



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 23 October 2018

Session 5



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DELEGATED POWERS AND LAW REFORM COMMITTEE

30th Meeting 2018, Session 5

CONVENER

*Graham Simpson (Central Scotland) (Con)

DEPUTY CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Tom Arthur (Renfrewshire South) (SNP)

*Neil Findlay (Lothian) (Lab)

*Alison Harris (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kevin Gibson (Scottish Government)

Michael Matheson (Cabinet Secretary for Transport, Infrastructure and Connectivity)

Kat Quane (Scottish Government)

Brendan Rooney (Scottish Government)

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament
Delegated Powers and Law Reform Committee

Tuesday 23 October 2018

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Graham Simpson): I welcome everyone to the 30th meeting in 2018 of the Delegated Powers and Law Reform Committee.

Before we move on to the main items of business, the committee must decide whether to take in private agenda items 6 to 10, which involve consideration of the evidence that we are—I hope—about to hear on the Transport (Scotland) Bill, the delegated powers provisions in various bills and our future work programme. Does the committee agree to take those agenda items in private?

Members *indicated agreement.*

The Convener: Agenda item 2 will be slightly delayed, so we will move on to agenda item 3.

Instruments subject to Affirmative Procedure

10:01

The Convener: No points have been raised on the following instruments.

Assigned Colleges (University of the Highlands and Islands) Order 2018 [Draft]

Budget (Scotland) Act 2018 Amendment Regulations 2018 [Draft]

First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 [Draft]

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

The Convener: Does the committee wish to welcome the Scottish Government's prompt action in withdrawing and relaying the first-tier tribunal instrument in response to our recommendations on 2 October 2018?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:02

The Convener: No points have been raised on the following instruments.

Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2018 (SSI 2018/292)

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2018 (SSI 2018/293)

National Health Service (General Dental Services) (Miscellaneous Amendments) (Scotland) Regulations 2018 (SSI 2018/300)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instrument not subject to Parliamentary Procedure

Social Security (Scotland) Act 2018 (Commencement No 2, Transitory and Saving Provision) Regulations 2018 (SSI 2018/298 (C 20))

10:03

The Convener: No points have been raised on the instrument. Is the committee content with it?

Members *indicated agreement.*

The Convener: I suspend the meeting briefly.

10:03

Meeting suspended.

10:04

On resuming—

Transport (Scotland) Bill: Stage 1

The Convener: Welcome back. We will now jump back to agenda item 2, which is consideration of the delegated powers provisions in the Transport (Scotland) Bill. I welcome the Cabinet Secretary for Transport, Infrastructure and Connectivity, Michael Matheson, and the Scottish Government officials accompanying him. Brendan Rooney is the bill team manager, Kat Quane is a road works policy adviser, and Kevin Gibson is a solicitor.

Does the minister have an opening statement to make?

The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson): I do, convener. My statement may be helpful to the committee in considering those matters.

The Transport (Scotland) Bill is a wide piece of legislation that takes forward a suite of measures to improve journeys for the travelling public across Scotland. It also makes necessary technical improvements in specific areas to ensure more appropriate financial flexibility and governance arrangements for some public bodies. The bill covers bus services, low-emission zones, prohibitions on pavements and double parking, smart ticketing, road works, regional transport partnerships and canals.

In framing the provisions in the bill, the Government has been acutely mindful of striking an appropriate balance between the use of primary legislation and the use of delegated powers. Delegated powers are considered appropriate in a number of places in the bill, mostly because of the complex and technical nature of the issues that are being dealt with. A level of technical detail that is simply not appropriate for primary legislation will be required in the regulations.

The bill also deals with issues in relation to which experience of practical operations or advances in technology will affect how the law should operate. Flexibility is therefore a key driver for our approach in a number of places.

I highlight that extensive stakeholder engagement is already taking place in many areas in which regulations have been proposed. That engagement aims to take a collaborative approach to developing the detail and to ensure that the secondary legislation is robust and informed by those whom it will affect. The Government does not want to pre-empt that process or stifle the chances of interested third parties to help to shape

the measures. That is why the proposals that are before the committee have been framed in the way that they have been.

Even where the Government has decided that policy objectives are most appropriately met through the use of delegated powers, we want to ensure, of course, that Parliament has the necessary detail in the bill and supporting documents as well as evidence from and engagement with the Government to give informed and constructive scrutiny. Transport Scotland officials have given evidence to the Rural Economy and Connectivity Committee, which is the lead committee, and have outlined that the Government will endeavour to share its thinking on secondary legislation with Parliament as the bill progresses. I reiterate that to the committee.

I am aware that the committee wrote to Transport Scotland with specific questions about a number of proposed delegated powers and that it received a detailed response. I hope that that response proved helpful in its consideration. I am keen to hear further from members to see where I can build on that or work with the committee to address any on-going concerns that it may have. However, the Government is clear that the approach to subordinate legislation in the bill should be seen in the context of the breadth and complexity of the subject matter at hand.

I am, of course, happy to answer any questions from committee members.

The Convener: Thank you very much.

The bill has more than 60 delegated powers, which is quite a high number; we do not often see such a number. I think that the last time that there was such a number was in the Planning (Scotland) Bill, and we had plenty to say about that. Why is it necessary to delegate that number of powers?

Michael Matheson: I recognise that that appears to be a high number, but that is a reflection of the significant range of areas that the bill seeks to address. There are around seven different areas and around 70 sections in the bill. That reflects its complexity. Very technical elements still have to be taken forward in a number of those areas in order to ensure that the bill can be effectively implemented once it has completed its parliamentary course, and the most effective way for us to do that is through the delegated powers.

The number of delegated powers is not reflective of our seeking to take more of them. The breadth and complexity of the bill and the different areas that it covers result in the need for more delegated powers than would normally be the case for a bill.

Neil Findlay (Lothian) (Lab): The bill makes provision for a number of new criminal offences to be created. I am sure that you, as a former Cabinet Secretary for Justice, will agree that creating offences that criminalise individuals is a serious and significant step. Why are they not in primary legislation?

Michael Matheson: The principal reason for that is that the criminal offences relate to enforcement matters. For example, it is likely that number plate recognition systems would be used for the enforcement of low-emission zones. There are other technologies that could be used as well, but the choice of the type of enforcement regime that is taken forward by a local authority that is implementing a low-emission zone has not yet been finalised. Until that has been finalised, it is difficult for us to put in place the exact criminal offences that would apply should someone try to circumvent or compromise the enforcement arrangement. If registration number recognition cameras were used and someone tried to cover up their number plate to try to circumvent the process or if someone tried to prevent an enforcement officer from issuing a ticket for parking on a pavement, for example, that would be a criminal offence. However, until we have finalised the enforcement regime that will be applied in different areas, we cannot make specific criminal offences.

Having been the Cabinet Secretary for Justice, I suspect that people will adapt their ways of doing things if they think that they can circumvent the existing enforcement regime. It is clear that, if that were set in primary legislation and people circumvented it or found a way to get around it, we would have to go back to the primary legislation to amend it. Doing things through regulation allows us to adapt our approach if we find that there are ways in which individuals are trying to get around the regime in order to ensure that they are not able to do so.

Neil Findlay: On the issue of flexibility, does that flexibility involve how authorities enforce the policy or does it involve what the punishment might be?

Michael Matheson: There is flexibility around what would be a criminal offence if you were trying to compromise the enforcement regime. There is flexibility there for local authorities and the bodies the provisions have been made for to be able to consider how they want to take forward enforcement, for example, through use of different technologies and associated adaptations.

There is limited flexibility around the fixed penalty that would be issued. For example, we have set out in the legislation that the fixed penalty is limited to level 5, in terms of a fine through summary proceedings. There are already

limitations in terms of what could actually be issued, but what we are discussing today is designed to deal with people who are trying to compromise that enforcement regime, which would be a criminal offence. Until we have finalised what the enforcement regime will be in those different areas, we need to take matters forward under regulations.

Neil Findlay: The areas that you have identified involve low-emission zones, parking prohibitions and the reinstatement of road works. Could you speak to each of those issues? You have elaborated on some of the issues, but why is it not possible for the enforcement regime to be in the bill?

Michael Matheson: With regard to low-emission zones, there is an issue around the type of mechanism that is going to be used for enforcement purposes. As I mentioned, that could be something like number-plate recognition systems. If someone was to compromise that, we need to be in a position where we can have a criminal offence for trying to breach that system. Exactly what that enforcement regime will be has not been finalised. There is also the potential for technology to change as well, which gives us other options. Dealing with the regime through regulation will allow us to adapt to that changing technology as well.

10:15

With regard to pavement and double-parking prohibition arrangements, the issue relates to how local authorities will seek to enforce the policies. Some will do so through fixed penalty charges but, again, the work that we are doing with local authorities on how they want to apply that has not been finalised. That is why we want to deal with the matter in regulations, so we can adapt that as well.

There is also the potential that new technology could be used to deal with those issues. The type of technology that is used by local authorities at present for fixed penalties could change at some point, and we need to be able to adapt the regulations to reflect the types of details that would be in the fixed penalty notice and so on. Using regulations gives us that flexibility.

The road works reinstatement quality plans involve a new provision that has been created. At present, the Scottish road works commissioner's work largely involves mediating agreement around where work has not been completed to the correct standard and getting the contractor or the road authority itself to carry out further repairs. One of the challenges that there has been involves making sure that there is adequate compliance in that regard. There has been a view within the

sector for some time that there is a need to make sure that the commissioner has the ultimate power to be able to fine a contractor or a roads authority if it is failing to comply with a notice that has been issued. The offence that is being created is part of a new framework that is being created to deliver these new types of enforcement provisions around the improvements that will be required through the commissioner's office. The backstop measure is that, ultimately, the commissioner will be able to apply for a fine to be applied to a contractor. The framework on how that will operate is new.

Neil Findlay: No more backstops, please.

Michael Matheson: When I read that, I knew that that was probably going to come up. Hopefully, this one will not be as complex as the other backstop issue, Mr Findlay.

It is a backstop measure that gives the commissioner the power to be able to pursue the issue if that is necessary. However, because the framework has not been fully developed with the sector yet, our view is that it is better to deal with the issue in regulation, as that allows us to address the matter at the appropriate point.

Neil Findlay: It is easy to argue that technological change happens quickly and that, therefore, we have to adapt quickly to it. You could apply that to whole swathes of Government policy that might be impacted on by technology. I am concerned that we might be moving towards doing everything through regulation.

Michael Matheson: I fully understand that. Taking powers through regulation is not something that we have undertaken lightly. We are trying to strike a balance between making provisions for things in the bill and allowing us some flexibility to respond to changes in a way that ensures that we can adapt in order to support local authorities and other partners who are going to be responsible for enforcement. I understand and recognise the concerns, and if the committee has views on how we can help to address that and improve Parliament's scrutiny of the regulations—they are going to be dealt with through affirmative procedures—I am more than happy to consider that as the bill progresses.

The Convener: Is there a danger that we could end up with a bit of a postcode lottery in terms of enforcement?

Michael Matheson: No. There will be flexibility with regard to the enforcement method that local authorities wish to use, but the penalty will not be different. There is clear consistency in how that will be applied. The criminal offences that we are discussing are to do with supporting the enforcement regime. If someone is trying to breach the enforcement regime, there are other forms of technology that could be used and other

means by which local authorities could go about enforcement. What we are trying to do is give the flexibility through regulation to enable us to adapt to that and to support them in the choices that they make.

The Convener: Obviously, some councils could enforce more strictly than others.

Michael Matheson: In what way?

The Convener: I am not saying that there is anything wrong with that, but if you allow that flexibility, clearly councils will take their own view on how they enforce either low-emission zones or pavement parking.

Michael Matheson: What the criminal offences deal with is breaches of the enforcement arrangements. If one local authority uses number-plate recognition and another local authority chooses to use another mechanism for that purpose, if the person tries to breach that by covering up their number plate or trying to circumvent the system in some way, they will be committing a criminal offence. Local authorities may take slightly different approaches to how they want to take forward enforcement, but breaches of that will still be a criminal offence. That is where the use of regulations give us the flexibility to adapt to that.

Alison Harris (Central Scotland) (Con): You will be aware that the Scottish Government's written response to the committee indicated that it is reasonable to assume that the first emission standard that is specified in the regulations under section 1(4)(a) of the bill will be consistent with leading European emission standards. It also recognised that the European standards for petrol and diesel vehicles have largely been accepted by stakeholders who responded to the consultation. We understand that the Government accepts that the emission standards are fundamental to the scope and operation of low-emission zones. Would parliamentary scrutiny be enhanced if the initial emission standard was set out in the bill and a power was taken in regulations to amend it?

Michael Matheson: That is one option. The principal reason for setting out the standards in regulations is that they are likely to change, and they could change quite quickly. What we do not want to have to do is revert to primary legislation every time that happens to amend the standards. At present, the direction of travel for diesel is towards the Euro 6 standard; for petrol, it is towards the Euro 4 standard. That is likely to be the approach that will be taken by local authorities in the implementation of low-emission zones. However, that has not yet been finalised by all the parties that will take part in the implementation of low-emission zones. That is partly why we have not included the initial emission standard in the

bill. The likelihood is that the standards will change; indeed, they will probably change quite rapidly over time. We need to be able to adapt and to address that through regulations. The regulation-making powers give us the opportunity to do that while at the same time providing the opportunity for parliamentary scrutiny.

Alison Harris: I appreciate what you are saying. Can you confirm that the affirmative procedure will apply for any subsequent changes that are made to the emission standard under section 1(4)(a) of the bill?

Michael Matheson: Is it the affirmative procedure that we will use?

Brendan Rooney (Scottish Government): It is the negative procedure.

Michael Matheson: If the committee felt that such changes would be better dealt with under the affirmative procedure, I would be more than happy to give consideration to whether the bill should take account of that and move to the use of the affirmative procedure.

The Convener: You could agree to that now if you like.

Michael Matheson: I would like to give the matter due consideration and establish whether that would be the most appropriate way to deal with it. I am not unsympathetic to the suggestion, but I would like to consider all the practical implications of any change to the use of the affirmative procedure.

Alison Harris: I appreciate that. If the bill is not amended in that way at stage 2, would it be possible for you to write to the committee to explain your reasons for taking that decision?

Michael Matheson: If it would be helpful, I would be happy to write to the committee, regardless of whether we amend the bill in that way.

Alison Harris: Thank you.

The Convener: Obviously, we will produce a report, to which you will undoubtedly respond.

Michael Matheson: Of course.

The Convener: It is an important line of questioning, because the introduction of an emission standard could affect a large number of drivers. I think that people need to know what is coming.

Michael Matheson: Even with the negative procedure, there is still a notification process. However, I am more than happy to consider the committee's views on the matter.

The Convener: Thank you very much.

We will move on to section 29, which is about bus services. It creates a new power that will allow ministers to make further provision about what may constitute a "facility" or "measure". To what extent are those terms already defined in the bill? Why is the power framed in such a way as to specify what "may" constitute a facility or measure?

Michael Matheson: The provisions in the bill are designed to be helpful to local transport authorities in setting up bus service improvement partnerships. The bill allows them to look at how they can use best practice and it enables us to consider how we can take a national approach to addressing these matters. The bus service improvement partnership model does not impose a particular obligation on local transport authorities as regards what facilities or measures must be part of the scheme. Instead, it seeks to assist local transport authorities to choose whether to include particular facilities or measures in the circumstances to which they are looking to apply a bus service improvement partnership.

I will let officials give you a bit of background to their thinking on the technical definition of the terms that are used. By and large, a facility would be some form of infrastructure, such as a bus stop or a bus lane. A measure might be the provision of additional parking facilities; "measure" is a slightly broader term. Officials can give you a bit of background, but it is important to emphasise that we are not trying to be prescriptive about what measures and facilities local transport authorities should include in a bus service improvement partnership. We are trying to be helpful to them by giving them an understanding of the issues that they should consider when they are thinking of putting a bus service improvement partnership in place.

Brendan Rooney: As the cabinet secretary said, the terms "facility" and "measure" were not designed to be particularly prescriptive or restrictive. Each partnership will be taken forward at local level by the local transport authority and bus operators in the area, so there will obviously be certain nuances to what is agreed, depending on the partnership. The regulations will allow illustrative examples to be given of what kind of things might be covered under the terms "facility" and "measure". As Mr Matheson said, a facility could be hard infrastructure, such as a bus lane or a bus stop. Measures could include traffic management or congestion policies or schemes that incentivise bus use and disincentivise car use. It is envisaged that the regulations will give illustrative examples of those.

As the partnership arrangements bed in or are taken up across the country, there is flexibility to look at how much direction will be needed in

regulations to give the parties involved in the partnerships more of a framework for coming to an agreement.

The Convener: That was useful, because most people would not have a clue what a “facility” or “measure” is. I guess that that is spelled out somewhere in the paperwork that accompanies the bill.

Brendan Rooney: The memoranda and explanatory notes that accompany the bill give a layman’s version of things. When the regulations come forward, they will include the specifics of what underpins those terms.

The Convener: Speaking of regulations, do you think, cabinet secretary, that it would be more appropriate for the affirmative procedure to be used for the regulations in question?

Michael Matheson: Given that we are not seeking to be prescriptive, I think that that would be a step too far. We are not trying to prescribe exactly what LTAs should include in a bus service improvement partnership. We simply want to support them in their decision making. In that sense, it feels to me as though the use of the affirmative procedure might be a step too far; the use of the negative procedure would seem to be appropriate and proportionate.

10:30

Tom Arthur (Renfrewshire South) (SNP): My question concerns section 39 of the bill, which makes provision for ministers to direct local transport authorities in exercising their powers to make or vary a ticketing scheme. The delegated powers memorandum states that, when such directions are issued, a reason will be provided. However, that is a political commitment; it is not included in the bill.

In correspondence with the Government, the committee asked why a requirement to provide reasoning would not be included in the bill. In its reply, the Government stated that such a requirement would be redundant because, under administrative law, the Government would be required to give a reason and a justification. However, the committee’s understanding is that, under administrative law, there would be no requirement to provide a reason, except in a specific context such as when a public authority departs from its stated provision. The Planning (Scotland) Bill includes a requirement to give specific directions—in section 7 of that bill, directions are given to planning authorities to exercise a power.

With that in mind, what is your view on the idea of including in the bill a requirement to provide

reasons for a direction to make a ticketing scheme, to put the position beyond any doubt?

Michael Matheson: The member has raised a very important issue. It is a matter that I have given some consideration to following the correspondence that we received from the committee. I believe that, under administrative law, there is a requirement for us to be transparent about the issuing of a direction, but I also think that it is an area in which we should put matters beyond doubt. This is an area in which we should consider amending the bill to include provisions that are similar to those in the Planning (Scotland) Bill so that there is no dubiety about the issuing of a direction. The reason for such a direction should be set out clearly.

The committee’s probing of the issue has helped me to formulate my thoughts on it. I think that we should put the matter beyond doubt and make it clear in the bill that there will be a requirement on the minister to set out their reasoning. Although I believe that, under administrative law, there is a requirement for us to do that, I think that we should include such a requirement in the bill so that there are no questions on the matter.

Tom Arthur: Thank you very much for that answer. I am sure that my colleagues on the committee will join me in welcoming that.

Michael Matheson: Thank you.

The Convener: Yes, that was very useful indeed.

Stuart McMillan (Greenock and Inverclyde) (SNP): My questions are on sections 51 to 53 of the bill, which confer powers to make regulations about the removal, moving and disposal of motor vehicles that are parked contrary to parking prohibitions, such as those in section 42 on pavement parking. Such regulations will engage the right to property under article 1 of protocol 1 to the European convention on human rights.

You said in your written response that, as the bill progresses, you will consider whether it should include a requirement to consult road users before such regulations are made. However, given the significance of the powers and the fact that similar United Kingdom provisions, such as those in the Road Traffic Regulation Act 1984, include a consultation requirement, can you confirm that the bill will be amended to include such a requirement?

Michael Matheson: It would be fair to say that, for regulations in this area, we would routinely carry out a consultation and would engage with a range of stakeholders on how the provisions should be drafted and developed. I am very open to the committee’s view on whether there is a

need for a provision that would require ministers to undertake such a consultation, given that, for any form of transport or traffic regulation, the Government would routinely undertake a consultation exercise as a matter of course. If the committee feels that it would prefer the bill to include a provision that makes that explicit, I would be happy to give consideration to that. Given that we would do that as a matter of course, including such a provision in the bill would put the matter beyond doubt.

Stuart McMillan: Okay. The committee will take on board what you have said when we decide whether to make further recommendations on the issue.

Section 42 is on pavement parking, which I know is not a delegated powers aspect, but it is one that I have an interest in as convener of the cross-party group on visual impairment. As you will be aware, the banning of parking on pavements is an issue that has been around for some years—Ross Finnie, Joe FitzPatrick and Sandra White all tried to do something about it. The issue is now being addressed by you in the bill.

Michael Matheson: We will get it done this time.

Stuart McMillan: Indeed. The issue comes up regularly in the cross-party group, and the fact that the bill will ban parking on pavements is welcome. People are looking forward to that coming into force when the bill becomes law. I just wanted to make you aware of that on behalf of the cross-party group.

Michael Matheson: Thank you very much. I am very grateful for that comment. I am conscious that a wide range of stakeholders are keen for the provision to be enforced. I know that the Rural Economy and Connectivity Committee has paid close attention to the issue in its evidence taking. I am keen to get as much parliamentary support as possible for the provision, because I think that it will make a marked improvement for people who experience difficulties because of pavement parking, especially people with visual impairments.

Stuart McMillan: Section 67 confers powers on the Scottish ministers to make codes of practice on reinstatement quality plans, which are to be entered in the Scottish road works register. The section also allows regulations to make further provision about those plans, including on the consequences of failing to comply with a code of practice, and for offences to be created for failure to comply with requirements that are imposed under the regulations. You indicated in your written response that the Scottish Government's view is that the bill does not authorise the regulations to contain provisions making it an

offence to fail to comply with the code of practice or to impose any other penalty for that. However, to put the position beyond doubt, are you willing to make that clearer in the bill?

Michael Matheson: That is quite a complex area, and Kat Quane will probably want to say a few things on it. The area is completely new, not just in Scotland but in the UK. Part of the reason for introducing some of the measures through regulation-making powers is to give us flexibility to adapt. It is also a new area for the sector, so it will have to adapt and respond, which again is reflected in the way in which we have framed the provisions.

I ask Kat Quane to explain a wee bit more why we have chosen that particular option.

Kat Quane (Scottish Government): Reinstatement quality plans are entirely new. We have a code of practice for how reinstatements should be carried out by those who undertake work and we have a resulting inspection regime, but we have never previously done anything on the process prior to that. The bill takes the focus back on to how things are planned, which we hope will improve the situation.

I am sorry, but what was the specific question?

Stuart McMillan: The Government's written response said that the bill does not authorise the regulations to contain provisions making it an offence to fail to comply with that code of practice or imposing any other penalty for that. To clarify that and put it beyond doubt, could that be dealt with in the bill?

Kevin Gibson (Scottish Government): The basic point is that a code of practice by its very nature is an advisory document. Our view is that, unless we specifically allowed for the regulations to create an offence of failing to comply with that document and adjusted its nature in that way, the powers as they stand do not allow us to create such an offence. We take the view that, by remaining silent on the point, we cannot create that mandatory element to the code of practice.

I am sure that we could think about whether we could do anything to make the point a bit clearer in the bill but, for the time being, given the inherent nature of a code of practice, it would need something a bit clearer than a general power to create offences in relation to a general power to make regulations about the code of practice. We would need to be clearer and more specific than that to allow us to create an offence in the regulations of failure to comply with the code.

Michael Matheson: I am interested in the committee's views on the issue, if it feels that there is a way in which we could enhance clarity on the issue in the bill. If there is a way in which

we can reasonably achieve that, we are more than happy to look at it.

Stuart McMillan: I have one further question, which is not about delegated powers.

The Convener: Before you ask that, I have a question on the code of practice issue. Why did you decide to go down that route rather than have something a bit tougher?

Kat Quane: For reinstatement quality plans to be effective, they need to be developed with the industry. Industry absolutely has to buy in, otherwise the process will become just a box-ticking exercise. The best and most effective way of doing that is through a code of practice that is nationally applied and that applies to everyone who has to provide the plans.

Michael Matheson: In addition, it is likely that the code of practice will have to be changed and adapted as time goes by and, because it will be a highly technical document, a code of practice is the most practical way in which to take that forward.

Stuart McMillan: I have a question about road works and what is in the bill. I do not see anything in the bill that will improve dialogue between the undertaker of road works and bus operators or that will encourage longer-term planning for non-essential and non-emergency road works that are required. Bus operators have raised that issue with me as a serious concern. The issue ties into Mr Rooney's comments a short time ago about incentivising bus usage and disincentivising car usage. If bus operators have to change bus routes at the last minute because there is little dialogue with them, there is less incentive for people to use buses and to get out of their cars.

Michael Matheson: You raise an important issue about the impact that road works can have on the quality of bus services. The bus industry is concerned about significant road works just starting without bus companies being notified. That can have an impact on journey times, as buses might have to take diversions, and passengers might not be aware of the changes. There is a role for the LTAs in those matters. Kat Quane can perhaps say a bit more about some of the work that has been going on to try to address the issues and get greater co-ordination. The issue has been raised with me by the bus sector as well.

Kat Quane: The issue is not related to powers; it is about bus companies and, indeed, all stakeholders. We have a really good system in Scotland through our national road works register, in which there must be advanced notification of planned works. The bill makes the timescales within which that information must be entered in the register much shorter, so that everyone can

have it. The information ports over to a public-facing website, so any bus company, supermarket, or member of the public has access to information about when roads are to be closed, with contact details of who to speak to about issues such as diversion routes. Tightening the timescales will make things better for everyone, including bus companies.

On emergency works, the bill gives the commissioner an inspection function—he does not have one at the moment—and better powers to investigate those things. If there is a genuine gas escape or water leak, that could be notified as an emergency. If it is perhaps not genuine, there will be additional powers for the commissioner to investigate that and address it.

Stuart McMillan: The issue of short notice has been raised with me, certainly for non-emergency works, as it causes confusion and hassle not only for the operator but for bus users. I will examine further what is in the bill and continue my dialogue with bus operators in my constituency but, given that the issue is still being raised by the industry, it is clear that there are still concerns and that things could be tightened up.

Kat Quane: Any road works that will take more than 10 days or that will involve a road closure need to be notified three months in advance. That information should be in the public domain. There will be occasions when, for co-ordination purposes, that timescale has to be shortened, but the norm is that that type of information should be in the public domain three months before the works happen. Maybe historically that was not available but, with the public-facing website, if someone knows what their bus routes are, they can look and see how works will affect their commute. Obviously, with work that is planned for a much shorter period to deal with things such as an emergency pothole, we cannot have those long timescales but, for planned works that will take more than 10 days or will involve road closures, the information should be available three months in advance.

10:45

Neil Findlay: On the wider points, tomorrow evening in my region, I have a public meeting about buses because of the withdrawal of a swathe of services. What is there in the bill that I can tell people about tomorrow night to show that things will change? Bus companies have withdrawn services. The public has very little say in that and no power to change it. What hope can you give people?

Michael Matheson: The bill gives powers to LTAs to put in place bus service improvement partnerships, working with bus service providers,

which can look at specific routes. It gives local authorities as well as LTAs the opportunity to consider putting in place franchises, and it gives them the power in certain circumstances to deliver a bus service directly within an area. The bill expands the range of options that LTAs have to address such issues. In some cases, that will involve working with operators, but in certain circumstances local authorities will have the power to deliver bus services within their areas.

Neil Findlay: Will they have the financial wherewithal to do that?

Michael Matheson: There will always be a financial limitation in such matters. There is no additional funding provided for that purpose. That is a matter for local authorities. For example, my local authority chooses to subsidise certain routes because it sees them as essential services. The local authority works with the bus operators to maintain services to some communities, because otherwise those services would not be commercially viable. In future, the local authority could choose not to provide that subsidy but to use that resource for the delivery of bus services directly. It will have the option to do that. The bill gives local authorities a greater range of options than they have available to them at present.

The Convener: As there are no more questions, I thank the cabinet secretary and his officials for their time. I move the meeting into private session.

10:47

Meeting continued in private until 11:16.

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