



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Petitions Committee

Thursday 12 November 2020

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 12 November 2020

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PUBLIC PETITIONS COMMITTEE

19th Meeting 2020, Session 5

CONVENER

*Johann Lamont (Glasgow) (Lab)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Maurice Corry (West Scotland) (Con)

*Tom Mason (North East Scotland) (Con)

*David Torrance (Kirkcaldy) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Finnie (Highlands and Islands) (Green)

Paul Maxton (Scottish Government)

Michael McLeod (Scottish Government)

Martin Ritchie (Scottish Government)

Paul Wheelhouse (Minister for Energy, Connectivity and the Islands)

Chris Wilcock (Transport Scotland)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

Virtual Meeting

Scottish Parliament

Public Petitions Committee

Thursday 12 November 2020

[The Convener opened the meeting at 09:30]

Continued Petitions

Ship-to-ship Oil Transfers (PE1637)

The Convener (Johann Lamont): Good morning, and welcome to this meeting of the Public Petitions Committee.

The first and only item on our agenda today is consideration of continued petitions. The first continued petition is PE1637, which was lodged by Greg Fullarton, on behalf of Cromarty Rising. I welcome John Finnie, who is attending the meeting in relation to the petition. The petition calls on the Scottish Parliament to urge the Scottish Government to ensure that environmental legislation in Scotland is sufficient to prevent ship-to-ship transfers of crude oil in environmentally sensitive locations, such as the inner Moray Firth, and to enhance the accountability of trust port boards to their stakeholders.

When we last considered the petition in December, we agreed to invite the Minister for Energy, Connectivity and the Islands to give oral evidence, focusing on the accountability of trust ports. I am pleased to welcome the minister, as well as two Scottish Government officials: Michael McLeod, who is head of marine conservation; and Martin Ritchie, who is head of ports, shipping, freight and canals.

Before we move to questions, I invite the minister to provide a brief opening statement.

The Minister for Energy, Connectivity and the Islands (Paul Wheelhouse): Good morning to all colleagues on the committee. I thank you for the opportunity to give evidence today.

I take to heart the very real concerns of the communities that live around the Moray and Cromarty firths over the now withdrawn application from the Cromarty Firth Port Authority to undertake ship-to-ship transfers of crude oil at sea in the Moray Firth.

To date, we have written four times to the United Kingdom Government to seek devolution of the powers to determine applications for ship-to-ship oil transfer licences within Scottish waters. Furthermore, the Secretary of State for Transport undertook a light-touch review of the regulations in 2017 and amended them earlier this year, all

without consultation with Scottish ministers. Sadly, therefore, an opportunity for devolving that function has been lost.

I have made it clear that the Scottish Government has no powers over the decision-making process for any application for an oil transfer licence, and the regulations under which such applications are made remain a reserved matter under the Merchant Shipping Act 1995. When consent is given for any regulated activity that takes place in Scottish waters, it is for the regulator to ensure that environmental legislation is complied with. In the case of ship-to-ship oil transfer licences, that responsibility currently sits with the UK Government.

Thank you for the opportunity to give some opening remarks. I am happy to take questions.

The Convener: Thank you for that; we appreciate your attendance today.

I will ask the first question. In your written submission to the committee last September, you stated that

"Scottish Ministers expect Trust Ports to operate with reference to the Modern Trust Ports for Scotland: Guidance for Good Governance and our experience is that Trust Ports across Scotland do this."

What evidence do you have for that claim?

Paul Wheelhouse: I appreciate that that is an important point. The Scottish Government recognises that Scotland benefits from a diverse and successful ports sector that contributes significantly to local and regional economies and, in some cases, the national economy. Our trust ports have no shareholders or owners and, therefore, profits are reinvested in the ports. They make a significant contribution to local employment and economic growth. The "Modern Trust Ports for Scotland: Guidance for good governance" notes that

"interested parties"

who believe that a trust port is acting

"in breach of the principles of the trust port"

should raise the matter with the trust port board

"in the first instance".

There are also routes for recourse related to specific areas of concern. For instance, there are well-publicised public consultations before any marine licence or harbour revision order is considered for approval, and queries around noise or light pollution or traffic congestion from a port should be directed to the local authority for investigation. Ultimately, there are the options of reporting matters to the police or of pursuing legal means, although that comes with a cost, which is an issue for the petitioners. However, the same arrangements apply to all ports in Scotland.

Thankfully, complaints against trust ports in Scotland are very low in number, despite many stakeholders regularly using or living in the vicinity of a trust port. That evidence suggests—although I appreciate that it is difficult to prove—that trust ports are striving to be good neighbours and have robust processes in place when matters are escalated. If it were otherwise, we would expect a much greater number of complaints and problems to come before Government.

The Convener: There are quite a number of issues in there that members will address.

You were quite explicit in saying that, in your experience, trust ports across Scotland follow the guidance. With respect, you have not given us any evidence for that. You have simply said that it looks as if that is the case because there have not been a lot of complaints. I think that the petitioners would argue the opposite. Have you specific evidence that the guidance is followed?

Paul Wheelhouse: Yes, as I understand it, convener. I apologise if I have given the wrong impression. Our records show that, this year, we have received just five representations about trust ports, of which two related to CFP.

The volume of complaints about trust ports is not large. I appreciate that that is not quite the same as saying that we have evidence of good behaviour, but it implies that the levels of complaint about the activities of trust ports are, if anything, very limited.

Martin Ritchie might be able to comment further on the detail of the complaints that have been received, if that would be helpful. Given the number of trust ports in Scotland, the evidence suggests that there are relatively low levels of difficulty in their engagement with local communities and with their users.

The Convener: Okay, so the evidence that it is working is the absence of evidence that it is not working, and the evidence that it is not working is simply that nobody has found a way to complain effectively. Again, that is something that we will look at.

Does Martin Ritchie want to come in at this point?

Martin Ritchie (Scottish Government): Protocols are in place for trust ports to deal with those issues. Certainly, the larger trust ports are required to have liaison groups with their local communities, so that they can deal with any complaints that they have received.

The minister is absolutely right to say that it is difficult to quantify the level of complaints that we have had about trust ports, but five is certainly a very low figure, given the economic activity around Scotland from those ports. As the minister said,

two of those complaints are about the port that I think is the focus of the question. Certainly, our records show that there seems to be a willingness from communities to raise issues. We may return to that as well.

We need to bear in mind that the activities of some of those ports are very significant for the local economy, the regional economy and the national economy. As with any industry, there may be rub points with local communities about some of the activities that go on, but, from the information that we have on the Cromarty Firth port, protocols and procedures seem to be in place for the local community to voice any displeasure.

The Convener: Thank you very much.

My observation is that the submission from the Scottish Government and the minister asserts something for which they have no evidence, and there are clearly some concerns. Has any consideration been given to putting the guidance into law? Would that help to give people confidence?

Paul Wheelhouse: All ports are obliged to act in accordance with the local legislation that underpins their trust port status and with other relevant law, whether they are trusts or privately or local authority owned. Trust ports are established and empowered by harbour orders, which are made by Scottish ministers, and they are required to operate only within the powers and duties that are conferred on them by statute. Those orders are subject to public consultation before they are adopted.

We would certainly insist that trust ports should do all that they can to comply with the guidance. However, we recognise and acknowledge that not all trust ports will be in a position to comply fully with every provision in the guidance. In some cases, the size and nature of a trust port's operation might mean that a particular stipulation does not apply or that compliance would be excessively burdensome or disproportionate.

We believe that trust port boards should exercise their own judgment on the essential elements of their operations. As and when necessary, they may also seek clarification on the guidance from Scottish Government officials if they are in any way unclear about how they should approach its adoption. However, we recognise and acknowledge that not all trust ports will be in a position to comply fully with the guidance.

The Convener: So you will not put the guidance into law because you do not believe that people can comply with it.

Paul Wheelhouse: That is perhaps an unfair characterisation. All members, but especially

those who represent constituencies with smaller trust ports, will recognise that fully complying with the guidance would be difficult in such cases. We are trying to take a proportionate, reasonable and pragmatic approach by not enforcing things through legislation and instead putting them in guidance.

The Convener: Have you ever thought of having guidance that might match the scale of the ports, so that the guidance could differ, depending on their size? Has that ever been considered?

Paul Wheelhouse: I cannot answer that question. If I may, I will bring in Martin Ritchie. Mr Matheson leads on trust ports, so Martin might be more familiar with the legislation that applies and the process that we went through to reach the position that has existed since 2015.

Martin Ritchie: The minister has laid out the position well. The issue is the vast diversity of trust ports in Scotland. If we were to try to tackle all their activities in guidance we would have either a lengthier document than we have now or many iterations of it. In my time in the office, we have considered the guidance—and it is guidance—but, as the minister said, on top of that is legislation, including local legislation, to which all trust ports must adhere. We feel that the guidance is just that—we do not want to be too restrictive about all the different angles that our trust ports work from.

Gail Ross (Caithness, Sutherland and Ross) (SNP): I welcome the minister and his team. I should say that I am the constituency MSP for the board that we are discussing. I declare an interest, in that I supported Cromarty Rising in its campaign against ship-to-ship oil transfers when the proposal was live.

The minister has explained that trust ports are independent statutory bodies. They are therefore governed by their own legislation and run by independent boards. He said that the fact that there have been only five complaints to the Scottish Government shows that they have been run in an acceptable manner. However, we have received more evidence from Cromarty Rising, which is a group that comprises people from all around the Cromarty Firth, including up to Nairn and round to Invergordon, where the port is situated.

On the subject of transparency and accountability, Cromarty Rising says that the Port of Cromarty Firth

“claimed that only 6 noise complaints had been recorded”

but that

“Highland Council has confirmed that”

it has had

“29 complaints”.

Therefore, there is—pardon the pun—a trust issue over how transparent the port is being about complaints.

A second protest group, which has been set up in Invergordon, is not happy about the lack of consultation with the community about, among other things, cruise ships, the use of public buses and the parking of private buses. What is your response to those concerns? If I was to say to all the members of Cromarty Rising and the protest group in Invergordon that they should get in touch with the Scottish Government, would that prompt action to be taken?

09:45

Paul Wheelhouse: I recognise the concern of Gail Ross, as the constituency member, when she hears those complaints from community groups. For what it is worth, I would be disappointed if there was any mismatch in the statistics that different bodies report. I will look into the matter that Gail Ross raises around complaints that have been raised with Highland Council and those that are being reported by the trust port. We need to bottom that out. I do not know whether Mr Ritchie or Mr McLeod has any insight into the difference or whether there is a technical reason for it, but it sounds odd that there is such a disparity. We will come back to the committee on that point, if that would be helpful.

The Convener: I am happy for you to do that.

Paul Wheelhouse: On the point about the second protest group and the lack of consultation on the issues with cruise ships and bus parking, those are matters on which we expect the trust port to undertake consultation and engagement with the local community. We expect all ports in Scotland to be good neighbours. The “Modern Trust Ports for Scotland” guidance, which was referred to earlier, clearly states the options that are available for interested parties who believe that the trust port in their locality is acting outwith its powers. I say to interested parties who are watching this session that we encourage any party with concerns about the Port of Cromarty Firth or any other trust port in Scotland, or who believes that their port is acting illegally or is

“otherwise in breach of the principles of the trust port”,

to follow the processes for having those concerns fully considered.

In addition to ship-to-ship transfers, I understand that there have recently been complaints from the Cromarty Rising group on noise vibration from rigs berthing in the firth. Noise pollution issues should be directed to the local authority to investigate, which might indicate why Highland Council reports a high number. It is not good that the issue is

happening, but it is good that folk are reporting it, because it indicates that that channel is active. However, I am concerned to hear that the trust port is reporting a much lower level of complaints.

As background, I understand that the port authority has said that more than 700 rig movements have been completed in the firth, which has hosted North Sea drilling rigs for more than 40 years. Despite an unprecedented increase in demand to store rigs, due to the collapse of the oil market earlier this year and the pandemic, I understand that, as I said, the port authority has received just six noise complaints. However, we will investigate why there is such a disparity.

The port authority has said that it investigates each complaint that it receives and, where possible, undertakes monitoring to measure and investigate the extent of noise pollution. With regard to the complaints that were investigated, the noise was within legal limits. However, Highland Council has received 23 other complaints, which I do not have similar reassurance about, so I am keen to explore that. I apologise that I do not have a response to that now, but we will get one to the committee as soon as we can, unless Mr Ritchie or Mr MacLeod has any insight on those larger numbers.

The Convener: Do Martin Ritchie or Michael McLeod want to say anything?

Martin Ritchie: I cannot add a lot to what the minister has said, but we will follow that up. I am not sure whether those six complaints have been made directly to the port authority and the others have gone to the local authority, but there is no reason why we cannot follow that up with Highland Council, and we will do so.

Gail Ross: I will also make a suggestion about contact with Cromarty and district community council. When it canvassed local opinion, 80 per cent of responses highlighted a shared “hate” of the noise. I believe that the port was asked to move noisier structures away from areas of population, but that suggestion was not taken up, which is disappointing.

I will ask a question about ship-to-ship oil transfers. From having made representations on behalf of Cromarty Rising and the community as a whole, I know that it is an issue for the Westminster Government. Can you tell me what input Marine Scotland had and whether it is a statutory consultee on any of those consultations?

Paul Wheelhouse: It is certainly important that NatureScot—formerly Scottish Natural Heritage—is consulted as a statutory consultee. The irony is that the Scottish ministers are not statutory consultees, which is why we have asked the United Kingdom Government to reflect on the difficulties that we have had with the application

and to perhaps use this as an opportunity to devolve responsibility to the Scottish ministers or, at least, to formally recognise the role of the Scottish Government as a consultee in the process to ensure that we are always consulted on any such applications as a matter of course. I hope that there is room for collaboration on that between us and UK ministers. That has not happened to date, regrettably, considering the changes that took place in 2017, and we would like to have discussions with the UK secretary of state on the issue. The secretary of state to whom we most recently addressed the matter was Chris Grayling, which was before a recent reshuffle. We hope to pick it up with UK ministers in due course.

It is a long-standing issue and I know that it is of great concern to local communities. The Scottish Government has responsibility for the marine environment so, logically, it should follow that we have a formal role in the oversight of such applications. If we do not get full devolution, we should at least have a role as a statutory consultee, and our view should always be taken into account on these matters.

Gail Ross: We know that the Cromarty Firth Port Authority has put a halt to its plans for ship-to-ship transfers in the form in which they were being proposed, but there is nothing preventing the port authority from changing its mind on that and coming back with another proposal. What would you say to the port and the community if that should happen? The community would be pretty much back to where it started and would have to start the fight all over again.

Paul Wheelhouse: I have to be careful, because I do not want to pre-empt any formal consultation that takes place on a specific application. However, on the basis of the general principle of what was being proposed in the Moray Firth, we have concerns along the following lines: we know that ship-to-ship transfer can be done safely and with relatively little risk but, if there were an incident involving ship-to-ship transfer in the Moray Firth, we believe that there is certainly a considerable likelihood that there would be significant damage to the marine environment there. There is a combination of a relatively low chance of such an incident happening—ship-to-ship transfer procedures are well practised around the world—and the potential for a significant impact on a precious part of our marine environment if an incident did happen, so we have significant concerns. We took a sceptical approach to the proposal. I am not criticising the port authority or any of the operators that would have been doing ship-to-ship transfers, but we had concerns about that taking place in that environmental context.

We would be keen to have oversight of such decisions but, as I said, those powers are not yet devolved to the Scottish ministers. We will continue to make representations to UK ministers on the devolution of those powers to the Scottish Government, and we will consider each application on its merits if we are invited to do so. We have some concerns about the potential impact of such an incident on that precious environment, with key species such as dolphins and the wider marine environment at risk.

Maurice Corry (West Scotland) (Con): On the issue of public funding, you have previously stated that trust ports operate in a commercial environment, usually with no direct public funding. The petitioners question that position, given that the Cromarty Firth Port Authority received Scottish Government funding worth £7.5 million for a new cruise hub development, which followed a £4 million grant from Highlands and Islands Enterprise in August 2014. Will you or your colleagues clarify the details around that funding—it appears to be public funding—and tell us whether other trust ports have received similar public funding?

Paul Wheelhouse: That is a fair question. Trust ports operate in a commercial environment and usually have no direct public funding, which means that a trust port must charge appropriate levels of fees from users of the port to cover the maintenance and running costs. However, it is also important to remember that ports, just like any other business, can apply to our economic development agencies for support for large-scale developments that are beyond their normal operations or are considered to be of wider economic significance. You referred to some of the figures but, as an example, the £4 million grant funding from Highlands and Islands Enterprise in 2014 was viewed as future proofing the port. It centred on the reclamation of approximately 10 acres of land to provide additional quayside with deeper-water capability. Although the port has continuity of access at all states of tide for large supply and cruise vessels, experience has identified that the scale of vessels serving the energy sector is increasing and the quay extension was intended to provide continuity of access as the energy and tourism markets change. Invergordon is also a deep-water port; it is the one that supports the Moray offshore wind farm projects, including those that are currently being built in Moray East.

The national renewables infrastructure plan—or NRIF, as it is often referred to—identified the Cromarty Firth port as a support site to play a major role in the operation and maintenance phase of offshore wind developments, and the investment that took place allowed the port to fulfil its potential complementary role in that respect

and also to continue as part of the integrated facilities within the inner Moray Firth cluster and what that has to offer for the renewable energy sector.

On the wider point about the number of trust ports that benefit, a number of Highlands and Islands ports are trusts, including Cromarty Firth, Inverness, Lerwick, Mallaig, Scrabster, St Margaret's Hope, Stornoway, Ullapool and Wick. Many of those ports have received support over the past 10 years from the Scottish Government and our agencies. Highlands and Islands Enterprise investments have been made on a case-by-case basis, with each project assessed in terms of its value for money, the degree of certainty over user demand for the facility that is being built and net impacts at a local or regional level. It is important to point out that, if it is eligible, it is legitimate for a trust port, as a business, to draw down funding in the same way that any other business would apply. That impartial approach has resulted in regional infrastructure sites achieving high levels of tourism and other business activity, including major offshore energy products projects, as at Wick harbour, in Ms Ross's constituency, which is doing excellently out of the Beatrice offshore wind farm. I hope that that is helpful.

Maurice Corry: I have one small supplementary question. Would you regard the £7.5 million of Scottish Government funding that was put in for the new cruise hub as match funding, following the £4 million grant from HIE in August 2014? Is it correct that, if one had not happened, the other would not have happened?

Paul Wheelhouse: On that specific point, so that I do not supply an inaccurate answer to Mr Corry, I will bring in Mr Ritchie; he might have some background knowledge on the £7.5 million.

Martin Ritchie: I am sorry, but I do not know the finer detail of that. Enterprise agency colleagues would be able to confirm that, but we can confirm it in writing. Most cases of infrastructure support that I have been involved with have included some level of match funding from the industry body, so I assume that that is also the case in this instance.

The Convener: Would funding from the agencies or the Scottish Government ever include conditions on how the organisation conducts itself?

Paul Wheelhouse: On the specifics about conduct, I am not certain about the conditions that were in Highlands and Islands Enterprise's grant conditions, but it is normal—

The Convener: No, I take your point. I am just making the point that you said, as Maurice Corry has said, that these are commercial organisations, and it is not a matter for the Government.

However, through its agencies, the Government is giving significant funding. Are conditions attached to that? It is slightly different from a straightforward commercial organisation doing whatever it wants, as long as people do not complain.

Paul Wheelhouse: You are right that it is normal these days, for example, for a fair work framework to be a core condition of that funding, and I would not be surprised if there were conditions in that case. If it would be helpful, we can come back to the committee with any conditions that were applied to the funding from Highlands and Islands Enterprise.

10:00

The Convener: Therefore, it would be reasonable to expect the Scottish Government, if it was concerned about the way in which ports were operating commercially, to attach those conditions. That is not something that is outwith your control; it would be normal.

David Torrance (Kirkcaldy) (SNP): Good morning, panel. Minister, you stated in previous correspondence to the committee that

“any party who feels a trust port is operating out with their powers as set out in their legislation should raise this with the Port in the first instance, but ultimately has the option to consider legal remedy”,

and you have reiterated that today. What advice would you offer to someone who has been unable to resolve their issue directly with the trust port, but does not have the financial means to take it to court?

Paul Wheelhouse: Mr Torrance raises an important point. Obviously, on the specific point that you raise, if anybody believes that a port, whether it is a trust port, a private port or a local authority port, is operating outside its powers as set out in legislation, they should raise that with the trust port board or alternative in the first instance. As we have maintained, there are potential routes for recourse for specific issues such as noise complaints. In this case, the route would be through Highland Council, and it sounds as though a number of complaints have already been made.

Ultimately, a community or an individual has the option to consider a legal remedy via the courts. Anyone considering legal action is of course advised to take independent legal advice. It may well be that support is available for individuals. We would need to look at whether legal aid covers such cases if it is an individual complaint.

Legal action would likely be the option of last resort, which we hope would not be required when other processes can be pursued. Ports and communities can, we would hope, live together

and enjoy mutual benefits. Clearly, there are issues in relation to Cromarty Firth Port Authority, and we will look into the unresolved issues around noise complaints. We would hope that, in practice, ports can work in harmony with local communities, and that people would not have to go as far as court action if complaints are taken seriously by trust port boards.

We encourage trust port boards to engage with those who are making complaints and try to resolve them where they can. Ultimately, as I said to David Torrance, communities or individuals have the option of taking court action if they believe that their issues have not been appropriately dealt with by the trust port board.

The Convener: Just to confirm, if someone does not have the financial means to go to court, they are advised just to see whether they can get legal aid. Is there anything else?

Paul Wheelhouse: I was suggesting that we will come back to the committee with a definitive answer on what eligibility there is for legal aid, to help Mr Torrance and the committee know what the options are. I do not know whether Michael McLeod or Martin Ritchie would have that to hand, but we can have a look at what support might be available to low-income individuals who feel that their voice needs to be heard in that forum.

I appreciate that going to court is never a cheap process, so we would not want just to incentivise people—

The Convener: The point is that one of the arguments for doing more on guidance is that it is difficult for people to enforce what they perceive to be their rights, because they do not have the financial means to do so. The question is more about what the Government could do if that was going to be a problem. Perhaps you can come back to the committee on that.

Tom Mason (North East Scotland) (Con): Is it not the case that, in England and Wales, if stakeholders are dissatisfied with a trust port's response to a complaint, they can appeal to the Department for Transport to intervene? In Scotland, as you have just stated, there is no such provision. Why do we have that situation?

Paul Wheelhouse: I believe that the Harbours (Scotland) Act 2015 changed the status of the relationship between the Scottish ministers and trust ports. In part, that was because the borrowing of trust ports appeared on the Scottish Government balance sheet. The UK Government retains different powers in relation to trust ports, including the ability to request that they consider moving from trust port status to full private ownership. We do not have that power in Scotland and we are not convinced that we want it. “Modern Trust Ports for Scotland: Guidance for good

governance” states that, if a complainant does not believe that the response that they have received from the trust port

“is reasonable in addressing the grounds of his or her concern, the matter should be reported to Scottish Ministers who may assist in resolving any dispute in their role as ‘honest broker’.”

However, we need to be clear that ministers still have no locus in regulating the commercial decisions or activities of a trust port, nor do we become involved in good-neighbour disputes, because those are matters for the board to resolve in the way that I described earlier. Our interest is in ensuring that the board does not take decisions in an arbitrary, unaccountable manner that is inconsistent with the spirit of the guidance.

Beyond that, I have outlined some of the options relevant to the areas of concern that we believe provide potential recourse for communities and which strengthen the need for accountability from the port in question. We have a role as an honest broker and we do what we can to try and influence, but we do not have a legislative route to enforce that action. I hope that that is helpful to the member. Perhaps Martin Ritchie can explain in greater detail the change in legislation that took place in 2015.

Martin Ritchie: I will give it a try, minister, although it is before my time in the branch. My understanding is that trust ports were an anomaly after the privatisation of ports in the 1990s. They were operating in a commercial sphere and were required to show independence but still had the ministerial oversight that exists in England. The minister has outlined the reasons why we felt that trust ports should come out of that arrangement: it was counting against Scottish Government budgets, and the trust ports did not have that level of independence over their financial arrangements that would help with things such as borrowing. They could borrow before the arrangements came into place, but that borrowing would also count against Scottish Government budgets, so there would be a restriction there. The arrangements in 2015 gave the required extra clarity on the independence of the trust ports.

As the minister said, south of the border, for trust ports—or public corporations, as some of the trust ports are classified in England—there is still that ability for ministers to decide that privatisation is the best way to go. Thus far, there has not been an appetite for that in Scotland. That is my summary of the background to where we are now.

Tom Mason: I also understand that, in the England and Wales, the Secretary of State for Transport still appoints the chairs and some non-executive directors of the five largest trust ports. If you have no involvement in the process, how can

you be assured that the trust ports in Scotland are appointing their directors transparently?

Paul Wheelhouse: I recognise the point that Mr Mason makes. We do not have involvement in the appointments process for board members at trust ports in Scotland. The process for appointing board members is led by the trust port board, which utilises its skills and local knowledge to identify the gaps in its skills matrix and fill them with the talented individuals whom they find locally or further afield. That allows the port to continue to benefit the local community and ensure viability for future generations.

“Modern Trust Ports for Scotland: Guidance for good governance” provides the code of best practice for trust ports, including openness and transparency in trust port board appointments and port governance more generally. The core principle of the guidance is to

“encourage the continued development of an open and accountable relationship between all ports, their users and local communities.”

Obviously, if that is not working, we need to look at the matter. However, based on the information that has been supplied to me, I believe that the approach has generally been successful. The port sector has diverse interests and is continuing to adapt.

We have a changing economic context; many ports are showing an interest in the green recovery and in developing facilities that cater for ever-changing market demands. Offshore wind in particular, and cruise traffic—which might take a hit for some time to come, but has generally been buoyant in recent years—are supporting the more traditional markets and are cross-subsidising the cost of the ports.

A key responsibility for the trust port boards will be to ensure that they continue to have the right mix of skills and experience at board and senior management levels, so that their ports can compete in the UK and global markets. I hope that they do that in a way that is compatible with communities’ aspirations through providing good employment opportunities for local people and economic cohesion, and with their health and wellbeing—for example, in respect of issues such as noise pollution, which we discussed earlier. We do not consider those aims to be exclusive of one other—there is room for achieving economic aims while being in harmony with local communities, and we would certainly encourage all trust ports to take that responsibility seriously.

I hope that the information in the code of practice that guides appointment of board members is helpful, but we do not have direct involvement in appointing boards, nor do we have oversight of the process.

The Convener: Have Government ministers ever been called in to act as honest brokers?

Paul Wheelhouse: In relation to the discussions around the Port of Cromarty Firth, we have been engaging with local stakeholders including Cromarty Rising, and with local community representatives and elected members, including Gail Ross and others. We have tried to calm things down and get to a place where there was some resolution to the issue. Obviously, the port ultimately dropped its application. That was its decision.

I do not know whether there are other examples. Perhaps Mr Ritchie or Mr McLeod are aware of similar issues arising where my predecessors or other ministers have had to intervene in that way.

Martin Ritchie: No, minister, I am not. It is fair to say that, in my time in the office, Cromarty Firth is the issue that we have been taking an interest in.

It is worth pointing out that our interest lies in circumstances in which we consider that a board is acting outwith its powers. As was mentioned earlier, it is not about trying to solve good-neighbour disputes, because there is a process that needs to be followed. It is more about a board acting unaccountably or, to take it to the extreme, there being a suggestion or evidence of illegality.

The Convener: So, you do have a role and you can intervene if you think that boards are acting outwith their powers.

Paul Wheelhouse: Yes, but in the context of the application that was made, there was nothing to suggest that the Port of Cromarty Firth was acting outwith its powers, so I think that is just to—

The Convener: If it had acted outwith its powers, you have the power to do something about that.

Paul Wheelhouse: We do not have powers, as such.

The Convener: Would you make an assessment if a port was acting outwith its powers?

Paul Wheelhouse: I refer to my earlier remarks—we would act as an honest broker. In responding to Mr Mason, I was pointing out that we do not have powers to intervene in board appointments; we act as an honest broker, where we can and as we have tried to do in the Cromarty Firth case. However, as I also explained to Gail Ross, we do not have a direct role in the application process for ship-to-ship transfers, which is what prompted the petition.

The Convener: With respect, we have just been told that if a port is acting outwith its powers, you have the power to intervene.

Paul Wheelhouse: I think that the use of the word “power” is inappropriate, convener. We have the ability to try to come in as an honest broker, but we do not have, as I understand it, powers to intervene in the way that you suggest.

The Convener: Right. Mark Ritchie said that, if a trust port is operating outwith its powers, the Government has a role; you are saying that there is no such role. That might just be a statement of fact. We would like to know which one is fact.

Paul Wheelhouse: I disagree with that. What we have tried to say is that we would act as an honest broker to try to bring resolution to an issue, but we do not have formal legal powers to intervene. That is not to say that we have been inactive in situations when we have felt—

10:15

The Convener: There is a big difference between Gail Ross carrying out her functions as a constituency MSP and the Government coming in. You said that your role is as an honest broker. I asked you when you have been an honest broker and you said that there is no example of that. When did you last write to all the trust ports to remind them of the guidance and their responsibilities?

Paul Wheelhouse: That is not part of my role, because I am not responsible for trust ports.

The Convener: When did a minister of the Scottish Government last write to the trust ports to remind them of the guidance and their responsibilities?

Paul Wheelhouse: We can get a written response on that to the committee, unless Martin Ritchie has an answer to the question.

The Convener: We will get it in writing—that is fine.

Paul Wheelhouse: You stated something incorrectly, convener. You said that there had been no instance of us acting as an honest broker, but I already stated, as did Martin Ritchie, that we have tried to act as an honest broker in the Cromarty Firth situation. I want to correct the record, so that there is no misunderstanding.

The Convener: It might just be me who is missing the distinction, but it would probably be useful for the committee to get a wee note on what acting as an honest broker means with regard to the particular issues that we are considering.

Gail Ross: I want to move on to the subject of free ports. The petitioner highlights that the introduction of the UK Government-led free ports initiative raises important points, including whether there would be any requirement for the UK Government to consult the Scottish ministers,

given that they have no legal, fiscal or governance control of the ports. What is your response to that? Has the Scottish Government had any conversations with the UK Government on free ports?

Paul Wheelhouse: There has been engagement between the UK and Scottish Governments on free ports. For the Scottish Government, work on that area is led by Ivan McKee, the Minister for Trade, Investment and Innovation.

We have welcomed the engagement and we continue to have regular dialogue with the UK Government on the matter. I understand that the UK Government has made it clear that any process for selecting free ports in Scotland would be agreed on and undertaken jointly by the UK and Scottish Governments.

The Scottish Government has not yet taken a decision on free ports. We remain open to exploring the policy and its potential benefits, but we are aware of its potential detriments, such as economic displacement, because a free port potentially displaces activity away from other ports and harbours.

Unfortunately, key information that we have requested from the UK Government, including on the tax and finance levers that the UK Government intends to apply, has not yet been shared with us. As a result, we are unable to make a full assessment of the risks and opportunities of the policy for Scotland, or to calculate the likely impact on Scotland's economy and finances. That information might be forthcoming at some point in the near future, and we will continue to press UK ministers for more evidence.

We will also continue to engage with stakeholders, such as the British Ports Association, that have an interest in the issue, to assess the risks and opportunities that free ports bring. However, we are clear that free ports cannot and will not undo the damage that is being caused to Scotland's economy by the UK Government's decision to take us out of the world's biggest single market, especially if no deal is the outcome.

I hope that that is helpful to Gail Ross. We are waiting for further detail. It may well come through, and we will not prejudge it. We might get the information that we are looking for, but we do not have it yet, which makes it difficult for the Scottish ministers to assess any benefits or risks that arise from having free ports in Scotland.

Gail Ross: That is interesting, because the proposal that has been put forward by the Port of Cromarty Firth suggests that a free port will be absolutely wonderful for the area. In the proposal, there is no estimate of the likely number of jobs, there is no guarantee of workers' rights and there

are no specifics on community benefits. There is also the tax issue that you just mentioned. The proposal has been put forward with, again, little or no community consultation, and the local MP and MSP—me—were told about it only after it was made public. Yet again, there is an issue with transparency.

It has been put to me recently that putting most of your economic eggs into the free-port basket would be an astounding race to the bottom on wages, conditions and environmental regulations. Can you respond to that?

Paul Wheelhouse: I am disappointed if there has not been engagement. I stress that for something so important, my hope is that there would be engagement between the port authority and key stakeholders, including local members.

However, on the principle of the issue, we are trying to assess whether there are risks of the kind that Ms Ross describes, in terms of there being a race to the bottom. Obviously, there is a displacement risk of potential damage to neighbouring ports and other ports around the coast. How many free ports would be allocated to Scotland? We have no idea whether it would be one or three or another number, so Mr McKee is striving to get that kind of information. It may well come through, so let us not prejudge it, but at this moment we have little, if any, detail on what this all means, so it is difficult to assess whether free ports are a welcome or unwelcome development.

In either case, we would argue that it would not be as good as the deal that we have now, or had up to March, in the European Union's single market. There is clearly a concern about the wider impact of that decision on Scotland.

John Finnie (Highlands and Islands) (Green): Thank you for letting me join you, convener. I declare that I previously lent my support to the petitioners.

As others are, I am keen to understand the accountability issue. I have a question for the minister about the relationship between the Scottish Government and the port. Will you please respond to the widely held belief in the community that the decision to abandon ship-to-ship oil transfer was the result of a deal—an inducement—that was brokered by the Cabinet Secretary for Rural Economy and Tourism, Fergus Ewing? I am talking about the £7.5 million of Scottish Government money, rather than Highlands and Islands Enterprise money. Can you comment on that? Perhaps concerns that you feel are unjustified could be allayed if you were to publish details of the discussions regarding the money and ministerial engagement?

Paul Wheelhouse: I do not have the information about ministerial engagement at my

fingertips, Mr Finnie. I apologise for that, but we have undertaken to come back on the £7.5 million, on which we can provide more information about the process of that application being taken forward by Highlands and Islands Enterprise. When I was up in Inverness I had one meeting with the port authority about its aspirations for cruise traffic and renewables, which was the issue that was of most interest to me. That meeting was at the Highlands and Islands Enterprise headquarters. I do not have to hand the details on Mr Ewing's engagement, but we can write to the committee and Mr Finnie with any details of engagement that we can share.

Other things were happening in parallel in relation to the timing of my meeting. I also met Global Energy Group along the road at a neighbouring facility and had a meeting with Cromarty Firth Port Authority to understand the potential for the port in relation to decommissioning and renewable energy development. I was aware that there was a parallel line of discussion going on around its aspirations and its desire to invest in cruise facilities. If Mr Ritchie has no further insight into the matter, we can get back to the committee with as much information as we can provide.

John Finnie: I will ask a more direct question in that case, minister. Did the Scottish Government offer an inducement to the port to withdraw or not to proceed with ship-to-ship oil transfer? That is a closed question—yes or no.

Paul Wheelhouse: I believe that the answer to that is no, but that is based on my own information. I am not aware of any such inducement being offered in that way. I hope that that is a helpful answer. Perhaps Mr Ritchie has a closer view on that. My view of what happened is that we did not, to the best of my knowledge, offer an inducement of that kind, although I will stand corrected if Mr Ritchie is aware of anything that I am not sighted on.

John Finnie: A frustration that many of us have is that the port should be a tremendous community asset, as it is in the ideal location and has deep water, as you said. It should be, but it is not viewed as a community asset. In fact, it is viewed as being in the control of commercial cowboys—I am being very gender specific with that term.

How would you respond to the view that the Scottish Government is complacent about community concerns about the operation of the port? I have to be blunt, minister: nothing that you have said about guidance for good governance and all the rest has reassured me that the Scottish Government takes seriously the concerns of the community regarding the operation of the port.

Paul Wheelhouse: I would certainly be concerned if that was the view that people have

locally. Obviously, we want communities to have faith in the process and to be able to trust that, when they have complaints, they will be heard. I hope that that goes without saying.

I assure you that the Government takes ship-to-ship oil transfers seriously. I appreciate that we are not always able to give the answers that a community wants, but I assure you—and Cromarty Rising, if its members are watching the meeting—that I, first as environment minister back in 2014, and then, ironically, as energy minister since 2016, have been involved in a number of attempts to take forward our demands for devolution of powers so that we can take such decisions locally ourselves. It might appear that we are not listening or taking action on behalf of the Cromarty Rising petitioners regarding ship-to-ship oil transfers, but that is because we have very limited powers to intervene in that instance, as I explained to Ms Ross and in correspondence with the committee. It is frustrating for me, because I have outlined what we think the risks are in relation to that activity.

On matters such as noise pollution, obviously there is a route that can be taken, which is devolved to local authority level. There is local legislation for local authorities to consider complaints against trust ports, and we would not want to intervene in that process unduly.

We will listen to any recommendations that the committee makes on the petition. If there are concerns about how the process functions, we can take on board any points that Mr Finnie or the committee makes in that regard.

We are trying to act in good faith. We do not want to jump in where it is inappropriate for us to do so. We do not have the legal power to intervene as a statutory consultee or to intervene directly in the decision on any application for ship-to-ship oil transfer. That is the position that the Scottish ministers are in. I appreciate that that might be frustrating for Mr Finnie and others to hear.

John Finnie: My frustration is that there is the potential for exactly the same arguments to be replicated in relation to the proposal regarding free ports. I heard the replies that you gave to Gail Ross, which are welcome. Environment is a devolved matter. Can you give an assurance that the Scottish Government will not only have regard to the alleged commercial benefits—the Scottish Green Party does not support the concept, which involves a race to the bottom and the worst of the free market—but engage with communities affected by the port's operations on the potential environmental implications?

I will conclude there. I think that there are a number of unanswered questions and I

respectfully suggest that the committee needs to keep the petition open.

Paul Wheelhouse: On the environmental implications, it might be appropriate to bring in Mr McLeod in a second on what formal role we would have in the event of any free port proposal. I will relay to Mr McKee the concerns that you have about the principle of ensuring that such decisions are not purely commercial. I am not the lead minister, so I do not want to overstep the mark and tread into Mr McKee's territory. I am sure that he would be sympathetic to the points that have been made but, ultimately, it is for Mr McKee to decide how he would consider them.

On free ports, I reassure Mr Finnie and other colleagues that although there is a lead minister, the implications of the concept are being discussed across Government. I am sure that Ms Cunningham, Ms Gougeon and other ministers are well aware of what is being discussed and have opportunities to relay their concerns about environmental impacts, should there be any.

I do not know whether Mr McLeod has any insight into what Marine Scotland might be doing on free ports that might be helpful for Mr Finnie to hear.

The Convener: We will just wait for Mr McLeod's microphone to come on.

I think that you might need to unmute your microphone yourself, Mr McLeod.

10:30

Michael McLeod (Scottish Government): Okay. Can you hear me now, convener?

The Convener: Yes, thank you.

Michael McLeod: At the moment, we are not doing any work on the subject, largely because it is still a developing concept. Given that it is a matter of strategic importance, I would expect the responsible authority, which is the UK Government, to undertake a strategic environmental assessment to properly assess the potential environmental impacts and to look at all the possibilities in terms of ports that could be used as free ports. I am not aware of any moves to do that as yet.

The Convener: Thank you very much.

I am conscious that we have spent a bit of time on this. I seek confirmation of two things from the minister. First, I seek confirmation that although it is Mr McKee's responsibility, the Government across the board is engaged with the issue and that Mr McKee would not have a veto and would not be able to drive this through without it being confirmed by—I see that the minister is nodding, so I assume that he agrees that Mr McKee could

not simply do what he wanted. Perhaps it would be useful to find out in writing whether there is a cross-party Government committee or group that has oversight of such an initiative.

Minister, you said that we do not currently have powers to intervene. Is that because you have chosen not to take those powers or because those powers are reserved? There is an argument around all such issues, for good or ill, but when you said that the Government does not currently have powers to intervene, is that because the issue is reserved or because the Government has chosen not to take those powers?

Paul Wheelhouse: It is both, in a sense. Certainly, when it comes to ship-to-ship oil transfers, it is because the powers are still reserved. We have asked for those powers to be devolved. In relation to the wider trust ports issue that has been raised by a number of members, the legislation that was passed in Parliament in 2015 sets out the relationship there, so the Parliament and the Government have made a conscious choice to limit our role in intervening in trust ports' operations, but we will reflect on any concerns that the committee raises in its report. At the moment, we do not have powers to intervene directly in relation to board appointments, for example. It is a mixed situation.

The Convener: So on the issues around guidance and so on, it is an active choice by the Government that it does not want to take those powers, but there are certain issues around ship-to-ship transfer that continue to involve reserved powers.

Paul Wheelhouse: Yes, there are still some reserved powers.

The Convener: I am conscious that we have spent a bit more time than we expected to on this. I will bring in any colleagues who want to speak, but my view is that we need to reflect on the petition at a further meeting and that it would be useful, ahead of that meeting, to get the information that the minister has indicated that he will give us and to hear from the petitioners or others who have watched today's session if they have some observations to make. An area that was highlighted by Gail Ross and others is the fact that there is a gap between the minister's perception of how well things are going and the scale of complaints and where those go, and the whole question of how people can complain if they do not have the financial means to do so.

I appreciate the time that the minister and his officials have spared us. If any member indicates that they do not want to take that approach, I will bring them in.

It seems that people are content to look at the petition at a further meeting but, in the intervening

period, we will get from the minister the advice and information that he has offered, and it will perhaps afford an opportunity for others who are interested to reflect on the session. Is that agreed?

Yes, it is. In that case, I will briefly suspend the meeting to allow for a change of officials before we consider the next petition. I thank Michael McLeod and Martin Ritchie for their attendance, which is very much appreciated.

10:34

Meeting suspended.

10:37

On resuming—

Island Lifeline Ferry Ports (Parking Charges) (PE1722)

The Convener: The second continued petition for consideration today is PE1722, lodged by Dr Shiona Ruheemann, on behalf of Iona and Mull community councils and others.

The petition calls on the Scottish Parliament to urge the Scottish Government to island proof transport infrastructure by ensuring that public bodies do not charge for parking in car parks at island ferry ports at which there are essential lifeline services, and that any proposed island parking charges are subject to rigorous impact assessment.

Members will be aware that we previously noted Mike Russell's support for the petition. Mr Russell has recently reiterated his strong support for the petition via email correspondence to the clerks.

At our last consideration of the petition in September, we considered written responses from the Scottish Government and the petitioner, and agreed to invite the Minister for Energy, Connectivity and the Islands to give evidence at a future meeting.

Members might wish to note that we have since received a further written submission from the petitioner, which is included in our committee papers. The petitioner highlights that the use of island community impact assessments

"in no way equates to addressing the substance of the Petition, and must not be used as a reason for considering it addressed."

I am pleased to welcome back the Minister for Energy, Connectivity and the Islands, as well as Paul Maxton, who is a senior islands expert at the Scottish Government; and Chris Wilcock, who is the head of ferries at Transport Scotland.

Before we move to questions, I invite the minister to provide a brief opening statement.

Paul Wheelhouse: Thank you, convener. I am pleased to be here to answer your questions in consideration of petition PE1722.

As you outlined, the petition calls on the Scottish Parliament to urge the Scottish Government to island proof transport infrastructure by ensuring that public bodies do not charge for parking in car parks at island ferry ports. As you said, the ferries are essential lifeline services, and I know that you have had a strong interest in the wellbeing of island communities over a long period. Any proposed island parking charges should be subject to rigorous impact assessment. I also recognise that local authorities are independent corporate bodies and that therefore Scottish ministers have no remit to intervene in their day-to-day duties.

Committee members will be familiar with section 8(1) of the Islands (Scotland) Act 2018, which introduced the public sector duty that requires relevant authorities

"to prepare an island communities impact assessment in relation to"

policies, strategies or services. The commencement regulations to bring section 8(1) into force were laid in the Scottish Parliament on 3 November and are due to come into force on 23 December. Concurrently, the review of decisions regulations required under section 9(1) of the 2018 act were also laid on 3 November and are due to come into force on 23 December.

I can report that the guidance associated with the island communities impact assessments is currently out to consultation, with a closing date of 9 November. That guidance will be in place for when the ICIA duties are brought into force. In the interim period, I emphasise that the expectation has been that, wherever possible, the Scottish Government should operate in the spirit of the 2018 act and take island issues into account when developing or reviewing policies, strategies or services that we provide. The regulations will empower island communities to challenge decisions that are made by relevant authorities in respect of ICIAs, and they will provide a robust and proportionate framework for the review of ICIAs, based on transparency and accountability.

The regulations are participatory, as they allow island communities to make third-party representations following publication of a review. They provide an additional focus for relevant authorities in carrying out their island communities impact assessments, by ensuring that they consider the uniqueness of each island, provide benefits for island communities and improve accountability.

I hope that that helps to set the scene. I am happy to take questions from the committee.

The Convener: Thank you; that is very helpful. I expressed concerns that there seems to be some slowness in bringing in island communities impact assessments.

Regardless of that process, I will ask something very specific. Do you think that ferries are lifeline services to those communities, and that, as such, in any set of circumstances, people should not be charged for using the ferry terminal car parks?

Paul Wheelhouse: We recognise that the overwhelming majority of the ferries that we provide are lifeline services. For any islander, a ferry is a lifeline service, and they could be regarded as providing a lifeline service for some of the mainland communities that are served, because of their isolation.

We recognise that it is an important concern and that it seems unfair to communities that different parking charge policies are applied at different ferry terminals. That might seem discriminatory and damaging to islands in some respects. As I mentioned in my opening remarks, local authorities are independent corporate bodies, so we are trying to tread a path between recognising their autonomy in making those decisions and providing a legislative framework that allows for those decisions to be reviewed. ICiAs will provide that.

The Convener: Therefore, you accept the argument that, if ferries are lifeline services, free parking at ferry terminals makes sense for island communities, and not having that will have a major impact. Why would a local authority choose to charge if it felt that there was any other option?

Paul Wheelhouse: I do not want to second guess local authority decisions. There might be circumstances in which modest charging is required in order to ensure turnover of car parking, if people are using car parks for purposes other than as passengers attending the ferry terminal. I will not criticise local authorities that take decisions to put in place car parking charges; it is for them to make that decision. However, as I said in my opening remarks, going forward, we want them to consider the uniqueness of the situation and whether alternatives can be used by the local community, because, if the ferry terminal car park is the only place in which people can safely park, that might create more financial hardship for those who have to use it.

Therefore, rather than prejudge the situation in every locality, we want to ensure that, in each case when councils are considering putting in place charging, a robust impact assessment is undertaken to ensure that the measure is proportionate and fair and is not causing hardship.

10:45

The Convener: What would happen if a local authority came back to you and said that the only reason that it was doing that was because its budgets were under massive pressure? The petitioners argue that the charges are discrimination and that there is a postcode lottery. What could the Scottish Government do to help the local authority not to discriminate?

Paul Wheelhouse: I have alluded to this, but it is important to stress that councils are rightly separate entities from the Scottish Government. They are independent corporate bodies, and it is for them to decide how they manage their day-to-day business. That means that they will sometimes take unpopular decisions that are not supported by all in the local community. It is for locally elected representatives who are accountable to the local electorates to make those decisions on behalf of the constituents whom they represent. We can only argue—

The Convener: You and I both know that the vast majority of the income comes from the Scottish Government. If local authorities say that charges are being introduced because of budget pressures, how can the Scottish Government help in that regard? Does it have a responsibility?

To frame the question slightly differently, given that the financial pressures might come from budgeting choices at Scottish Government level, and if you accept that ferries are lifeline services, are there ways in which you can constrain or limit the choices that local authorities have on parking at ferries?

Paul Wheelhouse: As I said, I accept that, in the vast majority of cases, ferry services are lifeline services. Not all services are classed as such for the purposes of CalMac Ferries' cascade policy and so forth, but almost all the services are lifeline services. The point that I am trying to get across is that we certainly respect and have to recognise the decisions that are taken locally.

I acknowledge your underlying point that many local authorities face huge financial pressures, as does the Scottish Government, particularly this year. We are all having to make tough choices on spending priorities. I would regret it if any local authority was in a position in which it felt that it had to impose parking charges for financial reasons. As I say, I hope that the local authority would take into account the wider impact of such a decision on the buoyancy of the local economy as well as taking into account the equalities impact and the impact on those who are on modest incomes.

It is hard to be definitive but, obviously, we support the general principle that you are setting out: we would like parking charges to be avoided where there is no choice for consumers as to

where they can park. However, I know that a number of local authorities have made the point to the committee that they feel that they have had to introduce charges for financial reasons.

Gail Ross: You said that the impact assessments will come into force on 23 December, but the petitioners are strongly of the view that that

“in no way equates to addressing the substance of the Petition, and must not be used as a reason for considering it addressed.”

The petitioners are of the view that, whether or not there is an impact assessment, it will not address the substance of the petition. Do you think that an island communities impact assessment might have addressed the substance of the petition, or do you agree with the petitioners that the local authority would just have gone ahead and introduced charges anyway?

Paul Wheelhouse: Obviously, that is hard to judge. Parking charges on Mull, such as those at Craignure, and any associated statutory processes or assessments, are matters for Argyll and Bute Council. Road traffic legislation provides local authorities with powers to develop specific parking charging schemes where they regard that as being appropriate for particular areas. However, I do not dismiss the convener's point about the financial drivers in this case, as has been reported. CalMac does not charge for parking at the ports that it operates on behalf of Caledonian Maritime Assets Ltd and has no plans to do so. That gives an indication of where we consider the direction of travel should go, although we respect local authorities' rights in this area.

I will give a wider answer on what we are doing to address the petition. We are developing the islands connectivity plan to succeed the Scottish ferries plan, which runs from 2013 to the end of 2022. It is likely to differ from the current format of the ferries plan and will be developed in the policy context that is provided by the recently published “National Transport Strategy: protecting our climate and improving lives” and the national islands plan. Those strategies are aligned to the Government's purpose and national outcomes.

The islands connectivity plan will be closely linked to the emerging strategic transport projects review 2. That will consider islands connectivity more broadly, having regard to all forms of transport—aviation, ferries and fixed links—to connecting onward travel, with a particular focus on active, public and shared transport.

I would hope that, in situations such as the one that we face in this case, there will be other means by which we can avoid people having to use car parking through their using active, public and shared transport. The plan will also reflect the

Government's commitments to achieve net carbon neutrality and for setting out pathways towards zero-carbon or low-carbon emission levels and services.

On whether that adequately deals with the petition, island communities impact assessments, as members might know, can be applied retrospectively. I appreciate that there has been concern about the length of time that it has taken to develop ICIA's. It is a complex process. Paul Maxton leads on that and is very much at the heart of that work.

The regulations will be enforced from 23 December. As I said, there is a retrospective element to them. If an application is made to review a decision, that can be progressed retrospectively. Perhaps Paul Maxton might want to comment on the powers that we have to deliver that.

I appreciate that that is perhaps not a perfect answer to Gail Ross's question, but I am trying to get across that we are doing a range of things to offset the need for parking through STPR2 and our wider national approach to transport and sustainable active travel. The framework that we are putting in place through the implementation of the island communities impact assessments provides a route by which appeals on decisions can be made—in cases where an ICIA has not been done previously, of course—to consider whether a policy is fair for the community in question, or whether it is potentially damaging to their interest.

Perhaps Mr Maxton might wish to comment on the retrospective aspects of the legislation, to give confidence that that could be applied in this situation.

Paul Maxton (Scottish Government): The review of decisions regulations will apply to existing and new policies, strategies and services.

There are a number of grounds on which an application can be made. In the Argyll and Bute case, no ICIA was carried out and there does not appear to be any published explanation as to why. In circumstances in which there is no published decision of an ICIA, nor an explanation as to why one was not carried out, the applicant can request a review at any time after the decision has been made. There is no time limit, so as not to prejudice an applicant in those circumstances.

In circumstances in which an ICIA has been carried out but there is no published explanation, a three-month time limit applies from when the decision was made. That would also be the case in other circumstances in which an ICIA has been carried out but the applicant is not happy with aspects of its content.

I understand that the regulations will go before the Rural Economy and Connectivity Committee on 9 December. By way of distinction, what I have just told you about the regulations does not take away from section 14 of the Islands (Scotland) Act 2018, whereby a local authority can apply to Scottish ministers to seek a retrospective ICIA in respect of national strategies and legislation. There is a distinction to be made there with what is proposed in the regulations. The regulations will apply so that the applicants will be island residents or community-controlled bodies, or a relevant local authority. Within the terms of the regulations, therefore, the scope for calling for a review is much wider.

Gail Ross: Minister, in your opening remarks, you stated that the Scottish Government should be or is operating within the spirit of the 2018 act. Even though the island community impact assessments do not come into operation until 23 December, all public authorities should be operating within the spirit of the 2018 act, whether or not they can do it retrospectively.

This is more of an opinion than a fact or anything else. Would it not have been a better solution if the local authority had agreed to issue some sort of parking permit or pass to people who use the ferries? That might have deterred people who do not need to use the car park. It seems to me that there are solutions to the problem that simply have not been considered.

Paul Wheelhouse: I do not want to second guess the processes that have taken place in Argyll and Bute Council, but I recognise the point that Ms Ross makes: that there are ways in which the needs of regular travellers and those who depend on the lifeline ferry, perhaps for medical, work or education reasons, could have a discount. That is a matter for the council, as is the charging regime, and it could consider whether there might be better ways of going forward. I am sure that we can lend support to the local authority or get advice from Transport Scotland officials about other practices that are deployed elsewhere.

As I say, we have taken CalMac's position with regard to its own ferry services. It does not charge for parking on car parks that are owned and operated by CMAL, because it is trying to build patronage and encourage people to leave their cars behind and use active travel when they get to their destination. We are exploring how we can improve access to sustainable active travel options on CalMac services.

Even though, in this case, an islands community impact assessment does not appear to have been done, I agree with Ms Ross in the sense that I encourage all public authorities that are covered by the 2018 act to act as though the ICIA's were already in place, because they can be

retrospective. It is probably a wise move to anticipate that a potentially unpopular decision might be reviewed, and to at least factor into your thinking as you develop your policy the things that you will have to consider, acting as though the ICIA is already in place. I am pleased to say that there has been good practice in the legislative proposals of the Scottish ministers—starting with Kevin Stewart, who has been followed by many other ministers since—because the policy decisions have tried to implement the principles of the ICIA's in advance of regulations coming into force.

We have learned a lot through that process and it has been helpful to my officials, who inform me about what we have done on ICIA's. I am therefore grateful to colleagues who have taken that bold step to do it early. It protects their policies against future reviews, because they have already factored in the concerns about the impacts on the islands of developing policies, thereby hopefully preventing any need for review. For example, Transport Scotland has done a lot of work on the national transport strategy to take into account the needs of island communities in framing its policy.

11:00

Tom Mason: To some extent, you have addressed my question. You have indicated that various departments are currently acting in the spirit of the 2018 act, before the assessments have been introduced, but can you give some concrete examples, rather than talking in the abstract? Perhaps you could write to us with a list of such work that has taken place.

Paul Wheelhouse: In the interests of time, I am happy to get back to the committee with examples, but to answer Mr Mason's question directly, I will give a couple of examples in which we have acted as though island communities impact assessments were in place.

Kevin Stewart was a pioneer in undertaking work on the recent Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019. Very helpfully, we learned a lot in that process through acting as though an island communities impact assessment was in place. We were successful in looking at the issues for that legislation, because we were aware that some of our island communities have much higher levels of fuel poverty than mainland communities have. Higher fuel poverty levels are common in many rural areas, particularly in the north, so we specifically took account of the needs of communities, in that respect.

Another example is the on-going work on the strategic transport projects review, which will be completed in two phases. The first phase will look

at active travel and locking in the good behaviours that have resulted from Covid, and the second phase will look at the investment opportunities. The process around island communities impact assessments has been very much at the heart of that work, in order to future proof it.

Island proofing has also been very much at the heart of the development of the Covid route map and the strategic framework, which have been deployed recently. As members might know, we now use much more tailored responses that take account of local prevalence of the disease and local conditions. That has allowed island communities to have a little more freedom, at level 1, than if we had taken a national approach.

Those are examples of where we are already taking that spirit forward. I am happy to get back with more examples of what we have done, in order to give the committee confidence that the principles are being deployed in advance of the regulations coming into operation.

Paul Maxton: I will add to what the minister has stated. Island communities impact assessments have been very much at the heart of Government. The Scottish Government has been giving policy-lead seminars in order to raise awareness, and we have been giving regular advice to policy colleagues on a wide range of matters. A few examples of matters on which we have commented recently are the deposit return scheme, producer responsibility for recycling and packaging, the heat and buildings strategy and, through Covid, the vaccination strategy.

A huge amount of work is going on in relation to ICiAs. We are working very closely with our stakeholders through the partnership working group, which consists of the six island authorities, and the islands strategic group, which includes the chief executives and leaders of the six island authorities.

The Convener: Does Tom Mason have any further questions?

Tom Mason: No. It would be good if the minister could send us a letter with a list of examples.

Maurice Corry: I declare an interest as a former councillor for Argyll and Bute Council. At that time, I was aware that financial pressures were beginning to build and of the need for the council to look at potential revenue-gaining areas, so I am fully aware of what has been going on.

Argyll and Bute Council told the committee that financial pressures led it to consider the introduction of parking charges. That relates to the comment that I have just made about when I was a councillor. The committee understands that local authorities have autonomy over their own budgets

and that they receive specific funding support from the Scottish Government for internal ferry services. I know that from when we have set budgets, before. However, it is clear that the council was forced to explore parking charges as an option in the face of the challenging financial situation. How can the Scottish Government assist local authorities to avoid introducing parking charges in the future, bearing in mind what we have already discussed?

Paul Wheelhouse: I recognise Mr Corry's local interest and knowledge. I made the point that I am cognisant of the fact that, as other public bodies are, local authorities are under enormous financial pressure, particularly because of the pandemic, although the public finance environment was already challenging for all of us, including the Scottish Government, and has been for a decade.

However, we have tried to take what we hope will be decisive action to commit additional resources to local authorities in response specifically to Covid. Some £382 million of additional funding is being provided to local authorities. On 8 October, the Cabinet Secretary for Finance, Ms Forbes, announced a package of financial flexibilities for Scotland's local authorities that, in theory, could be worth up to £600 million over the next two years. I appreciate that, at local level, the scale and nature of the benefits will vary. The Scottish ministers and the Convention of Scottish Local Authorities are also close to finalising a lost-income scheme that will be worth an estimated £90 million.

We believe that taken together those Covid-19-related measures bring the value of the overall support package for councils up to approximately £1 billion. The current local government finance settlement for 2020-21 provides an increase in day-to-day spending of around £589 million and recognises that individual decisions are available to local authorities in managing their budgets and allocating financial resources on the basis of local need.

We believe that we are providing support to councils. Obviously, we continue to listen as the particular pressures that they face in the current financial year become more evident as time passes and individual services come under more pressure. I hope that the talks between COSLA and the Government are fruitful and that the additional £90 million of support can help.

Mr Corry might have been referring to a longer-term issue around financial sustainability post-Covid and the need for parking charges, for example, in that context. I have not discussed that matter specifically with Argyll and Bute Council, but I hope that we can get to a position in which those charges would be less necessary for the local circumstances.

Maurice Corry: Does the Scottish Government accept that lifeline services are its concern, so assistance should be given to local authorities to reflect that financially, as the situation requires? In particular, I ask the minister to reflect on what the convener said about there being no choice for island residents.

Paul Wheelhouse: I certainly acknowledge that the situation is much more challenging where there is no alternative place to park and passengers have no options on where they may park their cars. There might be free, or cheaper, alternatives to a council-owned car park. In the case of Mull, I do not believe that that is the case, so the situation is more challenging for commuters who use the service. I understand why the petitioners have raised concerns.

As I have said, our approach is that CalMac should not charge for car parks that it controls, for reasons to which Mr Corry and the convener have alluded. Lifeline services are lifeline services; we try to make it as easy as possible for consumers to use them.

With the convener's permission, I invite Chris Wilcock, who is head of our ferries unit, to give an overview of what is happening on engagement with local authorities, including Argyll and Bute Council, on the general principle that Mr Corry and the convener have referred to, because that might be a factor that will come through in the strategic transport projects review or other strategic documents that Transport Scotland will be taking forward.

Chris Wilcock (Transport Scotland): I would echo a number of the points that the minister made. I would also reflect points that came across from the petitioner in relation to our plans. We do not charge at existing car parks that we have control over through CMAL or CalMac Ferries Ltd. The reason is that, although we are keen to encourage people to travel to the port by active travel or public transport if possible, if it is not possible, we want them to have options that mean that they do not have to take their vehicle on the vessel, so that we can free up deck space. From our perspective, with any such proposal we would expect to consider things such as its impact on affordability, particularly for people on low incomes, and its impact on deck space.

There are two elements to the wider engagement that we are having with local authorities. We are currently speaking to the local authorities that run lifeline ferry services—that is a factor for Argyll and Bute Council and for Orkney and Shetland councils. Obviously, we have given them funding in the past, and we are engaging with them on what funding will be required going forward in what is a particularly tight budget situation.

We will also engage more widely, not just with local authorities but with communities and stakeholders across the piece, as we roll out the islands connectivity plan. As the minister has articulated, we are keen to look beyond just the ferries plan and ferry services; we will look at other modes. In particular, we will consider aviation. We want to build on lessons from the national transport strategy and the strategic transport projects review. Where appropriate, we will explore things such as fixed links and other elements. We will be involved with local authorities on all those aspects.

David Torrance: Shetland Islands Council has called on the Scottish Government to island proof transport infrastructure through fair funding for ferry services, on the basis that if fair funding had been delivered previously, difficult decisions about car parking charges might not have arisen. How do you respond to that?

Paul Wheelhouse: First, just as I acknowledged the issues with regard to Argyll and Bute Council services, I acknowledge the situation for Shetland Islands Council. We are sympathetic to the significant financial challenges that all local authorities in Scotland face. It perhaps sounds unsympathetic to say so, but at the moment, local authority ferry services are the responsibility of the authorities. However, we recognise the growing financial challenge that they face in delivering those services and maintaining service quality.

For local authorities that are responsible for running ferry services, in the current financial year, we have provided £11.5 million of additional support over and above the money in the local government financial settlement that, under the funding formula, goes to them specifically to operate ferry services. I acknowledge that that does not meet the full cost of operating their services, but we have been increasing the percentage support to local authorities year on year. Over the past three years, we have put in place a total of £32.5 million of extra funding to support them.

As Mr Wilcock suggested, we are having on-going dialogue with Shetland Islands Council, Orkney Islands Council, Argyll and Bute Council and Highland Council, in advance of the draft budget being published, on their on-going needs for the next financial year. I acknowledge the challenges that they face, and I know that it is not easy for them. We hope to get to a position in which the services are genuinely sustainable, but that will obviously be wrapped up in the budget discussions that we will have in the near future.

David Torrance: What other relevant transport-related policies are in place to protect vulnerable rural and island communities from the impact of the rising cost of living?

11:15

Paul Wheelhouse: As I and Chris Wilcock have mentioned, the work that we are doing on the islands connectivity plan is of particular importance. Any work that we do on that will be subject to preparation of an ICIA.

We are developing the islands connectivity plan to succeed the current ferries plan. In addition, the national islands plan is now in place. It takes a human rights approach—if it was a stick of rock, that would be what you would see if you cut it open. At the heart of the national islands plan is how we reflect the needs of islanders and make sure that our policies are fair to islanders. I take that very seriously, so the islands connectivity plan will be critical. To an extent, though, everything that we do in the Clyde, Hebrides and northern isles ferry services contracts is done to support island communities and communities on remote peninsulas on the mainland.

A core theme of the work that we do is consideration of the impacts on islanders. We do not always get it right; we occasionally identify issues, but we try to respond and to fix them as they arise. We take very seriously indeed our responsibilities to the island communities—not just in Argyll and Bute, but across the whole of Scotland.

The Convener: I apologise to Maurice Corry—I should have called him back in.

Maurice Corry: Thank you, convener—apology accepted.

I want to follow up on my question about Argyll and Bute Council and David Torrance's question about funding. Mr Wilcock made a comment about fixed links. Some years ago, the Scottish Government held a review, as a result of which bridge tolls were removed throughout Scotland. That decision was based on the unfairness of the geographical issues that were faced by people who had to commute regularly for jobs and so on.

I have a question that is related to the one that I asked the minister about lifeline services being the concern of the Scottish Government. Given the Scottish Government's policy of bridge toll removal, would it not be fair for lifeline car parks, such as the Craignure car park on Mull in my home area of Argyll and Bute, to be considered in the same way throughout Scotland? Should particular cognisance not be taken of that in the impact assessment? I invite the minister to comment, and any of his officials who would like to do so.

Paul Wheelhouse: That is a fair question, the principle of which I understand. You make the comparison with charges for fixed links, the public policy on which is that we should remove those,

where we can do so. I am pleased that we have been able to do that.

That ties in with the approach that CalMac takes in recognising the importance of maintaining accessibility to services. Through the road equivalent tariff, we have tried to bring down the total cost of journeys for passengers with vehicles. We have taken a number of measures to improve accessibility and affordability. In the circumstance in question, the decision was taken by the local authority rather than by the Scottish ministers. I am not dismissing the point that you and the convener have made about the financial pressures on Argyll and Bute Council; indeed, I have outlined some of the ways in which we are trying to help the council.

As Mr Maxton outlined, the council's decision could be reviewed once the regulations come into force on 23 December. If there is unfairness—I stress the word “if”, because I cannot prejudge the matter—in the policy position, that would be revealed in any subsequent review.

I take the point that Mr Corry makes, which we can consider as part of our forward look at policy. I do not know whether Mr Wilcock wants to comment on whether that has been looked at already; I am not aware of whether it has been. The issue is certainly one that we can bear in mind in the future. Where CalMac delivers services from ports that are owned by CMAL, we have taken the decision not to charge passengers for parking their vehicles at those locations.

Maurice Corry: Mr Wilcock, would you like to comment?

Chris Wilcock: I would echo what the minister said. I note the parallels that you flag up, Mr Corry, which would have come within the trunk road network, so the decisions would have been within the remit of Transport Scotland and the Scottish ministers. The issue that we are discussing at the moment—we are focused on the Argyll and Bute example—is one for local authorities. Those car parks are not within our control, so the issue is very much for local authorities.

The Convener: In conclusion, although there has been a lot of discussion about impact assessments, it is important to highlight that the petitioners do not believe that those, in themselves, will resolve the issues that are raised by the petition. We have had an interesting discussion about impact assessments, but the petitioners are concerned with a fundamental issue. The petition urges the Scottish Government

“to island-proof transport infrastructure to ensure that public bodies do not charge for parking in car parks at island ferry ports, which are essential lifeline services”.

It then says that there should be impact assessments. It seems that the Scottish

Government agrees with the petition—the cabinet secretary has agreed that these are lifeline services. In that case, why cannot you simply agree to implement what the petition is calling for and make it not an option for local authorities to charge for car parking at ferry terminals, on the basis that the Scottish Government agrees that these are lifeline services for island communities?

Paul Wheelhouse: I recognise that that is a fair question to ask in the context of what has been discussed today. We need to think about how we can take forward a dialogue with local authorities, either individually or collectively, about the issue. As Mr Wilcock has confirmed, and as I said earlier, we recognise the autonomy of local authorities. All members of the committee would be concerned if Scottish ministers were to start stomping over existing arrangements for local authority autonomy in making such decisions.

We can take the issue into account in the work that we are doing on the islands connectivity plan to see whether any measures could come out of that to address the anomaly, where it arises in a small number of locations, in order to ensure that there is parity of treatment for the people whom Maurice Corry identified, who have to make important journeys. However, I do not want to state what we will do in that regard just now.

We have to recognise the limits of our powers to intervene in issues around local authority-owned car parks, but there is perhaps room for discussion with local authorities about how best to address the issue through the islands connectivity plan and STPR2, which we have also discussed. We should see whether there is any scope for using a positive approach to encourage the use of sustainable active travel, so that people leave their cars behind and perhaps use more sustainable forms of transport onwards from the ferry journey. That is part of our thinking around the encouragement of sustainable active travel.

I cannot give any promises, but I recognise the point that you are making, convener, and we will try to come back to the committee with anything that we can learn from the islands connectivity plan and STPR2 processes.

The Convener: As you know, minister, I only ever ask reasonable questions. It would be useful if you could provide details of the work that is done around the issue.

On the issue of dialogue, everyone recognises the autonomy of local authorities. However, if the Government has a fundamental policy that ferries are a lifeline service and, therefore, recognises that car parking at ferry terminals is part of accessing a lifeline service, it is possible that local authorities will have to accept Scottish Government direction in that regard. There are

other examples of that happening. The financial dependence of local authorities on the Scottish Government is a separate issue, but, in terms of the law and policy, there are things that local authorities have to abide by and recognise.

Let us look at the issue from the petitioners' point of view. If the Scottish Government believes that ferries are fundamental to the operation of transport with regard to the sustainability of island communities, is it not the case that you agree with the petitioners? Should you not therefore simply be saying that although we can have a conversation about the funding challenges for local authorities, charging for car parking at ferry terminals is unacceptable? It would not be acceptable if a local authority decided to act against anti-discrimination legislation in terms of access and so on, so why is it acceptable for them to charge for access to a lifeline service?

Paul Wheelhouse: I have great sympathy with the point that you are making, and with the petitioners' arguments. Our position is that, in practice, where it is practical, CalMac does not impose parking charges. That is a clear example of what we want the direction of travel to be in that respect. I do not want to prejudge any discussion that we will have with local authorities, but I can give an undertaking to try to work on the issue further and come back to the committee with the results of any positive discussions that we have with the local authority and with colleagues in Transport Scotland, as well as with wider local authorities that have an interest, such as Shetland Islands Council, which, obviously, feels strongly about the issue, too.

At this point in time, I do not want to rush to judgement. However, I certainly have great sympathy with the point that you are making. We recognise that, in many cases, people are on low incomes and, therefore, parking charges can be an additional cost that they might want to avoid.

The Convener: Thank you for that. You have given us a lot of your time, which we appreciate, and we note that you have committed to come back to the committee on various issues.

Because I am conscious of time, rather than going round the committee for views just now, I suggest that, as we decided to do in relation to the previous petition that we discussed, we should reflect on what has been said today and, once we have received further information from minister and responses from interested parties to what they have heard today, discuss all of that at a later meeting. Is that acceptable? I think that people are generally agreeing to that.

I thank the minister and his officials, Mr Maxton and Mr Wilcock, for their attendance. We particularly appreciate the minister's attendance,

as he has been here for a double session, and we have also spent longer on the petitions than we expected to. However, we hope that you understand, minister, that these are issues that the committee takes an interest in, in terms of representations that have been made to us.

I will suspend the meeting for five minutes. We have quite a bit of our agenda still to get through, and we might need to think about whether that is manageable.

11:27

Meeting suspended.

11:32

On resuming—

Housing Legislation (Review) (PE1756)

The Convener: The next continued petition is PE1756, which was lodged by James Mackie and calls on the Scottish Parliament to urge the Scottish Government to review current housing legislation in relation to circumstances where a non-tenant has been responsible for domestic or elder abuse.

Since our last consideration, we have received submissions from the Scottish Government, Age Concern Scotland, Hourglass Scotland—previously Action on Elder Abuse Scotland—as well as two submissions from the petitioner. Those are summarised in the clerk's note.

The Scottish Government advises that it will introduce a bill this year to provide the courts with a new power to impose protective orders that can remove a suspected perpetrator of domestic abuse from the home of a person at risk. The bill will also create a new ground on which a social landlord can apply to the court to end the tenancy of the perpetrator with a view to transferring it to the victim of domestic abuse or, where the perpetrator and victim are joint tenants, end the perpetrator's interest in the tenancy and enable the victim to remain in the family home.

The stakeholder submissions note that there is a significant gap in legislation and the protection that is available for older people who are experiencing abuse in their home. The petitioner highlights that the issue with legal routes to remove abusers is the time that it takes to do that. While that process is on-going, people are still subjected to abuse. Before I give my feelings on that issue, I offer my gratitude and that of the committee to a number of groups, organisations and local authorities that responded to our call for submissions.

The question for the committee is whether we are satisfied that the Scottish Government understands that this is an important issue. While flagging up that we hope that the Government will take forward the legislation that it proposes, we could close the petition. I ask members for their views.

Tom Mason: We have received a lot more information. If the bill is due this year, when will it be introduced? Are we referring to this financial year or this calendar year? If the bill is to be introduced imminently, I think that we can close the petition. However, if the bill is going to be delayed in any way, we should keep the petition open until the bill is introduced.

Gail Ross: Tom Mason makes a very valid point. We are all very much aware that we have little time left this year. From my reading, I think that "this year" means from now until the end of December. However, given all the time constraints and the other things that the Government is dealing with at the moment, I would not be surprised if the timing slipped.

Age Scotland notes that the petition has highlighted a gap in the legislation, so I thank the petitioner for that. I might have said that we should close the petition, given that the Government has said that it will introduce a bill, but I would be happy with our writing to the Government to confirm what the timescale will be.

Maurice Corry: I agree with Tom Mason and Gail Ross. We need to keep a fairly close grip on the proposed bill, because there is an issue. I remember from the previous time we considered the petition that there were several issues that we wanted to resolve, so I am reluctant to let go of the petition. I agree with Tom Mason that we should keep it on the books until the bill is introduced, so that we ensure that we get the best for older people in our society.

David Torrance: I thank the petitioner and all the different organisations that have contributed evidence to the committee. Like my colleagues, I would like to see a timetable for the bill, and I am happy to keep the petition open until we see a definite timetable for the bill to be introduced.

The Convener: I think that there is agreement that the issue is important. A point that might be repeated today is that the current Public Petitions Committee is coming to the end of its life, as the Parliament will be in dissolution by March or April next year, so we need to leave things for the next Public Petitions Committee, and there is a limit to what we will be able to do.

In the meantime, I think that we agree that we will check with the Scottish Government when it will introduce the bill. It might also be worth asking it about a campaign to increase public and

professional awareness of the Adult Support and Protection (Scotland) Act 2007. We can flag up that issue when we write to the Government.

We agree that we will write to the Scottish Government to identify timescales and to ask it to respond to the question of the role of the 2007 act and public awareness of it.

Scottish Local Government Pension Scheme (Actuarial Reductions) (PE1757)

The Convener: The next continued petition is PE1757, on reducing actuarial reductions to the Scottish local government pension scheme, which was lodged by Liz Maguire. The petition calls on the Scottish Government to significantly reduce the levels of reduction to the Scottish local government pension scheme to ensure that today's low-paid workers do not become even poorer pensioners.

At our previous consideration of the petition, the committee agreed to write to the Minister for Public Finance and Migration and to the Convention of Scottish Local Authorities. A submission has been received from the minister, but not from COSLA.

The Minister for Public Finance and Migration advises that the Scottish ministers must appoint a scheme actuary to carry out valuations of the scheme. When setting factors, the actuary adopts a principle of fiscal neutrality. The scheme actuary must regularly review scheme factors whenever their assumptions about the future experience of the scheme change. The minister also confirms that, in 2013, the Scottish Government undertook an equalities impact assessment for the new LGPS, in consultation with representatives from LGPS employers and unions.

Do members have any comments or suggestions for action?

Gail Ross: The petition is similar to many that we have had in the past, in that there is a disparity between what the petitioner has told us and what the Government's evidence says. That disparity is perhaps not only one of opinions but one of experience.

As with the previous petition, there are limitations on the committee's ability to do anything about the issue. I would like to get the response from COSLA that we have sought but not received. However, given what the minister said about the scheme actuary regularly reviewing the scheme, I do not see any other option but to close the petition.

I would make a couple of suggestions, however. Perhaps we could follow up with the Scottish Government, just to bring some points to its attention. We should definitely put something in

our legacy paper because, if we were not so far into the session, I might have suggested that the petition be dealt with as an equalities and human rights issue and possibly even referred on to the Equalities and Human Rights Committee. We should certainly put something in our legacy paper and perhaps even bring the petition to the attention of that committee, because it could be an issue for the next session of Parliament if the committee that is formed after May next year is minded to take on the matter.

We cannot take the petition any further now, but there definitely seems to be a discrepancy, and it needs to be looked into.

Maurice Corry: I agree whole-heartedly with Gail Ross. In practical terms, we should close the petition under rule 15.7 of standing orders, on the basis that the scheme actuary regularly reviews the scheme and given the commitments from the Scottish Government. However, as Gail Ross said, we need to make a strong point in our legacy paper about the issue, because it will not go away. We need to ensure that it is picked up in some way by future committees, whether that is the petitions committee or the equalities committee in the next session of Parliament.

I am minded to close the petition under rule 15.7 of standing orders.

David Torrance: I am happy to close the petition under rule 15.7 of standing orders, but I would like to see a response from COSLA to the letter that we sent it.

Tom Mason: Likewise, I think that we should close the petition, but I expect to see the letter from COSLA and I would like to ensure that documentation for legacy is in place.

The Convener: I think that we are agreeing to close the petition. We recognise that there are issues and we hope that a future equalities or petitions committee would be able to look at the issue again, if there was a subsequent petition. It certainly would be interesting to get a response from COSLA.

To me, the issue that the petition flags up is that, if the pension system discriminates against women and we then try to address that discrimination, that looks as if there is a rolling back of the rights of men in the scheme. That seems to be what came out of the equalities impact assessment, although I am reassured by the fact that the unions are engaged in the process.

I think that we agree to close the petition but to flag up the issue in our legacy paper for the future committee and perhaps contact the Equalities and Human Rights Committee to say that a future

equalities committee might wish to look at the issue.

Primary Schools (Equal Teaching Hours) (PE1759)

The Convener: The next continued petition is PE1759, which was lodged by Susan Crookes, on equal school hours for all children in Scotland. The petition calls on the Scottish Government to ensure that all children receive the same number of teaching hours. The petition was previously considered in September, when the committee agreed to write to the Government and all rural local authorities. The responses that were received are summarised in our meeting papers. Various submissions highlight the need for local authorities to have the flexibility to respond to their specific circumstances.

11:45

In response to the committee's queries about what constraints there are on that flexibility, the Deputy First Minister states:

"When Curriculum for Excellence was developed, it was envisaged that it would be delivered with the same levels of teacher contact time that exist today, and that expectation has not changed ... The Scottish Government is clear that any significant reduction"

in school hours

"would diminish the learning available to young people, and would not be acceptable."

The Deputy First Minister goes on to highlight that there are powers

"to prescribe a minimum number of learning hours per year"

and that he

"would not hesitate to seek to use"

those powers, should that be necessary.

In the petitioner's response to the submissions, she states that the disparity in the current system offers a "postcode lottery" to young people.

I think that there is still an issue, but I am not convinced that there is anything more that the committee can do. I welcome the fact that the Government's response is less glib than its previous one. It says that there is a core number of schools hours for young people and that that matters, whereas we were previously told that the number of hours did not matter. By the logic of that argument, it would not matter that some young people, as we have seen, have part-time timetables. However, this committee and the Education and Skills Committee recognise that that is problematic. Therefore, I am pleased that the Deputy First Minister has said that, if there is no logical reason for the hours that are presented,

the Government has powers to do something about that.

Maurice Corry: I agree with you, convener. The various responses that we have received from local authorities have been very good and helpful. I, too, am pleased that the Government, through the Deputy First Minister, has been a bit firmer about the minimum number of learning hours per year that are necessary and that he will

"not hesitate to seek to use"

his powers to prescribe that. That should go a long way to satisfying the petitioner, I hope.

An eye will need to be kept on the issue, but I am minded to close the petition, under rule 15.7 of standing orders, on the basis that the local authorities state that they need some flexibility, that we have the word of the Deputy First Minister on prescribing the minimum number of hours, which is a check and balance, and that any

"significant reduction would diminish the learning available to young people, and"—

quite clearly—

"would not be acceptable",

which backs up his point. As I said, I am happy to close the petition on that basis.

David Torrance: I am happy to support my colleague and close the petition. Local authorities should have the flexibility to structure the school week, and we have been given reassurance by the Deputy First Minister.

Tom Mason: I agree with what has been said. If a minimum number of hours—whether that is for content or for anything else—is determined, that becomes the maximum. That would be a mistake, so some flexibility in interpretation is necessary. However, a core number of hours needs to be in place, as has been clearly set out by the Deputy First Minister. I agree with my colleagues that the right thing to do is to close the petition.

Gail Ross: I will start by expressing my disappointment that Highland Council did not respond to our call for evidence, given that it is the local authority that we are discussing. I said at the last meeting that I would be keen to get evidence from that authority as to why it reduced the hours for that group of young people. The evidence that we received from the other local authorities was extremely valuable; they have reiterated what we were talking about in the last meeting about the minimum standard being adhered to. Different local authorities have different hours, depending on the needs of their learners. There is no detriment to the learning of young people, so I am satisfied that we have taken it as far as we can.

However, if the petitioner would like to follow that up with me, as her MSP, I am willing to look at

that for her. I agree with my colleagues that we should close the petition and I thank the petitioner.

The Convener: Thank you. There is a consensus that we want to close the petition. My concerns about the idea that hours do not matter at all have been addressed to some extent. The question of the postcode lottery probably still remains in the mind of the petitioner, and Gail Ross has offered to take that up with her. As a committee, we agree that, at this stage, there is nothing further that we can add and that we will close the petition. I thank the petitioner for her engagement with the committee. She can return with her petition in the future if she feels that there has been no movement to her satisfaction.

Referendums (Scotland) Act 2020 (PE1791)

The Convener: The next continued petition is PE1791, lodged by Mike Fenwick, which calls on the Scottish Government to recognise and respond to concerns that section 39 of the Referendums (Scotland) Act 2020 establishes a legal challenge—namely, that it breaches protections afforded by the Human Rights Act 1998.

Since our last consideration of the petition, we have received submissions from the Law Society of Scotland and the petitioner. The Law Society of Scotland advises that it agrees with the opinion that has been expressed by the Scottish Government, that the terms of section 39 do not breach convention rights. The petitioner's submission highlights a report that they believe shows revelations of potential influence and interference occurring, but, very noticeably, only after a period of years and well outwith a period of eight weeks.

In dealing with the petition, we have examined the issues seriously and have interrogated them. I found the evidence from the Law Society of Scotland compelling. One feeling about the usefulness of the Public Petitions Committee's role at this stage is that we could close the petition, but I would be interested in hearing other views or about things that we might be able to do. Or do members agree that it should be closed?

David Torrance: The Law Society of Scotland's submission is overwhelming, so I am in agreement with the convener that we should close the petition under rule 15.7 of the standing orders.

Tom Mason: The Law Society is clear about the situation with regard to the short term, but I worry about what happens in excess of eight weeks. The petitioner has a point about longer-term evidence generating, which could happen with a referendum. Historically, there is no requirement to close all petitions in the short term, so I would like

to see the Scottish Government justify its position that no problem might exist beyond eight weeks. After that answer has been received, we can come to a conclusion. In my view, ideally, we would keep the petition open for the moment.

Gail Ross: It is a difficult one. We must have faith in the system. The petitioner has brought up that additional paper and other evidence on outside interference, but I would hope that, if it was proven that there had been outside interference in any part of our democratic process, not just in a referendum, there would be recourse. I am happy to get the reassurance that Tom Mason has asked for, but, as I said, it should apply not just to a referendum, although that is the example that is being raised. We are seeing more and more accusations of outside interference in many other processes as well. I would be interested to see whether there would be any recourse after the eight weeks if more evidence came to light.

Maurice Corry: I hear my colleagues, and I am minded to close the petition under rule 15.7 of the standing orders. Equally, however, I would be comfortable if we addressed the issue by writing to the Scottish Government, asking for its views on the eight-week period, which Tom Mason and Gail Ross have rightly raised. I am minded to close the petition once we have that information and have evidence of that.

The Convener: We have come to a consensus, which is that you do not agree with me. I hear what people are saying, and I think that we want to write and ask what the situation would be if wrongdoing was established beyond the eight-week period. It would then be for the politicians to think about how they might deal with that response at a later stage. I think that we agree to write to the Scottish Government on those terms.

I am conscious of the time. We have two petitions left, and I would like to be able to deal with them, but I also do not want to feel that we are constraining ourselves. If it looks as though we are not going to be able to come to a conclusion, we will accept that they have dropped off the agenda, but it would be helpful if we could conclude them.

Spòrs Gàidhlig Funding (PE1795)

The Convener: The next continued petition for consideration is PE1795 by Màrtainn Mac a' Bhàillidh on behalf of Misneachd. The petition calls on the Scottish Government to meet with Bòrd na Gàidhlig to discuss longer-term and sustainable funding for Spòrs Gàidhlig, which is a social enterprise that delivers outdoor learning to young people through the medium of Gaelic.

We have received responses from Bòrd na Gàidhlig, COSLA and Spòrs Gàidhlig. From the information we have received, it appears that Spòrs Gàidhlig has funding until March 2022, but that position is vulnerable and relatively short term, and it does not equate to the sustainable funding that is asked for in the petition.

Do members have any comments or suggestions for action? Active sport and sporting clubs is an area that, whether it is through the Gaelic medium or not, is a massive issue because of Covid-19, and the petition highlights that. I would be interested in hearing the views of the Deputy First Minister on the importance of the long-term sustainability of vulnerable organisations such as Spòrs Gàidhlig, because if they do not have certainty, it is difficult to plan, and if people do not have confidence in it as a provision, they will not use it.

Tom Mason: I agree with the convener that the long-term situation of such organisations is important. We do not know what will happen, but we must make sure that the Government addresses those issues for the medium and long term. Writing to the Deputy First Minister is a necessary step at this stage.

Gail Ross: It says in our papers that funding seems to be “relatively secure” until March 2022, but in any organisation’s view that is not even the medium term, let alone the long term, so I would be happy to write to the Deputy First Minister along the lines that have been suggested.

Maurice Corry: I agree with colleagues that we should write to the Deputy First Minister, highlighting the need for long-term sustainability.

David Torrance: I agree with colleagues that we should write to the Deputy First Minister.

The Convener: In agreeing to do that, we recognise the issue that has been highlighted by the petitioner about how to plan for and get certainty in funding, and we recognise that their strong view is that that is a way of sustaining the language and should be an important part of any strategy.

That is agreed.

European Union Withdrawal Agreement (Powers of Economic and Industrial Intervention) (PE1801)

12:00

The Convener: The final continued petition on our agenda today is PE1801, which was lodged by Vincent Mills on behalf of Radical Options for Scotland and Europe. The petition calls on the Scottish Government to negotiate with the UK

Government to ensure that, in any future EU withdrawal agreement, Scotland retains the powers to provide state aid to workplaces that are threatened with closure; to take public utilities such as rail, bus and power fully back into public ownership; and to require public sector contractors to recognise trade unions and collective bargaining on wages.

Following our previous consideration of the petition in September 2020, the committee agreed to write to the Scottish Trades Union Congress to seek its views on the action that the petition calls for. In its response, the STUC expresses its concern that the provisions in the UK Government’s Internal Market Bill could lead to a race to the bottom on standards, and it states that it supports the action that the petition calls for.

I think that there is an issue here and that there are opportunities to reflect on it through the discussion around the Internal Market Bill. The state aid restrictions in Europe have sometimes been regarded as a limitation. I have certainly regarded them as such. They represent the one bit of not being in Europe that I think provides some opportunities. However, they would be opportunity denied to the Scottish Parliament if the powers did not lie here.

We need to decide whether to close the petition or keep it open. My preference is for us to write to the Scottish Government and the Secretary of State for Business, Energy and Industrial Strategy to highlight the issue. Another option would be for us to flag up the matter in our legacy paper if we could not deal with it now. We could also simply write to the Finance and Constitution Committee, saying that the issue has been highlighted to the Public Petitions Committee and that we would like that committee to reflect on it.

I ask members for their views. First, I call Gail Ross.

Gail Ross: Thank you, convener. You have covered it all succinctly, and I agree with your suggested course of action. The STUC’s response is interesting. We should certainly not just close the petition and hope that it all turns out okay. I agree that we should write to the Scottish Government and the secretary of state.

Maurice Corry: I am minded to close the petition under rule 15.7 of the standing orders on the basis that the Scottish Government has already committed to retaining its current powers following the end of the transition period and that more powers will be coming to Scotland from the European Union as the full transition period is completed. That is not to say that I would prevent the Scottish Government from speaking to the UK Government with regard to any on-going issues if that would be to the betterment of Scotland.

However, I am of the mind that we should close the petition on that basis.

David Torrance: I would like us to keep the petition open. The issue is too important for us to close it, and we need reassurances. Maurice Corry said that powers will be transferred, but we need a guarantee that they will come. Like my other colleagues, I would like us to keep the petition open and write to the Scottish Government and the secretary of state.

Tom Mason: It is an interesting area. As far as I can see, the Government, rightly or wrongly, has been very clear in deciding what it is going to do around the issue, and I think that we could predict pretty well what any answer would be. I think that the right thing to do at this point is to close the petition and make it very clear where we are at. If what is expected does not come about, that could be raised in a petition later on, when the situation might have become a bit clearer. As far as I can see, however, it is a fait accompli.

The Convener: The committee is clearly divided on the subject. We would be divided if we were having the argument in the chamber, but I am trying not to replicate that—I do not think that that would be helpful to the committee.

My feeling is that it would be worth our while to flag up the issue to the Finance and Constitution Committee. I hear exactly what Tom Mason says, but I think that it would also do no harm for us to write to the Scottish Government and the secretary of state simply to flag up the questions. The most important bit of that course of action would probably be that the Finance and Constitution Committee would have the information.

I do not think that we are going to resolve the matter now, but I wonder whether I can get the committee's agreement to that action. I recognise that, given the broader question, we are going to be divided, but I would expect that that action would be sufficient and that, having taken it, there will be an opportunity to look to closing the petition at a later stage.

I am conscious of the time, but I do not want to bounce anybody into agreeing with that. If Maurice Corry and Tom Mason continue to have reservations, I propose that we take the matter to our next meeting instead of seeking to resolve it now. However, my feeling is that we should be able to take the proposed action while recognising that the divisions exist.

I am in the hands of committee members. I do not know whether anyone wants to respond to what I have said. Does Tom Mason or Maurice Corry feel so strongly on the subject that they believe that the petition should be closed, or do

they accept that we should continue the petition, having got the information from the STUC?

Maurice Corry: You make a fair point, convener. I do not want us to go round and round in circles on this. There is a clear path that the Scottish Government has chosen to commit to. My fellow committee members have—quite rightly—made some points about writing to the Scottish Government. As I said, there is nothing wrong with jaw-jaw—that is, with the Scottish Government talking to the UK Government to see what can be taken and what goodness can come out of it. After all, it will be a compromise in the end.

I do not object to keeping the petition open, but I say that on the basis that I believe that it is finite and it will come to an end.

The Convener: I agree with that, and I suspect that the petitioners recognise that, too. I suspect that they wanted to make sure that people were aware of the issue, and I know that they would be interested in the Finance and Constitution Committee looking at it.

Do we agree to write as suggested? We recognise that there is a limit to any future work that the Public Petitions Committee could do, but we would write just to absolutely confirm that there are issues. As is the case with many petitions, the issues will not be resolved in the Public Petitions Committee, but they can be actively debated elsewhere. I appreciate committee members' reflections on the petition, and I think that we agree.

I am conscious of the time—

Maurice Corry: Convener, I think that Tom Mason is trying to come in.

The Convener: My apologies, Tom.

Tom Mason: I am happy to go along with your suggestion, convener.

The Convener: Okay. Thank you very much. I was genuinely not trying to rush or exclude anybody. I am just very conscious of the time.

I thank committee members, the broadcasting team, the clerks and, of course, the minister and his team for allowing us to have our discussion. I think that it reflected the fact that we are coming to the end of our work as we move towards the end of the current session of Parliament, but we still want to make sure that petitioners feel that their petitions are getting a fair hearing.

With that, I thank everyone and close the meeting.

Meeting closed at 12:07.

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