will be taken by Parliament, but the committee's debate will form the basis of a report that will be submitted to Parliament and made available for members to consider when Parliament debates the Sewel motion that the Executive proposes. At the end of the committee's debate, I will allow the minister to respond to any points that have been raised in the course of the debate. Finally, I will give the committee the opportunity to decide whether it wishes to recommend the Sewel motion to Parliament.

That is the process that I intend the committee to go through. I invite the minister to make his introductory statement.

**The Deputy Minister for Finance and Public Service Reform (Tavish Scott):** Thank you very much, convener. I am grateful for the time that you have taken to rearrange business for this item. I have with me Jacqueline Conlan and Ken McKenna. Jacqueline is leading the Executive's bill team on licensing reform and is the head of our licensing team. I will make some introductory remarks, as you have invited me to do.

First, it is important to lay out the Sewel motion's context and the component parts of the bill that are our responsibility. The UK Gambling Bill is a matter for the UK Government and the UK Parliament, as gambling is a reserved matter. Our motion on the bill will create a framework that gives Scottish ministers more power—not less—to regulate gambling in Scotland. Without the Sewel motion, there would be no Scottish influence on the parts of the UK legislation that are the responsibility of the Scottish Parliament. I am against that, as I suspect most people in the Parliament are.

Yesterday, I met Richard Caborn, who is a minister of state in the Department for Culture, Media and Sport and is piloting the UK bill through the House of Commons. We discussed various aspects of the bill's regulatory powers and its general progress. The bill will restore control of commercial gambling, for example, which has been undermined by new technology, and it will increase social responsibility. That is a key aim of the bill and I want to ensure that Scottish ministers can play a full and active role in achieving that aim. There is, for example, no current regulation on internet gambling. Some 4 million people throughout the UK gamble online every week, and the UK bill will regulate that gambling. That is just one measure that suggests that there should be support for the proposals.

The choice is simple and stark. We can either accept the powers that require the consent of the Parliament—and hence the Sewel motion—or let powers stay in the hands of UK ministers. I think that all committee members have a copy of the Executive's memorandum on the bill, which sets out the background and the existing and proposed devolved powers. I will not repeat what all those powers are, but I would like to say a few words on the main aspects of the bill.

The bill progresses proposals for the modernisation and consolidation of all gambling legislation following an independent review in 2001, which is known as the Budd report. Existing gambling legislation dates back to the 1960s and much of it is outdated. The bill is required in order to deal with the new technology—for example,

internet gambling, which did not exist back then. Some 90 per cent of the bill aims to tighten the rules to cover new forms of gambling.

The bill will also provide new protections for children and vulnerable persons, which are important in the context of social responsibility. Those protections will apply throughout the United Kingdom. A powerful new body, the gambling commission, will be established to regulate gambling. The commission will have power to investigate, prosecute and remove gambling operating licences if necessary and will be responsible for operating personal licensing. Again, social responsibility will be an explicit condition of an operating licence, with breaches triggering penalties or even the loss of a licence.

The current powers of Scottish ministers to set licence conditions for some gambling premises will be extended by the proposals to cover all gambling premises in Scotland. Local licensing boards in Scotland will be responsible for all premises and will be required to prepare three-year licensing board statements. Licensing boards will have power to decide whether the local community wants any more casinos in its area—in other words, local licensing boards can say no. Any new supercasino would be regulated by conditions that are set by Scottish ministers.

I am sure that the committee knows that the UK Government announced on 16 November that the number of regional casinos in the first phase of development will be limited to eight. Decisions on the location of any regional casino in Scotland will be taken only in consultation with Scottish ministers. In London yesterday, I discussed the fact that that will be explicitly stated in the United Kingdom legislation.

In summary, gambling is a reserved matter and the Scottish Parliament has no power to legislate on it. Therefore, the only realistic way in which Scottish ministers can acquire the new powers is through the Sewel motion. Scottish ministers will have a wider range of controls under the new system than they currently have. They will be able to set a range of licence conditions within the new national framework. We can and want to play an active part in achieving the bill's overall aim of increased social responsibility in gambling.

I am sure that the committee will want to explore a number of issues that arise from the Sewel motion and I am happy to answer any questions that members have as well as I can.

**The Convener:** All members seem to want to ask questions. I will try to get round everybody in turn. We will start off with David Mundell.

**David Mundell (South of Scotland) (Con):** Will the minister put on his parliamentary business hat—I think that he is still also the Deputy Minister

for Parliamentary Business—and explain the process of timetabling and conjoining legislation that operates between the UK Government, the Scottish Executive and the Scottish Parliament?

**Tavish Scott:** I presume that you are asking about Sewel motions.

**David Mundell:** I was asking specifically about the backdrop to the Gambling Bill. Will you talk about the discussions that took place between the Executive and the UK Government about the need to synchronise timetables?

**Tavish Scott:** A lot of work goes on, principally at official level, around the parliamentary stages at Westminster. We are talking about UK legislation, so the principal driver is the speed or otherwise of the process through the parliamentary channels—in the House of Commons and the House of Lords—at Westminster. On the mechanisms of the direct connections, I will say only that there are very frequent discussions between officials and that, as appropriate, ministers discuss with their opposite numbers how best matters can be progressed. The discussions obviously take into cognisance Scottish interests and what Scottish ministers want to achieve on behalf of the Parliament, bearing in mind that we will be held accountable for that.

**David Mundell:** Do you agree a timetable?

**Tavish Scott:** We can never agree a timetable, because the Westminster timetable is fluid, as is our own legislative timetable. We can agree as best we can an indicative timetable, but we never set down a hard-and-fast timetable, because such matters are by definition fluid.

**David Mundell:** Is the UK Government seeking confirmation from you that the Sewel motion will be agreed to?

**Tavish Scott:** If the motion is not agreed to, we will have none of the additional powers that it provides. I have argued that it is in our interests for Parliament to agree to a motion that would confer additional powers on Scottish ministers, who are accountable to the Scottish Parliament. It would be strange in the extreme to refuse to agree to a motion that would confer powers on us. If the motion is not agreed to, we will have no control over the additional points, because gambling is reserved to Westminster.

**David Mundell:** I will be sympathetic to that point when you adopt the same line on timetabling under a UK Conservative Government.

**The Convener:** You might have to wait a long time for that. Was that your final question?

**David Mundell:** It was a statement.

**Tommy Sheridan:** I seek definitions from the minister on a couple of points. What will be the

length of the "first phase" in relation to the eight supercasinos?

**Tavish Scott:** What do you mean by the "first phase"?

**Tommy Sheridan:** We have been given an assurance that only eight supercasinos will be allowed in the UK in the first phase, one of which will apparently be in Scotland. What does that mean?

**Tavish Scott:** The first phase is three years.

**Tommy Sheridan:** So we are really being told that by the time the first supercasino has been built, work on another one could have started.

**Tavish Scott:** I do not follow the logic of that. It is right that there should be that three-year period, which is not an insignificant amount of time and will allow for the checks and balances in the system that I am sure members ardently support. For example, social responsibility clauses will provide opportunities for a range of factors to be considered. In addition, work will be done by the proposed gambling commission and other bodies on the effects of any supercasino that is constructed. The three-year period will allow a lot of other work to go on.

**Tommy Sheridan:** I caution you to be careful. You moved from talking about regional casinos to talking about supercasinos.

**Tavish Scott:** They are one and the same thing.

**Tommy Sheridan:** That brings me to my second question. How would you define "large" in relation to a casino?

**Tavish Scott:** Forgive me for not knowing these off the top of my head, but square foot areas are given for large, small and regional casinos. Regional casinos and supercasinos are the same size in terms of square footage. I am sure that Ken McKenna can answer your question.

17:15

**Ken McKenna (Scottish Executive Finance and Central Services Department):** The sizes will be determined according to a range of criteria, including the minimum number of tables, the maximum number of machines and the customer area. Generally, a small casino will have up to 80 machines, a large casino will have a maximum of 150 machines and a regional or supercasino will have a maximum of 1,250 machines.

**The Convener:** I will allow you one more question, Tommy.

**Tommy Sheridan:** That is difficult, because I have a few more questions.

**The Convener:** I will let you ask more questions at the end.

**Tommy Sheridan:** How many people will be employed in the new gambling commission? I am particularly interested in the commission's role of liaising with and reporting to procurators fiscal on breaches of regulations under the Gambling Bill in Scotland. Will the commission be well enough resourced and employ enough people to allow it to carry out that duty?

**Tavish Scott:** Ken McKenna will provide the specific figures, if he can find the appropriate bit of paper. You raise the important issue of the gambling commission's responsibility to report directly to fiscals in Scotland. Three licensing objectives will give rise to such reports: first, preventing gambling from being a source of crime, being associated with crime or being used to support crime; secondly, ensuring that gambling is conducted fairly and openly; and thirdly, protecting children and other vulnerable persons from being harmed or exploited by gambling. I accept the premise of your question, which is about the importance of the commission's role in that.

**Ken McKenna:** The gambling commission will evolve from the present Gaming Board for Great Britain, which has about 80 staff. That figure will increase dramatically; I believe that it will go up to as high as 280 in the initial phase, although it will probably come down to about 200 at a later stage.

**Tommy Sheridan:** Is that the UK figure?

**Ken McKenna:** Yes.

**Tommy Sheridan:** So we are talking about 28 staff in Scotland.

**Ken McKenna:** I do not think that the staff will be proportionated in that way. The figures that I gave were the UK ones.

**The Convener:** I will explain how I intend to continue with this question-and-answer session. I have a list of members who want to ask questions and I will get to you all. I will try to balance the questions among the representatives of the different political parties. I ask members to ask no more than two or three questions initially. If members have pressing questions to which they wish to return, I will allow those at the end, once everyone has had a chance to ask their initial questions.

**Dr Jackson:** I welcome the minister's comments on the tightening of the rules. As recent reports have confirmed, internet gambling is becoming an issue.

I have three questions. First, will the minister confirm that Westminster could have gone ahead with the bill without consulting us and that some of the advantages that he described, such as the

widening of the Scottish ministers' powers, would not have happened without that consultation? Secondly, can a licensing board say no to a proposed supercasino, wherever it may be in Scotland? Thirdly, given that the Sewel memorandum mentions three different sizes of casino which, as Tommy Sheridan outlined, will be small, large and regional, what assurances have we received about the small and large casinos, rather than the first phase of eight regional casinos?

**Tavish Scott:** I ask you to remind me of your second question, which I missed. On your first point, you are right that the issue is reserved, which is why we have engaged actively in the issue. We would not have been able to take the additional powers that will accrue to the Scottish ministers and therefore to Parliament if we had not embarked on the process. In blunt terms, it would have been a breach of the Sewel convention had we not gone down this road because that is the mechanism that exists.

The issues that you rightly raise about small and large casinos are under active consideration by UK ministers, who have not concluded their discussions on the subject. The bill is in committee at Westminster as we speak, and a final committee session is expected on Thursday for further consideration and Government proposals. The point that you raise is acutely understood and proposals in that area are being considered although I cannot pre-empt what might come.

Will you remind me of the second question?

**The Convener:** It was whether a licensing board could say no to a supercasino.

**Tavish Scott:** Yes is the short answer.

**Bruce Crawford:** Thank you for coming along to explain matters to us so well. I have only two questions. First, what qualitative research has been done, either by the Scottish Executive or Westminster, into the economic and social effects of allowing casinos to be established outside the current permitted areas of the four cities in Scotland, considering the prevailing conditions in Scotland?

I ask the minister to bear in mind paragraph 19 of the Executive's "Consultation Paper: Devolved Powers in the Draft Gambling Bill", which states:

"At present casinos may only be established in permitted areas which are defined in regulations by Ministers. This power is to be discontinued and in common with UK Ministers, Scottish Ministers will no longer have power to determine the areas where casinos may be located."

It goes on to say:

"It is proposed that in future the location, number, size and character of casinos will largely be determined by the market and guided by existing planning policy objectives."

Sylvia Jackson's point should also be borne in mind when we read in the document:

"It will be necessary for authorities to have grounds on which to conclude there would be a detrimental effect in permitting further casinos."

**Tavish Scott:** Ken McKenna will deal with any precise research. It is important to say that, although the powers to allow permitted areas for casino development are being removed, it would be inexact—or just wrong—to infer from that that no additional powers will be given to Scottish ministers. The removal of permitted areas status—if I can use the word "status" in this context—is more than compensated for by the new power at local level for Scottish licensing boards to say no to casinos in their areas at any time if they do not want them. Mr Crawford linked Sylvia Jackson's point to that matter so I am linking it straight back.

In addition, it is important to recognise that, when issuing licences in Scotland, licensing boards will have to have regard to the statutory guidance issued by the proposed gambling commission. In that context, the licensing objectives are important—the prevention of crime, the fair and open conduct of gambling and the protection of children and vulnerable people from harm or exploitation. We must recognise the need to strike a balance but, bearing in mind the strong guidance, the proposed gambling commission and the nature of the conditions that licensing boards will set, I strongly contend that any potential operator will not be able to ignore those objectives. Perhaps Ken McKenna will comment on research.

**Ken McKenna:** It is fair to say that not a lot of research has been carried out into permitted areas to date. Scottish Development International commissioned some research—I think that it is called the Collins report. However, the clear position is that the establishment of any regional casino will be regarded as a three-year pilot. The evaluation at the end of the three years will include consideration of social and economic issues.

**Bruce Crawford:** We are talking not just about regional casinos, but about smaller and larger casinos as well. Will the minister confirm that if the legislation is passed and a bingo hall decides to convert itself into a casino, no further planning permission will be required, because previous planning decisions will have established its right to operate in a particular class?

**Tavish Scott:** No, I do not think that that would be the case because, as Mr Crawford will know from having read the memorandum to the Sewel motion, we are going to consult on the particular planning policy guideline—national planning policy guideline 8, if I remember rightly—in 2005. Those issues will be raised at that time, and will be subject to consultation and a final determination by

Scottish ministers. Under the current regime, any change would have to happen under the regulations that apply to casinos in Scotland. If there were to be any changes in future, they could only happen after due consideration of the planning guidance that will be adopted following the consultation in 2005.

**Bruce Crawford:** You are saying that when the new legislation comes in, you will consider applications to convert bingo halls into casinos because they are in the same class, but they will not be able just to convert.

**Tavish Scott:** We will consider those matters in consulting on the draft planning guidance.

**Iain Smith:** My first point seeks a restatement, because that is useful. As you understand it, the gambling provisions in the Gambling Bill are not matters over which the Scottish Parliament has legislative competence.

**Tavish Scott:** Correct.

**Iain Smith:** That context is helpful.

What is your understanding of who will have input to the decision and who will have the final say on whether a regional casino is approved?

**Tavish Scott:** Being written into the bill—if this has not already been done, it will happen—is the right of Scottish ministers to be consulted by the Secretary of State for Culture, Media and Sport in the process of making a final determination. However, as was made abundantly clear to me yesterday in London, it will be for Scottish ministers and the Parliament to examine the framework that we want to have in Scotland in relation to licensing boards, the planning system, issues around social responsibility, concerns about antisocial behaviour in particular areas that might emanate from casino activities, and other matters around any rise in gambling addiction.

Scottish ministers can put in place a framework that will be subject to parliamentary scrutiny and which will lead to us being clear about the regulations on supercasinos. When and if—it is important to remember that this is still an if—the Secretary of State for Culture, Media and Sport in London has a proposal on the table and wishes to go forward with it, the Scottish Executive will have a firm view on whether that is appropriate for Scotland.

**Iain Smith:** On the general provisions on casinos, can we clarify the grounds on which local licensing boards will be able to refuse a casino licence? As well as allowing them to deal with individual applications, will you confirm that the bill provides for licensing boards to have policies to have no casinos or no more casinos in their areas?

**Tavish Scott:** That is my understanding.

**Jacqueline Conlan (Scottish Executive Finance and Central Services Department):** It might be helpful to direct you to the content of the Gambling Bill. Clause 157 deals with a resolution not to issue casino licences, and states that

“A licensing authority”

—which in Scotland is a licensing board—

“may resolve not to issue casino premises licences.”

It sets out that such resolutions apply to all casino premises, that they can be revoked by a further resolution, and that they last for three years, which is the same length of time as the policy statement lasts. It is important to note that the clause states that in passing a resolution

“a licensing authority may have regard to any principle or matter.”

In other words, the clause is widely drafted and gives wide powers to licensing boards.

**Michael McMahon:** I have some points for clarification. The minister said that there was a difficulty with fluidity in timetabling of the bill. Does he have an indication of when Westminster expects to complete passage of the Gambling Bill?

17:30

**Tavish Scott:** Westminster expects to complete the committee stage on Thursday this week—I guess that there is a Christmas rush, unlike in other Parliaments—but I ask Ken McKenna to give an indication of when the Commons and Lords stages will be completed.

**Ken McKenna:** At the moment, the committee stage is expected to end at the tail end of this week. The bill is scheduled to begin report stage in the week beginning 11 January and the hope is that, if it continues to make the good progress that it is making at the moment at Westminster, it could, subject to the general election, be completed and on the books by about May or June 2005.

**Michael McMahon:** Many questions have been asked about the consequences of agreeing to the Sewel motion on the bill, but I will concentrate on the consequences of not agreeing to it. If Westminster passes the bill without a Sewel motion attached to it, would it be possible for this Parliament to introduce legislation that would fill the gap? If we were not to agree to the Sewel motion, would we leave Scotland exposed, without the powers that are being asked for?

**Tavish Scott:** The short answer is no and yes. Short of rewriting the split between the devolved and reserved responsibilities in the Scotland Act 1998, we would be as you describe. I would argue that we would be considerably worse off.

**Michael McMahon:** We have already had a consultation on the bill that reflected positively on the Sewel motion. If we did not agree to the motion, we would have to begin consultation on a bill, which would not allow us to have a bill in place by the time that Westminster passes the Gambling Bill. Would anything in the Gambling Bill be affected by any future planning bill in Scotland?

**Tavish Scott:** The short answer, as I said earlier to Mr Crawford, is that we will consult on the NPPG in relation to gambling in 2005 with the expectation of concluding the consultation, reaching a view and publishing guidance during next year. There is no question but that that will come before a planning bill. The combination of the Sewel motion, the additional powers for Scottish ministers in the Gambling Bill and the consultation on the planning guidance will undoubtedly precede the introduction of any planning legislation, which will be at a time in the next few years at which you and I can only guess.

**Michael McMahon:** Will you confirm that the only way in which to get the protection for which people in Scotland have begun to ask is to pass the Sewel motion?

**Tavish Scott:** That is my view.

**Fergus Ewing:** I will raise the concerns that were put to me by Mr Perrins, the managing director of Carlton Clubs plc, which is the largest independent bingo business in Scotland. I raised them last week, so the minister will be aware of them. Bingo is a form of soft, mild gambling that, at present, is enjoyed by, I believe, 1 million people—which makes it the second most popular pastime in Scotland after fishing—and in which 96 per cent of those who play, most of whom do so as a form of social activity, win a prize. What Mr Perrins's fears boil down to is that, as he understands it, the Gambling Bill will allow the large casinos and regional casinos to offer bingo, which, he thinks, would be a lure to bingo customers.

Does the minister feel that we should, in principle, have the power to prevent bingo from being offered in the three proposed types of casinos? If he agrees that that is a legitimate view, will it be possible to prevent bingo from being intermingled with other games in the new large casinos and supercasinos in Scotland under the powers that the Gambling Bill will introduce?

**Tavish Scott:** I do not wish to be aggressive about this, but the first thing to say is that the changes that were announced on 14 November were very clear about any potential growth in the number of supercasinos. At the very most, there will be one such casino in Scotland. There is a big if, and lots of caveats around it. We should not try to suggest—and I am sure that Mr Ewing is not

trying to do so—that there will suddenly be an explosion of such developments in Scotland. I respectfully suggest that the premise of his question might apply to England—he will have to respect my lack of knowledge about England; it is not my responsibility—but does not, I honestly believe, apply to Scotland.

I agree with the comments that Mr Ewing makes about the nature of bingo and the social aspects of the activity. However, I do not think that his concerns stand scrutiny in the context of what may happen, if it happens at all.

**Fergus Ewing:** I will press the point, because the concerns have been put to me by experts in the bingo industry. I am sure that the minister agrees that their views deserve to be taken seriously. Their concerns are that, under the proposed Westminster legislation, existing bingo clubs of a certain floor space could—and in some cases will—be converted into casinos that will still be able to offer bingo. One expert adds that an operator in Dundee has already opened a casino on the first floor above the existing bingo club, perhaps in readiness for the potential opportunity that the bill opens up.

If we set aside the rights or wrongs of the matter, should not we have the power in Scotland to prevent such developments from happening? Am I not right in saying that if the motion is passed, we will not have the power to prevent that from happening?

**Tavish Scott:** There has been a change of activity in one premises in Dundee, which I assume has taken place under the current licensing regime; if it has not done so, the operator will be in clear breach of its current operating licence. If the activity has changed, it will have changed under the current regime under which we operate.

I do not want in any way to disparage the context of the issue's being raised or the advice that Mr Ewing has been given by professionals in the sector. The issues are being considered at Westminster. All I am saying is that in Scotland, where we may—I emphasise, may—have one additional supercasino or regional casino, as they are the same thing, it is extremely unlikely that a problem of the scale that is being suggested would emerge, because the degree of change is very small.

**Fergus Ewing:** The concerns are not only about supercasinos—the regional casinos. They are also about small casinos and large casinos. The concerns are that the bingo industry, which we might see as being like a small retail corner shop, will be replaced by the supermarket, in the form of the large casino. The debate today is about whether we will have the power in Scotland to

prevent that from happening. I want a yes or no answer. My reading of the situation is that, unfortunately, we will not have that power.

**Tavish Scott:** A cautious approach is undoubtedly being taken. The concerns that are being expressed are understood. We had that discussion in London yesterday and the matters are being considered carefully.

I do not believe that a problem of the scale that is being suggested will arise in Scotland. I repeat that if licence conditions are as they are now, any change that happens now must be within the current licensing regime.

**The Convener:** In response to questions from Sylvia Jackson, the minister advised the committee that, under the new regime, licensing boards would have the power to refuse casino licences. Would the power to refuse casino licences under the new regime cover the concern that Mr Ewing raises about a bingo operator who might wish to become a bingo and casino operator?

**Tavish Scott:** My understanding is that it would.

**The Convener:** Licensing boards would have the power to refuse to give an operator a casino licence.

**Tavish Scott:** Yes.

**Paul Martin:** The points about the Sewel motion have been well made and I accept the position.

The Executive's paper says that consultation papers were provided to interested stakeholders. Is that how the Executive goes about its business? Does it contact interested groups? How open was the consultation exercise? It would help to have information on that.

**Tavish Scott:** Will you forgive me if I let Jacqueline Conlan answer that? She knows the subject inside out and will give a better answer than I would.

**Jacqueline Conlan:** We took that approach with the bill because one of our concerns was that, although the UK Government had undertaken quite a lot of consultation in the UK, nothing specific had been done in Scotland to flag up the changes that will take place and will affect local authorities and the trade. We issued the consultation paper in the normal way, as a public Executive paper that is available to everybody on our website for example, but we also sent it to a list of about 130 people. We based the list on our knowledge of the situation here and compiled it with the help of our Westminster colleagues. We sent the document directly to those people to reach the right people and to provoke a response.

**Robert Brown (Glasgow) (LD):** I thank the convener for allowing me to participate in the

committee's debate about the motion. My concern emanates from my Glasgow perspective. Most of the pressure, especially in relation to regional or supercasinos in Scotland, will probably involve Glasgow. Such casinos are major; you talked about 1,250 gaming machines in them. My back-of-an-envelope calculation suggests that they offer a potential take in the order of £75 million, so they are significant in any terms.

I will explore the sensible place for decisions in principle in Scotland—I accept that the matter is reserved. You said that locations would be decided in consultation with Scottish ministers—that means where, not whether, a casino will be established. You also said that the Executive would take a firm view on what was appropriate in Scotland. I will press you on that. Does the Executive or the Parliament have powers to say no if we decide on an all-Scotland basis that we do not want super or regional casinos?

**Tavish Scott:** I hope that I described the framework of mechanisms that we will establish if the Parliament agrees to the Sewel motion. The Scottish ministers will have additional powers. I will not repeat everything that I have said, but those powers will be as I described them. They will place a heavy responsibility and burden in relation to any application for a super or regional casino in Scotland on planning, which is by definition a devolved responsibility, and on the gambling commission. Ultimately, it will be for the Scottish ministers—subject to parliamentary scrutiny—to decide on the position if any application is made.

**Robert Brown:** I am asking whether the Executive has the ability in the bill or in agreements with the Parliament in London to decide whether to have a supercasino.

**Tavish Scott:** If local people and local authorities decide through licensing boards that they do not want a supercasino, they will not have one. I said that earlier to someone—I apologise for forgetting whom.

**Robert Brown:** I will press you on licensing boards, which you said could decide to have no casinos in their areas. In a way, that is a version of the permitted areas approach. Does it allow boards to say that they will have casinos but not a particular class of casino?

**Tavish Scott:** No.

**Robert Brown:** Should it? Did you discuss that in London?

**Tavish Scott:** We have considered the issue. The system will not operate in that way. I am not sure whether the situation that you describe would arise. We will continue to discuss the issues. As Jacqueline Conlan said, boards will be able to resolve to have no casinos or no more casinos in

their areas. Such a decision will not affect existing casino premises and an authority will have to be able to justify its decision. That is how we will proceed.

17:45

**Robert Brown:** I have a question about the sensible place for decisions to be made. In Scotland, local authorities are relatively small. A great deal of money could come in—I refer to the capital costs of developments and so on. If an authority is talking about having a major casino development—one of the big ones—at the back of its mind might be the thought that if it does not go for it, the neighbouring local authority, which is only 20 miles down the road, will go for it instead and attract the development to its area. If decisions are made at licensing board level, do not we run the risk of having piecemeal decisions that are made not on planning grounds but on the ground of relative competitive advantage between different local authorities?

**Tavish Scott:** With respect, I do not buy the Dutch auction argument, because of the framework that I have described. I honestly believe that a range of mechanisms is in place—not just planning and the licensing board, but the mandatory conditions that ministers will set for boards. That range and framework of measures, in addition to the significant role that the gambling commission will play, will create a proper mechanism for decisions to be taken, if the need to do so arises. I hope and argue that that will obviate the dangers of the kind of approach that Mr Brown has described.

**The Convener:** I said that I would give members an opportunity to ask further questions, but I ask them to keep their questions as concise as possible.

**Tommy Sheridan:** I will do so. I have two further questions for the minister. I refer you to paragraph 12 of annex A of your memorandum, on page 12 of paper LGT/S2/04/29/5. I seek clarification of clause 166 of the bill and the fact that the Private Security Industry Act 2001 has not been extended to Scotland. I find the paragraph confusing, because it states:

“Appropriate amendments to the Gambling Bill will be made in due course. We intend to use the legislation which amends the PSIA 2001 to amend the Gambling Bill at the same time.”

If the 2001 act does not apply to Scotland, how can amendments to it apply to Scotland?

**Tavish Scott:** I hope that Jacqueline Conlan or Ken McKenna will be able to deal with that. Forgive me for not knowing the answer to the question.

**Ken McKenna:** The position is that the 2001 act will be extended to Scotland, but that has not yet happened.

**Jacqueline Conlan:** It is just a timing issue concerning how the two pieces of legislation fit together. The intention is that they should fit together. There are timing issues related to other bills, such as the licensing bill.

**Ken McKenna:** In due course, the 2001 act will apply in Scotland.

**Tavish Scott:** We can provide a definitive answer in writing. I apologise for not being crystal clear about the answer to Mr Sheridan's question.

**Tommy Sheridan:** I would appreciate it if you could provide further explanation of the clause. I understood that there was talk of the Scottish Parliament regulating the private security industry, rather than just piggybacking on UK-wide legislation.

**Tavish Scott:** We can provide you with chapter and verse in writing.

**Tommy Sheridan:** My second question might also be based on a misinterpretation. You said that the Sewel motion and the Gambling Bill will deliver more power to Scotland, not less. Do you not think that that is over-egging the pudding, given that the Gaming Clubs (Permitted Areas) (Scotland) Regulations 1971 are to be removed? We have more power at the moment, which will be taken away from us.

**Tavish Scott:** I do not believe that that is the case. The removal of the permitted rights system is more than adequately compensated for by the additional conditions that will be put in place, which we discussed earlier. The three criteria with which the gambling commission, in particular, will deal—on children, vulnerable people and organised crime—are strong compensatory mechanisms. I accept that there is a balance to strike, but it is heavily weighted towards improvement in the system, which the Sewel motion will deliver.

**Tommy Sheridan:** Yes, but surely you would accept that, under the current permitted areas regulations, Scottish ministers can decide to have one casino or none. If your answer to Robert Brown was accurate, it seems that licensing boards will now have the ability to say no, not Scottish ministers, who will only have a right to be consulted.

**Tavish Scott:** No. I have obviously not described adequately enough the framework of mechanisms that will be put in place by the combination of the licensing board, the gambling commission, the planning guidance and so on. The combination of those factors is acute and will weigh heavily in relation to these decisions. The



balance of the argument is strongly in favour of what we are doing.

**Dr Jackson:** I will put on my subordinate legislation hat and ask about proposed devolved powers.

Paragraph 8 of the Sewel memorandum talks about the setting of fees and opening hours. I would like to know about the regulations. Earlier, Bruce Crawford raised a point about paragraph 9, which deals with the issuing of premises licences and permits in Scotland and the requirement for licensing boards to have regard to statutory guidance issued by the gambling commission and the licensing objectives, among other things. I would like to know how that will be processed to ensure that the decision that the licensing board makes is rational and based on useful criteria.

**Tavish Scott:** Sylvia Jackson has asked a fair question. The issue relates principally to the mechanism by which the gambling commission will consult Scottish ministers on some of the conditions, such as fees and so on. The fees will be set centrally by Scottish ministers but, in respect of the conditions, we will be part of the process that involves the gambling commission. In addition to that, material relating to the mechanism will be published; in that sense, it will be open.

**Jacqueline Conlan:** We have already talked about how that would work to the Gaming Board for Great Britain, which is already examining implementation. We both recognise that, because of the powers that Scottish ministers have to set licence conditions, we will need to help the Gaming Board with the draft guidance in order to cover the position in Scotland in relation to licence conditions. The intention is that we would work closely with the board.

**Dr Jackson:** Will the devolved powers be dealt with by the Scottish Parliament through subordinate legislation?

**Tavish Scott:** Yes; you will have a chance to see it.

**Fergus Ewing:** Clause 157 of the Gambling Bill says that a licensing authority could resolve not to issue licences to casino premises. However, that is subject to a number of conditions. One of those is that a resolution under clause 157(1)

“shall have no effect in relation to a casino premises licence issued before the resolution takes effect”

and

“shall have no effect in relation to anything converted into a casino premises”.

The minister will be aware that, in the Town and Country Planning (Use Classes) (Scotland) Order 1997, bingo halls and casinos are in the same use class, which means that many casinos already

have planning permission to operate as bingo halls and vice versa. Does that mean that, as far as the issue of legislative power is concerned, existing casinos could not be prevented from providing bingo in Scotland?

**Jacqueline Conlan:** An issue relating to use classes will be wrapped up in the consultation that is done on planning. Could you repeat your question, please?

**Fergus Ewing:** The question is: will we in Scotland have the power to prevent existing premises that have the necessary permissions to act as casinos—that is, gaming permission and planning permission—from offering bingo?

**Tavish Scott:** I do not think so, but I will come back to Mr Ewing formally on that to give an appropriate and, more important, an accurate response.

**Michael McMahon:** I seek clarification, given the answers that we have heard to some of the questions that were put earlier. It was made clear that you will have input to the licensing conditions that will allow licensing boards to make decisions on regional casinos. You said that there will be a reflection on NPPG 8, which will set the criteria according to which planning for casinos will be done. Is the answer to Robert Brown’s question that the Scottish Executive will have influence over whether particular casinos are given the go-ahead?

**Tavish Scott:** Yes. I believe that Michael McMahon’s central contention is absolutely right. That is what we seek to do through the framework that I described. In addition, because a national planning policy guideline is, by definition, published and available, it shows ministerial intent and the intent of the Scottish Executive in that regard. I say a firm yes to the question that Mr McMahon raises.

**The Convener:** That brings us to the end of questions. As I said, I will allow members to indicate what they think about the Sewel motion. I ask members to communicate their thoughts briefly and we will then move on to decide what the committee as a whole thinks about the Sewel motion and whether it is appropriate to recommend to the Parliament that the motion be agreed to. When members have made their contributions, I will allow the minister to respond to the points that have been made, but I urge him to respond to the specific points and not to make a further speech at that point. That is not an insult to the minister.

**Tavish Scott:** You know me too well.

**Bruce Crawford:** I look forward to hearing the minister’s conclusions. I suspect that we will not necessarily agree.

If we agree to recommend to the Parliament that the Sewel motion should be agreed to, we are at best acting prematurely and at worst abdicating our responsibility to the people of Scotland fully to scrutinise the legislation that will be passed with our approval at Westminster. I say that in the knowledge that the convener has had some letters from churches that support the view that we need to undertake fuller scrutiny.

I am also aware of the comments from Carlton Clubs plc that are referred to on page 16 of the Scottish Parliament information centre paper. Carlton Clubs states that the Joint Committee on the Draft Gambling Bill did not

“visit Scotland or take any evidence from any Scottish operatives whose businesses would be affected by the ... Gambling Bill”

because

“draft clauses for the gambling legislation as it would apply in Scotland were not made available in time for the Joint Scrutiny Committee (JSC) to include them in its review.”

Those are powerful words.

Today, in response to my question, we heard that Executive officials are not aware of any qualitative research that has been carried out either at Westminster or by the Scottish Executive on the economic and social impact of allowing more casinos—be they small, large or super—to be established outside the current permitted areas in our four main cities. The bill, as it affects Scotland, has therefore not been subjected to full scrutiny at Westminster. The Scottish Parliament has a duty and a moral obligation to carry out full scrutiny, which Westminster has failed to do properly.

18:00

The Executive has not made a safe and robust case for passing the powers to determine where casinos can be established from Scottish Executive ministers to local authorities. Paragraph 19 of the Executive’s consultation paper states:

“This power is to be discontinued and in common with UK Ministers, Scottish Ministers will no longer have power to determine the areas where casinos may be located.”

That goes for small casinos, large casinos, regional casinos, supercasinos, or whatever we want to call them.

I am also concerned about the proposal to lift restrictions on casinos offering live entertainment. Paragraph 55 of the Executive’s consultation paper states:

“At present the Gambling Clubs (Licensing) (Scotland) Regulations 1969 require licensing authorities to impose restrictions preventing casino premises from offering live entertainment.”

Those restrictions will be lifted as a result of the

Sewel process. The regulations were put in place for good and solid reasons: to prevent people who turn up to casinos to listen to music, to watch an act or for wider family entertainment—as was mentioned by the supercasino people from whom we heard today—from being sucked into a destructive gambling habit.

Why do we need a full scrutiny process? On the social impacts, the information that I have received from Dr Gerda Reith of the University of Glasgow is that research into gambling habits shows that Scots are the biggest gamblers in the UK. Some £80 per person per annum is spent on gambling in Scotland, compared with £52 per person per annum in England. Why on earth do we want to make problem gambling in Scotland potentially worse?

The Auckland report is qualitative research material, but Westminster did not examine it, as the report did not come out until October. Similarly, the Executive has not had the chance to examine it. The report, which was commissioned by the UK Responsibility in Gambling Trust, considered the experience of the United States of America and New Zealand in particular. It states:

“With respect to links between gambling availability and problems, it is of interest that the researchers found that location of a casino within 50 miles ... was associated with approximately double the rate of pathological gambling”.

It states:

“location of a casino within ten miles of an individual’s home is independently associated with a 90% increase in the odds of being a ... pathological gambler.”

It found:

“the four counties with the greatest access to casinos had the highest problem gambling rates and the four with the least availability had the lowest rates.”

I do not want to go on ad infinitum about the report, but it covers other issues and I will draw attention to two of them. It states:

“the data tend to support the contention that the widespread legalisation of gambling in the nation may result in a significant increase in the incidence of compulsion gambling”.

Finally, it states that

“age under 30 years, low income and single marital status ... less formal education and non-Caucasian ethnicity”

are risk factors for problem gambling. I leave members to take cognisance of what else the report says. It is pretty powerful evidence.

On the economic front, I have heard evidence from all sides about the additional economic activity that casinos can contribute. However, as far as I can see, casinos only redistribute economic activity. There is a danger that small pubs will be hoovered up into larger casinos and that money will be taken out of local communities

and no longer spent in Scotland. I refer to Glasgow in particular, where there are already difficulties, and other areas in which there might be larger casinos. That matter concerns me greatly. Have we not learned lessons from small shops closing when the supermarkets came along? I think that Fergus Ewing referred to that matter earlier. We lost many small corner shops to the bigger supermarkets. The same thing will happen to some of Scotland's pubs. We are not justified in proceeding on the basis that the measures promote a sustainable economy.

As I said, we should not recommend that the Parliament agree to the Sewel motion. At best, that would be to act prematurely; at worst it would be to abdicate our responsibility to scrutinise the proposed legislation fully. That scrutiny has not been carried out. Our moral duty and our obligation to Scotland are that we recommend to the Parliament that the Sewel motion should not be agreed to.

**Iain Smith:** The problem is that Bruce Crawford has been speaking about a different motion from the Sewel motion that the Parliament will consider. The Parliament will not consider a motion to pass powers from the Scottish Parliament to Westminster.

**Bruce Crawford:** I did not say that.

**Iain Smith:** You did. The motion does not mention our passing to Westminster the power to pass the Gambling Bill; it makes no reference to whether the Scottish Parliament or the Scottish Executive approves the proposals in the Gambling Bill. The motion states that if the Gambling Bill—which is a UK bill on a reserved matter over which this Parliament has no legislative competence—is passed, the Scottish ministers should at least have some powers under it. The question is whether the Scottish ministers, and through them the Scottish Parliament, to which the ministers are accountable, will have any say in the control of gambling premises in Scotland. If we do not pass the Sewel motion, the ministers will have no say in that. The UK Parliament could pass a bill with the same provisions, but under which UK ministers were responsible for implementing the regulations in Scotland, not the Scottish ministers. That is what the Sewel motion is about.

We should cut through the nonsense that the issue is about scrutiny by the Parliament. We have no responsibility for scrutinising the bill because it deals with a reserved matter. We cannot tell the UK Parliament whether it should pass the bill, because the matter is not our responsibility—it is reserved. The motion is the most clear-cut case of a motion on a reserved matter that has ever come before the Parliament. The Sewel motion is about giving the Scottish ministers powers to make

regulations on a reserved matter. As such, it is a straightforward motion that we must support.

The place for scrutiny of the bill is at Westminster. I ask SNP members how many contributions to the debate SNP members of Parliament at Westminster have made. The answer is none. That is the level of scrutiny that the SNP has given the bill at Westminster. The Scottish Parliament should not be responsible for doing the job of Westminster MPs, who should be doing it themselves. Let us recommend that the motion be passed, because it will give sensible controls to the Scottish ministers and therefore some say to the Scottish Parliament on an important reserved issue.

**Paul Martin:** There are good arguments for having UK legislation on the issue, because we need a uniform approach to the regulation of the industry. Any legislation on the issue should apply across the board, throughout the United Kingdom.

I turn to an issue that Fergus Ewing raised. No greater campaign could be launched than one to save bingo halls—that is a worthy cause—but Fergus Ewing presents a red herring in raising the issue. I see no evidence that the casino operators are targeting the bingo industry. Bingo would not provide those operators with sufficient income to allow them to make a living. Unfortunately, there is evidence that the operators will look to increase their income from the casino industry, but I see no evidence whatever that they will target Jeannie and Jessie, who make their way to the Forge bingo hall in Parkhead or the Possilpark bingo hall. We must tighten up the bill to prevent operators from using bingo halls as a cover to pursue casino interests. However, Fergus Ewing presents a red herring—the operators have other fish to fry.

I support the Sewel motion because we should have a UK process to ensure that the approach throughout the UK is uniform.

**David Mundell:** I will not support the Sewel motion. I gave some of my reasons for that at last week's committee meeting. I do not believe that we would be proceeding on the current basis if there were not a UK Labour Government and a Labour-led Scottish Executive. It is disappointing to see Iain Smith kowtowing in such a way about agreeing to the Sewel motion. If there were not a UK Labour Government, I cannot imagine that the members who are supporting the motion would be happy about the removal of powers from Scotland without debate and scrutiny in the Scottish Parliament.

**Iain Smith:** Will David Mundell give way?

**David Mundell:** This is not that kind of debate.

There was no reason why the Scottish Parliament and the UK Parliament could not have

worked in harmony to develop the proposals, but it is clear that that did not happen. Instead, the UK Government came up with proposals and expects the Scottish Executive to deliver on them in Scotland without the appropriate scrutiny. Bruce Crawford referred to what the churches have said about that.

Nothing of what Iain Smith and others described during the debate as doing down Scotland needs to happen. I am surprised to hear Labour members say that the UK Labour Government would somehow leave Scotland in a bad position—surely it would not do so. Iain Smith is a Liberal Democrat and might have no influence over a UK Labour Government and Labour ministers, as he indicated, but surely Labour members have influence with their colleagues. What is the role of the Secretary of State for Scotland? He must look out for Scotland's interests.

I cannot support the Sewel motion, which is just a fix and would set a bad precedent. I do not think that such a precedent would be followed under a Conservative Government, because the very members who are supporting this motion would be squealing against such an approach.

**Tommy Sheridan:** I apologise, convener, but if I do not catch the 6.30 pm train I will miss an important appointment.

I am unable to give a qualified and professional comment on the subject, because I do not even buy a lottery ticket. However, a serious issue has been raised about the removal of powers from Scottish ministers. Iain Smith and the minister must accept that a removal of powers is inherent in the bill. They argue that Scottish ministers are more than compensated for that, but not everybody agrees that that is the case. The matter should be further investigated, because the impact of the loss of powers has not been sufficiently explored.

There is probably more to unite than to divide the committee on the bill, because I do not think that anyone is arguing that it is a brilliant thing and that we should welcome the new casinos—it is not and we should not. The bill would replace the strong powers in the Gaming Clubs (Permitted Areas) (Scotland) Regulations 1971 with what seem to be diluted powers. For that reason, I cannot support the motion.

**Dr Jackson:** Like Iain Smith, I think that some people are generating confusion about who is responsible for the legislation. It is a shame that some of the arguments that members made have not been pursued in Westminster, where they should have been pursued. I take on board a little of what members said about scrutiny and I hope

that the minister will take up and pursue the matter.

To me, the evidence that Bruce Crawford gave suggests that the issue should be considered from the Westminster perspective. He mentioned data on the distance of casinos from homes, but nobody mentioned the dangers of the internet and the several million people each week who access internet gambling. That issue must be addressed. We have to move with the times and modernise legislation. I am one of many people here who are against gambling. I want to tighten up the legislation, so I welcome the bill's measures on the internet.

I see advantages in having a Sewel motion and taking the measures forward through our delegated powers. A lot of work will have to be done before we get to subordinate legislation. I am sure that our input at that stage will be welcome.

18:15

**Fergus Ewing:** We all welcome the regulation of internet gambling. There is no dispute about that around this table, although I believe that the matter should be scrutinised properly.

On Paul Martin's point, I, too, initially thought that bingo customers would not be the sort of people who would go to casinos. Only after speaking to the people involved did I learn that experience in America and Australia shows that it is possible to lure a proportion of bingo customers away—not all of them, by any means, but some. Paul Martin referred to, I think, Jim and Jeannie at the bingo not being casino customers—casino customers are James Bond and ladies wearing haute couture. That is the wrong image; things are not like that any more. Casinos now provide every type of leisure, so the fears are by no means fanciful—I would not have put forward my arguments today if I thought that they were.

I will be brief and address three significant points that have not been raised. First, the minister suggested—he was backed up by MSPs from Executive parties—that if we do not pass the Sewel motion we will end up with fewer powers. With respect, minister, that does not take account of section 28(7) of the Scotland Act 1998, which, as it happens, is my least favourite provision in the act. The Scottish Parliament can make laws, but section 28(7) states:

“This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.”

I do not like it and neither does Bruce Crawford—we would like to scrap it—but there it is. Westminster can predominate over this Parliament.

The argument put forward clearly by the minister, as the record will show, is that if we do not pass the Sewel motion we will not be given the powers, but that is patently wrong. I see that the minister is frenetically getting advice, which I am sure will be welcome. I look forward to hearing it. We all like advice. I do not claim to be an expert, but there is a simple point. The minister's proposition does not stand up. Westminster can do what it wants. It says so in section 28(7).

Secondly, section 63 of the Scotland Act 1998 provides that Westminster can transfer powers to Scotland. A lot of powers have gone down south, but there are one or two examples of powers coming back up—I welcome that in the spirit of consensus, which, as you know, convener, I seek to instil wherever I go. However, we have not seen many examples of section 63 being used. Westminster could probably legislate over internet gambling, but there are real concerns—moral, social, economic and religious—that have not been sufficiently addressed.

Finally, after I raised the issue at First Minister's question time, the First Minister said that he would use the licensing powers to prevent an explosion of gambling north of the border. He also argued that the powers would be adequate. My main contention today is that either the powers will not be adequate—as I think I demonstrated in the example that I gave of the risks of having bingo and casinos—or there is, at the very least, serious doubt about whether the powers will be adequate to protect Scotland and to fulfil the promise that the First Minister is quoted in the *Daily Mail* and other papers as making to the Parliament. The First Minister promised that the powers would be sufficient and that there would be no risk that we would be powerless to prevent the spread of—some people would see it as being a virus—hard gambling, unlike in Australia, where there are now serious addiction problems five or 10 years after gambling laws were liberalised.

I hope that those points inform the debate and I will be most interested to listen to the minister's response.

**The Convener:** Earlier, I was worried that Fergus Ewing's concern was that James Bond would lose all his money to Blofeld in a casino and would not have enough left to give the SNP a donation.

**Robert Brown:** As a guest of the committee, I will not say much. I agreed with much of what was said about the implications of the bill and about whether we were having the right debate. However, I strongly disagreed with Fergus Ewing's comment about the Scotland Act 1998. It seems strange to suggest in effect that Westminster should be invited to ignore a resolution of the Scottish Parliament to reject a Sewel motion. That

seems to be a peculiar approach. Fergus Ewing would be the first to object if such a procedure were followed.

On the substance of the matter, there is a sense among members that we are having a debate on the wrong issue. However, I have concerns about where the sensible place is to take decisions on the matter as it relates to Scotland. I asked questions that were germane to that point. We have received a degree of reassurance from Tavish Scott on the matter, but I wonder whether there could be further discussions between the ministers in Edinburgh and the ministers in London—particularly against the background of the First Minister's comments, to which Fergus Ewing referred—about whether it would be more sensible for the power to decide whether to proceed with supercasinos in Scotland to be placed at the Scottish Executive level rather than with local authorities. It seems to me that a Scotland-level decision is required on those matters. However, that is a side issue in relation to the Sewel motion and I do not want to say much more about it, as it is a matter for the committee. I would like to leave the issue with the minister and with the committee.

**Michael McMahon:** Unlike Bruce Crawford, I have not turned up with a prepared speech. I have listened to what the minister said and I want to respond to the minister's comments rather than to rehearse comments that, in Bruce Crawford's case, were made on "Good Morning Scotland" today. Bruce Crawford should have listened to the points that the minister made.

Nevertheless, Bruce Crawford outlined in his speech some of the concerns that I, too, have about the damage that the casinos could do. It was worth while for him to lay the concerns out, as that enables us to consider the issues that confront us. However, the minister explained that the licensing conditions would be directed from the Scottish Executive and that national planning policy guidelines would be directed from the Scottish Executive. Given that we know that people are already waiting in the wings—we have seen some plans and proposals in Glasgow—it may be too late if we do not take the powers that would become available to us through passing the Sewel motion. We could find ourselves in a situation in which someone could move ahead and build one of the casinos before the Parliament could consult, draft legislation and bring forward the powers that we would want to have to address the issues that Bruce Crawford outlined.

The Parliament should agree to the motion in order to provide the protection that people want. If we do that, we will not abdicate responsibility in respect of moral, religious or other considerations. We will be taking account of them and saying that

we want to do something about the matter now. I do not want the Parliament to walk away from the situation and leave the decision on a casino to be made without the Scottish Executive having any powers over the matter. The motion will ensure that the Scottish Executive has those powers. That is why we should support the motion and not walk away from the issue.

**The Convener:** I invite the minister to respond to the points that were raised in the debate. I ask him to restrict himself to those issues, although I suspect that that still gives him quite a bit of leeway.

**Tavish Scott:** I am grateful for your latitude, convener, and I will briefly deal with what I hope are the main points that were raised this afternoon.

I begin with what Bruce Crawford said. There has been wide agreement in the consultations on removing the clause that relates to live entertainment, particularly as that matter is covered by the ability of licensing boards to regulate by condition. I hope that Bruce Crawford will look at that evidence. He did not raise the issue during the questions, only during his speech, so it is difficult for me to respond more fully to his comments.

I submit that we all share the concerns about addiction. I hope that no members try to claim the moral high ground; I do not care for the insinuation that some members made that ministers do not care about such issues. It would be good if some members listened to everything that has been said on social responsibility. Ministers care about those issues and an insinuation to the contrary does not do the Parliament much good. There will be regular surveys of problem gambling—there will be a survey prior to the commencement of the bill and regularly thereafter—and I hope that that will assuage concern on that point.

On debt, I hope that Mr Crawford acknowledges that the Government is committed to reducing vulnerability to multiple debts and that it provides something in the region of £4.5 million to citizens advice bureaux and other debt advice organisations through debt advice services and local money advice. I hope that that deals with any suggestion that we do not appropriately confront that significant issue in Scotland.

On consultation, for Mr Crawford to claim—I hope that I quote him accurately—that the matter was not subject to full scrutiny at Westminster does not say much about his SNP colleagues. I have checked and discovered that not one SNP MP raised any concern on the bill: SNP MPs have not asked one oral or written parliamentary question during the bill's progression. Mr Crawford

should stop lecturing us and have a word with his SNP colleagues at Westminster.

I will deal with the other issues that members raised. I respect and agree with Iain Smith's point about the importance of the additional powers—and therefore the ability to deal with gambling—that will be passed to the Scottish ministers, despite what the Opposition seeks to imply.

Paul Martin rightly raises the need for uniformity of legislation in the UK. Some might not find compelling the concerns about internet gambling, the gambling sites that are available and why we should have UK-wide legislation, but I do. I will not get into the constitutional argument, which, no doubt, the SNP members will make, that we should have a separate gambling commission that can deal separately with internet sites. As we know, internet sites are not only UK-wide but worldwide, so it is right to have UK legislation on the matter.

Paul Martin was also right to remark on Mr Ewing's persistent desire to suggest that there will be an explosion of casinos in Scotland. By definition, and from everything that has happened in London and here, there simply will not be. Some people should stop scaremongering.

I could not even begin to understand where Mr Mundell was coming from. His argument was bizarre. I had better say nothing more about it, otherwise I will fall foul of the convener.

Mr Sheridan has left the meeting—I respect the fact that he had other duties. It is important to acknowledge that 90 per cent of the bill is about greater regulation of the gambling industry. Mr Sheridan might bear that in mind when he considers the matter further.

I take Sylvia Jackson's points about scrutiny and Michael McMahon's points about planning guidance and the pressures in Glasgow. I have tried this afternoon to suggest that the powers that the Scottish ministers will gain from the bill will allow for those additional pressures to be dealt with through the framework that I have described.

It is important to note that the UK Government's casino policy has been modified to avoid a proliferation of regional casinos, of which Scotland might—I stress that word—have one. The measures that have been taken in response to the concerns that have been expressed provide further reassurance on the bill's approach to gambling. Ministers will be consulted fully before any decisions are taken about the location of any regional casino in Scotland and, as I said, 90 per cent of the bill is about the greater regulation of the gambling industry, which, I presume, is something that we would all support.

The Sewel motion that is before the committee this afternoon is the only realistic way in which Scottish ministers can acquire more and new powers—not fewer powers—that will allow us to have greater influence on gambling issues in Scotland. That is the right approach. I am grateful to the committee for considering these issues this afternoon and hope that it will recommend to the Parliament that the motion be agreed to.

18:30

**The Convener:** That concludes the debate on the issues to which the Sewel motion relates. The debate will be published in the *Official Report* and will form the body of a report by the committee to the Parliament. I propose that the committee considers whether to recommend that the Sewel motion be agreed to. Does Mr Ewing want to make a different point?

**Fergus Ewing:** As the committee knows, the *Official Report* is often not available—for perfectly understandable reasons—until the sixth day after a meeting. I hope that there is no question that, if the Sewel motion is debated by the whole Parliament, as one would expect, the debate will take place before all members—not just members of the committee—have had the opportunity to read the full *Official Report* of this meeting.

**The Convener:** I am advised that it is not likely that the motion will be debated by the Parliament before the *Official Report* of the meeting is available. I will ask the clerks to make a specific request to the official report that the section of today's *Official Report* that relates to the Gambling Bill is given priority in its work.

I will ask members first to indicate whether they believe that the committee should recommend that the Parliament agree to the Sewel motion. I will then ask them to indicate whether they believe that the Parliament should not agree to the motion.

**Bruce Crawford:** Those who do not support the Sewel motion may want to attach reasons to that, instead of simply making a bald statement.

**The Convener:** That was the purpose of the debate. We are intending to report the full content of the debate and the committee's recommendation. Members will be able to read Bruce Crawford's comments and views on the motion.

The question is, that the committee recommends to the Parliament that the Sewel motion be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Jackson, Dr Sylvia (Stirling) (Lab)  
McMahon, Michael (Hamilton North and Bellshill) (Lab)  
Martin, Paul (Glasgow Springburn) (Lab)  
Muldoon, Bristow (Livingston) (Lab)  
Smith, Iain (North East Fife) (LD)

#### AGAINST

Crawford, Bruce (Mid Scotland and Fife) (SNP)  
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
Mundell, David (South of Scotland) (Con)

**The Convener:** The result of the division is: For 5, Against 3, Abstentions 0. The majority of members of the committee recommend that the Parliament agree to the Sewel motion.

I thank the minister and his officials for their attendance.

## Railways Bill

18:33

**The Convener:** Item 3 on the agenda will bring joy to members, as it relates to another Sewel motion. However, members will be pleased to know that we are not considering the motion at this stage.

I update members on the timetable for the Sewel motion on the Railways Bill. This is a new agenda item that was added to the original agenda that was circulated last Thursday. Members should have been alerted to it, as the revised agenda was distributed by e-mail and appears in the *Business Bulletin*.

Members will recall that, at the previous meeting of the committee, I promised to provide an update on the timetable for the Parliament's consideration of the Railways Bill Sewel motion. The clerks have contacted Executive officials, who have indicated that the timescale is still not clear. I have therefore written and spoken to the Minister for Transport. I have asked that we be given a swift response on the timescale that he anticipates for the lodging of the Sewel motion and the production of the Executive memorandum. I have also asked the minister whether, when the motion comes before the committee and he appears before us, he will be in a position to advise the committee on the proposed financial settlement.

Members will be aware that the motion and the memorandum have not yet been published. I suggest that it would be sensible for us to defer any decision on our approach to the Sewel motion until the information is available, as we are not in a position to make a judgment on the type of scrutiny that would be appropriate. However, I am keen that the committee should have sufficient time to scrutinise the proposals and, if necessary, to take evidence from relevant bodies that may have expertise, especially regarding the financial agreements that may be reached on the powers that we anticipate will be transferred to Scottish ministers. I have therefore asked the Minister for Transport to respond in advance of next week's meeting. Provided that he does so, I will update the committee further at that point.

Are members content with the approach that I have outlined?

**Members indicated agreement.**

**Fergus Ewing:** I appreciate the approach that you are taking, convener, which seems to be reasonable. In particular, I appreciate the fact that you will update us further next week. However, given the complexity, technicality and importance of some of the issues with which we are dealing,

could we request that the minister provide us with a written reply? That would allow us to have a fuller discussion. Would it be possible for the item to be put near the top of the agenda, so that our old brains are a bit fresher than they may be at 6.36 pm? I speak personally.

**The Convener:** I was going to say, "Speak for yourself." I have written formally to the minister and the clerks have indicated to Executive officials that we would appreciate a response within a week, so that we can consider the issue further. That will be a written response. I hope that it will address all the points that I have raised.

I thank members for their endurance.

*Meeting closed at 18:36.*



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