



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 28 March 2018

Session 5



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RURAL ECONOMY AND CONNECTIVITY COMMITTEE
10th Meeting 2018, Session 5

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

COMMITTEE MEMBERS

- *Peter Chapman (North East Scotland) (Con)
- *John Finnie (Highlands and Islands) (Green)
- *Jamie Greene (West Scotland) (Con)
- *Richard Lyle (Uddingston and Bellshill) (SNP)
- *Fulton MacGregor (Coatbridge and Chryston) (SNP)
- *John Mason (Glasgow Shettleston) (SNP)
- *Mike Rumbles (North East Scotland) (LD)
- *Colin Smyth (South Scotland) (Lab)
- *Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Alex Hynes (ScotRail Alliance)
- George Mair (Confederation of Passenger Transport)
- Liam McArthur (Orkney Islands) (LD)
- Tavish Scott (Shetland Islands) (LD)
- Humza Yousaf (Minister for Transport and the Islands)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 28 March 2018

[The Convener opened the meeting at 08:31]

Transport (Winter Resilience)

The Convener (Edward Mountain): Good morning, and welcome to the 10th meeting in 2018 of the Rural Economy and Connectivity Committee. I give a special welcome to anyone who is watching the meeting on Facebook, and ask everybody present to ensure that their mobile phones are on silent.

Agenda item 1 is transport and winter resilience. Do any members of the committee want to declare any interests that are relevant to agenda item 1?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am honorary president of the Scottish Association for Public Transport, which has an interest in trains and buses, for example, and I am honorary vice-president of Railfuture.

Gail Ross (Caithness, Sutherland and Ross) (SNP): I am honorary vice-president of the Friends of the Far North Line.

John Finnie (Highlands and Islands) (Green): I am a member of the cross-party group on rail and a member of the National Union of Rail, Maritime and Transport Workers parliamentary group.

John Mason (Glasgow Shettleston) (SNP): I am a co-convener of the cross-party group on rail.

The Convener: There is a lot of interest in rail around the table.

The evidence session is on the recent transport disruptions during the period of severe weather in late February and early March. I welcome the Minister for Transport and the Islands, Humza Yousaf; Martin Thomson, the networks impact manager at Transport Scotland; Andrew Harper, the timetable development manager at Transport Scotland; Alex Hynes, the managing director of the ScotRail Alliance; and George Mair, from the Confederation of Passenger Transport.

I thank all of you for coming in for an early start. Committees do not always start so early, so I am very grateful that you have all found the time to come in. I am especially grateful to the minister for adjusting his programme at late notice to make the early start possible.

I ask the minister, Alex Hynes and George Mair to make brief opening statements.

The Minister for Transport and the Islands (Humza Yousaf): Good morning. I will keep my remarks brief.

The recent severe winter weather was unusual. There were Met Office warnings of snow across much of Scotland and, as members know, there was the first snow red warning in Scotland since the Met Office adopted its colour-coded warning system. Although we know that severe weather will cause disruption, we cannot, of course, prevent that extreme bad weather. However, we can prepare for the conditions, so we do all that we possibly can to mitigate the effects of snow and ice.

The Scottish Government continues to invest in the latest technology to allow us to respond to winter weather, whether it is rain, wind, ice or snow. Clear, concise and consistent travel advice was given throughout the weather-warning period by the Scottish ministers, Police Scotland and Transport Scotland. During the red and amber warning periods, the advice was to avoid travel unless it was absolutely necessary. During those periods and in the immediate recovery period, the multi-agency response team—the MART—and the Transport Scotland resilience room operated 24 hours a day. All partners worked collaboratively and tirelessly to prepare for and tackle the emerging problems.

Extreme and challenging conditions were experienced across a number of modes of transport. I thank the emergency services for the efforts that they made with the assistance of mountain rescue teams and other partners. They worked absolutely tirelessly throughout the night and day to assist people who were stranded on the M80, for example, and to ensure that all welfare issues were handled as quickly as possible.

This Government has taken a wide range of steps to assess and improve our resilience to the challenge of winter; to mitigate its impacts and, crucially, to ensure that our transport networks recover in order to get daily life and business back to normal as quickly and as safely as possible.

Mutual aid was agreed and provided to local authorities through the regional resilience partnerships. Following that spell of winter weather, the Bellwin scheme was triggered, under which ministers can consider financial assistance for local councils following heavy snowfall.

We learn something new each time Scotland experiences severe weather. I am keen that the Government, Police Scotland and other partners and stakeholders learn lessons from the situation

in order to improve their resilience efforts during similar conditions in the future.

The Convener: Thank you, minister.

Alex Hynes (ScotRail Alliance): Good morning and thank you for inviting me to this session.

Overall, I am proud of how we performed during the red weather warning. Our people went above and beyond the call of duty day and night to keep our customers moving where possible and, of course, to get the railway back up and running as quickly as possible after the very worst of the weather had passed.

We kept trains running where it was safe to do so. We put stranded customers up in hotels, we got taxis for customers, we kept our major stations open into the night where necessary, and we did much more besides. Some of the videos and images that we shared on social media brought home to people the conditions in which we were operating.

The key factor in every decision that we made was safety. Was it safe to run trains, was it safe to have our people out there clearing the network and was it safe to keep customers moving?

Making decisions and communicating them clearly to our customers as quickly as we could was also very important. The Met Office issued its red weather warning on the Wednesday at 12 minutes past 11. Within two hours we had made the decision to have a controlled wind-down of our services and had communicated that to our customers. We worked closely with the Scottish Government and its agencies to co-ordinate that.

Our infrastructure team worked more than 20,000 hours clearing 2,800 miles of track and getting Scotland's railways back open. We received 52,000 in-bound messages on social media over two weeks, which was four times the normal amount.

We know that we did not get everything right and, as you would expect, we have already carried out an initial review of how we performed. We could have been quicker to confirm timetables for the following day, so we will do some work internally across the alliance to allow that to happen.

We also had problems with our website going down at one point, so we are working to ensure that our information technology infrastructure can cope better in the future.

As I said at the beginning of my statement, overall I am very proud of how our 7,500 people performed during the period. The positive feedback that we received from our customers is testament to that.

The Convener: Thank you.

George Mair (Confederation of Passenger Transport): Good morning and thank you, convener. The Confederation of Passenger Transport is a trade association for bus and coach operators in Scotland. As such, we are well placed to receive feedback from our members on the many challenges that they faced during the period of bad weather. Like ScotRail's staff, our members' staff did a fantastic job—some even to the extent that they were highlighted in the media consistently. It was a difficult and challenging period, but a good lot of effort and work went into keeping services going and getting them back up after they had stopped.

For many people in the industry, this was probably their first experience of a period of really bad winter weather. One has to go back to 2010, or possibly to about 1998, to remember a similar period. Thankfully, such weather is not a common feature of our operations these days. However, that in itself breeds significant complacency. If it was a regular feature—if we had such weather every year—everybody would be in a different place; there would be different equipment, more staff and, some might suggest, larger budgets. We would certainly deal with it differently.

There is a lot to be said about the staff who were driving buses and the local authorities that were trying to keep roads clear. For many, it was their first involvement in such terrible weather.

In any major situation, it is wise to take the time to take stock—to look back at what was done well and what could be improved upon. It is incumbent on everybody to do that—in the bus industry, in rail, in Government and in local authorities. We should look back, reflect, give praise where it is due and look for new and better ways to do things that did not work so well on this occasion. In that regard, I was delighted to be invited this morning; I am happy to answer any questions and look forward to participating.

The Convener: Thank you, George. The first question is from Richard Lyle.

Richard Lyle (Uddingston and Bellshill) (SNP): Good morning. Do you believe that during the beast from the east the trunk road operating companies met the commitments that are set out in their winter service plans, and will you comment on their operations and the commitment of the staff?

Humza Yousaf: From my perspective, it was quite an experience being in the control centre over those three days with the staff. I thank not only the staff in our traffic control centres, important though they are, but those who work in back-room functions for the rail networks, the bus industry and right across the emergency services. We do not see those people, but they do their best

to help us to recover—helping traffic to move on the trunk roads, and helping trains and buses to run.

I am probably going to caveat almost every answer today with, “Yes—there are always lessons that we can learn”, but that said, there is not a shadow of doubt in my mind that the operating companies not only performed well in terms of their contracts, but many, if not all, went above and beyond that.

I will talk about the MART. Imagine representatives of operating companies around a table, discussing where the problems are coming up in the network. There are tens and tens of cameras linked to screens in the control centre, so they are able to see where the problems are surfacing. The companies work really well together. One operating company will say to another that it needs an extra two bits of kit because it is facing a problem, perhaps on the M80 at Castlecary. The operating companies work together in a co-ordinated fashion. It does not matter what the exact stipulations of their contracts are—if another operating company needs additional equipment, plant or resource, they work closely together.

I am in charge of approximately 3,500km of trunk road network. During the severe winter weather—the beast from the east—we had a number of challenges on the M80, A720 and a few other bits and bobs. However, the vast majority of that 3,500km was incident free and—which is important—people were not hurt during that time. I am not saying that it was an almighty success, and there are certainly things that we have to learn, but the trunk road operating companies generally did a remarkable job.

Richard Lyle: Were you satisfied that the trunk road operating companies had sufficient staff, equipment and other resources to deal with the winter weather? I take on board the points that Mr Mair made earlier, and what you said about the companies making sure that if equipment was needed somewhere else, it was en route.

Humza Yousaf: George Mair’s point was a nuanced and acute observation, and I thank him for making it. We, or any Government, can decide to invest more money in more specialised equipment, but the money would have to come from health, education or some other budget. The country experiences such weather with some regularity, so should we make that investment or accept that such weather events are not altogether common—touch wood? There is a fine balance and judgment to be made and we will always invest to some extent in new technology and equipment. When I did the winter launch in October or November this year, we showcased some of the new equipment that we had bought,

including Unimogs, equipment to deal with flooding, and gritters that spread liquid brine rather than wetted salt.

There is always, without a shadow of doubt, equipment that we should invest in, but on the flipside, we must make a careful judgment about how often that equipment would be used and so on.

08:45

I know that we are pushed for time, so I will make this my final point. A key lesson that we learned from 2010 was that we must ensure that we have adequate salt stocks: we now have record salt stocks. To put that into context, this winter we used more than twice as much salt as we used last winter, but we still have plenty left. We also have a reserve in case stocks runs low.

I am satisfied that we have good equipment, but we will add to it every winter, to make it even better.

The Convener: George—do you want to comment on the trunk roads?

George Mair: The minister has highlighted that there were incidents on the main arteries. In general terms, once those were resolved, things were back in motion and were getting back to full service gradually over the week and towards the weekend.

It is absolutely right that we look back to identify areas that worked well and at where we can make improvements. However, spontaneous things happen, so it is key that we are able to deal with those situations, get them cleared up and get normality back into the network.

Mike Rumbles (North East Scotland) (LD): In my area of Aberdeenshire, the council often closes roads—for example, the Banchory to Fettercairn and Corgarff to Tomintoul roads—in periods of bad weather. In fact, during the recent red weather warning, the railways were—quite rightly—closed on public safety grounds, as Alex Hynes has mentioned.

My question is primarily for the minister, because I think that it relates to a decision that he would make. Aberdeenshire Council closed the local roads and the decision was taken to close the railways. Did you consider whether to close the worst-affected trunk roads, such as the M80? That is an important question, because closing those roads would have meant that we did not have some of the problems.

Humza Yousaf: Yes, we did consider that, and I will say why we did not do so. First, the decision whether to close roads is an operational decision for Police Scotland. We work closely with Police

Scotland and we have conversations about such matters.

I again remind members of the context. The weather event, particularly in the days leading up to the red weather warning, did not catch people by surprise. It had been trailed in the newspapers that the beast from the east was coming. Even my harshest critic would no doubt say that our message on the Monday and Tuesday before the red weather warning, about avoiding travel unless absolutely necessary, was clear and consistent. Despite the messaging and the trailing of the weather event—"the beast from the east" is not a nice fluffy name; people knew that it would be a tough weather event—tens of thousands of people chose to travel. Some of that travel might have been absolutely necessary, but I can tell members from what I saw on the cameras that some of it was unnecessary. Because people chose to travel, the police could have decided to close some of the pinchpoints and the more difficult parts of the trunk road network. The difficulty in doing so was that that would have pushed all the traffic on to local infrastructure, which would have absolutely been unable to cope.

We have some of the best equipment and plenty of salt stocks. We did our best to keep the trunk road network clear, but it took local authorities days and days to recover parts of the local network. If we had pushed all the trunk road traffic on to the local infrastructure, there is simply no way that it could have coped.

Mike Rumbles's point was another acute observation. We know where the pinchpoints are on M80, such as Castlecary and the Beattock summit, and we know that there are inclines on the M77 at Maidenhill and Fenwick where heavy goods vehicles often lose traction. Should we work alongside the police to close those roads if we ever have a red warning of snow in the future? Would that be the right thing to do? We are considering that approach.

There are other options. For example, should we keep heavy goods vehicles in one lane and enforce that for, say, a 3-mile stretch? Should we enact an "operation stack", which involves stacking HGVs in lay-bys or on the hard shoulder? All that thinking goes on, but I understand from my discussions with the police that the reason why they did not close roads was that the local infrastructure simply would not have been able to cope with the volume of traffic and we would have had a worse situation.

Mike Rumbles: But the alternative is that people are stranded. It is not just a case of the roads not being able to cope with the volume of traffic.

Humza Yousaf: With the greatest respect, that is not the alternative. People would have been stranded; they would have been stranded on the local roads, which would have been a more difficult situation. A gritter cannot get up and down through traffic on a local road. Where there are two lanes of trunk road plus the hard shoulder, gritters often use the hard shoulder, with a blue-light escort, to try to recover the road network. We just cannot do that where there is a single lane.

I agree that closing the trunk road is another option. It is not something that I am discounting for the future, by any means. However, I know from experience—and I absolutely believe the police when they say this—that the local road infrastructure could not have coped in the situation that we are talking about.

Mike Rumbles: I understand and accept that response. For future reference, are you saying that, given that we know the pinchpoints, when we get another red warning you might discuss with the police a requirement for the road haulage industry to stick to one lane? I would like to hear George Mair's response to that, too.

Humza Yousaf: I have already had conversations with the HGV sector, and I will meet the sector again tomorrow to talk about our winter plans. The bus industry will be part of that conversation, of course.

I would like to have a range of options. I would not discount any option, including Police Scotland closing part of the trunk road network. However, as I said, if we close part of the trunk road network we might well face the problem of local roads not being able to cope. In some cases, local roads might well be able to cope. In others, we might need to put in place a mitigation plan, alongside local authorities, to assist with the situation.

Closing part of the network should be an option, as should stacking HGVs and enforcing use of a single lane so that, even if one breaks down in lane 1, others cannot creep past in lane 2, which would be closed to traffic flow.

I am not saying that the problems that we witnessed were all caused by HGVs; that was certainly not the case. Other vehicles were involved in incidents.

Let me say, for clarity, that I would not expect the police to discount road closures. They will close roads for safety, which is their number 1 priority.

The Convener: Does George Mair want to comment, briefly?

George Mair: I will be brief. We have members who operate express coach services between the main urban areas of Scotland, and they make good use of the trunk road network in doing so.

They would like the trunk roads to be kept up and running so that they can continue to operate their services. Coach services can be an alternative to rail when rail is not available—they have been successful in that regard on previous occasions.

Humza Yousaf: If I may, convener, I will make one more point, very briefly. Some folk asked whether we could have cleared the trunk road network and kept traffic moving. My response is that, particularly during the red weather warning event, even if we had managed to make the surface black by clearing some of the snow and ice, that would not necessarily have made it safe to travel, given the blizzard conditions and the poor visibility in the falling snow. Even if we are able to clear the road surface, it is not necessarily safe for people to travel. We must always be conscious of that.

Peter Chapman (North East Scotland) (Con): In an answer to a topical question on 6 March, John Swinney MSP said:

“After every severe weather incident, the Government undertakes a review of how it was handled to identify lessons that can be learned.”—[*Official Report*, 6 March 2018; c 18.]

Has the review of the response to the recent severe weather produced results, to date?

Humza Yousaf: We are undertaking the review. We have done parts of it already, but we still need to get all our stakeholders to engage with it. You will appreciate that we are not yet through the winter, and a full-scale winter debrief cannot happen until we are through the winter. We are all alert to the fact that we are going to get some snow and sleet showers over the Easter weekend—that is likely, according to the Met Office, with whom I had a call yesterday.

I could rifle off a list of things that we have learned from previous winters, from last winter right back to 10 winters ago, but for the sake of brevity, I will not do so.

You asked about the beast from the east. On that particular event, there has already been a lot of discussion with stakeholders, particularly about the M80 at Castlecary, which is a pinchpoint, as we see time and again, both northbound and southbound. That has been a particular focus of the debrief on the weather event.

Peter Chapman: I want to home in on the hell on the M80 at Castlecary. That stretch was an issue for the whole area and the reason why hundreds of travellers were stranded overnight. Surely you need to focus on that pinchpoint and ensure that that part of the road is kept clear. If that bit of road is the problem, why can you not have a gritter going up and down, making sure that the road is clear and bare? I am sure that that would be possible.

Humza Yousaf: Again with the greatest respect—I would invite all members to come to the control centre to see what happens—we had more than one gritter constantly going up and down the northbound and southbound carriageways. We had a number of gritters doing that on the M80.

If you cast your mind back to the red weather event and looking out of your window, or if you were anywhere near the M80 or saw it on the news, you will remember that the weather was utterly relentless. We did not have a window of a couple of hours in order to try to recover the situation. We had constant blizzard conditions. That is why the red warning was issued, of course. There was simply no let-up. I was with the Met Office staff looking at the radar map and asking when we would get a window of opportunity, even just for an hour, and they said that it was going to be pretty consistent for the next 10 hours or so—I cannot remember exactly. It ended up being 15 hours.

We know that the M80 is a pinchpoint, so we placed the new equipment that we bought—the Unimog—there. The Unimog is not as big as a gritter, so it can get through traffic more easily.

Mr Chapman makes a good point. Following on from that, we are now identifying the six, seven or eight pinchpoints on the trunk road network—they usually involve inclines—where the incidents take place. As I said to Mike Rumbles, we are considering what we should do at those pinchpoints during extreme weather—for example, whether we should take the nuclear option, which is for the police to close the roads, whether we should carry out operation stack, and so on.

Mr Chapman’s point is right, but no one should be under any illusion that we did not have quite a bit of equipment at the pinchpoints, particularly on the M80.

The Convener: I will bring in Jamie Greene and then come back to Peter Chapman and Richard Lyle, if we have time. Please keep your questions short.

Jamie Greene (West Scotland) (Con): Good morning, panel. Minister, you said that, during amber and red warnings, the advice is not to travel unless it is absolutely necessary. That is sage advice. Do you think that therein lies the problem, in that the public has an inadequate understanding of the difference between an amber and a red warning? I think that the phrase you used is confusing, just as people’s perception of when they should and should not travel is confused.

The Convener: I will bring in the minister, but I saw George Mair nod, so I might bring him in after that. Minister, a short answer would be a good answer.

Humza Yousaf: Brevity is my middle name, convener.

That is a good point. One of the learning points that we took from feedback on the weather event that we had in the middle of January—you will remember that there was a fair bit of snow—was that the number of warnings was far too confusing. There was travel advice from the Government, there were Met Office weather warnings and there was police travel advice, and all of that just seemed to confuse people. They thought, “What the heck is a stage 4 or an amber warning?” For the beast from the east event, we tried to be more aligned in what we were saying and the Government tried to take the lead on the messaging front.

However, there is a bit of learning to do around the Met Office warning system of yellow, amber and red. We need to have conversations about that because there are different types of amber. Before I became transport minister, I was not alert to the fact that there is a matrix. When I sat down with the Met Office at the beginning of the week—on the Monday or the Tuesday—I was told that, in the matrix, the amber warning was right on the cusp of becoming a red warning. If you imagine a matrix, it was in the box just underneath the red warning. That is why I took the decision on the Tuesday to say that we were on the cusp of a red, which we had never seen before—it was unprecedented.

I think that the advice was really consistent, despite all the criticisms that people will give. I genuinely think that the communication was clear and consistent, and the member’s party leader has said that. That is something to learn from and to improve on in future.

09:00

The Convener: We have strayed slightly into the warning system, which we were going to deal with later. However, rather than lose the train of thought, I ask George Mair to comment on that issue, after which I will bring in Stewart Stevenson.

George Mair: After being invited to the meeting, I contacted members to ask for feedback on some of the issues that they believe prevailed during the period. The one consistent message that came back was about the understanding of the warnings. Some expressed the view that there appeared to be different understandings of the various warnings across the bodies that were involved. Somebody mentioned that they heard the phrase “high amber” being used—I now realise who probably said that—and that people were asking what it meant.

We should probably look back at the understanding of the metrics and the logic behind

them and consider whether there is a better way to communicate those. Some of the guys said that, in countries that they visit in Europe, there is a numerical scale, so we could consider whether that is better. Another issue is about how often the system is used and whether people remember it. For me, there is certainly a point that people are not getting it—they do not understand the ratings.

Another element that came across strongly was that we seem to be getting warnings more often now. If people are on the periphery of an area where there has been an amber warning, they might think that they have had worse weather under a yellow warning. It is difficult to give a detailed weather forecast that says precisely that it will be X, Y or Z in someone’s location. However, that issue needs to be looked at further.

Stewart Stevenson: I will structure my questions in a particular way. First, do we know where people get the information on which they will base their decisions? We know where we put the information out, but have we looked at what people use? That question has different parts. The first is about what people use for planning purposes. For example, what do they use to decide whether they will bother leaving home at all or to find out whether public transport is available? Then, during the course of the journey, what real-time information do people use? We need to know that so that we can build on the things that people really use.

Humza Yousaf: As I said, it was fascinating being in the control centre, because there was the radio broadcasting from the back as well as our on-going Twitter operation—or our social media operation—and then broadcasters including radio broadcasters were frequently coming in to do interviews with me, Stein Connelly or other members of the Transport Scotland team.

We have gathered some of the data. On 2 March this year, the traffic Scotland website had a record-breaking number of page impressions—it was in excess of 20.2 million. The traffic Scotland Twitter page has more than 250,000 followers. I have not yet gathered the number of Twitter messages and exchanges that we had, but we should absolutely do that.

From having been in that room, it is clear to me that more and more people are getting their information online. However, we should always remember that a fair chunk of people will go to the news bulletins at 6 o’clock, 10 o’clock and 1 pm. That is really important for us. I have to commend the broadcasters and media, as they were not shy in coming to us. They played their part in ensuring that the issue got the coverage that it absolutely needed.

We do not put all our eggs in one basket. We spread the information across the various mediums of communication. It is fair to say that our online communication mediums are well used. I saw a number of people in real time trying to get information on X, Y or Z bit of road. To answer the latter part of the question, if we can get consistent advice out, that is something that we should consider to see where we can make improvements.

Stewart Stevenson: Have you looked at the French system for road vehicles, in which every auto route is covered by a dedicated traffic radio system that simply takes computer information and turns it into voice, so it is not hugely expensive, and of course, it is localised, because the one thing that virtually every road vehicle will have is a radio, and it is legal and proper for the driver to use the radio? I wonder if, before people make their journey, we should be pointing them to how they can get information during that journey. We do not want drivers sitting on Facebook or Twitter.

The Convener: A lot of committee members want to ask questions on the warning systems.

Stewart Stevenson: I have one short question after this one.

The Convener: Absolutely, but I remind members that I want to stay on the warning system at this stage. I know that there are other aspects, but we can come back to them afterwards.

Humza Yousaf: Stewart Stevenson makes a good point. To answer the first part of his question, we will look across the world and across the continent to see what we can learn. My team, including Martin Thomson, is part of the World Road Association, so they often go across the continent, and I am sure that we will invite the association here in order to learn from best practice, wherever it exists.

Whether members of my team have looked at the specific example that Stewart Stevenson mentions, I could not say without having a discussion with them, but the World Road Association certainly provides international intelligence. In fact, I think that there is an intelligent transport systems workshop today, and we will be looking to see where we can use intelligent technology to the best possible effect.

Stewart Stevenson: I go back to the planning issue. I can see that each of the participants in the public transport realm has been putting out good-quality information, but there is not an integrated place—apart from perhaps Traveline Scotland, which integrates the planning, but I am not sure that it gives the kind of real-time information that is required in those circumstances. Will the

Government look at whether it is reasonable and cost effective to provide information—by that means or otherwise—in an integrated way, so that people can decide whether to go for the train or the bus, or whether to hug the sofa?

Humza Yousaf: We absolutely will. It would be worth looking at the mobile website trafficscotland.org, where you can register for a “My Traffic Scotland” account. We have made the latest enhancements yesterday and today, and you can get live images from the traffic cameras on the trunk road networks, and all the information about congestion, planned events and unplanned events. How we integrate that with the good apps that Alex Hynes has, and with the Traveline app that I know George Mair and many in the bus industry use is a question that we should take back, for sure.

Stewart Stevenson: Despite the size of my constituency, there are no traffic cameras in it—

The Convener: Let us leave it at that. I promised you one more question, but I have other members stacked up.

Richard Lyle: All vehicles lose tyre grip and traction, as Mr Mair said. Some very expensive cars cannot even get up hills because their back wheels spin and they do not have four-wheel drive. With regard to the pressure-point roads that you are talking about, where there were delays, can we look at resurfacing in some kind of material that would aid traction?

The Convener: I am going to park that question, because it is not about the warning system. We will come back to that later.

Mike Rumbles: When the minister was warning people about the red level, he consistently said, “Only travel if your journey is essential.” My question is simple: is travelling to your employment an essential journey?

Humza Yousaf: If it compromises your safety, absolutely not, but it depends what your employment is. For example, is it essential for emergency workers to travel? There are many emergency workers—but it is not all of them—for whom travel to employment would be essential. For many others, I do not view their travel as essential, particularly in this day and age when we can have a lot of flexible working and so on.

I will use my father as an example. He is a small business owner and an accountant, with 15 to 20 members of staff. I am pleased that he followed my advice—I am sure that many others did—to send staff home and give them the day off. He will have no doubt lost some income because of that decision. He would not have filed some accounts or dealt with the VAT returns that he should have done that day.

Many other small businesses chose to take a hit—we must accept that there will have been an economic impact—because the safety of their staff was paramount. I have had numerous emails from people who have told me that they were docked wages or asked to take annual leave because they did not come to work during the period of the red weather warning, which is unacceptable. As Mr Rumbles probably knows, the First Minister met the Scottish Trades Union Congress and they are developing a fair work charter.

I appreciate that the weather event was unprecedented, so some employers may not have known how to handle it—let us give them the benefit of the doubt. Red weather warnings are not given for any reason other than because people's safety is at risk. We can imagine what it would have been like if people had travelled as normal at peak time on Wednesday evening during the red weather warning.

The indirect answer to Mike Rumbles's question is that I do not view the travel of workers in the vast majority of types of employment as necessary, and they should not be punished for not going to work, but for some types of employment travel is essential.

Mike Rumbles: I heard and understood the messages that you put out on the radio. They were directed to the travellers—that is, of course, important—but I did not hear any message to employers that explained what you have just said.

The Convener: I am sorry to interrupt, minister, but I am very conscious of time and of the fact that a lot of members want to ask questions. I ask you to address Mike Rumbles's point in conjunction with Fulton MacGregor's question, if it is on warnings.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Before I ask my question on warnings, I want to raise a constituent case that I am dealing with, because we were talking about employment. We hope to resolve the issue without needing to take any further action, but the lady has unfortunately been sacked from her work for not travelling during the red weather warning.

My question is about yellow and amber weather warnings. When we gave the red weather warning, apart from some very rare circumstances such as those that I just described, the message was very clear and people got it. However, the situation between yellow and amber is a bit more difficult, as was mentioned earlier. Are there any thoughts to review that, particularly in relation to when a red warning goes down to an amber warning? I was listening to the radio in my house when we moved from red back to amber, and the radio presenter said, "We're just back down to an amber now." It was said in an unconscious way and he probably

was not the only person who was feeling like that, because we had had the beast from the east and then we were back down to amber. Is there any chance of a review?

The Convener: I ask the minister to answer both those points, on employment and on the movement between warnings.

Humza Yousaf: We gave messages to businesses; we have a business resilience centre that contacted a number of employers. However, I accept entirely Mike Rumbles's point that we should emphasise those messages in the future. We need to acknowledge that forecasting is not an exact science, but we will always work with the Met Office to try to improve forecasting, because the earlier we get forecasts, the earlier we can warn employers. I absolutely take that point on board.

In relation to the case that Fulton MacGregor is dealing with, he knows that employment law is reserved to the United Kingdom Government. However, the Scottish Government's view is that it is utterly unacceptable that that practice is taking place.

Fulton MacGregor's point about the weather warnings was a really good one, and similar to the point that Jamie Greene made. If someone is not in the position in which I am, or if they are not part of the Met Office, there is no reason for them to understand the Met Office matrix. Why would someone need to know about that on a normal day? Therefore, we had to get across to people that the weather warning due to the beast from the east was not a "pedestrian" amber. It was not an amber similar to the amber that we faced a month ago during the weather event in January. That is why I went out and talked often about a severe amber rather than a high amber, because we had to let people know that it was different from the amber warnings that there had been before, due to where it sat in the matrix.

09:15

That is not necessarily the best system, so the answer to your question is yes, there is some learning to be had. We were very alert to the fact that, when the warning went from red to amber, people might have thought that everything was going to be okay. That is why our media messages were the exact opposite and told people that it was still going to be extraordinarily challenging.

Even going from an amber to a yellow warning or, indeed, from a yellow warning to no weather warning, we face challenges. An example concerns the routes that take people up to ski centres in Glencoe and the Nevis range. People will have seen it snowing for days and days and,

when the weekend comes or at the Easter weekend, which is coming now, they decide en masse to go to the ski centres, which causes severe congestion on the trunk road network.

There is always learning to be had for us. We are always preparing not only for before the event but for after the event.

Peter Chapman: There was some criticism of HGV drivers who were supposedly on the roads doing non-essential deliveries. That criticism was unfair, in my opinion. The First Minister was involved in it as well. How did you engage with the road haulage industry prior to, during and after the severe weather with a view to maintaining essential supplies and deliveries safely?

Humza Yousaf: I will correct the member again. With respect, there was never a criticism of HGV drivers; there was a criticism of hauliers. I want the member to try to understand my sense of frustration. I am genuinely trying to be as open minded as possible about this and ask him to do the same.

Peter Chapman will be aware of what I said already. We knew in advance that there was going to be some of the most unprecedented and extreme weather in years. Our operating companies were working day and night trying to clear the surfaces—the gritters were out day and night. Our messaging went out for days to tell people to avoid travel unless absolutely essential because we know the pinchpoints, as the member already identified in a previous question. I was looking at the dozens of cameras in front of me and I saw an HGV that was at least branded for flatpack furniture drive past, skid and cause a tailback for 3 miles. I also saw home furniture or stationery deliveries—at least, that was the branding—and many empty car transporters. With the greatest respect, my public reaction to that was muted and restrained whereas I promise the member that, in the control centre, it was slightly less restrained.

I do not take away from what Peter Chapman is saying at all, but even our harshest critics will accept that there is a difference between necessary and unnecessary deliveries. I think that everybody around the table would accept that food and fuel have to get through by and large, but we have to ask questions about other deliveries. Perhaps I am wrong. Perhaps the HGVs were simply branded in that way and were carrying something completely different, but I am not entirely sure that that is the case.

The industry is involved. The Road Haulage Association and the Freight Transport Association, which Peter Chapman will know well, were very involved in discussions prior to the weather warning, right the way through it and afterwards. I

have a good relationship with them. I am meeting them tomorrow alongside some of the large HGV companies. However, I think that even Peter Chapman would be critical of companies that send out drivers—it is about their safety as well as everybody else's—for things that we commonly accept are unnecessary.

John Mason: As you know, minister, we are on Facebook this morning. I have been watching some of the comments. Dawn Oliver says,

“Thank you Humza for the pre warning of the possible disasters”,

so you have some fans out there. I thank ScotRail for getting me back to Glasgow on the Thursday afternoon when there were no other trains running and First for getting me from Glasgow city centre back home on the Thursday afternoon on its number 2 route, which was great.

We understand that there is a multi-agency response team and that a lot of organisations are involved in that. Should the logistics side be involved in it to try to get them on board a bit more?

Humza Yousaf: They are already involved in that activity. The Freight Transport Association, the Road Haulage Association and the Confederation for Passenger Transport are all part of the MART, and I can give you details about who else is involved.

There is an issue about how all of us can align earlier. When the red warning was announced, one of the first phone calls that I got was from Alex Hynes to say, “Look, we’re already putting in place a process for winding things down, and this is my feeling about the plans. Do you have any advice? What intelligence are you getting about the weather?” That was to ensure that everything was aligned. Of course, we have done that sort of thing previously with regard to multi-agency response, but perhaps we on this side of the table have some learning to do to ensure that, if we ever have this kind of extreme weather event again, we at a senior level sit down and co-ordinate our response even earlier. The earlier we can do things, the better it will be for everybody.

In answer to your question, though, Abellio ScotRail, Network Rail, the RHA, the FTA and the CPT are all part of the multi-agency response team.

Colin Smyth (South Scotland) (Lab): One of the most important pieces of information for passengers whose rail journeys, in particular, get disrupted relates to compensation. Rail companies, including ScotRail, were recently criticised by Which? for, at best, failing to make passengers aware that they were also entitled to make claims for consequential losses and, at

worst, misleading the public through social media by saying that they could not make such claims. Why are the public in effect being misled with regard to their right to claim for consequential losses? Now that the national information is being amended, what is being done to make passengers aware of their full rights when it comes to compensation?

Alex Hynes: Season-ticket holders who were affected by the red weather alert have already been given two free days on renewal, while customers who do not have season tickets are eligible for delay repay compensation. Irrespective of cause, if anyone's journey is delayed by more than 30 minutes, they are eligible for a no-quibble refund. In a typical week, we get on average 2,000 delay repay claims. However, over the red alert weather event, we were getting 5,000 applications per day. I think that we have been very clear about the compensation that our customers are entitled to, and they have been claiming it.

Humza Yousaf: All you need do is take a cursory glance at ScotRail's Twitter feed, and you will find that it is not shy at all about telling any passenger who complains directly to it about the delay repay scheme. I do not believe that anybody is being misled. The point that Colin Smyth has made and which Alex Hynes, I and others can perhaps take away is about what more we can do to make people aware of their rights. I think that that is a fair point.

Colin Smyth: People are being misled. My question was not about the repayment of tickets but about consequential and additional losses that might be incurred—for example, through having to pay for taxis and buses—as a result of disruption. The public were misled about that recently, and the information about that has been tightened. Alex Hynes mentioned that ScotRail received 5,000 applications per day during the adverse weather event, but I presume that those claims were purely for tickets. How many people claimed for consequential losses, and what did ScotRail and others do to make the public aware that they were potentially entitled to make applications for such losses?

Alex Hynes: Every day, our customer relations team considers requests from customers to cover consequential loss. That is normal business, and where we think that such a case has been made, we pay out beyond our strict obligations.

My understanding is that the national rail conditions of carriage, which apply across the UK, have recently been reissued to address the very issue that you have raised, which I would point out was not a Scotland-specific but a UK-wide issue. I understand that that has now been addressed, but I have to say that I am not aware of any criticism from ScotRail customers that we have in any way

been stingy about giving them their money back when we did not let them travel.

Colin Smyth: Would one solution be to move to a system of automatic compensation or reimbursement? Instead of your staff having to deal with 5,000 applications a day during the adverse weather, would it not be a lot simpler and easier if you provided compensation automatically, in the same way that other rail companies are starting to do?

Alex Hynes: We are certainly looking at that development. Our compensation policies are very clearly outlined in our passenger charter, which is available at every single staffed station.

The Convener: I think that we have taken that line of questioning as far as we can, so I invite Jamie Greene to ask his next question.

Jamie Greene: I will stay on the subject of rail. Mr Hynes, you said in your opening statement that feedback from ScotRail customers about the way in which things were handled was very positive. However, anyone who followed social media over those few days would have seen that there were a great number of unhappy customers, especially people who got into work by train and were then sitting in the office reading social media posts telling them that the network was shutting down. Will you briefly talk us through how and when you decided that the network would shut down entirely and how that was communicated to the general public?

Alex Hynes: Every day, we track positive, neutral or negative sentiment across social media and we can clearly demonstrate that during the red weather event sentiment about us was more positive than normal.

Our number 1 priority is safety. The forecast was accurate; it was very good. Clearly the red weather event was a threat to life and safety. My worst-case scenario was that we would have customers stranded on a train—or, even worse, stranded on a train that we could not get to. My number 1 priority was to make sure that that did not happen. Within two hours of the red weather warning being given on the Wednesday, my team and I took the decision to wind down the service in a controlled fashion. Our immediate advice to customers across all channels was to go home now. We were able to end the service about tea time on the Wednesday.

Safety was the clear priority. The decision was taken on the basis of the good weather forecasts that we got from the Met Office, and the trigger was the fact that we went to a red warning, which clearly required decisive action and good information. I was pleased to see that we did not have customers stranded on trains. We were able to get all our customers and our staff home safely

that evening, which was not the case across the United Kingdom. Relatively speaking, we did a good job here in Scotland.

Jamie Greene: Thank you. You said that one of the key learnings that we can take away from this is about giving information about what is bound to happen the next day, or what is very likely to happen the next day. I point you to a ScotRail tweet from 11am on 28 February, which states:

“Following the red alert ... we will not run trains in affected areas”—

there was perhaps some ambiguity about what the affected areas were—

“until late morning”,

which in itself is a vague term,

“at the very earliest and even then, we will be introducing a small number of services if it is safe to do so.”

There are so many ifs and buts in there that it is not a huge surprise that many customers had no idea whether the trains were running until they got to the station. Can you take any learnings from that?

Alex Hynes: One of the reasons why the travel advice is not always crystal clear is that you can only communicate a plan. If you do not have a plan, there is nothing to communicate.

It is unsafe to run trains into snowdrifts, particularly if they have customers on board. We route prove each line of route, which we have to do during the hours of daylight. In a weather event such as this, we do not know what we are going to be able to run. That is why customers get the travel advice that they do. As we enter daylight and we send our route-proving trains out and reopen the railway, we are able to reinstate services where possible. However, the fact of the matter is that, the evening before, we do not know what we will be able to run, which is why we are open and honest with our customers in telling them the latest situation. It is not that we are hiding anything or keeping anything back. We do not know what we will be able to run because we do not know what is safe to run.

09:30

Jamie Greene: Finally, has this particular event, which we acknowledge was quite extreme in its severity, led you to identify any weaknesses in the rail system in Scotland in relation to the tracks, the rolling stock or other types of stock, or indeed the equipment that you have available to you to clear lines, the level of resource that is available to you, and so on?

Are there any deficiencies in your ability to handle such extreme weather that will require beefing up before the next potential major event?

Alex Hynes: I do not believe so. We prepare for winter the whole year round. Our winter preparation plan went to our board and we were well prepared for this weather event. Indeed, we had a previous snowy event where we also performed relatively well.

Scotland’s railway is pretty resilient to bad weather, which is one of the reasons why it is more punctual than railways elsewhere in the UK. Of course, if we had a weather event every single year such as the one that we have just seen, there are decisions that we could take to make the rail network even more resilient. However, I am quite satisfied with our level of preparation and resilience. The fact that we were able to run a good service safely and that the railway in Scotland is more punctual than elsewhere is testament to our being in reasonable shape.

Clearly, if the weather was different and we faced such events every year, we might make a different decision.

Fulton MacGregor: I have a couple of questions about local authorities, and about buses in particular. In my local authority, North Lanarkshire, in the snowy weather before the red warning, there were a lot of difficulties for people trying to make it in to work and so on. We had a lot of constituent queries about it and we contacted the local authority. However, I have to say—similarly to what the minister said earlier—that the local authority was brilliant during the red warning. I do not mind saying that and I have reflected that back to the council.

What else could local authorities across the country do to improve winter service arrangements, perhaps taking into consideration the amber and yellow warning times?

Humza Yousaf: I echo what you said. Local authorities by and large coped really well and many of them took quite decisive action. For example, many of them decided the night before to let parents know that the schools were going to be closed the next day. In fact, the vast majority of local authorities did that, which made planning easier for parents, who did not have to wake up in the morning and check what was happening.

Many local authorities put in place sensible measures and did so early. There is a question around local budgets. I will not get into the politics of this—if you have not had an extreme or challenging winter for seven or eight years, it is only natural that you will probably consider reducing the winter budget and putting more money into social care, education and so on.

Because of the extent and extremity of this weather event, we triggered the Bellwin scheme, which the member will be aware of. The scheme

allows for additional financial grants and assistance to local authorities.

Our mutual aid process is really important. Our priority—and, of course, the remit and responsibility of Transport Scotland and the Government—is the 3,500km trunk road network, but where we can, we offer mutual aid to local authorities. We send out gritters and give them additional stocks of salt. That offer has always been open and I am sure that a few local authorities will have taken it up. I have just been told that mutual aid was provided to South Lanarkshire Council, for example. Where we can provide mutual aid, we are absolutely willing to do so.

I echo the member's general sentiment that the situation was well handled by local authorities.

Fulton MacGregor: This may be a question for George Mair. Is there a need for a central portal for bus service disruption information in order to get that information out, and is there anything that local authorities and other agencies can do to make sure that bus provision continues as best it can?

George Mair: Each of the operators that were resourced to deal with getting information out, particularly the larger ones—ScotRail, for example—consistently tweeted on the impact that the weather was having on whether services were winding down or winding back up. People can get services going quite quickly. It is a bit like heating a windscreen. Where the heat goes first, bus services will run quicker, but things will take a wee bit of time in outlying areas, where the snow is deeper and more difficult to clear up.

In general, operators tweeted and used social media and their websites. Most operators now have a direct feed to Traveline Scotland, on which they can put bulletins about services being reduced or reintroduced as the weather situation changes.

I try to work with Transport Scotland. I regularly have contact with colleagues in Transport Scotland, who say that they will do anything that they can to help but that inquiries should be directed to Traveline Scotland. It seems sensible to use a central point of contact like that, because Traveline Scotland gets information direct from the operators.

Given the scale of the challenge in some locations, the local authorities did a tremendous job. However, as everybody else has said, when we look back we can see that there were perhaps areas of weakness. The key thing that I would advise—I hope that local authorities will pick up on this as a result of this discussion—is that people should get round the table and have a chat so that, the next time there is a bad weather incident,

things that could be done better are done better. However, given the overall scale of the challenge, particularly across the central belt and the periphery—Dundee and Aberdeen for example—people seemed to cope reasonably well. The situation was certainly challenging. However, looking back, reflecting and building new ideas and strategies for the future can only be helpful.

John Finnie: I have a question for the minister. Rail and bus passengers were well served by ScotRail and the bus operators in very challenging circumstances. You will be familiar with another two categories of traveller: pedestrians and cyclists. I appreciate that your responsibilities are separate from the obligations of local authorities, but do you believe that sufficient priority is given to pedestrians and cyclists? Ultimately, it is, of course, pedestrians who have to make their way to bus stops and train stations.

Humza Yousaf: Yes. That is one of the things that we have learned from the harsh winter of 2010, for example. I agree with John Finnie on the importance and priority of footways and cycle paths. We had 52 tractor ploughs, gritters, pick-ups and other manual clearing and gritting equipment available across Scotland's trunk road network for footway clearance and treatment. The footways, footpaths and cycle facilities alongside the trunk road network are largely organised into three categories. When temperatures are forecast to fall, the operating companies will carry out pre-treatments of all category A footways, footpaths and cycle facilities. A combination of footpath spreaders and hand spreading will be used to pre-treat them as required. Operating companies clear category A and category B footways of snow and ice by 8 am or within two hours of snow ceasing to fall during the 6 am to 6 pm period. Operating companies clear category C footways of snow and ice by 5 pm the following week day. Obviously, operating companies allocate resources based on the network conditions and the reports that they receive from the winter drivers who have carried out ploughing.

We also have winter self-help kits, which continue to be made available to small communities that border trunk roads. It is not intended, of course, that those kits should replace normal winter maintenance, but they allow communities to play their part. Only a small number of self-help kits—20, I think—have been issued to local communities to date. The most recent was issued at New Cumnock on the A76. Therefore, there is maybe a bit of work for us to do on the advertisement of the available self-help kits.

John Finnie: You will have an obligation on a small portion of footways. There are plenty of examples of communities that have shown great resilience in coming together. However, that is not

without its problems, and I would have some concerns if, for instance, members of the public were clearing footways beside main trunk roads. Is there any liaison with local authorities on that? I appreciate that it is different in this country because we have episodes of severe weather rather than constant severe weather, but some countries take a different approach. They recognise that people are very important and that if they do not have access to the roads, they will not have access to public services. Footways are seen as the poor relation. I appreciate local authorities' obligations, but is there discussion with them about that?

Humza Yousaf: Local authorities are central to our planning, as well as to action during the event, and the recovery of access via footways is very much part of that conversation. John Finnie is right to say that footpaths sometimes do not get quite the same amount of attention and coverage in the public domain as the trunk road network and rail and bus services. I assure him that, once we get out of the winter period, that issue will be part of our overall debrief and discussion with the Convention of Scottish Local Authorities and local authorities themselves.

Jamie Greene: Just going slightly off topic, I want to touch on the issue of the intervention by the military and armed services in this weather event, which has not cropped up in conversation this morning. Public perception is that that intervention seemed to come very late. Was there an offer of help, or was there a request to the military and armed services for help? Is there a greater role for the military to intervene in situations such as on the M80, where people were stranded for many hours? What is the relationship between the Scottish Government and the military in respect of asking for assistance?

Humza Yousaf: We have close dialogue with the Ministry of Defence throughout weather events that are planned for or foreseen, as this one was. Jamie Greene will appreciate that, in my role as transport minister, my responsibility is to ensure that transport networks across the country are moving, if it is safe to do so, during an extreme weather event. The decision to involve the MOD was made not by me but by a different minister, because, as the member will know, there was a request to assist health workers and emergency workers to get to their places of work. It was the right decision to make. Although it was a different minister who made that call, we can provide more detail, which I can do through the convener and the appropriate channels.

On the second part of Jamie Greene's question, we always consider all the resources that are available to us, including the assistance of the MOD. If we take the example of the M80, from

what I know about the equipment the MOD has, I am not entirely convinced that it would have made a huge difference, because of the nature and scale of the problem. However, we would never discount the possibility of the MOD's assistance.

Where we could have done better—this is part of our learning—was in ensuring people's welfare. We know that there is an issue around, for example, the M80. As soon as we started to see tailbacks during that weather event, we knew that they would not be cleared, because of the nature of the snow, and we knew within an hour or two that we would have a challenging night ahead of us. Perhaps we could have got welfare to people quicker and in a more co-ordinated way, so that is what we are taking away as one of the learning points. We would not discount a role for the MOD in that in future.

The Convener: Thank you, minister. It is perfectly obvious from today's meeting that more lessons will come out at the end of the winter when you have carried out a complete review of the circumstances. It will be useful for the committee to have feedback from you on the full details of those lessons.

I thank the minister, Alex Hynes and George Mair for coming this morning. There has been a great deal of interest in the meeting on social media and Facebook, and I thank those who were watching and those who have taken part.

09:44

Meeting suspended.

09:52

On resuming—

Islands (Scotland) Bill: Stage 2

The Convener: Agenda item 2 is day 2 of our stage 2 consideration of the Islands (Scotland) Bill. I welcome back Humza Yousaf, the Minister for Transport and the Islands, and officials from the Scottish Government.

Everyone should have a copy of the bill as introduced; the second marshalled list of amendments, which was published on Thursday; and the second groupings paper, which sets out the amendments in the order in which they will be debated. The aim is to complete stage 2 today.

I remind committee members that, when there is a vote on an amendment, they should indicate clearly which way they are voting by raising their hands. It just makes our lives easier in recording the vote.

Section 7—Duty to have regard to island communities

The Convener: Amendment 43, in the name of Jamie Greene, is grouped with amendments 45, 73, 90 and 21 to 23.

Jamie Greene: First of all, I will give the committee some background about my amendments 43 and 45. Amendment 43 simply seeks to add the word “due” to the phrase “have regard to”. Although it might seem like a very minor addition, the phrase “have due regard to” is often used in contracts to give additional clarity.

There has been a lot of discussion about what the phrase “have regard to” actually means, and I am keen to hear what the minister thinks it means in the context of the bill. With amendment 43, I am seeking to change the phrase to “have due regard to” in order to strengthen things slightly by emphasising how strong that regard should be and the range of issues that one must have regard to. It is, as I have said, a very minor addition.

Amendment 45 seeks to add the phrase

“insofar as it is capable”

to section 7(1). The reason for that is that a duty to have due regard to all policies and services, and all decisions that are made, is a wide-ranging one. In my view, there might be situations in which a body or authority simply does not have the capability to have regard to everything. The use of the phrase

“insofar as it is capable”

will make it clearer that there is no expectation on a body to have regard to islands in cases in which,

perhaps for reasons relating to resources, it simply cannot. In my summing up, I might provide an example but, in the interests of brevity, I will leave it at that for now. I am keen to hear what other members think about the proposed additional language.

Amendment 73 seeks to insert in section 9 the phrase:

“For the purposes of this section, the relevant public authority may determine what constitutes compliance.”

It is more of a probing amendment. It raises the question of who decides whether there has or has not been compliance in relation to the duties under the act. Will compliance be a clear-cut thing? Will there be a list of metrics, actions, deeds, words that have to be used or steps that have to be taken? Will that be set out in guidance rather than legislation? I am trying to probe whether it is adequate for each local authority to feel that it has taken adequate steps to comply with the legislation or whether that will be independently monitored somehow, with the remit for that lying with some as yet unknown third party. At the moment, it is unclear who will decide what compliance is and how that will manifest itself. The wording that I have suggested would ensure that each public authority that is listed in the schedule to the bill could feel confident that it had taken the necessary steps to comply with the legislation.

It remains to be seen whether amendment 73 is suitable for that purpose in the context of the bill, but it is important to note that we have not addressed how compliance will be monitored and measured. Furthermore, the repercussions for non-compliance are a bit unclear.

Gail Ross’s amendment 21 and Tavish Scott’s amendment 23 seek to achieve the same thing through the insertion of additional wording. Amendment 21 seeks to add the words:

“each local authority listed in the schedule”.

I am not sure whether there are any issues of pre-emption. Given that both amendments seek to do the same thing, perhaps the members who lodged them can clarify which of them we should support.

I move amendment 43.

Colin Smyth: Amendment 90, in my name, would require relevant authorities to review and revise strategies and services as they saw fit in order to have regard to island communities. That is a sensible measure and it is in line with the rest of this part of the bill. As the bill stands, those bodies will be required to have regard to island communities in the future, but there is no provision in relation to existing strategies and policies. Clarification is required to ensure that any existing problems are addressed so that the section 7 duty can be complied with.

I have slight concerns about amendment 45, which I think might offer authorities a potential way out of fulfilling their duties. For example, would financial pressures render a relevant authority incapable? Likewise, I am concerned that amendment 73 could create a loophole, as it seems to enable authorities to determine whether they are compliant.

I support amendment 21, which concerns a recommendation that the committee made. Amendment 22 is also fine, as it tidies up the language.

10:00

Gail Ross: I will speak first to amendments 21 and 22, in my name. As we said when we debated amendments 17 and 18 last week, it is clear that the six local authorities that have island interests have a strong desire to be statutory consultees for the consultation on the guidance that must be prepared in relation to the island-proofing duty in section 7.

In line with those views and the committee's recommendation in its stage 1 report, amendment 21 would require the Scottish ministers to consult the six local authorities that are listed in the schedule. Like the amendments that we considered last week, amendment 21 future proofs the consultation requirement in case new local authorities are added to the schedule in future.

As a consequence of amendment 21, amendment 22 is a technical amendment that adjusts section 10(2)(b) to make it clear that persons other than local authorities who represent the interests of island communities must be consulted.

When I first read the amendments in Jamie Greene's name, I was unsure about the effect that they would have. That was particularly the case for amendment 45, because the phrase

"insofar as it is capable"

might have the effect of limiting and maybe even watering down the island-proofing duty. I look forward to hearing the example that Jamie Greene said that he would give when he sums up the debate.

The effect of amendment 73 would seem to be to make the relevant authority the sole authority that would determine whether something was compliant. Will Jamie Greene explain how his proposed approach would work alongside the guidance?

Amendment 23, in the name of Tavish Scott, would require the Parliament to approve the island-proofing guidance. I understand that that might be helpful and I accept that there are good

intentions behind the amendment, but I am concerned that the approach might restrict the ability of island communities to input when guidance was being developed. I will wait to hear what Tavish Scott says about that.

I say to Jamie Greene that amendment 21 would not have the same effect as amendment 23. Amendment 21 is about consulting local authorities as we develop the guidance, whereas, as far as I can see, the effect of amendment 23 would be that every change to the guidance would require a parliamentary vote, which I think would limit community involvement.

Tavish Scott (Shetland Islands) (LD): Amendment 23 would require the Scottish ministers to lay before the Parliament for its approval guidance on the section 7 duty.

I reflected on the debate that the committee had last week about the exhaustive—or otherwise—nature of the islands plan and matters therein, and I absolutely take the committee's point that there is a debate to be had about whether to include a list. The example of broadband works both ways. Should there be a right to broadband coverage of a certain level in the islands? Absolutely, but would a provision on coverage of a certain level be future proofed, given that technology moves on? There is certainly a debate to be had, and I entirely take the committee's views on that.

It follows that if so much is to be in guidance—and a theme of the bill appears to be that much will be done by way of guidance—it is appropriate that the Parliament should have an opportunity to see and approve the guidance.

I entirely take Gail Ross's point. Amendment 23 is not intended in any way to restrict the ability of islands, or of any group, organisation, business or local authority, to take a view on the guidance and to get involved with Government in ensuring that the guidance is correct and appropriate for the islands. Such restriction would be entirely counterproductive.

Nevertheless, the Parliament should have a role in approving the guidance. The Parliament sees an awful lot of guidance, and given how little detail is in the bill and how much will come through in guidance, it is appropriate that we test the arguments as to how the Parliament oversees the process and carries out its proper role in scrutinising ministerial activity. I commend amendment 23 to the committee.

Stewart Stevenson: I support what Gail Ross and Colin Smyth said about amendments 45 and 73.

On amendment 43, we must consider how the insertion of the word "due" qualifies the word "regard". I take it as restricting rather than

expanding the regard that must be had—only “due regard” must be had. I cannot see an argument for adding “due”.

Mike Rumbles: With due respect to Jamie Greene, his amendments would not achieve what he thinks they would. The bill will be weakened if we agree to them, so I urge him not to press amendment 43 and not to move his other amendments.

Tavish Scott is absolutely right with his amendment 23; Parliament should approve the guidance by resolution, because a lot is going into the guidance. The bill is an enabling bill, and we had a discussion about what it should include. I cannot see anything wrong with the minister producing the guidance and then putting it before Parliament so that we can have our say on it. We can only say yes or no; it is not as though we will be interfering with the guidance, as it were. That is a proper role for Parliament, so amendment 23 is absolutely essential. I also support the other amendments in the group.

John Finnie: I will restrict my comment to Tavish Scott’s amendment 23. As Mike Rumbles said, the bill is a piece of enabling legislation and the amendment would be complementary to it. Importantly, it would give Parliament joint ownership, which can only be positive. Therefore, I support Tavish Scott’s amendment 23.

Gail Ross: I have a question about amendment 23. Would Parliament approve the guidance when it is complete, or would it have to approve every small change as the guidance develops? It will be a flexible rather than a fixed document. How many times does the member expect it to come back to Parliament?

The Convener: Is Tavish Scott asking to make an intervention?

Tavish Scott: I apologise, convener. I am not sure what the correct protocol is in this committee or whether it involves waving one’s hands around.

The answer to Gail Ross’s question is that it would be logical for the guidance to come to Parliament once. It cannot be sensible for this committee or the Parliament to be bogged down in considering every change, as she rightly points out. Therefore, my contention is that approval of the guidance would happen at the stage when the minister wished it to happen.

The Convener: Would the minister like to say a few words?

Humza Yousaf: Thank you. I have almost a page and a half of rebuttal of Jamie Greene’s amendment 43, but I do not think that I could put it as succinctly as Stewart Stevenson managed to, which is a first. I agree with his central argument about the use of “due” and “due regard” and do

not think that the amendment does what Jamie Greene intended it to—it weakens the regard that an authority would have to have to island communities. I will not go through them, but there are many examples in our legislation where we use “regard” as opposed to “due regard”, and it has the desired effect. I will not spend more time on amendment 43, other than to say that I associate myself with the remarks of Mike Rumbles and Stewart Stevenson.

Amendment 45 would, it seems, have the effect of limiting the duty to circumstances in which the authority believed that it had the ability or resource to undertake the requirements of the duty. Other members have asked whether that could be a good way out in the context of financial pressures and so on. I believe that the amendment would limit the impact of the section 7 duty on public authorities, and it would create a really unhelpful subjective test that might result in public bodies behaving differently in different localities.

Amendment 73 provides that “the relevant public authority” would determine what was compliant with the section 7 duty under section 9. I am not entirely sure what the intended effect is. Although I believe that an appeal or review mechanism is not required in the bill, the amendment might limit what we could put in the statutory guidance on any potential dispute resolution mechanism, or it could mean that each public authority would have discretion in relation to how to interpret or implement such guidance. I ask Jamie Greene to withdraw amendment 43 and not to move his other amendments.

Amendment 90 was lodged last Thursday by Colin Smyth, and I am grateful for his outline of the need for it, as he sees it. However, I cannot support it in its current form. The amendment is almost identical—word for word—to the provisions in paragraph (5) of regulation 5 of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. Although I appreciate that the equalities duty and the equality impact assessment legislation are similar to the island-proofing duty in section 7 and the assessment process in this bill, they are not the same. We cannot just lift a provision from one piece of legislation and slot it into another without giving a good deal of consideration to the impact that it will have. In this case, I do not think that the proposed provision would be fit for purpose.

I will first outline why I do not think that the amendment would be fit for purpose, but I will return to a feature of it that I think is worthy of further consideration. The amendment contains a requirement to review and, where necessary, revise any policy, strategy or service. I would argue that that is not needed, because it is already incorporated into the bill process. The duty in

section 7 already covers the redevelopment of policies, strategies and services. Where a policy, strategy or service is to be redeveloped, the section 7 duty applies. A section 8 island communities impact assessment might need to be carried out. If not, the section 9 compliance provision requires authorities to take other steps that are needed. Sections 8 and 9 act as alternatives, depending on the circumstances.

The amendment that Colin Smyth has lodged seems to require a third process, which is not covered by section 8 or section 9. We would have to make significant changes to the bill to make that work—changes that are not needed, as it works in that way already. That is why I cannot support amendment 90.

However, the duty to review policies, strategies and services as expressed by amendment 90 is an interesting proposal. The requirement to have on-going flexibility and proportionate review processes seems a reasonable and sensible proposition. It would seem to be good practice that public authorities should follow. I would certainly be happy to see how we could cover it in guidance. It could also perhaps have another benefit. I know that the committee and others are keen on retrospective island proofing—for many reasons, I am not, but perhaps the suggestion of an on-going review process is a good compromise position. Asking relevant authorities to make such arrangements as they consider necessary to review any policy, strategy or service to ensure that it complies with section 7 would seem to provide the same benefit as a retrospective assessment process.

I ask Colin Smyth not to move amendment 90 but instead to work with the Government to come up with a fit-for-purpose review provision at stage 3 that captures the spirit of what he was trying to do.

I am happy to support amendments 21 and 22 from Gail Ross. They meet the recommendation of the committee to make each local authority mentioned in the schedule a statutory consultee in relation to statutory guidance.

I turn to Tavish Scott's amendment 23. I fully understand the intention behind the amendment. Indeed, we have had similar amendments in legislation throughout the history of this Parliament, including, I am sure, when he was a minister, and I dare say that we will have more in the same vein. I accept that the content of the guidance will be key to understanding what the expectations on public bodies are in practice when it comes to implementing and delivering the island-proofing duty. As Mr Scott knows, we are of course required to consult. We are expected to do so meaningfully, and we are wholly committed to developing the guidance in collaboration with the

relevant authorities and communities. The guidance will be detailed but will not stand still. It will need to be quick and flexible to respond, as Gail Ross said in relation to how duties are being used across Scotland. Given that the island-proofing duty is new and innovative, I anticipate that the process for getting it right in the longer term might well need to adapt and change with experience. Moreover, where we see good practice emerging, the guidance should be updated to reflect that practice.

The guidance will be a working document or series of documents that might need to be quickly adapted to what is happening, especially in the early days. We want to encourage innovation among public bodies and we want our public bodies to be flexible and responsive to the needs of island communities. This is not just about legislation but a culture change. I will of course wait to hear Mr Scott's summing up but, as I read amendment 23, it would require every iteration of the guidance to come before Parliament for approval. That would not allow us to be responsive to such changes. In my view, it runs the risk of reducing flexibility and adaptability, and it might well slow things down.

It is not normal practice for the Parliament to approve guidance, for the very good reason that the Parliament has limited time. To look at detailed guidance every time that it changed would be quite a burden. However, I want to be as helpful as I can. Given the innovation involved—and bearing in mind what Mike Rumbles and Tavish Scott had to say—I would be willing to bring before Parliament the first version of that guidance in draft before it is published and implemented so that Parliament could contribute to the development process. I hope that that is a fair compromise.

I ask Tavish Scott not to move amendment 23, because of the concerns that I have outlined. I hope that my proposal to bring the draft guidance to Parliament for comment is a good compromise that gives him reassurance.

10:15

Jamie Greene: I thank members for their feedback and comments, which were useful and helpful. It is absolutely not my intention to weaken the bill, which is a good bill that we are all working hard to strengthen as best we can. In my experience, the addition of the word "due" has always strengthened and not weakened, but I accept Stewart Stevenson's point about amendment 43 that it may be interpreted as restricting rather than expanding the phrase "having regard to".

With amendment 45, I am trying to make an important point. I am in no way trying to give authorities that are listed in the schedule a loophole or wriggle room that would allow them not to fulfil their obligations under section 7. That is a really important point. Given the scale and the broad range of agencies, in my head there are hypothetical examples in which an authority may be unable to “have regard to” an island community in its actions, for a number of reasons. I promised to give some examples, so I will do so. I am happy to be corrected on those, so members should feel free to intervene if they think that I am wrong.

One of the agencies that is listed in the schedule is David MacBrayne Ltd, which operates CalMac Ferries. I know of a situation in which it has made timetabling changes that will affect an island community off in the west coast, but it obviously takes direction on timetabling from decisions that are made by Transport Scotland, and therefore might have been unable to do otherwise on that.

John Mason: Will the member take an intervention?

Jamie Greene: Just let me make this point, then I will take the intervention.

That decision will inevitably have a negative consequence for islanders and the island community, but nonetheless the listed body—David MacBrayne Ltd—was unable to have regard to the island because the decision was made by another body. That is an example of where the additional wording—

“insofar as it is capable”—

will allow a body to make decisions based on the limitations of its decision-making ability.

I will take an intervention from John Mason in a second, but another example is VisitScotland. If, as a result of funding restrictions or a wider general central Government policy to reduce the number of buildings or staff, a visitor centre on an island was closed, VisitScotland would be implementing that decision but not necessarily introducing it. In that situation, how could VisitScotland have regard to the island community? It is about an organisation’s capability to have regard to island communities when the decisions are external to it.

My final example relates to colleges. As a result of a central policy of consolidation, a study facility on an island might be closed, as has happened in Ayrshire, for example. Would a college be able to have regard to island communities if it was being forced by another hand to make decisions that would have a negative impact on an island?

I will give way to John Mason.

John Mason: I first want to say that I agree with amendment 43 that “due regard” is better than “regard”. However, it seems to me that “having due regard” means “taking into consideration” or “thinking about” and those kinds of things, and so does not guarantee that the bodies will then do what island communities want. I therefore wonder whether amendment 45 is necessary and whether it would actually change anything. Indeed, it would give authorities a kind of excuse to get out of things, whereas under the bill as it stands they will have to “have regard to”, listen and consider, which will not, however, bind them to doing what someone else wants.

Jamie Greene: I accept that point, which is important. The island-proofing concept—that the bodies that are listed in the schedule will “have regard to” island communities—does not necessarily mean that they will always be able to mitigate issues.

Stewart Stevenson: Will the member take a brief intervention?

Jamie Greene: I will finish commenting on John Mason’s intervention, first.

The point that I am making with amendment 45 is that it might not always be possible for an authority or body to have regard to island communities if doing so is outside its capability, such as in the examples that I gave.

Stewart Stevenson: On amendment 45, were the words

“insofar as it is capable”,

to be included, we would end up saying, in effect, that a relevant authority may disregard island communities in carrying out its functions if it is not capable. That is what section 7 will mean if the amendment is accepted. That would simply be a blank cheque for a return to the status quo, and I could not possibly accept that.

Jamie Greene: I am saddened that Stewart Stevenson cannot accept amendment 45. However, I understand his point about that interpretation of the words that I have used being an unintended consequence.

I would, though, like the minister to reflect on the point that I am trying to make with amendment 45, which is that there will be decisions that bodies that are listed in the schedule will adhere to that are outwith their control. I do not think that those bodies’ ability to comply with section 7 is adequately catered for in the bill. Nevertheless, I am minded not to move amendment 45.

Similarly, for amendment 73, I have made the point that I would like to think that the guidance will include very clear instructions to public authorities on what compliance is—what it means to each

body and how they can interpret it for the ways in which they operate individually, in terms of their working practices, how they make decisions and policies, and how they develop strategies with regard to islands. However, I am minded also not to press that amendment.

I will, however, consider whether to do so subject to what Tavish Scott decides to do with amendment 23. I was quite taken with his argument that Parliament should have the opportunity to review guidance. If he chooses to take the minister's offer to present a draft to Parliament, I would accept that, but if he were to press the amendment, I would be minded to support it.

Thank you.

The Convener: Jamie—will you please clarify whether you are pressing or seeking to withdraw amendment 43?

Jamie Greene: I will press amendment 43.

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Peter (North East Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
Mason, John (Glasgow Shettleston) (SNP)
Mountain, Edward (Highlands and Islands) (Con)
Smyth, Colin (South Scotland) (Lab)

Against

Finnie, John (Highlands and Islands) (Green)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Rumbles, Mike (North East Scotland) (LD)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 5, Against 6, Abstentions 0.

Amendment 43 disagreed to.

Amendments 44 and 45 not moved.

The Convener: Amendment 5, in the name of the minister, is grouped with amendments 46 to 59 and 86.

Humza Yousaf: I will speak to my amendment 5 first, and then to the other amendments in the group.

The Delegated Powers and Law Reform Committee, in its stage 1 report, recommended a minor change to the power in section 7(3). It recommended that the bill should be amended to include

“a power to vary the description of an entry”

in the list of relevant authorities in the schedule. That would be in addition to the existing powers to remove an entry from the list or to add one.

Amendment 5, which has been lodged in my name, will give effect to that recommendation by providing a new power to vary the description of an entry in the schedule. Any regulations that would be made by virtue of that new power would be subject to affirmative parliamentary procedure. I hope, therefore, that members will support amendment 5.

I would find it helpful to hear from Jamie Greene his thinking about amendment 46. My reading of the amendment is that it seeks to give ministers a very wide-ranging subordinate legislation power to “amend the functions” of relevant authorities that are set out in legislation

“insofar as they relate to island communities.”

It is not clear what sort of function the member has in mind for use of such a provision.

In addition, there do not seem to be any criteria for the exercise of the power or any real process envisaged before ministers can make such regulations. Such a wide power—dare I say it, a Henry VIII power?—might normally be avoided because they are often seen to give the Government too much power. There have been many previous occasions when Parliament has been somewhat loth to give the Government such powers. On that basis, perhaps somewhat counterintuitively, I ask Jamie Greene not to move amendment 46 and the consequential amendment 86.

I turn to amendment 47, in the name of Colin Smyth. As with amendment 46, I would like to hear the reasoning behind it. On the face of it, amendment 47 is unnecessary. It appears that it would allow those that are contracted to provide services for relevant authorities to be added to the schedule, which would make them subject to the island-proofing duty under section 7. However, section 7(3), already allows “any person” to be added to the schedule.

What amendment 47 cannot do is remove overarching competence or restrictions that limit use of that power. As we discussed during stage 1, that is not required. The committee agreed with that assessment and accepted that the Government would not be able to require public or private companies to island proof their activities. It is clear that section 7 of the bill will require the relevant authorities that create the policy, strategy or service and then deliver it through commercial companies, to have regard to the needs and circumstances of island communities when drawing up a contract.

Amendments 48 and 49 seek to add the Boundary Commission for Scotland and the Local Government Boundary Commission for Scotland to the schedule. The effect of that would be that those bodies would be required to comply with the duties that are set out in part 3 of the bill. Unfortunately, the Boundary Commission for Scotland is a reserved body, so it cannot be added to the list. I therefore ask Mr Smyth not to move amendment 48.

The Local Government Boundary Commission for Scotland already has a specific set of duties in legislation. Given its independent role in relation to boundary reviews, it seems that it would not be appropriate to include it as a relevant authority. For that reason, I ask Colin Smyth not to move amendment 49.

The next batch of amendments in the name of Colin Smyth—amendments 50 to 58—seek to make changes to the bill’s schedule by adding the remaining NHS boards. In principle, I have no objections to those amendments, but before confirming the Government’s willingness to accept them, I would appreciate hearing the member’s reasons for lodging them.

Amendment 59 in the name of Colin Smyth is in a similar vein, in that it seeks to change the list of bodies in the schedule in relation to integration joint boards. As with amendments 50 to 58, we have no real objection to that, apart from a minor drafting point, so I would appreciate hearing the member’s thinking behind the amendment before I can confirm the Government’s willingness to accept it. The minor drafting point is that amendment 59 refers to an order that established the board, when it could be better future proofed if it were to refer to an order under the Public Bodies (Joint Working) (Scotland) Act 2014. I am happy to work with the member to address that point if he chooses not to move amendment 59 at this stage, with a view to bringing back an appropriately technically drafted amendment at stage 3.

I move amendment 5.

Jamie Greene: I thank the minister for his comments. I do not wish to give unnecessary additional power to ministers—that is far from my intention—but I must point out that a similarly worded amendment to the recent UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill was welcomed by ministers and accepted by the Finance and Constitution Committee. I think that I lodged that amendment, so I am not making a political point.

Amendment 46 is on a technical point on which I was trying to be helpful. If the minister says that it is not helpful, I am happy not to move it.

Section 11(3) will allow ministers to add a body to or remove an entry from the schedule, which

seems to be straightforward. It is perhaps not reflected in the language of amendment 46, but I am trying to make the point that the bodies that are listed in the schedule could change in nature, name and function, so it would be helpful if the minister had flexibility to amend the agencies that are listed without necessarily taking them off the schedule or having to re-add them if they were to change. An example is the Forestry Commission Scotland: its structure might change, but that is not reflected in the schedule.

10:30

There may be bodies in the schedule that currently have functions that relate to island communities, but they may not have such functions in the future were their remit to change. At that point, would we want to keep them in the schedule, so that they still

“must have regard to island communities”

rather than being able only to remove them? Again, I am happy to accept, if the wording of amendment 46 would not achieve my aim, that the issue could be looked at again at a later stage.

Amendment 86 is a technical amendment. It would replace the reference in section 21(2)(a) to section 7(3) with a reference to section 7. In retrospect, I think if all of section 7 were subject to affirmative procedure, that would be an onerous task, so I will probably not press that amendment.

Colin Smyth: Amendment 47 in my name aims to widen the list of relevant authorities to include publicly funded service providers. Publicly funded service providers often provide vital services for island communities. Given that they receive public money, they should be required to have the same regard to island communities as public bodies. Serco NorthLink is an example of an organisation that would fall into that category. It provides vital services to island communities. As such, it should be required to island proof its policies in the same way that a public body would be required to do.

Amendment 48 would add the Boundary Commission for Scotland to the schedule of relevant authorities. The addition would strengthen the protection of representation and participation in island communities.

Amendment 49 has the same aim, and would add the Local Government Boundary Commission for Scotland to the schedule. [*Interruption.*]

The Convener: Make sure that you speak up a bit when you ask for an intervention, Jamie.

Jamie Greene: I apologise. I thought that Colin Smyth had heard me.

Amendment 47 is an interesting one. We debated in committee at great length whether

subcontractors would be covered in the legislation or whether they would need to be specifically referred to.

Colin Smyth makes an interesting point about the need for the duty to relate to all parties involved in the delivery of public services in island communities, but I am unclear about the consequence of amendment 47 on subcontractors to the public bodies that would be subject to the legislation. Will the member confirm whether he has given any thought to that issue?

Colin Smyth: The first thing to point out is that amendment 47 has been requested by island authorities and other local authorities. They are concerned that, because subcontractors receive public money, their being covered under the bill would strengthen the requirement for them to

“have regard to island communities”

in the same way that public bodies “must have regard”. The amendment would strengthen the existing provisions.

I take on board what Jamie Greene and the minister have said, and I will listen to what members say during the debate.

Stewart Stevenson: Colin Smyth identified Serco NorthLink as an example. That company provides services to both the private and the public sectors throughout the United Kingdom and beyond. Does he mean Serco NorthLink? Does my question simply illustrate the difficulty of applying amendment 47 in the way that he describes?

Colin Smyth: I do not entirely recognise the point that Stewart Stevenson is making. That company very much provides island community services, and the aim of amendment 47 is to cover such companies.

John Finnie: I support amendment 47. Does Colin Smyth agree with me that the amendment would be entirely consistent with, for example, the guidance—I forget the specific title—that the Scottish Government gives to people on fair work provision? We want to commend good practice through public procurement.

Colin Smyth: John Finnie makes a very valid point. The fair work conditions should be expanded beyond public bodies to cover, say, bus services—on which there will be a debate this afternoon—or ferry provision. More and more services are being subcontracted to and provided by bodies that are not classed as public bodies, and there are deep concerns about the provision of some of those services. As a result, the aim of amendment 47 is to strengthen existing provision.

I have already touched on amendments 48 and 49. On amendments 50 to 58, I think that anyone

who represents a rural area will understand that people get services not just from health boards that geographically cover the area in question but other health boards. People often have to travel outwith their rural area to receive healthcare, and these amendments ensure that the bill covers all national health service boards that will ultimately provide services to island communities. Those that provide no services to those communities will not be subject to any additional burdens, as none of their work will impact on them, but, as I have said, I do not think that it is reasonable to include in the bill only health boards that geographically cover island communities, given that services are often provided by other health boards. The same goes for amendment 59, which covers integration joint boards.

Jamie Greene: Will the member take an intervention?

Colin Smyth: Yes.

Jamie Greene: This is another really interesting addition to the debate about other bodies that are not mentioned in the schedule, and I think that the member is right to bring the matter up. As we know, other bodies deliver services on behalf of NHS boards that cover islands. However, the question is whether those services are being provided under contracts between health boards. In that respect, what regard have you given to the legal and transactional relationships between health boards? After all, it is the home health board that is responsible for delivering a service; however, if it cannot do so, it will subcontract that responsibility to another health board. In such cases, is it fair to make that third party conform to the legislation when it is the home health board or IJB that is delivering the service on behalf of the patient? I am keen not to put onerous responsibilities on health boards that do not cover island communities and which are doing the best they can under subcontracted arrangements.

Colin Smyth: It is a valid point, and I am sure that it will be discussed in the debate. My concern is with the existing loophole in which a health board that does not geographically cover an island community might not ensure that its policies are fit for purpose when it comes to providing a particular service to someone from that community. It is almost a belt-and-braces approach. If there is clear evidence that this matter is covered under the home health board’s responsibilities, I will consider the member’s point as valid, but I have not been convinced by the argument to date.

I have no problems with amendments 5 and 46, which appear to do the same thing. We will see what happens when it comes to the vote.

Mike Rumbles: In the 19 years since I was first elected to this Parliament, I have never seen a

minister refuse the Henry VIII powers that the member is proposing to give through amendment 46, and I congratulate this minister for doing so. I cannot believe that this amendment has been lodged, and I say “Well done” to the minister for recognising that fact and for refusing those powers. I really hope that amendment 46 is not moved, but, if it is, I will most certainly vote against it.

As for amendments 50 to 58, they are well intended, but I, too, am reluctant to put any more onerous tasks on to health boards. However, I simply wanted to make the point about amendment 46 and to ensure that my congratulations to the minister for taking this unique position are put on the record.

The Convener: I am not sure that I would labour the point too much, Mike. It might come back to bite both of you.

Tavish Scott: I will speak to Colin Smyth’s amendments 50 to 58. He makes a really strong point. Some of us represent areas where patients have to go to health boards in other parts of Scotland, and that happens pretty regularly. Colin Smyth is simply asking that that is taken into account. They are good amendments. I could give you—and Liam McArthur and Gail Ross could probably do the same—a huge number of examples of patients who have to go to Aberdeen, Edinburgh or Glasgow for different procedures. Those of us who represent those folk sometimes have to make representations to the relevant health board about what has happened or about some difficulty to do with transport or their treatment.

It is not a criticism at all of those health boards; it is simply that we ask, as Colin Smyth’s amendments rightly do, that that is taken into account.

John Mason: I was fairly convinced by Jamie Greene’s argument, which I thought was a strong one. Would it be the responsibility of NHS Shetland to tell NHS Greater Glasgow and Clyde or NHS Grampian, for example, to take the island factor into account by, for example, not giving the patient an appointment first thing on a Monday morning?

Tavish Scott: The island health boards—and no doubt NHS Highland does the same—certainly make best provision in that regard, but it is not a foolproof system and the nature of health board bureaucracies means that you do not necessarily get to the right person. I suggest to you—I am sure that you have similar experiences as a constituency member—that when an MSP’s office sends a letter or an email that simply says, “Mrs Mason has not been able to get treatment at the right time—she is coming all the way from

Shetland. Would you please chase that up?”, it has some effect. We are just seeking to make sure, through Colin Smyth’s amendments, that that issue is taken into account.

Liam McArthur (Orkney Islands) (LD): I associate myself with Tavish Scott’s comments about Colin Smyth’s amendments. In response to John Mason’s intervention, I think that one of the problems is that at the point of transfer, patients become patients of NHS Grampian, for example. The extent to which the island health boards can intervene is therefore limited. I am sure that there is dialogue, but essentially, the responsibility passes to the mainland health board. There is good reason for that, but it underscores the importance of what Colin Smyth’s amendments are driving at.

Stewart Stevenson: I have constituents who are sent by health boards in Scotland to have treatment outwith Scotland and indeed outwith the UK. Great Ormond Street hospital, for example, is a regular outpost for specialist care for young people. I have had constituents who have gone to the Netherlands; others have gone to Leeds. I am not objecting to extending the list, but we are excluding things and I am slightly conflicted about what is going on here.

Tavish Scott: I take Mr Stevenson’s point; I also have constituents who travel outwith Scotland for medical procedures of one kind or another. The logical answer is that we are dealing with a Scottish bill in the Scottish Parliament in relation to Scottish public bodies. That would be my only argument in relation to that point.

I simply ask the committee to reflect on Colin Smyth’s amendments, because I think that there is considerable merit in them.

Mike Rumbles: I place on record that I am also now convinced by the argument that my colleague has made and I will be supporting Colin Smyth’s amendments.

Tavish Scott: That just goes to show that the Liberal Democrat script is never written until the last speech is made. I would simply ask the committee to reflect on Colin Smyth’s reasoned arguments. Certainly from my constituency perspective, the amendments would be enormously helpful.

Humza Yousaf: After hearing such gushing praise from Mike Rumbles, I am reconsidering my opposition to Jamie Greene’s amendment. Having reconsidered it, however, I think that we would still object. I am not convinced, despite Mike Rumbles’s best efforts, that these amendments to the bill are needed. I therefore ask the member not to move them.

Having listened carefully to Colin Smyth, I still believe that his amendment 47 is not necessary. He gave the example of Serco. The Serco contract would, in essence, be island proofed, because Scottish ministers would be the ones to award it. Therefore, I am not convinced by that example. Indeed, I can think of other examples that would not be within the remit of the bill. However, I think that there are still some questions to be asked around placing a duty on private companies, and I know from its stage 1 report that the committee agrees with me on that point.

In relation to Colin Smyth's amendment 48, the Boundary Commission for Scotland is a reserved body and therefore cannot be added to the list of bodies in the bill's schedule, so I ask him not to move it.

I listened carefully to an insightful and interesting discussion from members who represent rural and island local authorities. Therefore, having listened to the reasoning for Colin Smyth's amendments 49 to 59, which add bodies to the schedule, I am happy to support them, subject to the minor drafting change to amendment 59 to which I referred earlier. Perhaps we can work on that.

I ask members to support amendment 5 in my name.

10:45

Amendment 5 agreed to.

Amendment 46 not moved.

Amendment 47 moved—[Colin Smyth].

The Convener: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Rumbles, Mike (North East Scotland) (LD)
Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Mountain, Edward (Highlands and Islands) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 3, Against 8, Abstentions 0.

Amendment 47 disagreed to.

Section 7, as amended, agreed to.

Schedule—Duties in relation to island communities: relevant authorities

Amendment 48 not moved.

Amendment 49 moved—[Colin Smyth].

The Convener: The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Rumbles, Mike (North East Scotland) (LD)
Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 7, Against 4, Abstentions 0.

Amendment 49 agreed to.

Amendments 50 to 58 moved—[Colin Smyth]—and agreed to.

The Convener: Amendment 59 is in the name of Colin Smyth.

Colin Smyth: I am sure that the language could be tightened up at stage 3 if there are concerns about the wording, but I will move the amendment at this stage.

Amendment 59 moved—[Colin Smyth]—and agreed to.

Schedule, as amended, agreed to.

Section 8—Island communities impact assessment

Amendment 60 not moved.

The Convener: Amendment 61, in the name of Colin Smyth, is grouped with amendment 65.

Colin Smyth: These very minor amendments are edits to the wording of the provisions on impact assessment. They have come from discussions with local authorities. In both instances, the wording was considered to be too subjective: the term "significantly" is not clear and the inclusion of "in the authority's opinion" ultimately allows the authority in question to determine whether an impact assessment is necessary. There are potential get-out risks that undermine the purpose of the creation of impact assessments, hence the two very minor amendments.

I move amendment 61.

Peter Chapman: I support Colin Smyth's amendment 61, which is useful. The change that he proposes is small but important. A lot of today's amendments seem to bring me back to the same point, which is that this is a community empowerment bill. Local action groups, community groups and constituents should be able to suggest issues with legislation that they feel warrant an island impact assessment: it should not be just down to the authority's opinion.

However, I do not agree with amendment 65, which would remove the word "significantly". People who live on islands will always have different experiences from those who live on the mainland. A piece of legislation has to have a significant impact on an island community to warrant an island impact assessment, therefore I will not support amendment 65.

Liam McArthur: I thank Colin Smyth for lodging his amendments. They very helpfully try to address a problem with the bar being set too high—that is particularly true of amendment 61, which would delete the reference to "in the authority's opinion". Removal of that phrase would at least avoid some of the problems that would be created if public authorities were to be in constant conflict with communities that might have a different perspective on the policy proposal or piece of legislation that is being introduced.

I have some sympathy with Peter Chapman's comment on the word "significantly". Every time that the addition or removal of that word arises in the context of legislation, we have a debate about how subjective it is. I would be the first to accept that, however well crafted the legislation might be, it is perhaps likely to have a different impact on island communities than on mainland communities.

The more important amendment in the group is amendment 61, which, as I said, would remove the scope for public bodies to be arbiters on what falls within the ambit of the legislation. I would be very keen to see that agreed to.

Stewart Stevenson: If the decision is not to be based on "the authority's opinion", whose opinion should it be based on? Removing that wording, as amendment 61 would do, perhaps leaves that somewhat uncertain. The same is true of the term "significantly", which would be removed by amendment 65.

We must read the amendments in the context of the provisions in section 9. Those relate to compliance with the duty in section 7—which we have just agreed to—that requires not "due regard" but "regard" to be had by the relevant authorities, which are those that are described in the schedule. We cannot detach the amendments

that we seek to make to section 8 from the overriding requirement in section 9 to implement, in a particular way, what is in section 7, and to provide evidence of what is being done.

Therefore, I am not yet persuaded that Colin Smyth's amendments 61 and 65 are helpful. Amendment 61, in particular, carries some danger that it would introduce lack of clarity, whereas, at the moment, the bill is perfectly clear on where responsibility lies.

Jamie Greene: The discussion is interesting, and Colin Smyth has proposed some interesting amendments. I am minded to support amendment 61. Let us remember that section 8 is about preparing impact assessments. The inclusion in the bill of the words "in the authority's opinion" almost does what my previous amendments sought to do—to introduce some subjectivity to the authority in deciding whether an impact assessment should be done. We have just agreed that that is not the right way forward. I would be minded to remove that subjectivity by removing the words "in the authority's opinion"; that would have a positive effect on section 8.

Amendment 65 concerns the phrase "significantly different". Authorities will always have decisions to make in which the outcome will be different on islands compared with the mainland. The inclusion of the word "significantly" means that an impact assessment would be merited; without it, an island impact assessment might have to be done for every decision that is made across all levels of every authority. That would apply to all the authorities—there were 66, but there are more now—in the schedule, which would place unparalleled amounts of work on those bodies. The term "significantly" is reasonably well defined, which means that if something is sufficiently great or noteworthy it would require or merit an impact assessment. The removal of "in the authority's opinion" and the retention of "significantly" go hand in hand, and both would have a net positive effect on section 8. I am minded to support amendment 61, but not amendment 65.

John Finnie: I align myself entirely with Stewart Stevenson's comments about the phrase "in the authority's opinion". As someone who represents the area, it could be easy for me to discount that. However, as Stewart Stevenson said, we should look at the very first line of section 8, which states:

"A relevant authority must prepare".

Obviously, the authority will have to have regard to a number of factors, but I do not think that the phrase "in the authority's opinion" is redundant, and I do not think that it should, in itself, be restricting. I will not support amendment 61, in the name of Colin Smyth, but I will support amendment 65.

Humza Yousaf: I challenge the premise that the amendments in the group are minor. Their impact could be significant. I welcome the explanations by Colin Smyth and other members of the amendments, and their opinions on them. Amendment 61 would remove the phrase “in the authority’s opinion” from the bill. I do not agree that that amendment is required but, as Stewart Stevenson said, it would take away the phrase but not replace it with anything.

The decision to undertake an impact assessment will always require a subjective judgment. When a duty of that kind is placed on a public body in legislation, it is entirely appropriate that the public body should make the initial judgment of the impact of its policies. The guidance under section 10 makes it clear that the opinion should be based on a sufficient screening process that provides that those persons who may be affected by a policy, strategy or service have the opportunity to provide input. I hope that that addresses an element of Liam McArthur’s concerns.

Stewart Stevenson: The bill refers to a policy, strategy or service that,

“in the authority’s opinion, is likely to have an effect”.

If we agreed to amendment 61, we would be leaving in the words “is likely to have”. In other words, someone would have to exercise judgment—that is what “is likely to have” requires—but without the words “in the authority’s opinion” it would no longer be clear who would exercise that judgment and we would have difficulty in holding anyone to account for decisions that were made. Is that not the crux of the issue, minister?

Humza Yousaf: It is entirely the crux of the issue, which I was about to come to. Stewart Stevenson is right to make that point. At some point, a decision absolutely has to be made.

11:00

Mike Rumbles: Contrary to what Stewart Stevenson just said, surely if it is the authority’s opinion that something could have an effect on an island community, another organisation—or the community itself—might take a different view, but those people’s views might be overridden. If we remove “in the authority’s opinion”, it is absolutely clear, because the provision would simply read:

“A relevant authority must prepare an island communities impact assessment”

in relation to something

“which is likely to have an effect on an island community”.

As the bill is drafted, there is quite clearly a get-out clause for the authority.

Humza Yousaf: I disagree slightly with you. If Colin Smyth’s amendment sought to replace “the authority’s opinion” with “the community’s opinion”, you might well be right, but that would still not prevent the scenario that you articulate from playing out.

Let me return to the point that I made before Stewart Stevenson intervened. Section 10 makes clear that there is a screening process and provides that persons who are “likely to be affected” by any legislation, policy or strategy—that is, island communities—will have the opportunity to provide input.

As I said, the bill makes clear—as I think that it must do—who makes the decision, and amendment 61 would make that less clear. In practice, the public body would likely still be the one that made the decision, but amendment 61 would introduce an unwelcome element of doubt and uncertainty in that regard. This has been a fascinating debate, but I ask Colin Smyth to withdraw amendment 61. If he presses his amendment, I ask committee members not to agree to it.

Amendment 65, also in Colin Smyth’s name, would remove the word “significantly”. We have had insightful comments and a helpful debate on the proposal. The bill as drafted provides that the relevant authority

“must prepare an island communities impact assessment”

if a new or revised policy, service or strategy has an impact that is

“significantly different from its effect on other communities”.

I agree with Jamie Greene and other members who made the point that, given that Mr Smyth did not propose an alternative to “significantly”, the effect of amendment 65 would be that a new or revised policy, service or strategy that had any differential impact on an island community, no matter how small, would require an island communities impact assessment to be carried out. Such an approach could lead to unnecessary assessment of relatively minor changes. The removal of the threshold of significance would impose an undue regulatory burden on public authorities.

Let me give an example. One of the bodies that will now be in the bill, as a result of amendment 52, in Colin Smyth’s name, is NHS Fife. Are we saying that an island communities impact assessment should be undertaken for every policy, strategy and service decision in Fife? That seems to be wrong and burdensome. It has the makings of a bureaucratic nightmare.

John Finnie: The reality is that it is incumbent on everyone to consider all the factors that the Parliament wants them to consider. For example,

there are reserved issues to do with equalities, health and safety and the like. What is proposed could be a default position; it need not become a huge bureaucratic task. There has to be recognition of the impact of decisions about hospital appointments, for instance, on people in the islands. I do not think that it is unreasonable to ask bodies to consider the implications of their decisions.

Humza Yousaf: Let me go back to my point about NHS Fife. I suspect that most NHS Fife services, policies and guidance would have an impact on island communities that is different from the impact on the communities in Fife that the board predominantly serves. It would be a bureaucratic nightmare if the board had to do an impact assessment for everything. That is not the intention in the bill, and I do not think that the Parliament would want that.

The bill as introduced strikes the right balance. The section 7 duty will apply even where there is no requirement for an assessment, and section 9 provides that an assessment can be carried out in any case.

My final point is that, in the evidence that the committee has taken from island communities, there was a lot of comment about the need to avoid a tick-box exercise and to have a system that is agile and fit for purpose. I believe that, with the extra burden that amendment 65 would create, any policy with any differential impact on island communities would effectively encourage such a tick-box culture and diminish the objective that we are all seeking to achieve for islands and island communities. The use of such assessments will be seen as an impediment to change rather than a useful tool to bring others into the decision-making process, and that would, of course, be unfortunate.

I therefore urge Colin Smyth not to press amendment 61 but, if he does, I ask other members not to support it.

Colin Smyth: On amendment 61, I would say, first of all, that my reference to its being minor relates to the extent to which it would change the wording in section 8 and certainly not to its impact. In my view, the phrase “in the authority’s opinion” moves the balance of power too far in the authority’s direction, and there is a risk that it could be used as a way out of having to do an impact assessment. I therefore think that the phrase is unnecessary, and I will certainly press amendment 61 in order to remove it.

I take on board what members have said about amendment 65 and its deletion of the word “significantly”. I still think that the original provision is very unclear. I do not expect this amending of the language to cause the chaos that members

have talked about, with authorities having to write reams and reams of impact assessments. After all, that is not how such assessments work on the ground. Local authorities regularly carry out assessments on policy changes, and I do not agree that this will put a massive burden on local authorities, as long as the process is carried out appropriately and sensibly. On balance, I am not clear what the word “significantly” means in this context, and therefore I see no harm in moving amendment 65, too. As I have said, it would not put any undue burden on the local authorities.

The minister is right to point out that I have not suggested any alternative phrases, but that might be for other members to propose at a later date.

Jamie Greene: Will the member take an intervention?

Colin Smyth: I was just about to finish, but yes, I will.

Jamie Greene: I have a brief technical question. We are being asked to remove the word “significantly” from section 8, but I see no amendment that seeks to remove it from section 12, which relates to the same impact assessments being undertaken by ministers, not local authorities. That would, unfortunately, lead to a difference in meaning between sections 8 and 12, which would need to be tidied up by the legislation team.

Colin Smyth: That is a valid point. I am sure that that will be tidied up and that, if it is not, Jamie Greene will lodge an amendment to remove the word “significantly” from section 12 at a future stage.

The Convener: The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Peter (North East Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
Rumbles, Mike (North East Scotland) (LD)
Smyth, Colin (South Scotland) (Lab)

Against

Finnie, John (Highlands and Islands) (Green)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

Abstentions

Mountain, Edward (Highlands and Islands) (Con)

The Convener: The result of the division is: For 4, Against 6, Abstentions 1.

Amendment 61 disagreed to.

The Convener: Amendment 62, in the name of Peter Chapman, is grouped with amendment 64.

Peter Chapman: Much like Colin Smyth's previous amendments, these amendments make only small changes to the wording of the bill, but they will, I think, have a significant impact.

It was widely agreed at stage 1 that it was unrealistic to carry out retrospective island communities impact assessments on a large scale and on every piece of existing legislation. I accept that, but the committee also agreed that in severe cases where existing legislation is having a major impact, carrying out assessments would be the only way for the bill to achieve what it is setting out to do. This legislation needs to be able to look at any existing legislation that is having a major impact on island communities.

Richard Lyle: Could the member explain to me whether, when it says that all relevant authorities are required to prepare an island communities impact assessment, that includes North Lanarkshire Council, which does not have any islands?

Peter Chapman: No, it would not include an authority that does not have islands.

Richard Lyle: Your amendment does not say that. It would mean that all public authorities would have to review all previous policies, services and strategies, which means that councils that do not have islands would have to review their policies, services and strategies too. That seems a bit stupid to me.

Peter Chapman: All that I am doing is adding three words to what is in the bill. I cannot understand why that creates any uncertainty with regard to the authorities that have islands within their boundaries.

Mike Rumbles has just pointed out to me that the section says "a relevant authority".

The Convener: Would you like to make an intervention, Mr Rumbles?

Mike Rumbles: The section says "a relevant authority", so what Richard Lyle is saying is nonsense itself.

The Convener: Mr Rumbles, I think that the question to Mr Chapman in your intervention was, "Would you agree that the section refers to 'a relevant authority'?" We will ignore everything that you said apart from that.

Peter Chapman: I agree with that point. What I am saying is perfectly clear.

John Mason: I am just trying to think of an example. Crofting legislation, which can be quite major, would include islands. The amendment would mean that all the crofting legislation would

have to be reviewed. It might be reviewed anyway and, if it is reviewed, an island communities impact assessment would have to be done. Are you asking for incredibly complex areas of legislation and policy, such as crofting, to be completely reviewed? Would there be a cost to doing that?

Peter Chapman: We are in the midst of a review of crofting legislation, as Mr Mason knows.

I am saying that there must be a mechanism whereby existing legislation that has major impacts must be examined. I stand by that. The legislation might be fairly complex but, nevertheless, if it is having a major impact on island communities, it is only right that it is examined.

I move amendment 62.

John Finnie: As was the case with amendment 61, it would be simple for someone representing the area that I represent to say that amendment 62 is good. However, we are making law here, and there are issues around the retrospective implications of the amendment, some of which have been touched on. Peter Chapman used the terms "severe" and "major" and talked about existing legislation and policy. I think that there will be a severe deficiency in existing legislation and policy if, on an on-going basis, there is a detrimental effect on any sector, be that a group of individuals, people in a workforce, people in Edinburgh and Glasgow city centres or people in the northern isles, and that is not addressed.

The mechanism of post-legislative scrutiny exists, but this is about expectations. What I want is realism to be injected into things. If there are deficiencies in any policy or legislation, I would hope that I and colleagues across the Highlands and Islands would draw attention to them and seek to have them addressed. However, the amendment has the potential to create a significant bureaucratic exercise, as John Mason pointed out, and I regret that I will not be supporting it.

Jamie Greene: I am listening with interest to the debate. My understanding is that Peter Chapman is trying to introduce the technical option of retrospective assessment. According to my reading of the bill, that does not exist at the moment. The bill is concerned with future proofing, and rightly so. However, the committee has discussed whether public authorities and ministers should have the ability to retrospectively examine decisions that have been made that have a significant impact, but the bill does not provide for that to happen.

11:15

Amendment 62 does not say that all legislation, all decisions and all policies and strategies will have to be retrospectively assessed. In the context of what we previously discussed, the amendment simply adds the words “or have had” to the reference to any policy, strategy or service that

“in the authority’s opinion”—

that phrase is staying in the bill—

“is likely to have an effect”.

That gives public authorities the option, where required, to retrospectively create an impact assessment. That is a good thing and it would be welcomed by islanders and island communities.

Gail Ross: We discussed the matter on the islands and in the committee to a great extent. We also discussed it last week, when the minister gave a commitment that any local authority that comes forward with any legislation that it feels is detrimental will be given a fair hearing. Is that not enough?

Jamie Greene: The minister gave a welcome commitment, but the issue is not just about local authorities. There are 66 bodies in the schedule—in fact, there are now more than 70—that will be affected by the bill. Again, I make the point that amendment 62 would not automatically mean that all legislation would have to be retrospectively assessed.

John Mason: Will the member give way?

Jamie Greene: I am responding to Gail Ross’s point. Although the minister’s commitment that any body that wishes to retrospectively assess its decisions is welcome to do so, at the moment there is nothing in the bill that would enable a body to do that in the context of its obligations under section 7. The bill is forward thinking, and I do not see any harm in the technical addition of being able to look retrospectively at decisions that have been made.

John Mason: Jamie Greene suggests that authorities do not have the ability to carry out an assessment or a review at the moment. Is he really saying that Government ministers, local authorities and health boards do not have the ability to go back? Surely they currently have that ability, but they are not required to go back. Section 8 states that

“A relevant authority must prepare”

an assessment, so he is suggesting that, if it thinks that there is a significant difference, it “must” prepare an impact assessment.

Jamie Greene: The authority must prepare an assessment when “in the authority’s opinion” something has had an effect, if Mr Chapman’s

words are included. Again, it is not a blanket rule that they must prepare an impact assessment on every decision that has been made.

The same argument was used in the debate on the previous grouping about whether the reference to a local authority’s subjective opinion should stay in the bill, and we agreed that it should. The local authority makes the decision about whether an impact assessment should be created. As it stands, local authorities will be able to do that for future decisions, and Mr Chapman wants them to be able to do it for historic decisions. I cannot see any harm in that. That ability must surely be a welcome addition. It will not place any additional burden or additional requirements on local authorities. It simply—

John Finnie: Will the member take an intervention?

Jamie Greene: Amendment 62 is not even my amendment, but I am happy to continue the debate.

The Convener: I am sorry to interrupt, but nearly every member of the committee has now had a chance to speak, or is on the list to speak. It gets quite difficult if people are intervening the whole time even though they have already spoken or are about to speak. I ask members to be cautious of timings, because I do not want to curtail the debate, and I want to allow interventions.

John Finnie: I am grateful to Jamie Greene for taking the intervention. He talked about creation. Is there the potential that unrealistic expectations could be created? That is what some of the information suggested when we visited the islands.

Jamie Greene: That is a really good point. A lot of the discussion about the bill has been on whether it creates unrealistic expectations in island communities. I do not think that it does. If anything, the amendment will provide the opportunity for public bodies to retrospectively make an island impact assessment. I thought that that would have been more welcome.

It is important that we set expectations. We must make it clear that, if the amendment is agreed to, not every piece of legislation that has ever been passed by Parliament and not every policy decision that has ever been made by a public body will be reviewed. That will absolutely not be the case, and the specific words that are used do not require that to be the case. There will simply be an option, and that is very welcome.

Mike Rumbles: Let us get to the nub of the issue. The question is fundamentally important. We took evidence on the issue at stage 1, and I took it that islanders have an expectation. I am

quite surprised by John Finnie's comments. There is a perception that the bill will enable public authorities to examine significant effects retrospectively, so the issue is a fundamental one, and I am surprised that it seems to be dividing the committee.

If we agree to Peter Chapman's amendments, we will be in favour of retrospective examination. If we do not agree to them—I know that John Finnie is minded not to—we will be making it absolutely clear that we are not in favour of allowing retrospective examination under the bill. I would appreciate some clarification from John Finnie. If he is saying that we should just leave that to ministers or public bodies themselves without there being any legislative requirement, I would be interested to hear that argument. However, we are making the law of the land, and Peter Chapman's amendments are quite clear. If we agree to them, we will be saying that we are in favour of retrospective examination; if we do not agree to them, we will not be saying that. If we do not agree to the amendments at stage 2, they will certainly come back at stage 3, as the issue is a fundamental aspect of the bill.

John Finnie: There is not a simple binary choice, of course. I explained that good practice would be that an organisation would review its policies on an on-going basis and that, if there was any disadvantage to any group or any geographical area as a result of how a policy was applied, that should be addressed. That should be happening anyway.

Mike Rumbles: I understand what John Finnie is saying, but he is basically saying that it is good practice for organisations to do that and that we need to have good faith that they will do it. However, we are making the law, and there is a requirement to have them do it. That is the difference in the argument. Should we put that in the law or not put it in the law and allow people to have good practice? That is the key. I am not trying to make a political point; I am genuinely surprised by John Finnie's view.

Stewart Stevenson: My first and most straightforward point is that no one has pointed to a power that prevents any body on the list from retrospectively assessing something that has happened in the past. Therefore, there is no requirement to create a power because there is no prohibition. Under recent legislation, we have said that, through community empowerment, councils and others can do whatever they want unless that is forbidden. We have turned the whole thing on its head.

My second point is that we have preserved the phrase "in the authority's opinion" in section 8. That creates the opportunity for people who have a different opinion or believe that the authority is

perversely exercising an opinion to legally challenge, and that is good, right and proper. If we include "or have had", the challenge that people can make will be extended to the failure to review previous legislation.

Let me give some examples. I will start with the Common Good Act 1491.

The Convener: Stewart, I am asking you to be very brief, because at this stage, and given my discussions with the clerk, there is a real possibility that we might not get through the stage 2 debate before the end of the committee meeting. If that were so, we would need to seek authority to carry stage 2 forward until after recess. I ask all members to keep their comments as short and pithy as possible.

Stewart Stevenson: The Common Good Act 1491 was affected by the Local Government (Scotland) Act 1947 and the Local Government (Scotland) Act 1973. The latter act in particular, which reorganised local government, affected the common good funds. Is there an island differential? Yes, because Comhairle nan Eilean Siar had no common good funds. Therefore there is a differential effect associated with the operation of common good and the acts of 1491, 1947 and 1973.

The 1872 Ballot Act is differential in its effect on the islands and the crofting legislation, starting with the Crofters Holdings (Scotland) Act 1886, is differential in its effect on islands. There is a whole host of things where people could go to court and challenge the authority's opinion that it should not do something about it. I could come up with a much longer list.

The Convener: Tavish Scott may come in briefly.

Tavish Scott: I have one point to make, given your stricture, convener.

The principle behind amendment 62 is correct, but I am not sure about the language, because there has to be some trigger. I am not clear from Peter Chapman's opening remarks what the trigger is, but perhaps he can clear that up in his wind-up speech. Otherwise, there are some concerns that we could have everything back on the table—I say that as an islander. There are areas of policy that an amendment like this would rightly deal with and I suggest that, at stage 3, we could have an amendment that refines the principle behind what Peter Chapman is trying to achieve, which I agree with.

Humza Yousaf: Once again, it has been a very insightful discussion. I will speak to both amendments 62 and 64. I understand what Peter Chapman is trying to achieve, but his amendments do not do that at all. The amendments appear to

require all the relevant authorities to review all previous policies, services or strategies that it believes may have a significant differential impact on island communities.

I refer members to the wording of section 8 which, as John Mason mentioned, says that a relevant authority must prepare an island communities impact assessment and so on. To come back to Jamie Greene's point, even if the authority chose not to proceed with an impact assessment, it would have to go through the burdensome process of reviewing all its policies, strategies or services, potentially going back years, decades or even centuries. The authority might not choose to carry out an impact assessment, but it would be quite a burdensome and bureaucratic undertaking.

Jamie Greene: The spirit of the bill is to improve outcomes for islands and improving outcomes is not necessarily predicated on future policy decisions. The ability of authorities to consider decisions that have already been made is absolutely relevant and the bill does not provide for that. At this stage, will the minister commit to revisiting the concept of retrospective assessment at stage 3 so that it can be properly addressed in the bill? That might not be in the way that Mr Chapman is suggesting, but he makes a very important point.

Humza Yousaf: I would return to Stewart Stevenson's first point, which is that there is nothing preventing local authorities from coming to me or any of my ministerial colleagues in order to look back and review legislation and to gather parliamentary support for a change in policy, services, strategy or guidance. Although I was interested to hear about the 1491 act, the provision is not about legislation; it is about policies, strategies or services and the point is that there is nothing preventing local authorities from revisiting those. There are a number of forums in which local authorities can raise such points, of which the islands strategic group is probably the most prominent.

My feeling, which chimes with that of some other members, is that amendment 62 takes far too much of a blanket approach and that it would be a bureaucratic nightmare for local authorities to have to review all their policies, strategies and services.

I understand the spirit of the amendment. I do not believe that there is a need for a retrospective assessment provision, because section 8(2)'s application of the duty to the redevelopment of policies, services and strategies will largely cover it. Further, I remarked earlier on Colin Smyth's amendment 90 that it contains an interesting proposal in relation to on-going reviews. I believe

that that would be a more flexible and perhaps proportionate approach to retrospection.

11:30

I reaffirm my commitment to consider any issue that is brought to me by a member or a local authority where they believe that there is a detrimental impact on island communities. At the next meeting of the islands strategic group, I will raise the issue once again with the local authorities round the table. I am not at all closed minded to looking back over legislation and reviewing it. I will take the point away and talk to my Cabinet colleagues to see whether there is a conversation to be had on their portfolios in that regard. Given my view on the extremely negative impact of amendments 62 and 64, I ask the member not to press them to a vote but, should they be pressed, I ask the committee not to agree to them.

The Convener: I call Peter Chapman to wind up and say whether he wishes to press or withdraw amendment 62.

Peter Chapman: I will be very brief, because we have had a huge amount of discussion. I think that the issue is fundamentally important to the bill. Tavish Scott asked what the trigger is. The trigger is the authority's opinion—if an authority thinks that it is correct to look at something, it can do that. Other folks have said that that should happen, anyway. If it should happen anyway, there should be no problem with amendment 62, because it simply allows that to happen. Will it raise expectations? Yes, but the bill raises expectations right across the gamut of provisions, so I do not take that as a reason not to press my amendment. Therefore, I will press it.

The Convener: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Peter (North East Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Rumbles, Mike (North East Scotland) (LD)

Against

Finnie, John (Highlands and Islands) (Green)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Smyth, Colin (South Scotland) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 4, Against 7, Abstentions 0.

Amendment 62 disagreed to.

Amendment 63 not moved.

Amendment 64 moved—[Peter Chapman].

The Convener: The question is, that amendment 64 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Peter (North East Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Rumbles, Mike (North East Scotland) (LD)

Against

Finnie, John (Highlands and Islands) (Green)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Smyth, Colin (South Scotland) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 4, Against 7, Abstentions 0.

Amendment 64 disagreed to.

Amendment 65 moved—[Colin Smyth].

The Convener: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Mountain, Edward (Highlands and Islands) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Rumbles, Mike (North East Scotland) (LD)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 2, Against 9, Abstentions 0.

Amendment 65 disagreed to.

Amendments 66 to 68 not moved.

The Convener: I will suspend the meeting briefly, for a maximum of five minutes. I ask you all to be back promptly and as quickly as you can.

11:34

Meeting suspended.

11:40

On resuming—

The Convener: Amendment 69, in the name of Colin Smyth, is grouped with amendments 70 and 89.

Colin Smyth: Amendment 69 requires relevant authorities to provide an explanation for not doing an island communities impact assessment, if they have chosen not to do so. Given what has been said about other amendments, some members might argue that the amendment would place an additional burden on authorities. However, if we think about the way in which impact assessments work in practice, the reasons for a decision not to conduct an impact assessment in one area will be very similar to the reasons in another area and, therefore, the amendment would not result in significant additional work for authorities. On its own, the amendment is reasonable and represents good practice; it will also provide useful clarity when it comes to my amendment 89.

Amendment 89 would create an appeals mechanism for island communities impact assessments, which was a committee recommendation at stage 1 that was strongly supported by local authorities. Without recourse to appeal decisions, it is impossible for island communities to have faith in the impact assessment system. An appeals mechanism is particularly important given local authorities' and communities' lack of input in the decision whether to conduct an impact assessment in the first place. The Government rejected the proposal on the grounds that the administrative burden would be unreasonable, but I believe that amendment 89 outlines a fair and manageable system. We should be working to empower local authorities and communities through the bill but, as it stands, they do not have sufficient oversight and they have very little input in some areas. We should trust that local authorities and communities would use this power only when necessary.

I move amendment 69.

Stewart Stevenson: Will the member confirm whether it is the intention of amendment 69 that subsequent minor changes to policy, strategy or services would again require an assessment?

Colin Smyth: No, minor changes would not require another assessment.

Peter Chapman: Amendment 70 is very simple and is set out very clearly. The key point is that it places a duty of care on authorities for the people in island communities. It is logical that an authority should put in place steps to mitigate any negative effects stated by an island communities impact assessment. If it does not, it should explain why it has not carried out that process. Put simply, that is

what amendment 70 says and does. I will stop there.

Stewart Stevenson: Will the member take a brief intervention?

The Convener: He has stopped.

Peter Chapman: I have stopped.

Stewart Stevenson: I am unclear in legal drafting terms what “island community” means.

The Convener: That was not an intervention.

Stewart Stevenson: I have made my contribution. That is sufficient.

Humza Yousaf: I appreciate what Colin Smyth is attempting to do with amendment 69, and I can see why authorities that consider that a local policy, service or strategy does not meet the test for an impact assessment should make public the reasons for their decision. The amendment has the potential to create accountability to local communities that will ensure a thoughtful screening process. I agree that, if the information remains light touch, the requirement simply to state the information should not be overly burdensome on local authorities. The detail can be set out in guidance, which I have now committed to provide to Parliament in draft. Accordingly, I am happy to support Mr Smyth’s amendment 69, but note that officials will need to look more carefully at its construction and, if necessary, amend it at stage 3. I undertake to advise Mr Smyth if that should be necessary.

11:45

I cannot support Peter Chapman’s amendment 70. I appreciate what he is trying to do, but cannot see the need to include such a provision in the bill. The island communities impact assessment process is designed to ensure that island interests are considered in the development of policy, services and strategies, and to be open and transparent about the impacts on island communities, including any negative impacts. The amendment goes a step further, and asks all relevant authorities to write to ministers when they have not taken steps to mitigate any negative impacts.

It is not clear what effect the amendment might have beyond the potential for a number of letters to come to me, including from my ministerial colleagues, and I am not sure what that might achieve. That sort of issue would be much better dealt with as part of guidance, which could provide more detail on the content of the impact assessment, having particular regard to looking at how to deal with potential negative impacts on island communities. I am happy to discuss with Peter Chapman the effect that he is trying to

achieve, in order to ensure that the matter is appropriately addressed when we develop the guidance. I therefore ask Peter Chapman not to move amendment 70.

Amendment 89 from Colin Smyth creates a process to require a relevant authority to review the reasons why an island communities impact assessment was not prepared. It allows “any person” to request a review and sets out a process and timescale for response. The committee knows that I am not in favour of having a review process on the face of the bill, not least because other similar and successful impact assessment processes, such as the equality impact assessment, do not set out a review process in legislation.

The creation of a review process in this bill will lead to more bureaucracy—that tick-box culture that we want to avoid—and not to the change in culture that we want to see. In this case, the potential number of reviews for all new and revised policies, services and strategies, across all 66 relevant authorities, will be huge, cumbersome and potentially expensive.

Looking briefly at the practical implications, four weeks, as suggested in the amendment, is a reasonable timescale for a response, and Colin Smyth has now limited it to allow one request per review. That is presumably to stop multiple requests on the same topic, but I am not sure how it will work if a new request for a review is based on different grounds or facts. It would surely be unreasonable to refuse a request that was made on different grounds solely for the reason that a request had been received earlier. That distinction is not made in the drafting and I wonder whether that was Colin Smyth’s intention. He may want to comment on that in closing.

Further, the review is open to any person, rather than limited to someone who has a direct interest in the decision not to conduct an impact assessment. Any person in Scotland could request a review of the decision, regardless of whether they are in an island community or affected by the decision, and if they put their request in first, that might be the only review that is allowed. No particular grounds are given for review, such as unreasonableness or procedural unfairness. That is also left entirely open.

As I indicated in my response to the stage 1 report, I give a cast-iron commitment that the consultation on the guidance will cover the matter, and that an appropriate dispute resolution process will be considered as part of that. To give further encouragement to Mr Smyth not to move amendment 89, I suggest as a compromise that I will lodge an amendment at stage 3 to the effect that ministers must evaluate the operation of this part of the act, three years after it comes into

force. I will also lodge an amendment to put in place an order-making power that will allow ministers to make regulations with respect to reviews, so that if, after that period of time, the evaluation shows that a review process is required, we can provide for one based on that evidence. I believe that that is a good compromise, and ask Mr Smyth to give it consideration and not to move amendment 89.

Colin Smyth: I believe that amendment 69 stands on its own as good practice, and members appear to agree with that. It also helps when it comes to the aim of amendment 89, which is to create a review process. I will not go through the arguments for that review process, which was a clear recommendation of the committee at stage 1. The minister mentioned that I had changed the amendment to limit the number of reviews to one to reduce the burdens on local authorities. If the concern is now that there may be several applications for a review based on different criteria, I see no reason why guidance could not be published that allows authorities to take into account the different reasons why there might be a review. However, I take on board the point that the minister will lodge amendments on reviewing the section and on additional regulation.

On that basis, I will press amendment 69 but will not, at this stage, move amendment 89. I will reconsider the matter at stage 3, after seeing the additional information that the minister will provide between now and then.

The Convener: The question is, that amendment 69 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Smyth, Colin (South Scotland) (Lab)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

Against

Chapman, Peter (North East Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)

Abstention

Mountain, Edward (Highlands and Islands) (Con)

The Convener: The result of the division is: For 8, Against 2, Abstentions 1.

Amendment 69 agreed to.

The Convener: Amendment 70 is in the name of Peter Chapman.

Peter Chapman: Given that the minister said that he would look favourably on the proposal, I will not move amendment 70.

Amendment 70 not moved.

Section 8, as amended, agreed to.

After section 8

Amendment 89 not moved.

Section 9—Compliance with section 7 duty

Amendments 72 and 73 not moved.

Section 9 agreed to.

After section 9

The Convener: Amendment 20, in the name of Tavish Scott, is in a group on its own.

Tavish Scott: This has been an issue for a considerable time, and I am grateful to the Government for providing this legislative vehicle to allow it to be raised. The bill is about the islands, after all, and my contention is that the islands should be in the right place on a map. There are many examples of documents on which the Government has got it wrong, including when I was a minister.

I am grateful for the letter that I had from the permanent secretary, Leslie Evans, on the document that I have here: "A Connected Scotland: Tackling social isolation and loneliness and building stronger communities". It is an extremely good Government policy but, as colleagues—even those who are sitting on the far side of the table—will astutely notice, the map on its cover has Shetland next to Orkney. I am sitting next to Liam McArthur but we do not sit next to each other geographically. We are lonely at times, but this map is taking it a little too far.

I would like, in future, for Government publications to have Shetland in the right place. Here is one that I found last night. Food Standards Scotland has a stand in Parliament and I came across it as I was walking up to the ministerial corridor last night. It is a pretty awful map of all other areas of Scotland so I give zero out of 10 to Food Standards Scotland. The map puts a line right through Shetland. It puts a tape measure around the minister's constituency, so he might have his own concerns about that. All in all, it is a pretty dreadful piece of cartography by any standards.

Richard Lyle: Will the member take an intervention?

Tavish Scott: I am happy to.

The Convener: Before you do, Tavish, I note that, amusing as the maps may be, the *Official Report* cannot record what they show.

Richard Lyle: Is the Food Standards Scotland map not trying to convey the point that the Scottish diet needs to change? Is that not why it is overly obese?

The Convener: That might be amusing as an intervention, but it will not gain you an extra point.

Tavish Scott: I thought that it was worth an extra point in the classic fashion.

The Food Standards Scotland document is called “The Scottish Diet: It needs to change” and my contention is that the maps need to change. In subsection (3) of amendment 20, I ask that maps

“accurately and proportionately”

represent the Shetland Islands’

“geographical location in relation to the rest of Scotland.”

That is what we seek to achieve.

Scotland rightly highlights, for example, two industries that are important to its economic future: oil and gas and seafood. Shetland is central to those two industries, and those industries are so important and economically significant for the Scottish economy and, indeed, the wider economy because of where Shetland is.

I simply ask colleagues to bear in mind that, when scrutinising an islands bill, we deal with the reality of what challenges islands face, particularly on transport. If I were closer to the Moray Firth, or in the Moray Firth, I would not need to spend 12 hours going home on the boat from Aberdeen overnight; instead, it would be an hour from Invergordon in the Highlands.

I contend that our maps should be accurate. I am very grateful to all the geography teachers and various others in my constituency who have been in touch to say, “Thank goodness—at last this is going to be addressed.”

I hope that the Government will accept the argument for one other reason: it will not cost a penny. The change would simply be to ensure that future Government publications and documents reflect the reality of Scotland’s geography rather than making it fit neatly on an A4 sheet of paper.

I move amendment 20.

Stewart Stevenson: I have a few minor points about the drafting of amendment 20. Section 20(3) ends with the term “rest of Scotland”. Given that Lerwick is closer to Bergen than it is to Edinburgh, the amendment should be drawn more broadly, because you would equally want a map to show the correct relationship between Shetland and the coast of Norway.

Similarly—this is a minor and geeky point—the two references to “maps” should say “maps and charts”. Those are different things, although it is extremely unlikely that a chart would misrepresent the issue, because charts are used for navigation purposes.

The real point, which is important, is that—as I guess that Liam McArthur and others would readily acknowledge—the issue extends beyond Shetland. We did a computer model for something 45 years ago, which required mapping information. When we looked at the model’s outputs, it was clear that there was something wrong with the model. It turned out that the agency in London that had mapped the locations of bank branches had used a map that had Shetland in the Moray Firth, which totally threw the model. Fortunately, it was such a gross distortion that the mistake was obvious; it is when a distortion is more subtle and not so obvious that things become more serious.

The amendment’s underlying aim is an important one, but I am a bit dubious about whether the amendment as constructed fully meets it.

John Mason: I am very sympathetic towards amendment 20. Despite the situation for Orkney and the Western isles, it is Shetland that suffers. People want to keep maps fairly big or small, but putting in Shetland changes the scale that they can use.

I am enthusiastic about the amendment. I do not know whether it uses the right wording and we will probably hear from the minister about whether that is how it should be put.

I suspect that there might be a cost were the amendment to be agreed to, even if we did not change previous documentation, but I would want to be guided on that.

To be fair, one of my colleagues was extremely unhappy when the BBC used the weather map with the whole of Scotland reduced in size, and a lot of us supported him in that. Tavish Scott makes a valid point. Something needs to happen, whether in this legislation or elsewhere.

Fulton MacGregor: My point is practically the same as John Mason’s point. I have a lot of sympathy with amendment 20, too. There have always been issues with the representation of Scotland, whether on BBC maps or on stuff documented in the past. Even in the world as a whole, there have always been issues in not showing the true size of some countries, including overestimating their size.

I wonder whether Tavish Scott would consider working with the minister on an amendment at stage 3 because, at this point, I do not know whether it is totally clear what the effects of

amendment 20 would be. It might limit public bodies in their work, but I do not know exactly in what way—I would need to look into the issue a bit more.

12:00

Peter Chapman: I am really sympathetic to Tavish Scott's point, but—it is a big “but”—I am not sure whether the amendment is relevant to the bill. I do not agree with it in any case. I have been contacted by map specialists in my constituency, who have advised me that the amendment would be inappropriate.

The basic point is that it would reduce the scale of any map by about 40 per cent, because a whole chunk of sea would need to be represented. That is an important point, because we need to have maps that show as much detail as possible. The practice of putting the islands of countries in boxes on maps is well recognised; it has been done by cartographers for centuries. I feel that the loss of detail in any map that was produced under this system would be very counterproductive, so I will vote against the amendment.

Richard Lyle: I am sympathetic to what Tavish Scott says, and I take his point about Scotland being misrepresented in a brochure. It annoys me also when the BBC does not show Scotland correctly. I take the point that Fulton MacGregor has made; maybe Mr Scott should consider discussing his amendment with the Government. However, if he presses amendment 20, I will support it.

Jamie Greene: Nobody puts Shetland in a box. [*Laughter.*] Clearly it is a fair point, and Mr Scott made his point valiantly in committee today.

There is a technical matter in that if all publications—all maps and charts that were published by anybody, ever—had to use the proportion and scale that the amendment's wording suggest, that would prove quite difficult. I have great sympathy with the prospect of giving Shetland its due place on the map, but I am not sure that amendment 20 is the way to do that. I support the principle and the ethos, but perhaps not the wording.

Gail Ross: I, too, support the principle. Can the minister give us tangible examples of where the practice that the amendment proposes is already happening and tell us whether there are plans to move on with that without it being in the legislation?

Liam McArthur: I should make it clear that there is a legitimate concept of a “Shetland box”, but it relates to fisheries and involves some fairly exclusive rights in relation to access to those

fisheries. I do not think for a moment that Tavish Scott is arguing against that concept.

It is fair to say that the map problem has affected Shetland more than it has Orkney, but Orkney has not been left untouched by it. On a number of occasions we have found ourselves bundled into a box and stuck in the Moray Firth. The concern that arises is more than a presentational or superficial one. Over time that practice gives rise to a misconception about our islands. Some of the issues that we are wrestling with as part of this bill, and about which we are seeing helpful amendments being brought forward, are not made any easier to resolve by the misconception that the islands are a good deal closer to the mainland than is actually the case. Therefore I strongly support Tavish Scott's amendment. If it needs to be revised ahead of stage 3, I am sure that the minister will work constructively with Tavish on that.

There is an important point that although the amendment refers to the “Shetland mapping requirement”, it needs to encompass concerns that have been raised—although less often—by constituents in Orkney.

The Convener: I, too, thank Colin Smyth, John Finnie and Mike Rumbles for listening to the debate.

Humza Yousaf: I will pick up on Liam McArthur's point that there may be a temptation to think about this issue flippantly. That should absolutely not happen, because it is a serious issue. Putting myself in the shoes of Tavish Scott or any of his constituents, I certainly would not like to see map after map misrepresenting where Glasgow or Glasgow Pollok is in Scotland. I would not stand for that, and I would be pretty miffed about it. I absolutely respect the spirit of the amendment and I thank Tavish Scott for bringing it to the committee to discuss.

He described the issue that arose around the depiction of Scotland—and Shetland, in particular—in a recent Government publication. I agree with him that the depiction was not a good one and that the portrayal of Shetland was misguided and, indeed, unfortunate. As Tavish Scott has already said, he wrote to the permanent secretary about the publication in question. I hope that he found her response useful. She indicated her regret at any offence that had been caused, and I echo her comments whole-heartedly. In her letter, the permanent secretary set out that she had taken steps to ensure that there would be no repeat of that in future Scottish Government publications. A standing instruction to our publishing contractor was prepared to ensure that images of Scotland in future publications should seek to portray accurately the geographical

location of all Scotland's islands—not just Shetland.

To reinforce that further, following stage 2, I will be happy to write to all Scottish public authorities, highlighting the specific issue and other issues that Mr Scott has raised, to encourage them to follow the Scottish Government's lead on the matter, to contact their contractors and to avoid any incorrect or inaccurate depiction of the Shetland islands or, indeed, any of our island communities. I would also be willing to discuss with Mr Scott, or any other members who represent island communities who have concerns on that issue, other practical ways in which we can reinforce that message.

A couple of members have touched on amendment 20's wording and technical drafting. Its current scope, which is

"When publishing in any form a document that includes a map of Scotland",

is very wide, and my concern is that it provides little flexibility. As the member acknowledged in his own letter to the permanent secretary,

"There can be 'graphic design difficulties' in presenting an accurate depiction of Shetland's geography, especially depending on the type and detail of the map that is being produced."

For me, the way in which amendment 20 is drafted perhaps does not give any leeway, in that it always requires an accurate representation, even in instances where it could be helpful for readers of the map for a different format to be used.

There may be other unintended consequences if Mr Scott's amendment were to apply across the whole of the public sector. We cannot know which maps are in use and how they portray Scotland. Indeed, it could be argued that it would be inequitable for such a strategy requirement to apply solely to Shetland and not to other islands, although I understand why Mr Scott would focus on his constituency.

I suggest that perhaps the right approach to the matter is to change practice and behaviour in the way that I have described and for us to work with Mr Scott to see what more we can do, other than my writing to Scottish public authorities. While we are looking at changes in practice and behaviour we might also look at them in guidance. We can do that by agreement rather than through what I view as being a largely unenforceable provision in the legislation.

I am also told that the amendment might be outwith competence, as conferring such a function on all Scottish public authorities in the way that it does might go beyond devolved competence.

Notwithstanding all that, I feel that it is a very worthwhile issue to have raised in this forum and

to have brought to the committee. Although I have an enormous amount of sympathy for and agreement with Mr Scott's amendment, I ask him to withdraw it and have a discussion with me and Government officials to see how we can advance the spirit of the amendment in a way that is practically enforceable.

Tavish Scott: I am grateful to colleagues from across the committee for their thoughts on this matter. I accept the charge that the amendment is not technically perfect and that the drafting may or may not have some deficiencies. I take the minister's point on that as well. I would be happy to work with Government officials to get the drafting right.

I do want to see something in law on this, for the very reason that the minister gave in his opening remarks about other public authorities. He has offered—and I am very grateful for this, as I am sure that people who live on islands genuinely will be—to write to public authorities across Scotland and to encourage them to "follow the Government's lead". I want to do more than encourage them; I want to make them do that. However, in that context, I take his point about the language in my amendment, which is about publishing a document "in any form". That is a fair criticism of the drafting, and I am happy to look at wording that is more—

Stewart Stevenson: Is the member happy to take an intervention?

Tavish Scott: Yes, certainly.

Stewart Stevenson: Is one of the important questions not that if Government does not get this right, why should private industry do so?

Tavish Scott: Indeed—that is entirely correct. I totally accept that the Government will get the requirement right in the future, but I want us to ensure that other public authorities do so as well. Food Standards Scotland may be a bad example, but it is certainly one example of where that is not the case at the moment.

I am therefore happy to withdraw the amendment so that I can work with the minister's team on getting the correct technical drafting for stage 3.

Amendment 20, by agreement, withdrawn.

Amendment 90 moved—[Colin Smyth].

The Convener: The question is, that amendment 90 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Rumbles, Mike (North East Scotland) (LD)
Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Finnie, John (Highlands and Islands) (Green)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Mountain, Edward (Highlands and Islands) (Con)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 2, Against 9, Abstentions 0.

Amendment 90 disagreed to.

Section 10—Guidance about section 7 duty

*Amendments 21 and 22 moved—[Gail Ross]—
and agreed to.*

The Convener: Amendment 23 is in the name of Tavish Scott.

Tavish Scott: Given the minister's remarks, I will not move the amendment, with a view to resubmitting it at stage 3.

Amendment 23 not moved.

Section 10, as amended, agreed to.

Section 11 agreed to.

Section 12—Preparation of island communities impact assessment by Ministers

Amendments 74 to 77 not moved.

The Convener: Amendment 78, in the name of Jamie Greene, is grouped with amendments 79 and 24.

Jamie Greene: Section 12(3) sets out what must be covered in the island communities impact assessments that are prepared by ministers. For example, they must

“describe the likely significantly different effect of ... legislation”

that comes before Parliament and, more important, they must

“assess the extent to which ... legislation can be developed ... to improve or mitigate ... the outcomes resulting from the legislation.”

Amendment 78 simply adds a third requirement, for ministers to

“set out the financial implications of steps taken under this subsection to mitigate, for island communities, the outcomes resulting from the legislation.”

I think that the addition is an important one, because when ministers undertake their impact assessments, they should not only describe how they can mitigate the consequences of legislation but give Parliament an understanding of the financial implications of that mitigation, for very

obvious reasons. I have nothing further to say on the matter.

I move amendment 78.

Peter Chapman: I, too, will be brief. Amendment 79 seeks to ensure that an appeals mechanism for island communities impact assessments is put in place. If communities feel that they are being significantly impacted on by a piece of legislation, there should be a due process for appealing that.

Liam McArthur: First of all, I welcome the intention behind the amendments in the name of Jamie Greene and Peter Chapman.

With regard to amendment 24, in my name, colleagues will recall that one of the real anxieties that was raised about this bill at stage 1—and which has been raised again at stage 2—is that it raises expectations. There is a risk that it will fail to deliver, particularly with regard to the concept of island proofing.

12:15

I will not rehearse the arguments about how assessments of the impact of policy or legislative proposals on island communities should be made and used to shape changes to those proposals. However, I have always felt that the best way to demonstrate the benefit that island proofing can and should have is to apply it to existing examples that we all accept take little, if any, account of the needs of islands communities. I appreciate that that cannot be open ended, as Government or, indeed, Parliament cannot be expected to trawl through every piece of legislation that is on the statute book—we touched on that earlier. However, we must ensure that the bill offers a means to redress the most damaging examples of a one-size-fits-all approach.

An illustration that I have used is how building regulations lock in fuel poverty for the future in places such as Orkney—the minister and Kevin Stewart will be very familiar with that. Likewise, I have had discussions with the Cabinet Secretary for Health and Sport and her officials about the rules on direct payments and the regulation of care workers, which could result in services not being available to some of the most vulnerable people in my constituency in the not-too-distant future. Those cases would not be addressed by the bill as it stands, which is a missed opportunity and risks the bill failing to meet the needs and expectations of island communities.

Whether through amendment 24 or some other means, we need to find a way to make sure that the bill allows those past mistakes to be corrected and avoids future mistakes.

Richard Lyle: Will the member take an intervention?

The Convener: If you are happy to take the intervention, Mr McArthur, you may do so.

Liam McArthur: Yes.

Richard Lyle: How far back would we ask the authorities to go? I do not take away from your point, but earlier on, Stewart Stevenson mentioned the year 1491—I do not think we need to go back as far as that.

Liam McArthur: That is perhaps a misdirection. The issue is not the distance back but the impact that a policy is having. The point that Tavish Scott rightly made in relation to earlier amendments was that the issue is the trigger and mechanism that would allow that assessment to happen. I fully accept that the commitment cannot be open ended, but the bill needs something to open the possibility for existing policy and legislation to be looked at. It does not matter whether that would be from the 1970s, the 1980s, the 1990s or the 2000s; the significance of the impact that that legislation or policy is having on island communities is what is important, constrained only by the trigger or mechanism.

Stewart Stevenson: I will speak to Liam McArthur's amendment 24. His remarks slightly puzzle me. The phrasing of the amendment is that it would apply to acts of the Scottish Parliament and subordinate legislation, so therefore I do not think that there would be much legislation from the 1970s or 1980s—there might be something before 1707, of course. My point is that approximately 8,000 pieces of secondary legislation have been passed by this Parliament since 1999. The numbers in the first two years were relatively low, not surprisingly: 124 and 181. After that, the number in the highest year is 582 and the number in the lowest is 360. Even in the current year, we have already passed 109 pieces of secondary legislation, and we are still in March.

Even though it is clear from what Liam McArthur has said that he expects action to relate to only a small proportion of those instruments, it is necessary to prepare and publish a retrospective assessment of those—in other words, we would need to look at the 8,000 before we knew the six that we would need to address.

I am not trying to cut the feet from the principle of what is being said. However, the amendment leads us back to the territory of doing too much.

For clarity, I should say that I suspect that the Common Good Act 1491 would not be caught by the amendment, as legislation.gov.uk describes acts before 1707 as being of “the Old Scottish Parliament” which probably excludes them.

Humza Yousaf: I will speak first to Jamie Greene's amendment 78. I know that, throughout the process, he has been keen to understand the financial implications that might arise from island community impact assessments and the bill as a whole. As I have said, the impact assessment process is designed to bring into the open issues to do with the effects of legislation—including any negative impacts—on our island communities. However, the assessment will not be the end of the matter. Ministers will have to take a view on what to do about such a negative impact and potentially find a different way of achieving the goal of the proposed legislation. That might involve changing the drafting of a bill before it is introduced or allowing for a variation for the islands in its provisions. It will be expected of the Scottish ministers that they will seek to prevent any negative impact that is identified in such an assessment from arising.

Under standing orders, financial memorandums are built into the bill process, and that would be the best place for such information to be set out, alongside any other financial implications. I am happy to commit to looking at how the guidance can make that clearer for future legislation. For that reason, I do not believe that amendment 78 is necessary, and I ask Jamie Greene to withdraw it. If he presses it, I ask other members not to support it.

Peter Chapman's amendment 79 suggests an appeals process for section 12, but we need to look closely at the practical implications of how it might operate. The drafting of amendment 79 is such that there is a lack of clarity on its effect and on what might be appealed. As drafted, the provisions of the amendment would apply when ministers were already preparing an impact assessment, so they would not apply to a decision on whether to prepare an assessment. What else might be appealed? I do not think that it should be possible to make an appeal against the decision to legislate or in the context of an impact assessment.

In addition, amendment 79 is not clear on how “an island community”—as opposed to individual members of that community or a community body—could appeal. Stewart Stevenson has previously made that point. Although it proposes a regulation-making power and procedure, I am not clear whether, as part of that, it could be specified who would decide to appeal. In short, the terms of amendment 79 could create a cumbersome process that could hold up legislation, including, for example, emergency bills.

More fundamentally, I do not think that an appeal is necessary. All Government legislation comes before the Scottish Parliament—it is the job of MSPs to scrutinise such legislation—so I do not

think that amendment 79 is required. Therefore, I ask Peter Chapman not to move it. If it is put to the vote, I ask other members to reject it.

Liam McArthur's amendment 24 would require the Scottish ministers to

"prepare and publish a retrospective island communities impact assessment in relation to existing legislation and national strategies which have an effect on all island communities which is significantly different from their effect on other communities".

I go back to Stewart Stevenson's point. As with Peter Chapman's previous amendments, the effect would be that we would have to review all legislation and national strategies, regardless of whether we decided that a retrospective island impact assessment was needed. Stewart Stevenson has already given us some of the secondary legislation figures. National strategies would have to be reviewed, too. I agree that acts such as the 1491 act that Stewart Stevenson mentioned would not be included, because the amendment relates specifically to Scottish Parliament legislation—in other words, legislation from 1999 onwards. However, if national strategies were included, the figure would run into the tens of thousands.

Liam McArthur: I appreciate the minister's comments and those that Stewart Stevenson made earlier. That is why I reiterated the need to find a mechanism that was not open ended. I cited two obvious examples of where a retrospective application of the bill's provisions is necessary. I and my local council have had on-going engagement with the Government about how the provisions in the areas that I mentioned are not working in an island context. I have had a sympathetic hearing, but there has not been a willingness to carry out an independent impact assessment.

I appreciate that, in relation to the building regulations and in terms of direct payments to and regulation of care workers, those provisions are generally working fairly well in other parts of the country. Therefore, in that balance between the policy working, by and large, in achieving its objectives, and the interests of island communities when the circumstances mean that the national approach is chafing against the achievement of the Government's objectives, there is not currently a mechanism for applying pressure to either the Government or public bodies. That mechanism is what I am seeking to achieve, so—

The Convener: Liam—

Liam McArthur: —if the Government can come forward with an amendment at stage 3 that provides a mechanism, I would be happy to withdraw this amendment and support that one.

The Convener: That was quite a long intervention. I know that it was a salient point, but an intervention should, to my mind, be as short and pithy as possible.

Humza Yousaf: Regardless of the length of the intervention, I think that Liam McArthur made his point very well. I hope that he understands where I am coming from. I could make similar remarks to those that Stewart Stevenson made on the difficulty that we would have with this amendment if it were moved.

Let me look at ways that we can improve the bill in the way that Liam McArthur would like us to do. I would be happy to speak to Liam McArthur in the lead-up to stage 3 about various options that we could consider. Let me throw in that they might be non-legislative options, but let us have a consideration of all the options that might be developed. I am sure that if we collaborate on this issue, between us we can come to an agreement on the way forward. I ask Mr McArthur, on the basis of what he has said, not to move amendment 24. We can have a conversation about how we get to where he wishes to get to.

Jamie Greene: I do not have much to add to the discussion, other than to say that the minister said that he would improve guidance, but I feel that that commitment is not strong enough. I see no harm in my request that a requirement to set out the financial implications of those impact assessments be included in the bill. I will press amendment 78.

The Convener: I note for the *Official Report* that Mike Rumbles has had to leave the meeting and that the meeting will continue.

The question is, that amendment 78 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Peter (North East Scotland) (Con)
Finnie, John (Highlands and Islands) (Green)
Greene, Jamie (West Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Smyth, Colin (South Scotland) (Lab)

Against

Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0. I am therefore required to use my casting vote. I have always used my casting vote in the same way that I voted originally. That means that the result is: For 6, Against 4, Abstentions 0.

Richard Lyle: On a point of order, convener, you said that there were six votes for and four against.

The Convener: Sorry. The result is: For 6, Against 5, Abstentions 0. That was my mistake.

Stewart Stevenson: Just for the record, I think that it is five votes to five, but you have cast your vote in favour.

The Convener: It is five votes to five. Thank you. We have not come across this situation before—rather, I have not. The result of the division is: For 5, Against 5, Abstentions 0. With my casting vote, the amendment is agreed to.

Amendment 78 agreed to.

Amendment 79 not moved.

Section 12, as amended, agreed to.

After section 12

Amendment 24 not moved.

Amendment 80 moved—[Colin Smyth].

The Convener: The question is, that amendment 80 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Mountain, Edward (Highlands and Islands) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 2, Against 8, Abstentions 0.

Amendment 80 disagreed to.

Amendment 81 moved—[Colin Smyth].

12:30

The Convener: The question is, that amendment 81 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
Finnie, John (Highlands and Islands) (Green)

Greene, Jamie (West Scotland) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Mountain, Edward (Highlands and Islands) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 1, Against 9, Abstentions 0.

Amendment 81 disagreed to.

Section 13 agreed to.

Section 14—Number of councillors in wards with inhabited islands

The Convener: Amendment 82, in the name of Colin Smyth, is grouped with amendment 6.

Colin Smyth: I lodged amendment 82 because I was concerned that the bill's wording was somewhat ambiguous and potentially restrictive. The use of the word "mainly" in section 14 means that we could, in effect, have a situation in which a ward in Orkney would have to cover the majority of an island if it wished to have one or two members. That is significantly restrictive, and it could result in real difficulties.

Since amendment 82 was lodged, the minister has lodged amendment 6, which clarifies the point and is very welcome. When the minister talks to his amendment, I ask him to assure us that every ward in Orkney, Shetland and the Western Isles will be covered by a provision that would allow them to have one or two members, even if they are wholly contained within an island but do not form the majority of the island. That is my only comment. I welcome amendment 6.

I move amendment 82.

Humza Yousaf: Although I am keen to accept amendments that will improve the bill, I do not think that Colin Smyth's amendment 82 is necessary. The bill, as drafted, works. Amending section 14 in the way that is proposed would not have the effect that Mr Smyth is necessarily seeking. If the reason is to extend one or two-member wards to non-island wards, the policy behind the bill, which followed on from the consultation, is to allow for one or two-member wards that contain inhabited islands; it is not the policy to expand one or two-member wards to cover other areas.

There has been a consultation on electoral reform that proposed the creation of wards of two to five members. Any legislation that follows on from that consultation will be the most appropriate vehicle to take forward that policy intention. On that basis, I ask Colin Smyth not to press amendment 82, and I ask members to vote against it if it is pressed.

On amendment 6, I can give Colin Smyth the assurance that he seeks. The stage 1 committee report recommended that the Government should follow the suggestion of the Local Government Boundary Commission for Scotland and amend section 14 of the bill by changing the words “wholly or mainly” to “wholly or partly” to increase the flexibility in what the Local Government Boundary Commission for Scotland can propose in order to, as the committee put it, “better balance a ward”. That is what amendment 6 does.

The Convener: I invite Colin Smyth to wind up and to indicate whether he wishes to press or withdraw amendment 82.

Colin Smyth: To be clear, amendment 82 does not seek to extend the use of one or two-member wards to the mainland. Although I have some sympathy for that idea, it is not the aim of the Islands (Scotland) Bill, and it is certainly not the aim of amendment 82. Amendment 82 aims to avoid a situation in which a ward on an island is restricted because it does not cover the island “wholly or mainly”. However, amendment 6 deals with that concern, so I will not press amendment 82.

Amendment 82, by agreement, withdrawn.

Amendment 6 moved—[Humza Yousaf]—and agreed to.

Section 14, as amended, agreed to.

Section 15 agreed to.

After section 15

The Convener: Amendment 25, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur: Convener, I noted your earlier chastisement that you had heard enough from me today, so I will be as brief as I can.

As well as addressing problems relating to a one-size-fits-all approach to legislation and policy, one of the bill’s objectives is to put in place safeguards against future attempts at centralisation. Those are always portrayed as delivering cost savings, greater efficiencies and improvements to the service to the public. In truth, they almost invariably involve stripping away powers and decision making from our island and rural communities. In this session of Parliament alone, we have seen attempts to centralise economic development through the abolition of Highlands and Islands Enterprise’s board and proposals to merge health boards that could have resulted in island boards being subsumed into larger mainland bodies.

Closer integration and more efficient working are objectives that we would all support, but we

must recognise that the needs and interests of island communities will never be properly heard or prioritised when they are not the laser focus of those who are responsible for taking decisions.

Amendment 25 seeks to put in place safeguards against such centralisation in the context of island health boards and local authorities without their express consent.

I move amendment 25.

The Convener: Thank you, Liam, but you misrepresented me—I never said that I had heard enough from you.

Stewart Stevenson: The proposed new section that would be inserted after section 15 would prevent alteration of boundary functions or powers, which would, of course, prevent the addition of functions or powers as well as their subtraction. I do not believe that that is what Liam McArthur was seeking to do.

There is a more fundamental problem. If we look at the interests of Argyllshire, for example, where there are islands but a very substantial mainland, it might well be that the mainland parts determine what decisions are taken rather than the islands. The fundamental point is the question of who is responsible for providing health services under the National Health Service (Scotland) Act 1978. What we now have is a situation in which decisions are being taken by local authorities while the health boards carry the responsibility. That is an unhealthy position to be in. There could be a permanent inability of the health board to respond to changing needs appropriately. I am not saying that that would happen but, in legislative terms, that possibility would be opened up.

I would be more supportive of amendment 25 if I saw co-decision making, whereby the responsibilities would be carried by local authorities and health boards, or other ways of dealing with the problem. I recognise that a problem exists and I understand why Liam McArthur has lodged amendment 25, but I do not think that it is the right way of delivering better health services for the islands.

Humza Yousaf: I enjoyed listening to what Liam McArthur had to say. It gave me a bit more of an idea of the intent behind his amendment, but I still have some severe reservations.

Whenever change is considered, whether it be to local government functions and powers or health board functions and powers, or indeed those of other bodies that have a local delivery role to fulfil, it must be properly informed, not least through a full consultation, and—as Liam McArthur knows from his experience in the Parliament—it must be achieved on as consensual a basis as possible.

In seeking to take forward the bill and its aim of providing for the unique circumstances of our islands and island communities, I am mindful of the key role that the relevant local and health authorities will play. There is a fine balance to be struck in taking forward the proposals in a way that does not have an unhelpful impact on powers that rightfully belong to other portfolios or institutions or create a substantive difference in the powers that those agencies have in a way that could potentially create an uneven playing field.

I am conscious, too, of the need to future proof the legislation to ensure that it does not create unhelpful unintended consequences in the long term. In that context, I know that there is considerable satisfaction with the current provisions and that there is no clamour from any current island community for substantive change to current local authority or health board boundaries. However unlikely it seems now, that might change. Therefore, it would be wrong for any council to have a power of veto in relation to any proposal by the Scottish ministers to change the powers, functions or boundaries of any local authority.

By extension, that would apply to giving island local authorities such a power. My concern is that, in effect, such a power would deprive the Parliament of its rightful opportunity to consider and agree to such proposals. It would even create the potential for those local authorities to resist the will of local communities and local residents, if a situation should arise in which they want change and the current formation of the local authority does not. It would be an extraordinarily wide power.

Mr McArthur rightly draws our attention to the need to ensure that central Government should not unhelpfully interfere in island authority powers and functions if island communities did not agree with any proposed change. I offer him the reassurance that there are no current plans for any changes to the boundaries of health boards or local authorities. As the Cabinet Secretary for Health and Sport said on the publication of our health and social care delivery plan in December 2016:

“We want more services and more care delivered closer to home. And when someone does require specialist care in hospital we want it to be delivered in a centre of real expertise that is underpinned by our unswerving commitment to patient safety.

And while delivering these changes will require reforms to how boards work, and work with each other in partnership across disciplines and boundaries, we do not currently envisage our patient-facing boards being reduced in number.”

Amendment 25 could have unanticipated effects, as it would blur governance arrangements and

lines of responsibility between local authorities, health boards and the Scottish Government.

I fully understand that Scotland's islands are distinct communities and that the respective local authorities and health boards are experienced in serving those populations. During my many visits over the past 22 months, I witnessed at first hand the delivery of excellent local services that the staff in the islands should be rightly proud of.

The unique nature of the islands is the reason why the Scottish Government introduced the islands bill in the first place, and the bill includes provisions on the island proofing of new and revised Government legislation. That duty provides further protection against the situation that Mr McArthur fears. I hope that that provides the reassurances that he needs. If in future any Scottish Government decides to undertake a review of local government boundaries or health boards, or proposes a change to the functions and powers of local authorities, the Scottish Government would have a duty to

“have regard to island communities”.

The Convener: I am tactfully asking you to bring your remarks to a logical conclusion. Would you conclude briefly, please, so that Liam McArthur has the chance to respond?

Humza Yousaf: I will. A local authority power of veto over the Scottish ministers and potentially also island communities would be unhelpful. As a Government, we must be able to put forward ideas and proposals for change, and it must be for the Parliament to discuss and debate those.

I therefore urge Mr McArthur to consider withdrawing amendment 25. As with all previous amendments, I am happy to have a discussion with him about a variety of options for how we can give effect to the spirit of his amendment.

Liam McArthur: I thank Stewart Stevenson and the minister for their comments.

In response, I will make a small number of observations. On Stewart Stevenson's suggestion that the amendment limits the potential addition of powers, it is important to point out that the proposal in amendment 25 applies where the local authority does not consent. Where there is consent, the proposals from the Scottish ministers could go forward.

I accept the point that Stewart Stevenson made about co-decision making within islands. It happens to an extent, but it should happen more.

Co-operation between island authorities and health boards and mainland counterparts happens already, as we discussed in relation to earlier amendments. I do not see amendment 25 as cutting across that. I would expect co-operation to

happen more, not least given the minister's points about health specialisms and the requirement for patients to travel to centres to receive treatment.

I do not think that amendment 25 cuts across the responsibilities of others, and I believe that it is future proofed, but if Parliament wishes to come back in due course and amend the legislation, for whatever reason, it would be free to do so. As I understand it, the parliamentary boundaries are set out in and protected under legislation. Amendment 25 reflects a similar approach in relation to island authorities and health boards. Therefore, although I respect the comments of Stewart Stevenson and the minister, I will press amendment 25.

12:45

The Convener: The question is, that amendment 25 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Mountain, Edward (Highlands and Islands) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 2, Against 8, Abstentions 0.

Amendment 25 disagreed to.

Amendment 26 not moved.

Section 16—Meaning of “development activity”

The Convener: Amendment 7, in the name of the minister, is grouped with amendments 8, 9 and 83 to 85. I ask the minister to move amendment 7 and to speak, briefly, to the other amendments in the group.

Humza Yousaf: I got the inference.

In its stage 1 report, the committee recommended that the Scottish Government should lodge an amendment to clarify that dredging, as referred to in the bill, means the excavation activity and not fishing by dredge. Amendments 7 to 9 seek to achieve that and I hope that members will support them.

Amendment 8 is a minor technical amendment. Section 16(2) sets out the exceptions to the meaning of development activity in the bill and

explicitly excludes activities relating to the reserved areas of oil and gas, defence and pollution from the definition of development activity. Therefore, those activities cannot be subject to the requirement of licence under regulation under section 18 of the bill.

I support Stewart Stevenson's amendment 83. It relates to an issue that he raised during the committee evidence session on 8 November 2017. It is a technical issue, and I will leave Mr Stevenson to describe how the amendment improves the bill.

I confess that I am still struggling to understand the purpose of amendment 84 from Peter Chapman, and I will listen carefully to what he has to say. The amendment removes text from section 19(2)(d) of the bill relating to exceptions arising from the Orkney County Council Act 1974 and the Zetland County Council Act 1974. Section 19 is designed to exempt existing development activity from a new licensing regime. I suspect that the effect of amendment 84 might be to make it impossible for the new licensing regime and the 1974 acts to run together at all, even for future developments. That is not the position of the Government—we want the interaction with the 1974 acts regimes to be considered closely when the coverage, operation and exemptions of the new scheme are being consulted on and implemented under section 18. If it is a technical issue, I will be happy to look at it and see how we can give effect to it. Therefore, I ask Peter Chapman not to move amendment 84.

Amendment 85 from Colin Smyth relates to an issue that has arisen in Orkney. I understand that the council cannot find a partner to allow for delegation of the marine licensing planning functions. I will listen to the member carefully, but I am minded to support the principle behind the amendment. I am not sure that the amendment as currently drafted addresses the issue in the best possible way. I have a couple of concerns about the technicalities, about which I will not go into detail here. I would prefer Colin Smyth not to move his amendment and I give a commitment to liaise with him and come back with an appropriate amendment at stage 3, because I understand the spirit of what he is trying to do.

I move amendment 7.

Stewart Stevenson: I believe that amendment 83 is essentially a technical change that relates to something that I brought up at stage 1. I will give an example. We require there to be an island wholly inside a Scottish island marine area, but we might, for example, have a marine protected area adjacent to that island that it would not be reasonable to include within the licence area. That would remove the opportunity to have the island wholly inside the licence area. Amendment 83

simply says “is adjacent to” an island, which reflects what we are trying to do.

The Convener: I call Peter Chapman to speak to amendment 84 and the other amendments in the group.

Peter Chapman: I hope that I can explain what I am trying to achieve, and that my amendment is worded correctly, although I am beginning to wonder, given the minister’s comments. The amendment is a technical one. I believe that it would protect the existing powers to grant work licences under the existing Orkney County Council Act 1974 and the Zetland County Council Act 1974.

We welcome the new powers for marine licensing that the bill gives the island authorities, but we need an assurance that if a licence is granted after the area is designated as an island licensing area, existing powers will be exempt.

That is what I am aiming for. Whether I have managed to achieve it, I now hae ma doots, as they say.

Tavish Scott: I am grateful to Mr Chapman for taking an intervention. In the context of the remarks that he made, has he checked the amendment with the island authorities, which would be in a position to confirm or deny its effect?

Peter Chapman: I have not.

Stewart Stevenson: The bill as amended would say, “the person, was designated as an island licensing area”.

I am just not sure that that means very much, regardless of the intention behind the amendment.

Peter Chapman: Point taken.

The Convener: I will leave that hanging for the moment. You can decide whether to move your amendment, Mr Chapman.

I invite Colin Smyth to speak to amendment 85.

Colin Smyth: At present, local authorities require a delegate partner to carry out delegated functions for regional marine planning on behalf of ministers. Finding a delegate partner can prove difficult for some local authorities. As the minister said, Orkney Islands Council has highlighted that issue. The amendment would provide the flexibility to allow local authorities to have sole delegate authority if they can demonstrate difficulty fulfilling their obligations in relation to a delegate partner. When Orkney Islands Council consulted stakeholders, the feedback that it received was that the overwhelming majority of stakeholders had no desire to be a delegate partner. I take on board what the minister said about the spirit of the amendment and his suggestion to look at the wording for stage 3. At this point, I will not move

the amendment, given the assurances that the minister gave me about working on the wording for stage 3.

The Convener: Just to prove a point, I will bring in Liam McArthur, because I have not heard enough from him.

Liam McArthur: I very much welcome Colin Smyth’s amendment and the assurance from the minister. There is scope for reaching an agreement that achieves the objectives that Orkney Islands Council legitimately seeks to achieve, which I hope will be relatively straightforward.

The Convener: I ask the minister to wind up.

Humza Yousaf: I am not convinced by Peter Chapman’s explanation of what he is trying to achieve with amendment 84. I am not sure that he is necessarily convinced by it, either. I do not mean that in a disparaging way at all; I just mean that the technical drafting can be difficult—I accept that. If he does not move his amendment, we will work together to see whether we can get to a position that gives him the reassurance that he needs.

I am happy to support amendment 85 from Colin Smyth, but I urge him not to move it so that we can work out the kinks. We will draft something together to bring forward at stage 3.

I support Stewart Stevenson’s amendment 83 to fix an issue in the definition of a Scottish island marine area.

I ask members to support amendment 7 in my name.

Amendment 7 agreed to.

Amendments 8 and 9 moved—[Humza Yousaf]—and agreed to.

Section 16, as amended, agreed to.

Section 17 agreed to.

Section 18—Scottish island marine area licence

Amendment 83 moved—[Stewart Stevenson]—and agreed to.

Section 18, as amended, agreed to.

Section 19—Exception from requirement for licence

Amendment 84 not moved.

Section 19 agreed to.

Section 20 agreed to.

After section 20

Amendment 85 not moved.

Section 21—Regulations

Amendments 86 and 27 not moved.

Section 21 agreed to.

Section 22 agreed to.

After section 22

The Convener: Amendment 87, in the name of Jamie Greene, is in a group on its own.

Jamie Greene: Richard Lyle is waving at me furiously but I am not sure what he is trying to say. I think that he is saying that I should hurry up and keep it short and sweet, so I will. We are all moulding into our seats after five hours.

The aim of amendment 87 is to provide for a review of the act. The amendment provides that the minister should lay before Parliament

“a report on the impact and effectiveness of this Act.”

It is a simple ask. If members are unhappy with the time period and think that one year is too aggressive or too soon, I will take that on board. I will move the amendment, and any member or the minister can change the period as they see fit. The Parliament can debate the period at stage 3. That is a reasonable compromise. I would like to see the inclusion of a review in the bill.

I move amendment 87.

Richard Lyle: I accept the proposal by Jamie Greene and I am sure that everyone else accepts it, too. It is a reasonable ask.

The Convener: I am not sure that it is in your gift to do that. You might feel that you are in a position to speak for the whole committee and for the minister. He may have different opinions.

John Finnie: While I have no problem with reviewing legislation, the time period is ridiculously short. The work to produce the review would have to commence before the year had concluded.

I will not be supporting the amendment.

Humza Yousaf: I confirm that, as enthusiastic as Dick Lyle was, his is slightly different to my opinion, but only over the timing. The spirit of amendment 87 is welcome, and we should never fear post-legislative scrutiny. It is, of course, possible to have post-legislative scrutiny without having a section in the bill.

The reason why I think that one year from royal assent is not appropriate is because one year assumes that all parts and sections of the act will have come into effect by that point. That is not the case. There may be parts that take more than a

year to come into effect. Our national islands plan, for example, will probably only just have come into being. The island-proofing duty is likely to have been in force for only a short time, and so on.

I doubt that we will have much meaningful information in the space of a year. I am happy to listen to a call to place a provision in the bill requiring ministers to conduct a review of the act. Given what I have said about timing, our thinking is that a review about four years after commencement may well provide more useful information. That would be three years into the substantive operation of the act and the islands plan.

I ask the member not to press amendment 87 but to work with us to introduce an amendment at stage 3, setting out a more appropriate timescale for the review.

Jamie Greene: I thank the members who have contributed. If the minister has given a commitment to consider at stage 3 the amendment as currently worded but with a different time period, it would be suitable to bring an amendment back at that stage, rather than press amendment 87 today.

Amendment 87, by agreement, withdrawn.

Sections 23 and 24 agreed to.

Long title

Amendment 88 not moved.

Long title agreed to.

The Convener: That ends stage 2 consideration of the Islands (Scotland) Bill.

It has been a marathon session for the committee. I thank everyone for their input at all stages. Members should note that the bill will now be reprinted as amended and will be available in hard copy and online from 8.30 tomorrow morning.

Parliament has not yet determined when stage 3 will take place. Members can, however, now lodge amendments for stage 3. Members will be informed of the deadline for amendments, once that has been determined.

That concludes today's committee business.

Meeting closed at 13:00.

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