



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 19 March 2014

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INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

9th Meeting 2014, Session 4

CONVENER

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)

COMMITTEE MEMBERS

*Jim Eadie (Edinburgh Southern) (SNP)

*Mary Fee (West Scotland) (Lab)

*Mark Griffin (Central Scotland) (Lab)

*Alex Johnstone (North East Scotland) (Con)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jackie Baillie (Dumbarton) (Lab)

Jayne Baxter (Mid Scotland and Fife) (Lab)

Neil Bibby (West Scotland) (Lab)

Sarah Boyack (Lothian) (Lab)

Sharon Fairweather (Transport Scotland)

Neil Findlay (Lothian) (Lab)

Patrick Harvie (Glasgow) (Green)

James Kelly (Rutherglen) (Lab)

Ken Macintosh (Eastwood) (Lab)

Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

Committee Room 1

Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 19 March 2014

[The Convener opened the meeting at 09:30]

Procurement Reform (Scotland) Bill: Stage 2

The Convener (Maureen Watt): Good morning, everyone. I welcome you to the ninth meeting in 2014 of the Infrastructure and Capital Investment Committee. I remind everyone to switch off their mobile phones, as they affect the broadcasting system. Some committee members may consult their tablets during the meeting, as we provide meeting papers in digital format.

The first item on the agenda is the second day of our consideration of the Procurement Reform (Scotland) Bill at stage 2. I welcome back the Cabinet Secretary for Infrastructure, Investment and Cities, Nicola Sturgeon, and her supporting officials. I remind members that the cabinet secretary's officials are here in a strictly supportive capacity; they cannot speak during proceedings or be questioned by members.

Members should have a copy of the bill, the marshalled list and the groupings of amendments.

I welcome other members who are here to speak to their amendments.

Section 9—Sustainable procurement duty

The Convener: The first group of amendments is on ethical and fair trade practices. Amendment 6, in the name of Jim Eadie, is grouped with amendments 14 and 28.

Jim Eadie (Edinburgh Southern) (SNP): I welcome the opportunity to speak to amendments 6 and 28.

Amendment 6 recognises the Scottish Government's commitment to fair trade practices and seeks to embed in the bill the importance that Scotland places on fair trade in public procurement decisions. I place on record my appreciation to the Scottish Fair Trade Forum and Martin Rhodes for his work in highlighting the issue.

Section 9 of the bill creates a duty on contracting authorities

"to consider how in conducting ... procurement"

they may

"improve the economic, social, and environmental wellbeing of the authority's area".

The committee's stage 1 report recognises the concerns that the Scottish Fair Trade Forum raised. It states:

"The Forum was concerned that the duty at section 9 is built on a contracting authority's considerations of its own 'area' and will exclude fair trade from sustainable procurement decisions."

Amendment 6 seeks to address that specific concern by enhancing that duty so that contracting authorities must also pay due regard to the promotion of ethical and fair trade practices.

Scotland is one of the world's only two fair trade nations, and we can all be proud that it is leading the way internationally in that area. I believe that making specific reference to fair trade in the bill will help to increase our commitment to fair trade even further.

The committee's report noted:

"The recognition of fair trade was called for by a wide range of stakeholders".

In addition to the Scottish Fair Trade Forum, which I have already mentioned, they included

"the University of Edinburgh, Nourish Scotland ... the STUC and the Civil Society Organisation in Scotland. The latter considered that 'the Bill should empower procurers to prioritise fairly-traded products wherever these are available, especially when no locally-sourced alternatives exist'."

The committee's report also contained the statement by the Deputy First Minister:

"The sustainable procurement duty should help encourage authorities to buy fairly traded goods where they are available. A range of further work needs to be undertaken to progress the uptake of fair and ethical trade."

I believe that the Deputy First Minister is absolutely right in that regard and that my amendment gives practical effect to that commitment and to the aspirations that are contained in the bill.

Amendment 6 provides a straightforward and effective means to recognise the Scottish Government's continuing emphasis on supporting ethical and fair trade practices while continuing to leave other provisions intact. To quote what the Deputy First Minister said in last week's meeting, it is "simple, straightforward and deliverable".

Amendment 28 recognises the importance of providing guidance to contracting authorities to ensure that the implementation of ethical and fair trade procurement is as straightforward and consistent as possible. It states:

"any guidance issued ... must cover the manner in which contracting authorities are to take ethical and fair trade practices into account in assessing the suitability of an economic operator."

The Scottish Fair Trade Forum, which I have had the pleasure of working with on the amendment, has welcomed the opportunity to work with the Scottish Government in order to draw up detailed guidance and support for public sector procurement professionals to encourage wider and more consistent procurement of fair trade products.

It is worth noting that the executive committee of the National Assembly for Wales has published guidance on fair trade procurement. The Scottish sustainable procurement action plan includes many steps that promote sustainable procurement, but strengthened and coherent guidance will enable procurement officers to gain the confidence to honour their duty to promote ethical and fair trade.

I move amendment 6.

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): I thank Jim Eadie for lodging amendments 6 and 28, which have helped us to focus on fair trade at stage 2. Many members commented on the issue during stage 1. I listened carefully to their contributions and considered submissions, particularly from the Scottish Fair Trade Forum. I concluded that we should add a provision to the bill on fair and ethical trading.

Our status as a fair trade nation means that we already do a great deal in the area. The Government and other public bodies use and promote fair trade products in a number of ways. For example, we recently announced funding for the Scottish Fair Trade Forum until 2017, to enable the forum to develop support for fair trade across all sections of Scottish society.

It was noted in the stage 1 debate that there are legal challenges around what can be done on fair trade, because European law prohibits the specification of particular fair trade brands. It is also the case—this is a simple statement of fact—that fair trade products will not be available in relation to many procurement exercises in the public sector. It is therefore important that the bill allows a degree of flexibility for public bodies to decide, on a case-by-case basis for each procurement exercise, what is proportionate, pragmatic and possible, given the legal constraints within which they operate.

Against that background, I strongly concluded that the right approach is to provide that an authority's procurement strategy should set out a statement of its general policy on fairly and ethically traded goods and services. Amendment 14 will achieve that.

Jim Eadie's amendment 6 would add to the sustainable procurement duty a requirement to

promote fair trade practices. I have a lot of sympathy with the motivation behind the amendment, but I am concerned that it would place a disproportionate burden on public bodies by requiring consideration of fair trade in all competitions, even when fair trade products are clearly not available in the procurement under consideration. That perhaps tips the balance towards the approach being disproportionate.

On amendment 28, the bill provides for guidance on the selection of tenderers, which will address the standards of conduct that are required of participants in procurement processes. Separate provision in that regard is not required. Therefore, although I understand why Jim Eadie lodged the amendments, I ask him to consider withdrawing amendment 6 and not moving amendment 28, in favour of amendment 14, in my name, which I think will achieve the objective of his amendments in a proportionate and appropriate way.

Jim Eadie: I am grateful to the cabinet secretary for her positive response to the points that I made in support of amendments 6 and 28. I am particularly pleased that the Scottish Government has listened to and acted on representations from a range of stakeholders, by lodging amendment 14, which seeks to strengthen the bill along similar although not identical lines to those in my amendments, which I lodged before the Government lodged amendment 14.

I am delighted that the Government has responded to the Scottish Fair Trade Forum's call for the bill explicitly to recognise the responsibility of public procurement to reflect Scotland's fair trade nation status. I am satisfied that amendment 14 will achieve that, so I am content to withdraw amendment 6 and not to move amendment 28.

Amendment 6, by agreement, withdrawn.

Amendment 66 moved—[Patrick Harvie].

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 66 disagreed to.

Amendment 67 moved—[Patrick Harvie].

The Convener: The question is, that amendment 67 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Eadie, Jim (Edinburgh Southern) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

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

Amendment 67 disagreed to.

The Convener: The next group is on compliance with the public sector equality duty. Amendment 68, in the name of Jackie Baillie, is grouped with amendment 74.

Jackie Baillie (Dumbarton) (Lab): Amendment 68 is simple—in effect, it would promote compliance with the public sector equality duty. Amendment 74 would encourage local authorities or other public sector bodies to set out exactly how they will go about doing that.

It is perhaps worth explaining what the public sector equality duty requires. It is set out in section 149(1) of the Equality Act 2010, which requires listed public authorities to have due regard when exercising their functions to things such as the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations.

The phrase “due regard” means that, when public bodies make decisions, they must consciously consider the needs of the duty. However, the amount of regard that they give to it depends on the nature of the decision. For example, a procurement decision on a service for older people would require more due regard than a procurement decision on purchasing stationery. Therefore, we need to be proportionate in applying the duty.

I was driven to lodge the amendments as a result of an evaluation that was conducted by the Equality and Human Rights Commission between May and October 2013, which looked at how well public sector authorities are complying with the Equality Act 2010. It would be fair to say that there is a mixed picture. Although bodies might have good intentions, they fail to support those intentions with evidence of well-thought-through measurable and attainable outcomes. A separate

review that was undertaken by the United Kingdom Government equalities office found that the main challenges lie in implementation, and that the implementation varies considerably across the public sector.

Amendments 68 and 74 will place the duty firmly in the bill. I lodged them precisely because we need to move from good intentions to practical application and implementation. Making consideration of the public equality duty central to the procurement process will undoubtedly help.

I move amendment 68.

Nicola Sturgeon: Again, I have a lot of sympathy with the motivation for the amendments. Like Jackie Baillie and, I am sure, all members of the committee, I am fully and strongly supportive of the public sector equality duty.

I stress that contractors that are performing what would otherwise be regarded as a public function—there are many examples of that, such as contractors running a prison or another public building—are already subject to the Equality Act 2010 duty in relation to that function. It is important that we understand that. The amendments, particularly amendment 74, would extend the duty to private sector operators and would in effect put a bit of a policing function on the public sector to ensure compliance by private sector operators.

The application of the Equality Act 2010 and compliance with the duties under it were considered in detail during the consultation and the scrutiny process. There might be a bigger debate to be had about extension of those principles to the private sector, but I am not convinced that it is right or appropriate—or necessarily proportionate—to use the bill to extend to the private sector duties that have been carefully considered in the context of other legislation and imposed on public bodies, and then to use public bodies as a means of enforcing compliance with those duties.

Therefore, I am not persuaded of the case for the amendments. I recognise that there is certainly a bigger debate to be had about the principle of duties on the public sector and their application to the private sector, but I do not think that this way of doing it is appropriate.

For that reason, I ask Jackie Baillie to withdraw amendment 68 and not to move amendment 74. If the committee does vote on the amendments, I ask the committee not to agree to them.

09:45

Jackie Baillie: I certainly considered what the Government had done before, and I took a look at Scottish procurement policy note 8 of 2012, which talks about planning for the procurement of

services, developing a procurement strategy and even encouraging authorities to undertake equality impact assessments as one of the tools that they could use. Again, I am unclear whether any such assessments have actually been undertaken or whether in implementation we have failed to mirror the good intentions.

Although I hear what the cabinet secretary says, I think that if we are encouraging anybody to deliver a public service, whether it is the public sector, the voluntary sector or the private sector, we will want that public service to be delivered to the same quality and the same standard—to the highest quality and the highest standard. Complying with the public sector equality duties is very much part of that process, so I will press amendment 68.

The Convener: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 68 disagreed to.

The Convener: Amendment 69, in the name of Ken Macintosh, was debated with amendment 36 last week.

Ken Macintosh (Eastwood) (Lab): If I can just very briefly say—

The Convener: No, you just need to move or not move the amendment.

Ken Macintosh: If I may explain just very briefly, because I will not be able to stay for amendment 81—

The Convener: Just move the amendment or do not move it—that is it.

Ken Macintosh: I was encouraged by the cabinet secretary's remarks, but I am disappointed that she has not accepted any of the amendments.

I move amendment 69.

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

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 69 disagreed to.

The Convener: Amendment 70, in the name of Ken Macintosh, was debated with amendment 36 last week.

Ken Macintosh: I apologise that I will not be able to stay for amendment 81, which comes up later.

I move amendment 70.

The Convener: The question is, that amendment 70 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 70 disagreed to.

The Convener: The next group is on procurement involving the provision of food. Amendment 7, in the name of Sarah Boyack, is grouped with amendment 15.

Sarah Boyack (Lothian) (Lab): Amendments 7 and 15 are intended to put food fairly and squarely on the procurement agenda. I listened with interest to the cabinet secretary's comment last week that we should think about the bill in the context of whether it passes the test of European Union requirements and whether our amendments were pragmatic and proportionate. I believe that these two amendments fit the bill.

Over the past few years since the Parliament was established, we have had countless visits from local food producers as well as local food

campaigners through environment week, which has highlighted local food products that stress quality and the environmental benefits that come from those food products. As Jim Eadie alluded to, we have just finished Fairtrade fortnight—another huge success in terms of consumers expressing their preferences—and there have been a series of campaigns specifically aimed at promoting the uptake of higher quality and more sustainable food in the public sector.

We have had the better eating, better learning campaign, food for life, food for change, Nourish Scotland and the Soil Association's "First Aid for Hospital Food" report, which demonstrated that it is possible to source local, fresh food with no impact on cost—rather than putting the costs up, it is possible to do that in a cost-neutral way. There is a huge amount of best practice out there—the challenge is that it is not universal. Therefore if we do not amend the bill in this way today, it would be a missed opportunity.

I am trying to highlight the issues of public health, local economy and our climate change objectives. The Scottish Government's own research highlights the importance of food production to our economy. The sustainable Scotland network has highlighted the benefits that come from fresh food: the local reduction in food miles; sustainable produce; the reduced impact on our environment; and the fact that we raise people's health standards and awareness by focusing on seasonal and organic food.

There is also the issue of food safety—for example, people have been horrified by horsemeat ending up in food. There are lots of issues to do with transparency and quality that I believe would be helped by the proposed amendments. We have had a discussion about fair trade, which is all about spending our public money to deliver wider objectives and get more value for our money.

The reason for putting food on the agenda is that without explicitly asking the public sector to consider food, it simply will not happen. Without a reference to food in the bill, all the good initiatives and fantastic campaigns that many organisations have run will not really change the way in which procurement operates. The Scottish climate change declaration of 2013 was fantastic. However, Unison has analysed the impact in terms of food and has demonstrated that there is very little reference to food or food procurement in the climate change declaration reports. The only places where the issue of food is being explicitly picked up and practice is being changed are Edinburgh, where there has been a concerted effort on the issue by the local authority, public sector organisations and the health board, and East Ayrshire. Those two areas stand out because

they have been pioneering and because of the pilot schemes that they have had.

I cannot see any disadvantage to the proposed approach. It would be good for farmers, it is what consumers want and it would get more value out of our public sector investment. I believe that the bill needs to refer to food explicitly. I have spoken to various procurement officers, whose test to us is, "What difference will the bill make?" Amendments 7 and 15 would help on the food issue. They are proportionate, because they give procurement officers flexibility in how they negotiate a good deal. However, they would ensure that the areas that they seek to introduce would be part of that. What is proposed would not tie procurement officers to specific marks but would give them flexibility and let them exercise judgment; it takes into account that in years to come there might be different marks that would be appropriate.

The East Ayrshire project, which was initiated in 2006, demonstrates that what is proposed is possible and doable in terms of EU compliance. I believe that a reference to food on the face of the bill, backed by guidance, could make what I seek happen. I hope that the cabinet secretary will understand and sympathise with the objectives of amendments 7 and 15 and will accept that having a reference to food in the bill and, crucially, backing that up with guidance could be a game changer for the bill. I hope that committee colleagues will support amendments 7 and 15.

I move amendment 7.

The Convener: I think that Ms Boyack left out Moray in her list of places with good practices.

Nicola Sturgeon: I understand and sympathise with the objectives of amendments 7 and 15 and I think that Sarah Boyack has articulated her case very well. I explained the Government's position on fair trade in my response to amendments 6 and 28, in the name of Jim Eadie. As Sarah Boyack has just outlined, amendments 7 and 15 would add the areas of

"health, wellbeing and education of communities"

and "animal welfare" to the sustainable procurement duty and strategy in relation to regulated procurement for the provision of food.

I understand the objectives of amendments 7 and 15, but I would argue that they are unnecessary in some parts and that in other parts there is a danger that what is proposed borders on being unworkable, although I do not want to overemphasise that point. Currently, purchasers have a duty to consider how to improve the economic, social and environmental wellbeing of the public bodies' areas. That is of general application and is not limited to food procurement,

as per Sarah Boyack's amendments, but I would argue that it addresses the health and wellbeing aspect of paragraph (i) of the new subsections in both amendments 7 and 15.

We are talking about primary legislation, so this is not an unimportant point: we must be very clear about the duties that we will impose on public sector bodies. It is not entirely clear from amendments 7 and 15 how a purchaser would be expected to act in a way that improved the "education of communities" strand of paragraph (i), and it is arguably too tenuous a link to make to a public procurement exercise. I would argue that paragraph (iii) in both amendments 7 and 15 is unnecessary because of amendment 14, which we discussed earlier and which will introduce

"fairly and ethically traded goods and services"

into the procurement strategy. There is already a considerable body of policy and guidance that public bodies must comply with in this area, and I am not convinced that it would be proportionate to overlay further duties on that.

Also in relation to the procurement strategy, not all public bodies will have significant contracts connected with the provision of food. Some will have none. However, I would expect the strategy to cover those cases where bodies have significant contracts connected with food, especially following amendment 14, which requires the strategy to set out the contracting authority's general policy on

"fairly and ethically traded goods and services".

As members are aware, we will be publishing guidance under section 16 in relation to strategies. That will include detail as to the contents of the procurement strategy. I think that that is the appropriate forum for addressing matters relevant to procurement involving the provision of food. I am asking and tasking my officials to consider that when we draft the guidance. As I have said on previous occasions, I am happy to share that draft guidance with the committee and to consider any input from the committee at the appropriate time.

As I said, while I absolutely understand the objective and motives behind the two amendments, for the reasons that I have outlined I think that dealing with the issues in the way that I have set out is preferable to the approach contained in amendments 7 and 15. I therefore ask Sarah Boyack to withdraw amendment 7.

Sarah Boyack: I am not entirely surprised by the cabinet secretary's response, although I welcome the fact that there will be guidance from the Scottish Government.

I think that a specific benefit would come from including food in the bill. We have lots of best practice and good initiatives. I did not mention the

convener's own local authority because it was not flagged up in the research. The research indicates that there is good practice but it is not universal. That is why it would be a missed opportunity if we did not specify food in the bill.

I encourage a review of what ends up in the bill. We often pass a bill, think, "Job done," and move on. I sense that there is a chance that amendments 7 and 15 might not get through today, so I leave a plea with the committee and the cabinet secretary: I hope that, should those amendments not be accepted today, we will return to the matter in the future and analyse what difference the bill has made in food procurement. Did it do the job? Did we get a higher proportion of food that met the targets that I have outlined in my amendments?

On the health and wellbeing factor, the issue is about quality of food—and I return to the points that I made about horsemeat, traceability, organic food and freshly sourced food. There are lots of very good public health arguments, and there are links into the obesity agenda. There are lots of preventive arguments for having a strong, effective, good public health food policy. Procurement is one of the ways that we could achieve that. It is a significant issue for the public sector in the context of prisons, the health service, local authorities and the public sector more generally.

Adopting the measures that I have proposed would force everyone involved in procurement to think and to put the quality of food centre stage. If we do not include amendments 7 and 15 in the bill, it will not be centre stage, and I imagine myself returning to a committee some years hence.

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 7 disagreed to.

The Convener: The next group is on contracts for health and social care services. Amendment

38, in the name of Jim Eadie, is grouped with amendments 10, 10A, 11 and 11A.

Jim Eadie: I am pleased to introduce amendment 38, which is intended as a probing amendment. It seeks to create a duty on contracting authorities to consider how conducting the procurement process could improve the quality of a health or social care service and the wellbeing of the individuals and families who use it.

I acknowledge and record my thanks to the Coalition of Care and Support Providers in Scotland for its support in working with me on the amendment. In particular, I thank Annie Gunner Logan for her expertise in this area.

As we have already discussed, the sustainable procurement duty at section 9 is an important new obligation on contracting authorities to consider a range of factors when carrying out procurement activity, including how they can use procurement to bring about improvements to the wellbeing of the area, to facilitate better access to the process for small and medium-sized enterprises and third sector organisations, and to promote innovation.

10:00

In care and support, procurement is a process that is used to put services in place to meet the assessed needs of individuals, yet the bill as introduced does not place authorities under any obligation when carrying out procurement activity to consider the wellbeing of those individuals nor that of their families and carers. The question is why, if the needs and considerations of the authority area are deemed important enough to be included in the bill, the individuals in that area should not also be included. It is therefore proposed that the sustainable procurement duty be enhanced by the addition of a provision requiring authorities to consider how procurement activity can not only improve the wellbeing of the area but focus specifically on the wellbeing of the person or persons who use or will use the service to be procured and to report publicly on the extent to which that is achieved.

The amendment seeks to align the bill with the ambitions of the Christie commission and the Scottish Government's programme of public service reform, as well as aligning it more closely with current imperatives in social care policy and practice.

I move amendment 38.

Nicola Sturgeon: During last week's meeting, I mentioned the commitment that I had previously given the committee to lodge an amendment that exempts health and social care contracts from a requirement for advertising. Amendment 10 makes good that commitment.

The power in subsection (3) of the proposed new section that is introduced by amendment 10 is drafted to be consistent with other subordinate legislation provisions in the bill. The Government's intention is to bring forward regulations under this power, so changing the "may" to a "must", as amendment 10A would do, would have no practical effect. Amendment 10A is therefore not necessary and would lead to some inconsistent drafting in the legislation.

Following the committee's evidence session last December and the committee's stage 1 report on the bill, which asked the Government to consider representations from the CCSP and others, I have decided, on further reflection, to lodge a further amendment—amendment 11—that gives the Scottish Government the power to issue statutory guidance on health and social care contracts. Like other guidance and regulations provided for in the bill, there will need to be extensive consultation with all stakeholders on its content. I am happy to give an undertaking to the committee today to consult it on that guidance in due course.

Amendment 11A would change amendment 11 so that ministers are required to publish guidance on health and social care services rather than having a power to do so. On reflection, given the importance of the guidance addressed by amendment 11, I have no objection to amendment 11A if the committee sees fit to agree to it.

On amendment 38, section 11(5) already requires that procurement strategies contain a statement of general policy on engaging with those affected by the authority's procurement. In the context of health and social care procurement, that will inevitably require consideration of users and their families and carers, so the needs of users must already be a key consideration under the bill. In addition, health and social care services that are provided will be quality assured through the inspection and scrutiny process of Healthcare Improvement Scotland or Social Care and Social Work Improvement Scotland or, in the case of integrated services—under the Public Bodies (Joint Working) (Scotland) Bill—by both those organisations.

I understand Jim Eadie's motivations in lodging amendment 38, but I suggest to him that, rather than complicating the general duty laid out in the bill, the matter should be considered and addressed in the context of the statutory guidance that, by way of the amendments that I have lodged, I am undertaking that the Government will bring forward.

In conclusion, I ask the committee to support amendments 10 and 11, in my name, and I ask Jim Eadie to withdraw amendment 38 in line with the comments that I have given and I ask Mary Fee not to move amendment 10A.

Mary Fee (West Scotland) (Lab): I will be brief, as amendments 10A and 11A would both require a change of only one word in the amendments in the cabinet secretary's name.

I will speak to both amendments, as they are quite simple. Amendment 10A would place a duty on ministers to state clearly what a health and social care service is. Leaving the original amendment unchanged could result in a lack of clarity about what a health and social care service is and would potentially put contracting authorities in an unfavourable situation.

In seeking to change one word in amendment 11, amendment 11A would again provide additional clarity about the procurement circumstances that need to be adhered to for the sake of transparency by ensuring that guidance would be published. It would also ensure continuity of language in and indeed strengthen amendments 10 and 11.

Jim Eadie: I am grateful to the cabinet secretary for responding to my comments in support of amendment 38 and acknowledge the on-going constructive dialogue that she alluded to between Scottish Government officials and the Coalition of Care and Support Providers in Scotland, which has already resulted in the Government lodging a series of amendments to address a number of the coalition's concerns.

I lodged amendment 38 to explore further the outstanding issues that the coalition has raised and to find out what further assurances the Government could provide to meet those concerns. I welcome the cabinet secretary's commitment in lodging a further amendment—amendment 11—and her assurances that the issues raised in amendment 38 will be properly considered in the consultation process on the statutory guidance that the Government will issue.

I am therefore content to withdraw amendment 38.

Amendment 38, by agreement, withdrawn.

The Convener: Amendment 71, in the name of Patrick Harvie, has already been debated with amendment 65.

Patrick Harvie (Glasgow) (Green): I move amendment 71, convener, and indicate that I do not intend to move my four remaining amendments.

The Convener: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 71 disagreed to.

Amendment 3 moved—[James Kelly].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 3 disagreed to.

Amendment 72 moved—[Jackie Baillie].

The Convener: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 72 disagreed to.

Section 9 agreed to.

After section 9

Amendment 8 moved—[Nicola Sturgeon]—and agreed to.

Amendment 39 moved—[James Kelly].

The Convener: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 39 disagreed to.

Amendment 40 moved—[Mary Fee].

The Convener: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 40 disagreed to.

Section 10—Supported businesses

The Convener: Amendment 9, in the name of the Deputy First Minister, is grouped with amendments 13 and 17.

Nicola Sturgeon: I lodged amendment 9 following scrutiny by the Delegated Powers and Law Reform Committee, which questioned whether, in practice, the power to vary the definition of a supported business was necessary. On reflection, I agree with that committee, and amendment 9 seeks to remove that provision from the bill.

Amendment 13, in the name of Mark Griffin, seeks to require public bodies to state in their strategy whether they intend to restrict competition to supported businesses and how they intend to ensure that they award “at least one contract” to a supported business. I ask Mr Griffin to give serious consideration to the point that I am about to make, because I am very supportive of his amendment in principle.

Since I have become responsible for procurement, I have been very keen to ensure that we do everything we can to support supported businesses in the procurement process. However, I am not sure that amendment 13 would work in practice; indeed, when you think about it, it becomes very clear that it would be very difficult for it to do so. When an authority prepares its strategy, it is not necessarily going to know its precise requirements over the coming year and might not, for example, know whether it will have a procurement in which it would be appropriate to restrict competition to a supported business. In a practical sense, therefore, it is hard to see how a provision relating to the preparation of the strategy would be possible or, indeed, deliverable.

That said, I am sympathetic to the intention behind amendments 13 and 17, especially with regard to reporting on the level of engagement with supported businesses. However, my strong preference is for any provision relating to a supported business not to contain a reference to “at least one contract”, not because I do not want public authorities to award at least one contract to a supported business but because I do not want the possibility of sending a message that makes them think that once one such a contract has been awarded, they do not need to do anything else. I find that particular wording problematic.

I am happy to give the committee the commitment that we will consider what more might be done, particularly about reporting levels of engagement with supported businesses, and am happy to feed back to the committee on that further consideration before stage 3. Nevertheless, I hope that Mark Griffin will consider the points that I have just made, one of practical importance and one of importance in principle, and that in seeking to move his amendments, he will think about how they have been framed.

I ask Mark Griffin to consider the points that I have made and the very clear commitment that I have given and to agree not to move amendments 13 and 17.

I move amendment 9.

Mark Griffin (Central Scotland) (Lab): Amendments 13 and 17, which seek to amend sections 11 and 14 respectively, apply only to public authorities engaged in procurement

activities amounting to £5 million or more. I do not think it unreasonable of us to expect a procurement authority that is carrying out £5 million-worth of procurement a year to award at least one contract to a supported business.

In fact, these amendments seek to work towards the Government's own policy ambition, as stated in the supported business framework, that public authorities should award "at least one contract" to supported businesses. They do not say that public authorities must award a contract to a supported business, but simply ask them to set out how they are working towards that aim.

As a result, I intend to move amendments 13 and 17.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): I say to the cabinet secretary that I am a bit concerned at what appears to be a lack of provision for supported businesses in the bill, although I am encouraged by her opening remarks about giving the matter further consideration. I am also sympathetic to Mark Griffin's amendments, which seek to embed Scottish Government policy in the bill. As he has said, the Scottish sustainable procurement action plan encourages every public body to have at least one contract with a supported business.

The Scottish Government has also created a reserve framework agreement to make it easier for public sector buyers to do business with supported businesses, and I believe that, so far, the agreement has generated around £500,000 in extra business. However, much more can be done on this matter.

Total annual turnover in Scottish supported businesses is currently £32 million per annum. As the cabinet secretary will be aware, the actions of the Department for Work and Pensions are likely to increase the vulnerability of supported businesses. The work choice programme, which provides a subsidy of some £5,000 per annum for registered disabled staff, comes to an end in October 2015 and, as far as we can make out, is unlikely to be replaced. As I understand it, work choice spending in Scotland supports 565 places in supported businesses.

In summary, I would be grateful if the cabinet secretary could give consideration to a stage 3 amendment that would have the effect of promoting uptake of the reserve framework and article 19 of the EU procurement regulations, which permits public buyers to reserve contracts for supported businesses only.

10:15

Nicola Sturgeon: Adam Ingram is right to refer to the framework, which is one of the things that I

was alluding to when I spoke earlier about the Government's efforts to support supported business in the procurement process. The framework is having success, but I do not disagree with the statement that more needs to be done. I have given a commitment that we will explore further what more we might be able to do, particularly around reporting on levels of engagement with supported businesses. I am not going to state definitely that that will lead to a stage 3 amendment, because it would be premature to do so before we have conducted that exploration, but I have said that I will report back to the committee before stage 3, and if I think that it would be helpful to put something more in the bill, we would be prepared to do that through a stage 3 amendment. I hope that that gives Adam Ingram the assurance that he seeks.

On Mark Griffin's points, I agree that it is not unreasonable to expect public bodies that are procuring more than £5 million a year to have at least one contract with supported businesses. That is not a point of disagreement between Mark Griffin and me; I absolutely agree with that. However, I do not think that Mark Griffin properly addressed the two points when he spoke to his amendments.

Let me read the first part of amendment 13. It requires public bodies to include a statement in their procurement strategy

"setting out—

(i) whether the authority intends to restrict participation in regulated procurements under section 10(1)".

In practice, that would require public bodies, at the start of every year, when they set out their procurement strategy, to say whether at any point during the year they intend to restrict competition to supported businesses. However, they might not know at that point whether there is going to be a procurement in the course of the year where it would be appropriate to do that. The member is effectively asking public bodies to look into a crystal ball and try to come to conclusions about what procurements they might or might not need. I am making a practical objection to the framing of that amendment, not an objection in principle to what it is trying to achieve.

My second point relates to the second part of amendment 13, on

"how the authority intends to ensure that it awards at least one contract to a supported business".

Again, I agree with Mark Griffin that it is not unreasonable to say that a public body procuring significant amounts should have at least one contract, but I would go further and say that it is not unreasonable to expect them to have more than one contract with a supported business. That

is why I do not want to put a de minimis position into primary legislation, because, with the best will in the world, the danger of doing that is that public bodies will read it as saying that if they have one contract with a supported business, they can tick the box and will not have to do any more. I do not want that to be the message that the legislation sends to public bodies.

I am not disagreeing with what Mark Griffin is trying to achieve, but I am making hard, practical points about amendment 13. The first part of it asks public bodies to do something that is almost impossible, and the second part threatens to be counterproductive. We will look again at the issue in advance of stage 3, because we are serious about getting it right and doing what needs to be done, but amendments 13 and 17 would not achieve what Mark Griffin wants to achieve.

Amendment 9 agreed to.

Section 10, as amended, agreed to.

After section 10

Amendment 10 moved—[Nicola Sturgeon].

Amendment 10A moved—[Mary Fee].

The Convener: The question is, that amendment 10A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 10A disagreed to.

Amendment 10 agreed to.

Amendment 11 moved—[Nicola Sturgeon].

Amendment 11A moved—[Mary Fee]—and agreed to.

Amendment 11, as amended, agreed to.

The Convener: The next group is on other circumstances in which a contract can be awarded without competition. Amendment 12, in the name of the Deputy First Minister, is grouped with amendments 12A and 33.

Nicola Sturgeon: There are situations in which procurement contracts have to be awarded without

pursuing a competitive process. For example, that might be required in cases of extreme urgency. Further, under the proposed new EU procurement directive, there will be some types of contract which, as with health and social care contracts, may be awarded without competition. Amendment 12 is simply intended to allow us to define in regulations the circumstances in which advertising and competition are not required and so will build a necessary degree of flexibility into the bill.

Our intention is that the regulations will be similar to the equivalent provisions in regulation 14 of the Public Contracts (Scotland) Regulations 2012 and, to the extent considered appropriate, will also reflect the types of cases that are referred to in article 74 of the new EU directive where competitive processes are not required, except above certain thresholds.

As with amendment 10A, which we discussed earlier, I do not think that Mary Fee's amendment 12A is necessary. The power in amendment 12 is drafted to be consistent with other powers in the bill. Ministers will have discretion in how that power is exercised, so the use of the word "may" is entirely appropriate.

Amendment 33 will make regulations under the provisions that amendment 12 introduces subject to the affirmative procedure, which I consider to be appropriate in the circumstances.

I move amendment 12.

Mary Fee: Amendment 12A in my name is a simple amendment that would change one word in amendment 12. The bill is an opportunity to strengthen the procurement process, and my amendment would strengthen amendment 12 by ensuring that the regulations would specify the circumstances in which a contracting authority can award regulated contracts without seeking offers. That mirrors my amendments 10A and 11A and would improve transparency and consistency.

I move amendment 12A.

The Convener: The question is, that amendment 12A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 12A disagreed to.

Amendment 12 agreed to.

The Convener: The next group is on a power to restrict participation to third sector bodies. Amendment 41, in the name of Mary Fee, is the only amendment in the group.

Mary Fee: Amendment 41 would allow for greater involvement of third sector organisations in the procurement process. Often, such organisations cannot compete on price and fail to get the full benefits of procurement. The amendment would allow third sector organisations to be the only group that is considered for certain contracts. It has been drafted to simplify and strengthen the process, and it would place a duty on ministers to publish guidance that contracting authorities would have to abide by. It mirrors amendments 10A, 11A and 12A.

Amendment 41 could increase the participation of third sector organisations, which often offer a high degree of innovation and can bring enhanced benefits for communities, but which often miss out on the procurement process.

I move amendment 41.

Nicola Sturgeon: As Mary Fee said, amendment 41 would allow public bodies to limit participation in a regulated procurement to third sector bodies. Although I am sympathetic to the aim of the amendment and to anything that supports third sector bodies, I cannot support amendment 41, quite simply because it would breach European law. In some procurement exercises, it is possible to restrict competition to the third sector, but that depends on the particular circumstances of the competition. In some cases the general duties that flow from EU law will apply even at contract values within the threshold that is provided for by the bill. In such cases, restricting competition would be discriminatory and therefore incompatible with EU law.

An obvious and perfectly legitimate question, which I am sure that members are asking themselves, is why we can limit competition to supported businesses but not to the third sector. The simple answer is that EU procurement law, which is approved by the European Parliament, Council ministers and the Commission, makes specific provision for supported businesses, to enable competition to be restricted to such businesses. EU law does not make specific provision for the third sector, which of course is a much broader category of organisations. In other words, we can rely on a European provision on supported businesses, but there is no equivalent

European provision that would allow us to do the same for the third sector.

Although I am sympathetic to anything that helps the third sector, amendment 41 would clearly and pretty blatantly breach EU law, so I cannot support it, for reasons that I am sure the committee will understand.

Mary Fee: I thank the cabinet secretary for her words. I appreciate her support for what amendment 41 tries to do, and I am disappointed that she cannot bring herself to support it. I press amendment 41.

The Convener: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 41 disagreed to.

Amendment 42 not moved.

Section 11—Procurement strategy

The Convener: I call amendment 73. Patrick Harvie is not here.

Adam Ingram: He indicated that he did not intend to move the remaining amendments in his name.

The Convener: Yes—although there is the opportunity for another member to move the amendment.

Amendment 73 not moved.

Amendment 13 moved—[Mark Griffin].

The Convener: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)

Johnstone, Alex (North East Scotland) (Con)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine)
 (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 13 disagreed to.

Amendment 14 moved—[Nicola Sturgeon]—and agreed to.

Amendment 15 moved—[Sarah Boyack].

The Convener: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
 Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine)
 (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 15 disagreed to.

Amendment 74 moved—[Jackie Baillie].

The Convener: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
 Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine)
 (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 74 disagreed to.

The Convener: The next group is on procurement strategy and annual report: procurement contributing to other plans. Amendment 43, in the name of Adam Ingram, is grouped with amendments 44 to 51.

10:30

Adam Ingram: Amendments 43 to 51 are probing amendments. In recent years, we have seen a much more structured and integrated approach to how we plan and deliver public services in Scotland, which has included the Scotland-wide national performance framework, community planning partnerships and single outcome agreements at local authority level. We have also seen attempts to improve multi-agency working in specific areas—for example, in the new local joint children's services plans under the Children and Young People (Scotland) Act 2014—not to mention the integration of health and social care. However, if all those plans and strategies are to deliver as effectively as possible their stated outcomes, they need to link clearly to procurement strategies. That has been highlighted by the children's charities Barnardo's and Quarriers in their briefings for the debate.

My amendments would require public bodies to explain how their procurement strategies support the achievement of objectives or outcomes that are set out in any plan that they have a legal requirement to prepare. However, I understand that there may be concerns about overcomplicating the bill, and there is a suggestion that the existing section 11(5) already requires a procurement strategy to set out how a body intends to ensure that its procurement policy will

“contribute to the carrying out of its functions and the achievement of its purposes”.

Although it is important that that connection be made, it is often in practice rather unclear what the functions and purposes of a public body are. For example, if someone wants to know the aims and duties of Scottish local authorities, they will have to refer to at least seven different Westminster and Holyrood acts going back to the Local Government (Scotland) Act 1973. Therefore, I do not believe that the requirement in section 11(5) goes far enough to deliver effective integration between procurement strategies and other statutory planning requirements.

On amendments 48 to 51, I am aware that section 16 will require the Scottish ministers to

“issue guidance ... on the preparation and publication of procurement strategies and annual procurement reports.”

However, it is not clear that that guidance will properly cover the relationship between procurement strategies and other statutory plans and strategies. I am interested to hear from the Deputy First Minister how she would address those issues.

Amendment 47 rather sticks out. Recent years have seen growing use of public social partnerships to deliver public services in Scotland. That is potentially a welcome development that

links third sector experience with Government objectives. Amendment 47 would simply require reporting of the number of times that PSPs are used. The Scottish Government usefully provided an explanation of the meaning and function of the term “public social partnership” in its 2011 guidance.

I move amendment 43.

Nicola Sturgeon: I thank Adam Ingram for lodging amendments 43 to 51, which focus attention on some important matters about joint working between public authorities and how we ensure that procurement processes contribute to the overall aims and objectives of public authorities.

One of my recurring themes throughout discussion of the bill has been that we need to be careful not to overcomplicate the requirements that the bill will impose on public authorities. Through my involvement in and my experience of the bill’s progress, I have come to the view that that is really important. The more we complicate things, the less chance there is that what the bill will impose on public bodies will have the desired effect. That is my substantive concern.

I see the logic of linking plans to regulated procurement, which would be the effect of amendments 43, 46, 48 and 51. However, I argue that that is already required by section 11. Section 11(5) states:

“The procurement strategy must, in particular ... set out how the authority intends to ensure that its regulated procurements will ... contribute to the carrying out of its functions and the achievement of its purposes”.

Further information on the content of reports will be addressed in guidance, which will be published under section 16. I have considered the matter carefully, and my view is that that is, in the circumstances, the appropriate level of detail to have in the bill, and that additional detail should be set out in guidance. It would overcomplicate the duties to have the detail that is in the amendments in the bill.

If there is a specific issue regarding particular plans, I will be happy to consider addressing that in the guidance on strategies that we will publish, and I will issue an open invitation to Adam Ingram to discuss with my officials how we would take that forward and whether there is a specific issue that it might be appropriate for us to address in the guidance.

Although I am sympathetic to the aims of amendments 44, 45, 49 and 50, which are to link regulated procurement to children’s services plans, again I argue that the issue is covered in appropriate terms by section 11 and that it is better to address the underpinning detail in guidance. I am happy to restate my commitment to

consulting the committee on that guidance at the appropriate time. Again, if Adam Ingram wants a specific discussion about the detail, I will be happy to facilitate that.

Finally, on amendment 47, Adam Ingram is absolutely right to highlight the increasing importance of public social partnerships. Nevertheless, they are still at a relatively early stage of development. Although I and the Government generally are very positive about PSPs—evidence of that is that we are funding support for their development through the ready for business programme—I am cautious at this early stage of their development about whether it would be appropriate to impose a statutory obligation on public bodies to report on how many PSPs they have entered into.

That said, as I have indicated on other groups of amendments, we intend to keep reporting under close review. The provision in section 16 on guidance relating to reports will allow us to address PSPs at a future point, should we consider it appropriate to do so.

In conclusion, I hope that Adam Ingram will, if he thinks it appropriate, follow up the offer of further discussion on the principle of the amendments, but in the light of my explanation and comments, I ask him to seek to withdraw amendment 43 and not to move the other amendments in the group.

Adam Ingram: I am happy to oblige the Deputy First Minister. As I indicated at the outset, the amendments are probing ones that were inspired by children’s charities. I am reassured by what the Deputy First Minister has said and I particularly welcome her willingness to consult on the guidance. I hope that the children’s charities take full advantage of that. On that basis, I am happy not to press the amendments.

Amendment 43, by agreement, withdrawn.

Amendments 44 to 46 not moved.

Section 11, as amended, agreed to.

Sections 12 and 13 agreed to.

Section 14—Annual procurement reports

The Convener: The next group is on community benefit requirements. Amendment 16, in the name of the Deputy First Minister, is grouped with amendments 53, 54 and 78.

Nicola Sturgeon: Amendment 16 will add to the information that the annual report must contain a summary of fulfilled community benefits. That was a recommendation in the committee’s stage 1 report, so I hope that the amendment meets the committee’s approval.

I do not take issue with the underlying aim of Mary Fee's amendment 53 to promote apprenticeships, which is a key Government priority, but our experience around community benefit clauses suggests that it is difficult and not always helpful to set fixed target percentages. As members are well aware, projects and contracts vary considerably, so it is important that the level of community benefits that can be achieved is appropriate and proportionate for the project that is under consideration.

Support and guidance are available to public bodies that seek to apply community benefit clauses on the number of apprenticeships and training places that would be appropriate to the scale and type of projects. It would be inappropriate to take a blanket approach to all cases, and amendment 53 would not allow contractors to provide their own proposals that could then be evaluated by authorities. Therefore, I am not able to support amendment 53.

Amendment 54, which is also in the name of Mary Fee, seeks to reduce the threshold for contracts where contracting authorities must consider imposing community benefit requirements. The rationale behind the current £4 million threshold is that that is the level at which public works contracts are covered by the European Union's public procurement directive. That figure is fairly widely recognised, so to use it seems to be a fairly simple and straightforward approach to take. It is also important to say that the threshold was subject to consultation and the majority of respondents supported it. That is a not insignificant point for members to consider.

Having said that—I am pretty sure that I said this in the stage 1 debate—I am not wedded to the threshold; I am simply not convinced that it is right to change it arbitrarily at this stage. The £4 million figure has a rationale that members can agree or disagree with; I am not convinced that amendment 54 has a rationale other than it would simply halve the threshold.

We intend to keep the threshold under close review. Section 20 will allow us to amend the threshold by order, should we consider that to be appropriate. I suggest to the committee that we should return to the issue in the light not only of the outcome of the research on community benefits that we have recently commissioned, but of the experience once the provision has been in place for perhaps six to 12 months. I am happy to write to the committee with a more considered proposal about how to carry out a structured review when we get to the appropriate time. That would be a better way forward than to make an arbitrary change in the threshold. Let us stick with the threshold as it is, but review it on the basis that I have set out. If it is later felt that that is set too

high—there may well be that feeling; I am certainly not ruling out that possibility—we could change the threshold by order, in the light of evidence.

I understand the objectives behind amendment 78, which is to ensure that reliable data on achievement of community benefits are captured. However, that can be addressed adequately through other provisions in the bill. I have spoken to amendment 16, which will require the contracting authority's annual report to include a summary of the community benefits that were fulfilled over the year. It is also the case that contract award notices for higher-value contracts will have to include a statement of what the authority considers the contract would deliver. Against that background, although I agree that data collection is important, that will be better addressed through the guidance on community benefits, which is provided for in section 21.

Before I finish, I have another point to make on the threshold figure and Mary Fee's amendment 53. It is important that, wherever we set the threshold—this is a bit like the point that I made on supported businesses—we must make it clear that we are not saying to public bodies that if they are procuring below that threshold they are not expected to have regard to community benefits. They absolutely are. We are simply setting a threshold above which that duty would be imposed on them.

I ask Mary Fee not to move amendments 53 and 54 and Jackie Baillie—who has not spoken yet on this group—not to move amendment 78.

I move amendment 16.

Mary Fee: Amendment 53 in my name would ensure a quota of 5 per cent of staff being apprentices as a requirement for any contractor bidding on a large contract.

We must be bolder in order to ensure that communities achieve the greatest benefit for all contracts over the threshold, and the bill is an opportunity to do that. Amendment 53 would ensure that larger organisations that benefit from large sums of public money take on apprentices. If we are promoting training and recruitment, I think that it is only right that we set a quota. To ask large organisations to take on one apprentice for every 20 employees would boost skills and employability and have wider-reaching benefits for the community.

10:45

Amendment 54, which is also in my name, would reduce the threshold for the community benefit requirement from £4 million to £2 million and would ensure that communities would get the maximum benefit from procurement. We heard

frequently throughout the evidence sessions that the threshold is too high and needs to be reduced. To lower the threshold to £2 million would offer the chance for greater levels of benefit to be reaped in communities. I am grateful for the cabinet secretary's comments in relation to the threshold and my amendment 53.

I support amendment 16, in the cabinet secretary's name, because ensuring that there is a summary of community benefit in annual reports will improve transparency and accountability, which will be a welcome improvement.

I also support amendment 78, which is in Jackie Baillie's name and which she is about to speak to. Again, amendment 78 would strengthen community benefit and ensure that the benefits that are to be reported would be based on data evidence.

The Convener: It is over to Ms Baillie to speak to amendment 78 and the other amendments in the group.

Jackie Baillie: I am sorry that I am going to have to disappoint the cabinet secretary.

Nicola Sturgeon: Not for the first time.

Jackie Baillie: I intend to move amendment 78. As she said, that is a consistent approach.

In the stage 1 debate we touched on the issue that amendment 78 addresses. I thought that I received quite positive support from the cabinet secretary on it, but there you go—I must have been mistaken. At that stage, we were very clear that there are some very good community benefit policies and practices, including on the Commonwealth games. However, we do not know the extent to which the organisations that are contracting for the games are improving, for example, women's chances in industries in which they are underrepresented, because they are not collecting the data that would be required to make that assessment.

We know that there is difficulty in getting workforce data, whether for the Commonwealth games or arm's-length organisations. If we are in any way to be able to judge or demonstrate the effectiveness of community benefit clauses, we need to collect the data on which to base such judgment. Amendment 78 would quite simply enable Scottish ministers to determine what data should be collected and the manner in which they should be published, which I think is central to judging the effectiveness of community benefit policies.

Nicola Sturgeon: I do not say that Jackie Baillie has done it deliberately, but she has misheard me; I support what she is saying with regard to amendment 78, but I think that the bill as drafted will allow what Jackie Baillie seeks. I have been

quite consistent in my view that we should not overcomplicate the bill, but I do not disagree for a second about the importance of good-quality data collection and I do not dispute that it does not always happen as it should. There is no argument at all about the objective of amendment 78; there is simply a disagreement about how best to go about achieving it. I will continue to try to persuade Jackie Baillie that we are in agreement, and perhaps one day we will be able to admit it publicly.

I have a similar position on Mary Fee's amendments, because I do not disagree with their objectives. However, we have a lot of experience now in Government of application of community benefit clauses in big public contracts, most of which is very positive. It is a pretty obvious point to make, but that experience tells us that the nature of contracts varies considerably in terms of their scale and type, and the kind of community benefit clauses that are appropriate. I simply do not think that it is helpful to take a blanket approach to something that is in practice very nuanced and very diverse in terms of the range of community benefit clauses that might be appropriate. It is far better to try to tailor community benefit clauses to the circumstances of a particular contract.

Similar to the points that I made about supported businesses and the threshold is the point that if we include a de minimis amount there is a danger that people will start to play to the de minimis and that that will become the accepted standard, as opposed to its being the minimum that we expect to be achieved. It is better that we continue to be ambitious around community benefits rather than have a de minimis blanket approach in the legislation.

Mary Fee said that the committee heard time and again that the threshold is wrong. That is not our experience from the consultation. As members would expect me to have done, I have read the evidence to the committee. However, the consultation did not come to the view that the threshold is wrong. I am not wedded to the £4 million threshold, but there is a rationale for setting it there. I argue that there is not, other than just to cut it in half, a considered rationale for an amended threshold. It is important to wait and see, and to review experience and practice.

There is an easy—easy in respect of the method that we have chosen—way of amending the threshold in the future if Mary Fee is right and we would get more value out of community benefits if the threshold were to be set lower. I am very keen that we should do that. I will repeat the offer that I have made to the committee to set out proposals on how we would do that in partnership and in a very structured way. That will be better than replacing an amount that does have some

rationale—whether or not you agree with it—with an amount that has been chosen arbitrarily. Those are my concluding comments. I ask the committee to support amendment 16 and to reject the other amendments in the group.

Amendment 16 agreed to.

Amendment 17 moved—[Mark Griffin].

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 17 disagreed to.

Amendments 47 to 51 not moved.

Section 14, as amended, agreed to.

Section 15 agreed to.

Section 16—Guidance

The Convener: The next group is on publication of guidance and laying before Parliament. Amendment 18, in the name of the Deputy First Minister, is grouped with amendments 19 to 23, 26, 29 and 30.

Nicola Sturgeon: Amendments 18 to 23 and amendments 26, 29 and 30 are a response to the Delegated Powers and Law Reform Committee's scrutiny of the bill. The amendments will require the publication by Scottish ministers of guidance under the bill, and will require that such guidance be laid before Parliament. They are pretty straightforward and uncontroversial amendments.

I move amendment 18.

Amendment 18 agreed to.

Amendments 19 and 20 moved—[Nicola Sturgeon]—and agreed to.

Section 16, as amended, agreed to.

10:53

Meeting suspended.

10:57

On resuming—

After section 16

The Convener: The next group is on an annual procurement report by the Scottish ministers. Amendment 75, in the name of Jackie Baillie, is the only amendment in the group.

Jackie Baillie: One annual report bringing together all the activity across the public sector so that we can measure the overall success or otherwise of our approach to procurement would be extremely valuable. We acknowledge that billions of pounds of public money are spent on procurement so it is right that we should have the highest standards of accountability and transparency.

It is also a useful exercise and stresses the importance that we ascribe to procurement if it is not just a matter of a number of different public sector reports but rather that we bring everything together in one report to measure activity across Scotland as a whole.

The cabinet secretary will, of course, expect me to have done my homework on this and I have. I looked at sessions 1, 2, 3 and 4 of the Parliament to see whether this had ever been done before or whether it was completely novel. Of course, there are a number of precedents. There have been amendments calling for annual reports since the very first session of the Parliament—and indeed in every session of the Parliament. They are very often from Government ministers in response to stage 1 and stage 2 discussions in committee. Such amendments transcend Governments, too, so the approach is not peculiar to one particular political party.

I draw the cabinet secretary's attention to session 3 and the Wildlife and Natural Environment (Scotland) Bill. Amendments came at stage 2 from Liam McArthur and Peter Peacock and then, helpfully, Roseanna Cunningham as the Government minister decided that she would bring together those amendments at stage 3 and moved an amendment that called for an annual report. That is open and transparent and benefits the Parliament and the public alike.

In session 4, Paul Wheelhouse, as minister, called for an annual report during the progress of the Regulatory Reform (Scotland) Bill—a proposal that I think enjoyed support. Although I have not checked this, I know that Jim Eadie moved an amendment to the Water Resources (Scotland) Bill that called for an annual report. I am not sure whether Jim enjoyed support; I hope that he did. An amendment calling for an annual report is nothing unusual; it is quite normal.

The cabinet secretary has said throughout the process of stage 2 consideration that she and I agree on many things. I look forward to amendment 75 gaining the Government's support.

I move amendment 75.

11:00

Nicola Sturgeon: I was not keen for Jackie Baillie to stop speaking, because I was enjoying hearing her tell the committee how the current Scottish Government is such a responsive, listening and co-operative Government.

I agree with Jackie Baillie that there should be effective reporting on procurement performance. One of the strengths of our approach to procurement is that, increasingly, we are carrying it out in partnership with the wider public sector and I think that Jackie Baillie's amendment is trying to capture that. The ethos is very much about working in partnership and with key stakeholders. However, although amendment 75 tries to capture that ethos, it puts the duty in that respect solely on the Scottish ministers.

As a result—I am being genuine when I say this—I cannot support amendment 75 in its current form and I think that it needs to be looked at. That said, I am prepared to consider working with Jackie Baillie on a stage 3 amendment to allow for the publication of an annual report. We need to get the framing of such a provision right to ensure that we capture the right information.

We could also ask the procurement reform board, which I chair and which encompasses all the different stakeholders, to examine the matter. However, I am not unattracted to the idea of putting a duty in some form or other into the bill and I am happy to take the issue away and see whether we can frame a stage 3 amendment that would meet this objective better than amendment 75 does. So there you go.

Jackie Baillie: Am I correct in thinking that, when the cabinet secretary says that she is not unattracted to the idea of putting this duty into the bill, she is attracted to it?

Nicola Sturgeon: You are such a pedant.

Jackie Baillie: It shows that I am listening, cabinet secretary.

I am encouraged by the cabinet secretary's comments and am happy to work with her on this matter. However, I will press amendment 75—

Nicola Sturgeon: You cannot resist.

Jackie Baillie: I think it important to test the committee's view on the amendment, but I am happy to accept the cabinet secretary's invitation to take the matter away and work on it further,

because it will bring a measure of transparency and accountability that will be worth having.

The Convener: The question is, that amendment 75 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 75 disagreed to.

Section 17 agreed to.

Section 18—Publication of contract notices and award notices

Amendment 52 moved—[Mary Fee].

The Convener: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 52 disagreed to.

Section 18 agreed to.

Section 19—Community benefit requirements

Amendments 76 and 77 not moved.

Amendment 53 moved—[Mary Fee].

The Convener: The question is, that amendment 53 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 53 disagreed to.

Section 19 agreed to.

Section 20—Community benefit requirements in major contracts

Amendment 54 moved—[Mary Fee].

The Convener: The question is, that amendment 54 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 54 disagreed to.

Amendment 78 moved—[Jackie Baillie].

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

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 78 disagreed to.

Section 20 agreed to.

Section 21—Guidance on community benefit requirements

Amendments 21 to 23 moved—[Nicola Sturgeon]—and agreed to.

Section 21, as amended, agreed to.

After section 21

The Convener: Amendment 55, in the name of Claudia Beamish, was debated last week with amendment 37. Claudia is not here to move it, but another member may do so.

Amendment 55 moved—[Mary Fee].

The Convener: The question is, that amendment 55 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 55 disagreed to.

Amendment 79 moved—[Jackie Baillie].

The Convener: The question is, that amendment 79 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 79 disagreed to.

Amendment 80 moved—[Neil Bibby].

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

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 80 disagreed to.

The Convener: Amendment 81, in the name of Ken Macintosh, was debated last week with amendment 36. Ken is not here to move it, but another member may do so.

Amendment 81 moved—[Mark Griffin].

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

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 81 disagreed to.

Before section 22

The Convener: The next group is on the exclusion of economic operators on various grounds. Amendment 56, in the name of Neil Findlay, is grouped with amendments 57 and 58.

Neil Findlay (Lothian) (Lab): According to the Treasury, tax avoidance across the UK costs us £25 billion in lost revenue. At all levels of Government, we should use the powers that we have to clamp down on that scandal. Deliberate tax avoidance and evasion impacts directly on our public services. Our schools, hospitals, colleges and the environment are all affected by being starved of much-needed public funds. Some of the biggest household names are up to their necks in the practice. We are all aware of the examples of Starbucks, Google and the rest of those who have

been exposed. Recently, the Scottish Government awarded £10 million to Amazon, which is one of the worst corporate tax avoiders, to locate in Scotland.

Amendment 56 seeks to exclude contractors from securing public sector contracts if they are involved in deliberate avoidance or evasion. The question is: why should we reward companies that benefit and profit from our education system, roads, railways and other infrastructure but that refuse to pay into the public purse, which provides those services in the first place? The amendment is supported by a wide coalition of pressure groups, charities and trade unions.

Amendment 57 is on blacklisting, which is a heinous practice that has gone on for decades in the construction and other industries. The raid on the Consulting Association offices five years ago exposed a database with the names of almost 4,000 people, many of whom are Scots. Their names were held on the database because they had been health and safety reps, shop stewards or environmental or political activists, or because they had simply spoken up about conditions on construction sites. Some of the biggest companies in Scotland and across the UK were involved, such as Balfour Beatty, John Laing, Sir Robert McAlpine, Kier, Carillion, the Forth bridge constructors joint venture and the rest.

My amendment 57 seeks to include in the bill conditions for the exclusion of companies from contracts if they have compiled a list of people to be excluded from employment because of trade union or other activity. It also seeks to put in place a definition of the remedial action that contractors have to take to get back on to tender lists. In short, they would have to own up to what they had done, apologise to those involved and pay appropriate compensation following negotiation of an agreement with representatives of the victim. By putting such a provision in the bill, we would show how seriously we take the issue and leave no room for employers who may try to refuse to comply.

I pay tribute to the blacklist support group, Unite the Union, the GMB and the Union of Construction, Allied Trades and Technicians and, more important, to the ordinary men and women who have refused to accept that this is just the way of things. For me, they are the heroes of the story and we owe it to them to take action.

I accept that, since we began the campaign on the issue, the Government has moved significantly, but I think that we probably disagree on the best way to deal with it.

I move amendment 56.

Jayne Baxter (Mid Scotland and Fife) (Lab): The problems of zero-hours contracts, in their

most extreme and exploitative sense, have been well documented in the past few months and years. At their worst, zero-hours contracts, although they provide no guarantee of a minimum number of hours or income, restrict those contracted on them from working for any other employer. For too many workers, those contracts mean poverty wages, no guaranteed income and minimal rights. Employees are trapped in a restrictive contract and, in many cases, have no opportunity to seek other work even if they are not being offered any hours in their current job.

I note that in May last year the Minister for Youth Employment stressed that

“some people will choose to undertake zero-hours contracts because they want and need that flexibility for their life”.—[*Official Report*, 22 May 2013; c 20116.]

There may well be some circumstances in which a contract that does not specify the minimum number of hours or even fixed working times can work well for those who are on them. However, there must be the opportunity to seek legal or trade union advice before signing up to a contract that provides no guarantee of a minimum number of hours, as it is clear that there are still unscrupulous employers out there. It is even clearer that companies that benefit from public sector contracts should not engage in exploitative employment practices.

My amendment 58 seeks to exclude those exploitative economic operators from tendering for contracts. I am interested to hear the cabinet secretary's views on my amendment. If the Scottish Government is unable to support my amendment, I hope that it will support action on the matter in future and accept an updated amendment at stage 3.

Nicola Sturgeon: I thank both Neil Findlay and Jayne Baxter for lodging their amendments. I hope that it is accepted that if there is a difference of opinion on the amendments, it is about means rather than ends. Regardless of the decisions that the committee takes on the amendments, I will consider any amendments that are lodged at stage 3. I signal a clear intention on the Government's part to work with members, other parties, trade unions and other interested organisations to ensure that we eradicate tax avoidance, blacklisting and the inappropriate use of zero-hours contracts. I hope that we all unite around that aim.

Sections 22 and 23 of the bill contain provisions that will allow the Government to make regulations that specify the circumstances in which economic operators should be excluded from competition. I have already made it clear—I make it clear again today—that I intend to make regulations on blacklisting, and when the Revenue Scotland and Tax Powers Bill becomes law we will also look at

what the regulations can say to maximise our actions to eliminate tax avoidance.

Section 23 of the Procurement Reform (Scotland) Bill, as introduced, makes provision for those regulations. I reiterate that the Government will take whatever steps we believe are necessary and appropriate to ensure that tax avoidance will not succeed in Scotland. I agree with Neil Findlay's points about the implications and consequences of tax avoidance, which hits everybody in the country, particularly those who rely on our public services, and we should not tolerate it. We have made our position on the issue clear over a prolonged period of time and we will continue to do so.

We have also been clear that we are opposed to the inappropriate use of zero-hours contracts. I reiterate again today that we will use the guidance on workforce matters that is provided for by section 24 of the bill to address the issue in the way that we deem appropriate.

11:15

I will outline the reasons for my concerns more fully. They relate to the limitations that, perhaps counterintuitively, we would place upon ourselves by agreeing to the amendments, particularly Neil Findlay's amendments 56 and 57. We need the flexibility that regulations provide to be able to adapt the approach that we take in the event that there are changes in employment legislation or related matters. Those areas are currently outwith the responsibility and control of this Parliament.

I draw the committee's attention to the House of Commons Scottish Affairs Committee report on blacklisting, which was published last Friday. I was very pleased to see that the report acknowledges that the Scottish Government has already gone further than the Welsh Assembly Government in tackling blacklisting, specifically through procurement policy. However, the report also noted:

“Representatives for UCATT, GMB and Unite agreed that blacklisting would continue to be a problem until legal sanctions against it were strengthened.”

We need to continue to put pressure on the UK Government to respond. The legislation on blacklisting is employment legislation, which is reserved to the UK Government. That is not something that I am happy with, but that is the situation. I have written to the chair of the Scottish Affairs Committee—I copied the convener of this committee in to the letter—pointing out that, although I think that the House of Commons committee is right to recognise the influence that purchasing power can bring to bear on these issues, it is also important to understand that a purchaser's ability to take action depends on other

legislation, which is currently reserved to Westminster. I have urged the House of Commons committee—and I hope that this committee can provide support on this—not to lose sight, in its future consideration, of those concerns that have been expressed by the unions. If the UK Government decides to strengthen its legislation in this area, as I hope it does, we would need to be able to adapt our approach quickly to bring it into line with a changed legislative framework.

This is where the counterintuitive bit comes in. The amendments in this group would make it more difficult for us to do that, because we would have to change primary legislation, as opposed to secondary legislation. This is an area in which policy and law are developing and we need the additional flexibility that regulations provide. I want nobody to be in any doubt, however, that we regard the practice of blacklisting as totally abhorrent. We are continuing and will continue to work with the Scottish Trades Union Congress and individual trade unions, including Unite, the Union of Construction, Allied Trades and Technicians, the GMB and Unison—to which I pay tribute—to develop our policy on this issue with a view to ensuring that we can eradicate the practice in Scotland once and for all.

I have already indicated that we intend to deal with the position on zero-hours contracts through workforce-related guidance. I think that that is the appropriate approach, but I am happy to give an undertaking to Jayne Baxter to consider any amendments that are lodged for stage 3.

For the reasons that I have outlined, I ask committee members not to support the amendments in this group but, in rejecting them, to be under no illusion about our determination to deal with these issues and to work with the committee and others in doing so.

Neil Findlay: As I mentioned at the beginning, I think that the Parliament has the ability to use its powers on both the issues that we have discussed. By putting them in the bill, we up the ante and make it clear how we want them to be addressed.

I was disappointed that, although the Deputy First Minister offered talks with interested members and trade unions when we debated blacklisting last year, when I wrote to her on the matter, the offer of holding talks with members was withdrawn, and it was only the trade unions that had the discussions. If those talks with members had taken place, we would perhaps have been able to come to a closer position.

The Convener: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 56 disagreed to.

Amendment 57 moved—[Neil Findlay].

The Convener: The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 57 disagreed to.

Amendment 58 moved—[Jayne Baxter].

The Convener: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 58 disagreed to.

Section 22—Exclusion of economic operators on grounds of criminal activity

Amendment 24 moved—[Nicola Sturgeon]—and agreed to.

Section 22, as amended, agreed to.

Section 23—Selection of tenderers

Amendment 25 moved—[Nicola Sturgeon]—and agreed to.

Section 23, as amended, agreed to.

Section 24—Guidance on selection of tenderers

Amendments 26 and 27 moved—[Nicola Sturgeon]—and agreed to.

Amendment 28 not moved.

Amendments 29 and 30 moved—[Nicola Sturgeon]—and agreed to.

Section 24, as amended, agreed to.

Sections 25 to 34 agreed to.

After section 34

The Convener: The next group is on remedies: power to transfer forum from courts to first-tier tribunal. Amendment 31, in the name of the Deputy First Minister, is grouped with amendment 34.

Nicola Sturgeon: The stage 1 report supported the suggestion that we consider the establishment of a procurement tribunal or ombudsman. That will be considered in the context of our transposition of the new EU public procurement directives, on which we intend to consult later this year. The remedies directive allows for considerable flexibility for member states to adopt an approach to remedies that is consistent with a particular national legal system's preferences. The directive already provides an option to introduce a form of administrative review body or tribunal that operates at a tier below the national courts, and many other member states have chosen to introduce such bodies as part of their implementation of the directive.

Scotland has given effect to the public procurement remedies directive in the 2012 regulations. When we transpose the new EU procurement directive, we will have the opportunity to revisit our implementation of the associated remedies directive. Should we seek to provide for remedies before a tribunal, that would not extend to dealing with remedies under the bill as currently drafted. Amendment 31 is therefore intended to allow us to amend the remedies in the bill in the event that, when we transpose the new directive, which will probably be in 2015, we include

provision for procurement cases to be considered by the first-tier tribunal for Scotland.

If it is decided that an ombudsman should be established, separate legislative provision would require to be made. As such, that is not included in amendment 31.

Amendment 31 provides for the amendment of the remedies by regulation, and amendment 34 would make such regulations subject to the affirmative procedure.

I ask the committee to support amendments 31 and 34.

I move amendment 31.

Amendment 31 agreed to.

Section 35 agreed to.

Section 36—The Directive, Public Contracts Regulations and EU-regulated procurements

Amendment 59 moved—[Mary Fee].

The Convener: The question is, that amendment 59 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 59 disagreed to.

Amendment 60 moved—[Mary Fee].

The Convener: The question is, that amendment 60 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 60 disagreed to.

Amendment 82 not moved.

Section 36 agreed to.

Section 37 agreed to.

Section 38—Subordinate legislation

The Convener: We move on to regulations about dynamic purchasing systems: parliamentary procedure. Amendment 32, in the name of the Deputy First Minister, is the only amendment in the group.

Nicola Sturgeon: Amendment 32 responds to scrutiny by the Delegated Powers and Law Reform Committee and will change the approach to regulations made under section 7 on dynamic purchasing systems, so that they will be subject to the affirmative rather than the negative procedure.

I move amendment 32.

Amendment 32 agreed to.

Amendments 33 and 34 moved—[Nicola Sturgeon]—and agreed to.

Section 38, as amended, agreed to.

Sections 39 and 40 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration. The bill will be reprinted, as amended. The Parliament has not yet determined when stage 3 will take place, but members can now lodge stage 3 amendments with the legislation team at any time. You will be informed of the deadline for lodging amendments when it has been determined.

11:27

Meeting suspended.

11:33

On resuming—

Prestwick Airport

The Convener: Our next item of business is an update from the cabinet secretary on the progress of Prestwick airport following the Scottish Government's acquisition of it last year.

I welcome again Nicola Sturgeon, Cabinet Secretary for Infrastructure, Investment and Cities. I also welcome from Transport Scotland Sharon Fairweather, director of finance, and John Nicholls, director of aviation, maritime, freight and canals.

Cabinet secretary, would you like to make any opening remarks?

Nicola Sturgeon: I would, convener.

I appreciate the opportunity to be here to give the committee an update. I wrote to the committee on 31 January, since when there have been some further developments. This is a good opportunity to bring the committee up to date.

It is important to stress that this is a period of transition for the airport while we further develop the options for its long-term development and its intended return to profitability. Although I am able to give an interim report on progress, I will continue to keep the committee updated as things progress. It is obviously up to the committee whether it wants to invite me, but I suggest that it would be useful for me to come back to the committee in around three months' time, by which time we will be able to give more detail on our intended way forward.

It is also worth remembering that if we had not acquired the airport it would have closed—the choice was that stark. We were not prepared to see that happen. We believed then—we still believe now—that the airport can have a positive future. The business case and business plan that we prepared to inform and underpin the decision to acquire the airport demonstrated that our ownership would be undertaken on a commercial basis and satisfied the market economy investor principle. In other words, we are making an investment in the airport but we expect to generate a long-term return on taxpayers' money.

In my letter of 31 January, I indicated that we had provided Glasgow Prestwick airport with £3 million of working capital and that we would provide additional capital as and when that was appropriate. We have since provided an additional £2 million of working capital, some of which will be for operations in the next financial year. Approval has also been given to the carrying out of limited—at this stage—but, nevertheless, strategically

important capital investment in the airport to upgrade the central security search area, which will allow passengers to move more quickly through the airport, and to upgrade the mezzanine level. Ayrshire Chamber of Commerce and Industry is going to lease part of that space when it is upgraded, which will ensure a commercial return on our investment. It will also make that part of the airport property a more attractive proposition for other commercial tenants that might use the space.

The other significant development since I wrote my letter—in which the matter was flagged up—is that, on 11 February, we appointed a senior adviser. Romain Py will do some work over a three-month period to inform the holding company board and ministers about the longer-term options for the future business development of the airport. He will be required to make recommendations on the strategic business development options for repositioning the airport, building on the commercial opportunities that were identified during the acquisition process. He will develop a structural plan as well, which will identify the options for ownership and longer-term management arrangements and will recommend the optimum operating structure that is required to take the airport forward.

I do not want to lay too much stress on what I am about to say. Nevertheless, it is important that I advise the committee that, in the 11 months to 6 February this year, we have seen a 4 per cent increase in passenger numbers, compared with the numbers in the 11 months up to February 2013, and a 3 per cent increase in freight volumes. Those increases are undoubtedly a reflection of economic recovery. There is a long way to go, but we are pleased to be able to report that positive progress.

The senior adviser will consider and develop options for how best to market the airport to attract interest from outside Scotland and from the wider investment community. That work will be absolutely crucial in enabling us to develop the stage 2 business plan by fleshing out the earlier work that we did for the acquisition, and it will enable us to set out the details of the plan for the next three to five years. As I indicated at the outset, when we get to that stage, in about three months or so, it will be appropriate for me to come back to the committee and go into more detail, on the basis of the work that Romain Py will have done to flesh out our medium to long-term plans for the airport.

I apologise for taking a wee bit of time to outline where we are, but I thought that it would be useful to give an update.

We stress that the airport is open for business as usual. As I have said, a couple of

improvements to the airport have been authorised, very much to send the signal that we are starting the process—perhaps a long process—of turning the airport around and ensuring that the investment that is required to do that is made.

My final point is directed at our other airports. We will take care to ensure that any investment that we make has no impact on our team Scotland approach or on our on-going efforts to support all Scottish airports' route development aspirations. It is important that we give the other airports the assurance that we will continue to operate in a neutral way when it comes to route development across Scotland.

I hope that that update is helpful. I am happy to answer any questions.

The Convener: I will start. Can you explain why Scottish ministers considered it necessary to buy Prestwick airport? Were there no other buyers in the frame?

Nicola Sturgeon: I set out some of that information in my statement to Parliament at the end of last year. Some private sector purchasers were interested, and the Scottish Government—along with Infratil, the then owners of the airport—worked closely behind the scenes with those potential purchasers and with the three Ayrshire councils to do everything possible to facilitate that option.

I was quite open in my statement to Parliament, as I will be today. Our preferred option was a private sector sale, but it became clear that it would not be possible to achieve such a sale in the timescale that Infratil had set out. To be fair, the company had been patient and the airport had been on the market for a considerable time, but a clear end point in the process was reached. We were faced with a pretty stark choice: we could step in to acquire the airport or it would close—there is no doubt in my mind that Infratil would have chosen to take that step.

We chose to acquire the airport to keep it open because of its strategic importance to the local, regional and national economies. It is worth repeating the figures in my statement to Parliament. The total gross value added that is associated with the airport is just short of £50 million in an Ayrshire context, and just over £60 million in a Scottish context. Between 300 and 400 jobs depend directly on the airport, and approximately 1,400 are indirectly dependent on it. When we add in the aerospace cluster around the airport—the cluster does not depend directly on the airport but there is no doubt that having an operational airport there is an advantage to it—we are talking about even greater numbers of jobs. We believe that it was important to secure the airport for those reasons.

Even given those reasons, however, it would not have made sense for the Scottish Government to acquire the airport unless we believed that it had a positive future and could be returned to profitability, and that—at some point in the future—it could go back into private sector ownership. For those reasons, we decided after careful consideration that acquisition was the appropriate move for us to make.

The Convener: Given that no private sector operator was willing to take over the airport in the short term, do you sincerely believe that Scottish ministers can successfully operate the airport commercially and bring it into a position in which it may be returned to the private sector?

Nicola Sturgeon: Yes, I do, and I say genuinely that I would not be sitting here saying so if I did not believe that to be the case. I am not suggesting that it will be easy, and I have taken great care to make it plain to people that the process will take a lot of time, effort and investment. We are in this potentially for the long haul, if that is not too unfortunate a pun given the subject matter.

As I pointed out in my first answer, a number of private sector organisations had an interest in acquiring the airport. Obviously, I cannot go into detail about the identity of any particular organisation, but one bid reached a very advanced stage and, with more time, might well have materialised into a private sector acquisition. However, it was not possible to complete the process within the timescale that Infratil set in the latter stages of the airport being on the market.

As part of the confirmatory due diligence process, we compiled a business plan that indicated that the business can produce a return on the investment that we will make. We acknowledge that the process will be challenging and will take a number of years, but—as I said in my opening remarks—we require to operate the airport on a commercial basis. The market economy investor principle means that we must make a judgment. We can make an investment if there is an expectation of return and we come to the conclusion that a reasonable private sector investor would have made the same judgment. Those tests are fulfilled and, despite all the challenges that I have identified, I believe that we can operate the airport on a commercial basis and that making a concerted effort to do so is a better alternative than simply allowing the airport to close.

Alex Johnstone (North East Scotland) (Con): Can you explain the governance arrangements for the airport and the role of Transport Scotland and ministers in its management?

11:45

Nicola Sturgeon: The airport's senior management continues to have day-to-day responsibility for the business's commercial operation. The management team reports to the board of Prestwick HoldCo Ltd, which was the holding company that we established for the purchase, and that company's three board members are senior Transport Scotland officials, two of whom are with me this morning. I stress that this is an interim measure pending the outcome of the work of our senior adviser, who in addition to looking at the airport's commercial positioning will advise us on what the best governance model will be. In the longer term, I expect that at the very least we will look to appoint board members with a commercial background.

As for ministerial roles, I have principal ministerial responsibility for this issue and oversee the whole picture with regard to the developing plans around Prestwick. When I visited the airport two weeks ago today, I talked to senior management and met on site the senior adviser, Romain Py. Like many committee members, I have used the airport as a passenger many times, but guided by the management team I was able to see the situation, consider the investment requirements and start to get some picture of how we might take things forward.

In short, there is close ministerial oversight but the management team is responsible for day-to-day operations and reports formally to the holding company, the membership board of which at this stage comprises Transport Scotland staff pending a longer-term arrangement.

Alex Johnstone: So the management structure already duplicates what might be described as a private sector model. In other words, you have not created a structure that would be difficult to transfer back into the private sector.

Nicola Sturgeon: Indeed. The management team is as it previously was, but, of course, that is all pending the recommendations that we get on the way forward. As I said in my statement to Parliament, we envisage bringing in at a later stage a private sector operator to run the airport. For a variety of reasons, that continues to be the preferred option but I would rather wait for some considered recommendations before deciding whether we do that to begin with or whether we wait for a period of time until we have started to turn the airport around. Once we get Romain Py's recommendations, I will be able to talk more expansively on the matter, but it certainly remains a longer-term option. Nevertheless, you are right to suggest that as far as the governance arrangements and the model are concerned, we are operating like a private sector outfit.

Alex Johnstone: I am pleased to hear about your ambition to bring in a private sector operator at some stage, but the next stage would be to return the airport itself to private ownership. Is that one of your objectives?

Nicola Sturgeon: When I made the statement to Parliament, the committee convener questioned me on potential alternatives. In Wales, for example, Cardiff airport is owned by the Welsh Government, and the Government already owns a number of relatively small regional airports. I do not think that we should close our minds to potential future models that we might want for the airport, but my working assumption remains that we will seek to return it to the private sector. I have said that that is my preferred option, and I will not depart from that view this morning.

Of course, that will not happen in the short term; it will be possible only when the airport becomes a viable proposition for a private sector operator to take over. Once we get through this transition period, I might be able to sit before you and put a timescale on when that might be possible, but I can say that it will still be our aim at the appropriate time.

Alex Johnstone: Can you tell us anything else about the conditions that would have to exist before the airport could be transferred back to the private sector?

Nicola Sturgeon: I should say—indeed, I have said—that private sector operators were interested in the airport before the Government stepped in, and on the same basis that the Government acquired it. They wanted to take on a loss-making airport because they believed that they could turn it around. That turned out not to be possible on the timescales, but I do not rule out our getting to a point where a private sector operator is prepared to take on the airport on the same basis.

However, now that the Scottish Government owns the airport, we will be looking to return it to profitability. After all, we have to ensure that we get a return on the taxpayer investment that we are putting in, and we will therefore be looking to return the airport to the private sector when we have optimised the return to the taxpayer. It is not possible today to put specific timescales on that, but we are talking about a number of years. Once we have the senior adviser's report, I may be able to go a little bit further on predicting what that timeframe might look like.

Mark Griffin: I want to flesh out how long it would take to return the airport to profitability and, following that, to private ownership. For how long is the Scottish Government prepared to run Prestwick airport as a loss-making operation? What might happen if the airport cannot be returned to profitability?

Nicola Sturgeon: I am not sure that I can go much further in answering that than I did in my response to Alex Johnstone. It may be that, as we develop our transitional work, I will be able to say more.

We do not want to run the airport as a loss-making operation any longer than we absolutely must. That is a statement of the blindingly obvious. We are very focused on what we need to do to return the operation to profitability as quickly as possible. Once we have the stage 2 business plan completed on the basis of Romain Py's recommendations, we will be better able to make detailed judgments about when that might be.

As I mentioned, the aim of the improvement work that is under way is to make the operation more profitable. Central to the profitability of an airport are not only the passenger numbers and the freight volumes, but the attractiveness of the retail offering and the facility for passengers. It is also about how the land available is maximised. A lot of the land around Prestwick airport is underutilised or, in some respects, not utilised at all. All those things are in the mix to increase and maximise the airport's revenue in order to return it to profitability. That is absolutely the objective. The return on our investment is a longer-term proposition.

Two weeks ago, when I visited the airport, I was asked that question when I spoke to staff. As I said then, I will not put a guillotine on the timing. We acquired the airport to save it for the long term. However, you will appreciate that we must undertake very detailed work before I can sit here and tell you that in three, four or five years, Prestwick airport would be back in a profitable position. We must first do the things that will enable me to say with confidence that in X number of years the airport will be a profitable enterprise again.

Mark Griffin: Reports have put the loss experienced by Prestwick airport in 2012-13 at £9.7 million. Will you comment on that figure? Will the projected loss for 2014-15 be on a similar level or will it reduce?

Nicola Sturgeon: I need to double-check the figures to which you are referring. Where did you say that they came from?

Mark Griffin: The figures were reported in the press.

Nicola Sturgeon: I do not want to comment on figures that I do not have in front of me. In my statement to Parliament—I have a copy of the *Official Report* but I will probably be unable to find the specific reference quickly enough—I think that I gave a figure of around £7 million as regards the airport's losses. From memory, that figure is a

mixture of capital and revenue, but that is the ballpark figure that we are talking about.

Our objective is to minimise that loss. I have given you figures today but I do not wish to overstate them. We are starting to see—not, I hasten to add, because of the Scottish Government's acquisition; I am not claiming credit for this—a bit of recovery in passenger numbers and freight volumes. The work that I mentioned to refurbish the airport's mezzanine level is about trying to attract tenants into the unused space in the airport and consideration is being given to how we make the retail offering around the airport more attractive. It may take us a period to return the airport to profitability but, as we travel on that journey, we are reducing the losses that it is making. As I said, our objective is to maximise the revenue and reduce the losses. We are working to ensure that we do that.

Sharon Fairweather (Transport Scotland): We will give you a breakdown of the number in the press that you were talking about, but part of it involves the write-down of the value of assets to the end of March 2013, before we acquired the business. It is not a true operating loss that was incurred.

Mark Griffin: You have outlined the costs to date—the £1.08 million for advice and due diligence and the £3 million and £2 million figures for working capital. Are those the entire costs to the taxpayer to date? Which budget line did they come from?

Nicola Sturgeon: All the funding for that comes from Transport Scotland's budget. The figures that you have quoted are the figures that were given in my letter of 31 January, which detailed the costs of due diligence around acquisition, which was £1.08 million, excluding VAT.

We purchased some due diligence from one of the private sector operators that had been looking to buy the airport, in order to cut down on the cost and time involved for the Scottish Government, so some of the cost is down to that.

The £3 million in working capital was what we had given the airport at the time that I wrote that letter. I updated that in my opening remarks to say that we have given a further £2 million, which will take the airport into the next financial year and help to support some of the early refurbishment work that I have talked about.

In the initial business plan, we had identified a total initial repositioning capital investment of £2.25 million, which is about modernising the terminal facilities and generally starting to make the airport a more attractive proposition. However, that expenditure is anticipated to be incurred not in this financial year but in the financial year that we

are about to go into—2014-15. That is the extent of the Scottish Government's investment to date.

Mark Griffin: Finally, do European state aid rules restrict Scottish Government investment in Prestwick airport? If so, can you outline any of those restrictions?

Nicola Sturgeon: Yes, they do, and I have taken care to outline what those restrictions are, both in my statement to Parliament and in some of my correspondence with the committee. Again, I have alluded to some of that today.

We have to operate within European state aid rules, which means that we have to run the airport on a commercial basis. We are bound by the same restrictions but we also have the same opportunities as other public sector airport owners anywhere in the European Union.

I mentioned Cardiff airport, which was acquired by the Welsh Government. I am not saying that there are exact parallels with Prestwick—there are significant differences in the positions of Cardiff and Prestwick, not least Prestwick's proximity to other major airports—but Cardiff airport has reported a 9 per cent increase in passenger numbers since the Welsh Government acquired it in March last year.

If the European Commission was looking at whether funding constituted state aid, it would look at whether, in similar circumstances—leaving aside all the social and regional policy sectoral considerations—a private sector operator having regard to the foreseeability of obtaining a return would take the same decisions and be granted the same funding. That is the market economy investor principle that I spoke about and it is the principle on which our acquisition and our running of the airport will be based. We need to do this on a commercial basis and in a way that will secure a return on taxpayers' money. Those are the constraints within which we have to operate. We believe that we are operating within them, but we will continue to ensure that that is the case.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Cabinet secretary, you indicated in your opening remarks that you do not want to impact on other airport operators' businesses. However, given that one way in which airports can attract additional airlines is by reducing landing fees, what assurances can you offer Edinburgh and Glasgow airports that Scottish Government ownership of Prestwick airport will not have an undue detrimental impact on the development of their business?

12:00

Nicola Sturgeon: I am very keen that we should give Glasgow and Edinburgh in particular—

because of their geography and their proximity to Prestwick, particularly Glasgow—definite assurances. I have met representatives of Glasgow and Edinburgh airports since we acquired Prestwick and I intend to do so again once we have the recommendations from Romain Py.

In broad terms, we are determined to separate our involvement in operating Prestwick airport on a day-to-day basis—whatever that is going to be—from our team Scotland involvement whereby we as a Government look to provide, where we can, appropriate assistance to encourage airlines to develop routes in and out of Scotland. It is important that we separate those. Basically, we offer the support on an airport-neutral basis, and it is then for the airlines to decide whether they want to go to Glasgow, Edinburgh, Prestwick, Aberdeen or wherever. We will continue to do that on a neutral basis. There will be no special treatment for Prestwick airport when it comes to the support that we give through the team Scotland approach. We are taking care to ensure that in the way in which the Government operates, there is a clear separation of responsibility and no conflict of interest between those two separate functions.

I can understand the anxiety that Glasgow and Edinburgh airports have about the issue. That is why the onus is on us to go to great lengths to reassure them that, in our team Scotland capacity, we will continue to operate on an airport-neutral basis.

Adam Ingram: I thank the Deputy First Minister and the Scottish Government for riding to the rescue of Prestwick airport. As she rightly pointed out, the airport is a central feature of the local economy in Ayrshire, and it would have been a disaster if it had been allowed to fall out of economic use.

The Deputy First Minister spoke about the next financial year's investment in the airport. Obviously, we are undertaking a makeover of the terminal and, thankfully, we have got rid of the "Pure dead brilliant" branding. We are sitting in the Burns room in the Parliament. Is there any chance of rebranding the airport as Robert Burns international? The Deputy First Minister, as an Ayrshire girl herself, will know that that has been a long-term ambition of local people.

Nicola Sturgeon: This is probably the furthest that I have ever got into a discussion of Prestwick airport without that question being asked of me, so congratulations. [*Laughter.*]

As the member will know from his local knowledge, the "Pure dead brilliant" signage has gone. I was happy to see that when I visited a couple of weeks ago. On the rebranding, the further stages of our investment in, marketing of

and positioning on the airport depend on the recommendations that come to us, and it is important that we do not pre-empt that detailed work, which we are doing for a good reason.

To put my cards on the table, I am a resident of and an MSP from the city of Glasgow, but I grew up in Ayrshire, so I am not unmoved by the representations on rebranding the airport as Robert Burns international. To be honest, I have heard different opinions on that. I hear the Ayrshire opinion that it would be the right thing to do because it would recognise the local importance of the airport. I have also heard the opposite opinion, which is that we need to market the airport to those outside Scotland and, although everybody across the world knows about Robert Burns, they might not necessarily know where in Scotland an airport called Robert Burns international is. There are differences of opinion on the name Glasgow Prestwick, but it clearly puts the airport in a geographical location and makes it easier for passengers or companies from outside Scotland to know where they are flying to. Those are the different opinions on that.

We have taken no decisions on the issue. It is right that we proceed carefully, as with every other decision on the future of the airport. Whatever my Ayrshire loyalties and sentiments, it is important that we do not take such decisions on the basis of sentiment. The decision has to be based on what we think gives the airport the best chance of growing its business and returning to profit. If that means calling it the Robert Burns international airport, and if we have evidence and recommendations that the name will help us to do that, that is fine. If, on the other hand, the view is that that might be a sentimental move that would make it harder to market the airport, we would have to listen to that. Therefore, at this stage, I am staying agnostic on where we might get to.

Adam Ingram: So you have not ruled that out.

Nicola Sturgeon: We have not ruled it out.

Adam Ingram: Would a recommendation on the branding of the airport come through the second-stage business plan that you are currently working up?

Nicola Sturgeon: That may well be something that Romain Py recommends. I will not commit him to making a recommendation. He is not Scottish and he may not want to go into the Ayrshire politics of recommending what the airport would be called. I am being slightly flippant, but I do not want to underestimate the importance of getting the branding of the airport right. That is absolutely vital, but we need to ensure that we think about the person who will potentially fly into Scotland and what would help them to recognise the identity and location of Prestwick airport. Those things

require to be considered. Romain Py may well have something to say about that in his report.

Adam Ingram: You indicated that around £2.5 million is going into the airport in the next financial year to pay for the makeover of the terminal and other aspects of the mezzanine development to commercialise that particular part of the airport. Is that as much investment as you will make available? As you know, other investments are required. The airport has suffered from a lack of investment, particularly since 2008. I understand that a primary radar replacement is needed in the near future. When will you be in a position to make such decisions?

Nicola Sturgeon: The £2.25 million that is mentioned in my letter relates to the assessment of the initial repositioning capital requirement. As I said, most of that would fall next year. Approval has already been given for the two capital investments that I spoke about to revamp the search area to help speed up the flow of passengers through the airport and the mezzanine. Other decisions about where we will prioritise capital investment will flow from the senior adviser's report, which we expect in a couple of months' time.

Adam Ingram has been assiduous in raising the radar system issue with me in his local capacity. All those things will have to be taken into account in the overall decisions.

We need a very clear sense of priority about what needs to be done. I visited the airport two weeks ago. Without putting too fine a point on it, you do not see many parts of the airport—from the railway station, which should be a big asset for the airport, through to the departure and retail facilities—about which you would not say, "That could do with some investment." You look at all of it and think, "This really needs to be upgraded."

We will not be able to do everything immediately, so it will be about prioritising the things that will give us the biggest bang for our buck. The two things that I have spoken about do not seem very significant when they are seen in isolation, but they will help us to bring more business into the airport. I know that there are thoughts about positioning the retail space in the airport to make it more attractive and make people more likely to buy things as they go through it. We need to be very focused on what will deliver the greatest return in the shortest space of time. In that sense, nothing is ruled out, but we need to be realistic.

Adam Ingram: On developing the business, Prestwick airport has, certainly in the past few years, been very dependent on one airline that flies planes out of it: Ryanair. What discussions have you had with Transport Scotland, TS

Prestwick Holdco Ltd and Ryanair about their future intentions for the use of Prestwick?

Nicola Sturgeon: Ryanair is important to Prestwick and I envisage that it will continue to be extremely important to the airport's future. There was ministerial contact with Ryanair management before we took the decision to acquire the airport. Transport Scotland is due to meet Ryanair senior management early in April, and the intention is that I will have further ministerial contact with Ryanair after that.

Ryanair operates passenger services at the airport and, as you know, its maintenance, repair and overhaul facilities are at the airport, so it is important in both respects. The company will celebrate 20 years of services to Prestwick later this year and we will look to ensure that it remains there for many years to come. Its summer 2014 schedule offers a reduction in weekly services—there will be between 71 and 84 weekly services, compared with 95 in summer 2013. However, that is not specifically to do with conditions at Prestwick; it relates to a combination of factors, including a reduction in the overall aircraft fleet. Ryanair has indicated that once it starts to get new aircraft, probably in 2015, there will be opportunities to increase the number of flights at Prestwick.

I make it clear that Ryanair is and will continue to be important to the airport's future. That said, it is in the airport's interests to attract new passenger and cargo airlines. The management team continues to consider how to win new business. It will attend the routes Europe 2014 conference in Marseille next month, which is an important opportunity to make contact with airlines and encourage business. We want to try to diversify in the years to come.

Adam Ingram: I note from our briefing that after a big downturn in airport activity across the board in 2008, in recent years growth has returned to Glasgow and Edinburgh airports but not to Prestwick. That is the case in relation to not just passenger numbers but freight, which is an area in which Prestwick used to do well. Are there particular reasons for the decline?

Nicola Sturgeon: The decline in recent years has been down to the general economic situation and, not unrelated to that, increasing competition in the aviation sector—that is the general position for airports. For Prestwick, we can add into the mix the fact that there has not been investment in the business for a time, so the facility has deteriorated and has been less attractive to operators, passengers and commercial enterprises that might want to do business in and around Prestwick. I think that that explains why Prestwick has been particularly hard hit.

As I said, in the period to February this year there was a slight increase in passenger numbers and freight volumes. That is a good thing, which I suspect reflects improved economic conditions. The position with regard to freight remains challenging, but Cargolux recently announced that it is increasing its Prestwick schedule from four to six flights a week, from this month. The extra flights will bring significant extra revenue.

It is too early for anything that we have done to have effect at Prestwick, but we are seeing signs of a general uplift, which is associated with economic recovery. The challenge for us is to ensure that there is investment in the airport and that things that have not happened over a number of years happen, to allow the airport to be more competitive.

Adam Ingram: Prestwick does not have services to the major UK hub airports in London, which would provide access to onward long-haul flights. Do you have ambitions for Prestwick to offer such services in future?

12:15

Nicola Sturgeon: The restoration of a London service for Prestwick would be very welcome. I cannot give you any guarantees on the achievement of that at the moment, but there is no doubt that it would be significant for the airport and would open up other possibilities. Obviously, we will continue to work with airlines and local stakeholders to attract new business, but we do that with all Scottish airports. That goes back to my point in response to Gordon MacDonald, which is that we are neutral on where in Scotland airlines decide to base themselves and develop routes from, and we must remain neutral on that.

The other point that I would make, which you have heard the Government and I make often in the past, is around air passenger duty. APD is a significant constraint on our airports; for example, it is applied on both sectors of a Prestwick to London flight. APD is particularly significant for low-budget airline offerings such as the significant Ryanair one at Prestwick. If we were to get into a position one way or another—I will not go into how that might happen at the moment—of being able to do something about the crippling effect of APD at our airports, it would help all our airports but be particularly helpful for Prestwick in this period.

Jim Eadie: With your permission, convener, I want to ask a couple of brief questions on behalf of my colleague Chic Brodie, who has a specific interest in and passion for the future of Prestwick airport, although I hesitate to go beyond that and describe him as pure dead brilliant—but I just have.

He would like some clarification on the timescales for the structural plan. When does the cabinet secretary expect to receive it and be in a position to publish it?

Nicola Sturgeon: It is a matter of public record that we asked Romain Py to do his work within three months. He was appointed on 11 February, so we would now expect his report in just under two months. Like me, you will be aware that there is occasionally some slippage around these things, but I would not want that to be significant in any way. We want to get the report so that we can move on to the next stage of development of Prestwick airport as quickly as possible.

On when we will publish the plan, you will understand that there is a degree of commercial confidentiality around some of the plans underpinning the second-stage business plan. However, we will seek to be as open and transparent as possible around it, as you would expect us to be, given that Prestwick airport is a publicly owned facility at the moment. However, it is a publicly owned facility operating in a commercial environment, so we must all understand the constraints that will apply to the publication of business plans, et cetera.

Jim Eadie: Without pre-empting or prejudging the contents of the structural plan, are you or your officials in a position to give any kind of indication at this stage of where the balance of activity might be between maintenance, repair and overhaul, given that there is engineering expertise in Ayrshire and cargo/freight traffic and passenger traffic?

Nicola Sturgeon: Given the work that we have commissioned and which is under way, it would be wrong of me to sit here and start to say where that balance lies. I will put it in layman's terms for you: the balance of it should lie where we are best able to maximise the revenue and profits of the airport. We have asked an expert in the field to give us advice on how to best position the airport to do that.

One of the big advantages for the airport is the MRO presence there, which is Ryanair's at the moment. However, there is a range of other things. Passenger and freight are core business for any airport, but as I said earlier the airport is not maximising its potential in its retail offering or its food and drink offering. There is masses of land around the airport that is not being utilised properly. We must take time to have proper oversight and consideration of all that. Ultimately, the plan will be about maximising the asset to maximise its revenue, reduce its losses and get it as quickly as possible into a profitable position.

Jim Eadie: Finally on behalf of Mr Brodie, are you able to clarify whether there are plans to sell

off any part of the asset before a business plan is in place?

Nicola Sturgeon: That is part of the business planning. Decisions may well be taken to dispose of some of the surplus land around the airport. I am certainly not ruling that out. However, we are not at the point yet of taking specific decisions around that. That will flow from the recommendations that we get in a couple of months' time.

Jim Eadie: I will move on to my own question about the long-term viability and sustainability of Prestwick airport. I wrote to you on 13 February, on behalf of a constituent, Alan McKinney, who has for over 20 years harboured an ambition for Prestwick airport to play a role as a centre for disaster relief. At the moment, the budget that would be available to the Scottish Government through its external affairs strategy is fairly limited compared with what the Department for International Development would have available for humanitarian assistance and overseas aid. Nevertheless, Prestwick airport appears, at least on initial examination, to have a number of attractions as a hub and centre for disaster relief. For example, it is perfectly designed to accommodate large passenger and cargo planes; the runway can easily accommodate the type of aircraft that are used in relief operations; and the expertise, equipment and storage facilities that are available at Prestwick airport could provide relief efforts with the means to co-ordinate and deliver emergency aid within tight timescales.

Is there any way in which those ideas could be looked at as part of the development of the structural plan? They would require either a Scottish Government with a significant international aid budget or the involvement of the UK's Department for International Development.

Nicola Sturgeon: The short answer to your question is yes. We should look at all possible options for use of the airport. You have written to me and will receive a response fairly soon. Alan McKinney has also written to me directly. His idea certainly merits discussion and consideration, and I am happy to ensure that the senior adviser is aware of the proposal. For the reasons that you suggest, it may be a longer-term proposal rather than something that would feature heavily in our initial short-term plans for the airport. Nevertheless, it is worthy of consideration over the longer term.

As you say, the airport has a range of distinctive features, including two runways and particularly advantageous wind conditions. Those may make it attractive for a range of uses, but you have outlined why some of those attributes would potentially lend themselves to the kind of activity that you are talking about. I cannot say that it

would definitely be feasible to factor that into our thinking for Prestwick airport, but I can give you an undertaking that I will ensure that the adviser and the local management team are aware of the proposition.

Jim Eadie: I very much welcome that commitment, Deputy First Minister. I encourage you, in pursuing the idea and in exploring to the maximum the possibilities that may exist, to open discussions with officials at the Department for International Development on the subject. There may also be a European dimension given that, at the moment, there is no purposely designed permanent hub for countries in Europe to use to efficiently organise and co-ordinate disaster relief.

Nicola Sturgeon: I am happy to give consideration to all of that.

The Convener: As members have no further questions, I thank the cabinet secretary and her officials for their evidence. We look forward to receiving further evidence as it becomes available, as you said, in about three months or so.

I suspend the meeting briefly to allow our witnesses to leave before we consider our final item.

12:23

Meeting suspended.

12:24

On resuming—

Subordinate Legislation

Road Works (Inspection Fees) (Scotland) Amendment Regulations 2014 (SSI 2014/56)

Scottish Road Works Register (Prescribed Fees) Regulations 2014 (SSI 2014/58)

The Convener: Agenda item 3 is subordinate legislation. The committee is asked to consider two negative instruments: the Road Works (Inspection Fees) (Scotland) Amendment Regulations 2014 and the Scottish Road Works Register (Prescribed Fees) Regulations 2014. The first of those makes a minor increase to the fee for inspections that is payable by those who undertake road work. The second prescribes the methodology by which fees that are payable by road works authorities and so on are determined as a condition of access to the register.

The Delegated Powers and Law Reform Committee determined that it did not need to draw either of the instruments to the attention of the Parliament. No motions to annul have been received in relation to the instruments. Is the committee agreed that it does not wish to make any recommendation in relation to the instruments?

Members *indicated agreement.*

The Convener: Next week, the committee will hear a general update on transport issues from the Minister for Transport and Veterans and will consider the first draft of its Housing (Scotland) Bill report.

Meeting closed at 12:25.

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