

# **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE**

Wednesday 19 January 2005

Session 2

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## **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE** **3<sup>rd</sup> Meeting 2005, 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 GAVE EVIDENCE:**

Kenneth Hogg (Scottish Executive Enterprise, Transport and Lifelong Learning Department)

Dougald Middleton (Ernst & Young)

Nikola Plunkett (Scottish Executive Finance and Central Services Department)

Gillian Russell (Scottish Executive Legal and Parliamentary Services)

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

Nicol Stephen (Minister for Transport)

### **CLERK TO THE COMMITTEE**

Eugene Windsor

### **SENIOR ASSISTANT CLERK**

Alastair Macfie

### **ASSISTANT CLERK**

Euan Donald

### **LOCATION**

Committee Room 1



## Scottish Parliament

### Local Government and Transport Committee

*Wednesday 19 January 2005*

[THE CONVENER *opened the meeting at 09:32*]

### Subordinate Legislation

#### **Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 (Draft)**

**The Convener (Bristow Muldoon):** I welcome back members of the committee after a relatively short break, particularly for those who had the stamina to stay until the end of yesterday's meeting, which produced the unique effect that David Mundell applied to join the National Union of Rail, Maritime and Transport Workers. Whether Bob Crow will accept his application remains to be seen.

Under item 1, Tavish Scott, the Deputy Minister for Finance and Public Service Reform, will speak to and move motion S2M-2198 on the draft Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005. As is our usual practice when we deal with a Scottish statutory instrument, I will first ask the minister to make an opening statement explaining what the SSI aims to achieve. We will then ask technical questions on the content of the SSI, which the Scottish Executive officials who are here to support the minister may answer as necessary. After that, we will have a question and answer session, during which I ask members to steer clear of engaging in overt political debate. We will then have a debate on the motion.

**The Deputy Minister for Finance and Public Service Reform (Tavish Scott):** Thank you for the invitation to come along and deal with this piece of business. Nikola Plunkett and Gillian Russell are with me to answer members' questions. I understand that the committee has another lengthy agenda on railways this morning, so I will keep my remarks to the point.

First, the regulations will remove, with certain exemptions, the mandatory 50 per cent council tax discount that is awarded in relation to second homes and long-term empty properties. Local authorities will be given the discretion to retain a discount of between 10 and 50 per cent, which will allow decisions to be taken locally by people who know their communities best.

Secondly, additional income that arises from a reduction in the discount will be retained locally and routed through registered social landlords for the provision of new-build affordable social housing to meet locally determined housing priority needs. That will provide a genuine boost to the supply of affordable housing for local people.

Thirdly, as the committee would expect, the regulations and associated guidance have been the subject of consultation with, among others, the Convention of Scottish Local Authorities, local authorities, Communities Scotland, Scottish Water and the Scottish Federation of Housing Associations.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** I welcome the measure, for which I have campaigned for more years than I can remember. However, I have a few technical questions for the minister. Is there any specific provision for crofts? Especially in the Western Isles, but also in other parts of the crofting counties, the children of many families that have a croft have to move away, usually for economic reasons. However, in most cases, they are reluctant to sever the connection. I have raised the issue of second homes over the years and have generally supported the measure, but occasions of such support have usually been followed by a wave of virulent opposition from crofters and others who do not wish to sever their connection and who feel that the imposition of the full council tax would be a burden. I have argued in the past for specific provision for crofts. Do the regulations make such provision?

**Tavish Scott:** The short answer is no; there is no provision for crofts. Forgive me, but I am not clear whether Mr Ewing is arguing for a special discount for crofters per se. If that is the precise point, the short answer is no.

**Fergus Ewing:** I was not asking for specific provision, but rather for local authorities to be entitled to exercise discretion and introduce a specific provision, not just for purpose-built holiday homes, but for crofts.

That brings me to the definition of purpose-built holiday homes. I am sure that the minister is aware from the consultation, to which I think that I contributed, that one problem in areas in which there are large numbers of holiday homes, such as west Lochaber and Badenoch and Strathspey in my constituency, where places such as Nethy Bridge, Strontian and Acharacle have a high proportion of holiday homes, is that a number of those holiday homes, whether they are custom or purpose-built holiday homes or even villas—to use a word that has been in the news a lot recently—seem to be let out on the sly. A particular source of resentment among the local population is that their community is something of a mausoleum in

the winter months, when the holiday homes or villas are empty, but that they are let out at other times.

It has always surprised me that there has been no effort to ensure that those who obtain income from letting out villas or holiday homes declare that income. Has the Executive taken that issue on board? If it were taken on board, that would have an effect not only on the public purse through increased revenues, but on the propensity of people to take on properties as second homes given the possibility that any income that they made would have to be declared. Of course, I am not making a blanket accusation and I am sure that most people are absolutely law abiding. However, many of my constituents think that the practice goes on, although I have no way of knowing whether it is widespread and common or restricted to a few people. Has the minister considered that important point, which has a strong impact on rural housing—

**The Convener:** Give the minister a chance to answer, Fergus. I suspect that we are touching on issues that relate to the reserved matters of income tax and potential income tax evasion. However, I will allow the minister to answer.

**Tavish Scott:** I appreciate the importance of the issue but, fundamentally, income declaration is a matter for the individual or business concerned and the Inland Revenue, which is the appropriate tax authority. Mr Ewing will know from his intimate knowledge of the Scotland Act 1998 that those powers reside at Westminster rather than with us. If there is a significant problem to which local authorities wish to bring our attention, we would be happy to pass on such representation to the Inland Revenue; I am sure that Mr Ewing would expect us to do that. The Inland Revenue is the appropriate authority to deal with matters relating to personal taxation and business taxation.

**Fergus Ewing:** Purpose-built holiday homes are one of the classes of dwellings that are referred to in paragraphs (1) and (3) of regulation 5. Is it the case that if a purpose-built holiday home were to be granted exemption, its owner would automatically be liable to pay business rates?

**Tavish Scott:** Do you know the answer to that, Nikola?

**Nikola Plunkett (Scottish Executive Finance and Central Services Department):** That is the case if the home is rented out for 140 days or more.

**Gillian Russell (Scottish Executive Legal and Parliamentary Services):** A person is entitled to move over to the non-domestic rating system if their property is rented out for 140 days or more. I think that that is a matter for local authorities to establish. Someone would have to be able to

prove to their local authority that they were letting out their property for that length of time—perhaps by demonstrating that it was advertised on a tourist board website, for example.

**Fergus Ewing:** I thought that there was such a classification, but I could not remember the relevant number of days, so I am grateful to you for that information. However, my point was not about the precise definition; I wanted to check that owners of such dwellings would pay council tax or business rates and that they would not fall between two stools and end up being exempt and not having to pay either. I presume that the thoroughness of the regulations means that that could not possibly occur.

**Tavish Scott:** By working with local authorities and local assessors, we would ensure that that was not the case.

**Fergus Ewing:** My final question is on the financial effects. My interpretation of the Executive's note and the minister's introductory remarks is that the extra income that would be yielded through any decision to remove the existing discount for second homes would accrue to local authorities as genuine additional revenue. There are no ifs or buts about that.

**Tavish Scott:** That is correct.

**Fergus Ewing:** I am grateful for that. From reading the explanatory note and the associated documents, it seemed to me that there would be a delay in the process. Can you explain the mechanics of when—in what financial year—the local authority would have access to the extra yield, how the money would be spent and by whom? I understand that we have the common aim of using that extra income—which, if the removal of the discount were used to its maximum, would amount to about £3 million a year for Highland Council—to provide housing for young people so that they would have a better chance of being able to stay in their own area. Are there any practical impediments, procedural hurdles, difficulties or obstacles that could delay the achievement of that objective, which I believe is shared by my party and your party?

**Tavish Scott:** I agree with you on the broad policy, of which I imagine that the Parliament as a whole would be entirely supportive. Constituency members who represent the affected parts of Scotland have all made representations on freeing up cash by such means to help local authorities to make further provision on affordable housing.

You asked about the mechanism. It is for each local authority to decide in which financial year the extra money will be spent. That expenditure will be audited as part of the normal audit procedures and we will keep a weather eye on how the process is undertaken.

The one qualification—or hurdle, if that is how you prefer to describe it—is that we have made it clear that we expect those moneys to be used to meet the policy objective that Mr Ewing has just outlined through registered social landlords, in consultation with COSLA and individual local authorities. As I mentioned at the outset, that was considered to be the most efficient mechanism of ensuring that the moneys that accrue will be used to achieve the policy objective of constructing and maintaining affordable local housing for local people. That mechanism exists and we believe that it is the best way of achieving the policy objective. We will audit it through the appropriate and normal procedures, but we expect to check on each local authority every year to ensure that it is taking advantage of the scheme to ensure a supply of local affordable housing.

09:45

**The Convener:** The regulations will come into force on 1 April. Given the fact that local authorities will set their council tax levels prior to that date, will the regulations actually come into effect from the financial year 2006 onwards, or will they be applied for the forthcoming financial year?

**Tavish Scott:** I would have thought that they would be effective from this financial year. The regulations have been well trailed, and Andy Kerr announced them last summer. The committee will recall that it was felt strongly that, if the announcement was made in time—which was last summer—local authority finance chiefs would be able to make recommendations to their members to enable them to make decisions in time. I hope that the option of using the regulations will be available now, in time for the council tax setting process that local authorities are entering into.

**The Convener:** That is useful to know.

**David Mundell (South of Scotland) (Con):** Can the minister confirm that local authorities that think that they can have the additional capacity to raise a full council tax on second homes and then use the money in any way that they wish will be disappointed?

**Tavish Scott:** I am afraid that they will be disappointed. We have made that abundantly clear from day one, following representations from every political party in the Parliament about the availability of social rented, affordable housing. That is why we have followed that particular avenue.

**David Mundell:** My second question is about the electoral representation of second-home owners. There appears to be uncertainty about the ability of second-home owners to vote in two council elections when they are registered at two addresses. I am sure that you share my view that

it is not appropriate to have full taxation without representation. Will a second-home owner be able to register and vote in both council areas in which they have a home?

**Tavish Scott:** No, they will not be able to register and vote in the area in which they have their second home. However, where they have their second home, they will receive the considerable benefits of being in that area in terms of the services that are provided by the local authority. The argument that your colleague Mr Monteith has made steadily since last summer does not hold any water.

**David Mundell:** At least you are making that clear. The matter has been unclear.

**Bruce Crawford (Mid Scotland and Fife) (SNP):** I welcome the proposal that is before us, but I have some questions about how the money will be used.

Paragraph 10 of annex A to the guidance for local authorities suggests that the money should be routed through registered social landlords. That means that any income from the source will be ring fenced for that purpose, which is not a bad idea. However, will it preclude local authorities using the money to build new council houses?

**Tavish Scott:** It will not preclude it. However, under the current legislation and the regime that is operated throughout Scotland, registered social landlords are the primary mechanism for the delivery of new housing stock. That is the route that we have gone down.

**Bruce Crawford:** I understand that, but the terminology suggests that the money will be ring fenced to go through only registered social landlords. I want to ensure that the guidance makes it clear that, if councils cannot get registered social landlords on an adequate scale in their areas, especially in rural areas, they might use the money to build homes themselves. I would like that to be clear in the guidance.

**Tavish Scott:** I would be happy to consider any such examples, but I am not familiar with any area in rural Scotland in which there is not a registered social landlord who would meet the objectives that you and I share of building high-quality, affordable housing for local people. That is what we have sought to achieve across rural Scotland and we will follow that aim.

**Bruce Crawford:** I might write to the minister with some examples.

Given that the revenue that is raised will be ring fenced, will it go into local authorities' general revenue accounts or into their housing accounts? The latter would be more appropriate and would make for a much easier audit trail so that we could check that the money was being used for the appropriate purpose.

**Tavish Scott:** Nikola Plunkett might be able to answer the specific question, but we have certainly put in place arrangements that will ensure that the systems that monitor the resulting additional spending are transparent to ministers and Parliament.

**Nikola Plunkett:** Paragraph 19 of the guidance stipulates that payments should be made to the affordable housing revenue account.

**Bruce Crawford:** That is good, because it means that there will be no effect on council tax issues; the revenue will be contained within the housing account and no one will be able to claim that the council tax is being kept artificially low because of such activities.

Is there an estimate of the overall income that will be raised? What additional costs are envisaged for the required software changes?

**Tavish Scott:** The maximum additional income that could be raised if all Scottish local authorities chose to reduce the discount to 10 per cent is around £24 million. As Mr Ewing mentioned, Highland Council could make the greatest gain, if it wished to do so, at approximately £2.6 million.

I do not know the answer to the question about software and information technology. We could write to the committee on that. Fundamentally, that is an issue for the local authorities but the question is fair. We will reflect on it and see whether we can give you a more considered answer.

**Nikola Plunkett:** The local authorities have told us that there will be cost implications with regard to the software and we have invited them to tell us exactly what those implications are. As yet, no one has got back to us so it is a case of watch this space. We should be able to update the committee at some future point.

**Bruce Crawford:** I hope that COSLA will be encouraged to ensure that local authorities throughout the country come up with similar software rather than all of them trying to invent their own process for their own area.

**Tavish Scott:** You would expect me to adhere to the principles of efficient government and to expect that of local authorities.

**Bruce Crawford:** Let us ensure that it is said and that it happens.

**Tavish Scott:** I hear you, Mr Crawford.

**Iain Smith (North East Fife) (LD):** Will you clarify an issue regarding the additional council tax money or water charges that will accrue to Scottish Water? There seems to be a slight contradiction between paragraph 12 and paragraph 13, and I hope that you can confirm that paragraph 13 will take precedence. In many parts of Scotland, problems have arisen in relation to

restrictions on development as a result of lack of sewerage infrastructure. Could money that is accrued from the additional revenues be used to deal with some of those issues? That seems to be implied by paragraph 13, but not by paragraph 12.

**Nikola Plunkett:** Paragraph 12 says that when discounts reduce, the water discount will also reduce. It means that extra money will go to Scottish Water as a result of the changes. Scottish Water has a revenue cap, therefore it will have to use that money to reduce charges to customers.

Paragraph 13 says that the money that the councils accrue as a result of the change in policy can be used, if needs be, to provide water and sewerage infrastructure to new homes.

There are two different points. Does that make sense?

**Iain Smith:** Scottish Water will not be able to use the additional revenue to support infrastructure schemes, but councils will be able to do so.

**Nikola Plunkett:** Scottish Water is required to use the money to reduce charges.

**Iain Smith:** Right. That might be a question for the Minister for Environment and Rural Development.

**The Convener:** You got an answer, but perhaps it was not the one you wanted.

**Iain Smith:** The key point that I wanted to draw out was that it will be possible to use the money on the infrastructure.

**Dr Sylvia Jackson (Stirling) (Lab):** In relation to the money that will be accrued, Nikola Plunkett used the phrase

“can be used, if needs be”.

I am not sure what that means. Who will make the decision whether to use the money?

**Nikola Plunkett:** It is for the local authority to decide whether new homes require new water and sewerage infrastructure.

**Tavish Scott:** If building takes place in an existing development, where there are already water and waste water facilities, there is no need to install any new facilities there. The expression “can be used” takes that into account.

**Dr Jackson:** So the phrase

“can be used, if needs be”

relates to the moneys that the local authority will gather, as opposed to the moneys that Scottish Water will gather.

**Nikola Plunkett:** That is correct.



**Tommy Sheridan (Glasgow) (SSP):** I apologise for missing the minister's earlier remarks. I am afraid that ScotRail still has a job to do.

Is the discretion within local authority areas determined at the level of individual units, or must there be area-wide discretion? Our briefing notes refer to areas within local authorities.

**Tavish Scott:** Our understanding is that an area-based system would be used.

**Nikola Plunkett:** We assume that the local authority would choose to use postcode areas or electoral wards. Such decisions will be at the discretion of the local authority. In any event, discretion will be at an area level.

**Tommy Sheridan:** If a local authority designates an area with respect to the removal of a current discount, would an appeal procedure be available for individuals in that area? I am thinking of parts of Scotland with traditional but-and-ben-type holiday homes, rather than the more affluent, nouveau riche type of holiday homes. I am a bit worried that everyone might get caught in the one situation.

**Tavish Scott:** I understand Tommy Sheridan's point. I ask Gillian Russell to comment on the legal aspect of that question.

**Gillian Russell:** There is no legal appeal but, within a local authority area, it would be for the voters to exercise a political sanction, ultimately.

**Tommy Sheridan:** If one area within a local authority area is designated for a loss of discount whereas another area in the same local authority area, where there are some second homes, is not designated, that would appear, prima facie, to present a legal basis for appeal against the authority's decision on the basis of discrimination. Has that been looked into?

**Tavish Scott:** In the short term, local authorities will have to consider the issues and decide what they want to do. It would be dangerous for me or any of my officials to second-guess what local authorities will do this year and to get drawn into complex areas of hypothetical legal judgment. Local authorities will make judgments on how they wish to apply the discount, if at all, using the powers that they will have if the order is agreed to. We will keep a close monitoring eye on what happens. The principle that is being applied is the devolution of the powers to local authorities. That is what we all sought to achieve, on a cross-party basis. It would be wrong to start second-guessing at this stage what local authorities will wish to do with their powers.

**Tommy Sheridan:** I appreciate what you are saying, and I recognise the cross-party support for the thrust and the principle of the proposals. I am

merely trying to examine some of the possibilities that, it is to be hoped, will not occur, although they could occur.

**Tavish Scott:** I understand that.

**Tommy Sheridan:** On the potential generation of extra revenue, you mentioned £24 million as the top level of the estimate for Scotland as a whole. You then referred to Highland as, potentially, the top gainer. What is the situation for the more urban authorities, in particular Glasgow?

**Tavish Scott:** We do not have the relevant table with us, but we could provide it very quickly in a letter. Indeed, we could get it to the committee today, if that would be helpful.

10:00

**The Convener:** That would be useful, minister. Thank you very much.

That brings us to the end of questions to the minister. We now proceed to a debate on motion S2M-2198. I invite the minister to speak to and move the motion.

**Tavish Scott:** I thank the committee for its consideration of the issue. I do not have anything to add to what has been said. In my opening remarks, I made three points about why the measure has been taken forward, and there has obviously been quite a lot of discussion over the piece. As Mr Ewing fairly said, some of us have discussed the matter for a long time. I rest at that and leave the matter for the committee to consider.

I move,

That the Local Government and Transport Committee recommends that the draft Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 be approved.

**Iain Smith:** I am delighted to speak in favour of the motion, which seeks the committee's approval of the draft Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 because, as many members have said, many of us have looked for such a motion for a long time.

The way in which the Scottish Executive has decided to implement the proposal will have a double benefit. The main benefit will be the removal of one of the fundamental and underlying unfairnesses of the council tax, which is that people who have second homes or holiday homes are entitled to a 50 per cent discount, but a family that lives next door on the same site might have to pay the full council tax, irrespective of its means. That has led to distortions in the housing market in many communities. As many as 40 or 50 per cent of homes in some communities are second homes, which makes getting into the property

market extremely difficult for local families to afford.

That is where the second benefit of the regulations comes in. Not only will the measure address the fundamental unfairness in the council tax system that I have mentioned, but it will direct money towards people who are particularly penalised by the policy—that is, those who cannot afford to buy a house in their local community. That things are being done in such a way is extremely important. I welcome the fact that some of the money can be used to address infrastructure issues, for example, to which I referred earlier. That is important for many communities in which there is not only a shortage of affordable housing, but a block on development as a result of the lack of sufficient sewerage infrastructure.

A number of councils—including Fife Council, which covers my area—have already decided to implement the policy, and I hope that they will find it helpful that the additional money will be put to use in addressing affordable housing shortages. In saying that, I am referring to many parts of Fife in particular. There is an estimated shortfall of 3,000 affordable houses in North East Fife, particularly in St Andrews and the east neuk. I hope that the money will go some way towards addressing that fundamental problem. Therefore, I am happy to support the motion.

**Fergus Ewing:** Recently, a young couple who attended a surgery of mine in Badenoch and Strathspey said that they could not afford to continue to live in the area because they could not find a house that they could afford. They were forced to leave the area despite the fact that both held important jobs that were useful to the community. They are exactly the kind of people whom we hope would be able to stay in the area.

The measure will not be a solution in itself, but it will be part of the solution. I have campaigned for the measure for a long time—certainly since the mid-1990s, when I pushed the issue through at an unsuspecting Scottish National Party conference—and I am delighted that it will become law.

If I may, I will uncharacteristically offer the Executive a word of criticism. When in 1999, as a newly elected MSP, I advocated the measure to Mr Scott's predecessor, Mr Peacock, I was rebuffed, despite the fact that Mr Peacock had been the convener of Highland Council and had espoused the policy in that role. However, that is enough of that.

It is important to stress that I do not think that the minister and I are against holiday homes per se. I know very well that the construction of such homes creates work for local builders and that,

when constructed, those houses create work for local small businesses and the other companies that service them. By and large, people in my constituency do not have a nimby mentality. They, too, are not against holiday homes per se, or their contribution to the local community; however, they are concerned about unconstrained development in small towns whose size would be effectively doubled by developments. I am disappointed that no provision is made to allow councils to have the option of making a particular decision in relation to crofters, but perhaps that can be built on.

I am interested in the idea that holiday home owners should have two votes, which would create a new type of person in the universal franchise. Some people are obviously more equal than others. I wonder whether the Tories will extend that measure to other types of property ownership, such as shareholdings, and propose that people who have shares registered in more than one country should also have two votes.

I am also slightly puzzled by the Tories' suggestion that people who do not use services should not have to pay the council tax—after all, the Tories introduced it. I should point out that some people who occupy houses use no services. If people should pay only for what they use, why did the Tories bring in the tax in the first place? Perhaps that is not directly relevant to the debate, but Mr Mundell raised the matter.

I warmly welcome the draft regulations, which will make a difference in my area. However, they address only one part of a very serious problem. Much more must be done to create affordable housing for purchase and rental throughout Scotland, and especially in my constituency.

**David Mundell:** At least I find myself agreeing with something that Fergus Ewing said. Indeed, it is important that he put his view of the situation on record, because the matter is not always portrayed in such a way. Many people who own second homes contribute enormously to the communities concerned and we must rebut the perception that second home ownership is a bad thing per se.

I also find myself agreeing with Mr Sheridan, which is something that happens occasionally these days. There is support for the general thrust of the draft regulations, but they still raise some concerns. Although I very much support any measure that leads to the provision of affordable housing, some councils and councillors will be disappointed to find that this money is ring fenced, because there was an expectation that it would be available more generally. However, that is the Executive's policy decision.

I do not accept Fergus Ewing's comments about the second vote. Our proposal relates only to council elections in council areas where people

are being asked to pay full council tax. The principle of no taxation without representation is valid. The minister has helpfully clarified the Executive position on the matter, because there has been a lack of clarity in that respect. However, I have to say that the issue still raises serious concerns.

**The Convener:** Given that the Tories have not controlled a single council since local government reorganisation, Mr Mundell's proposal is an innovative way of trying to create a Tory revival.

I do not know whether Tommy Sheridan welcomes Mr Mundell's support, but I will give him the opportunity to respond.

**Tommy Sheridan:** Thanks, convener. Members will recall that in 1996 the Tories' last attempt to gerrymander the councils backfired spectacularly when they lost through the reorganisation plan even the councils that they had formerly controlled. David Mundell will have to go back to the drawing board if he wants to secure local authority control by any Conservative administration.

I want to make two points. I realise that the minister will be invited to respond to this debate. I hope that he will take that opportunity, because the guidance on these welcome regulations says:

"The additional income will be retained locally and routed through Registered Social Landlords ... for the provision of new-build affordable social housing to meet locally-determined priorities."

However, to prevent those houses from being sold off, we have to deal with the problem and stop continually pouring water into the bath without putting the plug in. Any new homes that are constructed by housing associations and councils inevitably face the threat of being sold at a later date. That problem is not being addressed, so my first point is that I hope that the minister will take the opportunity to make some statement of intent about the removal of the ridiculous right to buy. There should be a right to a decent home at a decent level of rent rather than a right to buy.

Secondly, I ask the minister to address the extra revenue that will be generated by the proposed measures. We are talking about £24 million, which is a not inconsiderable sum of money. Has any discussion taken place with the Westminster funders—I almost said "owners"—of the Parliament about the confines of the Scotland Act 1998 and the generation of extra funding in Scotland? As we know, there has been discussion about the ability of the Parliament to take measures to generate extra finance that could then lead to reductions in block grant. I want an assurance from the minister that that will not be the case, particularly in relation to council tax. We have to keep checking with the Liberals, but I think

that they still support the abolition of the council tax, as my party does. If we abolished it, we could be looking at the potential loss of some £300 million in council tax benefit—

**The Convener:** I think that you are a bit wide of the mark, Tommy. Please return to the subject of the draft regulations.

**Tommy Sheridan:** Will the extra revenue generated by this measure come into the ambit of the discussion about the potential loss of revenue from an Executive-determined policy to abolish council tax? That abolition would be widely welcomed throughout Scotland.

**The Convener:** That is a separate debate.

**Dr Jackson:** I welcome the draft regulations because, as everybody said, the way in which they are constructed means that the moneys generated will go into much-needed affordable housing. I agree with everything that Iain Smith said. He spoke about waiting lists in the north of Fife and we have exactly the same situation in my Stirling constituency. The regulations are needed all over Scotland.

David Mundell's comments lead me to address the issue of ring fencing. I have great sympathy with the idea that local authorities should have flexibility, but there are one or two areas in which needs are so great that I welcome the channelling of the money into affordable housing. I fully support ring fencing in this case.

I am pleased that everybody thinks that affordable housing is so important. I am sure that a lot of MSPs who are new to the cross-party group on affordable housing will come to the group's next meeting to help us to deal with the important aspects that Tommy Sheridan listed, such as the right to buy and pressured area status.

**Paul Martin (Glasgow Springburn) (Lab):** Unlike in Fergus Ewing's constituency, holiday homes are not an issue in Glasgow Springburn, although we are working towards them.

I support the draft regulations, and I tell David Mundell that the democratic right to vote should not be based on the payment of council tax. We have a democratic right to vote regardless of whether we pay council tax at the two different addresses to which David Mundell referred. We should recognise that people are entitled to that right to vote. It is wrong to suggest that someone who pays council tax in two places should be entitled to register for two votes. I oppose that suggestion strongly.

A number of members have made representations on this issue and a number of considered approaches have been taken. That is why I support the proposal.

**Tavish Scott:** I do not have a lot to add, but I am grateful for all members' points. Our overall and abiding interest is in the creation of more affordable housing in the rented sector for people in our communities who need it. I agree with those members who said that the draft regulations are only part of the solution. That is why we put so much more additional resource into affordable housing throughout Scotland in the spending review that has just concluded. The draft regulations are part of the solution, along with a number of other mechanisms and resources that we have been able to deploy because of the spending review.

I will make two other brief points. I confirm to Mr Sheridan that the £24 million that might be accrued through the measure has played no part in our on-going discussions with the Treasury. He will also be familiar with the fact that the independent review on local government finance is due—I think—to publish its request for evidence this week. That will give us all an opportunity to contribute.

In relation to housing guidance, Mr Sheridan will also be familiar with the terms of the Housing (Scotland) Act 2001, which relate to pressured areas. If he wants to pursue that point, he should take it up with the relevant portfolio minister, Mr Chisholm.

I finish by agreeing with Mr Ewing: I suspect that there will be many unsuspecting SNP conferences, as he mentioned earlier.

**The Convener:** The question is, that motion S2M-2198, in the name of Tavish Scott, be agreed to. Are members agreed?

**Members:** No.

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

#### FOR

Butler, Bill (Glasgow Anniesland) (Lab)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Smith, Iain (North East Fife) (LD)

#### ABSTENTIONS

Mundell, David (South of Scotland) (Con)

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

*Motion agreed to.*

That the Local Government and Transport Committee recommends that the draft Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 be approved.

**The Convener:** Agenda item 2 is a briefing on the evidence taken to date on the UK Railways

Bill. Our adviser will give us his initial views on that evidence. We agreed previously to take the item in private.

10:17

*Meeting continued in private.*

11:26

*Meeting continued in public.*

## Railways Bill

**The Convener:** The next item of business is consideration of the Railways Bill, which is United Kingdom legislation. We will take evidence from the Minister for Transport.

The committee has asked me to say a few words about the process associated with the bill. In general, I pick up from members that there is support for more devolution of railway powers to Scotland. However, our consideration of the bill during the past day and a half has been made very difficult by the late arrival of much information and the committee has asked me to express its disquiet over how it has been able to handle consideration of the Sewel motion on the bill. Some information arrived very late—indeed, we were provided with further information this morning just before the minister arrived.

I acknowledge that the matter has not been entirely within the minister's control, but the late arrival of information has made it difficult for the committee to give full consideration to all aspects of the bill and was a contributory factor in our extremely lengthy meeting yesterday evening—the minister is aware of that because I bumped into him on my way out of the building. The committee would like the Executive to take the issue on board in relation to future consideration of legislation of such complexity.

After our question-and-answer session with the minister, the committee will briefly consult its adviser before it debates the motion, so that we can reflect on the minister's answers. Do members agree to take the session with the adviser in private?

**Members indicated agreement.**

**The Convener:** I invite the minister to make introductory remarks on the bill and the Sewel motion that he lodged, after which we will move on to the question-and-answer session.

**The Minister for Transport (Nicol Stephen):** I start by apologising to the committee. I wanted to be able to circulate information earlier, but some of the documents that the committee received this morning were finalised only this morning, following our agreement with the UK Department for Transport and the UK Treasury on the financial aspects of the proposals. We reached agreement with the DFT on Monday evening and received Treasury approval yesterday. That is the only reason for the delay in circulating information to the committee, but I wish that the situation had been different.

11:30

Clearly, our discussions with the United Kingdom Government were very important. It was vital that we came to a fair and appropriate settlement in respect of the financial matters. I believe that we have done so. It is also important that we do not lose sight of the scale and importance of the overall proposals that are contained in the bill and in the Sewel motion that is before the committee and the Parliament. The bill represents the most significant devolution of new powers to Scotland since the creation of the Scottish Parliament.

It is clear from the level of scrutiny that the committee is giving to the matter that its members realise the importance of the proposals. Having watched the evidence sessions for much of yesterday afternoon—and into the evening—I acknowledge the level of detail that members are rightly asking for. That is why I wanted to ensure that the committee received the Ernst & Young report and the other documents as soon as they were finalised.

The consultants from Ernst & Young were working on finalising the documents up to yesterday. As soon as the documents were available, they were e-mailed to the committee clerk and hard copies were given to members. I too received my copy of the documents for the first time just now. It is not as if ministers or officials had the documents made available to them and held them back from the committee. We received them in their finished form at the same time as members of the committee received them.

We are talking about an important new settlement that gives Scottish ministers very wide powers over not only the rail franchise but the rail network—the track, railway stations and sections of the east coast main line and the west coast main line that run through Scotland. Under the bill's proposals, all those responsibilities will be transferred to the Scottish Executive. New responsibilities will come to us from the Strategic Rail Authority and we will have a new relationship with the Office of Rail Regulation and Network Rail. It was appropriate therefore that the committee took detailed evidence from those bodies yesterday.

Some of the detail of the proposals has still to be finally agreed. For example, the future form of Network Rail and how it operates in Scotland is something that I have discussed with its chairman and chief executive. The creation of an advisory board for Network Rail in Scotland has been suggested so that it has a permanent and visible Scottish presence. Those issues will develop from the proposals.

The core proposals are hugely significant. They tie in with our ambitions for and increased

investment in transport in Scotland. We are establishing the new national transport agency, which will be located in Glasgow, and we intend to give it responsibility for rail. As the committee knows, in parallel with the issues that we are considering today, the Transport (Scotland) Bill is making its progress through the Parliament. We intend to open new rail lines, invest in improvements to railway stations and consider proposals for new railway stations, and a new ScotRail franchise is in operation. All of that makes this an exciting time for rail in Scotland.

I am sure that no member of the committee is concerned about the proposals in respect of the devolution to Scotland of significant new responsibilities. The key issue was whether we could reach a fair financial settlement to support the new powers and responsibilities and, as I have said on the record on many occasions, there would have been little point in our accepting the new powers and responsibilities without a substantial financial settlement.

The financial agreement with the UK Department for Transport involves a transfer of £7.5 million in respect of Strategic Rail Authority responsibilities and a settlement of around £300 million in respect of the operation and maintenance of the lines. The committee has discussed in great detail the regulatory asset base and the calculations that are being done in that respect. It is important to emphasise that the Office of Rail Regulation will do more work on the £300 million figure over the next few months. Representations will be made by DFT and the Scottish Executive on the issue. An important part of the agreement with the DFT is that the figure for the regulatory asset base would be very close to 10 per cent. I believe that those words are important because, as members know from the evidence that the committee took yesterday, figures ranging from less than 7 per cent to up to 13 per cent were discussed. It was important that we were given that extra assurance that the final figure would be very close to 10 per cent and would be written into the final agreement.

My final point is that we negotiated a figure of £17 million per year—on an on-going basis—that would be available to the Scottish Executive for investment in enhancements. We believe that that should allow us to invest about £170 million, roughly 10 times the annual figure, in capital projects, which in turn allowed us to announce yesterday that we were proceeding with and fully funding phase 1 of the Waverley station redevelopment proposals. We gained further reassurance that, in addition to the figure of £17 million, if the English and Welsh railways receive additional enhancement moneys, a Barnett share of that would come to Scotland.

I will stop there and take questions. I emphasise again that I realise the difficulty that receiving the documents at this late stage has caused the committee. I also recognise the problems that the committee had at times yesterday when it discussed the settlement with the various representative organisations, given that everyone had just received details of the settlement. We worked hard to try to ensure that a final deal was agreed earlier, but it is perhaps in the nature of such very important negotiations that they sometimes run close to the wire.

**The Convener:** I thank the minister for his opening remarks. I will start off with a couple of questions. My first question is on the £17 million that has been identified for enhancements. How was that figure established? Is it related to UK funds for enhancements or is it based on an agreement that has been reached between the two Governments? Are there specific areas in which you expect that £17 million to be invested?

**Nicol Stephen:** The short answer is that the £17 million is a negotiated figure. It would be wrong to go into all the details of every aspect of the negotiations and the negotiating positions taken by the DFT and us, but I do not think that it is a revelation to inform members that the DFT's view is that it is currently investing no money in enhancements across the UK network. For example, we have raised the Waverley station project and some of the other major projects that we are considering, such as the Edinburgh airport rail link, which we believe are of such strategic UK significance that there is a strong case for investment by Network Rail or by the DFT from UK funding sources. However, the DFT has regularly responded by saying that there is currently no enhancement money for the UK rail network and that if some money becomes available it would consider projects such as the Waverley station upgrade, but that no UK contribution to any of those projects was on the table. After pushing that point very hard, we reached the negotiated figure of £17 million a year.

The project that we are immediately able to announce our funding support for is the Waverley station upgrade. The current estimate for the first phase of that work is £150 million, whatever happens with the second and third phases. The committee will know that there are different proposals for the second and third phases, involving a greater or lesser amount of retail space, for example. The final project and its costs are yet to be agreed, but phase 1 allows us to proceed with all the existing proposals that involve Waverley station. Improvements to the Fife circle services, the reopening of the Stirling-Alloa-Kincardine and Airdrie to Bathgate lines and the proposed Edinburgh airport and Borders rail links—all the proposals that are in the partnership

agreement—can be delivered with the improvements involved in phase 1. We intend to deliver additional platform space at Waverley and to increase the number of trains that can use the station from 24 to 28 per hour by the end of 2006. We intend to let the contract for that work this year, so that work on those aspects of the phase 1 development can start in 2005 and be completed by the end of 2006. We hope to have the full project completed by 2007.

**The Convener:** Other members might return to that later, but I have one other question at this stage. One issue that the committee has tried to grapple with is whether the bill represents a fair and reasonable settlement for investment in Scotland's railway industry over the years to come. A particular cause for concern was the first paragraph on page 2 of the Ernst & Young summary report, which reads:

"Further, more detailed, information relating to both the Scottish region and centrally controlled costs was requested but was not made available due to the structure of Network Rail's financial reporting systems. This information was required in order to understand the detailed breakdown of the central costs and the information available on which to base an allocation to the Scottish region."

Given that important caveat on the figures in the report, can the minister provide us with more information on Network Rail's income in Scotland from track access charges, and from the Government grant that is currently provided by the UK Government but will in future come from the Scottish Executive? Will Scotland be allocated a reasonable share of UK railway resources to ensure that investment in the railway network in Scotland continues to a sufficient degree to ensure that maintenance and renewals are carried out at a rate that meets the needs of the Scottish part of the network? In addition, will the share that Scotland receives be sufficient to guarantee not only the ScotRail part of the network, but those parts such as the east coast and west coast main lines that link Scotland to the rest of the UK?

**Nicol Stephen:** The first point to emphasise is that the scale of the proposed change has challenged all the organisations that are involved in the running of the UK rail network. In a number of areas, Network Rail, the Office of Rail Regulation and the SRA have discovered that they lack detailed financial and other management information at the Scottish level. In the negotiations of the past few months, those organisations have had to work hard to provide the best information that they can in the time available.

The figures on page 5 of the document to which the convener referred have given us quite a strong degree of comfort. In that table, we set out the amounts of money that are being invested in the

network across the UK for control period 3, and we indicate the average allocation that is directed towards Scotland.

I ask Dougald Middleton to interject if I get any details wrong. The figures towards the top of the chart are real amounts of money. I shall pause while committee members get to the relevant page in the document. Do members have a copy of the document from last night's meeting?

**The Convener:** I think that members who did not attend yesterday's meeting might need a copy.

**Dr Jackson:** Which document is it?

**Nicol Stephen:** The document is called "Scottish Executive—Rail Infrastructure Review: Presentation to the Transport Committee". The same table is also in the full Ernst & Young report that was circulated this morning.

**Dougald Middleton (Ernst & Young):** The table is on page 17 of the full document.

11:45

**Nicol Stephen:** The detail is on page 17 of the lengthier document.

The figures are listed in the table "Proposed basis of allocation per cost/income category". Our CP3 average percentage allocation for maintenance is 9.2 per cent. The allocation for both controllable opex and non-controllable opex is 9.7 per cent. The schedule 4 and 8 allocation is 8.8 per cent. In the document that was issued last night, the figure of 7.3 per cent for other single till income is in red to show that on average Scotland generates less income than the UK average. All those figures gave us a significant degree of comfort that the figure of 10 per cent was fair and reasonable.

As Network Rail explained yesterday, there is no direct match between the amount that is charged through the track access charges and the amount that is spent in a particular region or on a particular franchise. Network Rail wants a better match but, at the moment, the figures that are generated by track access charges do not match the expenditure as much as it would like. That is not a particular problem, given the way that the network currently operates. It would be better if there were a more detailed match, but it is not a particular problem. Obviously, however, it becomes a particular problem under the sort of devolution settlement that is now being proposed. If we had to accept that 6.8 per cent or 6.2 per cent was the full settlement available to us, that would be unfair, as the expenditure is greater than that. We believe that the 10 per cent settlement is reasonable.

The other issue that gives us comfort is the historic spend on the rail network in Scotland. You

asked Dougald Middleton about that yesterday. The Scotland operations expenditure has gone up significantly and the 2004-05 figure of around £120 million is an all-time high. The graph that I have before me does not give detailed figures, but indicates that the figure for the previous year was around £70 million. The amount of operations expenditure has gone up markedly.

I refer members to page 3 of the Great Britain operations expenditure comparison document that was circulated this morning. The first part of my argument relates to the percentage figures, which we can see are around 9.2 per cent, 9.7 per cent, 8.8 per cent, 9.5 per cent and so on. The second part of my argument relates not to the percentage spend, but the historic actual spend, which has gone up significantly in Scotland in relation to operations. In relation to maintenance, the spend has gone up slightly, but again, 2004-05 is a record high figure in that regard. Coincidentally, the figures for spend on operations and maintenance in 2004-05 are both around £120 million. The chart on page 4 shows that the spend on maintenance in the previous year was around £115 million while the spend on operations was around £70 million.

Those are the issues that we took into consideration when agreeing the figure. However, I repeat that more work needs to be done to finalise that figure with the Office of Rail Regulation.

**Bruce Crawford:** As you will know if you were watching yesterday's proceedings, I was trying to burrow down to some of the historic issues so that we could compare them to what we think might happen in future. For better or worse, Network Rail gave us figures yesterday that were divided into a revenue column and an investment column. When track grant charges were included, those figures seemed to suggest that, if we start with the figure of £320 million—which I accept will move—we will be locked into a situation in which there is a potential outflow of expenditure from Scotland. A lot of figures have been thrown at us and it is important to remember that they came with a health warning from Network Rail. However, they are important if we are to get some assurance about the future.

I will come to a question, convener, but I need to outline why I am asking it. Network Rail provided us with figures for 2003-04 of £57 million for operating expenditure and £99 million for maintenance. However, I see from the 2003-04 figures from the Executive that the latter is more likely to be £117 million, so there is already a health warning attached to that figure. Let us assume, though, that it is the higher figure. The renewals figure is £139 million and enhancements did not count. On the revenue side, passenger

access is £191 million and freight is £9 million. We have to include on the investment side items such as contribution from central costs and so on.

The figure that seems to be missing from that column, which would allow us to complete a calculation based—I accept—on pretty woolly information provided by Network Rail, is the network grant. Although we are all aware that when we add the network grant for 2003-04 in it will not necessarily be the full picture, do you have a figure for it? If not, can you tell us the figures over a number of years so that we can get a feel for it?

**The Convener:** In fairness, it is probably wise to add that Network Rail indicated that on the investment side, the west coast main line upgrades were not included either.

**Bruce Crawford:** I intentionally did not include that because enhancements are not part of the £302 million package.

**Kenneth Hogg (Scottish Executive Enterprise, Transport and Lifelong Learning Department):** Yes, you are right. The missing element is the grant to Network Rail, which comprises a substantial element of Network Rail's income. The table provided at yesterday's meeting provides the Scottish element of that. Dougald Middleton might want to elaborate on that.

**Dougald Middleton:** I refer you to the first two slides in the pack of four that the minister referred to. I recognise the importance of the issue, and I went back to the office last night and this morning to try to get the exact numbers that you asked for last night. What was going on at the end of the last control period—I was heavily involved in the Railtrack administration, so I have first-hand experience of what was happening—was that Railtrack was spending way ahead of what the regulator had allowed it to spend. The gap, which is currently bridged by network grant in the control period 3 settlement, was effectively being financed by Network Rail borrowing, ahead of what the regulator had allowed. That started immediately post-Hatfield, and continued at pretty much the same level all the way through to the end of control period 2. In the graph at the front there—

**Bruce Crawford:** Which page?

**Dougald Middleton:** Page 1 of the pack of four slides.

**Nicol Stephen:** The graph is headed "GB operations expenditure comparison".

**Dougald Middleton:** In slides 1 and 2, the gap between the red line and the blue line is essentially what Network Rail was spending that had not been allowed for by the regulator. It was unauthorised borrowings, if you like, that were guaranteed by the Department for Transport as



part of the administration, before the move out of administration to Network Rail. What happened at the CP3 settlement was effectively that the regulator—and the regulatory framework and allowed expenditure—caught up with what the company had actually been spending on the network immediately post-Hatfield. What you see in the CP3 numbers is effectively a continuation of that level of expenditure, then the efficiency gains in the operations and maintenance kicking in, which, as we talked about yesterday, is where the numbers start to go down over the long term. Essentially, we are up at the same level—the immediate post-Hatfield level.

**Bruce Crawford:** How do we disaggregate that in relation to Scotland? These are GB figures.

**Nicol Stephen:** It might be helpful if you turn the pages of the document slowly while I talk you through it. The first slide shows GB operating expenditure. The blue dotted line shows that actual expenditure is above £1.2 billion and will reduce over the years to less than £1.2 billion, but we will keep the £1.2 billion in mind. On the second slide, the blue dotted line shows that actual expenditure is again more than £1.2 billion and stays well above that figure into 2004-05, after which it starts to reduce. We will bear those GB figures in mind.

The final two slides show the Scottish figures. Each slide shows only a blue dotted line, because until now, no planned Scottish expenditure has taken place; that was not disaggregated. We have in the slides our best estimate of actual Network Rail expenditure. Dougald Middleton might be able to give an exact figure, but the graph suggests that actual expenditure in 2003-04 was about £70 million from the GB figure of more than £1.2 billion of actual expenditure on operations. In 2004-05, actual expenditure rose to about £120 million, so it is almost—but slightly less than—10 per cent of the GB figure, which is still above £1.2 billion for 2004-05. The big shift has happened in operating expenditure, which is at an all-time high in Scotland.

Expenditure on Scottish maintenance in 2003-04 and 2004-05 was just under £120 million against a GB figure that is reasonably well above £1.2 billion. We receive less than 10 per cent of the GB maintenance figure. Those are our best estimates, based on the information that has become available from Network Rail.

**Kenneth Hogg:** I will complete the picture. In the full Ernst & Young report, which was circulated this morning, page 12 sets out all the figures for the current control period at GB level and page 13 sets out the equivalent figures that underpin Scotland's settlement for CP3. I will take the top line of the tables on pages 12 and 13 as an example. We can compare the maintenance figure

on page 12 of approximately £1.3 billion in 2004-05 with the £119 million on page 13. Those two tables break down between grant income and access charge income at the Scotland and GB levels on a comparable basis.

**Bruce Crawford:** I get that.

**Nicol Stephen:** Obviously, the figures in the controllable and non-controllable operating expenditure rows must be added to obtain the total opex figure.

**Bruce Crawford:** I will explain my problem with that. Page 13 says that, for instance, grant payments for Scotland in 2004-05 totalled £224 million. When they are added to passenger access charges and freight charges for 2003-04—I am using two different years, which complicates the matter, but the grant payment for 2004-05 is the only accurate indicator that I have—the result is £424 million of revenue to Network Rail. Even with the enhanced amount of investment in maintenance, we are talking about investing about £300 million, plus the other figures that we do not know about in relation to costs from the centre and other matters. There appears to be a gap. I need to know much more to close that gap in understanding.

**Dougald Middleton:** I think that your analysis treats renewals expenditure as a revenue item—

**Bruce Crawford:** It is an investment item, anyway.

**Dougald Middleton:** It is an investment item.

**Bruce Crawford:** I have classed that as an investment item, because that is what Network Rail does. Opex is £54 million, maintenance, with the new figure, is £117 million, and renewals investment is £139 million, which takes us to something in the order of £300 million.

12:00

**Dougald Middleton:** But renewals and CP3 are being funded under RAB. What is included in the funding requirement for CP3 on the revenue side is an assumption that over the CP3 period Network Rail will spend 9.5 per cent of £12 billion in Scotland. That will be added to its balance sheet and what has been included in the analysis of the funding settlement is the revenue that is required to service that investment. It is not the investment itself, but the servicing of it. That is where the gap in the numbers is.

**Nicol Stephen:** That was one of the important changes from CP2 to CP3. Renewals that had been treated as revenue were moved to the RAB and treated in effect as capital investment in the new CP3.

**Bruce Crawford:** What is 9.5 per cent of £12 billion?

**Nicol Stephen:** It is less than £120 million.

**Dougald Middleton:** It is about that. Sorry, the figure is £1.2 billion over the control period.

**Bruce Crawford:** But that has to be added to the investment column to allow us to get the balance.

**Nicol Stephen:** You might be about to ask about the gap between the figure of around £120 million and the figure of £139 million, because the renewals figure appears to be—

**Bruce Crawford:** That makes the net outflow worse. If it is a replacement, it does; if it is an addition, it does not.

**Nicol Stephen:** Let us pause there and try to clarify the point.

**Dougald Middleton:** I refer you to the table on page 13 of our full report. The top half of the table calculates the net revenue requirement. You will recognise the £466 million figure from last night's meeting. The maintenance opex and schedule 4 and 8 costs are relatively non-contentious. We discussed the return on the RAB last night. The number that is different in this settlement from the CP2 settlement, which makes a linear analysis of your numbers difficult, is the amortisation allowance. We are treating renewals as a capital item, but included in the analysis is an amortisation allowance, which in effect allows Network Rail to amortise its RAB—both the existing RAB and subsequent investment—over a 30-year period. We are talking about a completely different set of numbers.

**Dr Jackson:** Could you put what you have just said in plain English?

**Nicol Stephen:** Can I have a go?

**Dr Jackson:** Yes. I want to know what "amortisation" means.

**Nicol Stephen:** Amortisation is depreciation. It is like making a repayment.

**Dougald Middleton:** It is like repaying a domestic mortgage. It allows you to repay the debt outstanding. It is analogous to repaying a domestic mortgage.

**Nicol Stephen:** The figures in the amortisation line are £141 million, £140 million and £139 million. It is no coincidence that those figures are close to the renewals figure of £139 million. The renewals have been shifted from revenue expenditure—day-to-day expenditure—to capital expenditure. Network Rail requires to be able to repay that capital over the 30-year period. The amount that it has been allocated to repay the

capital expenditure is around £140 million per year.

**Fergus Ewing:** I want to ask technical questions rather than make a speech at this point. Good morning, minister.

**Nicol Stephen:** Good morning, Mr Ewing.

**Fergus Ewing:** According to the Scottish Parliament information centre, the length of the total track of the Scottish rail network is 5,489km. However, according to the evidence that we heard yesterday from Network Rail and—I think—Mr Middleton, the figure is 4,140km. I put the point to Mr Hogg last night and he could not give me an answer, but perhaps this morning the Executive can explain the loss of between 1,200km and 1,300km of track. There must be an explanation.

**Nicol Stephen:** The correct figure for the length of track in Scotland is 4,140km, as Network Rail advised you yesterday. The document "Scottish Transport Statistics" gives the figure as 4,190km of non-electrified track, which creates a discrepancy of 50km that I do not understand. However, Network Rail is likely to have the most accurate information on the rail network in Scotland, so I defer to Network Rail on the figure for the length of track that it owns and for which it is responsible. We should work on the assumption that the figure is 4,140km. That is the figure that Ernst & Young used in its analyses.

There is a problem with the 2004 edition of "Scottish Transport Statistics" in that it separately identifies 1,299km of electrified track and adds that figure to its figure for non-electrified track of 4,190km, to give a total of 5,489km. That figure is wrong, because the electrified track has been double counted. I can only guess at the reasons for that. I think that Dougald Middleton explained at yesterday's meeting that there are areas of track on which diesel and electrified trains run, the electrified sections of which are not dedicated electrified sections. Whatever the reason, two figures were added in the transport statistics document that should not have been added. I apologise for the mistake, which was repeated in the SPICe briefing and created the discrepancy that committee members identified yesterday.

**Fergus Ewing:** Thank you. We all make mistakes—I am certainly no exception.

I have a more fundamental question. The Ernst & Young analysis was based entirely on information that was provided by Network Rail and the Office of Rail Regulation about past and estimated costs. Given that we are considering a deal that will have huge consequences for Scotland, in that the welcome transfer of powers will be accompanied by the transfer of financial responsibility for fulfilling those powers, the Parliament must be satisfied that we are getting a

good deal. I think that the committee is at one on that point. Were other methods of making the allocation considered? In particular, was consideration given to apportioning the assets in accordance with a valuation of the assets? I am told that the Transport and Works Act 1992 contains a definition of what railways are, so do you agree that it would have been perfectly possible to calculate the value of the assets? Such an approach could have been considered, especially given that if equated track miles were used as a criterion in the apportionment, it seems that our share in Scotland would be far more than 10 per cent—indeed, it would be nearer to 13 per cent and the figure of 13.3 per cent was mentioned yesterday. On the points of principle, what detailed consideration did the Executive give to other methods of allocating the resources than the one that was embarked on, given that Parliament was not consulted on the matter?

**Nicol Stephen:** I ask Dougal Middleton to answer that latter point about the different methods that have been discussed with Network Rail. However, I make the general point that, in future, our relationship with Network Rail will depend heavily on the Office of Rail Regulation. We will rely heavily on the rail regulator to cost the level of investment and the level of operations and maintenance expenditure that are required to fulfil our obligations in relation to the rail network in Scotland. The rail regulator is an independent body and is key to determining the amount of investment and efficiencies that can be gained from Network Rail not only in Scotland but in the whole of the UK. The regulator is also key to deciding on the level of information that it will be necessary to provide, on time and accurately, for the effective operation of the Scottish network.

Our future working relationship with Network Rail will be heavily influenced by our relationship with the Office of Rail Regulation. It is important that we recognise the independence of the rail regulator and the vital role that it will play when we specify the future rail network that we want in Scotland. Our interests will be heavily protected by the Office of Rail Regulation and it is important that we build on that relationship and ensure that it is positive and effective. That is not to minimise in any way the importance of the direct relationship that we will have with Network Rail, but simply to emphasise that the Office of Rail Regulation will be in the lead in the work on future investment and in agreeing the final figure for the Scottish element of the network, which will be close to 10 per cent.

Fergus Ewing is right that different options were considered to work out the costing for the Scottish element of the network. I hinted at where we are pitching our negotiations on that matter and mentioned the importance of agreeing the figure, which will be close to 10 per cent. More work will

be done and I am sure that issues such as length of track and equated length of track will be discussed in great detail in the coming months. Perhaps Dougal Middleton can give some insight into that.

**Dougal Middleton:** We tried as far as possible to make the allocation for the operations, maintenance and renewals costs fact based, where the information was available to us, through examining either what Network Rail has spent historically or what it intends to spend in the future. For cases in which sufficient information was not available on the operations, maintenance and renewals costs to make our figures absolutely fact based, we identified a number of allocation methodologies. Page 19 of our main report shows that, for the operating expenditure allocation, we carried out a reasonably sophisticated analysis of the various cost components.

**Nicol Stephen:** That is the page that says “Commercially Confidential” at the bottom.

**Dougal Middleton:** I think that all the pages say that.

The opex costs were broken down into component parts, for which a method of allocation was discussed and agreed with Network Rail that seemed to fit most closely with the likely cost distribution. For example, for safety and compliance, we used track kilometres, which gave a figure of 13.3 per cent for that function. For some of the other functions, the figures were 9.5, 9.6 or 9.7 per cent, which again were based on the likely levels of expenditure. We drilled down into a lot of detail on the operations and maintenance costs, based on the information that was available to us.

**Fergus Ewing:** I thank Mr Middleton for that clarification. We are seeing the information for the first time, so it would not be sensible to ask a supplementary question. It is not really possible to study a document and ask questions at the same time.

I have a wider question for the minister about the principles of the matter. Network Rail and the ORR consider the railways to be those railways for which Network Rail is responsible. However, the public would see the railways as being all the railways, including the London underground—I am advised that until 1993 the London underground was part of the official rail network. The public would also consider the channel tunnel to be a railway, because it is.

The ORR and Network Rail are considering their statutory responsibilities; that is fine. However, given that there has been and there will continue to be massive public investment, mostly in England, in those railways, would it not have been better or more sensible to consider from the

Scottish taxpayers' point of view the comparative spend on all the railways and not just those that happen to be managed by Network Rail. If I am wrong, why is it that under the Channel Tunnel Rail Link Act 1996 there is an obligation that all parts of the UK must benefit?

12:15

**Nicol Stephen:** The simple answer to that is that we have had to conduct the negotiations with the UK Government in the terms of the current legislative, statutory and financial framework. The Railways Bill deals with those parts of the rail network that are currently the responsibility of Network Rail and the SRA. We have been entitled to a share of that funding rather than any of the funding given to the London underground network, which is clearly the responsibility of others.

**Fergus Ewing:** I am grateful for the candour of that answer. Surely you would therefore accept that Scotland is not receiving any share of the extra investment that is flowing into projects such as the Jubilee line and the London underground, London cross-rail and the chunnel. This deal does not take account of Scotland's relative disadvantage because of the lack of major projects here compared with in England and the huge on-going costs of the London underground. Obviously those projects are of great benefit to the people of England.

**Nicol Stephen:** Until now, the rail network has been run as the UK rail network. During the past five years we have argued, strongly at times, for new investment, for funding to enhance the rail network in Scotland, and for at least some of that funding to come from the UK Government. There are several significant rail projects funded by different organisations—some of the funding is significant private sector funding—and those projects are in a number of different parts of the UK. We were arguing that some of those projects, such as the Edinburgh Waverley station upgrade and the Edinburgh airport rail link should be funded by the UK Government.

We have now reached a new settlement on rail that allows us to proceed with all those projects based on the responsibility being devolved to the Scottish Parliament and Executive. I would have thought that Fergus Ewing and all members of the committee would have warmly welcomed that. There is clear benefit to Scotland from some of those projects in other parts of the UK and we are dependent on high-quality rail links to London and other parts of the UK. We also gain benefit from the channel tunnel.

Where we were having difficulty in dealing with Network Rail and the SRA and getting a contribution, this deal allows the logjams to be

broken and a simpler and more effective structure to be brought about for rail in Scotland. All the projects that are in the partnership agreement and to which I referred in my opening remarks will now proceed, including the Edinburgh Waverley station redevelopment, which will allow us to proceed with the Edinburgh airport rail link, the Airdrie to Bathgate line, the Stirling-Alloa-Kincardine line and improvements to the Fife circle services. We will be responsible for ensuring that those projects are project managed and delivered on time, on budget and to a high quality.

**The Convener:** I will now bring in other members, although I should remind them that we face strong time pressures with regard to this question-and-answer session and the forthcoming debate. I ask everyone to be as concise as possible. I will call David Mundell first.

**Dr Jackson:** Can I ask a supplementary to the previous question?

**The Convener:** I know that David Mundell, Tommy Sheridan, Iain Smith and you want to ask supplementaries. I am simply asking everyone to be concise.

**David Mundell:** I will raise my more general points in the debate. For now, I will stick to the financial arrangements.

As you appreciate, minister, one of the difficulties that we face is that we do not have the *Official Report* of yesterday's meeting, which means that we have to rely on our own memory of what happened. As a result, I ask you to set out again the cross-border arrangements. I believe that in their evidence Mr Hogg and Mr Middleton described them as a "zero-sum game". It would be helpful if you could clarify our understanding of those arrangements.

**Nicol Stephen:** I will try to give a simple explanation, and see whether that is sufficient. I am sure that Mr Hogg and Mr Middleton will provide some more detail and correct my inaccuracies.

The simple position is that the Scottish Executive currently funds Network Rail's track access charges. The track access charges for the east coast main line and the cross-country franchise will continue to be part of the UK system and there will be no attempt to split the allocation of those charges between the Scottish and English elements. Because we are responsible for the east coast and west coast main lines in Scotland, we need additional funding in Scotland to take account of the fact that no track access charge element flows to us. Part of the negotiated settlement with the DFT is an additional funding element that forms part of the £302 million figure that has been given to the committee and will allow us to take on the responsibility for the

operation and maintenance of the east coast and west coast main lines.

I imagine that the committee would like to know how much that additional funding comes to, but I do not have an accurate figure at the moment. *[Interruption.]* Dougald Middleton has just told me that it is about £30 million of the total funding.

**David Mundell:** Was that figure arrived at through some formula or was it negotiated?

**Dougald Middleton:** As the minister said, the agreement involved the notional track access charges that the two operators would have paid to Network Rail in Scotland. They have simply been offset against the DFT funding. I think that I said last night that the figure is around £30 million, which is correct. In effect, it means that Scotland is getting £30 million more from the DFT in lieu of the track access charges that the train operator would pay to Network Rail in Scotland.

**David Mundell:** I seek some reassurance, minister. You are aware that services on the west coast main line that run south of Carstairs are all cross-border services. The situation on the east coast main line is similar. I take it that the arrangements that you are entering into do not prohibit or financially restrict First ScotRail's services on those lines.

**Nicol Stephen:** That is correct. If anything, the new arrangements probably give us wider discretion and more direct responsibility for those matters. Indeed, I know that such issues are of particular concern to you with regard to the west coast main line, but they will also interest a number of communities that are located close to the east coast main line.

**Tommy Sheridan:** I seek guidance, convener. I have a number of operational, non-financial questions to do with the transfer of functions. Would I be better to ask my financial questions and then come back with the other questions later?

**The Convener:** We will not have much more time before we need to take further guidance from our adviser who, as you will be aware, is under time pressure. If you ask just a couple of questions at the moment and are as concise as possible, that will increase your chances of getting your questions in.

**Tommy Sheridan:** I would characterise Network Rail as being in effect a public company, in that it is publicly underwritten and is a non-profit-making organisation. I think that the Network Rail representatives themselves admitted that the only reason why it is not referred to as a public company is that the chancellor wants it off the Treasury balance sheet. It is very important indeed that Network Rail should have financial

transparency. What you have done today with the new documents that you have delivered to us is to create in my mind even more doubt about the financial transparency of Network Rail.

I hope that Network Rail will be invited, with a bit of prodding from you, to apologise for the set of statements that it brought to us yesterday giving us figures for investment versus revenue, which we then used in the course of our questioning. When I checked your document, I found that your figures relate to Network Rail's 2004 financial accounts. Network Rail presented to us what it said were its 2003-04 financial figures. In the table on page 3, you refer to a figure of £70 million for operation costs in 2003-04, but Network Rail told us that its operation cost in that year was £57 million. According to page 56 of your more detailed document, Network Rail gave you a maintenance figure for that year of £108 million, but it told us that it was spending £99 million. Network Rail gave you a renewals figure for that year of £124 million, but it gave us a figure of £139 million. All along the line, Network Rail has given us a set of figures that are different from the figures that it gave you, which were apparently available.

**The Convener:** Just to be helpful, although I agree with Tommy Sheridan that the figures that Network Rail gave us have perhaps not helped our scrutiny of the issue and I accept that confusion has been created, I note that we asked for greater clarity about some of those figures yesterday. I advise the committee that I have been passed a letter that Network Rail has sent to the committee today indicating that it made all the financial information mentioned in the report available to Ernst & Young. In effect, Network Rail is saying that it believes that the figures that it gave to Ernst & Young have been used in compiling the report, so perhaps it might be best if we used the figures in the report as the ones that accurately represent the information.

**Nicol Stephen:** You explain the situation correctly, convener. The figures in the final Ernst & Young report have been carefully checked with all the relevant organisations that you spoke to yesterday. Those are the figures on which everyone should be able to rely accurately. If there were any difficulties with those figures, I would alert the committee immediately, and I shall ensure that there is some discussion between the relevant bodies before the debate in Parliament next week. For example, a document of 20 December was being referred to yesterday. That was a draft document and part of a detailed checking and double-checking process that went on to ensure that all the relevant organisations knew what Ernst & Young was proposing and that the figures were accurate, and it was part of a

process of working towards the final document, which has become available only today.

12:30

**The Convener:** Before Tommy Sheridan continues, I would like to say that it would be useful to have more clarity with regard to the estimation of the margin of error that existed as a result of the lack of clarity over some of the figures. We were not able to get a precise idea of that and it would be useful to get that today, if possible, but certainly before the Parliament considers the Sewel motion next week.

**Nicol Stephen:** I understand that and will ensure that that happens. I think that Kenneth Hogg wants to give a bit more information on exactly that point.

**Kenneth Hogg:** We can be clear about what proportion of the final figures comprises costs linked to actual activity in Scotland and what proportion comes from the disaggregation of central GB overheads. That will give a feel for the extent to which costs have been extrapolated as opposed to being real figures.

**The Convener:** That would certainly help.

**Tommy Sheridan:** I suppose that I am looking for something that I am not going to get, in that I would like Network Rail to be given six of the belt in front of us. The figures that are in the Executive's document and the Ernst & Young report are from Network Rail's annual returns for 2004. Yesterday, Network Rail gave us a set of figures that are different from the ones in this document. I find it unacceptable that a publicly funded body can come to a parliamentary committee with figures that are either inaccurate or based on information in a document that is inaccurate. One of the documents must be telling the truth. It is not good enough that that company can treat the committee with such disdain. Either it sticks by the figures with which there is a problem or it accepts that it must withdraw the evidence that it has given to the committee. I hope that, now that the matter is on record, it will do one thing or the other.

**The Convener:** As convener of the committee, I take on board the point that you make and will correspond with Network Rail on those issues. I will share the response to that correspondence with members.

**Tommy Sheridan:** The Executive overview on page 13 of the Ernst & Young document details the operation costs for 2004-05 and says that the non-controllable costs were £22 million and that the controllable costs were £98 million.

**Nicol Stephen:** I have that table before me.

**Tommy Sheridan:** You can see the reasons why worries start to arise. The figure that was given to us, which was £57 million, jumps to £120 million or so in Ernst & Young's figures. Or is it £130 million? My arithmetic is terrible.

**Nicol Stephen:** You are right; it is £120 million.

**Tommy Sheridan:** That suggests that there has been a £60 million increase in operating costs in one year. Is that accurate?

**Dougald Middleton:** To be honest, I cannot comment on the figures that Network Rail gave you yesterday. However, we have gone through these numbers with the company and it has signed off these numbers as being a likely reflection of what the costs and revenues will be for the remainder of the CP3. The level of diligence that we have brought to bear on these numbers in an attempt to look behind them is significant but has been limited to some extent by the quality of the financial reporting systems that Network Rail has and the way in which they are structured.

The Executive has been clear in its discussions with the ORR that it requires significantly improved regulatory reporting guidance. That is to say, the Executive wants it to be a licence condition on Network Rail that it must provide the kind of detailed information that, in an ideal world, we should have been able to have at this stage and which would enable us to disaggregate costs at the Scotland level. The Executive has addressed that thoroughly with the ORR as part of addressing some of the issues that you highlight.

**The Convener:** I will allow Tommy Sheridan in briefly.

**Tommy Sheridan:** Minister, will you give me some guidance on the transfer of functions? Will you guarantee that we will move away from the two-tier system that exists between pre-privatisation staff and post-privatisation staff in railway concessionary travel? Will you guarantee that you consider the trade unions in the industry to be major stakeholders and that they will therefore be consulted at the first stage on any proposed closures of stations or track? Will you guarantee that you will not, under the transfer of functions, assume the SRA's role of compensating train operators for losses that were incurred during industrial action? That role allowed the perverse situation in which private train operators had no incentive to solve industrial disputes because they were receiving financial compensation anyway and suffered no losses. Will you assure me that the Scottish Executive will not assume that function, in other words, that if there were any industrial disputes in Scotland, which I hope that there will not be, you would not—

**The Convener:** Tommy, I think that the minister has got the point.

**Tommy Sheridan:** Sorry.

**The Convener:** I am curtailing you not because I do not think that you are raising important points, but because we are short of time.

**Nicol Stephen:** I assure Tommy Sheridan that, in the vast majority of matters—apart from some matters that will remain United Kingdom issues, such as safety—the responsibility for the rail network will shift to the Scottish Executive. We will have a new relationship with the Office of Rail Regulation and Network Rail. I believe that that relationship can be constructive, positive and better than the one that we have at present and that it will deliver improvements for the rail network in Scotland. It is important to emphasise that the climate for rail in Scotland is different from that in other parts of the UK. We are talking about opening new rail stations and new rail links; there is no suggestion of proposals for closure or cuts. The transfer of functions will allow us to deliver the improvements more effectively, more straightforwardly and more simply. That is an important backdrop to the matter.

I will look into the responsibility for each of the detailed issues that Tommy Sheridan has raised and write to the committee on them. However, I will need time to address some of them. It is only fair that we should be able to describe the new relationship that we would wish to have with the stakeholders in the rail industry in Scotland. That must be thought about carefully, but of course we envisage a central role for the trade unions. We also envisage a central role for passengers. We need to think about how to involve passengers and other customers of the rail network in Scotland. I will tackle all those issues over the coming months, but I will do so positively as I consider the expansion and improvement of the rail network in Scotland. I hope that all stakeholders in the rail industry will respond positively to the new structure, which is good for Scotland.

**The Convener:** I intend to call only two more questioners before we go into private to consult our adviser. I will take Sylvia Jackson and then Iain Smith. I ask them both to be as concise as they can be.

**Dr Jackson:** Minister, I thank you for the figures that we were given today, which have helped us, and for your commitment to get more detail on the figures from Network Rail through the ORR. That will be welcome.

I will ask a supplementary question to a matter that Fergus Ewing raised. Could you confirm that the financial model that the Executive has negotiated with Westminster is basically an

apportioning model, in which the Executive gets roughly 10 per cent of the GB funding. You talked about on-going negotiations on the basis for that model, whether it be track length or whatever. However, when you talked about enhancements, you seemed to be talking about a needs-based model, which is different.

Secondly, I want to ask about accountability, which is obviously important. It has been pointed out to us that there is an independent department in Northern Ireland—the Department for Regional Development—that deals with accountability aspects. I wondered why that was not a possible route for Scotland. What were the reasons for not pursuing that route? If we decided that we wanted to pursue that route in the future, could we still do so?

**The Convener:** It would help us to keep to our times if Iain Smith asked his questions now. We could then allow Nicol Stephen to respond to all the questions as a group.

**Iain Smith:** I have two questions. As far as I can work out from the documentation that we have received, the funding settlement up to the end of the current control period appears to match Network Rail's expenditure requirements, but it is not clear whether Network Rail's funding requirements are sufficient to meet the needs of Scotland's railways, as essentially the figures are just restating what has been agreed. How do we know that the figures that the ORR and Network Rail have agreed for Scotland and that have been worked out by Ernst & Young and your other advisers meet the needs of Scotland's railways, particularly given that the LEK Consulting report that has been put before us seems to imply that Scotland has received less renewals and maintenance expenditure than have other parts of the network, certainly for 2003-04? That might be to do with an underspend in that year.

My second question leads on from that. What will be the basis of uprating or changing the Scottish allocation from the Department for Transport for the next control period? When negotiations are taking place, how will the £302 million be looked at?

**Nicol Stephen:** On the final point, perhaps I can bring in Dougald Middleton and Kenneth Hogg to talk about CP4.

Sylvia Jackson asked about financial models, apportionment and whether everything was based on the 10 per cent figure. The answer is no. The 10 per cent figure has been agreed with respect to the regulatory asset base, and that element will be carefully scrutinised by the Office of Rail Regulation. The agreement between the DFT and the Scottish Executive is that the figure will be close to 10 per cent. However, other aspects of

the settlement have been based on actual figures wherever possible. The position has been built up from current budgets and Network Rail's current expenditure in Scotland. Wherever we have good-quality information, we have used it.

On accountability and the opportunity to have a single body, the difference between the network here and the situation in Northern Ireland is that the network here will still be a UK rail network. Network Rail and the Office of Rail Regulation are responsible for the whole UK network, and it would be inappropriate to try to create separate bodies. That is why the solution that is being proposed to the committee today is being proposed. It is clear that responsibility for specifying and funding the network in Scotland rests with the Scottish Executive.

That is part of the answer to Iain Smith's question. It will be for the Executive to decide the outputs that we want to see from the rail network in Scotland. We will specify what we want to the Office of Rail Regulation, which will then come forward with what it believes to be a fair financial figure for Network Rail to deliver the outputs that we have specified. The process will be one of the Scottish Executive deciding the future outputs that we wish to see, rather than Network Rail deciding on those matters.

The key issue that we had to look at very carefully was the current condition of the network, which is why the LEK Consulting report is so important. We had to assure ourselves that the quality of the network and the amount of money that is being spent on the network are reasonable. All members will no doubt have good examples of where the network requires additional investment, just as they will have examples of where that is required for the roads network. However, overall, the current condition of the rail network in Scotland is good compared with the condition of the UK rail network. It gave us some comfort to know that the current levels of expenditure are adequate. Obviously, we cannot see into the far-distant future, but we believe that the levels of expenditure that are being proposed will be adequate for us to maintain that asset for the current and foreseeable period and, I hope, to improve it. Those are our plans.

**The Convener:** I will allow a brief supplementary question from Iain Smith.

**Iain Smith:** I perhaps did not make my question clear. When the Office of Rail Regulation determines the next control period pattern for England, in terms of access charges and departmental contributions, how will the Scottish block allocation be calculated? What changes, if any, will come as a result of that?

**Nicol Stephen:** Kenneth Hogg will be able to answer that final part of your question.

**The Convener:** Please make it a brief response.

**Kenneth Hogg:** When the ORR goes through that process for England and Wales, it will go through a similar process for Scotland, bearing in mind our specification for the Scottish network. We will not reopen the financial negotiation with the DFT at that point. The figures that we are agreeing right now will be locked into the Executive budget and will be rolled forward from then on. They will be updated in line with the increases that are agreed each year, including those that are a consequence of the Barnett formula. There will be no reopening of the financial negotiation; there will be a reassessment of Scotland's need, which will be in line with the Executive's ability to pay for it going forward.

**Iain Smith:** So, the Scottish allocation will be based on Barnett.

**The Convener:** The committee needs to take further advice from its adviser on the answers that we have received from the minister, so I propose that we move back into private session for a brief period, after which we will ask the minister and his team to return.

12:47

*Meeting continued in private.*

13:07

*Meeting continued in public.*

**The Convener:** Thank you for coming back, minister. Your officials can join you at the table, as committee members want to ask you a few more questions before we begin the debate. I hope that the questions will not take too long.

**David Mundell:** The jury has not been able to reach a verdict, so we are bringing back the witnesses. I seek clarification on two points. First, what is the margin of error within the figure of £302 million? What is the statistical uncertainty or the modelling that you have used regarding the margin of error in that figure?

**Nicol Stephen:** The £302 million is made up of several different figures; some of those figures are reasonably certain because they are based on actuals and others we have had to disaggregate from a UK figure. I ask Dougald Middleton to talk you through the different aspects of that from the Ernst & Young work.

**Dougald Middleton:** I think that we touched on the matter last night. The CP3 settlement between the ORR and Network Rail was arrived at by looking at the figures in the round, applying some statistical analysis and—as Network Rail said last night—agreeing the various figures across their costing base. The margin of error in the CP3



settlement was built not into the individual cost heads per se but into the overall funding agreement. The level of the RAB and the return on the RAB were calculated. The margin of error or equity cushion—whichever term is used—was built into the overall funding settlement.

**Nicol Stephen:** It is built into the RAB element. Am I right in saying that the RAB element is not the full £302 million but one portion of the £302 million?

**Dougald Middleton:** No, the overall funding requirement that was established is based on a given level of RAB and a given return on the RAB. That was the first level of cushion that was built into the settlement. The funding arrangements include an assumption on Network Rail borrowing. I think that its borrowings are set to average at 72 per cent of the RAB value across the CP3 period. A cap was set on its allowed borrowings at 85 per cent of the RAB value, which means that another cushion or margin of error is built into the number.

If things go badly wrong for Network Rail and its costs exceed the planned costs by 15 per cent, it has the ability to go back to the ORR and reopen the whole funding settlement on that basis. We are talking not about plus or minus 10 per cent on any one of the given cost headings; the issue is being dealt with more on a global basis.

**David Mundell:** In relation to some of the other figures, is it not the case that none of them seems quite right in respect of the overall settlement?

**Dougald Middleton:** No. The Scottish settlement is an apportionment of the GB funding settlement. It was worked up in the way that I described. Proportionately, Scotland has the same cushion as the GB network has.

**Nicol Stephen:** Is David Mundell trying to seek clarification on the 15 per cent figure? If he is referring to unexpected events or to increases in expenditure, I think that the answer is that, once the figure goes beyond 15 per cent, the opportunity arises to reopen the CP3 settlement.

**The Convener:** To be helpful, minister, I think that members are trying to understand the degree to which the Executive budget could be placed under pressure as a result of the margin of error in the settlement. We are trying to ascertain whether the figure is in the magnitude of 2 per cent, 5 per cent, 10 per cent or whatever. You have said that you will try to indicate which of the figures are the hard ones—the absolutely solid figures—and which contain a degree of estimation. Members are simply trying to get a grasp of the magnitude of the issue.

We also seek clarification on the exposure of the Executive's budget. If, for example, a significant cost-base change were to be required in the UK-

wide network—as happened, for example, post-Hatfield—it seems clear that the implication for Scotland is that the costs would be covered by the fact that the change was the result of a UK-wide phenomenon. Scotland would, therefore, to some degree be insulated against the additional expenditure that would be required in the railway in Scotland because of the Barnett consequences.

If a significant issue arose in Scotland—the unforeseen requirement to replace the Forth rail bridge, for example—would the cost of that work fall entirely on the Executive or can we access UK contingency funds in order to address the issue?

**Nicol Stephen:** First, I will address the last point, for which the figure of 15 per cent on the £302 million is relevant. If a major event were to take place—one that involved expenditure of more than £40 to £50 million—we would have the opportunity of going to the UK Treasury and seeking a reopening of the settlement. The issue of the settlement being reopened at that point was discussed specifically. I think that the 15 per cent figure is probably also helpful in relation to the other aspects of risk. I ask Kenneth Hogg to clarify the matter.

**Kenneth Hogg:** We will write to the committee with the precise breakdown of the hard numbers and those that have been extrapolated. The vast majority of the numbers that make up the £302 million are of the hard-number variety. We are almost as certain that that is the right number for Scotland as Network Rail is in relation to the whole GB settlement.

The second point is that, if things go wrong up to the value of 15 per cent of its expenditure, Network Rail must still deal with that within the constraints of the income that is given to it and it cannot seek a reopener. Beyond 15 per cent, we get into reopening territory, which provides something of a cushion. As the minister indicated, in extremis—a major catastrophe involving the Forth rail bridge, for example—there would always be recourse to the Treasury contingency reserve, as is the case for any devolved issue.

13:15

**David Mundell:** That is a helpful response, particularly if you can let us have the breakdown of the numbers ahead of the parliamentary debate next Wednesday.

My next question is on an issue that was touched on in earlier questioning. It relates to the £17 million figure for rail enhancement. You suggested, minister, that that was the subject of negotiation and was not necessarily subject to a formula.

**Nicol Stephen:** That is correct.

**David Mundell:** So that figure came from negotiations, rather than from a formula.

**Nicol Stephen:** Yes.

**Tommy Sheridan:** I would like to be satisfied that the review that you have provided via Ernst & Young relates to the cost of running the rail network in Scotland. The table on page 13 sets out the gross revenue requirement, which declines from £519 million to £510 million to £492 million to £485 million to £478 million. Is that declining revenue requirement synonymous with declining expenditure on the rail network? If not, what does it signify?

**Nicol Stephen:** Those figures are driven by the savings that the ORR is expecting Network Rail to deliver over the control period. Yesterday afternoon, you were asking about the allocation of the 31 per cent savings between Scotland and the rest of the rail network. The ORR has said to Network Rail that it believes that the rail network can effectively be delivered to its present extent and quality in Scotland based on the figures that are set out in the Ernst & Young report. Although there is a reduction or cut in expenditure, there should be no reduction or cut in the service outputs, in the services that are run, in the length of track that is operated or in other aspects of the network.

As Kenneth Hogg has been saying, if Network Rail believes, at some stage, that it cannot achieve the current level of service, and if its expenditure runs above 15 per cent of the figures, it can ask for the issue to be reopened. You can see from the actual figures for the end of the previous control period that Network Rail, based on the figures that were given to it by the ORR, was overspending. Network Rail is now working to the figure of 31 per cent savings over the control period. I repeat that that still means delivering the current network and current services to the quality and standards that are expected of Network Rail by the ORR. The difference is that, in future, it will be for the Scottish Executive to specify directly those standards and the services that we want. The ORR will cost that and it will then be for Network Rail to deliver the operational, management and maintenance services in Scotland at that cost.

**Tommy Sheridan:** So the figure of £519 million for 2004-05 is a figure for running the Scottish rail network. Of that £519 million, we are paying £80 million in track access charges from the public purse; we are paying £224 million in direct grant; and we are underwriting Network Rail, because of its nature, with £155 million of additional borrowing. Therefore, out of a total of £519 million, £512 million is being met from the public purse.

**Nicol Stephen:** The £519 million is the gross revenue requirement; then there is some

generated income, which is the £53 million. The total revenue that we need to support in Scotland is therefore £466 million. We then show how that is supported. You are right to say that track access charges amount to £80 million of that. In addition, there is a small element that is nevertheless a part of the £466 million—the “Schedule 4 & 8 income” of £7 million. Then there are grant payments and additional borrowing, which total £379 million.

**Tommy Sheridan:** I was interested in what comes from the public. The additional income is from till income—from the citizen—but the citizen is also paying the rest, via taxes.

**Nicol Stephen:** That is right. The total funded by the Government is £466 million—although the single till income is not quite as simple as has been suggested. For example, some freight elements are included. As ever, things are never quite as simple as one might hope. However, in broad terms, what you are saying is correct.

**Dr Jackson:** I have some questions about the cost base. The LEK Consulting report outlines how the target of 30 per cent efficiency savings will be reached. I have been looking at Ernst & Young’s financial overview. On page 26, in the section on risks, you say a little more about efficiency.

The second bullet point under the heading “Cost Inefficiencies” mentions bringing maintenance in house. Is that where a considerable amount of saving will be made? What are the implications for personnel? The paragraph ends by saying that Network Rail management

“consider this target extremely challenging and there are no firm plans to deliver the savings”.

Will you elaborate on that?

On page 27, the second bullet point under “Funding” says:

“Unclear way forward regarding inter-regional coordination in major incidents.”

Will you comment on that as well?

**Nicol Stephen:** I will ask Dougald Middleton to comment, as it is his company’s report.

**Dougald Middleton:** I think that it was Ron Henderson or Paul Plummer who said yesterday that Network Rail views the 31 per cent for operational savings as challenging. Trying to improve efficiency by 31 per cent would be challenging for any organisation. Network Rail sees the bringing of maintenance contractors in house as one of the key drivers.

I do not want to speak for Network Rail to too great an extent, but I will make a comment based on our experience in the rail industry. Historically, the relationship between Network Rail—or Railtrack—and the maintenance contractors was getting towards being dysfunctional. Significant

costs were being imported into the maintenance activities of Network Rail by that relationship. I think that what Network Rail has done is to shorten the reporting lines, which it hopes will bring significant savings. It also hopes for improved relationships between Network Rail, the Scottish Executive and the train operating companies and hopes to have the more partnership-based working that has emerged since the rail review. It wants to improve the efficiency of the network and of delivering outputs.

The statistics vary across the country. Some suggest that only 30 per cent of maintenance expenditure historically actually hit the track and that 70 per cent was lost on other things. We are trying to attack that leakage of maintenance expenditure. I do not know what the impact is for personnel; that is for the company to answer. I have no knowledge of what it is seeking to achieve in that respect.

**The Convener:** I do not want us to go too far into those issues, because they were addressed with the ORR and Network Rail yesterday and were also the subject of previous work that the committee did on the rail review. What was your other question, Sylvia?

**Dr Jackson:** It was about inter-regional co-ordination in major incidents.

**Dougald Middleton:** I will have to come back to you on that point.

**Bruce Crawford:** On a slightly different track—forgive the pun—the SRA's departmental expenditure limit settlement is £7.5 million. We heard yesterday from the SRA that it thought that the Executive would need a staff base of about 30 to 40 people to run the SRA element from the Scottish Executive in future. I seek assurances on the robustness of that £7.5 million figure. Can you convince me that it will give you the finance necessary to support around 30 to 40 members of staff with the skills mix that you will need—the staff will have to include some highly skilled people—and the accommodation costs that will go with that?

Secondly, in relation to the assets that are available immediately to the SRA, did the £7.5 million include elements for office accommodation costs and for disaggregation of equipment, plant and furniture? Having been through that process as a local government leader, I know that it is incredibly difficult.

Finally, the SRA has considerable assets beyond the existing building that it works in. Those came from BRB (Residuary) Ltd and include many assets of land throughout the UK. What discussion was held with the SRA about proper disaggregation of that land and building asset, other than about its all just going back to the UK department?

**Kenneth Hogg:** To take the last point first, we discussed the property assets—"property liability" is a more appropriate term—and that is where we left it.

**Bruce Crawford:** Okay. Understood. Message received.

**The Convener:** You do not want to pursue that?

**Bruce Crawford:** No. If that is how we negotiate the system to help the UK to become independent, it just shows you that it can be done.

**Kenneth Hogg:** I mentioned last night that we have taken efficiency savings into account in agreeing that number. On the accommodation front, for example, we are in any case setting up a transport agency; the costs of accommodating those rail staff are being taken into account in that context, so it would be true to say that we are not taking on a share of the SRA's accommodation cost, because that is being provided for anyway. However, I can reassure you that, on the people front, the figures that the SRA mentioned last night in relation to the recommended number of staff correlate with or are very close to the figures that the minister has discussed previously in other contexts with regard to the transport agency rail staff. The £7.5 million will be adequate to fund that level of operation. It is not just for in-house staff; it is for the consultancy support and professional fee support that they will need to carry out their functions.

**Bruce Crawford:** The £7.5 million figure does not take into account some of the accommodation issues to do with the property costs that are immediately associated with the proposals, which I presume is a bit of a quid pro quo for not accepting some of the liability.

**Kenneth Hogg:** Yes.

**Bruce Crawford:** That is fair. I understand why you did that.

13:30

**The Convener:** That brings us to the end of questions to the minister and his team. I thank the officials who have supported the minister during our discussions, including Mr Middleton from Ernst & Young.

We move on to the debate on whether the committee should recommend that the Parliament agree to the Sewel motion. I remind members that our debate has no formal status in parliamentary procedure. However, given the committee's intense scrutiny of the matter, what we say might provide guidance for our colleagues on whether they should support the motion when it is debated in the Parliament next week. For the record, before I invite the minister to open the debate, I

ask Bill Butler formally to confirm that he is present as a committee substitute for Michael McMahon—I apologise for not doing so at the start of the meeting.

**Bill Butler (Glasgow Anniesland) (Lab):** I am attending the meeting as a committee substitute.

**The Convener:** Thank you. I invite the minister to indicate the reasons why the Parliament should support the Sewel motion in his name on the UK Railways Bill.

**Nicol Stephen:** I will be brief. The motion is significant. It concerns the most extensive devolution of new responsibilities to the Scottish Executive and the Parliament since the creation of the Parliament in 1999. On many occasions since 1999, members of the Parliament have argued that the Scottish Executive and the Parliament should have more powers over the rail network. We have often been frustrated by the inability to deliver improvements to the network and there is no doubt that part of the reason for that is the complexity of the relationship between the various bodies that are involved in the rail industry: Network Rail; the SRA; the operators; the Office of Rail Regulation; and the Health and Safety Executive.

There are several examples of projects that have been significantly delayed because of those complexities. The Larkhall to Milngavie line and the Edinburgh Park railway station are examples that spring immediately to mind. In both cases, there was not only delay but significant cost escalation. I have no doubt that those projects would have moved forward more effectively and that all the improvement projects that we are considering for Scotland will move forward more effectively as a result of the proposed new structure. The structure will be simpler and more effective and will give us the opportunity to develop new and improved relationships with Network Rail and the ORR. Those relationships will be vital to the delivery of the major improvements to the rail network in Scotland that we want to be made.

We must move fast. We have a very good opportunity to attract a number of SRA staff to Scotland and to the headquarters of the proposed new national transport agency in Glasgow, because exciting new developments are taking place in the rail network in Scotland, in contrast to the situation in other parts of the UK. Projects such as the Glasgow airport rail link, the Edinburgh airport rail link, the Airdrie to Bathgate line, the Stirling-Alloa-Kincardine line, the Borders rail link and the redevelopment of Waverley station will require good project management skills and significant expertise. The moment is now; the SRA is being disbanded and we must ensure that we advertise for staff as soon as possible, which

means that we must move forward on the proposals in the UK Railways Bill. The new powers will be good for the rail network in Scotland and for passengers and the rail freight industry—I do not think that there will be division among members of the committee on that issue.

The key element was the need to ensure a fair and reasonable financial settlement. That has been a more difficult issue and has involved intense negotiations and much detailed scrutiny of the financial information. Full and adequate information has not always been available to us. The committee will know about the difficulties that that has caused for its scrutiny; we have shared some of those difficulties over the past few months. Thanks to the hard work of the officials and advisers involved—whom I thank for the considerable amount of work that they have done to reach the settlement that has been achieved—I believe that we have reached a fair and reasonable deal that will allow us to fund the rail network in Scotland and to make progress on enhancing it.

Given the background that we have been considering, which includes the ORR's figure of a 31 per cent efficiency saving, the process will not be without its risks. We should acknowledge that we will never remove those risks, but we must decide whether we want to take them on and to have responsibility for the improvement of the rail network in Scotland. I very much want to do that and I believe that we have sufficient confidence to allow us to do it, as the deal is appropriate from the point of view of both the devolution of new responsibilities and the financial agreement. Therefore, we should approve the Sewel motion and look forward to the simpler and more effective system for the rail industry in Scotland that we will have as a result.

**The Convener:** I thank the minister for that statement in support of the Sewel motion. Nearly all members would like to speak. I will say a few words at the end, but Sylvia Jackson will go first.

**Dr Jackson:** First of all, I agree in principle with what the minister said about the Sewel motion; everyone is looking forward to our having the new powers. As the minister said, the fact that we got the materials very late on is unfortunate, but I think that we have got to grips with the bill as well as we could have been expected to in the short time that has been available.

There will be on-going issues, quite a few of which have been outlined. We have talked about the cost base and the efficiency gains, which we will keep an eye on. We will pay particular attention to the in-house maintenance contracts. However, the most significant issues are those that the minister mentioned, which relate to the financial arrangements that have been made. We

need to ask whether Scotland has got the best model, especially for enhancements, about which quite a few questions have been asked. Given the difficulty that we have had in getting reliable data, I can understand that it has been by no means easy for the minister. I welcome his commitment to getting better figures on what is happening in future.

As well as considering whether we have the best financial model, we must determine whether the structures are correct. We need to find out how our use of the ORR mechanism will work out. We will keep abreast of those issues.

**Fergus Ewing:** Obviously, the Scottish National Party welcomes the transfer of more powers to the Scottish Parliament. However, it seems that the reason for the transfer emerges not from a desire to transfer more powers to the Parliament but, as the minister has said, from the realisation, following the publication of the white paper, "The Future of Rail", that the current system is overly complex. What is really happening is that a quango—the SRA—is being scrapped and its powers are being taken back into Government departments.

We welcome those changes but, as chief Opposition party, we have the vital role of ensuring that with the new powers come the financial capability to meet the responsibilities. The way in which information has been drip-fed to the committee over the past 24 hours means that anyone with a desire to apply rational analysis in reaching decisions has been unable to come to a final view on the matter. I will return to that point.

The two fundamental questions of policy have not really been fully considered. If we are going to transfer powers over the railways and the financial responsibility to discharge those powers, we need to know exactly what the railways are, and we do not. That has been admitted, because sufficiently detailed information has not been received from the qualification of audit of Ernst & Young's report. Therefore, we do not know with absolute certainty what the railways are or their value.

We do not have an audit of need and we do not have the other information to decide whether the method of allocation is the best for Scotland. To determine the answer to that question, the Executive must have analysed the alternatives. The minister said that an alternative apportionment of asset value had been considered, but I did not get the impression that it had been considered in any detail, and that seems to be corroborated by the narrowness of the remit that is confirmed in the detailed report from Ernst & Young that I had the opportunity of reading a few moments ago.

It seems to me that there were other ways of doing this. Whether they would have resulted in a

better deal for Scotland is something that I cannot answer. However, they should have been considered and they have not been.

More important is the fact that Parliament was not really involved in the matter at any stage until yesterday. I must confess that in the five years that I have been a member of this Parliament, I cannot remember an example of the Scottish Executive bringing to Parliament so much data, so late, on a matter of such long-term significance to Scotland. I do not allocate any mala fides—as we used to say in the sheriff court—but I note that the ORR had what it called the final document on 20 December.

A few moments ago, the minister said that he has not had full information. I agree with that; we have not got adequate information. He also said that he has shared the difficulties with the committee in the past few months. With respect, I would be grateful if he would identify when that was. I do not recall any sharing of information until yesterday.

On 2 November, the minister will remember that we discussed the important policy issue of which formula or criteria would be used to bring about a deal. I tried to raise the specific point of principle: should we use cost, asset value or length of track? Ironically, I read out at the time the figure of 5,489km as being the length of track that the Executive had said was Scottish track and I was amused to note that Mr Middleton and Mr Hogg had apparently not read that *Official Report*. It was only really this morning that we got to the bottom of the matter, which suggests that not a great deal of attention was paid to what Parliament said.

There has not been a more significant example of Parliament having been kept in the dark than this occasion, and there was some fairly stiff competition to beat. I support the move to transfer more power; however, my principal objection is that while one quango, the SRA, will become history, another, the ORR, will be left as the sole arbiter of the cost base of Network Rail.

I gather that Ford's law says that new infrastructure costs 2.5 times more since British Rail was scrapped, which is hardly a ringing endorsement of the privatised rail world. Along with that, the ORR's admission that Network Rail is 31 per cent inefficient—

**The Convener:** Will you come to a conclusion, Mr Ewing?

**Fergus Ewing:** The figure indicates to me that the ORR is not working, because if it were, there would not be 31 per cent inefficiency. To me, that demonstrates clearly that the system, both for new projects and for the existing rail network, is not working and that it could work better, as it does in Northern Ireland, if more powers were transferred

to the Parliament, in particular the regulatory and economic powers. If the network is so inefficient that it is right to dequangoise the SRA function and take it back into Government control, it must also be right in principle to simplify the system further and to take back the regulatory function. There must be a strong case for that.

I have tried to set out the SNP's view. I hope that the minister will take my comments about disclosure as they were meant: as a statement of argument, without ascription of personal blame to any individual. At the end of the day, the key issue is whether Parliament should be involved at all in important negotiations. I would say yes, but I presume that the Scottish Executive's answer is no.

13:45

**Tommy Sheridan:** The proposals are a wee bit like a big Christmas present—we know that we have got something really good, but we do not quite know what it is.

**The Convener:** It is a train set.

**Tommy Sheridan:** Aye, but does it work?

I am dead pleased that we are getting more power over the railways in Scotland. That is the bottom line and why we must support the measures. However, I am not sure that we will get a good deal in the disaggregation of the public finances that are poured into the railway. I sought clarification from the minister about the level of public expenditure on the railway network in Scotland, because it is important that we establish that, although we almost run the network with public money, we do not own it. The Scottish Socialist Party believes that we should own it. We should have more integration of the network, by owning and running not only the track, but the freight and passenger operating companies.

Given the level of public expenditure that is currently being poured into the railway and the new expenditure that will be available as a result of the settlement, we could more than afford not just to run the rail network in an integrated fashion, but to improve and expand it as well. That must be the next step if we are to have a commonsense approach to running the railway network in Scotland. I do not often agree with Ernst & Young, so this will probably do Dougal Middleton's career no good, but I was glad when he confirmed that, before the introduction of in-house maintenance, only 30p of every pound of public money that was spent on maintenance ever went to the track. That is a warning sign and a clear message that, in relation to maintenance, renewals and every other aspect of the railway industry, if we want to stretch public money as far as possible to get the best value from it, the

railway should be a public asset, rather than one that is run for the benefit of the private sector.

I am sure that the committee and the Parliament will agree unanimously that we should have more power over the railways, which I thoroughly welcome. However, I hope that that is the first major step to returning the railways to where they belong, which is in public hands. Mr Eric Geddes, who, I think, was the first British railway minister, said that we should have a wholly separate Scottish railway industry. He was right then and that would be right now.

**Paul Martin:** Everyone welcomes the additional powers that we are to be given, but one crucial element in ensuring that the arrangements work is to ensure that we improve the passenger experience as a result. We have talked about the management of the rail industry and about ensuring that we make progress with the new devolved powers. However, if we do not improve the passenger experience, there will be no point in the new process of managing the railways.

Another crucial point that we discussed with the Strategic Rail Authority is the transfer of functions. The fact that the SRA is engaging with us on how it should go about that is welcome, but it is crucial that we examine the new organisation to ensure that we deal with a number of the current complexities in the system.

I welcome the principles of the motion, but it is crucial that we ensure that the passenger experience is improved as a result of the process. I know that the minister is also considering how we engage with passengers, on which a great deal of work must be done.

**David Mundell:** I do not want to repeat the general reservations that my party and I have about the whole Sewel process, which I set out in Parliament last week. However, during the debate on the Gambling Bill, I said that we welcome new powers coming to the Scottish Parliament where appropriate, because we are signed up to the view that devolution is a process, not an event. There is general agreement that the powers are sensible for the practical operation of the rail industry, so my colleagues and I support the proposals.

Clearly, the issue that has taken so much of the committee's time in the past couple of days, and which has highlighted the unsatisfactory nature of the overall process, is to ensure that the financial settlement is appropriate. Subject to the caveat that appears on page 2 of the Ernst & Young document that was distributed yesterday, should additional information emerge between now and next Wednesday, or during the process, that gives us a different view of the figures and indicates that the financial settlement is not as sound as we have been led to believe, I reserve the right to criticise it.

The minister made the point that the process has at least highlighted many of the difficulties in relation to the financial workings of the rail industry. I am not the only committee member to be disappointed by the nature and factual basis of the evidence provided by Network Rail, which raises far more questions than it answers. I would like to be clear that Network Rail will organise itself in such a way that it will be able to work closely with the Executive, as is envisaged, on the responsibilities that the minister is taking over from the SRA. I hope that the way in which Network Rail has organised itself throughout the United Kingdom will not impede the development of the partnerships and new relationships that are required and that we wish to see delivered.

I particularly welcome the minister's view in evidence today that the new arrangements will assist in developing ScotRail services on the west coast main line between Carlisle and Edinburgh and between Glasgow and the east coast main line, because there is a concern that the parts of the lines that fall only within the cross-border service are in no man's land. The operation of ScotRail services over those lines would be a welcome development.

My final point is on Strathclyde Passenger Transport; I did not raise the matter during the questioning, which concentrated on financial issues. Members might be aware that when the bill was before the House of Commons, Labour MPs tabled amendments that would have allowed SPT to have the same powers in relation to franchise arrangements as do its equivalents in England and Wales. The amendments were withdrawn on the basis of assurances that SPT will be consulted, and it would be helpful if the minister could repeat those assurances on the record today. The matter is important because the bill puts SPT in a different position from the passenger transport executives in the rest of the United Kingdom.

**Bruce Crawford:** Tommy Sheridan referred to a train set coming home, and that probably makes Nicol Stephen our Fat Controller, as per Thomas the Tank Engine.

**The Convener:** I hope that you were not sitting up all night thinking that one up.

**Bruce Crawford:** You would be disappointed if I had been, because it was pretty crass.

I am glad that Nicol Stephen will become Scotland's Fat Controller and I welcome the additional powers that will come here but, like Fergus Ewing, I have some concerns. We might have gone about the process of organising the rail industry in Scotland much more successfully in a vertical manner—that is something for which there has been a general desire in Scotland for some time—and it would be useful to consider how, over

a longer period of time, the ORR's powers might become the minister's responsibility in years to come. I hope that we will get to that stage.

Fergus Ewing made another fair point about whether we have considered all the required criteria and whether a form of appropriation would have produced a better solution for Scotland. I suspect that we will never know the answer to that, given that we have not examined whether that would have worked—if there has been such an examination, I have not heard about it.

The issue that still causes me some concern is whether in future Scotland will have an inflow or an outflow of revenue. By accepting the settlement, we are establishing the baseline and drawing the line in the sand. I have still not got to the bottom of the figures on historical spend compared with what we will spend in the future. Doing so would enable me to put my hand on my heart and say that I have been successfully persuaded, but I need to go away and read much more of the documentation that has been sent to me to see whether I can make head or tail of it. We might never get to that final point, but I want to satisfy myself about where we are.

On enhancements, a significant question remains unanswered: is the £17 million enough, particularly in view of the channel tunnel issue? I know that that issue was passed over and dismissed, but even though the channel tunnel is not owned by Network Rail and is off the balance sheet, it is a considerable enhancement of the rail infrastructure in the UK, particularly the south-east corner. It cost £2 billion to £3 billion and even a Barnett share would give us an additional £175 million to £250 million—obviously, we would need to consider how that was spread over the number of years over which it was costed. For me, the question that remains is whether we have got a fair and reasonable deal if we take into account the entire infrastructure and not just the part that is owned or operated by Network Rail.

I will be interested to see the final position on the return on the RAB. Although that is not a huge element, it is an important one in relation to where we finally settle. I hope that the minister will assure us that he will come back to us further down the line—although I do not want to have another eight-hour session—with information about where negotiations have reached, so that we understand the final position.

I draw to the minister's attention clause 19 of the Railways Bill. Scottish ministers will have the power to appoint one member of the Rail Passengers Council, as will the National Assembly for Wales and the Greater London Assembly, but another 12 members will be appointed by the Secretary of State for Transport after consultation with the chairman of the council. Such consultation

should involve Scottish ministers, the National Assembly for Wales and the Greater London Assembly. It is interesting that in Wales, the Assembly will appoint a member, but in Scotland, Scottish ministers will do so. I do not know whether it would be more appropriate for the Parliament, rather than ministers, to appoint members.

I seek assurances that the rail passengers committee, which I think the minister envisages for Scotland, will have the teeth to do the job. In the past couple of days, we have had difficulty understanding all the economics and the balance-sheet issues. Much of the responsibility for that will lie with the rail passengers committee, so it needs the teeth to get ripped into some of the issues.

I have been impressed by how Kenneth Hogg and Dougald Middleton have handled the process. The help that they gave us yesterday late on was useful. Conversely, I was disappointed with Network Rail. Tommy Sheridan is right: it is time that the Fat Controller chased after it and gave it the messages that it needs to hear about the information that it gives the Parliament. Perhaps the convener will do something similar.

14:00

**Iain Smith:** The Sewel motion is important, because, as the minister said, it marks the biggest transfer of powers since the devolution settlement and the biggest change to that settlement. I welcome the motion, because transferring the powers is the right thing to do.

The bill is a result of the UK rail review and the need to streamline the railway industry throughout the UK. It has particular knock-on benefits in Scotland, because it deals with some of the confusing problems that we have experienced in taking forward the extensive investment that we wish to make in rail, which the minister was right to highlight. Getting rid of the Strategic Rail Authority is long overdue. I never thought that the body was either strategic or a rail authority, given much of what it proposed to do. The organisation was not helpful and it did not seem sensible that the funding body for the Scottish rail franchise had to have somebody else negotiate and sign the deal.

One of the most significant changes that the bill will bring about is that the Scottish Executive will have the responsibility for signing off the ScotRail franchise. That is a much more sensible arrangement and I hope that it will lead to future improvements. It will also give us more control of the asset—we will have more direct control over how the physical aspects of the railway operate through Network Rail. I appreciate that that will still be subject to the ORR, but at least the Scottish Executive will be able to determine the level of

service that we expect and, to an extent, the level of investment that goes into the rail network. That is of considerable benefit to us in developing the railways.

The financial settlement is crucial to all that. We have had a tough couple of days and I am sure that everyone is looking forward to reading volumes 1, 2, 3 and 4 of the *Official Report* to review all the information that we received. We identified—as far as we can make use of information from some sources—that the settlement that has been negotiated appears to be adequate and is almost certainly fairer in meeting the needs of Scotland's railways up to the end of the current control period. We should congratulate those who have been involved in negotiations on achieving that.

Clearly, there have been problems with the rail network for many years. Most of the cost issues that have been raised—for example, the 31 per cent inefficiencies within Network Rail—were inherited by Network Rail from its privatised counterpart, Railtrack, and it has been trying to catch up with those problems. It is a bit unfair to criticise the ORR for not addressing the problems earlier, because it was able to do so only from CP3. By the end of that period, the ORR had addressed the issue.

The cost base of the railway network should reduce significantly. That is important here in Scotland because it means that we will get more bang for our buck. We will be able to invest more in our railways and we will get more out of that investment because the costs will be brought under our control. That must be welcome.

Therefore, I think that the Sewel motion, which is very significant for us, must be supported. We have now received, albeit at the 12<sup>th</sup> hour, all the financial information that we need to make a judgment. My assessment is that the deal is fair and good for Scotland.

**The Convener:** I will make a few concluding comments. I will try to be brief, because I know that people want to proceed with other business. First, I want to put on record my thanks to all the Parliament staff who have assisted the committee over the past day and a half during the extensive hours of meetings that the committee has had. All the staff deserve thanks from all committee members for the support and guidance that they have given us. Indeed, those who were unexpectedly kept very late at work last night deserve an apology. I thank all the staff concerned.

I also thank the committee's adviser, Dr Iain Docherty, who gave extensive hours last evening to the committee's work. He has had to go back to his academic duties at the University of Glasgow,



which is perfectly understandable, given that the number of hours that he was with us was probably way beyond what he had expected. Again, I thank him for his advice and guidance.

We also had some interesting outcomes. One was that David Mundell was considering applying to join the RMT in order to have his interests better represented. I do not know whether he is aware that, if the RMT were able to negotiate overtime payments for him, one of the conditions might be that he would have to join the Scottish Socialist Party. In that case, he would have to pay half his salary to the SSP.

**David Mundell:** I only wanted food, convener.

**The Convener:** Moving on to serious business, I note that members have commented on the late arrival of the financial information. I commented on that earlier, but I do not intend to dwell on the matter. The important issues that we must address are, first, whether the appropriate powers are being transferred to the Scottish Executive and the Scottish Parliament and whether they will improve the operation of the railways in Scotland; and, secondly, whether the financial resources that are the result of the agreements between the Executive and the UK Government will enable the Executive to deliver on its aspirations for the rail network in Scotland and allow for sufficient investment to continue to be made.

We must recognise that the current set of reforms comes out of the latest reforms that are trying to make railways in Britain more effective and trying to rebuild a coherent railway network, following the fragmentation that was caused by the disruptive privatisation under the previous Conservative Government. One of the first planks of the rebuilding involved moving from Railtrack, which was a fully fledged private company that was not focused on safety or building an efficient railway, to Network Rail, which is required to focus on both the safety and the reliability of the industry. Those are essential components for ensuring that passengers experience the sort of railway that they deserve, both in relation to being able to go about their normal lives and in relation to the significant public investment in the railway asset.

The current stage of reforms is about ensuring that the different components of the railway work better together. That involves a reduction in the number of players—for example, the HSE and the ORR have been brought together over the safety aspects that the HSE has looked after. Some people have expressed concerns about that, but it seems to me that if a similar model can work in the aviation industry, it is at least feasible that the model can work in the railways. I recognise that both the Scottish Executive and the UK Government are strongly committed to safety

being an absolute priority of the network's operation.

Other bodies, such as the SRA, are disappearing altogether and, for the first time, the Scottish Executive will be given a direct relationship with the ORR and Network Rail. That enhanced role for the Scottish Executive will be welcome and will allow it to deliver greater progress on the many rail projects in its portfolio that it intends to deliver over the years ahead.

Over the past day and a half, the debate in the committee on the financial resources has been complex. There are still areas on which we would wish to have greater clarity, but I have come to the conclusion that the settlement that has been agreed between the two Governments—largely, as I understand it, on the basis of an assessment of the Scottish railway industry's needs—is fair and reasonable. It will enable investment in the industry to continue and will ensure a period of stability in the industry.

It is important to stress that one of the issues that has always been important in any further devolution of power is the way in which cross-border services will be managed. It is welcome that that issue is acknowledged in the process, but there probably needs to be greater clarity on how it will be addressed to ensure that Scotland's economic interest in cross-border services is fully recognised.

I will respond to Fergus Ewing's comparison with Northern Ireland. The difference with the Northern Irish rail network is that, apart from its being separate from the rest of the UK in economic regulation, it is not connected to the GB rail network. The relationship between Northern Ireland and the Republic of Ireland is one between different nation states, whereas we are talking about a GB-wide network. It is important to acknowledge that the cross-border flows are important to Scotland and it is important that they are recognised in the settlement.

It is welcome that additional resources have been made available to the Executive for enhancement. I welcome the fact that the minister has indicated that, as a top priority, the Executive will commit to funding fully the completion of phase 1 of the Waverley station investment and expansion project. That will enable a number of the other projects around the east of Scotland to be completed, as the restriction on platform space at Waverley is one of the factors that hold those projects back.

The committee should recommend to the Parliament that it agree to the Sewel motion when it considers it next week. I encourage all members to vote for the motion.

I offer the minister the opportunity to respond to issues that members have raised in the debate.

**Nicol Stephen:** Thank you, convener. I will try to be brief.

I understand many of the concerns that committee members have raised and I fully understand the points about the information that was provided and the time at which it was provided. However, the committee now has full information; we will provide the additional financial information that has been requested before the debate in the Parliament next week.

Other issues have been raised in the debate and we will return to some of them in the context of the Transport (Scotland) Bill. For example, the future of the SPT and its relationship with the Executive will be one of the key issues that I am sure the committee will scrutinise carefully as the Transport (Scotland) Bill progresses through Parliament. We also have proposals for a Scottish passengers committee, on which we will give more information in due course.

The key issue on which we must focus is important not only for the committee, but for the whole of Scotland—the transfer of the new responsibilities for rail. On behalf of the officials and advisers, I thank the committee for its positive comments and for the close scrutiny that it has given the issue over the past 24 hours. Even in that time, it has started to see the development of new relationships and the opportunity that exists for Scotland in the direct relationship, which we have not had before, with Network Rail, the ORR and the other organisations that are involved in the rail network. It is important that we continue that development. If we can develop a better, more direct, less complex approach, we can deliver better for the rail network in Scotland.

The first key question on the Railways Bill is whether we want the additional powers for Scotland. The simple answer is yes. The second question is whether we have a fair and reasonable settlement. I am clear that the answer to that is now yes. The final question is whether we are prepared to proceed, given the risks and responsibilities that we know the transfer involves. My answer to all those questions is positive. It is all good for the future of rail in Scotland; it is good for passengers and it is good for the rail freight industry.

If we have the powers, we can get on with delivering our ambitious proposals for the future of the rail network in Scotland with greater confidence. We are ambitious for the rail network in Scotland. We want to get on with fulfilling our ambitions and we believe that the new powers will be good for everyone in Scotland.

**The Convener:** There is no formal rule on the committee agreeing to a Sewel motion, but we have the opportunity to decide whether we wish to

recommend to the Parliament that it agree to the motion in the minister's name. Are we agreed to recommend to the Parliament that the motion be approved?

**Members indicated agreement.**

**The Convener:** Thank you very much, colleagues. That will be recorded as the committee's recommendation and will be available, as part of the *Official Report*, to other members of the Parliament in their consideration of the motion next week. I thank members for their attendance over the past day and a half and their contribution to our consideration of the issue.

*Meeting closed at 14:16.*

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