OFFICIAL REPORT
AITHISG OIFIGEIL

Net Zero, Energy and Transport Committee

Tuesday 27 May 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 27 May 2025

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NET ZERO, ENERGY AND TRANSPORT COMMITTEE

19th Meeting 2025, Session 6

CONVENER

Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Michael Matheson (Falkirk West) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)
Monica Lennon (Central Scotland) (Lab)
*Douglas Lumsden (North East Scotland) (Con)
*Mark Ruskell (Mid Scotland and Fife) (Green)
Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sarah Boyack (Lothian) (Lab) (Committee Substitute)
Alan Brogan (Scottish Government)
Anne Cairns (Scottish Government)
Nick Gosling (Transport Scotland)
Ailsa Heine (Scottish Government)
Giles Hendry (Scottish Government)
Ben Macpherson (Edinburgh Northern and Leith) (SNP) (Committee Substitute)
Gillian Martin (Acting Cabinet Secretary for Net Zero and Energy)
Haydn Thomas (Scottish Government)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 27 May 2025

[The Convener opened the meeting at 09:23]

Decision on Taking Business in Private

The Deputy Convener (Michael Matheson): Good morning, and welcome to the 19th meeting in 2025 of the Net Zero, Energy and Transport Committee. Apologies have been received from Monica Lennon and Kevin Stewart. I welcome Sarah Boyack, who is attending as Monica Lennon's substitute, and Ben Macpherson, who is attending as Kevin Stewart's substitute. Apologies have also been received from Edward Mountain, the convener, so I will convene today's meeting.

Our first item of business is a decision on taking business in private. Do members agree to take in private item 9, which is consideration of the evidence that we will hear on the legislative consent memorandum on the Planning and Infrastructure Bill?

Members *indicated agreement.*

Planning and Infrastructure Bill

09:24

The Deputy Convener: Our second item of business is an evidence session on the legislative consent memorandum that the Scottish Government has lodged on the Planning and Infrastructure Bill, which is a United Kingdom Government bill that is being considered at Westminster. The committee must report on the LCM.

The LCM, which the Scottish Government lodged on 27 March, mentions the need for the Scottish Parliament to consent on two matters: consent for electricity infrastructure, which is covered in clauses 14 to 20, and fees for application for harbour orders, which is covered in clause 42. The LCM also mentions clause 96, which makes commencement and transitional provisions, in so far as those relate to clauses 14 to 20 and 42.

The committee agreed to write to a targeted group of stakeholders to gather evidence on the areas of the bill that are covered by the LCM, and we are thankful to those who responded to our call for evidence. This morning, we will discuss the LCM with the Scottish Government, including any developments since the LCM was lodged and some of the main issues that stakeholders have raised.

I welcome Gillian Martin, Acting Cabinet Secretary for Net Zero and Energy, and her supporting officials. Alan Brogan is head of operational delivery at the energy consents unit, Robert Martin is policy and administration team leader at the energy consents unit, and Anne Cairns is a solicitor. I believe that the acting cabinet secretary would like to make a short opening statement before we move to questions.

Gillian Martin (Acting Cabinet Secretary for Net Zero and Energy): Thank you, deputy convener. Good morning, everyone. Thank you for the invitation to provide evidence on the LCM on the Planning and Infrastructure Bill. Before I answer the committee's questions, I would like to speak for a few minutes to explain the purpose behind the bill, how we have got to this point and why an LCM is required in this instance.

By way of background, I note that, although land use and planning in Scotland is devolved, the powers to legislate for generation, transmission, distribution and supply of electricity are reserved to the UK Government. However, Scottish ministers determine applications to construct or install electricity infrastructure under the Electricity Act 1989. In England and Wales, the relevant legislation was updated in 2008 to make the

consenting process more efficient. However, the process in Scotland has remained unchanged as we do not have the power to amend the legislation. The situation has resulted in it taking up to four years to process an application determination. The Scottish Government has long called for the process to be reformed, for the relevant powers to be given to Scottish ministers and for the system to be modernised, as it has been across the rest of the UK.

Having finally recognised that Scottish consenting needed reform, the previous UK Government, under the Conservatives, committed to reviewing it in November 2023. Thankfully, the new Labour Government continued those plans, and UK and Scottish Government officials worked together on the proposed reforms that the UK Government published in October 2024, alongside a consultation. In March this year, the UK Government published its response to the consultation, which showed broad support for the reforms from consultees, and the measures were included in the Planning and Infrastructure Bill, which was introduced to the House of Commons on 11 March.

The bill cuts across a number of different subjects including planning; nationally significant infrastructure projects; the transmission, distribution and supply of electricity; transport, roads and the operation of harbours; and the environment. Many of the bill's clauses apply only to England and Wales or have no practical application in Scotland. However, clauses 14 to 20, which relate to electricity infrastructure consenting in Scotland, and clause 42, which refers to harbour processing fees, alter the competence of Scottish ministers, so the UK Government is seeking legislative consent.

As I set out earlier, the changes that are proposed in clauses 14 to 20 are intended to reform outdated and inefficient elements of the consenting process for electricity infrastructure. The changes include, but are by no means limited to, strengthening pre-application requirements and procedures, making them statutory for the first time and allowing communities to share their views earlier in the process; creating a new reporter-led procedure in response to an objection from a local planning authority, reducing the administrative burden of an automatic public inquiry while always retaining a public inquiry as an option; and moving from a lengthy judicial review process to one of statutory appeals, aligning with existing processes under the Town and Country Planning (Scotland) Act 1997.

The bill will provide Scottish ministers with regulation-making powers to implement more technical statutory elements of reform. Those will be concurrent powers that are exercisable by either Scottish ministers or the secretary of state. The bill does not specify which authority will exercise which powers and how, but the general expectation, which is shared by both Governments, is that the Scottish Government will introduce the regulations and they will be laid in the Scottish Parliament. That reflects the position that planning is a devolved matter and it recognises the executively devolved role of Scottish ministers in administering applications for consent under the Electricity Act 1998. With regard to clauses 14 to 20, we therefore recommend that consent is granted. The Scottish Government intends to consult on proposals for secondary legislation as soon as possible after the bill is passed.

I am not the Cabinet Secretary for Transport and I am not best placed to speak on clause 42, so I welcome the presence of officials from Transport Scotland who will be able to reply if you require further information on that front. I also note that Ms Hyslop provided an update on clause 42 in her letter this morning.

I am happy to answer any questions, convener.

09:30

The Deputy Convener: Thank you. Nick Gosling, head of maritime policy at Transport Scotland, is with us and he can respond as appropriate on any of the harbour order fee issues.

We move to questions, and I start with a question about the concurrent nature of the powers that are provided for in the bill. Why is the Scottish Government content that powers over areas that are wholly within Scotland may also be exercised by ministers at a UK level?

Gillian Martin: Throughout the process, we have been clear that planning is devolved in Scotland, but we have an understanding with the secretary of state. The regulation-making powers and the bill itself are righting a wrong. Wales had the powers long before Scotland will have them, and this is an area where we have wanted reform. I believe that, in your time as energy secretary, you looked for these reforms as well.

The bill uses the wording

"The Secretary of State or the Scottish Ministers",

but there is an understanding that it will be the Scottish ministers, who will be able to bring in secondary legislation on consents. Up to now, we have been quite hamstrung. In the past couple of years, in working with my officials, it has been quite frustrating that we have not been able to change any of the regulations on consents, particularly in relation to mandating a requirement for community engagement ahead of applications

going in. That has been a source of great frustration to communities, but also to the Government. We have been asking for the change for quite some time. If the legislative consent motion is agreed to and the bill passes, we will be able to mandate that community engagement.

We have got ahead in that we have been doing our own work and we have just published our good practice principles on engaging with communities, but they are voluntary. There is no compulsion on developers to engage with communities. We do not think that that is right. However, we have done the work ahead of the LCM because we wanted the good practice principles to be updated. If the LCM is agreed to and the bill passes, we will be able to work on secondary legislation, which we will bring to this committee, on what we require of developers ahead of them putting in their applications.

The Deputy Convener: That is helpful. On the concurrent nature of the powers, what is the intended mechanism to be used if there is a conflict of position between the Scottish and UK Governments in exercising what is an executive function under reserved legislation?

Gillian Martin: The bill does not say that any minister has primacy in this area. There is an understanding that the reason for the powers being developed is that there was a need for Scottish ministers to have the same powers as Welsh ministers. The real basis for why this is being done in the first place is to give powers to Scottish ministers.

The Deputy Convener: I appreciate that and I recognise the importance of it. I am just trying to understand what will happen if there is a conflict of thinking on exercising of the powers. If I recall correctly, the executive power sits with the secretary of state at the UK Government level. What is the intended mechanism if there is a conflict of views on decision making relating to the powers?

Gillian Martin: Although there is, as I said, no formal decision-making mechanism in the bill, decisions about which Government will exercise the powers will be guided by the reality that Scottish ministers currently administer and determine applications under the Electricity Act 1989. It is expected that the Scottish Government will typically lead on this, as I said. It is understood by both Governments and reflected in the legislation that it will be for the Scottish Government to lay the accompanying secondary legislation.

Both Governments will have concurrent powers, as you said, to make regulations, reflecting those shared responsibilities. We hope that the respectful approach to devolution that has guided the development of the provisions will continue to inform their implementation. That is the understanding. I understand that you are looking for a mechanism. The mechanism is cross-Government working on this and our understanding during the drafting that the powers will be exercised by Scottish Government ministers.

The Deputy Convener: Okay. That is helpful. Thank you.

Sarah Boyack (Lothian) (Lab): Cabinet secretary, could you give a bit of clarity about the fees that will be introduced for electricity consent applications? Will those fees be ring fenced to support the work of the energy consents unit? I draw your attention to the views that we got from Scottish Environment LINK that, if we were to do that, it would be likely to lead to

"better resourcing of the determination process and therefore more timeous processing of applications, without being overly onerous for applicants."

Gillian Martin: We want full-cost recovery for public services in general. In my remit, one of the things that we have done is expand the capacity of the energy consents unit. In the past year, we have more than doubled the number of personnel who are dealing with energy consents. We expect that the fees will be set to recover the cost of processing applications and providing pre-application services to streamline the process, so that there is communication between the ECU and applicants, in line with policy.

The fees will, of course, help to resource the Scottish Government's administration of the consenting process. That will mean that we can enable more timely consents. That work has already been done. As I say, we have more than doubled the capacity of the energy consents unit, because of the volume of consents that we anticipate. We are not waiting for the volume of applications to go through the roof before we put in place the necessary capacity. We have front-loaded the capacity in the ECU in anticipation of the many applications that will come through, particularly with regard to the transmission infrastructure and the ScotWind round.

Sarah Boyack: It is useful to get that on the record. For clarity, you said that you expect the fees to go to the energy consents unit, but can you confirm that that is definitely what will happen?

Gillian Martin: Yes.

Sarah Boyack: It is good to get that on the record, too.

How will the powers in the bill in relation to the environmental impact assessment interact with the proposals from the UK Government to move to a system of environmental outcomes reports, under

powers that were introduced in the Levelling Up and Regeneration Act 2023, and the proposals for new powers in relation to EIAs that are in the Natural Environment (Scotland) Bill?

Gillian Martin: As you rightly say, the UK Government intends to replace the European Union-derived environmental impact assessment system with new environmental outcomes reports, the framework for which was established in the 2023 act. The systems are not yet operational and require further development. The functions will allow for Scottish ministers to make the environmental outcomes report regulations for electricity applications, and those powers have been transferred by a separate order. Clause 20 provides a pragmatic interim solution that will allow for procedural updates to the existing EIA system, while policy on the potential transition to EORs further develops. There will be no gap, so the transition from the old system to the new system will be covered by clause 20.

Sarah Boyack: I think that issue about there not being a gap is important for environmental standards—we do not want to see a reduction in standards here.

Mark Ruskell (Mid Scotland and Fife) (Green): I would like to get a bit of clarity on where you see the environmental outcomes reports and the existing EIA system applying? If, for example, there were consents for onshore transmission infrastructure under sections 36 or 37 of the Electricity Act 1989, would they now go through the Westminster system of EORs, or would it be expected that EIAs will still apply?

Gillian Martin: If the LCM is agreed and the bill goes through, there will be the pragmatic interim solution that I set out. That would mean that we would have the necessary procedural updates to the existing EIA system while we are waiting for that policy transition to happen and to be bottomed out between all Governments on the transition to the EOR system. There will effectively be a transitional period in which we have the existing EIA system, but it will provide us with updates that start to bring us in line with what is anticipated in the EOR system.

Mark Ruskell: Right. I am just trying to understand how that works. If you are a developer and you are bringing forward a wind farm project that is under the section 36 threshold, you would expect to do an environmental impact assessment, as the regulations require you to send that to the local authority. However, if you are over that threshold, you will have to engage eventually with the new system of environmental outcomes reports. Is that right? Will we have two systems, effectively?

Gillian Martin: Environmental impact assessments will still apply. That is effectively what I am saying. There is no dilution of that in any way.

Mark Ruskell: So, there will be two systems?

Gillian Martin: The adjustment in clause 20 is about restoring that limited ability that we had under the European Communities Act 1972 to make procedural changes to the EIA process to mean that it is aligned with reformed electricity consenting, but there will not be any gap in the process—there will not be any point at which there will be a dilution of the requirement to follow an EIA. I hope that that gives you clarity.

Mark Ruskell: I am struggling a bit with that. It might be better for you to write to the committee with some examples of where that applies and where it does not apply. What I am trying to understand is whether the Government is moving away from the EIA system to a new system of environmental outcomes reports. Is that what you are doing? I see that you are shaking your head.

Gillian Martin: EIAs will always be in place. We want to be agile in making sure that there is no misalignment between the two processes—the EIA process and the EOR process—but EIAs will still apply. There will be no point at which they are diluted or do not apply. They apply in all cases.

Mark Ruskell: So, the environmental outcomes reports are more about those areas that are in the offshore environment, where Westminster is requiring that regime to be applied. You do not see EORs applying in relation to onshore development or anything that is within the consenting powers of the Scottish ministers.

Gillian Martin: I will defer to my officials, but my understanding is that EORs can apply in any case while environmental impact assessments will apply in all cases. Alan Brogan can perhaps add some clarity.

Alan Brogan (Scottish Government): There is a bit of a complex picture. The framework for environmental outcomes reports was introduced in the Levelling Up and Regeneration Act 2023. The UK Government needs to develop the framework further to set out what it really means. In Scotland, we are not clear exactly what the system will look like. Further, in Scotland, in general, the policy is to continue with the EU-derived EIA system. The clause does not restore the position that we had before—that is, it does not allow Scottish ministers to make the EIA regulations in full. Rather, it restores the EIA power in a limited way, allowing us to make procedural updates. It does not allow any change or regression in environmental standards. It only allows procedural changes, such as those that are proposed in relation to the updating of the Electricity Act 1989, and those that

would enable us to make efficiencies by, for example, making more information available to people online rather than in public places where it is not practical or useful to do so.

09:45

The proposal is to stay with EIA; there is no proposal to move away from that. The UK Government transferred EOR powers in relation to the Electricity Act 1989, but that does not necessarily mean that we need to bring them in. They are effectively optional and there are no immediate intentions to bring them in. The intention is to remain with EIA, and the clause restores a limited ability to make procedural changes, because that does not exist at the moment. When the European Communities Act 1972 was repealed, that power was lost.

Mark Ruskell: Okay.

Douglas Lumsden (North East Scotland) (Con): Some stakeholders have raised concerns about the proposed reduction in time available to lodge a legal challenge to a ministerial decision about an onshore wind farm from three months to six weeks. How would you justify that change?

Gillian Martin: It is important to set out that the process that we are looking at in respect of any challenge is probably more efficient for both sides—objectors and developers—in that it will enable a resolution to be found more quickly than has been the case when there has been an automatic triggering of a public inquiry. The reform that we are proposing maintains that robust scrutiny but allows for appropriate and efficient procedures. The mandatory public inquiry requirement has been a source of significant delay, but it is important for me to stress that it is still an option.

We will put a reporter in place, and there will be a number of tools at their disposal. Reporters will be able to make an examination into the application and will have the power to determine what form that examination takes. Reporters will be able to specify site inspection and hold evidence-taking sessions. They will have everything at their disposal, as they do in relation to other planning matters. Local planning authorities will remain statutory consultees. Their objections will continue to trigger a formal examination process, but the key difference is that the objections will be considered through a process involving an independent reporter rather than automatically going to a public inquiry. However, the reporter has the right to call a public inquiry.

In recent cases, public inquiries that have been triggered by a planning authority have added 12 to 24 months to the process. I do not think that it is good for an objector to have to wait 12 to 24 months to have a determination on their objection to something. The exact time savings will depend on the complexity of cases. There will be time for people to put in their objections, but the time that is taken for the assessment of all the evidence by the reporter should shorten the determination, and the objectors and developers will get a resolution a lot more quickly.

Douglas Lumsden: I am not talking about the time that is taken for an objection to go in and for it to be resolved; I am talking about the time that people have in which to lodge a legal challenge being reduced from three months to six weeks. You say that that benefits everyone, but the Environmental Rights Centre for Scotland does not agree. It has raised concerns about the proposal and has even stated that clause 16 of the bill

"will have a substantial detrimental impact on access to justice",

and that

"Civil society organisations and members of the public will struggle to meet a six-week time limit for initiating legal challenges against onshore electricity consents."

Why is the time period being reduced from three months to six weeks?

Gillian Martin: The six-week timeframe has been effective in practice for offshore generating station decisions for more than 10 years—since 2013—and for planning decisions more broadly. We think that it provides sufficient time for potential challengers to assess decisions and prepare cases, but it reduces the extended period of uncertainty for them in getting a resolution. The clause complies with the Aarhus convention's requirements for access to environmental justice, and the six-week challenge period has been accepted by the Aarhus compliance committee.

Crucially, the rights and regulations that will now be devolved to Scottish ministers to mandate community engagement ahead of a planning application going in will mean that, by law, there is much earlier engagement by developers with communities. I think that it is important to look at what is being proposed in the round. It is no longer going to be voluntary to engage with communities ahead of putting in an application; it is going to be mandatory. However, at the other end of it, once an application is in, there will be the ability, within a six-week period, to challenge that determination. Then it will be referred to a reporter, who will undertake all the evidence gathering around it. People will not be left in limbo for two years, wondering what the result will be.

Douglas Lumsden: I am sorry, cabinet secretary, but we are not talking about the two-year application time; we are talking about the

time for communities to lodge an objection to onshore developments. You propose to cut that from three months to six weeks. Do you really think that communities deserve to be given that limited time to make that objection?

Gillian Martin: Yes, I do. Six weeks—

Douglas Lumsden: Do you think that that is long enough?

Gillian Martin: Yes, I do. It is in line with other planning regulations. I would expect that, when you have mandated community engagement, which is what we have been calling for for many years, there will be early community engagement, which, it is my hope, would prevent objections.

Douglas Lumsden: So, the Environmental Rights Centre for Scotland is wrong, in your belief.

Gillian Martin: The clause complies with the Aarhus convention requirement for environmental justice. The Aarhus compliance committee has said that it provides sufficient time for preparing cases, provided that the decisions are properly publicised. The regulations that will be in place will mean that there is a legal requirement on applicants to properly publicise proposals and to engage with communities. That is in line with the Aarhus compliance committee's view. That is why we are taking it forward in the way that we have. Obviously, the proposal has been negotiated not just with the current UK Government but with the previous UK Government.

Douglas Lumsden: Okay. We will stay with local communities. When the committee was looking to take evidence on the bill, we wrote to some community groups. Several of the responses to our call for views argued that recent consultations on electricity-related developments were simply box-ticking exercises and that the views of many respondents are routinely ignored.

The submission by Scotland Against Spin said:

"No opposition to the proposed changes will be forthcoming from Holyrood, whatever the responses to this latest consultation. In those circumstances, we are not going to waste our time making the same arguments that have already been ignored once and which will no doubt be ignored again."

What is your response to that? Is it not a sign that we are not taking people with us?

Gillian Martin: It is a sign that years of lobbying by the Scottish Government and a succession of ministers seeking to mandate community engagement before an application goes in has worked. It is actually the opposite of what Douglas Lumsden is asserting. We have heard very loud and clear that communities do not feel that they are listened to by developers and that there is no compulsion on developers to engage with communities. There are developers who voluntarily engage with communities and who have signed up voluntarily to the good practice principles that we have put in place in Scotland, but there are others who, by law, are allowed not to bother to engage with communities. The change means that there is a material difference. Following the lobbying that we have done with the UK Government, Scottish ministers will be given legal powers to demand that developers engage with communities before an application goes in.

At present, there is no statutory requirement for notification, publicity, consultation or proposals before an application is made. There are no detailed requirements that applicants must adhere to in the making of applications to the determining authority, and no validation procedure. These regulation-making powers will allow for requirements regarding the pre-application steps of mandatory notification to prescribed persons, publicity requirements and consultation obligations. They create an acceptance stage during which Scottish ministers must assess an applicant's compliance with the regulatory requirements before deciding to proceed with the application. They also enable fee charges for applications.

That empowers communities: by law, they must be engaged with by the applicant. It is a wholesale strengthening of communities' views in the determination of an application—

Douglas Lumsden: Cabinet secretary, if it is such a great thing for communities, how come all the community groups that we wrote to about it are saying, "We will not take part because we are not being listened to"? It is not developers that are not listening to them; it is the Scottish Government. That is why they have real concerns. You may want to go down a path of earlier engagement and everything else, but this is what the community groups are telling us. Why are you not addressing that point? Why do they feel ignored at every opportunity by the Scottish Government?

Gillian Martin: This is an indication that the voices of communities have been heard loud and clear. The Scottish Government would not have lobbied for years and years for these regulation-making powers to make community engagement mandatory ahead of an application if it was not for community groups saying that they were dissatisfied—

Douglas Lumsden: This is the voice of community groups—this is what they are coming back with.

Gillian Martin: The powers will enable regulations requiring developers—

The Deputy Convener: Douglas, we need to allow people to respond to questions. I remind you

of the time constraints. Other members want to come in with their questions.

Gillian Martin: This is a direct response to developers' lack of accountability to communities. By law, developers will have to engage with communities and we will set out in secondary legislation the parameters of what we demand that engagement to look like. It is a direct response to the lack of accountability that, rightly, these community groups have been putting to us for many years.

Douglas Lumsden: Well, I find it strange that community groups are so against what you are doing. It sounds like you are not listening to them. I will finish there, convener.

The Deputy Convener: Mark Ruskell has a brief supplementary.

Mark Ruskell: Yes. I read Scotland Against Spin's response to the committee. I think that it was possibly the only group that actually submitted evidence. I recognise that there is a concern.

I wanted to ask for your view, cabinet secretary, on whether the good practice principles on community engagement are already being adhered to or whether you can point to examples of where developers are not engaging early on with communities, not doing a pre-application consultation, not holding exhibitions, and not gathering feedback on a development application and then offering feedback to those who have put in their views as to whether, as a result of those views, changes are being made or rejected. I am interested in the development process, how communities get involved very early on and how their views are respected.

Is the current voluntary system working, or are you coming across developers who are ignoring or bypassing it and saying, "It's fine, we will just get through with very limited consultation"? Is good practice happening widely across the industry, or is that not happening, which is why you are bringing a mandatory requirement?

Gillian Martin: Good practice is patchy. That is why we need the powers in the first place to mandate community engagement and the good practice principles that we developed ahead of making anything mandatory. There are responsible applicants who adhere to the good practice principles—there are some who will make a virtue of it. However, there is no compulsion on them to do that.

10:00

The picture varies throughout the country. I do not think that that is right. I agree with community groups that are saying that there has to be enhanced and meaningful community engagement ahead of an application. I think that that is the least we should expect from developers.

There are community groups that are angry at not being consulted. The clauses that make the requirements mandatory and the good practice principles no longer voluntary will be the springboard for what we take forward in secondary legislation. A great deal of work will be done to tighten the good practice principles, and they will be the guidance that we will want developers to follow.

We will take the views of communities that are unhappy with the current system, which is patchy. There will be some areas where communities are perfectly happy with the engagement that they have had from a developer. However, the very fact that, as Douglas Lumsden has read out, Scotland Against Spin does not feel happy with the current situation means that we need to do something, and this is the something that we have to do. Not engaging with the community in a meaningful way will have to be reflected in the evidence that we gather in assessing applications. The mechanism should vastly improve community engagement.

Mark Ruskell: Do you think that there are isolated examples of bad practice that have tarred the industry with the same brush?

Gillian Martin: That could be the case. I look to my own area—a developer came in many years ago, promised a lot of things to the community for a development and never delivered. That sort of approach will sour a community's view of all developments, regardless of who the developer is. There are lots of cases like that across Scotland. People are right to be angry when developers do that, but now we will have a law that they will have to follow. Whatever we bring forward in secondary legislation will be mandatory, and if developers do not comply, they will be jeopardising the success of their application.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): I want to ask about clause 42 of the bill. I am conscious that Nick Gosling might be the one who answers these questions.

First, can I get the factual situation with regard to clause 42 on the record? I notice that it provides enhanced powers for the Scottish ministers in respect of fees for harbour revision orders to allow recovery of costs associated with the handling of applications for port development. We are told that the Scottish Government is content with that provision. Would it allow the Scottish Government to have a new system for the recovery of fees, rather than the existing provision in the Harbours Act 1964, which I think that the cabinet secretary referred to? Is that the situation?

Nick Gosling (Transport Scotland): Yes, that is correct.

Bob Doris: Okay—that is fine.

I turn to clause 96, which I believe deals with commencement powers. We know that there is a dispute between the Scottish and UK Governments about whether those commencement powers should sit with the UK secretary of state or with the Scottish Government. Will the provisions in clause 42 commence at the same time that the provisions in the 1964 act are repealed? Will those things happen at the same time under clause 96? My notes do not demonstrate to me that that will be the case.

Nick Gosling: No. We queried with the UK Government why, in the way that the bill is currently drafted, it is not considered appropriate to confer the powers to commence clause 96 in relation to clause 42 on the Scottish ministers, given that not only the decision to repeal the relevant provisions of the Harbours Act 1964 but the timing of that repeal are matters of devolved policy. The UK Government is saying that it will repeal the old legislation at a time of the Scottish ministers' choosing, but that is not a legally binding position. That is why we are asking for that power to be devolved to the Scottish ministers.

Bob Doris: So, technically, if the bill goes through, the UK Government could repeal the provisions of the 1964 act, and there is a separate commencement power that would be exercised by the UK secretary of state to bring in the new fees regime that the Scottish Government would develop. The bill deals with those as two separate issues.

Nick Gosling: The bill is currently drafted in such a way that the Scottish ministers will have full powers to bring in a new fee system at a time of their choosing. The UK Government is arguing that the new system will automatically take precedence over the old system and that although the repealing of the old system will sit with the secretary of state, it will be done at a time of the Scottish ministers' choosing. At the moment, we are arguing that that is not a legally binding position.

Bob Doris: That is helpful. In other words, there is no decoupling. There is no world in which the provisions of the 1964 act would be repealed and any new fee regime that the Scottish Government wished to bring in would be brought in separately. Both would happen at the same time. We are simply debating whether the commencement power sits with the UK secretary of state or with the Scottish Government. That is what I am trying to establish.

Nick Gosling: The bill is currently drafted in such a way that they are two separate powers: the Scottish Government can bring in a new fee system at a time of its choosing, but the secretary of state can repeal the old system at a time of their choosing. That is where we have a slight concern. If we did not have a new fee structure in place and the old system was repealed, there could be a gap, whereby we would not be in a position to charge fees.

Bob Doris: Okay. I think that we are saying the same thing. The Scottish Government will have the power to bring in a new fee system, but the commencement of that will be in the hands of the UK secretary of state. Is that correct?

Nick Gosling: The commencement of the repealing of the old fees—

Bob Doris: To allow the new fees to come into place.

Nick Gosling: Yes.

Bob Doris: Okay.

The Delegated Powers and Law Reform Committee has said that, if the power in clause 96 was conferred on the Scottish ministers, that would allow the Scottish Government to control the sequencing of the repeal so that it aligned with when the Scottish regulations under new paragraph 9A of schedule 3 to the Harbours Act 1964 were ready to come into force. The DPLR Committee has asked the UK Government why it will not simply confer the powers on the Scottish Government.

What is your understanding of why the UK Government will not simply do that to make sure that there is absolute alignment?

Nick Gosling: The UK Government has argued that, although it acknowledges that there are sometimes exceptions, the conventional approach to commencement orders is for them to be made by the same body that introduced the parent legislation. The UK Government has highlighted that because any new fee system would take precedence over the current system upon commencement of the clause, there would be no delay if the Scottish ministers chose to introduce a new fee system.

Bob Doris: If the secretary of state decides; I apologise—that is not how I wanted to express the question. Is it the case that the UK secretary of state requires to repeal the 1964 act before the new powers can come into place?

Nick Gosling: No. I will pass over to my colleague Anne Cairns on that.

Anne Cairns (Scottish Government): I will explain the way that the legislation is currently drafted. The existing power in the Harbours Act 1964 is for a fee for an application for a harbour revision order to be set by determination by the

Scottish ministers. The bill proposes to repeal that and to replace it with a regulation-making power that would enable the Scottish ministers to set fees in regulations.

The difficulty is that clause 96 is currently drafted in such a way that the power to make such regulations will come into force automatically two months after royal assent. However, the ability to repeal the existing fee determination power is currently in the hands of the secretary of state. That is the point that we have raised with the UK Government. Theoretically, we could get into a situation in which the power to make the new regulations for fees will come into force two months after royal assent, by which time the Scottish ministers will not have laid the regulations in the Scottish Parliament and they will not have come into force. In the meantime, the secretary of state could, through commencement regulations, repeal the existing fee mechanism.

Bob Doris: So we could be left with nothing—there could be a gap.

Anne Cairns: Possibly, yes. That is what we are querying with the UK Government. The UK Government has said that it will not introduce commencement regulations to repeal the existing power without the consent of the Scottish ministers, but that is a matter that we are currently negotiating. We expect to hear back from the UK Government on that.

Bob Doris: So the safest option would be simply to put the commencement powers fully into the hands of the Scottish Government. Is that the Scottish Government's position, cabinet secretary?

Gillian Martin: That is my understanding.

Bob Doris: Okay.

I have one final question. Let us say that the process goes swimmingly well, the new fee regime is developed and the UK secretary of state says what they will do. If, at some point in the future, the Scottish ministers wish to lay further regulations to change how fees for ports are developed or to change what the fee regime looks like, will there be any recourse to the UK secretary of state or will the matter be fully in the hands of the Scottish ministers?

Anne Cairns: It will be fully in the hands of the Scottish ministers. If all goes well, what should happen is that the new power to make regulations will come into force automatically two months after royal assent and, at some point after that, the Scottish ministers will make regulations, the existing fee mechanism will be repealed and the new regulations for Scotland will be in place. If, at some point after that, the Scottish Government wanted to amend those regulations, amending regulations could be brought forward in the Scottish Parliament.

Bob Doris: Okay. I will not ask any more questions. I am minded to think that it would be easier if all the commencement powers were in the hands of the Scottish Government, but it would be helpful if the Cabinet Secretary for Transport could inform the committee whether any work has already been done in relation to what the new fees regime might look like and what the timescale might be, to see whether the possibility exists of there being a mismatch between a repeal of the existing regime and the new system coming into place.

Nick, do you have anything to add?

Nick Gosling: Yes. At the moment, we have no plans to review the fee structure in Scotland. Although a review could be built into work plans, any changes to the existing regime would require policy consideration, stakeholder consultation and the drafting and approval of appropriate legislation. There are no immediate plans to amend the fee structure.

Bob Doris: I know that I said that I had no further questions, but let us fast forward two years and assume that the Scottish Government wants to make a change. How long would it take a UK secretary of state to do their bit and get on with repealing the previous provisions? What is the timescale for that?

Nick Gosling: If the secretary of state retained the commencement powers, that would not stop the Scottish Government coming up with a new fee structure, because that automatically takes precedence. If the Scottish Government were to hold a stakeholder consultation and a proper review and to come up with a new fee structure, that would automatically take precedence over the old system. All that the secretary of state holds is the power to repeal the old legislation.

Bob Doris: So the only issue that we are talking about is whether there could be a gap.

Nick Gosling: Yes.

Bob Doris: Thank you.

The Deputy Convener: I want to return briefly to the issue of capacity in the Scottish Government's energy consents unit. Is the Government aware of the concern that exists among some developers, especially those in the pumped hydro storage sector? While the energy consents unit might have additional capacity, they are concerned about whether the Scottish Environment Protection Agency has the capacity to conduct its controlled activities regulations assessments and to report to local authority planning committees when they are considering developments in their area in order to make sure

that they can submit those in a timely fashion to the ECU.

The reason why I said that that was a particular issue for the pumped hydro storage sector is that the Office of Gas and Electricity Markets has set a date of 30 September, I think, for the cap and floor and for any developers or projects to have made their bids or applications by then. However, they can do so only if they have a section 36 order in place, and that could be put in jeopardy if SEPA and the local authority do not have the capacity to get their work done to allow that to inform any decision that the ECU may make.

Are you aware of that concern? Are you alive to it, and are you seeking to address it urgently for those developers that might have highlighted that that is an issue of concern for them?

Gillian Martin: I am aware of general concerns about the time that it takes for applications to go through. You have highlighted, and I have previously mentioned, the work that the Scottish Government has done in doubling the capacity of the ECU. I have also had discussions with SEPA, which is currently working on its business plan to deal with the volume of applications that it is getting, not only from the pumped hydro storage sector but from all areas in which it has a responsibility to report.

You will be aware of the work that the Minister for Public Finance, Ivan McKee, and I have been doing to provide local authorities with access to the expertise that they might not have in-house but which they need in order to be able to make determinations on complex applications. Mr McKee is rolling out the planning hub model, not only for energy consents and applications but for planning applications more widely. The more complex applications get, the more individual local authorities might not have the necessary expertise in-house, but they will be able to procure it centrally to allow them to assess the applications that come before them.

10:15

A number of things are being done, but I take your point about SEPA in particular. You have provided me with some detail on the issue. Anyone from the pumped hydro storage sector who has concerns about it can raise them with me directly and I can speak to SEPA directly about it.

I have spoken to SEPA about its capacity in general in dealing with energy consents. SEPA is aware of the concerns about its capacity in that regard and is looking to manage its resource to cope with the demand and the complexity so that we can still get consents out to people in a timely fashion.

The Deputy Convener: I appreciate the issue of the volume that SEPA is dealing with in this area. The challenge here is the fact that the deadline that has been set for the cap and floor is the end of September, which places a huge amount of pressure on developers to get their applications in or they will miss the deadline.

While SEPA might be dealing with large volumes of applications, some are highly time sensitive. The issue is about SEPA's ability to make sure that it is able to identify those applications that are highly time sensitive and, where necessary, to expedite the consideration process so that the cap and floor deadline of the end of September can be met.

I presume that the ECU is alive to the issue and is looking for the applications in question to be dealt with in a timely fashion. We are talking about billion-pound projects that could have thousands of jobs associated with them, and if we do not meet the timelines, we might lose the huge opportunity that goes with them.

Gillian Martin: Absolutely. The ECU is alive to the various milestones that developers want to meet—allocation round 7 for contracts for difference, for example, and the cap and floor that you have just mentioned—and it works closely with developers to ensure that it gets the right information to enable it to make determinations that allow them to meet those milestones.

I will certainly take away your wider point about the other bodies that need to have capacity and will add that to the agenda for my next meeting with SEPA.

The Deputy Convener: Thank you very much. I thank those officials who attended the meeting for this item. The cabinet secretary will remain with us for the next agenda item. I suspend the meeting until 10.23.

10:18

Meeting suspended.

10:23

On resuming—

Subordinate Legislation

Deposit and Return Scheme for Scotland Amendment Regulations 2025 [Draft]

Deposit and Return Scheme for Scotland (Designation of Scheme Administrator) Order 2025 [Draft]

The Deputy Convener: Item 3 is consideration of two draft statutory instruments. The Delegated Powers and Law Reform Committee raised points in relation to both instruments. In relation to the Deposit and Return Scheme for Scotland Amendment Regulations 2025, it has reported a defective drafting issue under reporting ground (i) and seven issues under the general reporting ground.

In relation to the Deposit and Return Scheme for Scotland (Designation of Scheme Administrator) Order 2025, the DPLR Committee has reported one issue of defective drafting under reporting ground (i), one issue where the meaning should be clearer under reporting ground (h) and two issues under the general reporting ground.

The Scottish Government has committed to corrective action on most of those points. Further detail is set out in the clerk's note on the instruments and, of course, in the DPLR Committee's report.

I welcome back to the committee Gillian Martin, Acting Cabinet Secretary for Net Zero and Energy, and her supporting officials for this item: Giles Hendry, policy officer, deposit return scheme; Ailsa Heine, solicitor; and Haydn Thomas, producer responsibility unit head.

The instruments are laid under the affirmative procedure, which means that they cannot come into force unless the Parliament approves them. Following this evidence session, the committee will be invited to consider two motions recommending that the instruments be approved. I remind everyone that Scottish Government officials can speak under this item but not in the debate that follows under the next item.

I invite the acting cabinet secretary to make a short opening statement.

Gillian Martin: Thank you, convener, for the opportunity to discuss these two instruments, both of which were laid in Parliament on 2 May. The Government has been committed to the introduction of a deposit return scheme since 2019 in order to promote and secure an increase in recycling of materials by applying a deposit to single-use drinks containers.

Since a DRS in Scotland was delayed in June 2023, we have worked with industry, stakeholders, the UK Government and other devolved Governments to agree the principles of a DRS that will operate compatibly. That work culminated in the publication of a joint policy paper in April 2024, which set out the broad design of the schemes that had been agreed with industry and between all Governments at the time.

The Deposit and Return Scheme for Scotland Amendment Regulations 2025 amend the Deposit and Return Scheme for Scotland Regulations 2020. The 2025 regulations alter the implementation date for Scotland's DRS to October 2027, remove glass from the scope of the scheme and make other amendments to support the operation of our DRS in an interoperable way with other nations.

The order designates the UK Deposit Management Organisation as the scheme administrator to operate a DRS in Scotland. That follows an open application process and a joint assessment alongside the UK Department for Environment, Food and Rural Affairs and the Northern Ireland Department of Agriculture, Environment and Rural Affairs. It also confers functions on that body as the scheme administrator. The organisation will also operate the scheme in England and Northern Ireland.

Once the DRS scheme administrator is formally designated, subject to Parliament's approval, it will begin the process of implementing a DRS on behalf of industry.

Together, the instruments provide the legislative framework for a DRS in Scotland, ensuring that the schemes in Scotland, England and Northern Ireland can operate seamlessly with each other and launch jointly on 1 October 2027.

The DRS forms part of the Scottish Government's response to the global climate emergency by ensuring that plastic and metal drinks containers are kept out of our bins and off our streets and instead are recycled for future use, bringing both environmental and economic benefits.

We will continue to engage constructively with industry and with the other nations across the UK to support the successful delivery of our DRS in 2027, joining the other 50-plus deposit return schemes in operation over the world.

I look forward to our discussion.

The Deputy Convener: Thank you, cabinet secretary. We move to questions, and I will start us off. What substantive changes have been made to the Deposit and Return Scheme for Scotland

Amendment Regulations 2025 in order to align with the scheme in England and Northern Ireland?

Gillian Martin: I am happy to answer that, convener. I will take you through the substantive changes to the current regulations for Scotland. The first thing, crucially, is that the timeline is revised to launch the DRS in October 2027. Glass is removed from the scheme. The minimum container size has increased from 100ml to 150ml. Producers will be required to register with the scheme administrator rather than SEPA. Supermarkets, grocery stores, convenience stores and newsagents will be required to host return points unless their premises are less than $100m_2$ in size and in an urban area. Take-back services may be provided voluntarily and organisations must register to operate take-back services.

10:30

I mentioned the designation of the new scheme administrator, UK DMO. It will have additional functions. The scheme administrator must issue a logo and a machine-readable code, and it may issue a logo identifying multipacks containing scheme articles. It will determine the deposit level, which may be a flat or variable rate. Those who want a review of the rate can request one from the scheme administrator. Any scheme administrator will also determine applications for an exemption from operating a return point.

Those are the substantive areas in which there will be a change.

The Deputy Convener: Those are quite significant changes. What impact will they have on the outcomes that will be achieved compared with what was proposed under the Scottish DRS, particularly in relation to the environment, carbon emissions, businesses and consumers?

Gillian Martin: The most substantive change is the removal of glass. We want recycling rates for glass to accelerate and improve. The Scottish Government, as has been well documented, wanted to introduce a scheme in 2024. It would have been up and running, I think, in March 2024. We have effectively lost a year of deposit return items being recycled, so that has had a material impact on our recycling targets in the past year.

The biggest difference is the exclusion of glass. That is why Wales has decided not to go forward with the regulations as we are. Its recycling rates are very good—they are the best in the UK. Wales wanted to include glass in order for the scheme to make a material difference to its recycling rates.

As you will remember, convener, the previous UK Government denied an exemption from the United Kingdom Internal Market Act 2020 to allow glass to be included in the Scottish scheme. Our view is that a deposit return scheme that deals with aluminium cans and plastic bottles but without glass is better than no scheme at all. It is expected that the implementation of a deposit return scheme will take 0.8 megatonnes of CO_2 out of Scotland, and it will increase the recycling rate of those materials to about 76 per cent. There were different estimates for the previous regulations, which included glass. We are also working on implementing the Circular Economy (Scotland) Act 2024 and are working with local authorities on how we can have general improvement in recycling rates. A number of strategies are being taken forward.

There is no doubt that a UK-wide deposit return scheme, which we have signed up to in concert with the previous UK Government, the current UK Government and the Northern Ireland Government, will make a substantial difference to recycling rates. However, the impact will not just be on the recycling rates but on the amount of litter, as I mentioned in my statement. As you know, a lot of litter, particularly on our roadsides and in our coastal areas, is single-use drinks containers of the type that will be in the scope of the regulations. I am looking forward to a situation in which we no longer see cans and bottles littering our streets and our roadsides, because they have a material value associated with their return.

The Deputy Convener: The changes have quite a substantial impact on the overall benefit of the original deposit return scheme, given the exclusion of glass from the new scheme.

Sarah Boyack: Why have we not had a consultation on these changes? How is the Scottish Government engaging and ensuring that the feedback from key sectors and stakeholders is fed in, given, as you outlined in your initial comments, the quite significant changes that have been made in the past two years? Have any particular concerns been raised by smaller producers, local authorities or non-governmental organisations?

Gillian Martin: I will hand over to one of my officials, Haydn Thomas, in a minute, as he has been in the weeds of all this. Obviously, we have been having a great deal of discussion with stakeholders on all of this. When it comes to signing up to the principles of these regulations, we have been having a continuing dialogue with producers and, indeed, vendors.

One of the things that the smaller producers were very keen to see was that there was no mandatory take-back system. To my knowledge, there is no other scheme in operation that has such a system; in fact, I remember that, when the regulations for the original DRS were being taken through the Scottish Parliament, microbreweries

and so on expressed concerns in that respect, as such a move would have put an overhead cost on them that they were not really able to meet. Because it is now voluntary, I think that we have bottomed out a lot of those concerns.

It is fair to say that the Scottish Grocers Federation, which I met last week to discuss the issue, still has some questions about what the scheme administrator will do about handling fees. We have made it absolutely clear that we want handling fees associated with DRS to be proportionate, and we have discussed the issue with and had that assurance from the UK Government. However, the Scottish Grocers Federation is asking for more assurances from the scheme administrator, which, once in place, will obviously be able to answer quite a lot of the concerns. Of course, its board members will represent a great many of the stakeholders involved.

I will hand over to Haydn Thomas, who will be able to detail the discussions that we have been having with stakeholders over the past year or so.

Haydn Thomas (Scottish Government): I am happy to take that one.

First of all, we can look at the consultation issue in a few ways. We consulted on the principle and design of Scotland's DRS in depth before laying the original regulations, and these amendment regulations still leave the scheme as a whole substantially unchanged. The regulations do make substantive changes, but fundamentally, the scheme is doing the same thing and achieving the same outcomes. Indeed, many of the changes that the cabinet secretary has outlined are operational ones instead of necessarily getting at what the scheme fundamentally does. That consultation has already been carried out and published.

As has been outlined, the key change relates to glass. We consulted on whether to include glass in the scheme; as you will know, the Scottish Parliament previously reached a different conclusion, which was to include glass. The question of glass has been the subject of very considerable feedback from business, NGOs and the public; indeed, it has probably been the main point on which we have engaged with businesses over the past five years or so, and it is also something that the UK Government consulted on as part of its consultation. It reached a different conclusion, which was that glass would not be in its scheme. As the cabinet secretary has said, given the requirement to align with the UK Government, we have taken the decision to take glass out through these amendment regulations.

Gillian Martin: It might also be helpful to outline what is required of the scheme administrator with regard to consulting and working with affected stakeholders. The draft designation order requires the scheme administrator to consult representatives of producers, retailers and wholesalers, including small retailers, in making certain decisions. The scheme administrator, therefore, has the duty to consult to ensure that, as it rolls out the scheme, it takes all views into account and works with producers and vendors to make the scheme efficient and ensure that it does not have any unintended consequences for any of them.

Sarah Boyack: I welcome those answers, because the issue of small producers and retailers is huge and one that I certainly raised in the first instance.

You did not clarify whether there had been any discussions with local government or NGOs in the drafting of the current regulations.

Gillian Martin: We have been engaging with the Convention of Scottish Local Authorities on this, and indeed did so ahead of signing up to the principles in, I think, April last year, just before the general election. Before we sign up to anything that would have an impact on waste recovery, we will consult with COSLA. We are doing so regularly, and, as I have said, we did so right up until the general principles were agreed and then beyond.

Sarah Boyack: Thanks. I will come back later to ask about some of the changes that have been made.

The Deputy Convener: I call Douglas Lumsden.

Douglas Lumsden: Cabinet secretary, I want to look at the regulations for return points, the proposals for which are a bit different from what was proposed before. The regulations say that a groceries retailer can apply for an exemption from operating a return point if there is an alternative return point within reasonable proximity. Who decides whether a retailer would be allowed an exemption or not?

Gillian Martin: The scheme administrator would decide that.

Douglas Lumsden: Would there be any appeal against that?

Gillian Martin: Yes. That is one of the changes that have been made. In terms of the associated fees or a review of whether there should be an exemption, there would be grounds to appeal, but, once these regulations go through in Scotland—obviously, it will be the same for England and Northern Ireland, too—it will be for the scheme administrator to lay out exactly the processes in this respect. You are right to highlight this, as it represents a fundamental change from our previous regulations, in which Scottish ministers

would have determined whether to grant an exemption. That responsibility has now been conferred to the scheme administrator.

Douglas Lumsden: But there would still be an appeal process—it just needs to be ironed out. Is that right?

Gillian Martin: Yes. I think that it is one of the ways in which these regulations strengthen things: vendors can ask for a review of decisions that the scheme administrator makes.

I will bring Ailsa Heine in here.

Ailsa Heine (Scottish Government): I just wanted to clarify that there is a right of review to the scheme administrator for these decisions. It is set out in the designation order.

Douglas Lumsden: But the matter will still go to the scheme administrator.

Ailsa Heine: Yes.

Douglas Lumsden: Okay.

Cabinet secretary, how do the regulations ensure that there is a good distribution of return points, especially in rural areas and on the islands?

Gillian Martin: That is a good point, and it is something that the scheme administrator will take into account. You have rightly pointed to rural areas, where there might be no larger supermarkets and the small convenience stores might be the only vendor in the area.

The scheme administrator will look at the spread of return points. Supermarkets, grocery stores, convenience stores and newsagents will be required to host return points unless their premises are less than 100m^2 and in an urban area. In a rural area, there will be an expectation that a convenience store—which might be the only such store on, say, an island—will have a return point. After all, we do not want to disenfranchise people living in island communities; they will be paying the deposit on their drinks containers, so they will want to get that back. The scheme administrator will be working with small vendors to ensure they have that capacity.

The administrator will also have a map of all the return points. It will be voluntary in urban environments, but we should bear in mind the business case for having a return point when it comes to competition. It will be far better for you if your grocery store or supermarket has a return point in your grocery store or supermarket, because of the associated footfall; if people are returning their cans and bottles, they are more likely to spend money on their way out of your shop or to redeem their vouchers there.

At the moment, then, this is voluntary in urban areas, while in rural areas, there is an expectation that there will be an acceptable spread of return points to ensure that people in those areas are not disenfranchised.

10:45

Douglas Lumsden: So, will people get money back or, as you just mentioned, a voucher?

Gillian Martin: The scheme administrator will bottom all that out. That is for it to decide.

Douglas Lumsden: We do not know that yet.

Gillian Martin: No, it will be for the scheme administrator to decide.

Douglas Lumsden: From what I have read, hospitality is now out of scope for returns. What if I, for example, go to the pub with my pals on a Friday night, and they all have a pint of lager and I have a can of Diet Coke? Am I expected to keep my can? If it is poured for me, what happens to that can at that point?

Gillian Martin: Mr Lumsden, you can do whatever you want with your can. I imagine that, if you wanted the 20p back, you could just put it in your pocket.

Douglas Lumsden: So will it be 20p?

Gillian Martin: I have no idea; the scheme administrator will decide that. You can take the can back—I do not think that anyone will stop you walking out with it.

Douglas Lumsden: Where do I take it back to? I would have to take it with me for the rest of the night, wouldn't I, if I wanted to get my money back?

Gillian Martin: Douglas, this is why men need bags. I do not know your habits, what you take to the pub or—

Douglas Lumsden: I am just trying to ask the question. If somebody goes to some hospitality place—a cafe, for example—and buys a can of Coke, they will have to take it with them if they want to get their money back. Is that correct?

Gillian Martin: Haydn Thomas can try to answer that. I think that you can take it with you, and you can get the money back.

It does not matter where you buy the drink. If I bought a Diet Coke from Tesco, for example, and if the local convenience store in my village had a return point, I could take it back there and get my money back. I think that that would apply, wherever you bought your drink.

Douglas Lumsden: If you go to a cafe and buy a round of drinks, you will not be able to get the money back from that hospitality place any more.

Gillian Martin: No.

Douglas Lumsden: You will have to take all the empties.

Gillian Martin: You always pay a premium for drinks when you are seated in a cafe or pub, but if you want to hang on to your can in order to get your money back, you are perfectly within your rights to do so. Haydn, is there anything to add?

Haydn Thomas: To clarify, when we talk about hospitality being exempt, it is from the requirement to act as a return point. What remains unchanged is the situation for what we call closed-loop venues—indeed, your example of the pub is a good one in that respect—where the general expectation is that the can never leaves the building. That would have been the same in the unamended regulations. In that situation, the pub does not need to charge you the 20p when it hands you the can or pours it behind the bar; that 20p never does the loop through your hands. You do not have to worry about what happens to that can.

It can, in theory, be argued that if you have not been charged the 20p at the bar, you can pocket the can and take it somewhere else. That can always happen, and there might be leakage, but it is then for the business to decide how it deals with people potentially taking their Coke cans home at the end of the night.

Douglas Lumsden: So there is still an option to have, as you have said, a closed-loop system.

Haydn Thomas: That is right.

Douglas Lumsden: The container never leaves the premise, so no money is added to the cost of it.

Haydn Thomas: That is correct.

Douglas Lumsden: That is perfect. Would the same apply to, say, Murrayfield, which was campaigning to be a closed-loop premise?

Haydn Thomas: I think so. The question for the business is how much risk it is willing to take and how leaky it might be. If a coffee shop, for example, were not charging consumers for the deposit and half of its cans were being taken away, it could be losing that money, and it might then take the business decision to charge the deposit to ensure that that money was not being lost from the system. However, that would be its decision.

Douglas Lumsden: Okay. Thank you.

The Deputy Convener: I have this image in my head of folk leaving the pub at the end of a night with a bag full of empty cans and heading to the reverse vending machine.

On that note, I will pass over to Mark Ruskell.

Mark Ruskell: I am interested in how the exclusion of glass affects the overall economics of the deposit and return scheme and in the impact on local authorities. Can we start with the first of those? How does the exclusion of glass impact on the economics of the DRS?

Gillian Martin: I can give a high-level view. There will be variation. Some local authorities collect glass through kerbside collections. In some areas, such as mine, people do not get a kerbside collection of glass but go to whatever drop-off point the authority has put in place. There is value associated with the material that is recovered, although there may be local authorities that do not do any recycling of glass. The economics point will be variable around Scotland.

On the material difference, I will hand over to Haydn Thomas, but it is important to say that it was our intention to have glass in the scheme. An aspect that was convincing for me was the amount of broken glass that we have in our town centres and on our streets and our beaches. If there was a value associated with taking a glass bottle back, we would be less likely to see broken glass. I felt that the safety element was a strong case for the original regulations, as well as the economic argument.

The most important thing for us is the recycling rates. It will be economical. I will hand over to Haydn Thomas to take you through that, but the biggest saving relates to the materials—the recovery of the plastics and aluminium that will be associated with the deposit and return scheme. That represents a larger saving for society and indeed for our local authorities given their clean-up operations. Will we see a situation in a few years' time where politicians will go to beach cleans and not see drinks containers any more? There will be a material impact on the amount of litter and the amount of clean-up that local authorities are charged with doing.

Mark Ruskell: Can I pick up on the council issue before you bring Haydn Thomas in? My understanding is that the inclusion of glass in the DRS would have meant that many councils could have wound down or reduced their kerbside recycling operations and saved money as a result. Are you expecting any changes due to councils having to maintain glass recycling—at a cost to them, because they do not make a profit from it—as a result of glass not being included? I am interested in where the cost will arise. Will it come to local authorities or will the extended producer responsibility kick in, with local authorities getting money for running such schemes? They will still have to collect and deal with what is a bulky, expensive and difficult-to-handle material.

Gillian Martin: I am glad that you mentioned the extended producer responsibility. We will talk about that later in this session, but glass is included in EPR—the polluter-pays principle will apply to it. The DRS will work alongside EPR in that respect.

With EPR, funds associated with the recovery of packaging materials will go to local authorities, with the desirable outcome that local authorities will be paid by producers for a lot of the recovery that they do. I hope that, over time, producers will look at reducing the amount of packaging that they use so that they do not have to pay the fees, so there will be less for local authorities to recover.

Your point is well made. If you want details of the analysis of the cost, I am sure that we can provide them, but the point is that glass is covered by EPR but not by the DRS. Wales is taking a different view. As you will remember very well, when we looked at schemes across Europe, we saw countries that had decided to extend their schemes and include glass at a later date. At the moment, however, the scheme covers plastic and aluminium.

Mark Ruskell: Okay. Haydn, will you comment on the economics of the exclusion of glass?

Haydn Thomas: Yes. The net present value for the amended scheme—that is, without glass—is estimated to be £366 million over 10 years, so it still has a clear net present value and economic benefit. With glass, there was a higher net present value, which is why including glass was originally our preferred option, but the removal of glass still leaves a significant benefit.

On the question about the costs of glass to local authorities, the minister's answer covered it well. The basic principle is that there should be producer responsibility for all these materials. The default is that the material is covered by EPR if it is collected at the kerbside. The DRS offers producers a way to have a separate system that is outside EPR. That is what we have now for metal and plastics. Glass would have been taken out of the EPR system and into the DRS. Taking glass out of the DRS means that it goes back into EPR, so those costs are still covered.

Mark Ruskell: Will EPR meet local authorities' costs and enable them to invest in and expand glass recycling? Will a point come where it can only go so far in dealing with that line of waste?

Gillian Martin: My understanding of EPR is that, in general, the funds that will go to local authorities will allow them to expand their recycling capabilities into a lot of the areas that we discussed when we created the Circular Economy (Scotland) Act 2024. Of course, the funding is not ring fenced and it is up to councils to decide how to do that. The polluter-pays principle means that we are putting funds into local authorities, but the main point of EPR is to incentivise producers to reduce the amount of packaging. I think we will see massive innovations in packaging because of EPR.

It is for individual councils to decide how to respond to the twin opportunities of the DRS and the fact that they will no longer be dealing with the same volumes of plastics and cans, but also what to do about glass versus—or in addition to—the other things that they want to do to expand their waste recovery, reuse and remake, and circular economy objectives more widely.

Mark Ruskell: You mentioned earlier the environmental outcomes and the increased emissions from not including glass in the system, so we do not need to dwell on that.

Wales is going ahead with including glass. I think that you said that that is primarily because Wales has a very high recycling rate and sees this as a way to drive it to the next level. How will the Welsh scheme be interoperable with the scheme that Scotland will now be part of? Are there discussions about how that interoperability will work and about the internal market act implications of the regulations in Wales? That is pertinent to the discussions that we had in Scotland a couple of years ago. Can Wales actually go ahead with this? Will it work with the scheme that you are now signed up to?

Gillian Martin: I have regular discussions with my counterpart Huw Irranca-Davies, the Deputy First Minister of Wales, about this. He is very determined that Wales will have a scheme that includes glass, so Wales has opted out, as you rightly put it, of the DRS regulations that we are putting forward as the three remaining nations. I would not want to speak for him, but he hopes that he will get an internal market act exemption to be able to do that, in the same way that Scotland did. My officials have been working with Welsh officials on how we thought that we could do that in order to assist them.

11:00

We continue to discuss the impact of the internal market act not just on DRS but on devolved competency and responsibility. The issue is still very alive. The Scottish Government's position is that we would like the act to be repealed in full to allow devolved Governments to make their own decisions in the way that we should.

I am supportive of what Wales is doing. It is up to those in Wales to decide how they will do it. They are still in negotiation with the UK Government on that and are looking at how any scheme that they come up with will be

interoperable with the scheme in the rest of the UK. That is for them to decide and they will be given the space to do that.

Mark Ruskell: If Wales is granted an internal market act exemption, it will be somewhat bittersweet for you and for the Scottish Government, but would it provide a route for you to come back at some point and include glass within a UK and Scottish scheme?

Gillian Martin: I think that there is always a route. I mentioned that some other countries have looked again at their deposit return schemes after five years or so and decided to change their regulations and include glass, so it can be done. I remember the cabinet secretary at the time of our regulations saying that there is a cost associated with that, because the scheme will have been set up to take the original materials. That includes the reverse vending machines and everything else that we have talked about today. That is one of the reasons why we wanted to include glass, because, if you start with glass, there is less cost associated with changing the scope later.

It will be very interesting for Scotland, the UK and Northern Ireland to look at what happens in Wales, because if it is able to have its own scheme that includes glass, it will give us a template. We will be able to look at how it works and at the recycling rates and learn from them. The beauty of having devolved Governments is that we do learn from one another. It would not be the first time that Scotland had adopted something that Wales had done first or vice versa.

The Deputy Convener: Sarah Boyack has a supplementary question.

Sarah Boyack: There was a big discussion previously about the money—I think that it was the best part of £1 billion—that the Welsh Government gave local authorities to improve their recycling processes. Will you give us a bit more information on the parallel discussion in Scotland? You mentioned local authorities' kerbside collections. Some local authorities have lobbied the committee because they get an income from that. Is a discussion continuing about how we can use a mixture of the EPR regulations and the fact that glass is not included in the DRS requirements to improve those recycling processes?

Some constituents find it harder than others to take glass back, and having it picked up at the kerbside outside their homes is a lot easier for them. Will you talk about the income for local authorities and how we could make things work more effectively to increase the recycling rate for glass?

Gillian Martin: All that I can say to Ms Boyack is that I am open to having discussions with COSLA and any local authorities on how we can improve recycling rates and whether there are ways in which we can help them. That is why the Circular Economy (Scotland) Act 2024 put the route map in the hands of those who deliver on waste recovery—our 32 local authorities—for them to work together on ways to bring the recycling rates up and the waste levels down in many areas.

I make that general offer if certain local authorities think that they can do more with regard to glass. With the landscape that we have, which includes the DRS, EPR and the circular economy route map, I am absolutely open to having those conversations, and I regularly have them with COSLA anyway.

Sarah Boyack: Can you give us any stats that show the differences between local authorities' collection rates and income generation?

Gillian Martin: We can pass that information on if we have it. I do not have that in front of me now.

Sarah Boyack: That would be useful. I know from being in various local authorities recently the differences between places where people can drop materials for collection 5 feet away and places where they have a long walk to recycle things. In the latter case, it is just not happening.

Gillian Martin: You make a good point about the variability of services across the 32 local authorities, so that information is important. With the circular economy route map, which has been worked on by all 32 local authorities and COSLA, we can see that some local authorities are doing things differently for particular reasons. We can look at their recycling rates and ask what other local authorities can learn from them. Every area is different and they all have their particular geographical opportunities and challenges, but your point is well made. We need to see the variability and we need to be able to pinpoint and address where things can be improved.

Sarah Boyack: It is also important to consider how the glass is used. I remember being lobbied about that last time we discussed this. There are companies in the private sector that want to repurpose and reuse glass. It would be really good to get some feedback on the economics of that.

Gillian Martin: Yes. Clear glass in particular has a high value and we should make sure that we capture that.

The Deputy Convener: Douglas Lumsden has a brief supplementary question.

Douglas Lumsden: Earlier, cabinet secretary, you said that a DRS for cans and plastic but not glass is better than no DRS at all. What has changed between now and June 2023, when you could have proceeded with a DRS with just cans and plastic? You might then have saved a lot of money on Circularity Scotland and also the court

case that I think that Biffa is now taking against the Scottish Government.

Gillian Martin: I do not think that anyone here would expect me to comment on a live court case. The deposit return scheme that we wanted to have in place included glass. What happened was that the UK Government at the time did not give us an exclusion from the internal market act to facilitate that, so we decided to work with the UK Government and the other devolved Governments in putting forward a scheme that is interoperable and workable. That is all that I will say on the matter.

Douglas Lumsden: You were given a limited exclusion that meant that you could have proceeded with a DRS for plastic and cans. I am trying to understand what is different now, when you are willing to accept that scheme, compared to June 2023, when you were not willing to accept that scheme.

Gillian Martin: I ask members to reflect on the fact that the regulations for a DRS including glass were voted for by a majority of the Parliament. The will of the Parliament could not be exercised, because there could not be an exclusion according to the UK Government at the time. What is important now is that we look forward and that we have an interoperable DRS that will mean that we do not have aluminium cans and plastic bottles littering our roadsides, because those materials will have a value associated with them, which will improve the recycling rates.

Douglas Lumsden: You could have had that in June 2023.

Mark Ruskell: I ask the cabinet secretary to reflect on the fact that it was not just the exclusion of glass that was required in the internal market act exemption; it was an alignment of the deposit value with a scheme in England that did not exist at the time. Was that not the real reason why the scheme could not go ahead at that time? It could have gone ahead without glass but not without an answer to that question, which was an unanswerable question back in June 2023. I assume that there is now certainty about what the deposit level will be in the other schemes that the Scottish scheme will have to align with.

Gillian Martin: The interoperability of the schemes in Scotland, England and Northern Ireland is the way forward. Everything will be put in place by the scheme administrator, which will be the same administrator across those three nations. Mark Ruskell makes a point about another challenge at the time.

Bob Doris: I should maybe ask a question about whether the scheme will recycle brass necks, which I think that we have seen in this committee recently. However, I want to ask about the scheme administrator.

The scheme administrator will be for Scotland, England and Northern Ireland. What was the Scottish Government's involvement in the process of deciding what the powers of the scheme administrator will be and appointing the scheme administrator? We have heard about handling fees, the consultation requirements and some powers that the Scottish Government would have had under the previous scheme but that the scheme administrator will now have. It is important to know what that process was like and what the Scottish Government's involvement was.

Gillian Martin: I can take Bob Doris through that. Ministers decided that UK DMO Ltd will be designated as the scheme administrator for Scotland's DRS, although obviously that is subject to approval in Parliament. DEFRA and DAERA have appointed the same organisation. The administrator is responsible for the operational design and delivery of the scheme.

Interested parties were invited to submit applications to be designated as the scheme administrator for the DRS in Scotland, and that window was open from 2 December to 3 February. The application process requested essential information about the applicant and information on operational plans, financial management and cross-cutting issues. Officials assessed the applications in accordance with the three-nation process. All three nations were involved in deciding on which applicant became the scheme administrator. Based on the assessment of the applicants, ministers from the three nations concluded that the UK DMO Ltd application was successful.

Bob Doris: So, at official level, Government officials were working with other Government officials elsewhere in the UK. I assume that those officials must have been updating Government ministers periodically and you were content that the process was a robust and transparent one in which the Scottish Government's views were heard.

Gillian Martin: Yes, absolutely. Of course, before the scheme administrator could be appointed, I was required to accept the recommendations and approve the scheme administrator, as was Northern Ireland and DAERA.

Bob Doris: A decision was made that it would be a single body. I know that the Scottish Government could have decided to have a DMO for Scotland, but it would have had to have dovetailed nicely with the administrator for England and Northern Ireland, so it was decided to have one scheme administrator. Are there any

implications to be worked through in that? For example, rurality could have a significant impact on a deposit return scheme in Scotland, as we have heard already. Local authorities' voices in Scotland can be projected strongly to the heart of the Scottish Government, but that might be more challenging at UK level. Also, the fact that we have island communities might have a certain impact on how the scheme operates.

Given that we will not have a specific administrator for Scotland, how can we ensure that all those voices are heard at the heart of the UK scheme?

Gillian Martin: I will bring in Giles Hendry, as he has been very close to the appointment of the board. One of the duties of the administrator is to set out an operational plan, which will take into account the rurality of Scotland and the different geographical challenges and opportunities in all three nations. Obviously, in Scotland, we have particular issues in making sure that what is rolled out is fair and equitable for rural and island communities.

Giles Hendry can give you more detail on that.

Giles Hendry (Scottish Government): Officials from the Scottish Government were involved with colleagues from the UK Government and Northern Irish Administration in developing the assessment process. We each contributed questions for the applicant about what mattered to each Administration. We were careful to include questions about how applicants planned to make sure that rural and island areas would be well served by return points. That information was included in the applications to ministers.

Bob Doris: I have no reason to believe that the scheme administrator will not do a very good job. However, fast-forwarding a few years, if we find that the Scottish voice is not being heard by the UK scheme administrator, what power is there for on-going discussion between the Scottish Government and the scheme administrator about tweaking things to ensure that the unique positions of remote and rural communities, island communities or local authorities are being heard at UK level?

11:15

Gillian Martin: Mr Doris used the word "dovetailed", which is important. We are talking about the same administrator but three separate systems. The administrator will be answerable to us for how the Scottish scheme operates. If we feel that certain tweaks, as you say, need to be made, we can have that discussion with the scheme operator in Scotland. It is a Scottish system that links with the English and the Northern Irish systems in terms of interoperability. We are talking about three systems, but the same company is the scheme administrator for all. It is not a UK system. There are three separate systems.

Bob Doris: It is helpful to be reminded of that.

I think that we have already heard the answer to my final question, but we can put it on the record again. Can you summarise any significant changes that have been made to the role of the scheme administrator compared with what it would have looked like under the previous Scottish system? I am not talking about glass. I am talking about other matters. For example, how will fees work for small producers? Has that changed under the new dovetailing scheme? Has the process for setting deposit levels changed? What are the differences?

Gillian Martin: I will point to some of the things that have been put in place, which I think strengthen the regulations. People will be able to request a review of the scheme administrator's decisions, as Ailsa Heine pointed out. Also, the scheme administrator will determine any exemptions and associated fees. Those matters will no longer be for Scottish ministers. Exemption from operating a return point will also be in the gift of the scheme administrator. Those are probably the headline differences.

Bob Doris: Thank you.

The Deputy Convener: Douglas, do you have a supplementary on the deposit?

Douglas Lumsden: We have heard that the deposit level—we do not know what it will be yet—could be different for different sizes of containers. Is that right, cabinet secretary?

Gillian Martin: Yes.

Douglas Lumsden: Will the system administrator be subject to freedom of information?

Gillian Martin: It is not a public body; it is a private company.

Douglas Lumsden: So there will be no special status for it.

Gillian Martin: No—it is not a public body.

Douglas Lumsden: Thank you.

Sarah Boyack: How are you monitoring milestones, and when will they be met? To what extent will that be publicly reported as we approach the deadline of October 2027? What do local authorities need to do to ensure that this happens on time?

Gillian Martin: The date by which the scheme should be operational is 1 October 2027. I hope that Parliament will agree to the regulations and

that the scheme administrator will be in place. All three nations that are involved will be checking in with the scheme administrator on the milestones to ensure that it is ready to deliver by 1 October 2027.

As the scheme goes live, we will monitor its success. As I mentioned, it will be interesting to look at our recycling and recovery rates for certain materials in Scotland once the scheme is operational. It is important to stress that the DRS is not there to collect money; it is to improve the recovery of materials and the circular economy.

Sarah Boyack: Sure. Just to clarify, what is your timescale for publishing regular updates on the milestones?

Gillian Martin: The scheme administrator must provide an operational plan to SEPA for approval by 31 March 2026, so I guess that that is the first milestone.

Sarah Boyack: That is just under a year away.

Will voluntary return points be part of that process? Will it be possible to feed in to the decision on where they will be to ensure that people can access them?

Gillian Martin: Yes. That is a very important point. People must be able to know where the return points will be in their locality, and that is something that the scheme administrator will be assessing. When the approaches from vendors to have voluntary return points come in, it is important that there is an assessment of any gaps. Particularly for Scotland, it will be important to know whether there are any areas with gaps, because the scheme must be equitable; we expect people to have equal access to the scheme.

Sarah Boyack: That is really important. I previously visited a few of the vending points that had been established. It will be critical to be able to map them to ensure that people can easily access them.

Gillian Martin: That was a critical consideration in the process of appointing a scheme administrator. Questions were put to the applicants about how they would do those things.

Sarah Boyack: Thank you.

The Deputy Convener: That concludes questions from members.

Item 4 is a debate on motion S6M-17469. I invite the cabinet secretary to move the motion.

Motion moved,

That the Net Zero, Energy and Transport Committee recommends that the Deposit and Return Scheme for Scotland Amendment Regulations 2025 [draft] be approved.—[*Gillian Martin*]

The Deputy Convener: I invite committee members to make a contribution to the debate.

Douglas Lumsden: I admit that, at the start of today, I was not planning on contributing to this debate, but, as the morning has gone on, it seems that more and more unknowns about the scheme have been discussed, and they probably need to be addressed.

We have heard that there has been no consultation on the changes to the previous Scottish scheme that had been proposed, even though the changes are quite considerable.

I am glad that officials managed to step in and clarify some of the points about closed-loop premises, but there are still some questions about that. I asked about Murrayfield because I am not sure whether it will be allowed to be classed as a closed-loop premises, as it has wanted to be in the past. I still think that there are question marks about that.

We do not know what the deposit level will be. At one point, 20p was mentioned, but the level is still to be set. There could be different prices for different sizes of containers. We also do not know what the handling fees or charges will be.

Just now, there are too many unknowns. I would like to see a lot more information before the regulations are approved.

As I said, what has changed since June 2023? At that point, the Scottish Government did not feel that it was appropriate to have a scheme without glass, but it does now. I am being accused of having a brass neck for asking that question, but, as committee members, we should be asking such questions, because we need to know, fundamentally, whether the scheme will work. Two years ago, the Scottish Government thought that such a scheme would not work, but it now thinks that it can work.

There are too many unanswered questions so, for that reason, I am not in a position to vote for the regulations today.

Sarah Boyack: We need to get on with this, because there have been far too many delays. That has not been good for businesses, producers or the hospitality sector. People need to know what is happening. It might seem as though October 2027 is a long way off, but it is not.

The critical issue is that there needs to be more work with local authorities, which need investment now so that they can address issues with glass recycling. There is an opportunity right across Scotland, but geography can be different even within local authority areas. Local authorities need support to ensure that recycling rates increase, and our constituents need to be confident that there will be progress.

My view is that we need to get on with this. The monitoring of recycling rates is critical, as is making progress in implementing the scheme. Right across the business sector, people need to be confident that, this time around, this will happen and that, when investment is made, it will benefit the wider economy and, critically, our environment. We need to get on with this and ensure that the Scottish Government's monitoring approach is transparent so that people can relate to it and see the progress that we need to make.

Mark Ruskell: We need to get on with it. We cannot let the perfect be the enemy of the good, so now is the right time to push ahead with the scheme that is in front of us. It is very regrettable that the scheme does not include glass—we have gone through the impacts on the environment, on our communities, on climate change and on the economics of the scheme—but now is the time to move forward with what we have.

A solution has been found in operating on a three-nation basis, but I think that the Welsh Government is going down the right route. There will be a lot of learning as Wales looks to secure an exemption to the United Kingdom Internal Market Act 2020 and, I hope, successfully rolls out a scheme that includes glass. It will be bittersweet if Wales is successful in that and we realise that that could have been us back in 2023. Impossible conditions were put on the previous scheme. It could have gone ahead without glass a couple of years ago, but there were a lot of other conditions, which meant that we could not move forward at that point.

However, we are losing time. We are in a climate emergency. I see the impact of litter in our communities all the time. We are talking about really low-hanging fruit. Such a scheme is the simplest thing that the Parliament can do to tackle some of these issues. We should have got on with it years ago, but there is now an opportunity to pick up the reins again and move forward. I am pleased that there is now some movement on the issue, which is why I will be voting for the regulations.

The Deputy Convener: That concludes contributions from committee members. I invite the cabinet secretary to sum up and to respond to the issues that have been raised in the debate.

Gillian Martin: Douglas Lumsden has made it clear that he is not in favour of this, but the scheme administrator has the power to respond to a lot of his questions and to implement answers. I will leave it there.

The Deputy Convener: The question is, that motion S6M-17469, in the name of Gillian Martin, be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Abstentions

Lumsden, Douglas (North East Scotland) (Con)

The Deputy Convener: The result of the division is: For 5, Against 0, Abstentions 1.

Motion agreed to,

That the Net Zero, Energy and Transport Committee recommends that the Deposit and Return Scheme for Scotland Amendment Regulations 2025 [draft] be approved.

The Deputy Convener: The committee will report on the outcome of our decision in due course. I expect that committee members will agree that it makes sense to produce one report on both the instruments that we are considering today. Are members content to delegate the authority to approve the draft report's publication to me, as deputy convener?

Members *indicated agreement.*

The Deputy Convener: Item 5 is a debate on motion S6M-17470. I invite the cabinet secretary to move the motion.

Motion moved,

That the Net Zero, Energy and Transport Committee recommends that the Deposit and Return Scheme for Scotland (Designation of Scheme Administrator) Order 2025 [draft] be approved.—[*Gillian Martin*]

The Deputy Convener: Does any committee member want to make a contribution to the debate?

Douglas Lumsden: I will be brief, but I want to respond to the cabinet secretary's comment that I am not in favour of the scheme. That is not my position. My position is that, given that there is so much information that we do not have just now, it is too difficult to say whether I am in favour of the scheme. I will leave it there.

The Deputy Convener: No other members have indicated that they want to contribute, so I invite the cabinet secretary to sum up and respond to the debate.

Gillian Martin: I have nothing to add, convener.

The Deputy Convener: The question is, that motion S6M-17470, in the name of Gillian Martin, be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Abstentions

Lumsden, Douglas (North East Scotland) (Con)

The Deputy Convener: The result of the division is: For 5, Against 0, Abstentions 1.

Motion agreed to,

That the Net Zero, Energy and Transport Committee recommends that the Deposit and Return Scheme for Scotland (Designation of Scheme Administrator) Order 2025 [draft] be approved.

The Deputy Convener: The committee will report on the outcome of our decision in due course. I repeat that I propose to wrap consideration of both instruments into one report. Again, do members agree to delegate to me the authority to approve the report's publication?

Members *indicated agreement.*

The Deputy Convener: I thank the cabinet secretary and her officials. I will suspend the meeting briefly to allow for a change of witnesses for our next item.

11:30

Meeting suspended.

11:34

On resuming—

Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2025 [Draft]

The Deputy Convener: Item 6 is consideration of a further draft statutory instrument. This instrument is laid under the affirmative procedure, which means that it cannot come into force until the Parliament approves it. The Delegated Powers and Law Reform Committee has drawn the instrument to the attention of the Parliament on the general reporting ground, in light of a misplaced footnote and the typographical error in the reference to the title of the principal order.

The acting cabinet secretary remains in her place. Her supporting officials for this item are Alex Brown, packaging senior policy adviser; Ailsa Heine, solicitor; and Haydn Thomas, producer responsibility unit head. Following this evidence session, the committee will be invited to consider a motion recommending that the instrument be approved. I remind everyone that Scottish Government officials can speak under this item but not in the debate that follows. I invite the acting cabinet secretary to make a short opening statement.

Gillian Martin: This year, we will be commencing the packaging extended producer responsibility—EPR—scheme. It will have a transformative effect on the packaging industry, impacting the packaging that we see on the shelves of our supermarkets and shops and the funding model for local authority recycling and waste management.

Packaging EPR will implement the polluter-pays principle and place responsibility for funding the collection and disposal of household packaging waste on to the businesses that produce it. The order that is before you will enable SEPA to use civil sanctions in relation to offences under the UK EPR for packaging regulations—the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024—which came into force on 1 January 2025.

The order provides SEPA with access to civil enforcement measures, such as fixed and variable monetary penalties, rather than relying on criminal offences. It confers no additional responsibility on to SEPA but provides it with a wider range of enforcement powers to allow a flexible and proportionate response to offences. These powers will support the implementation of packaging EPR by ensuring that SEPA can take appropriate action against businesses that do not fulfil their obligations, enabling the correct funding to be available for local authorities and creating a level playing field for compliant businesses.

The Deputy Convener: Thank you.

Sarah Boyack: I have a couple of questions about the practical changes that the SSI will make. First, the cabinet secretary referred to the polluter-pays principle. What is the estimated income that will be generated for our local authorities in implementing this piece of work? Also, what are the estimated costs to SEPA of implementing these enforcement powers, and can it generate any income from this?

Gillian Martin: First, I thank Sarah Boyack for highlighting the fact that local authorities will get increased access to funding. The current estimate is that there will be around £160 million a year for local authorities to support the collection of household packaging waste. The payments will start in November 2025. That is a significant boost to waste management in Scotland at local authority level. I said in the earlier session that one of the positive things about this is that, over time, local authorities will be able to divert a lot of their efforts in waste reduction and the recovery of

materials into things that they may not formerly have had the scope or capacity to do.

The other aspect, of course, is the inevitable change that this will make to types of packaging. Packaging producers will be innovating in this space, and I am very hopeful that they will reduce the amount of packaging associated with household goods.

Sarah Boyack: I want to put on the record what that means in practice. Is it moving from plastics to cardboard or reducing packaging entirely?

Gillian Martin: That is a really interesting question. Packaging producers and producers of household goods will be discussing how they can reduce the carbon footprint that is associated with their packaging. I cannot determine what is going to happen. It will happen in the private sector, where there will be innovation. EPR has been put in place because we have not seen enough reduction in the amounts or types of packaging. It will be exciting to see what our supermarkets look like after five to 10 years of implementation. Hopefully, they will look very different.

We are already seeing some of the packaging associated with household items changing in anticipation, with the use of cardboard over plastic and a reduction in overpackaging—that is certainly my experience as a consumer.

We have given SEPA powers to impose three different civil sanctions. It will not require any increase in capacity, because we are just giving it the powers to impose the sanctions: a fixed monetary penalty that is set at either £300, £600 or £1,000 depending on the nature of each offence and whether it has been designated as low, medium or high; and a variable monetary penalty that is equivalent to the maximum fine that could be imposed on a summary conviction, which is £10,000. We have given SEPA the powers and, in our discussions with it, we have not seen that any increase in capacity will be required. To my knowledge, SEPA has not made any ask of Government in that regard.

Mark Ruskell: On that last point, I am struggling to see—given the breadth of different product categories and retailers and everybody who would be involved in this—how SEPA's current capacity is adequate because, presumably, there will be a need for investigations. This is not just about issuing fixed-penalty notices. It is about the investigatory work.

I am thinking about the example of the single-use packaging regulations that have come in. I still see polystyrene containers being used by takeaways and other shops in my community. I do not think that that is allowed but, clearly, the fact that it is still happening suggests to me that there is already a gap in SEPA's research and enforcement work, and this is an order of magnitude bigger than that. This is about all product categories, not just polystyrene takeaway containers. It covers a huge amount of product categories. I am struggling to understand how SEPA is going to enforce this with the capacity that it has at the moment, given that it already seems that it is not enforcing as much as it could.

Gillian Martin: I have just been reminded by my officials that I should have mentioned that the registration fees associated with EPR will cover any costs that SEPA has for investigation, which may or may not lead to the issuing of these fixed-penalty notices. I should have clarified that, of course, there is a cost associated with that, but it will be covered by the registration fees.

Scotland's environmental regulator has a number of functions. We have made sure that its resource positions it to lead on the new duties that are associated with EPR. We have just introduced fixed-penalty notices for single-use items as well, so it is at local authority level as well. Some of the issues that Mark Ruskell mentioned to do with the types of materials that are used for things such as takeaway items are for the local authority level rather than SEPA. This is for the regulator to deal with those that are registered as part of EPR.

A number of things are happening at local authority level. I understand that but, of course, if people are using materials that they should not be using, it is for the local authority to investigate.

Mark Ruskell: SEPA has said to you, "Yes, we will need an increase in capacity, but we do not need an increase in capacity beyond what we are going to get through the fees."

Gillian Martin: Yes. I should have clarified that. My official has clarified that, obviously, there are new duties associated with EPR and there are new fixed-penalty notices. There are also registration fees associated with EPR that go directly to SEPA, so I apologise for that comment—it was a bit misleading.

Mark Ruskell: It is a full cost recovery model.

Gillian Martin: Yes.

Mark Ruskell: Thanks.

The Deputy Convener: That concludes contributions from committee members.

Item 7 is a debate on the motion. I invite the acting cabinet secretary to move motion S6M-17471.

Motion moved,

That the Net Zero, Energy and Transport Committee recommends that the Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2025 [draft] be approved.—[*Gillian Martin*].

The Deputy Convener: I invite contributions from members who want to raise any issues.

11:45

Sarah Boyack: One thing that strikes me here is that significant changes will be taking place, which includes new duties for local authorities and SEPA, but there is gap in relation to advertising the changes. How will our constituents know about them? We need there to be publicity, led by the Scottish Government, so that people will understand what is happening, because it will impact their everyday lives. The changes that the cabinet secretary has mentioned are pretty significant.

I would also like there to be monitoring and analysis of the registration fees that SEPA will receive. Although no concerns have been raised about that, that will enable us to see what practical change is taking place once delivery is under way.

Providing a lot more information on and giving a lot more publicity to the issue would be very much welcome.

The Deputy Convener: Okay. As no other member has indicated that they want to contribute, I invite the cabinet secretary to sum up and respond to the issues that were raised.

Gillian Martin: I will just briefly respond to Sarah Boyack. I appreciate her point. It is important that the public understands the changes that are taking place with regard to our joint efforts in progressing a polluter-pays principle and reducing the amount of associated packaging. I think that that is something that really exercises people.

The beauty of EPR is that consumers will not have to do anything. It is the producers that will need to act, and we hope that they will reduce the amount of packaging. Local authorities will get money for dealing with the packaging as well.

This is one of those instruments in which we are not necessarily asking for any behavioural change from consumers, but they will, I hope, see a big impact with regard to what they buy for their households. We all go into schools in our constituencies. Young people, who are concerned about litter, climate change and our carbon footprint, regularly bring up with me the amount of packaging on products that they and their families buy in shops. I am hopeful that this instrument will lead to a real change in that over the years to come.

The Deputy Convener: Okay. Thank you.

Motion agreed to,

That the Net Zero, Energy and Transport Committee recommends that the Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2025 [draft] be approved.

The Deputy Convener: The committee will report on the outcome of the instrument in due course, and I invite the committee to delegate authority to me, as deputy convener, to approve a draft of the report for publication. Do members agree to do so?

Members *indicated agreement.*

Public Service Vehicles (Registration of Local Services) (Local Services Franchises Transitional Provisions) (Scotland) Regulations 2025 (SSI 2025/137)

11:46

The Deputy Convener: Our eighth item is consideration of an SSI. The instrument was laid under the negative procedure, which means that it will come into force unless the Parliament agrees to a motion to annul it. No such motion has been lodged.

The Delegated Powers and Law Reform Committee has drawn an instrument to the attention of the Parliament on the general reporting ground for a minor drafting error in regulation 7(1)—the reference to “paragraphs (2) to (4)” should be a reference to “paragraphs (2) and (3).” Do members have any comments to make on the instrument?

Mark Ruskell: I very much welcome that this SSI has been introduced—it is the final SSI in a suite of regulations that are needed to introduce franchising. However, a number of questions arise from this and previous SSIs that need to be answered.

When the previous SSI came to the committee, the Government committed to getting back to us with more information about the guidance that would be produced. I do not think that we have seen that yet, so it would be useful if we could write to the Government to ask it where the guidance on franchising is.

It would also be useful to ask about the timescale for implementation. I am aware that Strathclyde Partnership for Transport might be making a decision in September about whether to go down the franchising route, so I would be concerned about any delay in the production of guidance delaying that process. We are already quite delayed in Scotland compared with many of the mayoral authorities in England that have already taken advantage of the legal changes there and have gone down a franchising and municipalisation route. More information from the Scottish Government on that would be useful.

I am also aware that SPT has raised a range of concerns about the risks that are associated with the suite of franchising regulations. It would be good to reflect those concerns in a letter to the Government and to get a response from it on those concerns at this point, given that SPT is preparing for a potential decision to go down that route in September.

I feel that there are a couple of loose ends that it would be worth this committee following up on with the Government—its commitment to us on guidance and our raising with it a few of the concerns that have come out of SPT's considerations.

Beyond that, I am happy for the instrument to come into effect and that we have the legal basis to allow bids for franchising to be developed.

The Deputy Convener: You have made a number of reasonable points, and we should write to the Scottish Government to ask it for an update on those. I am happy for us to do that.

Sarah Boyack: I very much agree with Mark Ruskell's points. The committee's evidence sessions on the topic in previous weeks have been useful in considering how to make buses more accessible and affordable, and even in relation to whether services should exist. Important opportunities come from franchising. One thing that is quite helpful is the reference to the requirements for transport authorities to have time to ensure that services are retained for passengers in the event of operators reducing or withdrawing their services before a franchise framework comes into operation. That is an important provision.

For me, part of the issue is about the sheer length of time that the franchising process will take. The requirements are too onerous. The process needs to be simplified—it is too complex and too time consuming. Compared with the process in England, there are a lot more requirements placed on any authority that wants to use the franchising process, and that is not helpful.

I very much agree with Mark that the statutory guidance must be issued as soon as possible. I know that Strathclyde Partnership for Transport is looking at franchising, although I understand that it is not a cheap process; it could cost it £15 million. We need to make progress. However, we also need a reality check, because it could be 2030 before we see bus franchising in Scotland. That means that people will not get the bus services that they need. Although I support franchising, much more needs to change.

I thank the Get Glasgow Moving team for raising that issue with me, to make sure that we focus on making this possible for the benefit of our constituents, because the timescale for this happening is way off into the future.

Douglas Lumsden: I briefly want to agree with Mark Ruskell—I, too, am in favour of writing to the Government to ask where the guidance is. I do not know what the next step would be after that, considering that the Government committed to issuing the guidance at the end of 2024. I just wonder what the next step would be to try to make the Government honour that commitment, convener.

The Deputy Convener: Does the committee agree that we should write to the Scottish Government on the matter?

Members *indicated agreement.*

The Deputy Convener: I suspect that any next steps will depend on what we get in response to our letter. It would then be for the committee to decide on what to do, such as whether it wants to call the Cabinet Secretary for Transport before the committee or to hold a wider evidence session.

In the meantime, we will write to the Scottish Government and ask for ministers to respond.

Does the committee agree that it does not wish to make any recommendations in relation to the instrument?

Members *indicated agreement.*

The Deputy Convener: Thank you. We will now move into private session.

11:55

Meeting continued in private until 12:10.

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