

LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 24 October 2006

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

25th Meeting 2006, Session 2

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

Dr Sylvia Jackson (Stirling) (Lab)
*Paul Martin (Glasgow Springburn) (Lab)
*David McLetchie (Edinburgh Pentlands) (Con)
*Michael McMahon (Hamilton North and Bellshill) (Lab)
*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
*Tommy Sheridan (Glasgow) (Sol)
*Ms Maureen Watt (North East Scotland) (SNP)

COMMITTEE SUBSTITUTES

Mr Bruce McFee (West of Scotland) (SNP)
John Farquhar Munro (Ross, Skye and Inverness West)
(LD)
Dr Elaine Murray (Dumfries) (Lab)
Murray Tosh (West of Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Margo MacDonald (Lothians) (Ind)

THE FOLLOWING GAVE EVIDENCE:

Alan Beatson (Leith Links Residents Association)
Amanda Bell (Calton for All)
Senga Bethune (Leith Links Residents Association)
Anne Fallon (Routes Out)
Guy Houston (Transport Scotland)
Jinty Kerr (SCOT-PEP)
Jennifer McCarey (Calton for All)
Ruth Morgan Thomas (SCOT-PEP)
Malcolm Reed (Transport Scotland)
Tavish Scott (Minister for Transport)
Cath Smith (Routes Out)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 3

Scottish Parliament

Local Government and Transport Committee

Tuesday 24 October 2006

[THE CONVENER *opened the meeting at 14:02*]

Budget Process 2007-08

The Convener (Bristow Muldoon): I open today's meeting of the Local Government and Transport Committee. Only one member—Sylvia Jackson MSP—has intimated apologies. I believe that Elaine Murray MSP will substitute for her later in the meeting.

Agenda item 1 is part of the committee's consideration of the budget for 2007-08. We will take evidence from the Minister for Transport, Tavish Scott MSP, whom I welcome to the committee again. Here to support him are John Ewing, who is the head of the Executive's transport group; David Dow, who is a team leader in the Finance and Central Services Department; Guy Houston, who is from Transport Scotland; and Malcolm Reed, who is the chief executive of Transport Scotland. I welcome all of you.

I ask the minister to give an introduction on the proposed transport budget for 2007-08, after which we will have questions and answers.

The Minister for Transport (Tavish Scott): In opening proceedings, I will reflect on several transport issues, but I note at the outset that only two substantial changes have been made to the budget, both of which relate to transfers. If that is of interest, we can deal with it.

The Government's transport policies have delivered investment in the transport infrastructure of Scotland's economy. As the committee knows, 70 per cent of our transport investment in the current financial year and future financial years will be targeted on public transport. Our new national transport agency, Transport Scotland, has begun to speed the delivery of our transport investment. That is why it is important that Malcolm Reed and Guy Houston are here today.

The last available figures, which are from 2004-05, show that rail passenger numbers are at their highest level since 1964. The number of rail passenger journeys originating in Scotland rose to 72.9 million in 2004-05, which is the highest level for 40 years. Considerable capital projects for rail are, of course, in the pipeline. We have opened the Larkhall to Milngavie railway line. The important fact is that passenger numbers on that line are 34 per cent higher than the projected

level. The transition to additional devolved rail powers for Scotland and the Scottish ministers, who are accountable to Parliament, has been smooth.

On 1 April, we introduced the Scotland-wide free bus travel scheme for elderly and disabled people. Scotland is the only part of the United Kingdom to have such a scheme. The total number of bus journeys made under the concessionary fare scheme increased from 103 million in 2001-02 to 145 million in 2004-05. The number of local bus journeys increased in each of the past six years to reach a total of 465 million in 2004-05. Proportionately more journeys are made by local bus services in Scotland than in the UK as a whole. In addition, we established the bus route development grant to create better-value bus services, thereby improving access to public transport. To date, 39 projects throughout Scotland have been approved with a spend of £16.8 million.

I turn to roads. We have provided a national framework for safe walking to school through our safer routes to school policy, which includes the introduction of 20mph speed limits around most Scottish schools. Our investment in road improvements to reduce casualties has led to the lowest rate of road accidents since records began 50 years ago. The figures include a 57 per cent reduction in children killed and seriously injured. Road fatalities are now well below the European Union average. The current trend is falling: child road fatalities in Scotland are now at the same level as those in the UK. We saw a significant reduction in road casualties in 2005: the reduction in casualty numbers was 4 per cent and, for serious casualties, 5 per cent—the lowest figure since 1952. Our investment criteria for tackling road safety issues can clearly be seen.

We are maintaining and improving the trunk road network, including the M74, M8 extension and M80 upgrade. We are also making a number of minor, but nevertheless extremely important, junction improvements, including on the A9 at Ballinluig.

I turn to air travel. Our air route development fund has supported the establishment of 32 new direct air links. We have also provided support to users of the Highlands and Islands air network through the introduction of the air discount scheme.

I turn to ferries. Since 1999, 10 new ferries have been bought. We have made a substantial investment in the island communities around Scotland.

Those are the headline figures. I am, of course, happy to answer questions.

The Convener: Thank you, minister. I will open the questioning and then bring in other members. My first question is on the M74, to which you referred. Do you have any indication of the financial impact of the delay in starting construction? If so, has the Executive's transport budget taken that into account?

Tavish Scott: I will ask Malcolm Reed or Guy Houston to deal with the detail. We are aware of the delay and have budgeted for it. As the convener knows, the delay was caused by court action. Any Government would, of course, have to deal with that situation appropriately.

As the convener will also be aware, we were able to move ahead on a couple of projects in the interim, one of which was the Dalkeith bypass. The delay on the M74 was an advantage in assisting that part of Scotland to move forward on a project that people have been awaiting for a considerable period of time. In the context of the M74, I appreciate that the delay was not helpful. However, at the time, we were where we were with that project. Clearly, we are now moving ahead again. Malcolm Reed will add something on the detail of the spend.

Malcolm Reed (Transport Scotland): The delay has not had a significant impact on the spend. Obviously, we have lost the economic benefit that the earlier completion of the scheme would have brought. That is the primary impact of the delay. As the committee knows, we are pressing ahead with the project.

The Convener: Do you have any figures for the economic loss to the west of Scotland or Scotland in general?

Malcolm Reed: We can get the figures to you. We have the calculations, as they were prepared for the court case.

The Convener: Another potential major transport infrastructure project is the replacement—or second—Forth road bridge. I am aware that a lot of work is under way to assess the condition of the existing bridge and that the Executive is engaged in that work. If it becomes necessary to commission a new bridge—whether as a replacement or a second bridge—is the Executive's transport budget sufficiently flexible to enable an early start? I am thinking in particular of the flexibility to undertake the preparatory works that will enable the project to get under way.

Tavish Scott: As the convener knows, we have begun the work that needs to be done at this stage to ensure that there will be no delay if the assessment of the bridge's condition proves to be the worst case scenario. We all hope that that is not the case, but I assure the committee that work has begun—through the strategic transport projects review, for which Malcolm Reed is

responsible—in relation to the preparation that would be necessary for a second crossing. That will allow ministers of the day to take the appropriate decision with the fullest information.

There is no budgetary constraint in relation to the work that is now under way, which is factored in to the budget for the strategic transport projects review. I observe that we have not closed off options in relation to tunnels. It is sensible not to do so at this stage. There are different views on the issues, but we intend that the initial studies will be completed in the context of considering all the possible transport ramifications and options that Government should consider at this time.

On the convener's significant point about the scale of investment that will be required if a second crossing proves necessary, that will be an important part of spending review 2007. It has implications not just for one spending review period but for a number of spending review periods. Ministers are already taking advice on that subject to ensure that any necessary planning is done now.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): The minister said that the costs in respect of a new Forth crossing have been factored in to the budget for the strategic projects review. What amount has been factored in and in which financial year or years?

Tavish Scott: I did not say that the costs of a new Forth crossing have been factored in. I said that the cost of the studies that we are undertaking—that is what the convener asked about—have been factored in and accounted for in the current budgetary procedures.

Fergus Ewing: Now that the minister has said that no actual costing for a crossing is factored in to the strategic projects review, will he explain what work has been done by Transport Scotland?

Tavish Scott: First, I did not say something different. I am not going to have Mr Ewing twisting my words in the way that he just implied.

Secondly, Malcolm Reed and Transport Scotland are taking forward, quite appropriately, the necessary planning work. They have fast-tracked the preparatory work in relation to a potential new crossing of the Forth. That is being done through the strategic projects review. I am sure that we can furnish the committee with details of that work, which is continuing.

Fergus Ewing: I still do not know exactly what work is being done. Is Mr Reed able to expand on that and explain what work is being done? The Scottish Executive has not made a press announcement on the matter for some time, but it is obviously a massive priority for the entire

transport system in Scotland. Can Mr Reed tell us what is happening?

Tavish Scott: We said that we would do the preparatory work, which is an important aspect of being ready and providing ministers of the day with the fullest possible information that they could need at the time. We said that that would be in the context of next May or June and that the matter is important in the context of the spending review because of the enormity of the spending decisions that ministers might have to take.

The work that is under way within Transport Scotland through the strategic projects review is, appropriately, about informing ministers of the day so that they can take the decision if it proves necessary. It is all about the preparation, the options that are available and the financial consequences, which are significant, as I am sure Mr Ewing appreciates. It is right for that work to be undertaken and for other ministers, particularly the Minister for Finance and Public Service Reform, to be fully aware of it so that we can make an informed decision at the time, depending on the circumstances that we face.

Malcolm Reed: If I can expand on what the minister said, we are taking forward the Forth crossing work as part of the strategic projects review. It is a separate work stream within that review and the consultants who were appointed in August are already making good progress. In fact, when I left the office to come to the committee, a meeting was taking place between our staff and Forth Estuary Transport Authority staff about the way forward. The consultants have started work. They have been in the job for only six weeks and there is a lot to do, but we are ensuring that we take the work forward as quickly as we can.

14:15

Fergus Ewing: I want to ask about budgetary implications. As the minister said, this is a serious matter. A Forth crossing will not be cheap, whether it is a bridge, a tunnel or whatever. However, a new crossing is a priority for the whole of the Scottish economy, not least that of Fife, which is already beginning to suffer because of worries over the closure of the existing bridge to heavy goods vehicles by 2013.

In most people's view, a Forth crossing is a greater priority than an Edinburgh airport rail link that will involve burrowing under a live runway at a cost of £609 million and rising—experts say towards £1 billion. Does the minister agree that this would be a good moment to reappraise the priorities for Scotland's spending and to support the view of the Scottish National Party that a Forth crossing is a greater priority than an Edinburgh

airport rail link that will be highly risky, hugely complex and massively expensive?

Tavish Scott: I genuinely think that it demeans the budget process if a member abuses his position as Fergus always does. He has just done so again to make a series of party-political observations. We have plenty of opportunities to debate such matters in the chamber.

I fundamentally disagree with what Fergus just said about the Edinburgh airport rail link. I think that it is a very important project for Scotland, but Fergus Ewing does not. That is fine; we can disagree. However, we should have the discussion in the chamber, where we can have a good old knockabout. I would welcome that debate any time, any day. However, while we are here we should deal with the budget process appropriately. I do not think that Fergus's question was at all appropriate.

Fergus Ewing: I want to move on to another area relevant to the budget, but I am aware that other members might wish to come in. However, I will take the minister's answer as a no.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I want to focus my questions on target 10 in the draft transport budget, which is

"To reduce the number of serious and fatal road accident casualties".

The minister mentioned that target in his opening remarks, and I see that Audit Scotland has stated that the target has been achieved well ahead of schedule. Why has the target not been revised in the light of the successes achieved, to improve road safety even further? The targets in the draft were set in 2005.

Tavish Scott: I admit that the budget process can be a bit bizarre, but we are accountable for this set of targets and for the way in which we have spent money in meeting them. I accept the challenge posed by the committee to look closely at the targets, and we will continue to do so. Given the importance of safety on Scotland's roads, I am more than happy to engage in a process that leads us towards more exacting standards and targets. I accept that challenge.

Mike Rumbles: I want to focus on one particular aspect of road safety. The Executive is constructing two grade-separated junctions on the A90 between Perth and Dundee, to add to the two that have already been constructed on that stretch. As I drove past them this morning, I saw that they were well under way. Those junctions will undoubtedly help road safety.

The Scottish Executive has already recognised that road safety is an issue further along the A90 at Laurencekirk. There is a new speed limit of 50mph and there are speed cameras and a new

road surface. However, those are short-term measures. As we consider how to improve road safety on major roads such as the A90, does the minister agree that we could construct more grade-separated junctions? Malcolm Reed wrote to me recently on this very issue, and said that commitments had been made up to 2012 and implied that nothing further could be done until 2012. Road safety issues are constantly changing. Is there any prospect of improving the rest of the A90 with grade-separated junctions, particularly at Laurencekirk, before 2012?

Tavish Scott: Malcolm Reed will deal with the specifics and I will deal with the more general points. Our programme is full. We could switch spending—and a switch is what it would be—away from other areas of capital transport spending towards more grade-separated junctions. We would undoubtedly gain in road safety terms from such a switch, but there is a balance to be struck. There is a judgment call as to how many junctions we can have in our programme at any one time and where they should be, which is why any minister is dependent on road engineers and road safety advice to make the list of priorities clear.

It is important to make clear that the main connection routes in Scotland, such as the one that Mike Rumbles described, will be very much part of the strategic projects review that is under way. When the assessment is made, account will be taken of additional information, such as accident statistics—the worst possible information—and changes to and growth in communities. However, as I am sure Malcolm Reed will confirm, once a study concludes it will be important for ministers to set out a programme. If road safety issues jump out of the assessment, we will need to react to them. Mr Rumbles may have raised one such issue.

Malcolm Reed: I confirm that the process is as the minister described. We will examine the road accident statistics and, if we see a cluster of accidents that causes concern, we will investigate it and bring forward proposals. Ultimately, we face two constraints. One is the budgetary constraint. The other is the need to allow time to design a scheme and possibly acquire land and so on. We share the member's concern. Road safety is a very high priority, but we must follow due process to get schemes into the programme.

Mike Rumbles: Your point about due process is important. The minister was helpful in saying that due process will take account of changes in road safety. I want to be clear in my mind that you are not saying that there cannot be any changes until after 2012. That is my key question.

Malcolm Reed: I confirm that changes can be made before 2012. The only caveat that I offer is that it would take time for a scheme to be

designed and to go through the necessary statutory procedures.

Paul Martin (Glasgow Springburn) (Lab): Do you think that we are getting value for money from the bus services operators grant? The latest figure for the grant, for 2006-07, is £56 million. The figure for the next year is £57 million.

Tavish Scott: Like every area that the transport group is reviewing, the bus services operators grant is under review in the context of the national transport strategy. As part of that strategy, we hope to present a bus action plan to Parliament later in the autumn. I assure Mr Martin that we are looking closely at spending on the grant and at how what we get out of it relates to what we expect. John Ewing's team has the matter under active review. At the moment, we think that the grant is delivering, but I take the point that we need to keep such matters under review.

Paul Martin: The draft budget states:

“Bus Route Development Grant provides short-term funding to improve local bus services”.

Based on evidence that you have received from members from all parties represented in the Parliament, do you agree that members of the public rarely accept that local bus services are improving?

Tavish Scott: The most recent survey showed strong support for bus services throughout the country. John Ewing can provide details of who carried out the survey and of the sample size, because it is important to provide appropriate context. We would be happy to share the survey evidence with the committee. Much of it is already in the public domain, because it consists of statistical information that has been published. We can go only on evidence that we have received.

Paul Martin: Do you appreciate that the issue is not the quality of services? People are happy to have bus services. The difficulty is that in many cases they do not have services in the first place. On a number of occasions, the point has been made to you that we are providing £57 million in bus services operators grant to an industry that is clearly not responding to the needs of local communities. The draft budget states that the grant is intended to reduce the need for increases in fares and to reduce the burden on local authorities of providing services for socially excluded groups. Do you accept that operators are not delivering in that area?

Tavish Scott: I accept that there are different circumstances in different parts of the country. I am sure that Mr Martin shares the view that in some areas there are clear signs of success and progress. As is appropriate, he and other members from the west of Scotland, in particular,

have highlighted on a number of occasions the deep concerns that exist about the level of service in that area, especially in the evenings and at other times when the commercial sector is failing to provide the service that we need from the perspective of social inclusion and a number of other policy objectives. I accept that point in relation to various parts of Scotland. We are seeking to tackle the problem through the on-going review of the national transport strategy. We hope that we can put in place a series of mechanisms that will give national Government, local government and regional transport partnerships more flexibility to work with operators to find the best mechanisms for delivering in such areas. We will do our best to do that and to keep members up to date on what is happening. *[Interruption.]*

The Convener: I suspend the meeting until the fire alert is over. We can remain here.

14:25

Meeting suspended.

14:42

On resuming—

The Convener: I reconvene the meeting. I apologise to committee members and members of the public for the inconvenience that has been caused by the fire alarm—obviously we must take all necessary precautions when the alarm sounds.

Members will resume their questioning of the Minister for Transport. Paul Martin was asking questions before the meeting was suspended.

Paul Martin: What additional funding has been set aside to improve disabled access at train stations?

Tavish Scott: No specific additional funding has been made available in the budget for disabled access at train stations, but we are closely examining the matter in our consideration of the First ScotRail franchise and Transport Scotland's budget generally. A considerable number of demands to improve access for people with disabilities have been made. Fair requests have been made to upgrade and improve access facilities for disabled people in many stations in the country and I hope that we can make proposals in that context soon—certainly in time for next year's budget process.

Paul Martin: Who is responsible for upgrading disabled access in train stations? It seems to be expected that First ScotRail will make improvements, but it seems to be saying that it must apply to the Scottish Executive for funding

for such improvements. Will you clarify once and for all what the process is?

Tavish Scott: I invite the gentlemen from Transport Scotland to answer that question.

Malcolm Reed: Disabled access is a reserved matter. The funding for our work in Scotland on disabled access therefore comes from the Department for Transport. We have a proportionate share of a Great Britain-wide pot, which we are using. We prioritise stations according to the volume of passengers that use them and line-of-route considerations. The minister made the fair point that, through the franchise and the other funds that are at our disposal, we have an opportunity to supplement the funding from the DFT. We will work on proposals along those lines.

14:45

Paul Martin: What timescales are attached to that work? I have asked the same question consistently for the past three years, but the consistent answer that I have received is, "We are looking at this." Can we have a more definitive answer? You have clarified the areas of responsibility, but my understanding is that the Executive has a role in providing funding, given that train station improvements are a Scottish Executive responsibility.

Malcolm Reed: That is broadly correct. Within the franchise, First ScotRail made provision for improving disabled access. Under our programme, several stations are being dealt with. I can let the committee have information on which stations are involved and what the criteria are. The programme is a rolling one—we cannot address everything at once because of funding constraints. However, we will do our best to make progress on the programme.

Paul Martin: For the past three years, I have been assured that we will get some kind of timescale. We have all the targets that have been set out for improvements, so surely people who are disabled are entitled to be advised about when they can expect to get access to the stations throughout Scotland to which they currently have no access.

Malcolm Reed: To give a bit of context, I say that it is barely a year since the devolution settlement on rail matters. We had to sort out with the DFT the amount of funding that was to be made available to Scotland and we now have to develop the programme. We are doing that as quickly as we can. I can give the committee more information on that in due course.

Paul Martin: You have given a commitment that you will make progress "in due course", but I like

to think that, next year, we will certainly not get the same answer—which is that you are considering the issue. You will appreciate that changes must be driven on so that people who deserve to have access can at least be advised of what targets have been set. People appreciate that we cannot deliver the entire programme within a short space of time and they know about the investment that is necessary, but they are entitled to information about when the capital improvements will be carried out.

Malcolm Reed: I will make two comments by way of clarification. First, the use of the words “in due course” was perhaps unfortunate. We have named stations that are currently being dealt with in the programme. I will make the details of that programme available to the committee.

My second point is the wider one that everything that we do must be subject to overall financial constraints. We do not have an unlimited budget for rail or for access issues in rail provision. The matter is reserved, so we need to address the interface issues. We appreciate the importance of the issue and we are making progress on it.

David McLetchie (Edinburgh Pentlands) (Con): In drawing up the draft budget and in looking ahead to future years, is it still the minister's and the Scottish Executive's view that there is no need to prioritise any of the major transport projects to which commitments have been made, irrespective of changes in circumstances, such as the cost of the projects?

Tavish Scott: We have a programme, which I laid out in Parliament on 16 March this year. It builds on the programme that Iain Gray announced originally and that has been worked on further by successive transport ministers. One of the strongest aspects of the process is that we have laid out the budget and said what we are going to do. We are making progress with the programme. We have said that the strategic projects review will examine the period from 2012 onward and that it will come up with the priorities for that period. However, we fully intend to deliver all the projects in our current programme—we have budgeted on that basis.

Another aspect on which to reflect is that we are in a very tight period in the construction industry, not least because of growth throughout Europe, but also because of the Olympic games in London. We face considerable competition for engineers, designers and other skilled people, such as project managers. An important point, I believe, is that one of Transport Scotland's key roles in managing the continuing delivery of what is a very significant capital transport programme is to ensure that we retain that expertise here and that we keep interest in Scotland as a place where transport projects are absolutely happening. We hear a lot

of feedback from industry that that plays an important part in how it views Scotland over the next five, 10 or 15 years.

David McLetchie: Given the uncertainties and pressures, would it make sense to state publicly and expressly that, although we want to deliver all the projects to which we are committed, they have nonetheless been prioritised so that, in the event that unforeseen circumstances—or, indeed, the foreseen circumstances to which you alluded—were to put significant pressures on the budget, we would have at least a clear idea of which projects will be delivered first?

Tavish Scott: I almost thought that Mr McLetchie was about to drag me into a Donald Rumsfeld moment by asking about unknown unknowns.

Let me be clear that we have the budget to deliver our current programme. I do not plan to start to pick and mix those projects, nor do I have a remit from Cabinet to do so. I believe that we need to do what we have said we will do, which is to deliver the programme as a whole. As I told Parliament back in March, if substantial budgetary problems were to arise, either individually or across the programme as a whole, I would report back to Parliament speedily on those and lay out the consequences. The theme of Mr McLetchie's question is that, if we were to encounter a significant financial issue—we referred to this earlier in our evidence—ministers would be responsible for deciding how to cope with that budgetary pressure. What I have said is consistent with the message that I gave in March and, in fairness, with what all my predecessors have said about how we will manage the programme.

David McLetchie: In preparing next year's budget and in looking ahead to delivery of the transport capital projects with all the attendant cost pressures that we have discussed, did you have the benefit of being able to look at the report of the independent budget review group, which was commissioned by the Minister for Finance and Public Service Reform but has not yet been published and is not to be disclosed to us until September of next year?

Tavish Scott: I certainly looked at the part of the report relating to transport.

David McLetchie: Does not the report look at the budget as a whole and indicate where savings might be made that would benefit the transport budget overall?

Tavish Scott: The important point about the report is that, on behalf of the Minister for Finance and Public Service Reform, it feeds into the spending review of summer 2007, when ministers will need to take account of the report's recommendations and the on-going work in which

the budget reviewers are still involved. The review will certainly present ministers with options on capital and revenue spend.

David McLetchie: May I ask a couple of specific questions before other members go on to other issues?

The Convener: You may continue as long you are fairly quick.

David McLetchie: The budget contains an operating subsidy for ferry services. Do you anticipate that the tendering process that is currently under way is likely to result in an outturn that will save money, or the reverse?

Tavish Scott: To be blunt, I do not envisage a saving. As Mr McLetchie and other committee members will know, the position on Clyde and Hebrides ferry services has, in effect, been determined by the maritime cabotage rules, in which Parliament has rightly taken an interest over the past couple of years. It would be foolish to say that the process will bring us savings; I have no confidence whatever that it will do so. We must go through the process, which will be robust, appropriate and proper. We will ensure that the process is carried out in line with the requirements that are laid upon all Governments that are required to follow the maritime cabotage rules. However, I have my doubts as to whether it will save us money.

David McLetchie: My final question is on money-saving measures for rail services, which is an issue that was picked up in the committee's report on last year's budget. First ScotRail has put considerable effort into revenue protection measures. In plain English, that means stopping people dodging their fares—or skipping their fares, as it used to be called when I was at school—for their journeys. Have those efforts resulted in an increase in revenues to First ScotRail and what impact has that had in respect of savings for and benefits to the Scottish Executive and the taxpayer?

Tavish Scott: First ScotRail has had an increase in revenue. I will get Malcolm Reed or Guy Houston to deal with the figures. I read the other day an attack on us in one of the north-east papers for not ensuring that ticket barriers were in place in Aberdeen, Dundee and other places. It seems that the barriers are popular nowadays, so we will ensure that they are in place in Aberdeen very shortly. The direct answer is that the measure has raised revenue. Perhaps the gentlemen who are with me can share the figures with the committee.

Malcolm Reed: I would not like to give a revenue figure off the top of my head. We are talking about a growth in total passenger numbers over two years of 23 per cent. I suspect that some

of that increase represents travellers who had not previously paid their fares. The contract provides for revenue sharing between First ScotRail and the Scottish Executive once a certain threshold has been reached. We are very close to that threshold, but I do not want to say more because we would be going into commercially confidential matters. There should be a benefit to the Scottish Executive as a consequence.

David McLetchie: Is it right to say that it will always be the case that if enhanced revenues arise from revenue protection measures, we—the public and the committee—will not know the benefit that that will bring for the budget?

Malcolm Reed: I would like to take advice on that. There will certainly be outturn figures that reflect that, but I would not like to quote percentages at this stage.

Tavish Scott: We will examine the figures to see what we can share with the committee. If members have more questions, we would be happy to try and answer them. That was a legitimate question.

The Convener: We would welcome a detailed response. The matter is one that members legitimately wish to be aware of on behalf of members of the public, in order that we can ensure that we are getting value for money from the franchise arrangements.

Tavish Scott: I agree and I accept that.

Ms Maureen Watt (North East Scotland) (SNP): My question follows Mike Rumbles's question about accident reduction. Although I accept that major projects such as grade-separated junctions have had an effect on road accidents, what specific measures does the minister believe the Scottish Executive has taken that have led to a reduction in accidents on roads other than the ones that Mike Rumbles mentioned? I am thinking specifically of roads in the north-east, given that every Monday morning the papers report three or four accidents that have occurred on other A roads or B roads. What measures does he believe the Scottish Executive has taken to alleviate the problem, given that a report indicates that a significant number of our roads are in amber or red condition?

Tavish Scott: I will get Guy Houston to deal with the point on road conditions that was made in the Audit Scotland report, which I am sure Maureen Watt is reflecting. We will do so fully because we want to address the issue; I am grateful to Maureen Watt for raising it today.

On the road network overall, it is important to reflect the differences between trunk road maintenance, which is the responsibility of Transport Scotland, and local roads, which are—in

Maureen Watt's example—the responsibility of either Aberdeen City Council or Aberdeenshire Council.

The straight answer on road safety is that the increased work that is done on design and the better information that is available on what causes accidents, which comes from a number of agencies and sources, including roads engineers but also the police and other appropriate bodies, leads to better design, better construction and better use of, for example, surfaces that are used for resurfacing on both the trunk road network and a local road network. It is important to reflect on the fact that technology moves on, so the transport industry has better information on the matter. We also depend on the operating companies. Perhaps Guy Houston and Malcolm Reed could talk in more detail about the matter and share the points about the Audit Scotland report on trunk road maintenance.

15:00

Guy Houston (Transport Scotland): The Audit Scotland report suggests that £325 million is required to bring the roads up to acceptable standard. I want to clarify the exact definition of “acceptable standard”. It is noted in the report that £325 million is required to bring the roads from close monitoring to normal monitoring. That means moving from the normal monitoring procedures that are in place as defined in the roads manual, which says that, under normal conditions, based on asset life, the condition of the road, surveys, reviews and so on, £325 million is required to move from closer inspection. We never go below closer inspection or monitoring. All our roads meet a standard that is defined in the roads manual. The £325 million that is quoted is for bringing that up to a standard that would take roads off close monitoring.

The Convener: What is the difference between close monitoring and normal monitoring?

Guy Houston: That depends on traffic volumes. In the middle of the M8, normal monitoring takes place much more often than it does on the Fort William to Mallaig road, for example. Normal monitoring on trunk roads or motorways can often take place daily, and close monitoring would happen more than daily there. On some trunk roads up north, normal monitoring takes place once a month. It is completely variable, depending on traffic flows and volumes. It is to play with words to say that roads do not meet an acceptable standard—they always meet an acceptable standard as defined in the roads manual.

Ms Watt: If you do not think that the figure should be £325 million, how much is required to

be spent on our roads? Clearly, the public realise that many roads are deteriorating.

Guy Houston: All our trunk roads meet the minimum standard. We are keeping a very careful eye on £325 million-worth of roads spending.

Ms Watt: You say that your

“trunk roads meet the minimum standard.”

Surely you have had representations from local authorities—I know that you have—saying that the roads within their jurisdictions are not meeting the standard and they do not have the funds to meet them.

Tavish Scott: Table 6.11 in the draft budget document shows that the roads budget increased by £60 million in the budget year that we are discussing. As Maureen Watt well knows, it is not for central Government to tell local government what to do with its grant-aided expenditure. That is not the job of any of us around this table, in my view. Those are matters for local determination by local councillors. If Maureen Watt has an issue with council spend, she might wish to note the budget numbers and then discuss the priorities in the areas in question.

Ms Watt: Are you saying that the extra money that you have given is enough to bring the roads up to an acceptable standard?

Tavish Scott: I used to be a councillor, and I know fine that decisions are taken on spending priorities for within the local authority area. It would always be nice to have more money to spend in every portfolio area, but locally elected politicians must make judgments about the spending priorities in their areas. As Maureen Watt should know, we met the full bid from the Convention of Scottish Local Authorities in relation to road expenditure in the latest spending review period. We look forward to receiving a COSLA submission in relation to the next spending review period. We met the last one in full.

Ms Watt: On the delay with the M74, you said that the unspent money has been used elsewhere. There is a seven-year delay with the Aberdeen western peripheral route. Where has the money for that been hived off to?

Tavish Scott: I do not accept the term “hived off”. In the context of budget monitoring, the M74 project was earmarked for budget spend from year to year, so funding was available to be spent. It was not envisaged—quite fairly, in my view—that there would be a delay due to court action. That happened, so there was a year's delay. That allowed spend to be profiled, which is what any public agency does, whether it be Transport Scotland, Government portfolios, local government or another public agency. In the profile of spend, reallocations were made to meet other transport

spends. I think that that was advantageous and was a good use of taxpayers' money. I assure Maureen Watt that no money has been "hived off" to other projects in the way that she describes.

Ms Watt: So, once a decision is taken on the route of the western peripheral route, the money will be there to get the project up and running as quickly as possible.

Tavish Scott: The money will be available once the project has gone through all the statutory processes, including, I am sure, a local public inquiry next year. We envisage that the contract will go through its formal processes during 2008, with construction starting in 2009. Appropriate budgetary provision will be made in forthcoming budgets.

Ms Watt: My final question is on concessionary travel. I refer to the appendix to the Audit Scotland report on the partnership agreement and your high-level commitments, a number of which relate to extending concessionary travel. We already have concessionary travel schemes on buses and there are commitments to provide concessionary travel for people with disabilities and young people in full-time education and training. What progress has been made on those commitments?

Tavish Scott: We hope to make an announcement on that in the next few weeks. We have had constructive and sensible discussions with the industry. We have to have an industry agreement as to how such schemes would work. The process has taken rather longer than I would have liked, but it was ever thus. We will get there and will we make an announcement as soon as we can.

Michael McMahon (Hamilton North and Bellshill) (Lab): I want to follow up Maureen Watt's question on concessionary travel. Table 6.06, on page 90 of the draft budget, shows that the budget for concessionary fares in 2006-07 is £185.338 million. In 2007-08, the plan is to spend £189.338 million. That would indicate no more than an increase in line with inflation. Does that imply that there is no provision for an increase in uptake?

Tavish Scott: For the national concessionary travel scheme, we have budgeted conservatively with regard to expected uptake and have taken into account an increase in uptake. The budgetary calculation was made in conjunction with the industry on the basis that there would be an increase in uptake.

Michael McMahon: My follow-up question is similar to Maureen Watt's. Where is the money for other concessionary schemes, such as for young people, going to come from, given that there is no indication of that in the budget plan?

Tavish Scott: There is a separate line that relates to the young persons concessionary scheme. In the current financial year, the budget for the national scheme is £159 million and for next year it will be £161 million. Those are the figures that my predecessor announced in Parliament and which we have stated on numerous parliamentary opportunities since. They take into account both uptake and the industry and Government's financial arrangement in relation to the scheme. I assure Michael McMahon that money is available for the young persons concessionary scheme, as budgeted for, which we will identify formally for the committee.

Guy Houston: It is not clear in the document that in 2006-07 the figure includes start-up costs to get the national old age pensioner, disabled and young persons schemes started up, which are primarily the costs of ticket machines for operators. You do not see that included in 2007-08, which is the main reason why you do not necessarily see the growth. We are spending a load of money in 2006-07 on ticketing equipment and start-up costs. In 2007-08 we will spend it on the growth in uptake instead.

The Convener: It would be useful if we could get a clear indication of what is available for the young persons scheme and whether it is in a separate line, or is in the same line, but is clouded by the investment in ticket machines. Could we get that in correspondence?

Tavish Scott: My understanding is that the figure is £24 million, but we will confirm that in correspondence.

Michael McMahon: My next question is on emission reduction equipment. In the period up to 2006, the Executive spent £4 million on schemes such as the cleanup Scotland programme and the powershift programme, which seemed to have had a beneficial effect. In 2005, time was taken to revise and evaluate the schemes in order to decide whether they should continue. Has that evaluation been made and will the schemes continue? Alternatively, are there plans to deliver on air quality commitments by a different method and, if so, what would be the budget for that?

Tavish Scott: I will have to write to the committee with the detail of that. Those schemes have been under review for some time, and it is arguable that the process needs to come to a firm conclusion. I am focused on the best mechanisms that we have for improving air quality and reducing emissions. Some of that work—in relation to cleaner fuels, for example—is with the industry; there are a number of United Kingdom-wide schemes in that regard. Other commercial developments are being progressed by the energy companies; we see those on our forecourts, never mind anywhere else.

That work is being progressed in conjunction with, for example, bus manufacturers. A lot of work is going into developing different technologies for the bus industry, and there is on-going work relating to rail as well. One of the issues that we are considering in the context of the procurement exercise for rolling stock is the appropriate mix of technologies from an emissions perspective. Work is going on in a rather more targeted manner across different modes of transport to discover what we can do, both in industry and through developments in technology, to assist in meeting climate change objectives and requirements.

In my view, there is a reasonable judgment call to be made on whether those schemes achieve very much, given the small number of people who take them up. They look attractive on the surface, but are they making a significant difference to the issues that Michael McMahon fairly raises with regard to air quality? That is the judgment call that we are making. For the future, it is important to move forward across modes of transport in considering new technologies, including developments in buses and rolling stock and the cleaner fuels that are becoming increasingly available.

Tommy Sheridan (Glasgow) (Sol): I want to try to make sense of some of the figures in the document that are linked to some of your objectives and targets. In relation to the revenue protection measures, especially the automatic ticket barrier schemes, Malcolm Reed mentioned a growth in rail passenger numbers of 23 per cent over two years. Is that correct?

Malcolm Reed: Yes. That is correct.

Tommy Sheridan: You think that some of that is due to people who were using the railway services anyway being caught.

Malcolm Reed: Yes. That is a fair assumption.

Tommy Sheridan: That is over a two-year period.

Malcolm Reed: Yes.

Tommy Sheridan: Your document talks about the target of increasing the number of passenger journeys on the Scottish rail network by an average of 2 per cent each year. Do you not think that that is a small target, given what you have just said?

Tavish Scott: Yes. That is a fair point. We are aiming at exactly that. However, the target is not exact enough; we need a more aggressive target in that area.

Tommy Sheridan: Do you think that the savings that are being generated, in relation to the franchise agreement, from the installation of the automatic ticket barriers—I think that they will be

installed next in Aberdeen and Dundee—are as much as £500,000 or £1 million a year?

Malcolm Reed: I would not want to venture a guess—and it would be a guess. It is an area of conjecture.

Tommy Sheridan: Perhaps the minister will comment. I corresponded with him on the matter and he said that the cost of installing and operating the automatic ticket barriers was £500,000 a year. He also said that the savings to the Executive were significantly in excess of that cost. Somebody somewhere has made a calculation, and I wondered where those savings are reflected in the budget figures.

Tavish Scott: I hope that Mr Sheridan accepts that, as Malcolm Reed said to the convener, it would be probably inappropriate and certainly unwise to speculate on the figures. Mr Sheridan asks a fair question, and the convener touched on the point earlier. We will write to the committee on the issue. I accept and understand that the issue is of concern and interest to members. We will see what we can do after taking the advice that we must take—although we may not like it—in relation to the commercial relationship between us and First ScotRail. We will furnish the committee with a full answer on that point as best we can.

15:15

Tommy Sheridan: I appreciate that. However, in May, when you last corresponded with me on this matter, you said that the savings had resulted in a substantial reduction in the franchise payment. Given that we are paying more than £260 million a year, I hope that any substantial reduction would amount to millions of pounds. It would be very helpful if we could get that figure as soon as possible.

Is there any indication of the level of profit that we are allowing the franchise operator to make from the substantial investment that the public purse is ploughing in?

Tavish Scott: Those details are commercially sensitive. I was not directly involved in the discussions on this matter at the time, but as I recall, Parliament quite rightly took a lot of interest in the matter when the franchise opportunity was advertised, the bids processed and the franchise itself let. I am sure that a number of my predecessors made clear what details could and could not be put on record. I appreciate that that is probably not the answer that Mr Sheridan is looking for, but it is the factual position.

Tommy Sheridan: Where does the budget reflect the increased revenue to the franchisee from the installation of automatic ticket barriers? I believe that there is an equation in which any

increase in revenue is divided between the franchisee and the Executive.

Tavish Scott: I am not sure that we can answer that question today. I wonder whether we can respond in writing to the specific questions and to the general point that has been made.

Malcolm Reed: I might be able to help. When the franchise was let, a commitment had already been made to install some ticket barriers. The franchisee made an assumption about the business case for installing other ticket barriers, which would have been factored into the bid cost. Therefore, what is in effect the price that we are paying for the franchise will be reflected in the total bid cost.

Tommy Sheridan: I am sorry to return to this question, convener, but I am concerned that the money that the Executive is spending on improving the rail service is resulting in increased profits for a franchisee. I thought it had been agreed that if target revenue increased by between 2 and 6 per cent—which, given the 23 per cent increase in passengers, seems to be the case—the operator would retain 50 per cent of the increased revenue. Is that the case, or not?

Malcolm Reed: I think that two figures are being confused. The target revenue figure is an internal Scottish Executive figure. The franchisee would have made its own assumptions about revenue growth in bidding for the franchise, and any revenue share calculations are based on those figures.

The Convener: Of course, the installation of barriers at certain train stations is not solely responsible for increases in revenue or passenger numbers. Any such increase might also be a result of factors such as economic growth or the promotion of public transport.

Tavish Scott: That is a very fair assessment of some of the reasons for passenger growth. For example, significant growth has been experienced on the Larkhall to Milngavie line, which was mentioned earlier, not because automatic ticket barriers have been installed, but because it has been promoted.

Tommy Sheridan: In the written response that you will provide on costs and so on, will you also indicate the extra revenue that the franchisee receives from ticket barriers?

Malcolm Reed: I am not sure whether we can. As the minister said, some details are commercially confidential, while others are based on the bidder's own assumptions. It will be difficult to disentangle the revenue growth that its bid ascribes to particular items of investment.

The Convener: Rather than continuing down this route, it would be better to accept the

minister's commitment that he will try to give further detailed information to the committee, in response to both Mr McLetchie's initial question and Mr Sheridan's questions. We should give the minister the opportunity to bring together that information in as open and transparent a manner as he is able to. It will then be up to committee members to decide whether they are satisfied with that response; they can raise further questions, if necessary, at that point.

Does Tommy Sheridan have any other points?

Tommy Sheridan: We all supported the development of the Airdrie to Bathgate line. Where is the cost of the rolling stock reflected? Is there an overall or a specific figure?

Tavish Scott: I will be corrected by my colleagues if I am wrong, but I assume that the figures relate to the construction of the line. As I said in Parliament on a number of recent occasions, it is our intention to factor in to the procurement of rolling stock for the network the needs of the Airdrie to Bathgate line. Malcolm Reed will keep me right here, but I assume that the figures for rolling stock procurement are not directly in the budget for the Airdrie to Bathgate project, which is for the construction of the line.

Tommy Sheridan: What is the cost of the rolling stock?

Tavish Scott: The figure is under negotiation, because we will not know the cost until we conclude the commercial contract and announce the successful bidder for the contract to provide new rolling stock for the whole Scottish network. I appreciate that it will be a matter of considerable interest to Parliament, which we will keep updated. The cost of necessary budget spend in that area will be in future budget documents.

Tommy Sheridan: I have two final points. I corresponded with the minister and the previous incumbent about the nature of the contract with franchisees on indemnification for industrial disputes. Is it the case that the Scottish Executive has now carried over that responsibility from the former Strategic Rail Authority? In other words, do we agree to indemnify a franchisee for losses that are incurred during industrial disputes?

Tavish Scott: Yes.

Malcolm Reed: I add a note of qualification. The franchisee has to pass a test of reasonableness in such a situation.

Tommy Sheridan: Who judges that test of reasonableness—the Executive or the Parliament?

Tavish Scott: Ultimately ministers will do so, but they are by definition accountable to the Parliament.

Tommy Sheridan: There is a significant increase in expenditure in 2006-07; I assume that that reflects increased devolved powers over the network. To whom are ministers responsible for that increased devolved power and expenditure?

Tavish Scott: To the Parliament and this committee.

Fergus Ewing: As the minister knows from his extensive visits to Inverness, the route connecting the main trunk routes—the A82, the A96 and the A9—which is known as the trunk link route, is presently the local authority's responsibility. However, a wide campaign that is supported by all parties locally calls for the route, which would create a ring road or city bypass for Inverness, to become a trunk road. The obvious corollary of that is that the Scottish Executive as opposed to the council would then be financially responsible for it.

The controversial point is that many people, including me and the provost of the council, believe that a swing bridge across the canal would be inappropriate because of the consequent delays that it would cause and that therefore a bridge or tunnel would be far preferable. However, the council cannot afford that.

When I raised the matter previously, the minister refused to classify the route as a trunk road. Is he willing to look again at the matter with a view to ensuring that, like the other four cities in Scotland, Inverness will have a bypass or ring road so that we can keep traffic out of the city centre and let it go from west to east and north to south without clogging up city centre streets?

Tavish Scott: I have read recent editorials in the *Inverness Courier* with great interest. I take Mr Ewing's point about the broad support for that investment proposal. I am certainly considering it and we will see what we can do. I recognise that the project is important for the development of Inverness, which is one of Scotland's fastest-growing cities. Given that, we will of course keep such matters under review.

Fergus Ewing: I am grateful for that answer. I think that Inverness is the fastest-growing city. It is the fifth largest, but perhaps it has ambitions to move up the league table.

The Convener: Is that only because Livingston is not designated as a city?

Fergus Ewing: Competing bids always exist, no matter how flimsy.

When we conducted the freight transport inquiry, we considered budgetary aspects of the Stirling-Alloa-Kincardine rail line. When that line was proposed with all-party support, a key objective was to take the coal freight traffic that English Welsh & Scottish Railway Ltd—the freight franchise operator—conveys over the Forth rail

bridge off that bridge and on to the Stirling-Alloa-Kincardine line. As we all know, that would have the benefit of freeing paths on the Forth rail bridge and allowing many more frequent rail services through Fife to the north and so on. We would all support that.

However, I understand that Transport Scotland has asked EWS to pay supplementary costs that EWS has no obligation to pay for using the railways. I also understand from previous evidence that no precedent exists in the UK for asking railway companies to pay supplementary charges for using track. The minister knows that my interest in the matter is long standing and he will recall the evidence that we heard from EWS during the freight inquiry.

What is the position? When the Scottish transport appraisal guidance appraisal and the financial appraisal were undertaken, was it assumed that EWS would pay the charges that are being imposed?

Tavish Scott: It is inappropriate to make a simplistic analysis of the commercial world and I counsel Mr Ewing against doing that. We are dealing with a competitive commercial world. One company will have one perspective on it, but companies that have commercial contracts with that company will have other perspectives on it. Mr Ewing may have been briefed about one side of the commercial equation, but that is not the only side to that equation. The Government must weigh up different aspects and different relationships and must take—as best any Government can—an overview of the contractual arrangements that are in place. Transport Scotland is responsible for that.

The direct answer is that the issue sits with the Office of Rail Regulation, as would such an issue from any part of the UK. We await the regulator's judgment on the arrangement. The Stirling-Alloa-Kincardine line is an important part of the rail network that will deliver improvements to freight movements and, consequentially, to passenger service paths across the Forth rail bridge. That will help immensely in the delivery of better rail services. I counsel against taking a perspective on the issue off the top of one's head, because it is not as easy as it may look.

Fergus Ewing: I hope that the minister knows that I have pursued the issue not off the cuff but over a long period in the committee, in evidence, in correspondence and through a freedom of information request to Transport Scotland that has not been answered yet. What part of my analysis was simplistic? I say with respect that I do not believe that my analysis is simplistic.

Will the minister please answer the critical question? If EWS is to pay extra charges for using

the rail track, why did the Executive not deal with that before proceeding with the railway? Would it not have been prudent for the Executive to sort that out before proceeding with the project, which I understand depends heavily on and is justified by the assumption that coal traffic would come off the Forth rail bridge and go on to the Stirling-Alloa-Kincardine line? Since the Executive has not got the agreement from EWS to pay charges, and since there is no legal obligation whatsoever on EWS to pay extra charges, has not the Executive really mucked up?

15:30

Tavish Scott: The simplistic piece of Mr Ewing's analysis, as I have tried to point out to him, is that he has failed to recognise that we do not build rail lines just for one company, which is what his line of questioning suggests. We do not do that for the line that we are talking about today and we do not do it for any railway line. We build the rail infrastructure for the benefits that it will bring to the rail network as a whole and for the freight market, on behalf of all the commercial companies and businesses across Scotland that look for competitiveness between rail and road. We build it because we hope that it will encourage commercial operations through that network, to provide a more cost-effective service and to provide an alternative to the road. To suggest, as Fergus Ewing has done, that we have built that rail line just for EWS is simplistic, I am afraid.

Fergus Ewing: With respect, minister, I did not suggest that at all.

Tavish Scott: You have just changed your mind, then.

Fergus Ewing: I simply said that, substantially, the justification for the line was that new paths would be created by taking that huge freight traffic of coal off the Forth rail bridge. Given that that was a substantial justification—everybody accepts that—why did not the Scottish Executive get the agreement of EWS before it went ahead, rather than after going ahead? Now the Executive is in a situation where it has no legal entitlement to claim extra charges from EWS, as far as I am aware. If the minister can point to any specific flaws in my argument so as to educate me, as he is obviously anxious to do, perhaps he can tell me exactly what the flaws in my analysis are. I have followed the matter carefully for a long time and it seems to me that the Executive is in a muddle of its own devising.

Tavish Scott: I could not begin to educate Mr Ewing. It would be quite beyond me to do that. I always bow to his ever-superior knowledge on all aspects of Scots law. I repeat that we do not build rail lines for one company. Mr Ewing began his

question, once again, by saying that it was a matter of creating paths and moving coal around Scotland, and then he returned to his argument about the one company that he is determined to point to. I will not add to what I have already said. That is the position.

The Convener: I draw an end to the questioning at that point. The session has been useful, although there are one or two areas on which we need further information. I thank the minister and his officials for attending.

Prostitution (Public Places) (Scotland) Bill: Stage 1

15:35

The Convener: We move on to the second item on our agenda, which is further evidence taking on the Prostitution (Public Places) (Scotland) Bill. I inform the witnesses and any members of the public who are listening that we are running a little bit late, largely because of a fire alert that took place earlier. We apologise for any inconvenience that that may cause.

I welcome the witnesses. Ruth Morgan Thomas is the manager of SCOT-PEP and Jinty Kerr is the co-chair of SCOT-PEP's board of directors. Cath Smith and Anne Fallon are from the Routes Out intervention team. Before we move on to questions and answers, I invite one representative of each organisation to make some introductory remarks.

Ruth Morgan Thomas (SCOT-PEP): Most of my comments will be based on our submission. There are diverse ideological perspectives and political stances around sex work, but regardless of those, what remains undeniable is the vulnerability of sex workers in society today, the most vulnerable of whom are those who are involved in street prostitution.

Zero tolerance of the sex industry does not work. The sex industry adapts to whatever strategy is implemented in an attempt to eradicate it. Globally, such approaches have all too often had the result of driving prostitution further underground, thereby opening it up even further to criminal influence and the exploitation and abuse of sex workers, as has been witnessed in the street prostitution environment in Edinburgh over the past five years.

It is important to note that prostitution—

The Convener: It seems that you are simply reading out your written evidence, which members have in front of them. Perhaps you could identify the main points.

Ruth Morgan Thomas: Okay. It is important to note that the selling of sexual services is not a criminal offence. Sex workers do not break the law by selling sex; they are criminalised because of the public nuisance that they cause.

It is also important to note that SCOT-PEP firmly believes that in an ideal society there would be no need for people to sell sex in order to survive or for purchasers to buy sex because everyone would be sexually fulfilled, as well as having the economic security and independence that sex

work gives some individuals. However, we are a long way from living in such a society.

We have major concerns about the bill because it fails to address the issues that the expert group on prostitution set out to address, which were about creating equality in the treatment of sellers and buyers of sexual services. As the committee has previously identified, in reality the offence of loitering will be applicable only to sellers of sexual services because it does not apply to anyone in a vehicle. We know for a fact that 95 per cent of clients come to the street prostitution environment in a car and seek contact with sex workers from vehicles. That places the burden on the people who are selling sex on our streets—who are primarily women—and means that the inequity that was highlighted in the expert group's report and when the committee reviewed Margo MacDonald's Prostitution Tolerance Zones (Scotland) Bill will not be addressed.

There is also an issue about the retention of the terms "soliciting" and "loitering". Although those terms are not defined in the bill, they have specific meanings in law, whereby it is difficult to charge anyone in a vehicle with loitering. In our view, other solutions could be considered.

Given that the bill defines activity that is "likely to cause alarm, offence or nuisance"

as an offence, sex workers have asked us how they can engage in what they do without causing offence. If soliciting and loitering will not be criminalised and the offence will be one of public nuisance and causing alarm and fear, they want to know how they can engage in their activity without breaking the law. The wording of the bill means that that is a difficult question to answer. There are no significant changes for women and men who sell sex on the streets in terms of the offences in the new bill. The only addition is what I believe to be a weak offence that can be used against purchasers.

We also raised the issue of the new power of arrest. The matter is one of concern for us because, in English cities, the norm is that women are taken to the police station and are held overnight until they appear in court. That has major implications for women who are drug dependent—and we know that more than 95 per cent of women who are involved in street prostitution are drug dependent—given that, in the cells, there is no prescribing and there are no appropriate facilities for women who are withdrawing from opiate-based drugs. We also have concerns about women who have custody of their children, because child care arrangements cannot be extended for long.

The expert group did not want to up the ante for an already vulnerable group of women who are

engaging in a behaviour that is seen as a survival behaviour. It was felt that we might be increasing the burden on a group that is already carrying a phenomenal burden in our society.

The final issue that we raised in our paper was about the title of the bill. We know that, if someone has a conviction for a prostitution offence, that acts as a disincentive to employers to consider those individuals as fit individuals to be employed. We are a long way away from removing the stigma that sex workers face when they seek employment in an attempt to move on from the industry. Ensuring that people have a conviction on their criminal record that refers to a piece of legislation containing the word “prostitution” will do nothing to remove the barriers that face women who are trying to move on and look for alternative employment.

We in SCOT-PEP have been discussing the fact that the proposed legislation does not have an age level. In its report, the expert group highlighted the fact that, in England and Wales, 16 and 17-year-old prostitutes are considered to be victims of abuse rather than offenders. It is important that we do not criminalise young people who are involved in street prostitution. Instead, we should put in place appropriate support packages to assist them.

It is essential that we analyse the impact that the bill will have on the vulnerability of sex workers. All of us in this room are all too well aware of how many women in the sex industry have been attacked, murdered and raped. It is important that any new legislation does not increase their vulnerability. Further, it is important that it address the vulnerabilities within the communities and residential areas in which street prostitution occurs.

The Convener: Thank you. I invite Cath Smith, of Routes Out to make some introductory remarks.

Cath Smith (Routes Out): I apologise if in my remarks I repeat anything that Ruth Morgan Thomas has already gone over in her extremely clear presentation.

The Routes Out intervention team has gained considerable experience of working with women who are currently or were previously involved in prostitution and has gathered knowledge of the long-term trauma and harm that are caused to women through involvement in prostitution. The work is challenging and innovative and a partnership approach to addressing the issue of prostitution, underlined by the Glasgow policy on prostitution, has been integral to service development, service delivery and raising awareness of the harm that is caused through prostitution.

Routes Out welcomes any measures that will make the purchaser of street prostitution more visible and will hold them accountable for their behaviour. The bill, which proposes to use the same legislation against the seller and the purchaser, fails to address the inequality in respect of the buyer, who makes an informed choice in buying sex, and the seller, whose involvement in street prostitution is primarily an aspect of survival behaviour.

The information that we have about the women who are involved in street prostitution in Glasgow indicates that the vast majority of them are chaotic drug users and have significant issues that need to be addressed in addition to their substance misuse, including past and current abuse, mental and physical health difficulties, homelessness and poverty.

15:45

The bill fails to address the root causes of women’s involvement in street prostitution, the consequences of their subsequent involvement in the criminal justice system and the likelihood of their being remanded in custody or imprisoned for fine default. There is no recognition of the two different offender profiles of the purchaser and the seller.

Prosecuting the buyer and making him more visible is a positive step, but there is no commitment in the longer term to challenge the buyer’s attitude, which is the driving force behind street prostitution. Under the proposed legislation, it appears that the seller—the woman—will continue to be the most likely to be prosecuted.

The proposed offence of causing “alarm, offence or nuisance” might carry a greater stigma than the offence of soliciting, and in respect of women who have exited prostitution and are seeking employment it could create an additional barrier to women moving on with their lives and fully exiting prostitution.

I hand over to my colleague Anne Fallon, who has much more direct contact with women who are involved in street prostitution and is a manager of the intervention team.

Anne Fallon (Routes Out): Members might be aware that Glasgow has a zero tolerance approach to prostitution—the same approach that we have to domestic abuse, child abuse, rape and sexual assault. Prostitution will still happen, but we do not want to dilute the message that we regard prostitution as being on the continuum of violence against women. Street prostitution, in particular, is sexual exploitation of women.

Glasgow also takes an holistic approach to prostitution and offers women harm reduction

services and exit strategies. Our team works with women in the long term to enable them to exit prostitution, but we also have other projects such as Base 75 and a relatively new drop-in centre for women who are out on the streets. We now have centres in both areas of Glasgow where prostitution occurs.

Members might know that most of the street prostitution in Glasgow takes place in two areas. One is a city-centre area called the drag and the other is in the east end. The Routes Out partnership is part of the east end community safety forum, within which we work with residents and other agencies. Prostitution is one of the issues in the east end action safety plan. As well as being manager of the intervention team, I have lived in the east end all my life. I have lived exactly where prostitution takes place—in and around the Calton area—for 24 years.

We are concerned that the bill fails the community. Women are the only visible source of the prostitution in and around the east end. We are concerned that, because the community feels let down, there might be a reaction to the visible signs of prostitution—that is, the women—in the community. I have worked with women who have been attacked by young people in the east end because of their involvement in prostitution. Prostitution is understandably a major issue for residents. That is why we want to work closely with them, but our concerns are both for the community and for women who are prostituting.

We are also concerned about the relationship between women and the street liaison team. There might be more of a duty on the street liaison team to contact their uniformed colleagues in relation to offences. The women have very good relationships with the street liaison team and we are concerned that those relationships might change. We are also concerned about the implications for gathering intelligence on abusers of women.

We also have fears that more charges might be brought because of the points that Ruth Morgan Thomas and Cath Smith mentioned about the loitering and soliciting offences. The women will be more visible but, because the bill contains nothing on kerb crawling, it will be extremely difficult to get verbal evidence to prove an offence. The women will be out on the streets, but the men are in cars and will be able to drive away. Because of the way in which the loitering elements of the bill are drafted, the women will be left standing on the street, which concerns us.

We are also concerned about the impact that the title of the bill, which we regard as going against the principles of social justice, will have on the women's vulnerability. The bill adds the offence of causing "alarm, offence or nuisance" to the

offences of soliciting and loitering. In the past, if a woman wanted to access training or education, potential employers or colleges would have to dig deep to find out what a conviction under section 46 of the Civic Government (Scotland) Act 1982 was. However, the title of the Prostitution (Public Places) (Scotland) Bill will leave nobody under any illusion as to what an offence is.

I will give a couple of examples. One woman was automatically sacked from a major company when it was found out that she had been involved in prostitution. That was before the introduction of a bill on prostitution; her conviction was under section 46 of the 1982 act. Another woman's experience was that, in the huge food chain where she worked, it leaked out that she had been involved in prostitution and men started to come up and ask her about free services. She had to leave that job. We are worried about the implications of the bill's title for women.

I will stop there.

The Convener: I thank the witnesses for their introductory remarks and open up the meeting for questions from committee members.

David McLetchie: I address this question to both organisations that have presented evidence. Is it your view that there should be no law at all on the buying or selling of sexual services in public places?

Ruth Morgan Thomas: Are you asking for SCOT-PEP's view as an organisation?

David McLetchie: Yes.

Ruth Morgan Thomas: We accept that there is some degree of social nuisance attached to street prostitution and that that needs to be managed. As a general principle, we do not believe that the buying or selling of sex should be criminalised.

David McLetchie: As you point out in your submission, it is not criminalised at the moment. It is the manner of the transaction that is criminalised, is it not?

Ruth Morgan Thomas: It is. The important factor is that SCOT-PEP was set up by sex workers for sex workers 17 years ago and continues to try to represent the voice of an incredibly marginalised group of citizens.

David McLetchie: What characteristics should a public nuisance offence in relation to the purchase or sale of sexual services in a public place have, given that you have accepted that there is a public nuisance aspect to the transaction?

Ruth Morgan Thomas: Members of the community in Edinburgh have failed to use an opportunity that current legislation presents. I am really clear that, if a potential client approaches a local woman who is not involved in sex work and

asks her if she wants to do business, that is enough to cause that woman fear or alarm, but I think that breach of the peace covers that. There are occasions when some of the women with whom we work display inappropriate and unacceptable behaviour in public streets and I think that that too would fall under breach of the peace.

David McLetchie: I am grateful for that answer.

In your paper, you say that

“The sex industry adapts to whatever strategy is implemented to try and eradicate it”.

I do not think that any one would demur from that.

You go on to say that prostitution is being driven

“further underground opening it up even further to criminal influences”

and so on. From that statement, is the selling of sexual services in a public place—in other words, street prostitution—in some respects a safer forum or environment in which to sell sexual services than others?

Ruth Morgan Thomas: It can be. I will give a practical example. The French Government has introduced an internal security law that has made passive soliciting by sex workers on the streets of France a criminal offence. The penalties are up to two months’ imprisonment and a €3,750 fine. However, in Paris, inner-city street prostitution, which sometimes occurred in non-residential areas, has been driven out to forests on the very edge of the city. Sex workers in Paris now have absolutely no contact with ordinary members of the public and no protection. They are reporting phenomenal rises in violence from clients and others. The question was whether I think that street prostitution can be safer than the alternatives, and the answer is, yes, I do.

David McLetchie: In your example, you compared working in a forest with working on the street. I am more interested in the comparison between a street and an indoor facility such as a sauna. What is your assessment of the relative risk factors?

Ruth Morgan Thomas: The evidence is undeniable. Research shows that street-based sex workers are far more vulnerable to violence and assaults than indoor workers are. Back in 1999, a Medical Research Council study covered indoor and street-based sex workers in Edinburgh and Glasgow. I believe that 81 per cent of the street-based sex workers had experienced crimes of violence from clients, compared with 48 per cent of those who worked indoors. The assumption is that indoor prostitution is safe per se, but it is not. Many men view sex workers as a group that is outside the law. Those men have assaulted, raped

and, on occasions, murdered; they feel that they face no penalty in society.

David McLetchie: I see that.

Cath Smith: The member mentioned the safety of women. It is important to restate today that women who are involved in street prostitution are never safe. Improving safety is very difficult. In Glasgow, personal alarms have been issued. We also have third-party reporting, under which women can report to the police incidents or descriptions of men who they believe are causing alarm and who may become a risk, for example to younger women.

It is also important to look at the harm that those men cause not only to the women who are involved in street prostitution but to families and communities. It is more than likely that those men have a relationship—they may well be married—and may well have a sexually transmitted disease. We have to look at the broader picture.

I return to the point that prostitution is harmful. We cannot accept going down the route of saying that we should tolerate behaviour that is harmful and dangerous to these women and to communities. We have to target men and challenge their perception of women by asking why they use women in this way. If the bill were to be passed, we may have the opportunity of imposing, by way of an order or a penalty, some kind of programmed intervention that addresses the men’s attitudes and value base.

On awareness raising, we have to remember that vast numbers of men—the majority of men—never use women street prostitutes. They also have to be part of the solution.

16:00

David McLetchie: It is evident from the submissions that we have received, particularly Anne Fallon’s evidence about two areas in Glasgow that are venues for street prostitution, that the selling and purchasing—the marketing, if you like—of sexual services is a visible offence. On an average night—I imagine that a weekend night will be busier than other nights—how many women in the two areas that have been mentioned would be engaged in that activity? How many would be arrested?

Cath Smith: It is very difficult to give you those figures off the top of my head. However, I can tell you that, on average, 20 to 40 different women call regularly into Base 75’s drop-in centre in Glasgow city centre, which operates between 7 pm and 11.30 pm six nights a week and is our first point of contact with women involved in street prostitution. I can certainly come back to the committee with the exact numbers.

David McLetchie: How many people would be arrested in a week?

Cath Smith: I cannot give you those figures at the moment, but I can come back to the committee on that matter. Certainly women will tell us about police presence on certain nights, and the number of women who are arrested very much depends on their visibility and the number of police on the streets at a given time.

David McLetchie: So the frequency of arrests depends on the police's willingness to enforce the law.

Witnesses indicated agreement.

David McLetchie: So could the police end street prostitution in those areas simply by enforcing existing laws?

Cath Smith: No, it is not as simple as that. Women and men will always find ways of ensuring that street prostitution continues to take place, no matter where that might be. For example, we—and, I am sure, SCOT-PEP—are concerned about the fact that women are making more use of mobile phones, because that means that they are perhaps not tying into and using services such as Base 75, where they can receive a really good package of support including methadone prescribing and health checks.

David McLetchie: I understand that, but we are talking about changing the law in specific areas where street prostitution is seen to be a problem. You are critical of some of the proposed changes, and I imagine that you are also critical of some of the existing laws. The fundamental question is whether we are changing the law to eradicate an activity that many people perceive to be a public nuisance, which will require enforcement, or whether we are simply changing the way in which the current system is managed.

Anne Fallon: The fundamental point is that women prostitute themselves in order to survive. For example, 90-odd per cent of the women involved in street prostitution in Glasgow do it to fund not only their own drug habit but the drug habits of their partners or other people. On the other hand, men can choose freely whether to buy sex. What we need to address is the inequality between the women who sell sex and the men who buy it. That is not a matter of simply juggling laws, but tackling real issues such as the reasons why men buy sex and the abuse experienced by women involved in street prostitution.

I should also point out that some women have moved from street prostitution to working in saunas and flats. Indeed, we are now getting more referrals from women who work in flats. Women are also telling one another about our team, and it is clear that women are moving off the streets

because, with the regeneration of Glasgow's east end and city centre, they are more likely to be arrested if they work there.

We fear for women who are then hidden from, and will not come near, services. The use of mobile phones also increases the risk to women of being attacked or raped. For us, the fundamental issue is the reasons why women prostitute—the survival reasons. Even when women want to get out of prostitution, a lot of them cannot because they are still funding their partners' habits. We are working with one woman who was involved in prostitution from her parents' flat and was told that she could not stop because they would then not be able to pay the mortgage. She has been emotionally blackmailed for years. Those are the real issues for women in street prostitution.

David McLetchie: I understand that there is a much bigger picture, and that we are addressing a very narrow part of it, which is street prostitution. Accepting that we have a very narrow focus—and I fully accept that you have raised many wider issues in your evidence—is the bill going to make any difference at all to the incidence of street prostitution? Is it really about how street prostitution is managed under the present law and the legislation that might be passed?

Jinty Kerr (SCOT-PEP): I think that you have put your finger on an important point. If anyone has a pious hope that when, or if, the bill passes into law it will eradicate street prostitution, or prostitution in general, I have to tell them that that has never happened in history and it is not going to happen because of the bill. As you say, many other issues must be addressed and a main plank of any action to address street prostitution is that it has to be managed. An act of Parliament will not do that. It will prescribe offences and sentences. With such a marginalised group of people, sentences usually mean fines to start with, which means that they will have to work to pay the fines. When they cannot pay the fines, they are imprisoned. What is new? The bill is not going to reduce street prostitution to zero. That is my candid opinion.

The Convener: Cath Smith may make a brief comment, but I want to try and get to questions from other members.

Cath Smith: I have a brief point on what the bill will do. It looks as if women will be prosecuted much more often than men, given that they will be visible in the street and will be seen to be the ones who cause alarm and nuisance. It is difficult to see how the bill will make a difference in relation to the prosecution of men.

Tommy Sheridan: I will address my question to Anne Fallon and Cath Smith first. Routes Out has been working for many years now; I visited you

away back for your inauguration and I applaud the work that you are doing. Do you have figures that would indicate that the wider social problems that are driving women into prostitution are being addressed at a legislative, social or political level to deliver a reduction in the client group that you are working with? In other words, when David McLetchie asks how many women would drop into Base 75 during an average evening, I want to know what the trend has been during the past three or four years. Is there a discernible decrease and, if so, is some of that a result of the factors that you mentioned, such as the use of flats and saunas, rather than the achievement of the Routes Out objective? The answer is important because if, unfortunately, it is no, we are obviously doing something wrong. We are told every day in the *Evening Times* about Glasgow's regeneration and how wonderful Glasgow is becoming. There is no doubt that there are changes in Glasgow—I am sure that Anne Fallon can testify to some of the changes in the east end. However, if you are finding no significant reduction in your client group, why are those changes in Glasgow not reaching that group? I hope that you can give me some answers on that.

Cath Smith: We are raising awareness of the issues of prostitution across the board. For example, four or five years ago, prostitution was rarely spoken about in public even in social work and health services. I recently received figures—unfortunately, I do not have them with me, but I can give a copy of them to the committee—from community addiction teams in Glasgow. I am sure that members are aware that we now have five community health and social care partnerships. Using the figures, I tried to assess how many women have been involved in prostitution in Glasgow and how many women are currently involved. Base 75 and the intervention team do not work with all those women, but they all use the health and social care partnership services. The numbers, which I will provide to the committee, are considerable.

We have an opportunity to talk about street prostitution and indoor prostitution. More important, we have an opportunity to get women into services and to make them feel that there is no shame and that they can talk about their issues. That needs workers to be confident and to understand what prostitution is about and how we have to work with women. We need mainstreaming into all public services, so that everyone is aware of the issues. There is no evidence that street prostitution has reduced. I am more than happy to provide the committee with the figures that I have for Glasgow.

Anne Fallon: The intervention team currently works with 72 women—that is 72 women in Glasgow who are not prostituting. Those women

might have gone to Base 75 or received services elsewhere. As was mentioned, the intervention team has been working with women for about six years as part of the Routes Out partnership. We do not work with women on our own, because women have criminal justice, mental health, housing and child care needs. The women's needs are extremely complex. However, we have an understanding and knowledge of the issues for women who are involved in prostitution. Some of the women whom we work with will lapse, but that is part of the moving on process. As I said, we are working with 72 women who are not currently prostituting.

Ruth Morgan Thomas: I will talk briefly about the experience in Edinburgh. I agree that fundamental issues lead men, women and transgender individuals into sex work in order to support themselves. Those issues, which we are not addressing in our societies, include poverty, drug dependency and homelessness. In Edinburgh, 50 per cent of the individuals in the sex industry each year are new to prostitution that year. That figure is not declining. Each year, 50 per cent move on, because prostitution is not an easy job—it is not easy work or easy money. There is a rapid changeover in population. Regrettably, Government policies are not having an impact on that.

Tommy Sheridan: Anne Fallon said that the intervention team works with 72 women who were formerly involved in prostitution and Cath Smith referred to some figures from Glasgow. Do those figures show a trend that is not falling anywhere near as fast as you had hoped? Will you share the figures with us?

16:15

Cath Smith: It was interesting doing the work on this. The figures indicate that there are many more women in Glasgow who are or have been involved in street prostitution who use other services. However, when they use those health, education or social work services, they do not disclose their current street prostitution or their past involvement in it. That is very much to do with the sense of shame and of how they might be judged or treated.

In the Routes Out partnership, we are keen to ensure that all council workers in Glasgow who come into contact with those women are aware of how they should be working with them, of what services the women require and of how they can make significant changes to their lives and move on. The intervention team can provide good examples of women who have done really well. It is a long-term process, however—it is not an easy fix.

Tommy Sheridan: I will come on to something that is a big question for all of you. You have expressed serious doubts about some big aspects of the bill. There is even the ideological point about whether you should be managing what is a form of abuse. Will your organisations track the bill with a view to suggesting amendments to make it better? You might start with the point of view that we all start off with, which is that we would rather not be here discussing this at all. Nevertheless, could some serious amendments be presented by each of your organisations to improve the bill, and are you able to dedicate resources to do that?

In particular, Cath Smith spoke about a male being prosecuted and whether there should be an attachment of some sort of behaviour order to address the behavioural pattern that compelled that male to purchase the services of a woman. Could we get that written into the bill? Could we also write it into the bill that, if a woman is prosecuted, the services that might be required to assist her, perhaps with a drug dependency, should be made available? You will all be aware of cases involving people who seek help but who do not have services available to them. If the Executive is serious about adopting an holistic approach to the problem, it needs to provide serious resources so that, when someone has been charged, that will trigger help. I wish that we did not have to have somebody getting charged to trigger help being given, but could that, at least, be written into the bill so that services become more available than they are at present?

Cath Smith: I have no doubt that that would involve a huge cost. However, Glasgow is pretty well served by way of services for women in street prostitution. We are tapping into different services. We do not want to rely entirely on specialist services such as Routes Out or Base 75 to deal with the issue. I agree that it is unfortunate that we are here discussing this today. I hope that, at some point, Base 75 and the intervention team will not be required.

The aspect involving men is very important. I have responsibility and involvement in the setting up of the domestic abuse court in Glasgow. That came about because we had perpetrator programmes, which criminal justice workers delivered to men who were abusing women. It does not have to be as intense as that, but there is no doubt that it is possible to challenge and change behaviour if that is done effectively, if the programme work is established and if we know it can work. That is the challenge for us and it would be a powerful move to write that into legislation.

The Convener: I call Mike Rumbles.

Tommy Sheridan: Sorry—I was hoping that Ruth Morgan Thomas was also going to answer

that question. I am talking about the bit to do with tracking the bill and suggesting amendments.

Ruth Morgan Thomas: We will be examining and tracking the bill and we will be drawing up amendments in line with what we believe is right. I would add that we are clear about what the offence is. We certainly support the expert group's opinions. This is not a moral judgment. We are talking about a public nuisance offence, not about the criminalising of the buying and selling of sex.

Mike Rumbles: This has been a wide-ranging discussion so far, but I want to focus on the bill, which is what we are supposed to be focusing on. The bill is very narrow indeed in its remit. It creates two offences: soliciting and loitering. It is quite clear about soliciting. It refers to someone who is

“engaging in prostitution”

or

“obtaining the services of a person engaged in prostitution.”

That is clear, and I do not think that there is anything wrong with that.

I want to focus on the second offence, which is loitering. The bill's intention is not to end prostitution—no one thinks that we will ever be able to do that—but to reduce prostitution and the harm that it causes by making both sides of the arrangement subject to the criminal law. The problem that I have with the bill is that loitering will not be an offence if the individual concerned is

“in a motor vehicle which is not public transport”.

The written evidence from SCOT-PEP highlights the fact that

“95% of the purchasers of sexual services in public places do so from a vehicle”.

The issue on which I want to focus—I put the same question to our previous set of witnesses the other week—is whether the provisions will work. The whole point of the bill is stop so-called kerb-crawlers, but it will not do that. I would like to hear your assessment of the matter. I had thought that the purpose of this very short bill was to stop that.

Ruth Morgan Thomas: We made that point in our submission. It is clear to us that, by stating that the loitering offence does not apply to people in cars, the bill will basically make no change to the existing law. Sex workers will be disproportionately charged, fined and imprisoned for non-payment of fines in exactly the same way that they are today.

Another point is that lawyers defending women against loitering charges in Edinburgh sheriff court have argued that not all the women are loitering in a public place. Such case law has resulted in a reduction of the number of women on loitering charges to virtually zero. The legal definition of “to

loiter” that was accepted by the courts is “to travel indolently and with frequent pauses”.

None of the women in their right minds travel indolently and pause frequently when a police car or policeman is near. Therefore, the loitering charge cannot be used effectively against the women who are sellers. By retaining the two terms “loitering” and “soliciting”, you are tying yourselves up in knots by tying yourselves to current legal definitions, whereas you really aim to do something broader.

Anne Fallon: I completely agree with that. Women loiter on foot; men are usually in cars and will circle round and round. Over the years, I have been followed I do not know how many times. When I was pushing my pram 19 years ago, I was followed by men in cars. Under the bill as it stands, nothing would come of that.

Mike Rumbles: Let me give you a scenario on which I would like to hear your comments. In the bill, the offence of loitering does not cover people who are in a car, so kerb crawling will not be illegal. Only when the kerb-crawler stops, winds down the window and communicates with another person will he be engaged in soliciting the services of that person. The kerb-crawler will break the law only at the point at which he communicates with the person. That is my interpretation of the bill. Is that your interpretation?

Cath Smith: Yes.

Anne Fallon: Yes.

Ruth Morgan Thomas: Yes, that is our interpretation. I might add that very few clients will stop to speak to a woman when a police officer is present.

Anne Fallon: As the bill stands, both the man and the woman could be charged with soliciting. However, whereas a woman could be done for loitering, the man could not be if he was in his car. It takes two for the soliciting offence but only one for loitering.

Mike Rumbles: The Executive says that the purpose of the bill is to put everybody on an equal footing, if I may put it that way, so that both parties are charged. However, it seems to me—and, I think, to you—that the bill will not do that.

Anne Fallon: No.

Ruth Morgan Thomas: No.

Fergus Ewing: I recognise that much of the evidence that the witnesses have given relates to issues that are wider and perhaps more serious than those that are dealt with in the bill. However, like Mike Rumbles, I want to focus on the committee’s job, which is to consider whether the bill will add anything of benefit to deal with the

problems of prostitution. Following the evidence that was given at our previous meeting, which you may have heard about, I thought that the whole concept behind the bill was fatally flawed. If I may, I would like to find out what your reactions are to two or three aspects of it.

According to section 1(1), an offence relating to prostitution is committed by a person who

“solicits in a relevant place in such a manner or in such circumstances as a reasonable person would consider to be likely to cause alarm, offence or nuisance”.

That does not mean that a person who was soliciting would be committing an offence. The soliciting would become an offence only if it were done

“in such a manner or in such circumstances as a reasonable person would consider to be likely to cause alarm, offence or nuisance”.

It seemed to me in interpreting what the bill says that it would be possible for a prostitute and a punter—who is usually a man—to have sex and that nobody would know about it. No nuisance would have been created and no offence caused because nobody would know what had happened; indeed, that might be the norm when sex acts are purchased and sold as a commodity. In your view and with your knowledge of the problem, do you think that I am right to interpret the bill in that way?

Anne Fallon: I think that we would agree with you, but there is another aspect to consider. If the soliciting is not done in a public place

“in such a manner ... as a reasonable person would consider to be likely to cause alarm, offence or nuisance”

and no one sees it because it is hidden, the questions of decriminalisation and whether what has happened does not matter must be considered. Indeed, there are several issues for us to consider. We should consider the phrases “in such a manner” and “a reasonable person”.

Ruth Morgan Thomas: I have a slightly different take on the bill. The words “likely to cause” leave enormous scope for police officers to interpret what could be caused. I absolutely support the expert group’s proposal to repeal the offence of soliciting and instead have a public order offence. However, the soliciting offence that is framed in the bill does not focus on where the alarm, fear or nuisance is caused. There is no objective test. My understanding is that the expert group recommended that there should be a complaint-led offence—a member of the public would have to have been caused offence, alarm, or nuisance by actions that had taken place and it would then be up to the court to decide whether that was a reasonable assumption to draw. The bill will make it incredibly difficult for local authorities to manage street prostitution—I know that some members are opposed to such

management, but it reduces the vulnerability not only of sex workers but of our community. The bill will make that highly difficult and could be used in any circumstances, even if things are done out of the way.

Fergus Ewing: You referred to the police's possible interpretation of the phrase "likely to cause". Did you have a particular scenario in mind or an interpretation that the police could be inclined to put on those words?

Ruth Morgan Thomas: I can give examples of situations in which women have been charged with offences that currently exist. Because of the stigma and discrimination that are involved in such situations, women do not necessarily plead not guilty to those charges. For example, police officers have charged a woman who came out of a fish and chip shop with a fish supper with loitering. Many police officers view the presence of a sex worker in a public place as in itself an offence to public morals. I dispute that. I am a former sex worker and assert my right to freedom of movement and to be in public places where I am not committing an offence. There are individual costs for known sex workers in our society. In many cases, women sex workers are not perceived to have the right to walk in public places, even when they are not engaging in prostitution. That perception is extended in the bill by the words

"likely to cause alarm, offence or nuisance".

16:30

Fergus Ewing: Another point occurs to me about a worrying scenario that could be encouraged by the form of words that the Scottish Executive has used in section 1. If a male buying sex knows that that wording means that, in order to solicit in such a way as not to cause a nuisance, he must ensure that nobody is around who could witness the soliciting, he will be determined to ensure that there are no potential witnesses. I guess that those acts will be carried out in private places, away from public gaze, which must be part and parcel of the intention behind the wording, but if punters realise that they might be done for soliciting unless they are well away from any potential witness, is there not a risk that that will drive the act further underground, thereby exposing the female to even greater levels of risk than might be the case at present?

Ruth Morgan Thomas: We certainly have evidence from England that shows that the introduction of kerb-crawling legislation there led to an increase in violence against women who are involved in street prostitution. The evidence showed clearly that street prostitution was being

driven out to the peripheries of cities, where women were more vulnerable.

Fergus Ewing: So that wording could make things even worse and could increase the already high risk of violence for women?

Ruth Morgan Thomas: Yes.

Fergus Ewing: Do other witnesses share that view?

Cath Smith: It is almost as if that wording gives men information about what will happen if they solicit in such a way. We are almost alerting them to the fact that the authorities will be increasingly vigilant about their presence on the streets in cars. I am not sure how many men will go outwith the city centre because of that, but they will be much more vigilant. Men who regularly use women in prostitution are pretty skilled individuals and are very much alert to the police presence.

Fergus Ewing: I want to pursue a couple of other points. I personally think that the man should be committing a criminal offence and should be prosecuted for soliciting sex. The man who buys sex should be prosecuted and, when convicted, should automatically be named and shamed in the newspapers by law. If that happened, that would surely deter many men who currently entertain these transactions from so doing. However, I appreciate that witnesses have different views and that members of the panel have knowledge and experience that I do not profess to have. I would be interested in hearing your views on whether my argument is correct. If buying sex is made a crime, and if due publicity is made of any man who is convicted of such a crime, will that—if it does not eliminate the issue—deter some men from taking the risk of attracting such publicity and therefore reduce the number of men who seek to buy sex from women?

Ruth Morgan Thomas: I do not believe that there is hard evidence from Sweden, where the buying of sex has been criminalised. There was a reduction in street prostitution there after 1999, when the legislation came in, but, if you talk to health departments in Swedish cities, you will discover that the levels are back where they were before buying sex was criminalised. What has become clear from the discussions that I have had with Swedish sex workers is what sort of consequences that legislation has had for sex workers. Any legislative change must analyse the impact and consequences for all the stakeholders. Sex workers should be valued as citizens and we should not put them in situations of greater vulnerability. However, reports from Sweden indicate that that might be happening as a consequence of the legislation.

It is also interesting that, prior to 1999, the majority of sex workers in Sweden worked

independently. Further, there were low levels of drug dependency among sex workers—it was estimated that there were only 800 drug-dependent sex workers in the country, which is fewer than there are in either Glasgow or Edinburgh. However, the change in the situation in Sweden has driven sex workers into organised crime networks that are offering protection. I do not believe that the criminalising of the purchasing of sex is effective with regard to reducing prostitution.

The strategy of naming and shaming people does not sit comfortably with me. Many men who use prostitutes are in relationships—whether they are married or are living with someone or whatever—and naming and shaming them would affect not only them but their families. The stigma that sex workers face would be spread to the clients and the clients' families in the same way that it is spread to the partners and children of sex workers at the moment. Further, it would be incredibly naive to think that the strategy would put off significant numbers of men.

Anne Fallon: Cath Smith mentioned education schemes. That is an important issue, as is awareness-raising work. There is an imbalance of power between buyer and seller in street prostitution. The harm that is caused to women needs to be considered. It is true to say that if a buyer is prosecuted and named and shamed, women and children will be affected. I do not think that we are necessarily talking about going down that road.

We need to look at the impact that the buying of sex from a woman has on a woman who is selling sex for survival purposes. That is probably an area in which significant changes can take place through awareness raising.

Margo MacDonald (Lothians) (Ind): I have the figures from Sweden, if anyone is interested in seeing them. They substantiate what Ruth Morgan Thomas said about what happened there. After the criminalisation of the buyer, it took about a year to a year and a half for things to go back to what we might call the normal state of affairs. Sweden is a relevant international comparison as it is roughly the size of our country and has three big cities. The lesson that we can draw from Sweden is that each city has its own pattern.

This afternoon, we have been in danger of confusing the bill—which seeks to change the law—and the advice that was given by the Executive in the explanatory notes.

The Convener: Margo, can I ask you to address your points in the form of questions to the witnesses? I am conscious that we still have another panel of witnesses to hear from.

Margo MacDonald: I wanted to outline where my questions are coming from. If I appear to be ignoring much of the witnesses' evidence, it is because we are supposed to be considering the bill, not the explanatory notes.

I agree that this is not a good bill and that it does not do what the expert group wanted it to do. Does Routes Out want the law to stay as it is?

Cath Smith: No, I do not think that the law should stay as it is. We must make men more visible and hold them to account for their behaviour. The bill will not do that.

Margo MacDonald: So you want to use the law to change behaviour and the culture.

Cath Smith: The law is one of many strands to changing behaviour and culture. It is one option that we should consider.

Margo MacDonald: The primary objective was to consider the law from the point of view of public order, which Ruth Morgan Thomas raised. We know why that objective was set—it was because people in an area of Edinburgh were being disturbed. Will the bill go any way towards making life more tolerable for the people who live around Leith Links, for example?

Ruth Morgan Thomas: I do not believe so.

Margo MacDonald: That is the sort of question in which I am interested. I say with all due respect that the committee must decide whether to amend the bill to ensure that it meets the criteria that experts have set out.

The Convener: The committee is well aware that several witnesses have expressed concerns about the bill. We will address that in our stage 1 report to Parliament. Members are aware of the issues.

Margo MacDonald: My other question is for Routes Out and is for clarification for the committee. I am steeped in the issue, but many committee members are coming to it for the first time. Anne Fallon said that we should not tolerate prostitution.

Anne Fallon: That is not what I said.

Margo MacDonald: What is it that we should not tolerate?

Anne Fallon: I said that we have a zero-tolerance approach to prostitution, as we have to domestic abuse, child abuse, rape and sexual assault. We are saying that, yes, prostitution is here and probably will not go away, but that does not dilute the message that we see prostitution on the continuum of violence against women.

Margo MacDonald: Does the bill exhibit tolerance of prostitution?

Anne Fallon: What we were saying—we have mentioned it a couple of times—is that the bill does not redress the imbalance in prostitution between the seller and the buyer of sex.

Margo MacDonald: I will come to that later.

Does the bill do anything to encourage prostitution?

Cath Smith: Perhaps the bill does not encourage prostitution but, as Fergus Ewing said, the concern is that men will be more alert to how they will be prosecuted and will be more vigilant, which may mean that women are pulled into much more dangerous situations. We are concerned because the bill does not talk clearly about the harm that is caused to women; instead, it deals with legislation that is not fair or equitable, ostensibly to target men, although I do not believe that it will do that.

Margo MacDonald: I am trying to get at whether the bill has any provisions of merit and whether it meets any of the intentions of the expert group, with which I think you agreed. The expert group's intention will be completely lost if we cannot identify any provision of merit in the bill. That concerns me, but I wonder whether amending the bill could take care of that.

Anne Fallon: The intentions and recommendations of the expert group were and are there. We were all very excited about the bill. We have waited a long time for it, and communities, agencies and women are disappointed with what we have. The bill presents our chance to change things but, as it stands, we do not think that it will do that.

Margo MacDonald: It might be remiss of me to say this, but if we do not get this bill right, we do not get a bill.

16:45

Ms Watt: There seems to be a fair degree of consensus that the bill does not do what it set out to do and that things have moved on in prostitution since Margo MacDonald's member's bill was considered. Much prostitution is now arranged by mobile phone, we have seen a big increase in workers coming in from eastern European countries and many people are now working out of flats through pimps. Given all that, is there a case for saying that we should have a completely new bill that covers saunas and brothels—or whatever you want to call them—as well as street prostitution, rather than tackling the problem piecemeal in the way that this bill does?

Ruth Morgan Thomas: I had hoped that the bill would improve the situation in which women in Edinburgh have found themselves in the past five years. The deterioration that we have witnessed,

with increasing levels of violence, has been extreme and the women have just been left to fend for themselves. There was an urgent need to address the situation, which merited the bill. We are a long way from having done the necessary research and analysis of the indoor industry or of male sex work to be able to put together a bill to cover all that. I do not think that women on the streets have the time to give you to get that right.

Anne Fallon: There are differences between street prostitution and indoor prostitution, for example in drug use. Our experience is that some women are moving off the streets and going into flats. I do not know whether they have pimps; they usually have partners. We need to consider the issues separately.

The Convener: That brings us to the end of questions for this panel. I thank all four witnesses for their evidence.

I welcome our second panel. We will hear from Amanda Bell, chairperson of Calton for all; Jennifer McCarey, committee member of Calton for all; Alan Beatson, chair of Leith Links residents association; and Senga Bethune, member of Leith Links residents association. Before inviting representatives of both organisations to make introductory remarks, I extend an apology to you all for the fact that we are running a bit later than we expected, partly as a result of the fire alert and partly because some of the question-and-answer sessions have overrun.

Jennifer McCarey (Calton for All): I thank the committee for giving us the opportunity to come along on behalf of our local community group to talk about the issues that affect us. Nobody managed to let us know that we were expected to make introductory remarks, so I am going to ad lib. I hope that you will be patient with me, as I am a bit nervous.

Our area has been mentioned on several occasions. It is becoming notorious in Glasgow for the problems that are caused by street prostitution, but local people have a different feeling. We are very pleased to live in the area and we want to stay there. Many of our families have lived there for generations. Although the problem is serious and we want to tackle it, we do not want to be defined by it—we do not want it to be what our community is known for.

The community group of which I am a member wants to emphasise that the problem of street prostitution is expanding beyond the Calton area. Community groups and mums in Bridgeton and parts of Dennistoun have told us that the area of the east end of Glasgow in which street prostitution occurs is widening. That can be seen in the infamous *Evening Times* statistics, which did not concentrate on the five or six streets that

have been known as red-light areas for the past few years. The issue is expanding geographically.

Street prostitution is also a 24-hour activity in our community. It is not something that happens when our curtains are closed and our children are tucked up in bed; it happens when we take ourselves off to our cleaning jobs at 5 o'clock in the morning, when we go to the local health centre and when we take our children to school at 9 o'clock in the morning. It happens all through the day. At 3 o'clock in the afternoon, the head teacher of our local primary school has to phone the police to say that there is street prostitution going on around the school. That happens frequently and has been recorded by the police. There is activity throughout the early evening, which restricts people's comings and goings in the community, and it continues into the evening when, as we look out of our windows or lie in bed, we hear shouts, screams and things going on. It is frightening to be around.

Our group started as a group of local mums who came together because we wanted to find activities for our children. We met at nurseries and schools, which is how we became a community group. One of the issues for us was the way in which street prostitution in the area was affecting our children's lives. I do not know whether committee members have any idea what it is like to live with the issue or how it affects a mother's life. All of a sudden, she has to have conversations with her eight, nine or 10-year-old children about prostitution and explain why the vulnerable-looking young women they see are stepping into cars with what look like strangers. In Scotland in this day and age, it is appalling that we need to discuss that with our children.

For our children's personal safety, we have to have serious conversations with them and, at times, restrict them in certain ways even if we would like to give them a bit of leeway as they get older. They cannot walk around the streets as we would like them to do, to enable them to gain confidence and freedom as young people; we have to restrict their movements. They are exposed to a particular side of life in a powerful way, and we think that that is a social problem in which the committee should be interested. Tackling that should be a priority alongside tackling the other issues that have been eloquently spelled out today. It is not a competition; these are serious issues that affect our community and that are caused by street prostitution.

The Convener: Thank you for those introductory remarks, Jennifer. I am sorry that you were not made aware that there was an opportunity to make introductory remarks. I make the same opportunity available to the

representatives of Leith Links residents association.

Alan Beatson (Leith Links Residents Association): I am not going to follow the pattern that I had intended to follow, because—not for the first time—I have been made rather angry by what I have heard.

About 1,000 people live in the vicinity of Leith Links. It has always been a residential community, but the problem emerged when prostitution was imported into the community in early 2002. At the moment, if you go out into Leith Links at night, there will probably be only two or three prostitutes. The low number is due largely to greatly increased police activity in the past six months. The problem was at its worst in 2003, when perhaps 15 or 20 prostitutes would be out on a typical night. That was before we were forced to set up patrols to reprotect our community from the devastating effects that Jennifer McCarey described. At that time, at one o'clock in the morning, there could be 30 cars going round and round a particular circuit around Leith Links. The noise was much greater than at any time during the day, and the disruption at every level was catastrophic to the community.

This afternoon, we have heard a tremendous amount about the genuine problems of prostitutes. However, as Jennifer and people in other communities would agree, we should also consider the people who live in the area. On the one hand, we have 15 or 20 women with serious problems whom we all want to help, but on the other hand we have around 1,000 people in the community around Leith Links whose interests are not being given equal standing with the interests of those women. We have felt that from the beginning.

I will not bore the committee with the details, because we have gone through them many times, but our lives were devastated by what happened around Leith Links in 2003 and 2004. Large numbers of people moved out and, in effect, we had a curfew. Women in our communities would not go out at night. Around 15 or 20 prostitutes were operating, but around 400 women could not leave their houses because they would be approached or threatened. All sorts of things would happen to them. The problem was hugely important for the community—and ours was not the only community to be affected. The needs of local residents have been ignored.

In 2003, we were forced to set up patrols. They were not vigilante patrols but simply groups comprising dentists, cleaners, mothers and other typical groups of people. The patrols went out with placards and simply said, "Go away." In doing so, we managed to break the link between the kerb-crawlers and the prostitutes. After six months of going out seven days a week, we managed to

reduce the problem. We were about 250 people, and it took a lot of commitment. That will give the committee some idea of the impact that the problem was having on the community.

We gave evidence to the expert group. We were a bit disappointed that the group did not give more credence to the interests of residents. Page 10 of the briefing paper that I have been given for this meeting gives the five conclusions of the expert group on the objectives for changes in the law. All five of them are meritorious and we agree with them. However, we are bound to ask: where is any reference to the residents? Number 4 says that changes to the law should provide

“effective protection to the general public from offensive behaviour and conduct”.

Local residents are not the general public; they are a very specific group. They are a group to which all of us like to think we belong—law-abiding people, doing their jobs, living with their children and families, and wanting to be left alone to enjoy their civic and human rights as ordinary people living quietly in their homes. We were disappointed that the expert group did not give more credence to such issues.

17:00

We felt that the expert group’s total failure to deal with pimps in its conclusions was a serious omission because many of the women have pimps, as we know from personal experience. The prostitutes are exploited by pimps and by the groups of men who use them.

We were disappointed that kerb-crawlers were not isolated as the group that ought to be penalised. We agree with everyone today who has said that there is a serious lack of balance in the bill between the women, who are likely to be prosecuted, and the men, who are not. After all, the men are wealthy and have less reason to do what they do than the women who are prostitutes to survive. Judging by the cars that the men drive, they are pretty well-off. One is bound to ask what sort of deviancy they want to indulge around Leith Links that they cannot indulge in a safer place such as a sauna. We know that women are at risk from kerb-crawlers, so we were disappointed by the lack of emphasis on that in the report and consequently in the bill, on which we have been asked to comment. Loitering is so vaguely and ambiguously defined in the bill that it is more or less worthless and in practice the provisions on soliciting will not change the situation very much.

I do not want to go on for long because I realise that time is short, but I have a couple of final points. The first is about the role of the police, which is absolutely central. In 2002-03, they totally disregarded us as a local community because they

did not regard prostitution as an issue with which they wanted to be involved. The police were noticeable by their invisibility. Whenever we phoned up they would not give us incident numbers. We had months of problems when they were downplaying the situation. They were embarrassed when the patrols were established and when members of the residents association were talking to the national press and the “PM” radio programme. That emphasised the problem and City of Edinburgh Council responded to a degree. However, the lack of police co-operation to begin with is an important matter.

In the past six or seven months, we have been struck by how the police around Leith Links have suddenly become much more committed to our cause. The change has been quite dramatic. At the moment, it is unusual to see more than two or three women about the links. We know that, because hundreds of people live there and they experience much more than SCOT-PEP what is happening on the streets on a daily basis. Why has that happened? It is because the police are present in quite large numbers, they are visible and they are stopping women. The result is that the number has reduced. When I was out with my dog late one night, I heard a woman say to her pimp, “It’s just too much hassle these days.” Many women who might get involved on the margins of prostitution have been driven away from our area by the level of police involvement, although I do not know about other areas. What has happened is remarkable. It has been a learning exercise for us to find out how effective the police can be if they want to be.

There is one worrying aspect of the bill that we must put to the committee today. It is suggested in the bill that any strategy to deal with the problem should not be complaints-led, which we support strongly in the community—there was unanimous support for that at a meeting that we held. The reason is that if the police are around, they can monitor and control the problem of prostitution by being visible. If it is simply a matter of local residents complaining, it will be much easier for prostitution to continue and it will be much harder to control. It might also victimise local residents, who will be easily identified and fingered as the people who have contacted the police to make a complaint.

The comments that I have made are not what I intended to say originally, but my thoughts have evolved as I have listened to the discussion. I emphasise strongly that we feel that sufficient regard has not been paid to communities in this process by the expert committee or in the bill. We have rights that are not always thought about and addressed in the way in which they ought to be. Street prostitution does devastating damage to a community that is very hard to describe, although

Jennifer McCarey went some way towards doing so.

The Convener: I thank both groups for their introductory remarks. On behalf of members of the committee, I reassure you that we want to hear the views of communities that are experiencing difficulties associated with this issue. We are open to listening to your ideas and views on the bill.

Paul Martin: I have a question for Alan Beatson about the Prostitution Tolerance Zones (Scotland) Bill that Margo MacDonald introduced. I accept that that bill is not connected to the bill that we are considering, but I understand that Margo MacDonald's member's bill emerged from discussions with the Leith Links residents association. Can you elaborate on that?

Alan Beatson: It did not emerge directly from discussions with the association. When the problem suddenly arose in 2002, it was a new experience for us. Margo MacDonald had discussed the issue previously. We had discussions with her about the best way forward for us as a community and about whether there should be what is called a tolerance zone. Originally there was an unofficial tolerance zone in Edinburgh, in Coburg Street. That worked extremely well, because everyone accepted that it existed, it was run according to some unofficial rules and no one seemed to bother about it. Problems arose when the local police chief unilaterally closed down the zone and declared that it was to move somewhere else.

Our association held a meeting to discuss the possibility of setting up a tolerance zone. As liberally inclined persons, many of us were sympathetic to the idea in principle. However, at the meeting, which went on for a long time, practical problems began to emerge. For example, it was suggested that if the areas around the docks and the old esplanade, which are quite isolated from the rest of Leith, were chosen as a tolerance zone, its existence would be publicised and people would come from far and wide to one corner of Leith—it would become a sort of leisure activity.

The zone might not be next to our community, but what about the policing of the fringes of our community? We raised that issue at one meeting with the police. Because they are always short of numbers, they could not commit themselves. The fear was that if areas near the esplanade or other parts of Leith that are quite isolated were designated as a tolerance zone, people would be attracted in for sexual purposes. How would we stop that activity spreading from the zone into the community? A high level of fringe policing would be necessary to do that. People would be attracted into the wider area for sex tourism.

Paul Martin: You are now advocating the establishment of what amounts to a dispersal zone, similar to those for which the Antisocial Behaviour etc (Scotland) Act 2004 provides. You are suggesting that there should be a heavy, intensive police presence to ensure that people are deterred from taking part in such activities.

Alan Beatson: No. It is not fair to say that. The police do not have a heavy policy on Leith Links; they are simply doing their job, which is to enforce the law. There is a law on soliciting and the police are visible, which in itself is having an effect because they were not visible before. That proves to us that, if administered rigorously, the present law works. That is what people in the west of Scotland said to us at many meetings. They asked why liberal Edinburgh did not apply the law more rigorously, as it is done in the west. They told us that we would find that that works.

We do not take a moral stance on this at all—far from it. We want to support the women because they are members of the community and we have obligations to them. It is in everyone's interests to sort out the problem, but we think that it ought to be done with proper policies to help people to get out of prostitution, particularly through drug support. SCOT-PEP is unique to Edinburgh; as far as I am aware there is no equivalent organisation elsewhere in Britain. It is not specifically dedicated to getting people out of prostitution or to getting them off drugs. Drugs are the central issue here. We think that a lot of resources ought to be put in to helping the women to get out of drugs. We have some experience with antisocial behaviour orders as they are applied at the moment, but they have been slightly hit or miss. My colleague Senga Bethune has been more involved with that.

Paul Martin: I have a question for Jennifer McCarey and Amanda Bell. From your experience in Calton, if we increased the tariff served on the perpetrators—those who are purchasing sex in the first place—would it deter them from kerb crawling in the Calton area?

Jennifer McCarey: I am not here to analyse how sentencing works or what is effective. What I will say is that men—middle-class men, working-class men and upper-class men—come into our community looking for street sex. They think that that is acceptable behaviour. Society tells them that that is acceptable behaviour. Our community group says that that is unacceptable. It is inappropriate for a man to come into a community for that purpose—there is something wrong with it. However, it is also about the other men who come to our community. There is a whole layer of dangerous men who partake in that activity for their own reasons. The women and children in our community are more likely to be exposed to those dangerous men. There have been frequent reports

of assaults in our community and there have been incidents that women have not reported.

Kerb crawling has been mentioned. People think that kerb crawling is when someone drives up to you, rolls down their window and makes a comment. Kerb crawling is not just that. It is a car slowly following you and creeping along beside you. Often you are the only person in the street. The car stops until you catch up, then it drives slowly beside you and stops. It is tremendously intimidating behaviour, which does not involve rolling down a window and talking to you. As others have said, including the folk from Leith, we see the same cars going round and round our area. These men are persistent. They spend their evenings going round our community, observing. That kind of behaviour is unacceptable. We have to do something about it.

Dispersal was mentioned. That is an issue for our community. The policing changed in the centre of Glasgow. There used to be an area where women could work, where they were unlikely to be prosecuted. That stopped about 18 months ago. Women had always used parts of the east end. It is traditional. For 200 years, women worked in the green. It is not a new problem. Then the Glasgow green area was completely regenerated to prevent cars going right through the park and to prevent kerb crawling. However, what happened was that the women moved up three streets. They moved out of the city centre, not towards the leafy west end but towards the east end. Dispersal is an issue, because it affects another community. We cannot close our eyes to that and pretend that it is not happening.

17:15

David McLetchie: I want to ask Alan Beatson about enforcement, of the existing law and of any new law that we might get. You said that the problem on Leith Links developed because the senior police officer closed down the unofficial tolerance zone in Coburg Street and the surrounding area. Am I right in saying that he changed his mind not just on a whim, but because those streets had become increasingly residential as a result of new property developments and the residents decided that they did not want to tolerate that activity on their doorstep?

Alan Beatson: I believe that that is true. The change occurred in November or December 2001 and was the senior police officer's parting shot. Some of the local police were not happy about it because the decision was made unilaterally—the city did not know about it.

There is no doubt that you are right about the reason for the change being made. Part of Coburg

Street was being developed and there had been some complaints.

David McLetchie: Basically, what happened was that the present law started to be effectively enforced in Coburg Street, which resulted in the closing down of what had previously been an unofficial tolerance zone.

Alan Beatson: Yes.

David McLetchie: That resulted in displacement, which is the problem that Jennifer McCarey has just highlighted, which led to a problem developing in Leith Links. You were saying that the same senior police officer must have said to the chief constable that, as far as the Leith Links area was concerned, the displacement was acceptable and the situation could be tolerated, but that your activities compelled the law to be enforced. Is that correct?

Alan Beatson: No, that is not what I said. A public announcement was made—I saw it in the paper but did not realise its significance at the time—that the unofficial tolerance zone was being moved to Salamander Street, which, at that time, was semi-industrial and mostly contained warehouses. The problem was that that was not a perfect place for the women, so they spread through the roads that connect Salamander Street to Leith Links. Because Leith Links has a natural circuit, it started to become the natural place for people to go to look for prostitutes. That had never happened there before.

David McLetchie: I am aware of that. What I am saying is that when you found yourself being impacted on by the activity, as a result of the displacement from Coburg Street and the unsuitability of Salamander Street for the purposes of prostitution, your initial experience was that the police were not enforcing the law in your area. If I understood your evidence correctly, you had to shame the police into enforcing the law. Is that correct?

Alan Beatson: In many senses, it is. I will ask Senga Bethune to speak, as she has a lot of experience of what you are asking about.

Senga Bethune (Leith Links Residents Association): When the unofficial tolerance zone was moved from Coburg Street to Salamander Street, the new zone was marketed as an official zone. Although the area is mostly industrial, it is a small street, which meant that the women would go into tenement stairs and Leith Links, which is a playground area for many local people.

In conjunction with SCOT-PEP, the police decided that Salamander Street would be a good place to have the new tolerance zone. There was no consultation with local residents and businesses. However, everything fell through and,

because the police had had their fingers burned previously, they washed their hands of the whole thing and we were left to pick up—literally—the detritus of the experience. You are right that we had to start going on patrols and collecting signatures for a petition to Parliament because no one was listening to us. There came a point at which we, as residents, could not take the abuse that we receive nightly from kerb-crawlers—that relates to the incident that Jennifer McCarey mentioned—and also from the prostitutes themselves and their pimps. That abuse is a common occurrence.

David McLetchie: As I understand your evidence, your problem arose from displacement.

Senga Bethune: Yes.

David McLetchie: When the problem arose as a result of prostitution moving from Salamander Street to your area, your initial experience was that the police were not particularly sympathetic to your situation in enforcing the law.

Senga Bethune: That is correct.

David McLetchie: Through the actions of your community, we arrived at the present situation. If I understand your evidence correctly, whereas three years ago there might have been 15 or 20 women engaged in street prostitution in your vicinity, there are now just a handful—two or three—and the police are enforcing the law.

Senga Bethune: Yes. There is much more positive policing.

David McLetchie: I ask Jennifer McCarey and Amanda Bell to comment on their experience of enforcement of the law in Calton and the wider areas of Bridgeton and Dennistoun, which they mentioned in their evidence.

In your perception as residents, what efforts do Strathclyde police make to enforce the law in dealing with what I think you described as a 24-hour activity?

Jennifer McCarey: We had a series of meetings with Chief Superintendent Kenny Scott. There has been quite a heavy police presence in our community in the past few years and no shortage of arrests and convictions for prostitution. For a while, the number of women who had been charged with prostitution on Glasgow green was daily front-page news in the *Daily Record*. The women certainly seem to be lifted, but the police tell us that the women walk out of the police station and go straight back to where they were standing before, or maybe to a more discreet corner. They go out again and again.

The police tell us that lifting those women has zero impact, because whatever forced them out there in the first place forces them back. We see

them at 3 o'clock in the afternoon, standing outside a primary school. It is not callousness that brings them there, but desperate circumstances, which are not changed by the women being lifted by the police.

David McLetchie: But what do you think we should do in the narrow context of the laws that we are considering?

Jennifer McCarey: I do not have the solution. I am sure that, if you gave me plenty of resources, our community group could come up with a solution for our area. I can tell you what we need but I cannot tell you the solution to the problem.

David McLetchie: What do you need?

Jennifer McCarey: We need women not to be in such desperate circumstances that they will put themselves through anything to get a bit of cash to get through the next 24 hours. We need men not to think that it is acceptable to wander into the area looking for street sex at 5 o'clock in the morning, 9 o'clock in the morning or 3 o'clock in the afternoon. Men wander around the area with no regard for the way in which we live our lives.

The men who come with the women are a problem as well. I do not know whether they are pimps or boyfriends, but they are there while the women go in cars. They are often violent men and they often deal in drugs. They need to be dealt with as well, because they pose as much of a threat to our community as the men who come looking for sex.

In the community that we live in, the problems that we face are intensified. Our community is not laid out very well. It is a bit run down in some places and nobody has bothered about it for a wee while. That is intensified by street prostitution because every dark alleyway becomes a dangerous place. We have areas that need ripped up and done again, but no resources are available to make such communities safer places and to reduce the problems that they face.

That does not answer your question about the bill. If the bill was effective in targeting kerb-crawlers, we would welcome that, because we see kerb crawling daily. We have evidence that the bill will not have any impact on the women's behaviour, because they are in desperate circumstances. We are not too confident that the bill will give us the result that we want on that. The most important thing for our community is to have effective action.

David McLetchie: You acknowledge the wider social problems that relate to the supply of women who are engaged in prostitution and the need to address those problems. However, if I understand what you have just said, you feel that what we can do is to pass laws that will choke off the demand—

the customers or kerb-crawlers. Is it a fair assumption that, for you, the key thing is to try to ensure that the laws on kerb crawling are tightened up to reduce the demand?

Amanda Bell (Calton for All): Kerb-crawlers are at the schools every day. I have two girls—one goes to St Mungo's academy and the other goes to St James' primary school. I am only two minutes away, but I have to get somebody to go and pick them up, because the situation is so bad.

David McLetchie: So kerb crawling is the key issue.

Jennifer McCarey: Absolutely.

Amanda Bell: Yes.

Michael McMahon: My questions will not be dissimilar to those that you have heard already. I want to get to the bottom of what we need to do to make the bill as effective as local communities would like it to be. We understand that there are many complex reasons why women are in prostitution. Equally, in tackling other antisocial behaviour, there may be underlying problems, such as drug and alcohol abuse or domestic problems that cause young people to wander the streets at night. We understand that antisocial behaviour can have causes that we want to address. However, in dealing with antisocial behaviour that causes disturbance to local communities, we do not take an easy line; we take a hard line and ask for that behaviour to be addressed, while considering the other issues along with that. Is that the type of approach that we need to make the bill effective? Do we need to treat prostitution as antisocial behaviour and try to eradicate the problem by making people aware that the behaviour is not acceptable?

Alan Beatson: Are you suggesting the use of the present regime of ASBOs? We have some experience of those, so we know that many practical problems arise. In theory, the idea of treating the problem as one of antisocial behaviour is excellent, but in practice that has proved to be a problem. In our area, ASBOs have made a difference in one or two cases. Senga Bethune has been heavily involved in keeping diaries and with the business of ASBOs.

Senga Bethune: I do not think that such orders are a way of tackling the issue. I listened to what the experts said earlier and I think that it is about time that the whole business of street prostitution was treated as a drug problem. Earlier, we were given a figure that 50 per cent of people who are involved in prostitution are new to it. One must wonder whether that is because of the availability of cheaper drugs. That must be considered. Basically, women sell themselves to pay for either their drugs or someone else's drugs. If a young man burgled houses to pay for his or someone

else's drugs, the law would come down hard on him. However, the women are in a different position, because they are being abused and are vulnerable. We think that targeting kerb-crawlers is a way of cutting the demand. If the demand was cut, organisations such as Routes Out and drugs organisations could get together to help the women.

If there is no demand, they will not earn as much money and might come forward voluntarily. As far as we are aware, there have not been many cases in which a pimp has been charged, simply because the prostitute would have to give evidence to the effect that the pimp was living off immoral earnings. That will not happen when a woman is terrified. We need to examine prostitution as a drug problem. Using the bill to target kerb-crawlers would definitely represent a way forward, but at the moment it does not go far enough.

17:30

Michael McMahon: Is that the view of Calton for all?

Jennifer McCarey: I can give you only our impressions. Many of the women who stand on corners in the streets of our communities are very young—some of them barely look 16—and they are extremely vulnerable. To a mother, they look like highly vulnerable young people. If I think about the vulnerable young people that I know, I recognise how easy it is to slip into that world. Would a hard regime of arresting and sentencing those young people to teach them a lesson achieve the result of reforming their characters and getting them on the right road? In my experience and in the experience that we have heard about, that would not happen. We are talking about extremely vulnerable women. We have no experience of people being attacked. If folk do not look completely drug fuelled, they look as if they are in a really bad place. We can only feel sadness and pity for them.

We have been involved in dealing with cases of antisocial behaviour. The deployment of police officers in specific areas to deal with some of the issues that have been outlined has been quite effective. However, the issue that we are discussing is different and different problems are causing it. The tougher approach that you outlined can be successful—I have seen it used successfully to deal with specific antisocial behaviour problems that arise at certain times in particular parts of my community. However, I do not think that prostitution is the same problem.

Michael McMahon: That is helpful. I wanted to explore whether we are talking about a general problem of antisocial behaviour or a more specific

issue. You can correct me if I am wrong, but you seem to be saying that kerb crawling is the problem and that we must get the bill to address that.

Jennifer McCarey: Absolutely. We must also help to provide some support for the women.

Senga Bethune: The other organisations that have been represented at today's meeting have all said the same thing. I have met Ruth Morgan Thomas on several occasions and we do not always agree on everything, as I am sure the committee will understand, but we certainly agree on the need to go for the kerb-crawlers. Everyone here is saying that.

Tommy Sheridan: I am sorry to go over old ground, but will you tell the committee how Calton for all was formed? Over what timescale did you come together and how did that happen?

Jennifer McCarey: Amanda Bell was in the group first; I joined about six months later. A group of local mums got together because we did not have a community centre in our community—it was as simple as that. We wanted to provide clubs, youth activities and summer holiday activities for our children, so we got together to organise them. Incidents happened in our community—for example, I would be kerb crawled going to a meeting. Things happened as we went about our business. It became evident that prostitution was a big issue in our community that we were all distressed about. The problem was getting worse and there did not seem to be a way out, so we decided that we would call community meetings.

Amanda Bell: Calton for all started because there were two murders in our area, one of which was caused by a pimp and his girlfriend. There were two murders in the same place. That is how things started. We all got together after that.

Tommy Sheridan: When was that?

Jennifer McCarey: We had the first public meetings in May—no, March. We have had five meetings since then, and at no public meeting have fewer than 50 people been present.

Our community is a tolerant one. We live next to Celtic football park, the Barrowlands and the Barras—Europe's biggest market—so we are used to being in the middle of a lively community. We like that and we are used to tolerating lots of different kinds of people and their behaviour, but, as mothers, grandmothers and parents, we feel that our area has become unsafe. We see the cars going round and round and the vulnerable young women standing in corners as we go about our day, and the situation has become intolerable. We have had meetings and have tried to take the issues on board for the community.

We have small delegations that meet certain people. We have had the police along to the big meetings, but we now have a small delegation that has meetings with Kenny Scott on a fortnightly basis to tackle five key areas. We are working with people and that is going well in some ways although not so well in other ways, as you would expect.

That is how we came to where we are today. I think that we probably tolerated things a lot more than we might have done because of the nature of where we are and the community in which we live. A lot of other communities would probably have been in uproar a long time before us. It has taken us quite a long time to get to where we are.

Tommy Sheridan: I asked about that because your group was formed to tackle a plethora—a myriad—of problems, not just street prostitution.

Jennifer McCarey: Absolutely. It is not just about that.

Tommy Sheridan: Do you have any input from residents associations, tenants groups and community councils? Do you subsume all of those or do you not have linkage with them?

Jennifer McCarey: Lots of folk have been involved in the big public meetings, which have been attended by lots of community groups from the area. Members of our committee are also on the community council in Calton, so we are involved in those activities. There was not much community activity in Calton before, which is why we started up our group. There were no mother-and-toddler groups, no youth groups, no football clubs—there was nothing, really. We started up our group to try to create a bit of community activity in the area.

Tommy Sheridan: Did you have any input to the expert group that was established to consider the prostitution issue? Did you have any way of inputting before the bill appeared? Did anybody ask you for your opinions before the bill was written?

Jennifer McCarey: The short answer is no, we did not. However, in the past two years, we have been in touch with Frank McAveety, who has come to our committee meetings and attended every public meeting. A councillor and another MSP have attended some of the meetings as well. We have managed to get the politicians interested in our community recently, which is a good thing. That is why we have been able to have a bit of an input to the process.

Tommy Sheridan: I would like to involve Alan Beatson and Senga Bethune in the discussion. I asked about your input because it is clear that the bill's big weakness is that it does not deal with the problem of kerb crawling; yet, the single biggest

problem that you highlight is kerb crawling. Calton for all did not have an input into the bill, but Alan Beatson said that the Leith Links residents association had had an input via the expert group, to which it gave evidence.

Alan Beatson: Yes. We gave a presentation to the group on one occasion, but we were disappointed when we read the report. We highlighted the role of pimps, which is difficult to deal with but is a real part of the problem, but that was not addressed fully—if at all—by the expert group. We also made it clear in our submission that kerb-crawlers are, in our view, the major problem. They are the only ones who have the option of cutting the circle.

Tommy Sheridan: I asked those questions—I am sorry that you have had to go over some old ground—because it appears from what Mike Rumbles and others have said that the bill's biggest weakness is that it does not address kerb crawling. You come from community groups that represent real people and you are telling us that that is the biggest problem. That poses a big question in relation to the bill. You listened to the previous discussions: do you agree that the fact that the bill does not deal with kerb crawling is a big problem?

Alan Beatson: Yes. That caught our attention as soon as we read the expert group's report. Many people have talked about what is happening in Sweden. We know that nothing is perfect in this world. Consider the problems that we see—or that we saw, given that they are now much reduced. Middle-class men came into our area, sometimes from many miles away—the fact that they were middle class did not really matter: the point is that they were, by and large, pretty wealthy, although some were not. People came to Edinburgh and into our community from 30 or 40 miles away for this purpose; they were not part of the community and they put the women at risk. Our perception has always been that kerb-crawlers are the real problem; if kerb crawling is cut out and the women have no clients, they disperse.

Our evidence is that that has happened to an extent at Leith Links over the past few years. Our patrols were very effective against kerb-crawlers. We have identified them and got to know the people who come along two or three nights a week. They go round and round. Some of them do that as potential voyeurs and do not pick up women. They just go round and round all evening. There is a lot of dispute about how we can define a kerb-crawler; we often say to the police, "How do you define a kerb-crawler?" However, if someone is slowly going round a defined area five or six times or more—they do it continuously for hours—that behaviour is demonstrably odd. They cannot reasonably say that they are lost, although that is

often what they say. Some of our members' daughters have been stalked—that is the best way to describe what has happened—by kerb-crawlers.

Tommy Sheridan: Do the other witnesses share that experience?

Amanda Bell: My daughter has been followed.

Jennifer McCarey: It is a big issue for women in our community. There is almost no journey that you can make in any direction on the main streets that does not involve you being tracked by a vehicle, especially at quieter times. Men will congregate in the area, stop their cars and wait with their engines revving. People who live in the area know about and see that behaviour. The behaviour is odd and there is no other reason for it. When someone stops their car and opens their window, that is frightening or alarming, especially for young people.

Alan Beatson: In our area, the men tended to make several circuits to have a look at the women who were around and to work out whether some of them were prostitutes. There was a lot more interaction with local people than you might imagine. My wife is disabled and in a wheelchair. Once, when we were going across the links after being out in the evening, a chap went by slowly and stared at us out of his car window. It was unpleasant. He drove on and looked at someone else further on. Such behaviour is a nuisance and is very threatening. As I said in our submission, there really was a curfew at Leith Links in 2003. Approximately 500 women were frightened to come out of their doors at night. The kerb-crawlers caused that fear.

Margo MacDonald: I want to check something with you. You said that you had noticed—in your group, I presume—a difference in the style of policing in Glasgow about 18 months ago. I think that you were talking about the area around Bothwell Street and Cadogan Street that was traditionally used for such activities. You said that more women were being lifted.

17:45

Jennifer McCarey: Policing changed in Glasgow city centre; that is a well-reported fact. Anyone who works in the area will tell you that, from 8 o'clock in the evening until 4 o'clock in the morning, there was an unofficial zone that women were working in and they were not arrested. That stopped, and the police decided to arrest every woman who was working. That resulted in people being scared to work in the area.

In an *Evening Times* article two weeks ago, the police referred to the halving of the number of arrests for prostitution in the city centre in the past

year as a great success, but the problems that bring women into prostitution have not halved. Someone else inherits those problems.

Margo MacDonald: There was more stringent policing and more women were lifted. Are there still women around Cadogan Street and Bothwell Street?

Jennifer McCarey: Yes.

Margo MacDonald: That is the first thing that we ought to bear in mind. When we are trying to construct a law in the interests of the general public, we do not want to have intrusive soliciting and attempts to buy and sell sexual services. I heard that the police move was made because there was a call centre in Cadogan Street, but that is by the by.

The other issue that I want to ask about is the change that has been made on Glasgow green. You said that the younger women, in particular—many of them drugged-up women—were going on to the green, so a physical change was made to prevent people from taking their cars there. What happened? The change did not shrink the market—the women went elsewhere.

The Convener: Please ask questions, rather than making statements.

Margo MacDonald: I agree that kerb crawling is the big issue that we must tackle. Why do you think that the introduction in the bill of a punitive measure against kerb crawling will decrease the number of women who are involved in prostitution, or are you not concerning yourself with that issue? Is your aim simply to rid yourself of a nuisance on your doorstep?

Senga Bethune: After suffering from the problem for four years, the association and I would not wish to disperse it to anyone else. I do not want anyone else to have the problems that we have had. We have experience of many kerb-crawlers, who are of all ages and classes. The threat of punitive action will cause many of them not to come down. As I said earlier, I hope that it will be a question of supply and demand. If the demand drops, the supply will drop. Hopefully, some women will find the strength to get out of prostitution and will decide to get rid of the idiot at home who lives off them.

Margo MacDonald: The evidence that we have received suggests that the women find somewhere else to go.

Senga Bethune: That is the situation at the moment.

Margo MacDonald: If the women are soliciting in a place that is away from your and other people's homes, is that more acceptable than the current situation?

Senga Bethune: You are asking whether I agree that there should be a tolerance zone further away. I do not.

Margo MacDonald: I am not talking about a tolerance zone—we have gone beyond that point. I put the same question to the witnesses from Calton for all.

Jennifer McCarey: Are you talking about an area to which the problem could be moved?

Margo MacDonald: Yes—an area where there are not residents like you, schools and so on.

Jennifer McCarey: Are you asking whether it would be okay for the problem to be moved to such an area?

Margo MacDonald: Not whether it would be okay, but whether it would be an improvement on the current situation.

Jennifer McCarey: If street prostitution were to be moved from our streets, that would be an improvement. However, it would absolutely not address the issues that have been described to the committee today.

Margo MacDonald: I agree.

Alan Beatson: The women would not be involved in prostitution if they did not get money for it—it is quite simple. They go out on the streets only to get money. If we take away the customers who provide them with money, they will not get money for the activity.

Fergus Ewing: The key problem is kerb crawling. Your evidence has been very effective in portraying how that affects your lives and those of your daughters. It is unacceptable and must be stopped.

If kerb crawling is made an offence and we target the man, as I think we should do, and the man knows that he faces prosecution and possible publicity, will that have the effect of reducing the number of men who engage in this activity for fear that they will be caught, prosecuted and possibly exposed to publicity? Will it reduce demand, albeit not to zero?

It is to be hoped that a lot of men would be persuaded not to do—or would be made afraid of doing—what they are doing at the moment. Surely that would reduce the number of men who, by buying sex, also make your lives a misery. Would you like to see the Parliament make kerb crawling a criminal offence, as a means of both tackling this problem and reducing the incidence of men kerb crawling in your area and other areas in Scotland?

Amanda Bell: Yes.

Jennifer McCarey: Yes.

Senga Bethune: Yes.

Alan Beatson: We had a meeting at which that was carried unanimously by our 250 members.

Fergus Ewing: Thank you.

Jennifer McCarey: It would also send out a message to the young people in our community that we do not tolerate that behaviour. We must remember that children watch this going on. Do we want that example to be set for our young people, including our young men?

Fergus Ewing: You have persuaded me.

The Convener: I thank all four panel members for their evidence on behalf of Leith Links residents association and Calton for all. As I said at the outset, we want to hear from communities that are affected by the problems of street prostitution and kerb crawling. Your evidence was effective and will be useful to us when we report on the bill.

We are running late, but the evidence sessions—with the Minister for Transport on the transport budget and the two panels on the Prostitution (Public Places) (Scotland) Bill—were important, so I decided to allow members to ask all their questions. I apologise to all those who are here a little later than was planned. I hope that we can deal speedily with the remaining three agenda items.

Subordinate Legislation

Local Governance (Scotland) Act 2004 (Severance Payments) Regulations 2006 (SSI 2006/471)

Local Government Pension Scheme (Scotland) Amendment (No 2) Regulations 2006 (SSI 2006/468)

17:51

The Convener: Two Scottish statutory instruments are before us under agenda item 3. I declare an interest in that my wife, as a serving local authority councillor, may be affected by the provisions of both instruments.

On SSI 2006/471, we put the questions that were raised by Fergus Ewing to the Executive and its response has been circulated to members. The Subordinate Legislation Committee drew the instrument to our attention

“on the grounds of defective drafting, but not so as to affect the validity of the instrument.”

That committee’s report is included in our papers. There are no motions to annul. Do we agree that we have nothing to report?

Members indicated agreement.

The Convener: On SSI 2006/468, no motions to annul have been lodged and no points have been raised by members. The Subordinate Legislation Committee drew the instrument to the attention of this committee, and the relevant extract from that committee’s report is included with our papers. Do we agree that the committee has nothing to report on the regulations?

Members indicated agreement.

Provision of Rail Passenger Services (Scotland) Bill

17:55

The Convener: The next agenda item, consideration of the Provision of Rail Passenger Services (Scotland) Bill, will take us a little bit longer to deal with. It is a member's bill and was introduced by Tommy Sheridan on 29 September.

Members have before them a paper that was commissioned by me relating to the bill, and I ask them to consider the paper with respect to our approach to the bill. In my comments and in my recommendation, I do not intend to make any judgment about the merits or otherwise of the bill's policy intentions; they relate more to its legislative competence. It is in that light that I make the following comments.

On 28 September, the Presiding Officer stated that the Rail Passenger Services (Scotland) Bill was

"not within the competence of the Scottish Parliament."

The committee may decide to take evidence on the bill and submit a stage 1 report in the usual way. However, members might consider that it would not be advisable to proceed with a bill the provisions of which, in the view of the Presiding Officer, are not within the competence of the Parliament. I do not, at this stage, intend to make any comment as to whether its provisions ought to be within the competence of the Parliament; I wish simply to give my own assessment on the current position.

Standing orders allow a committee to recommend to the Parliament, on a motion of the convener, that it does not agree to the general principles of a bill in cases in which the bill appears to be outwith the competence of the Parliament and it is unlikely to be possible to amend it to bring it within the Parliament's competence. On behalf of the committee, I have sought further advice on the issue from the Parliament's legal office and the Scottish Parliament information centre. That advice is annexed to the paper in my name.

In that paper, I set out the following comments:

"In my view, it would not be advisable for the Committee to proceed to consider the Bill at Stage 1 in the normal way, because

- it appears to be outwith the legislative competence of the Parliament;
- it appears to be unlikely that it can be brought back within legislative competence; and
- if the Judicial Committee were to decide that the Bill was not competent, then the Presiding Officer could not submit the Bill for Royal Assent."

I therefore recommend in the paper:

"(a) that the Committee recommends to the Parliament that the general principles of the Bill not be agreed to on the grounds that, in the opinion of the Committee, having regard to the terms of the Presiding Officer's statement on legislative competence under Rule 9.3.1, the Bill appears to be clearly outwith the legislative competence of the Parliament and it is unlikely to be possible to amend it at Stages 2 and 3 to bring it within legislative competence; and

(b) that the Committee agrees that I should lodge the appropriate motion under Rule 9.14.18."

I seek the committee's agreement to that recommendation. I invite members' views.

Tommy Sheridan: As you would expect, I will oppose your recommendation. The position that the committee finds itself in is very serious. I think that this will be the first time ever that a committee takes such a decision, and a decision of such uniqueness should be taken with as much information to hand as possible. I do not think that rule 9.3.1 is satisfied at all. To satisfy the standing orders, the committee must be convinced, under rule 9.14.18, that the bill is

"clearly outwith the legislative competence of the Parliament".

At half past 12 this afternoon, I met the director of legal services. We had a debate revolving around the major devolving of powers that was delivered via the Railways Act 2005, which conferred on Scottish ministers a huge number of new powers relating to railways in Scotland.

During a debate on the matter in December 2004, Pete Wishart of the Scottish National Party said:

"I have been keen to intervene to congratulate the Secretary of State in overseeing the biggest devolution of power since the Scotland Act 1998 was passed. It confirms the view of devolution as a process, not an event."—*[Official Report, House of Commons, 6 December 2004; Vol 428, c 928.]*

In February 2005, the Earl of Mar and Kellie—I am sure that David McLetchie will be able to confirm whether he is a Conservative—said:

"The Bill brings welcome constitutional change. The devolution of most railway activity in Scotland is the first major modification to Schedule 5 to the Scotland Act 1998. I am very pleased about that".—*[Official Report, House of Lords, 10 February 2005; Vol 669, c 937.]*

18:00

The discussion in the Scottish Parliament focused on the fact that the transfer of powers that was involved represented the single biggest conferral of reserved powers from Westminster to Scottish ministers. The legal argument revolves around whether those new powers have been conferred on Scottish ministers without Parliament having the ability to instruct them how to use those

powers or whether Scottish ministers have the right to use those powers in whatever way they see fit. In the discussion between Thompsons Solicitors, who are acting on my behalf, the National Union of Rail, Maritime and Transport Workers—which is adamant that the bill is competent—and the director of legal services, it was clear that a grey area exists and that the question is not black and white. Accountability for the new ministerial powers could involve no more than people having the ability to ask questions and seek answers on how those powers are used—such matters could be discussed. The other view is that the Parliament has the right to instruct ministers how to use their powers.

Earlier today, I asked the minister about the new budget and the new powers. I asked him who he was accountable to for spending the new budget; he answered that he was accountable to the Parliament. If ministers are accountable to the Parliament for the use of the new powers, a logical and legal argument is that we should be able to instruct them legislatively how to use those powers.

Bristow Muldoon is right to leave aside the argument about whether people would support a not-for-profit railway. Today, we are arguing about whether we have the right to attempt to instruct ministers to use their powers so that the profit element is removed from the delivery of railway services in Scotland. An important constitutional question is involved. If huge new devolved powers have been conferred on Scottish ministers but we cannot instruct them how to use those powers, questions are raised about the strength of parliamentary democracy as far as the Scottish Parliament is concerned.

I ask members to reject the convener's recommendation in order to allow the bill to be properly discussed, evaluated and scrutinised. If it is considered by the Parliament and overcomes all the parliamentary hurdles, there can then be an important judicial argument over whether powers of such a nature and magnitude could be conferred on Scottish ministers without the Parliament having the ability to instruct them legislatively how to use those powers. At the moment, the committee is not armed with the necessary material to allow it to conclude that the standing orders clearly state that the bill is outwith the Parliament's legislative competence. The committee is in no position to reach such a conclusion. Therefore, I ask it to recommend that the bill be scrutinised in the normal way.

Michael McMahon: Tommy Sheridan says that the issue is not as black and white as the Parliament's legal advisers would have us believe, but he bases that view on a conversation that he had this afternoon with someone who said that it

might or might not be a grey area. We have received legal advice that says in black and white that, in view of the Parliament's devolved powers, the bill is not legally competent.

Tommy Sheridan has also said that Thompsons Solicitors and the RMT disagree with our legal advice and believe that the bill is competent. What we need to decide, therefore, is whether we go ahead, have the various discussions, go through the various political processes and then take the matter to judicial review to find out whether we can implement something that we might not agree on or whether we get Thompsons Solicitors and the RMT to mount the challenge at the outset, prove that the bill is legally competent and then have the debate in the knowledge that we are not wasting our time. As it stands, the only black-and-white evidence that we have on the matter is that the bill is not competent. If the RMT and Thompsons Solicitors can prove otherwise, it is incumbent on them—not us—to do so. The convener has sought, and we have received, legal advice on the matter. In the absence of any other legal advice, we have to accept the conclusion that the bill is not competent.

Fergus Ewing: Obviously, it will not come as a crashing surprise to members that I state for the record the SNP's position that Scotland should have the full range of powers to take whatever action is necessary in its own interests.

However, the question is whether the time of the Parliament and, in particular, this parliamentary committee should be taken up with considering a bill that the Presiding Officer has ruled—and which the convener has indicated in his paper—is outwith the Parliament's legislative competence. Although I wish that all such matters were within the Parliament's competence, we need to ask whether, under the current rules, this particular ruling is correct. I am not an expert, but it appears that the ruling is correct. If the member had realistically expected us to take account of material related to a conversation that he had earlier today with the director of legal services, he should have ensured that members were furnished with a statement, preferably a letter, from that person. Plainly, there have been a lot of opportunities to get and provide the committee with such material. As those opportunities have not been taken and as we do not have that material, we cannot really consider it. Of course it is open to the member to pursue these matters in his debating time in the chamber, in the same way that the SNP frequently uses its own time to debate reserved matters.

If the bill were to be considered, it would use up a huge amount of time, which would prevent us from carrying out work on other issues within our powers. Although the SNP has the highest

ambitions for Scotland, we cannot simply wave a magic wand and disapply the standing orders, rules and procedures within which the Parliament has to operate. If those rules are flouted or ignored, the Parliament cannot proceed in an orderly way.

In any case, having read the various papers that have been circulated, I think that the proposal is completely unworkable, untenable and unrealistic. The idea that a company will submit a tender, secure in the knowledge that all the effort that it goes to and all the money that it spends—which can sometimes amount to £500,000 or £1 million—will result in its automatic rejection, is quite frankly risible.

I will not allow anyone to say that the SNP is ducking the issue. It would simply be absurd to support any debate of such a proposal, which, in common with the vast majority of the policies of the party that the member currently represents, is unworkable and unrealistic. For those reasons, I support the convener's ruling on this matter.

David McLetchie: Convener, I commend you for your approach to this matter and for seeking the advice that has been set out in the papers before us. I should also commend Tommy Sheridan and his advisers for working their way through the undergrowth of the Scotland Act 1998 to achieve their objective and bring to the Parliament's attention a substantive policy issue in which they fervently believe—and in which I certainly do not believe.

The advice that we have been given is quite clear. We are not in the business of setting up some kind of constitutional showdown over the question whether the bill is competent to be determined by the courts at some future date. Michael McMahon and Fergus Ewing have made perfectly valid points about the time that the process would involve.

Given that the advice that we have received suggests that the bill is not competent and does not fall within the Parliament's current powers, if Tommy Sheridan, the RMT and others who support it think otherwise, the appropriate course of action for them would be to seek a judicial declaration from the courts in Scotland to that effect. If they were to obtain such a declaration, we could consider the bill's substance.

However, there has been no such ruling and, in light of all the advice that we have received, I believe that we cannot proceed with the bill. Moreover, we are only six months away from dissolution. Given the time constraints that the Parliament is facing with regard to the consideration of bills, I simply do not believe that we have enough time to consider this proposal. As

a result, I support the convener's recommendation.

The Convener: I welcome members' support for the position that I have outlined in the paper. I respect Tommy Sheridan's position, although the guidance that I have received suggests that it is not the right one.

On certain points that Tommy Sheridan made about the additional powers given to Scottish ministers under the Railways Act 2005, I should say that although powers can be conferred on Scottish ministers under the devolution settlement, that does not mean that the Parliament is also given the power to legislate on them. On certain occasions, ministers might operate on behalf of the Crown—in other words, the UK Government—in undertaking certain duties and performing certain functions that remain within the UK Parliament's legislative competence.

Of course, ministers are accountable to Parliament in a number of ways for their performance of functions that are devolved to them but which are not within their legislative competence. For example, members can ask parliamentary questions about or have parliamentary debates on how ministers exercise those powers. Ultimately, motions of no confidence can be moved if ministers do not use their powers appropriately.

In my opening remarks, I made no judgment on the merits of the bill's aims or on whether the Scottish Parliament should have these powers. On the basis of the advice that I—and, indeed, the Presiding Officer—have received, my judgment is that the bill is not within the competence of the Scottish Parliament.

The question is, that the committee makes to Parliament a recommendation under rule 9.14.18 that the general principles of the Provision of Rail Passenger Services (Scotland) Bill not be agreed to. Are members agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Watt, Ms Maureen, (North East Scotland) (SNP)

AGAINST

Sheridan, Tommy (Glasgow) (Sol)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0. The recommendation is therefore agreed to.

Witness Expenses

18:14

The Convener: Finally, we move to item 5. I ask the committee to delegate authority to me to authorise any expenses that are requested by witnesses who give evidence on the Prostitution (Public Places) (Scotland) Bill. Are members agreed?

Members *indicated agreement.*

The Convener: I thank members for their attendance at this lengthy meeting.

Meeting closed at 18:14.

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