

# **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE**

Tuesday 16 November 2004

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2004.

Applications for reproduction should be made in writing to the Licensing Division,  
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ  
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate  
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

---

# CONTENTS

Tuesday 16 November 2004

Col.

TRANSPORT (SCOTLAND) BILL: STAGE 1 .....	1397
--	------

---

## LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

25<sup>th</sup> Meeting 2004, Session 2

### CONVENER

\*Bristow Muldoon (Livingston) (Lab)

### DEPUTY CONVENER

\*Bruce Crawford (Mid Scotland and Fife) (SNP)

### COMMITTEE MEMBERS

\*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

Dr Sylvia Jackson (Stirling) (Lab)

\*Michael McMahon (Hamilton North and Bellshill) (Lab)

Paul Martin (Glasgow Springburn) (Lab)

\*David Mundell (South of Scotland) (Con)

\*Tommy Sheridan (Glasgow) (SSP)

\*Iain Smith (North East Fife) (LD)

### COMMITTEE SUBSTITUTES

Bill Butler (Glasgow Anniesland) (Lab)

Colin Fox (Lothians) (SSP)

Mr Bruce McFee (West of Scotland) (SNP)

Mr Brian Monteith (Mid Scotland and Fife) (Con)

John Farquhar Munro (Ross, Skye and Inverness West) (LD)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Bill Barker (Society of Chief Officers of Transportation in Scotland)

Howard Brindley (Highlands and Islands Strategic Transport Partnership)

Frazer Henderson (Scottish Executive Enterprise, Transport and Lifelong Learning Department)

Grahame Lawson (Society of Chief Officers of Transportation in Scotland)

Caroline Lyon (Scottish Executive Legal and Parliamentary Services)

Tom Macdonald (Scottish Executive Enterprise, Transport and Lifelong Learning Department)

Councillor Duncan MacIntyre (Highlands and Islands Strategic Transport Partnership)

Councillor Gordon Mitchell (Highlands and Islands Strategic Transport Partnership)

Jonathan Pryce (Scottish Executive Enterprise, Transport and Lifelong Learning Department)

Laurence Sullivan (Scottish Executive Legal and Parliamentary Services)

### CLERK TO THE COMMITTEE

Eugene Windsor

### SENIOR ASSISTANT CLERK

Alastair Macfie

### ASSISTANT CLERK

Euan Donald

### LOCATION

Committee Room 1



## Scottish Parliament

### Local Government and Transport Committee

*Tuesday 16 November 2004*

[THE CONVENER *opened the meeting at 14:04*]

### Transport (Scotland) Bill: Stage 1

**The Convener (Bristow Muldoon):** I call today's meeting of the Local Government and Transport Committee to order. The main item on the agenda is stage 1 consideration of the Transport (Scotland) Bill and, as is normally the case with an Executive bill, our first panel of witnesses consists of representatives of the Scottish Executive. I welcome to the committee Jonathan Pryce, who is the head of the transport strategy and legislation division; Frazer Henderson, who is the bill team leader; Tom Macdonald, who is the head of the bus and taxi policy branch; and Caroline Lyon and Laurence Sullivan, who are solicitors with the Executive.

I will give Jonathan Pryce the opportunity to introduce the bill, but I indicate to the witnesses that, when we get to the questioning, we intend to take the three parts of the bill separately. We will start by asking questions that relate to transport partnerships, move on to questions that relate to the road works aspects of the bill and, finally, ask questions on the issues in the miscellaneous part of the bill, including concessionary travel. I invite Jonathan Pryce to make some introductory remarks.

**Jonathan Pryce (Scottish Executive Enterprise, Transport and Lifelong Learning Department):** I thank the committee for inviting us to give evidence today. We are pleased to have the opportunity to set out the provisions of the bill and give the background to it.

First, I will give a little of the history of how we have got to where we are today. The main policy provisions were set out in May 2003 in the partnership agreement, which outlined the principles that would guide the partnership in developing and implementing its transport policies in Scotland. The partnership agreement was followed in September 2003 by the consultation paper "Scotland's Transport: Proposals for a New Approach to Transport in Scotland", which set out a range of options on the establishment of a national transport agency and stronger regional delivery bodies. That consultation process was augmented by a national conference in November 2003, at which delegates from all areas of

transport had an opportunity to influence the policy development directly. In 2003, we also conducted a consultation on utility road works and, earlier this year, we consulted local authorities and harbour authorities on simplifying the procedures relating to pedestrian crossings and harbour orders.

Bringing all that consultation together, we published "Scotland's transport future: The transport white paper—June 2004", which pretty much set out the framework for the bill. As the convener has mentioned, the bill makes substantive provision in three significant policy areas: the regional partnerships, utility company road works and powers for Scottish ministers to run the concessionary travel schemes that are in hand.

It is also worth noting that we are in the midst of a consultation on the detail of the regional transport partnership provisions. The consultation paper—"Scotland's Transport Future: Proposals for Statutory Regional Transport Partnerships", which we launched on 27 October—goes into detailed aspects of regional partnerships. The consultation period will run until the middle of January. Once we have had the feedback from the consultation, we intend to provide the committee with draft illustrative orders that will enable committee members to see what the secondary legislation will look like—the committee will be able to consider that in skeleton form at stage 2.

We would be happy to answer detailed questions on the provisions in the bill. I will speak mostly about regional partnerships; Frazer Henderson will deal with road works; and Tom Macdonald will deal with bus provisions and concessionary fares. We also have with us the two solicitors who have worked closely with us on the bill's development, if members have any technical legal questions.

**The Convener:** Thank you for those introductory remarks. Fergus Ewing will open the questions on part 1 of the bill.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Jonathan Pryce mentioned that a consultation, the remit of which is to consult on

"the development of the precise boundaries, constitution, functions and financing of the new Transport Partnerships",

was launched on 27 October. Would it not have been better for the Parliament to start considering the bill after that consultation was over, so that we had some idea of what the boundaries, constitution, functions and financing of the partnerships are to be? We are debating a bill that, in that respect, is little more than an enabling bill.

**Jonathan Pryce:** In response to that, I would say that the consultation paper sets out proposals on—and, in the main, puts forward the Scottish

Executive's view on—how to progress the regional transport partnerships. Nevertheless, it is important that we get feedback from that consultation and that we are able to bring the results of consideration of that feedback before the committee. We certainly hope that we will be in a position to do that at stage 2.

**Fergus Ewing:** Would we not be better off having that feedback before we spend time examining the bill, which will be our prime role as a parliamentary committee for the next several weeks? Why does the Executive not withdraw the bill and bring it back when we know what the boundaries, constitution, functions and financing of the partnerships will be?

**Jonathan Pryce:** The key thing is that all the matters that we are considering in the consultation paper will be the subject of the secondary legislation. The bill's primary provisions are in front of the committee now and are open to the committee's consideration.

**Fergus Ewing:** I appreciate that the decision was taken by a minister rather than by a civil servant, so it is perhaps difficult for Mr Pryce to answer my question precisely. The responsibility rests with ministers. However, I remember that the last bill that contained so many provisions for making subordinate legislation was the one that dealt with individual learning accounts, which came to a sticky end, as far as I recall.

I have a specific question about one of the few things that we know about the regional transport partnerships. Section 1(2) makes provision on their membership. It states that they should include

"a councillor (but only one councillor)"

from each council area. Is that not likely to lead to a situation in which a majority party in Scotland—let us have a wild guess and say the Labour Party—will just appoint a councillor from every council that it is likely to control? If that is the case, the fact that only one councillor from each council can be appointed will mean that the partnerships run the risk of being seen as no more than Labour quangos that herald a new age of Labour cronyism. Is that not a danger?

**Jonathan Pryce:** The bill makes provision for only one council member per local authority on the partnerships because the policy intention is that the regional partnership boards should be lean bodies that are capable of having focused and structured discussions and decision-making processes. That is what drives the proposal that there should be only one councillor per local authority on the partnerships.

**Fergus Ewing:** You must accept that there is at least a danger that, with one nominee per council,

a dominant party will be able to ensure that the representatives on each of the regional partnerships are from that party, which will mean that the partnerships become seen as being dominated by party-political interest.

**Jonathan Pryce:** I would not like to speculate on what the final political balance would be, but we recognise that there could be an issue of political balance. The minister has acknowledged that and has said that it is something that he will want to consider further when he talks to the regional partnerships around the country. However, he has made it clear that he would like to hold to the principle that there should be only one voting councillor per local authority on the regional partnership boards.

**The Convener:** I have a question to ask on the back of Fergus Ewing's, although it is perhaps not as overtly political as his was. Some of the proposed partnerships are relatively small in terms of the number of member authorities. For example, only two member authorities are proposed for the north-east regional transport partnership, which suggests that the number of people on the partnership would be limited. There would be only two councillors and—because two thirds of the places are allocated to councillors—there would be only one other person serving on the partnership. Is that interpretation correct?

14:15

**Jonathan Pryce:** In the scenario that you describe for the north-east, it is possible for there to be two external members as well as two councillors, because each council could have more than one vote. The provisions of the bill are designed to ensure that at least two thirds of the partnership's voting weight comes from councils. In the north-east, it is possible to envisage Aberdeenshire Council and Aberdeen City Council each having one councillor member with two votes and there being two external members with one vote each. It is a relatively complex arrangement to work through.

**The Convener:** A fairly limited pool of people would still be responsible for taking decisions in the partnership.

**Jonathan Pryce:** Yes. That is the way in which we have framed the legislation and the way in which we envisage the system working. It is possible—indeed, likely—that non-voting members would also attend board meetings. In that circumstance, the two councils might wish to send along other non-voting representatives as observer members.

**Fergus Ewing:** The members who are not councillors would be appointed by the Executive, subject to the Parliament's approval. Is that correct?

**Jonathan Pryce:** In the first round of appointments, it is intended that the Executive will consult the local authorities that make up regional transport partnerships. Thereafter, appointments will be made by the partnerships, subject to confirmation by Scottish ministers.

**Fergus Ewing:** So the Executive has the power to appoint external members. That seems to increase the general risk of politicisation.

I return to the answer that you gave to my previous question. You stated that the minister is aware of the problem that I identified and that he is minded to consider it, so it must at least be possible that some change will be proposed. Is the minister contemplating changing the provisions relating to the constitution of regional transport partnerships?

**Jonathan Pryce:** At the moment, it is difficult for me to say whether there is any likelihood of a change. I explained that the minister was keen to retain the one council, one member arrangement for partnership boards—the element that is specified in the legislation. There is no intention to make a change, but the minister accepts that there is an issue of political balance. We need to consider whether that can be addressed in another way.

**Fergus Ewing:** I think that I am right in saying that Strathclyde Passenger Transport does not support the provisions relating to membership of regional transport partnerships. Is that your understanding?

**Jonathan Pryce:** We are discussing a number of issues with staff of Strathclyde Passenger Transport.

**Fergus Ewing:** I had the benefit of meeting representatives of SPT this morning. Would you not say that one of the body's advantages is that it includes at least an element of representation from different parties?

**Jonathan Pryce:** That is the way in which the Strathclyde Passenger Transport Authority is made up at the moment. We are proposing something different.

**The Convener:** I want to bring in a couple of other members, but I will come back to Fergus Ewing later.

**Bruce Crawford (Mid Scotland and Fife) (SNP):** Mr Pryce, I hope that you will accept that some committee members are a wee bit concerned that we may be discussing some of the material a little prematurely given that we do not have all the facts about how the boundaries, constitutions and functions of the new transport partnerships will work in practice. You conceded that those issues are out for consultation at this stage.

From paragraphs 12 and 16 of the policy memorandum and from what you have said, it is clear that a considerable amount of secondary legislation will be required. A lot of the bill seems to be predicated on the need for orders, some of which seem to provide the minister with wide and strong powers over the process. As we all know, difficulties can arise if orders are made under the negative and not the affirmative procedure.

In particular, section 2 on the dissolution of RTPs says:

"An order under this section may modify any enactment."

Again, section 10 allows the minister to use order-making powers to do anything that he likes to an RTP. The way in which the bill is drafted gives the Parliament problems in terms of scrutiny, transparency and understanding the process. As you said earlier, a lot of the material will not come together until stage 2, when you say that we will see it in skeleton form. Do you accept that the Parliament does not have the overlay of legislation that it requires to be able properly to scrutinise the bill?

**Jonathan Pryce:** The consultation paper is before the committee, so members can see in outline the Executive's proposals, including its boundary proposals. Our hope is that the Parliament will be able to see rather more detail in the audits at stage 2.

You make a good point about the Parliament's ability to scrutinise some of the strong powers that Scottish ministers will be able to exercise through secondary legislation. However, many of the orders made under the powers will be subject to the affirmative procedure. That means that the orders will come before the Parliament for approval. In particular, I am thinking of the constitution order under which the partnerships will be set up and the boundaries defined. There will be an opportunity for the committee and the Parliament to approve the make-up of the regional partnerships even after the bill has completed its passage through the Parliament.

**Bruce Crawford:** I hope that you will accept that the subordinate legislation affirmative procedure can never be as robust as the bill process. For example, the timescales that are involved in the order-making process do not allow for our taking evidence from witnesses.

You will have to forgive me for saying that it will hardly help us if skeleton orders are introduced at stage 2. That will not assist us in our significant evidence taking at stage 1 on constitutional issues, boundaries, functions and financing. By stage 2, the Parliament is getting down to the hard work of line-by-line change. Because we do not have the overlay of the legislation at this stage, we do not have the level of detail that we require,

which makes this feel like a premature stage in the process.

**Jonathan Pryce:** The only way I feel that I can respond to that is by giving the example of the boundaries. The consultation document includes a set of boundaries and I would entirely expect members to express views on them during the process.

**Bruce Crawford:** Are you are saying that, if we wish, civil servants will come back before the committee to give evidence on boundaries, constitution, functions and financing? If we are to go through the process properly, where does that leave us in terms of the timetabling of the bill?

**Jonathan Pryce:** The minister will come before the committee towards the end of the stage 1 process. There will be an opportunity at that point to raise issues that members might have encountered in their evidence-taking sessions.

**Bruce Crawford:** Okay. There are other issues that I would like to raise, but I will do so later in the meeting.

**David Mundell (South of Scotland) (Con):** I have a specific question about the boundaries. What criteria have you used to divide Scotland into the regions for the purposes of part 1 of the bill?

**Jonathan Pryce:** Although the consultation paper sets out some of the considerations that we took into account, it is fair to say that we have largely tried to build on the four existing voluntary regional partnerships and to reflect their current division of Scotland. For example, we reflected the fact that, in central and Tay regions, Angus and Dundee are not members of any voluntary partnership by proposing a new partnership, which will include some of the existing south-east Scotland transport partnership authorities. Our fundamental approach to developing the boundaries has been to take the best of existing practice but to ensure that the whole of Scotland is covered by partnership areas.

**David Mundell:** Although Dumfries and Galloway has had contact with the west of Scotland transport partnership in the past, it does not really fit into any of the existing areas and it might not wish to become part of WESTRANS. However, under the strong powers of the bill, it will be required to become part of the regional transport partnership and will therefore have money requisitioned.

**Jonathan Pryce:** Dumfries and Galloway is a member of WESTRANS; it is not a member of Strathclyde Passenger Transport, but we should remember that some areas of other local authority members of WESTRANS are also not covered by SPT. The policy is that all Scottish local authorities should be a member of one or other partnership.

Like the rest of the country, Dumfries and Galloway has transport links with other authorities and it is reasonable that it should participate in a partnership with other local authorities.

**David Mundell:** So you would rule out any proposal to make Dumfries and Galloway a partnership area on its own. However, Dumfries and Galloway is a former regional council area. Given that you are using those criteria and that strategic framework in this exercise, why is it not capable of remaining an area on its own?

**Jonathan Pryce:** The current policy is that all local authorities need to be a member of a partnership. Under the bill, it is not possible for there to be a single local authority partnership.

**David Mundell:** Is it not a little unusual to require people to be part of a partnership? After all, a partnership should be about working together for mutual benefit instead of requiring people to be part of it and requisitioning funds from them to pay their dues.

**Jonathan Pryce:** It is certainly the intention that the local authorities in the partnership will work together. Obviously, that raises questions about funding arrangements and the extent to which local authorities are prepared to work together in partnership and by consensus. However, the proposals are underpinned by the presumption that the councils will take a consensual approach. The position of Dumfries and Galloway vis-à-vis the partnerships is pretty much as I have set out: under the policy, it needs to be a member of a partnership with other local authorities. However, we are aware of its reluctance to enter into such a partnership. I have no doubt that the authority will make that entirely clear when it responds to the consultation and will also let us know about which partnership would be the best one for it to go into if it were not able, as you say, to be in a partnership by itself.

14:30

**David Mundell:** I want to follow up the general point about requisitioning funding. Why has the Executive chosen that route rather than granting funds directly?

**Jonathan Pryce:** We acknowledge that requisitioning is not always popular with local authorities, but we have not found any other straightforward way of arranging funding that would retain the local democratic principle. The Executive could fund the partnerships directly, but at that point the member local authorities would be out of the funding and accountability loop. Our view was that on balance it was better to provide accountability through the local democratic process whereby the councils, rather than the Executive, were the paymasters.



**David Mundell:** On the accountability front, how will the process work? I refer to the WESTRANS example. I am a resident of Dumfries and Galloway and a council tax payer. How is having one councillor from Dumfries and Galloway on the WESTRANS board providing accountability?

**Jonathan Pryce:** That councillor will have weight in determining precisely what the partnership board's spending is and he or she will be accountable to his or her council and constituents. That is the link. A local democratic representative is on the board.

**David Mundell:** The councillor will not have weight if they have been outvoted by the other 13 councillors on the board.

**Jonathan Pryce:** That brings us back to the voting arrangements and the intention that councils should as far as possible work together and take a consensual approach.

**The Convener:** I have a couple of questions. First, if we assume that the bill is passed and the regional transport partnerships are established, would the partnerships, rather than local authorities, not be the appropriate bodies to hold powers in relation to the introduction or promotion of congestion charging, because they would be able to balance the interests of a whole region as opposed to those of an individual authority? Does the Executive have a view on that?

**Jonathan Pryce:** It will be possible for the partnerships, in consultation with the councils, to decide what functions they wish to transfer from the councils. The bill and the orders that will go with it will make the scenario that you describe possible. In certain parts of the country, congestion charging could be the responsibility of the regional partnership, but that will largely be a decision for the councils within the partnership to take. They would have to make a recommendation to Scottish ministers, who could then promote the order that would give effect to the recommendation. That is all part of the secondary legislation process of deciding what functions councils might want to transfer to regional level.

**The Convener:** Does the Executive have a view on whether that would be a desirable development?

**Jonathan Pryce:** Our view is that it is for the councils to make their own proposals about what functions should move.

**The Convener:** My second question relates specifically to what will become the south-east partnership in the SESTRAN area. I am aware that SESTRAN includes Forth Estuary Transport Authority as one of its members. How do you envisage the new south-east partnership relating to FETA?

**Jonathan Pryce:** It is perfectly possible for the arrangements to continue much as they are at the moment; FETA would not be a member of the partnership, but it could work closely with it. The detailed arrangements for FETA will depend on the outcome of the bridges review, which is on-going. A separate process is under way to look at the management of and operational arrangements for the toll bridges in Scotland. Options for change to FETA and the Forth road bridge will be considered in that context.

**Iain Smith (North East Fife) (LD):** I welcome the general intentions behind the regional transport partnerships, but I am slightly concerned about one or two of the things that I have heard today about the policy position. I am not entirely convinced—and I wait to be convinced by you or, later, by the minister—that the right approach is to say that every council must be a member of a certain regional transport partnership, even if it is not logical for it to be a member of that partnership. For example, it is not immediately obvious why Dumfries and Galloway Council needs to be in the same regional transport partnership as the greater Glasgow area.

Another issue is the central and Tay boundary. It is not entirely clear to me what the regional transport partnership requirements are between Arbroath and Crianlarich, for example. I am not comfortable with that as a policy initiative.

A specific point about Fife, which I have raised a few times, is the fact that Fife Council is being put into a regional transport partnership with the south-east. That makes sense for most of Fife, but there are clear links between other parts of Fife and the central and Tay area, yet they would not be part of that regional transport partnership. Can you comment on those issues?

**Jonathan Pryce:** Much as I wish that it were possible, I do not think that any drawing of boundaries will be perfect. No drawing of boundaries will satisfy every local authority and everyone who has an interest in the new partnerships and where their boundaries lie. There will always have to be some compromise when we draw a dividing line between parts of the country.

We have made it clear that we would consider splitting a local authority area; therefore, it would be possible to address the issue that you raise in relation to north-east Fife and its linkages to Dundee across the Tay bridge. Although we know that that is not something that Fife Council is keen on, if it told us that it felt that that was the best thing for its area, we would consider that. It is worth mentioning that, as things stand, there is a linkage between Dundee and Fife in the context of the Tay bridge joint board.

**Iain Smith:** Fife people such as myself never want to see Fife split for any reason. The point that I am making is that there is no flexibility in the policy or the consultation document: a council has to be a member of one regional transport partnership or another although, in most areas, there is going to be a significant overlap at the edges. Fife is a good example of that. Where would you draw the line between the part that would go with Dundee and the part that would come south to Edinburgh? That would be a difficult thing to do. I am not sure that there is enough flexibility in what is proposed at present to take such issues on board. The answer might lie in observer membership of partnerships, but that might need to be specified.

**Jonathan Pryce:** You make a very good point about observer membership for neighbouring partnerships where there is such clear overlap. We are faced with a situation in which we have to draw boundaries and ensure that every part of Scotland is in only one partnership because the partnerships are to be capable of carrying out executive delivery functions. They could take on some of the transport functions of their constituent local authorities; therefore, we need to know where the dividing lines lie. We do not have the luxury of saying that Fife can be in, for example, the city region planning arrangement for Edinburgh as well as the city region planning arrangement for Dundee.

**Iain Smith:** The consultation paper provides three models for the development of regional transport partnerships that would allow councils to start at the lowest level and work up to the top or, I suppose, vice versa. Is there any opportunity within that for a partnership to have different functions in different parts of its area? For example, the transfer of functions to the west and south-west partnership might be less relevant for Dumfries and Galloway Council than for the councils that are in the SPT area. Will partnerships have the opportunity to come to arrangements whereby different functions are carried out in different parts of their area?

**Jonathan Pryce:** It is not the intention that there should be any difference among councils within a partnership area on the degree of function that moves to the regional level. I will need to check whether such an arrangement would be possible under the bill as it is currently framed. However, we have not ruled out the possibility that management arrangements could change where particular functions are delivered. For example, for the west and south-west partnership, it might well be that all public transport functions might be vested in the partnership, but an agency or local-office arrangement could plausibly allow services in Dumfries and Galloway to be delivered locally rather than from the heart of the partnership area.

I cannot say precisely how such an arrangement would work, but the partnership could certainly explore those possibilities. That might meet some of the concerns that have been expressed this afternoon.

**The Convener:** I ask Bruce Crawford to keep his questions on part 1 as brief as possible so that we can move on to consider other parts of the bill.

**Bruce Crawford:** I recognise that dividing powers between councils and regional transport partnerships is a delicate balance to get right, given that local authorities have a legitimate democratic interest. However, some critics have said that the need for consensus and for partnership working will simply create toothless wonders without the real powers to do the job. An example of that is section 8, which deals with the duty of constituent councils and other public bodies in respect of transport strategies. The catch-all phrase "so far as possible" appears in every subsection of section 8. What consideration was given to providing the regional transport partnerships with more powers of direction so that the critics' "toothless wonder" tag could be lost?

**Jonathan Pryce:** You have certainly put your finger on the approach that we have adopted. The requirement to produce a regional transport strategy that is binding on the constituent local authorities provides the mechanism by which the regional transport partnership can provide significant direction to those local authorities.

The use of the phrase "so far as possible" in the drafting simply reflects the fact that we need to get the balance right. It reflects the reality, which is that the duty will bite on the constituent local authorities only in so far as that is possible. If there is a view that the duty should be stronger than that, we could certainly explore the legal possibilities.

**Bruce Crawford:** I also want to ask about the intention to establish the regional transport partnerships as bodies corporate. If I remember correctly, Scottish Water was established as a body corporate under the Water Industry (Scotland) Act 2002. I read in the policy memorandum about the suggestions that you have made for the make-up of those bodies corporate, such as having joint boards or following existing arrangements. Did you examine the possibility of creating a public sector company limited by guarantee, which would be a more innovative model?

14:45

**Jonathan Pryce:** We looked at a range of options for the new regional bodies—that was the subject of the consultation in September 2003. As I recall, we did not get a significant level of support

for the company option, although it is fair to say that we did not get a huge response on the best approach to take. We sought to take a bespoke approach, which is particularly suitable for transport, bringing together members from each local authority while ensuring that there is some external expertise.

**Bruce Crawford:** That could still happen in a public sector company. The organisation could have that membership but be formed differently. I will give an example to illustrate why I asked the question. If at some stage in the future we were to decide to have another bridge across the Forth because of congestion problems—I am not saying that that would be the right option—that would be extremely expensive. It would, no doubt, gobble up all the Scottish Executive's transport budget for some time. If, in the current environment and with the body corporate that you envisage in the bill, the regional transport partnership was the prime mover behind that, all that expenditure would score against public expenditure requirements. Am I right to say that if the body was a public sector company limited by guarantee, it could borrow from future years on the strength of its income from tolling or whatever, and that that would not score against public sector borrowing requirements? That would be a more innovative model and would release resources.

**Jonathan Pryce:** The financial question whether the sort of company that you describe would take expenditure off the balance sheet is complex. A complex analysis would be required to decide whether something would remain on the public sector balance sheet. I honestly cannot say whether the aim that you suggest would be achieved—it might. Under the proposed arrangements, it is open to a regional transport partnership to set up a company. It will have most of the attributes of a local authority and as it is possible for local authorities to set up companies limited by guarantee, it is perfectly possible that a regional transport partnership could do that. If there was a specific project of the nature that you describe, that option could be explored further.

**Bruce Crawford:** I understand the public sector model—for example, Perth and Kinross Recreational Facilities Ltd is a company limited by guarantee but that does not necessarily prevent it scoring against public expenditure. It would be useful if the Executive officials could take the suggestion away, put it through their complex mincer and come back to tell us whether it is feasible. The committee might want to examine the option further.

**Jonathan Pryce:** I do not think that something that was set up separately, outside the existing structures, would alter the balance sheet treatment, nor do I think that we could come back

to you and give you a confident assessment of whether something would be on or off the balance sheet, simply because that is really a matter for Audit Scotland. It would consider the matter if we came forward with firm plans and, in my experience, Audit Scotland considers such matters only once a body has been created. However, I am happy to reflect on that matter.

**Bruce Crawford:** With due respect, we will have to vote on whether the bill is satisfactory. Some members may think that another model would be more satisfactory, but we need all the evidence that we can get to allow us to decide whether to support the bill. There must be some compulsion on civil servants to discuss the matter with Audit Scotland, if that is required, and to present to us the full range of available options. After all, you have presented other available options. We are simply asking for an option that is not on the table at present.

**Jonathan Pryce:** You raise the general point of the extent to which such a body would be able to take its borrowing off the balance sheet. I am happy to explore that issue with my finance colleagues. However, at present, I am not confident that we will give you the material that you want.

**Iain Smith:** If Mr Pryce is going to do that examination, I ask him also to consider the implications for the accountability of the members of such a public company limited by guarantee—rather than a body corporate—to their nominating bodies.

**Fergus Ewing:** Am I right that the bill will impose a sole duty on the transport partnerships, which is to draw up a strategy for transport in their regions?

**Jonathan Pryce:** That is the single main duty that will be placed on the partnerships from the outset.

**Fergus Ewing:** Is it the sole duty in the bill as drafted?

**Jonathan Pryce:** It is the sole duty that the partnerships will get at the outset, except in the west of Scotland, where the policy intention is clear that the board of the partnership will get powers that at present lie with Strathclyde Passenger Transport.

**Fergus Ewing:** My question was whether it will be the sole duty in the statute—I think that the answer is yes. Is it correct that, under the Transport (Scotland) Act 2001, the Scottish ministers already have powers to require any body to prepare a strategy for transport and that the Scottish ministers could therefore require Highlands and Islands strategic transport partnership, WESTRANS and other such bodies to do that?

**Jonathan Pryce:** That is not the approach that we have taken.

**Fergus Ewing:** My question is whether the legal capacity exists for ministers to use the power—which I think is contained in section 1 of the 2001 act—to require any body that they want, including existing bodies that do good work such as HITRANS, to carry out the sole duty that will initially be conferred on the new regional transport partnerships under the bill.

**Jonathan Pryce:** I think that, under the 2001 act, ministers can require bodies to produce a joint transport strategy.

**Fergus Ewing:** I am glad for that clarification, because that is what I thought. I am left metaphorically scratching my head—as the public may be doing—and asking what the new bodies are for, what they will do and whether they will be talking shops. The estimated cost of the new bodies is £2.5 million, but are they necessary? Would we not be better sticking with the existing bodies and providing them, on a voluntary basis, with additional power or resources, if that is what is required? Why do we need the regional transport partnerships, at a cost of around £2.5 million?

**Jonathan Pryce:** The framework that is set out in the bill will provide not only a requirement to produce a regional transport strategy, but a duty on the constituent councils to co-operate with that strategy. I do not believe that that is part of the 2001 act.

**Fergus Ewing:** I see. Can you give, say, three examples of councils that are not co-operating at present and which have therefore led the Executive to introduce the new statutory model?

**Jonathan Pryce:** It would not be right for me to go into detail. However, it is important that councils should have to co-operate with the provisions that are set out in the regional transport strategy. That is not the way in which the existing joint transport strategies work.

**Fergus Ewing:** Are you not able to give us examples?

**Jonathan Pryce:** I would not like to give specific examples, but I am aware of instances of friction between local authorities in fulfilling their transport functions.

**Fergus Ewing:** I am not aware of any legislation that can abolish friction.

**The Convener:** We move on to part 2 of the bill, on road works.

**David Mundell:** I have asked about how many prosecutions there have been under the New Roads and Street Works Act 1991, but my questions were answered by the Scottish

Executive Justice Department, rather than the Enterprise, Transport and Lifelong Learning Department. What research have you done on the matter and why do you consider that the existing provisions have not worked adequately?

**Frazer Henderson (Scottish Executive Enterprise, Transport and Lifelong Learning Department):** To our knowledge, there have been no prosecutions under the 1991 act. Why that is the case is a matter for procurators fiscal.

**David Mundell:** I do not agree, because there is a wider issue. Elaborate provisions currently govern the digging up of roads throughout Scotland, but the anecdotal evidence is that the public do not regard the situation, since the passing of the 1991 act, as satisfactory and no one has been prosecuted for being in breach of the act's provisions. How can we be confident that additional legislation will make the situation better?

**Frazer Henderson:** You will be aware that the bill would uprate the level of fines from level 3—the current level, which is £1,000—to levels 4 and 5. If a summary offence occurs, procurators fiscal might take a different view about prosecuting the offence vis-à-vis other offences that they must consider—I am not trying to second-guess how procurators fiscal would address the matter. We considered the offences, in particular administrative offences, and identified four offences under the 1991 act that we thought might more appropriately be dealt with by fixed-penalty notices.

**David Mundell:** Do you understand my difficulty? No one has been fined under the existing provisions, so it cannot be argued that people disregard them because they are too lenient. Simply to change the provisions will achieve nothing unless they are enforced. Surely the first step should be to enforce the current provisions, rather than to introduce new measures.

**Frazer Henderson:** I note your comments.

**The Convener:** Perhaps we can develop the point. Mr Mundell asked about prosecutions, but the Executive intends the bill to reduce inconvenience caused by congestion and to address matters such as the quality and safety of reinstatements. Many utility companies contend that the congestion that is caused by road works that they initiate is not huge in relation to the overall congestion on Scottish roads. Has there been a statistical analysis of the scale of the problem? What impact would the bill be likely to have?

15:00

**Frazer Henderson:** There are common figures for congestion. It is estimated that 65 per cent of

congestion is caused by the sheer volume of vehicles on the road. A further 25 per cent is caused by incidents, which could range from people double parking to serious accidents. That leaves 10 per cent, which is caused by road works of all types.

The utility companies directly cause about 6 or 7 per cent of congestion on the roads. That congestion can take many forms. Around 88 per cent of it is due to roads being narrowed so that work can be undertaken. A further 10 per cent is due to shuttling services where traffic lights have to be put up and traffic has to be constrained; such congestion and its social cost is therefore much greater. The remaining 2 per cent is due to diversions that are put in place when it is just not feasible to put in a shuttling service. Those are the figures, and I do not think that any of the utility companies would demur from them. Such road works probably cause around 6 to 7 per cent of all congestion.

**The Convener:** Working on the assumption that much of the work that is currently going on will still be undertaken after the laying of new regulations, what impact do you anticipate that the bill will have on reducing the amount of congestion attributable to the actions of utility companies?

**Frazer Henderson:** We are seeking to improve the co-ordination and co-operation between utility companies and road works authorities. It is very difficult to estimate the likely reduction in congestion because that will depend on the manner in which all parties co-operate in implementing the planning requirements.

We estimate—I think that this is mentioned in the financial memorandum—that even a relatively minor reduction in congestion will generate a business benefit of millions of pounds. The figure that we quoted is that congestion caused by road works by the utility companies and the road works authorities cost the United Kingdom economy around £2.4 billion. Even a 10 per cent reduction on that figure is substantial. That is the sort of figure that we are thinking about, but, as I say, we have no figure in mind for the likely reduction.

**Fergus Ewing:** Your evidence so far seems to be proffered on the assumption that all road works are occasioned by the utility companies, but that is obviously not true. What proportion of the total is caused by the utility companies?

**Frazer Henderson:** It is difficult to get a figure for that. One of the reasons for that is that the Scottish road works register, which contains details of road works, does not contain all information sets. We are seeking to redress that situation so that all information will be placed on the register. Once that happens, we will be in a better position to identify which road works are

attributable to utility companies and which are attributable to road works authorities.

Anecdotal evidence—and that is all that it can be because we do not have the complete information set—is that the split could be 70:30. I am talking about 60 to 70 per cent of road works being caused by the utility companies and 30 to 40 per cent being caused by the road works authorities. However, as I said, that is purely anecdotal.

**Fergus Ewing:** I think that we are going to hear from the national joint utilities group later. While I am no expert, I understand that it will dispute those statistics. If you do not have the statistics, how were you able to quote those percentages for the causation of congestion?

**Frazer Henderson:** The congestion figures were taken from a 1992 report by the Transport Research Laboratory. They were, I believe, based on a sample and on an extrapolation taken thereafter.

**Fergus Ewing:** So, at best, the statistic is 12 years old—and probably older.

**Frazer Henderson:** Yes, unfortunately.

**Fergus Ewing:** If the statistic is at least 12 years old, do you think that it is of any use now?

**Frazer Henderson:** I think that it gives an indication. Clearly, many changes have taken place over the intervening period—especially among the utility companies. For example, many more telecommunications companies have come on stream. More research needs to be done.

**Fergus Ewing:** I wonder whether you can clarify something that will help us when we take evidence from the national joint utilities group. I know that this issue has been considered during the consultation, because utility companies have already expressed their concerns to you. Am I right in saying that the bill will subject utility companies to civil penalties if they infringe the law? If so, should those penalties not be exacted from anyone who is responsible for carrying out road works but who fails to do so and infringes the law? Should there not be equal treatment for utility companies, local authorities and the companies responsible for trunk road maintenance? Are they treated equally in the bill?

**Frazer Henderson:** As you know, the bill amplifies the provisions of the New Roads and Street Works Act 1991. There is indeed an uprating in the penalties that will apply to utility companies. The Scottish road works commissioner can also apply penalties, through regulations, if utility companies are not co-operating in the provision of information to the register.

A different regime applies to roads authorities. Under the Roads (Scotland) Act 1984, they have a duty to maintain the roads. The Local Government Committee was instrumental in the Local Government in Scotland Act 2003. That act ensures that the roads authorities have to act in accordance with best value. They are therefore subject to the Accounts Commission. As they carry out their duty to maintain the roads, the roads authorities have to use statutory indicators, but they are also subject—as we have made clear in the bill—to direction by the road works commissioner, who can ensure that they co-ordinate their works with the works of the statutory undertakers. The commissioner can state what steps the roads authorities should take to ensure that co-ordination.

The commissioner therefore has clear intervention powers with the roads authorities and clear fining powers with the utility companies. Those fining powers are supplemented by codes of practice. We are trying to have balance in the bill by ensuring that measures are in place to encourage good practice. However, the fines are being uprated.

**Fergus Ewing:** I thank you for that answer, but it does not really address the question put. Everyone should be treated equally. If there is to be a system of fines, anyone who fails to carry out road works properly should be fined. The minister does not accept that view, or the legislation would not apply civil penalties only to utility companies.

I will put to you the rationale that has been put to me by some utility companies. They—whether it is Thus, or Cable and Wireless or British Telecom—have a commercial interest in ensuring that works are completed as quickly as possible, because until works are completed they cannot start charging their customers and receiving revenue. Utility companies have a direct financial interest in carrying out the works on time, rather than allowing a delay to occur. The local authority, however, does not have any obvious interest in ensuring that every road work is carried out on time, because there is no sanction. No obvious benefit will accrue to a local authority through ensuring that road works are carried out on time and that there is no infringement of the existing rules.

**Frazer Henderson:** The road works authority has a duty to maintain the roads, which are a public asset. There are provisions under the various acts that we have been speaking about whereby the Accounts Commission can come down hard on the local authority. As I understand it, there are also provisions for ministers to intervene directly with local authorities to ensure that they are pursuing best value under the Local Government in Scotland Act 2003.

**Fergus Ewing:** Does the Accounts Commission have the power to exact civil penalties? If so, has that power ever been used? Have ministers ever intervened?

**Frazer Henderson:** I am sorry—I do not know the answer to that question.

**Fergus Ewing:** Perhaps we could find that out. There seems to be a two-tier system—it is road works apartheid. Utility companies will be fined. They will be hounded and pursued. Meanwhile, local authorities are subject to no sanctions at all. How can that make sense? Surely there should be one rule for all and, if the public want road works to be carried out properly and promptly, there should be one regime to which everyone is subject. Surely that is fair and easy to explain, and that is what we should have before us.

**Jonathan Pryce:** We are indeed looking at a bill that does not put the utility companies on the same basis as the road works authorities. That is inevitable, as the road works authorities are the owners of the asset. They are the owners of the road and, as Frazer Henderson said, they have a statutory duty to deliver best value and to ensure the smooth operation of the traffic on those roads. The incentives for the utility companies, strong though they may be, are rather different. Because of that aspect, the road works authorities and the utility companies have a different background to their reason for being on the road and carrying out road works. The bill is not just about the carrying out of the road works; it also places a duty on the road works authority to co-ordinate the works that take place on its roads.

**Fergus Ewing:** Are the road works authorities liable—and have they been liable—to enter details of road works on to the Scottish road works register?

**Jonathan Pryce:** Yes.

**Fergus Ewing:** Have they done so?

**Frazer Henderson:** Yes, some have done so. As I mentioned at the outset, we want to ensure that all information sets are placed in the register by all parties, so that we have a complete record.

**Fergus Ewing:** So some road works authorities have not done so. Could you be more precise, perhaps in a letter to the committee, about the facts on this matter?

**Frazer Henderson:** We can give you information about the notices that have been applied on the register for the past year.

**Bruce Crawford:** This is an intriguing area. Who will be fined and who will not be fined? If I have understood you correctly, the road works authority and the local authority cannot be fined because they are responsible for and own the

road, and the Scottish Executive is in the same boat, because it owns the trunk roads. Where does that leave BEAR Scotland or any of the other premium providers? They are not the owners but are simply discharging a duty on behalf of the Executive. Will it be possible for them to be fined? It seems that we need to explore this area a bit more.

While we are at it, could you tell us the number of occasions on which the Accounts Commission's powers have been used against local authorities? If you cannot tell us that today, it would form useful follow-up information.

15:15

**Jonathan Pryce:** We cannot answer on the latter point today. As I understand it, the bill's provisions will apply to the organisation that has responsibility for the road works. In other words, the Scottish ministers are accountable for any works on the trunk road network and, as you say, BEAR Scotland and Amey Highways are simply acting as our agents in carrying out the work.

**Bruce Crawford:** The Scottish Executive will not be playing on the same playing field as the utilities because it will in effect have an opt-out from being fined. You would perhaps not use the term "opt-out", but you know where I am coming from with that terminology.

**Jonathan Pryce:** That is exactly what I was going to say; I would not think of it as an opt-out. The Scottish ministers have a responsibility to ensure the smooth operation of the trunk road network, want to ensure that at all times and therefore seek to minimise any disruption.

**Tommy Sheridan (Glasgow) (SSP):** I will pursue the idea of the proposed Scottish road works commissioner. My impression from surgeries that I have held over the years as a local councillor and as an MSP is that the big complaint from the public is about the amount of road works and the number of different companies that do them. Constituents ask why, rather than the road being dug up again and again, it cannot just be dug up once and have everything done then. My worry is that the commissioner might not have the resources and power to act as an overarching agent for all the work. Although there is pressure on private sector companies to get the job done as quickly as possible, there is not enough pressure on them to ensure that they put the road back into the condition in which they found it, and that is a major problem. Local authorities also have pressures on budgets for the equipment that they have to hire for road works, and that makes them try to get the job done quickly. I ask you to assure us that the commissioner will be properly resourced and will have the powers to stop the

fiasco of several pieces of road being dug up at different times over the course of 12 or 24 months to the annoyance and inconvenience of ordinary people. I think that there are weaknesses in the plan, but I ask you for that assurance.

**Jonathan Pryce:** I will ask Frazer Henderson to respond on the detail of the powers that the commissioner will have. The bill provides significant powers of direction for the road works commissioner, which should improve matters considerably.

It is not our intention to create a new body and not resource it. The resourcing will be considered more fully further down the line, but it would not be sensible for us to create a new body and not enable it to get on and do its work.

**Frazer Henderson:** The statutory register that we mention in the bill—the Scottish road works register—will be the principal tool for undertaking the co-ordination activities that your constituents constantly state are lacking. Under the auspices of the commissioner, it will be the principal way that we ensure that we get proper co-ordination and co-operation between road works authorities to minimise the impact of road works throughout Scotland. That is the ultimate aim and we are providing a planning tool to achieve it.

**Tommy Sheridan:** If there are future problems in local authority areas, the commissioner, rather than local authorities, will be responsible for solving them. Will the commissioner have the authority to be able to bridge the gap between the local authorities and the private utilities?

**Frazer Henderson:** We think of the commissioner as an overarching corporate body that will bring the utility companies and the road works authorities together using the register as the principal planning tool. By reference to that planning tool and the information that it contains, the commissioner will ensure that quality is maintained. I think that the bill refers to at least eight occasions on which the commissioner can resolve disputes between the road works authorities and the utility companies with the aim of smoothing through better co-ordination of road works, which is what your constituents have said that they want.

**Iain Smith:** I do not think that anyone would argue that the 1991 act is working satisfactorily. I can give a good example from my constituency. Work under a contract to replace water mains along the High Street in Newburgh was meant to take six months, but it took 18 months and caused great disruption for the community and businesses. Even when the work was completed, the reinstatements were not done to a satisfactory standard, which meant even more disruption to the local community while things were fixed. How will

the bill help to prevent such things from happening again?

**Frazer Henderson:** One of the major irritations with major water mains going in is that substantial works are required, but provisions in the bill mean that road excavations for substantial works cannot occur again within three years. That said, the emphasis is on all utility companies co-operating and co-ordinating activities in such a manner that roads are not constantly being opened.

I do not want to talk about the specifics of the case that you have mentioned, as I do not know the details, but if a utility company has stated that it will take X period of time to undertake works, that will be placed on the register and the road works authority will be aware of it. I can only assume that something untoward must have happened that caused the road works to go beyond the specified period of time.

**Iain Smith:** Nothing particularly untoward happened—there were simply bad contractors and there was bad management of the scheme. I had hoped that we would try to address such matters with the bill. Will the bill enable roads authorities to work to try to ensure that, when there is clear evidence of bad management of a scheme by contractors, roads authorities or the commissioner can take action to deal with that?

**Frazer Henderson:** The roads authority can currently take action if it thinks that there have been delays in any works that are taking place under the 1991 act. It can step in and undertake the work itself, and fine and/or invoice the relevant utility company for backfill, for example.

Through the bill, we hope that the commissioner will have access to the register in which all the information set will be placed and that the commissioner will be able to identify where there are quality issues from audit work and information that is provided to the commissioner by the road works authorities. The commissioner will then have powers under the bill to ensure that utility companies co-operate with road works authorities in providing information. If the information set is inaccurate, the commissioner will be able to step in and if there are quality issues, the commissioner will have wide-ranging powers to seek to address them with the utility company. We are seeking to improve the information sets that are available and to ensure that the commissioner has those available to him to undertake interrogation, audit and so on across a range of issues.

**Iain Smith:** I am not entirely convinced that you have answered my question. Information was available and people knew that work on the contract was taking three times longer than it should have taken and that the quality of work was not up to standard, but it still seemed impossible

for the roads authority to take sufficient action to resolve the problem because its powers were essentially limited to reinstatement issues. However, there was bad management and poor supervision of a contract by the utility company, which meant that the work took longer than it should have done. Is there anything in the bill that will mean that if utility companies say that they will take six months to do a job but go beyond that six months, something can be done to deal with the matter?

**Frazer Henderson:** I would like to reflect on that and come back to the committee on it. I want to check the details.

**Iain Smith:** I would be grateful if you could do that, because one of the fundamental frustrations of the public is when utility works take significantly longer than required and cause more disruption. There is no point having a street works register saying that a job will take six months if it takes 18 months. That would be of no value to anyone.

**Caroline Lyon (Scottish Executive Legal and Parliamentary Services):** The power may already exist in the 1991 act, but perhaps the road works authorities are not using it. The extended powers in the bill will mean that they will have to co-ordinate their works properly, which may be an incentive for them to use the powers in the 1991 act to avoid any unnecessary delay.

**Iain Smith:** With deep respect, I am not sure how the roads authority can do that if the failure is on the part of the utility company to supervise its contracts adequately. Surely the roads authority cannot take over the running of the contract, which is the central problem.

**Caroline Lyon:** Under the 1991 act, the road works authority has quite a wide power to take whatever steps are necessary

“to mitigate or discontinue the obstruction.”

**Bruce Crawford:** We will be getting quite a superhighwayman. The commissioner will promote good practice and co-ordinate co-operation, which I understand, and will ensure compliance, which may lead to enforcement and fixed penalties. If those penalties are objected to, court action will no doubt follow, which will involve substantial amounts of time. The commissioner will monitor the performance of statutory undertakers, I presume from Benbecula to Berwick and from Wick to Wigtown. It will be a big job for the individual, but I cannot reconcile that big job with the costs, which it is suggested will be in the order of £200,000 initially, with running costs of £160,000 thereafter. Does that mean that in effect the job will be done by the person and a dog, or will they have a substantial number of staff to underpin them? Monitoring the performance of statutory undertakers will be a job in itself, even



though we will get feedback from the roads authorities. If cases end up in court action to back up fixed penalties, a substantial amount of work will be required to ensure that the action is successful. We have the detail of what the individual will do, but I am concerned that they will not have the wherewithal to make it happen. Maybe you will tell me differently.

**Frazer Henderson:** You are right to identify that we are talking about figures of £160,000 and £200,000 to start with, which are for a commissioner plus a small staff unit. We envisage the commissioner working closely with the roads authorities and utilities committee Scotland—which, as the name suggests, is made up of various parties—to drive forward improvements. That committee currently has a key role in terms of the register. From the dealings that we have had with that committee, we know that it wishes to improve the situation to drive up quality and ensure that the register has more information. The commissioner will not be going against the grain. We are all moving forward together. Support will be available to the commissioner from within the utility companies and the road works authorities.

The picture that you paint—perhaps unintentionally—is that an awful lot will be happening and there will be a lot of disputes. I hope, and the minister hopes, that that will not be the case. We are putting in place provisions that will assist the road works authorities and the utility companies to achieve what they each wish to do. The utility companies want to provide a quality product and the road works authorities want to ensure that their assets are maintained at all times.

I note the concerns of the committee about resourcing. Clearly, we may need to reflect on that as issues come out at stage 1.

**Bruce Crawford:** I appreciate the grain of the argument. However, utility companies will realise that the Scottish road works commissioner has a lot of teeth but cannot bite, because he will not have the wherewithal to do the work, given that he will have a small staff unit and no inspectors or staff to process disputes with road companies about fixed penalties. The utility companies will say, “He might be a big scary man, but he cannot do much to me, so we will carry on doing what we are doing.”

**Frazer Henderson:** Regulations made under the bill could enable the commissioner to fine the utility companies.

**Bruce Crawford:** Let us tease that out. If a company objected to a fine imposed by the commissioner, who would do the case work and produce the evidence for the procurator fiscal? Would that be done by the commissioner and his small unit? Do you understand my point?

**Frazer Henderson:** I note it.

15:30

**David Mundell:** In light of Mr Henderson's previous answers, I ask that the clerk write to the Lord Advocate to ask for his view on why there have been no prosecutions under the 1991 act. Perhaps the Lord Advocate can tell us how many reports have been made under the 1991 act and why they have not led to prosecutions.

The evidence that we have heard has gone round in a circle. Iain Smith described a scenario that could have led to a prosecution under the 1991 act, as Ms Lyon clearly indicated, although it did not lead to one. I have listened to all the evidence, but I am still not clear about how the measures in the bill will lead to prosecutions. What purpose will part 2 of the bill serve if there are no prosecutions under the enhanced measures that it introduces? What is Mr Henderson's view on that?

**Frazer Henderson:** One of the commissioner's key roles will be to ensure that the road works authorities fulfil their duties, which include ensuring that the utility companies perform as they should in relation to the road works authorities' assets. Therefore, the commissioner will be likely to seek from the road works authorities information about the state of roads and about why the authorities might not be co-ordinating the works of utility companies or ensuring that those companies undertake their work in the manner that is expected of them.

**David Mundell:** That is an interesting reply. Basically, you are saying that you regard the local authorities as the problem, because they do not enforce the existing legislation. The purpose of the commissioner will be to gee them up. Is that right?

**Frazer Henderson:** One of the commissioner's principal roles will be to ensure that the provisions of the 1991 act and the bill that relate to road works are addressed.

**David Mundell:** Could the minister not do that? If local authorities are simply not enforcing the existing legislation, must we invent a new role in order for someone to tell local authorities to use the powers that they already have?

**Frazer Henderson:** One of the principal reasons for creating the role of Scottish road works commissioner is that we want to put the Scottish road works register on a statutory footing and we need a statutory body to keep the register. In addition to that, we identified deficiencies in the 1991 act—perhaps “deficiencies” is not the right word. Under the bill, the commissioner will take forward the monitoring, compliance and good practice elements that emanate from the use of the register as an information set.

**David Mundell:** I would like Mr Pryce to clarify a small matter in relation to Fergus Ewing's point about congestion. I understand that local authorities have a duty to maintain roads, but I am not aware of any provisions that place local authorities under a duty to minimise congestion, although that seemed to be the implication of what Mr Pryce said.

**Jonathan Pryce:** I am not suggesting that they have an explicit statutory duty to minimise congestion on the roads. However, given that they are the owner of the road and the traffic manager for that part of the local road network, in fulfilling their duties on best value they will want to ensure that the traffic flows smoothly on their roads.

**David Mundell:** Yes, but they do not have a specific duty to minimise congestion, do they?

**Jonathan Pryce:** Not that I can think of.

**The Convener:** Finally, do members have questions about part 3 of the bill, which deals primarily with national concessionary schemes, but includes a range of other measures?

**Tommy Sheridan:** In the interests of focus, I will leave out my question on the national concessionary schemes, because I am sure that other members will want to ask about them. I will ask about the support for the lifeline ferry services to our islands and, in particular, the repeal of the Highlands and Islands Shipping Services Act 1960. Has the Executive had discussions about exempting itself from the European Union state-aid rules, which it appears are being used as a justification for the repeal of the act? Has there been any discussion about challenging whether the rules should be imposed in relation to the essential ferry services to our islands? If that has been considered, what comparisons with services in other countries have been used?

**Jonathan Pryce:** There have been discussions with the European Commission about state aid in relation to the tendering of ferry services. From what the Commission has said, we are clear that there continues to be a requirement for the Executive to tender ferry services in Scotland. That comes out of the Altmark case, which was about whether a payment constituted state aid. The requirement for public tendering of ferry services stems from the maritime cabotage regulation, which has a different treaty base from the state-aid rules. The Altmark judgment itself does not affect the issue whether public tendering is required—the conclusion is that it is required.

**Tommy Sheridan:** I draw to your attention page 14 of the policy memorandum. The last sentence of paragraph 68 states, in connection with assistance to sea transport services in the Highlands and Islands:

"This sits uneasily with European Union State Aid rules which allow for access to markets, including State ferry subsidies."

I put it to you that, although you have just said that you are absolutely clear that there can be no avoidance of the imposition of the tendering rules, that is not what is stated in the policy memorandum. The statement that something sits uneasily with European Union state-aid rules is open to interpretation and further discussion. Is it not the case that, although the Executive would have a legal case to mount to protect the services in relation to state subsidy, it has not been willing to take such a case to court?

**Jonathan Pryce:** My colleague Laurence Sullivan will be happy to answer your question on the legal aspects.

**Laurence Sullivan (Scottish Executive Legal and Parliamentary Services):** The purpose of the change of effect of the 1960 act—and its linkage into the EU rules that are mentioned in the policy memorandum—concerns the procedure that the Scottish Executive has to go through in order to use the 1960 act, rather than the substance of EU state-aid rules, which section 39 of the bill does not affect in any way. Section 39 simply removes the effect of the 1960 act and uses instead the power in section 70 of the Transport (Scotland) Act 2001, which will make the procedure for supporting lifeline services easier.

**Tommy Sheridan:** I say with the greatest respect that we are not talking about that. I am perfectly aware that the cumbersome problems with the 1960 act—in relation to the level of aid that triggers an application and to the complexity and bureaucracy that are involved in that—must be removed. However, as you will know if you check page 13 of your policy memorandum, your

"policy is to continue to have a power, rather than a duty, for the Scottish Ministers to support such services."

The reason why we now have a power rather than a duty is that EU state-aid rules tell us that the duty to support those services must be circumscribed by the requirement to tender for such services.

I am asking whether the Scottish Executive has a legal case—who knows whether it would win? As you know, the basis of Altmark was that it was an arguable case. The French water situation involves another exemption that was sought from EU state-aid rules. Do we have a case for fighting for state-aid support as a duty for Highlands and Islands ferry services?

**Laurence Sullivan:** The 1960 act contains a power to fund lifeline services that is limited to the Highlands and Islands. Removing that provision and replacing it with the powers in section 70 of the 2001 act will extend the position, because the

1960 act has a variety of problems, which you noted. I am not in a position to comment in detail on the wider, complex issues of state aid and Altmark, because the substance of that argument does not affect what we do in the bill to change the procedures by which the Scottish Executive has the power to fund lifeline ferry services.

**Tommy Sheridan:** Are you saying that EU state-aid rules have nothing to do with the proposed changes in relation to Highlands and Islands shipping?

**Laurence Sullivan:** All EU state-aid rules apply to Scotland, as they do to the rest of the EU. I am saying that the removal of the effect of the 1960 act does not affect that.

**Tommy Sheridan:** I apologise if I am not making myself clear. I am looking for an answer from the Scottish Executive on whether it is prepared to consider seeking the same exemption as the German Government did in relation to Altmark and the French Government did in relation to water services from EU state-aid rules, to allow us as a country to continue to have the duty to support Highlands and Islands ferry services, rather than forcing those services into competitive tender. Has that been considered? Is there a case? If there is, why has it never been proposed?

**Jonathan Pryce:** Discussions have taken place. We have explored with the Commission whether it is necessary to tender ferry services, particularly the Clyde and Hebrides services. The Commission could envisage no circumstance in which the requirements of the maritime cabotage regulation would enable the Clyde and Hebrides ferry services not to go to tender. The arguments have been considered carefully. We have taken the case to, and discussed it with, the Commission. The Commission's clear view is that tendering is required. However, I confess to not being an expert on ferry tendering.

**Tommy Sheridan:** I am asking you whether the Executive subsequently considered whether it had a legal case. You went to the Commission and asked it about the matter. In the cases that I mentioned, Governments went to the Commission and they were told, "No, you can't exempt water in France," and, "No, you can't exempt bus services in certain parts of Germany." However, there were subsequent court cases that allowed those Governments to fight their causes. Can you provide information to the committee about whether there was any consideration of mounting a legal challenge to the Commission's opinion and, if not, why not?

15:45

**Jonathan Pryce:** We will come back to you on that.

**The Convener:** Okay. It would certainly be useful if you would come back to the committee on the general area that has been covered by that line of questioning. Thank you for that. We move on to other lines of questioning.

**Bruce Crawford:** The bill provides for a power to create a national travel concession scheme. Has further thought been given to the delivery mechanism for that? As we note from the Scottish Parliament information centre briefing on the bill, the options for delivery are through local authorities, the Scottish ministers or the new transport partnerships.

**Jonathan Pryce:** I will get Tom Macdonald to say a little more about that, but I believe that the minister appeared before the committee just two weeks ago and said then that there would be further developments shortly.

**Tom Macdonald (Scottish Executive Enterprise, Transport and Lifelong Learning Department):** The position is still as it was two weeks ago when the minister was before the committee. The powers in the bill are discretionary and they give ministers the ability to make an order for a national travel concession scheme if that is what they decide to do. The point is that the power is discretionary.

**Bruce Crawford:** Jonathan Pryce indicated earlier that we will be able to see, in skeleton form, some of the other orders that will be made under the bill. Will we see a national travel concession scheme order in skeleton form at stage 2, even though I think that it will be too late at that point? Will we know what the specific proposals are or will there be an announcement from the minister before then?

**Jonathan Pryce:** That depends on what stage we have reached in our proposals for concessionary travel. Perhaps Tom Macdonald would like to add something.

**Tom Macdonald:** I cannot respond to the question whether a draft order will be presented to the committee, but ministers plan to make an announcement fairly soon about the way forward on concessionary travel.

**Bruce Crawford:** I am not sure where that leaves the committee in terms of evidence taking. If we get to stage 2, we will not be able to have a detailed discussion about whether the mechanism that will be used to deliver such a scheme is the most satisfactory way of doing it. I am a bit concerned about that, in the same way as I was concerned about earlier issues.

My next question concerns a small matter that has come to my notice on a number of occasions. I notice that section 38—in the part of the bill entitled "Miscellaneous"—deals with the

"Abolition of requirement on local traffic authority to inform Ministers about certain pedestrian crossings".

However, is there any prospect that you would allow local authorities to introduce 30mph repeater signs in towns without having to ask the Executive for permission? Such a provision would help local authorities and communities to signal where there is a speeding problem. It seems daft that such a provision is not available to local authorities at present, because it would make life easier for everyone.

**Jonathan Pryce:** Did you say "30mph repeater signs"?

**Bruce Crawford:** I am talking about repeater signs within town boundaries.

**Jonathan Pryce:** So you mean the small signs—

**Bruce Crawford:** Small signs or markings on the road. I understand that, at the moment, local authorities have to ask permission from the Executive to introduce such signs. That requirement seems unnecessarily bureaucratic and everyone would be helped if it were removed.

**Jonathan Pryce:** I do not know the details. We can certainly take that issue away and consider it. I am not aware that local authorities have made approaches to us about it. If you have any more information—

**Bruce Crawford:** I will certainly forward to you the information that I have.

**The Convener:** I think that I know the answer to my next question from reading the policy memorandum, but will you confirm for the record that section 37 of the bill will give ministers the power to introduce travel concession schemes not only for buses, but for ferries and trains as they deem fit?

**Tom Macdonald:** Yes.

**Iain Smith:** I appreciate that the bill is enabling legislation for national travel concession schemes and does not provide the detail. However, the financial memorandum refers to the budget allocation of about £196 million over the last two years of the spending review to implement such a scheme. That is a substantial sum. We are all keen to ensure that, in introducing a scheme, that money is invested wisely. Is it possible to tell us now, or to indicate when further information will be available, about the models that the Executive is considering and about how such a scheme will be funded? Is the Executive considering a national scheme based on the fare multiplier that is used by local authorities or is it looking at another mechanism, such as a quality partnership-type scheme, which would require operators not only to ferry our concessionaires around but to improve

the services that are available to people, in particular in rural areas where having a concessionary bus pass will be of no use if there is no bus to use it on?

**Jonathan Pryce:** All that we can do at the moment is to refer you to what is in the partnership agreement, where there is a commitment to free off-peak bus travel throughout Scotland for elderly and disabled people.

**Tom Macdonald:** The remuneration mechanisms through which operators are paid for carrying concessionary passengers currently work on a no-better-no-worse basis: operators are funded for what they would have received if they had not had the scheme in the first place. That underlying mechanism goes back to European legislation and is likely to continue when we introduce new national schemes. Beyond the narrow confines of the issue, as the Minister for Transport said when he was last before the committee, the scale of the investment in concessionary travel that comes through from spending review 2004 is such that there should be a general benefit to bus services.

**Iain Smith:** I am pleased to have that on the record, as it is important. Does the Executive intend to publish a consultation on concession schemes before the draft orders are published?

**Tom Macdonald:** Ministers have said in the past that the intention is to produce a consultation paper. All that I can say now is that an announcement will be made quite soon.

**Fergus Ewing:** When the Minister for Transport was before us, he said in response to a question from my colleague Bruce Crawford that he was actively considering extending the proposed national concessionary scheme to ferries. Since then, have you been in contact with the ferry operators, such as Caledonian MacBrayne, and with HITRANS? Have you come up with a cost for extending the scheme to ferry users in the eligible categories—senior citizens and people with a disability?

**Tom Macdonald:** We have not been directly talking to HITRANS. I think that my colleagues on the ferry side may have been speaking with CalMac, but we do not yet have an answer to the questions that you pose about where we go further in relation to ferry travel. I say again that the minister will make an announcement quite soon.

**Fergus Ewing:** Yes, but he has already said what he thinks the cost of the scheme as proposed is, so we should be entitled to know—and the taxpayer needs to know—what the additional cost would be to extend the scheme to ferry users. Have you obtained information about those costs? Can you provide an estimate of the cost of such an extension?

**Tom Macdonald:** I cannot provide that today.

**Fergus Ewing:** Is that because you do not have that information?

**Tom Macdonald:** I certainly do not have it with me.

**Fergus Ewing:** But you have it.

**Tom Macdonald:** I do not have robust, fully worked out estimates of what such an extension would cost.

**Fergus Ewing:** May I ask one final question that strikes me as possibly being relevant? The minister will no doubt, concurrent with consideration of national travel concession schemes, be looking to implement the partnership commitment to explore ways in which air travel could be made less expensive for people in the Highlands and Islands. In particular, he will be thinking about the undertaking in the partnership agreement to consider the model that was proposed—

**The Convener:** I am not sure how relevant that is to the bill.

**Fergus Ewing:** I am coming to the bill. My question is simple. Arguably, if it is cheaper to go by ferry, fewer of the people who currently use the plane to travel to the mainland will continue to do so. Has consideration been given to whether making ferry travel subject to the concessionary scheme will have a knock-on impact on usage of air services and, in particular, on the finances of Highlands and Islands Airports Ltd and the companies that operate lifeline services to the islands?

**Tom Macdonald:** I understand the point that you make, but we have not done what you suggest.

**Fergus Ewing:** Do you intend to do it?

**Jonathan Pryce:** We will consider all aspects of the issue. You make a reasonable point.

**Fergus Ewing:** We would not want to help one type of transport and damage the interests of another, especially when lifeline services are involved. A commitment to lifeline air services appears in all the transport documents that I have seen.

**Jonathan Pryce** *indicated agreement.*

**Fergus Ewing:** Was that a yes? You were nodding.

**Jonathan Pryce:** I was indicating that I understood your point. I was not aware that you were asking a question.

**Bruce Crawford:** I have a question about yellow taxibuses. Tom Macdonald is from the section that

deals with taxis and so on. A few weeks ago, we heard evidence from the traffic commissioner for Scotland about some of the difficulties that Stagecoach yellow taxibuses were having. There is a conflict between them and local taxi drivers because of a lack of clarity about the distinction between public service vehicles and private hire cars. Given that the long title of the bill refers to

“miscellaneous modifications of the law relating to transport”,

would it be possible to use the bill to remove some of the grey area that I have described, so that both taxi drivers and Stagecoach yellow taxibuses are much clearer about the provisions? That might remove the threat of problems further down the line, if that innovative process is to be spread throughout Scotland.

**Jonathan Pryce:** I understand that the legislation to which you refer is reserved and is unlikely to be susceptible to modification through the bill.

**Bruce Crawford:** Good grief! We cannot even look after taxis.

**Tom Macdonald:** We can look after taxis. The legislation on taxis and private hire vehicles is devolved, but the legislation on the licensing of bus services is reserved. We can deal with the issue from the point of view of taxis and private hire vehicles, but not from the point of view of yellow taxibuses. You said that there is confusion about what is a taxi and what is a bus. The yellow taxibus from Dunfermline to Edinburgh that Stagecoach provides is a registered local bus service. There is clarity about where it fits into the current structure.

**Bruce Crawford:** I accept that it is a local registered bus service, but it can be called to people's homes to pick them up, as a taxi would be called. The fact that that is not how registered bus services normally work has resulted in a lack of clarity in the system. I understand that some issues may be reserved to Westminster—although I may not like it—and that that may make it difficult to achieve clarity.

**Tom Macdonald:** I recognise the point that you make. There are questions about the distinction between buses and taxis. However, the yellow taxibus has been accepted by the traffic commissioner as a local bus service, so we know how it is classified.

**Tommy Sheridan:** You say that the bill's overarching policy objective is

“to promote economic growth, social inclusion and health and protection of our environment through a safe, integrated, effective and efficient transport system.”

Has a road equivalent tariff scheme been considered for the Highlands and Islands? Given

the prohibitive cost of travel to and from our islands, such a scheme might help to meet the objectives of the bill, particularly economic growth and social inclusion.

**Jonathan Pryce:** I understand that the Executive has considered the point that you raise, but I am not aware that any particular consideration was given to it in the context of the bill.

**Tommy Sheridan:** Would it be possible for amendments and additions on the issue of road equivalent tariffs to be introduced to the bill's policy objectives? Will you share with the committee the consideration that has already taken place in the Executive? What was the extent of that consideration? Were figures given and was a scheme examined?

**The Convener:** It is for me as convener to adjudicate on what amendments are acceptable and within the remit of the bill at stage 2. I would not want to do that hypothetically on the basis of amendments that I have not seen. At stage 3, it is for the Presiding Officer to decide whether an amendment is appropriate. I do not think that the Executive officials can respond on the matter.

**Tommy Sheridan:** Can they respond to the second part of my question, on the consideration that has already taken place?

**Jonathan Pryce:** Yes. Thank you, convener, for your comments on the scope of amendments—that is my understanding, too. As far as road equivalent tariff schemes for ferry services are concerned, it is best for us to drop you a note explaining the background. Again, that is not a matter on which I or anyone else here is particularly expert.

**Tommy Sheridan:** Will you do that in enough time for me to raise the matter during consideration of the bill or are you talking about dropping us a note in a few months' time?

**Jonathan Pryce:** We will seek to produce something for you swiftly. I do not know how much we will have to say.

**The Convener:** That brings us to the end of questions—finally—for this group of witnesses. I thank Jonathan Pryce and his team of officials from the Scottish Executive. I suggest that we have a three or four-minute break before we bring in the next panel of witnesses.

16:02

*Meeting suspended.*

16:09

*On resuming—*

**The Convener:** I apologise to our next panel of witnesses for the fact that we overran a little with the Executive officials. To some extent that was because the Executive is the promoter of the bill and so will be quizzed in detail on every aspect.

I welcome representatives of the Society of Chief Officers of Transportation in Scotland. Bill Barker is the operations manager for strategic waste policy and assets at Dumfries and Galloway Council and Grahame Lawson is the head of planning and transportation at North Lanarkshire Council. I understand that you have some introductory remarks to make.

**Grahame Lawson (Society of Chief Officers of Transportation in Scotland):** I realise that you have had a long day; we have given you a written submission, so we will rely on that. We welcome the opportunity to give evidence to the committee at this early stage of the bill. I have spoken to Bill Barker and neither he nor I will say any more than that, as we prefer to answer your questions, which I think would be appropriate.

**The Convener:** That is helpful. Thank you for the written submission that you provided in advance. Again, we will deal with the three aspects of the bill. Do members wish to ask questions on regional transport partnerships and part 1 of the bill?

**Iain Smith:** One of the proposals in the bill is that regional transport strategies will have to be devised within a year of the partnerships being set up. Do you think that that is achievable? If not, what timescale would be realistic?

**Grahame Lawson:** I should have said that I will deal with part 1 of the bill, Bill Barker will deal with part 2 and we will field questions on part 3 between us.

The timescale for the production of regional transport strategies is challenging. The four existing partnerships have gone some way towards producing draft strategies and we expect them to form the basis of the statutory strategies. There is a big difference: the new strategies that the minister is talking about are statutory documents whereas the existing strategies are voluntary.

**Fergus Ewing:** We heard recently from Audit Scotland that there is a backlog of £1.5 billion of road works for which local authorities are responsible. How will spending £3.7 million on the bill help that situation? Would it be better to spend the extra money on carrying out road works rather than on talking about carrying out works of any description? Will you explain in concrete terms exactly how the partnerships will help?

**Bill Barker (Society of Chief Officers of Transportation in Scotland):** That issue probably falls neatly between us—Grahame Lawson will talk about expenditure on regional transport partnerships. You refer to the maintenance backlog, on which Audit Scotland recently published a report. I can say only that any additional money spent on that backlog would be a wonderful thing.

**The Convener:** I ask members not to get too deeply into the £1.5 billion backlog because the committee has agreed to take further evidence from SCOTS and Audit Scotland on that. We will be able to give the matter detailed scrutiny in due course.

**Grahame Lawson:** That is what I was going to say. If you do not mind, the question is better answered at another time. We certainly welcome any money for road maintenance because there is a backlog, but we will answer the question later. On the partnerships, all I can say is that voluntary partnerships already exist, but they have limitations. It would help if they had more teeth because there is a need for a regional dimension in transport planning.

**Fergus Ewing:** What teeth will be provided by the bill?

**Grahame Lawson:** You asked that question earlier. There are big differences between the partnerships. Four of the five proposed partnerships will have limited powers, in that their only statutory duty will be to produce a regional strategy. The exception will be the new body that will take over in the west of Scotland, which will also have to take over the powers of SPT. That will create a major imbalance in the powers and nature of the partnerships, which you will have to address.

**Fergus Ewing:** Am I right that, as far as SPT is concerned, teeth will be extracted rather than provided? Its responsibilities in respect of rail are being removed, as explained in paragraph 22 of the policy memorandum.

16:15

**Grahame Lawson:** I understand that the committee will invite SPT to speak to it later. The powers that will be “extracted” from SPT, as Fergus Ewing put it, are limited and relate to the strategic element of rail passenger planning rather than to overall planning. The bill does not mention the relationship between the new regional partnerships and the proposed national transport agency—between the two, no powers will be lost to Scottish democracy, so SCOTS is relaxed from that point of view.

**Fergus Ewing:** The questions that I am trying to cover are: what is the point of the partnerships and

how will they make a difference for the better? So far, your answer has been that there will be more teeth—although I cannot detect any molars, let alone any incisors—and that the strategies will be statutory rather than voluntary. What difference will that make unless there is extra cash to implement the strategy? I think you will agree that the bill does not give any indication of whether there will be extra cash, or whether the partnerships will be responsible for delivery and fulfilment of the strategy as well as its production.

**Grahame Lawson:** We mentioned that in our comments on section 3 of the bill. We acknowledge that there will be huge variations, as I said, in the scale and nature of operations. We would certainly be concerned if there was no assurance from ministers that strategies will be funded. That applies to sustaining the current SPT operation, which is a major operation in its own right and is the exception. It is the only situation in which local authorities’ duties and responsibilities for public transport are vested in another body.

**Fergus Ewing:** That is extremely helpful. You said that unless there are assurances from ministers that the strategies will be funded, they will not work. Should the strategies be able to cover all modes of transport? Should the regional bodies be able to cover trunk roads, minor roads, rail, ferries and air transport or should they cover only some of those modes? If so, which modes should they cover?

**Grahame Lawson:** We made representations on that. The bill mentions powers being ceded by local authorities to the partnerships and we have raised the issue of powers being ceded downwards by ministers to the partnerships, particularly in relation to trunk roads and motorways. We accept that there may well be a difference between the trunk road network and the motorway network in terms of the scale and nature of the beast, but it is difficult to see the difference between trunk roads such as the A77 south of Ayr or the A9 north of Inverness and other local authority roads. We see no reason why maintenance and development of such roads could not be passed to regional transport bodies.

We have already touched on rail and bus operations, which are—again—patchy. That situation goes back to the Transport (Scotland) Act 2001, which included powers to introduce quality bus partnerships and quality bus contracts. We want quality bus contracts to be made easier to implement, with fewer hurdles. It would be useful for the regional partnerships to promote them because bus services tend to operate along corridors and often pass from one local authority area to another. It makes sense for local authorities to co-operate in the development of services.

On air travel, there are some services that are internal to Scotland. The intention, as I understand it, is for the national transport agency to take over responsibility for the Highlands and Islands Airports Ltd operation and, I presume, to have an interest in internal air services. I do not think that there is a case for partnerships to take over interest in external air services, except in relation to the land side of airports and access to them, such as rail and bus links.

**Fergus Ewing:** That is extremely helpful. As far as trunk roads are concerned, should the regional partnerships have responsibility for prioritising in their strategies the improvement works that would be required for trunk roads in their areas to work properly?

**Grahame Lawson:** I do not see how a regional partnership could come up with a transport strategy that did not address that issue.

**David Mundell:** Are you and your organisation aware of the widespread lack of co-operation among local authorities, which might be preventing regional schemes from being delivered? In our previous questioning, we sought examples of that, but none was provided.

**Grahame Lawson:** I am not aware of any friction among local authorities. There will be issues that divide authorities, of course. For example—although perhaps I should not mention this—the issue of road-user charging in Edinburgh and the east of Scotland has, shall we say, got authorities talking. Otherwise, in terms of promoting projects, the evidence is that local authorities recognise the advantages of co-operating with each other and do so. For example, my local authority, North Lanarkshire Council, which is a member of the WESTRANS partnership, and West Lothian Council, which is a member of the SESTRAN partnership, are co-operating closely on the reopening of the Airdrie to Bathgate railway line and on promoting the Caledonian express services on the Shotts line. Not only do we co-operate within our partnerships, we are prepared to co-operate with other partnerships.

**David Mundell:** That is a helpful response, because part of the rationale for the bill was the need to force local authorities to work together. If there is no evidence that they are not working together, one must question that rationale. Could you comment on the funding arrangements and the concept of requisitioning funds from local authorities rather than having the Scottish Executive fund the new partnerships directly?

**Grahame Lawson:** Wearing my SCOTS hat, I would say that that concept of requisitioning funds will be alien to many authorities. It is not something that they are accustomed to and I am

not certain that many authorities would be comfortable with it. However, the 12 authorities that currently lie within the SPTA area are used to requisitioning, to a certain extent, because funding for SPT comes in the front door of each authority and straight out the back door to SPT.

We would prefer agreed strategies to be directly funded; that would be in line with the practice of the Scottish Executive over the past two years. In my written submission, I allude to our having a successful record on spending the money that has been given to the partnerships in the past two years. Indeed, WESTRANS achieved 101 per cent spend; we were so successful that we achieved a greater spend than had been anticipated. It is easier for authorities to come together in agreement when they are talking about spending somebody else's money.

**David Mundell:** It is always easy to spend somebody else's money.

**The Convener:** In your written evidence, you express concern about the proposal for each council to be represented by a councillor with a weighted vote. Could you expand on those concerns? What would be your suggested solution?

**Grahame Lawson:** We have concerns about the democratic accountability of the weighted-vote system. If I might be permitted to say so, that system smacks of union meetings with card-carrying members and so on. All the institutions that we have in local authorities at the moment are based on a one-person-one-vote system. We see that as being the only way to do things. For example, SPT has 34 members and the share is proportional to the size of the member authorities. Glasgow City Council has eight members, North Lanarkshire Council and South Lanarkshire Council have four members each, and so on down to smaller authorities that have only one member.

The current proposal for the west of Scotland is to have 13 members with weighted votes. For example, the Glasgow member might have four votes, the North Lanarkshire member might have three votes and so on. We would have 13 members but a total of 20 or 21 votes, depending on how things worked out in practice. In addition, one third of the voting membership would be non-elected people, who would be drawn from elsewhere, which would amount to 10 or 11 people. Sitting round the table would be 24 people, but the number of votes would not be 24 but some other number. That is far from democratic accountability.

Having discussed the issue with colleagues in different partnership areas, SCOTS sees no substitute for a straightforward vote according to the number of members. Instead of a weighted



vote, why not have the number of votes equal to the number of representatives? Why should Glasgow City Council not have four members, and so on?

Under the current proposals, in Aberdeen there might be four people sitting round the table. Two would be from local authorities—one from Aberdeenshire Council and one from Aberdeen City Council. The two elected members would have four votes but the other two members would have only two votes. That defies all normal systems of accountability and we, as officers, would foresee difficulties for our elected members in that situation.

**Bruce Crawford:** I am not sure whether Grahame Lawson heard the earlier evidence from officials. I am interested in the various powers that will be available to the regional transport partnerships, as compared with the powers of councils. I appreciate that there is a difficult balance to be struck. You will have heard me talk about the phrase “so far as possible” in the bill, which represents a wee bit of an opt-out, although I can understand the reasons for that.

Section 8 of the bill is on the

“Duty of constituent councils and other public bodies”.

The Executive will soon be responsible for most of the rail network, once powers have been transferred from the Department for Transport, and it is responsible for trunk roads. Most of the work of the regional transport partnerships will therefore impact on what the Executive does, or might be expected to do. However, the bill does not seem to place a duty on the Scottish Executive to follow through on issues regarding regional transport partnerships and what they might come up with by way of a strategy. Do you think that that is a necessary requirement?

**Grahame Lawson:** Yes. When the present local authorities were established in 1996, one of the things that we had to do was come up with a local transport strategy. At the time, we expressed concern that there was no national strategy within which to set local strategies. We got the impression that the then Scottish Office felt that, if each of the 32 local authorities produced a local transport strategy, those strategies could be put together and—hey presto!—we would have a national strategy.

Similar logic seems to apply to the new regional transport strategies. Unless we have a detailed and comprehensive national context into which to set those strategies, we will be in difficulty. The impression is that the Executive thinks that if there are five partnerships and five regional transport strategies, the strategies can be put together and again—hey presto!—we will have a national strategy. It will not work that way. There is an

element of a top-down approach and an element of a bottom-up approach. Unless the local authorities and the partnerships work in partnership with the Executive and the national transport agency, we are doomed.

**Bruce Crawford:** I think that you are saying, in effect, that although it is all good and well for good work to be going on, for regional transport strategies to be developed and for there to be agreements among the regional transport partnerships and the local authorities, the Executive is not going to play ball, meaning that everything will come to a stop. You are asking for the bill to contain a duty on ministers to have a national transport strategy so that time is not wasted and we know where we are going.

**Grahame Lawson:** Absolutely.

**Bruce Crawford:** That was very useful. Thank you.

**The Convener:** There are no further questions on that part of the bill, so we move to members' questions on part 2 of the bill, on road works and so on.

16:30

**David Mundell:** Do you have any view about why there have been no prosecutions under the New Roads and Street Works Act 1991?

**Bill Barker:** My colleagues from the Executive gave you part of the reason. There is a perceived reluctance among procurators fiscal to make such prosecutions. It is also fair to say that, within Scotland, we have always taken the view that we would work in partnership with utilities companies. Unlike the situation south of the border, we have had some remarkable successes in collaborative and co-operative working. A number of my colleagues in other authorities would really like to have taken cases to prosecution, but have failed because the procurator fiscal felt that to proceed was not in the public interest.

**David Mundell:** So the reports have gone to the procurators fiscal.

**Bill Barker:** I understand that that is the case in some authorities. I know that none has gone from my authority, but I cannot give you information on other authorities.

**David Mundell:** It is probably not a question that Mr Barker can answer, but on that basis, one of the questions that we have to ask is why such issues would be pursued under the new act if fiscals are not pursuing them under current legislation.

**Bill Barker:** We share your concerns.

**Michael McMahon (Hamilton North and Bellshill) (Lab):** You mentioned utilities companies. Prior to introduction of the bill, a number of those companies expressed concern that the statistics that underpin development of the bill were not an accurate reflection of the amount of road works that have been undertaken by the utilities companies, and that local authorities had much more responsibility than the statistics indicated. Do you have any comments on that?

**Bill Barker:** A number of smaller Scottish local authorities find it difficult to find the resources to put into the Scottish road works register all the data that are currently required. Some works, whether utilities or road works authority, are excluded from having to be put into the register. There are gaps in the existing system, though I have to say that the SRWR is one of our successes. It might not be perfect, but it is a lot better than anything that has gone before.

**Michael McMahon:** Will the bill enhance the relationship between you and the utilities companies?

**Bill Barker:** For a moment I thought that you were going to ask whether it would enhance the Scottish road works register. I was just about to leap into an answer.

**Michael McMahon:** You can answer that one as well—I do not mind.

**Bill Barker:** One of the good aspects of the bill is that it will require everybody to enter information on the register. That is not the case at the moment because it is possible to pass notices by paper—in other words, by fax or post. The bill will make it a requirement to use the register; that will be a good thing. I do not anticipate the relationship between utilities companies and road works authorities changing to that extent in Scotland because of the bill.

**Michael McMahon:** So fears on the part of the utilities companies would be groundless.

**Bill Barker:** Those companies would have to answer that question.

**Iain Smith:** I am not sure whether you were here when I referred to the case in my constituency of a utility company—the water board as it happens—whose contractors were so inefficient, and Scottish Water's supervision so poor, that a contract that should have taken six months took 18 months. Will any of the proposals in the bill help to address such situations when they occur? That was not an isolated incident—it is not only the water board that is responsible for such occurrences. If the bill contains no such proposals, can you suggest any improvements?

**Bill Barker:** I do not think that the bill will make a great deal of difference in circumstances such

as those that you described. To be fair, I do not think that any legislation will overcome difficulties with contractors, whether they are on the utilities side or on our side. South of the border, section 74 of the New Roads and Street Works Act 1991 made provisions for lane rental, but even that has its problems.

**Iain Smith:** I noticed the reference to lane rental in your submission. Do you think that that would be of benefit as regards lengthy works by utilities companies? Would it give an additional incentive to the utilities companies to supervise their contractors?

**Bill Barker:** As I am speaking on behalf of SCOTS, I must give a fairly ambivalent answer. Although the more urban areas—the cities, in particular—feel that such provisions could have significant benefits, rural authorities such as mine feel that the administrative burden of implementing such measures would outweigh any benefit. Opinion is divided.

**Fergus Ewing:** Your submission challenges whether the Scottish road works commissioner will be effective or will be able to do anything that cannot already be done by, for example, RAUCS. It questions whether the commissioner will have any additional powers and asks what the point of having a commissioner will be. It suggests that the proposal will impose additional burdens on smaller authorities, as you just mentioned, which the Executive's financial memorandum does not cost or provide for. I do not have time to repeat the other criticisms that are made. Will having a Scottish road works commissioner produce any clear and demonstrable benefit or would we be better off using the money to carry out road works rather than to administer and talk about them?

**Bill Barker:** As far as SCOTS is concerned, the single benefit of a Scottish road works commissioner that we can identify is that access to Scottish ministers will be provided. Also, with the requirement to publish annual reports, the commissioner will become a figurehead for the whole road works situation.

I do not believe that having a commissioner will make a significant difference. Most of the commissioner's functions are those of RAUCS, of which I am the roads co-chair. Again, we are divided on the matter. If there is to be a commissioner, we would like the commissioner to have more powers. We are concerned that, given that the commissioner will have a very small and lean staff, most of the work will be done by utilities companies and roads authorities on the commissioner's behalf, which will create a burden for which some councils are not resourced.

**Fergus Ewing:** I notice that the bill will impose a duty on the commissioner to monitor road works

throughout Scotland. In his questioning of the civil servants, Bruce Crawford established that, with a budget of £200,000 for the whole office, the commissioner is unlikely to have more than a handful of staff. Is it your view that, because most monitoring will be done through submission of information by local authorities and others, you will be doing the commissioner's work for him or her, because he or she will simply not have the resources to monitor all road works throughout Scotland?

**Bill Barker:** The short answer is yes.

**Bruce Crawford:** I thank Fergus Ewing, as I was going to go down that road. I am now able to go down another road instead. If the short answer is, "Yes, one man and his dug isnae gonnae make any difference," could RAUCS be given the statutory power to do the job instead?

**Bill Barker:** That suggestion has merit. Both SCOTS and RAUCS have discussed the suggestion of making RAUCS a statutory body with certain powers. At present, it carries out its functions in a spirit of co-operation, and those functions are much the same as those that the commissioner will have. We already monitor road works quality locally, in larger areas and nationally.

**Bruce Crawford:** In that case, will you submit more considered views on that model? There is no point in creating a bureaucracy to do what is already being done. All we need to do is give the powers to your organisation—provided that you agree on a proper constitution—and, hey presto, we do not need one man and his dug.

**Bill Barker:** We can certainly produce something on that.

**The Convener:** Those are all our questions on part 2 of the bill and I do not think that we have any questions on part 3—I guessed that most of our questions to the witnesses would be on parts 1 and 2. I thank them for their evidence.

We move swiftly on to our third and final panel for the afternoon. I welcome the representatives of HITRANS, who are Councillor Gordon Mitchell, from Shetland Islands Council, Councillor Duncan MacIntyre, from Argyll and Bute Council, and Howard Brindley, who is the co-ordinator of HITRANS. I thank them for their patience during the earlier sessions and for their written submission on the bill. I understand that Councillor Mitchell has some introductory remarks.

**Councillor Gordon Mitchell (Highlands and Islands Strategic Transport Partnership):** Thank you for the opportunity to give evidence to the committee.

As members probably know, HITRANS covers a huge area that stretches from Shetland down

through the Highlands and Islands nearly to the Glasgow area. The councils in the area have a wide variety of needs and aspirations. HITRANS has been in existence for about eight years and I have been a member of HITRANS, as a representative of Shetland Islands Council, for the past five years. During that time, quite a few innovative projects have been pushed through, and some are still in the early stages. We have been complimented on the way in which we operate, but we are now being forced into change.

At present, HITRANS has one member from each of the councils in the Highlands and Islands area, each of whom has one vote. We have no proper voting system, in that we work on a consensual basis. We have never gone to a vote on anything; we always end up with a compromise or consensus. That has worked extremely well.

16:45

When it comes to finance, each council voluntarily contributes an amount that is worked out according to a sliding scale relative to the populations of the different areas. That covers about 50 per cent of the costs of running HITRANS; the other 50 per cent is met by a grant from the Scottish Executive.

HITRANS does not yet have a coherent view on the bill, because we have still to discuss it in greater detail at our next meeting, which will be held at the beginning of December. I will give you the views of the smaller councils, because they have the most concerns about the bill. The bigger councils have some concerns, but they are perhaps less vociferous in expressing them. There is a definite spread of views within HITRANS, but we hope to come to a consensus before the end of the year. I will give you the views opposing the bill, which is of great concern to the smaller councils.

The biggest concern is that the bill insists that we pay for the cost of the administration of HITRANS by requisition. In other words, the small councils would have no say over how much they were to pay. At the moment, as I have explained, the councils each pay a proportionate amount towards half the costs of running HITRANS. Under the new system, we expect the level of administration to increase dramatically, which, in turn, would dramatically increase the amount that each council would have to pay. Even allowing for smaller contributions on the part of smaller councils, there would still be a large hike. It would more than quadruple the amount that we have to pay at the moment. We currently have no budget for such a big increase in costs, and we do not feel that we should be asked to pay it. Our view is that the intention of the bill is to improve the functionality of central Government in Scotland, and that it is not exactly fair to ask individual councils to pay for that. We feel that we should

continue to pay what we have been paying until now, and that any difference should be made up centrally.

We are being told that we are going to be forced into adopting a new voting system whereby, instead of each member of HITRANS having one vote, some members will have more votes than others. Nobody is happy with that. The whole concept of running a system that worked on consensus worked extremely well. We have heard that WESTRANS and SESTRAN have voting systems that have worked well, and that they are therefore being allowed to keep them. We are asking why we cannot keep our system, because it has worked very well for us. If we are going to be forced into adopting another system, we would ask to be allowed to come up with our own new version of how to do things, rather than having that imposed on us.

There are a number of problems when it comes to finance, from the small councils' point of view. Let us suppose that a huge new roads scheme was to be started in the north of Scotland and that money would, at some stage, have to be borrowed in order to make that work. There is talk of using prudential borrowing in order to allow the scheme to proceed. That might be acceptable or unacceptable to the councils that use the roads in question. However, someone who lives away up in Shetland is not particularly interested in roads down on the west coast of Scotland that they never use. We would not be happy to have to pay for a new scheme there. On top of that, we have a stringent policy in Shetland of borrowing only within our resources. If we found ourselves tied into a system of prudential borrowing in which the council was not involved, that would create a great problem for us.

In the suggested voting system, small councils would have one vote and no veto. I speak not only for Shetland Islands Council, but for several smaller councils when I say that we are concerned that we would have no real say in the financial running of the proposed organisation. That leads us to question whether we should be involved in an organisation that would represent such a disparate range of interests.

The situation in Shetland is almost unique because we have only one passenger ferry a day, which leaves for Aberdeen. We have about five flights a day. Orkney is slightly better off, but it is still a long way from the centre of things. Orkney and Shetland largely share transport interests, but we have completely different transport interests from those of other parts of the Highlands and Islands. That has led us to pursue the concept of having a separate TRANS—let us call it NORTTRANS—so that we would have our own little TRANS organisation, with our own interests and

our own very low running costs. Personally, I do not think that that would be a good idea in the long run because the HITRANS concept is about having a large corporate body that can fight for its members. However, having our own organisation makes a lot of sense financially to the small councils, so we are looking at the question of boundaries and whether we should be forced to sign up to an organisation when we have no idea of the costs involved. From the bill and the provisions on secondary legislation, it is unclear how much the smaller councils would have to pay once the proposed organisation is running. Therefore, we are unhappy about being forced into signing up without knowing about longer-term financing.

Much of the severity of the situation could easily be reduced, as far as we are concerned, if the voting arrangements were to remain as they are. In the current consensus situation, smaller councils can at least block measures, if not necessarily veto them, until we can reach a compromise. That is a good idea, as far as we are concerned, and it has always worked in the past. That takes me back to the voting problem.

As I said, the issue that nobody is happy about is the requisitioning of funds. I will leave matters there and will try to answer any questions.

**The Convener:** Thank you. The first group of questions is on part 1, which is on the regional transport partnerships. Iain Smith will lead off.

**Iain Smith:** I listened with interest to your statement, Councillor Mitchell, but I was a little concerned that you seemed to imply that the consultation document's option 3 model, which would give most powers to the regional transport partnerships and take more powers from local authorities, would be imposed on HITRANS. I am not sure that that is what is intended by the bill or by the options. Do you accept that, if HITRANS went for option 1, it would make little difference to the current situation and the existing HITRANS, because all option 1 does is impose a duty on all regional transport partnerships to create a regional transport strategy? That would not be a huge burden on local authorities. It would not result, for example, in Shetland Islands Council having to pay for something in Argyll, because that would be part of the strategy and it would be up to Argyll and Bute Council to fund its share of that work.

**Councillor Mitchell:** You are correct. At the moment, we are looking for a continuation of the present situation, in which we would deal only with the strategic transport plans, but somewhere in the stuff that I have read, it is suggested that there would be a move towards further legislation under which model 3 might be implemented. That is worrying. In addition, we do not know at this stage what the impact of the secondary legislation will

be. We are saying that we should not be asked to sign up for something until the secondary legislation has been published and we can look at it.

**Iain Smith:** I understand that point, but my understanding is that the consultation document “Scotland’s Transport Future: Proposals for Statutory Regional Transport Partnerships”, the bill and the minister’s previous statements have all made it clear that the Executive does not anticipate regional transport partnerships—apart from the west and south-west of Scotland partnership, which is slightly different because of Strathclyde Passenger Transport—moving beyond model 1 unless there is a consensus in the partnerships to do so. Do you accept that the policy intention behind the minister’s statement is that it would be up to the partnerships to decide whether they wished to go further than the basic minimum requirements?

**Councillor Mitchell:** That is not our primary concern at the moment, but it is a secondary concern. One of our primary concerns is the additional costs that will accrue from having a much larger administration. Theoretically, once the new Highlands and Islands regional transport partnership is formed and running, there is nothing to stop it expanding its administration. That would mean additional costs, all of which will, under the present proposals, fall on the councils after the first year of the new partnership’s operation. We will find that we are paying huge amounts of money for no improvement on what we had before.

**Iain Smith:** Surely if a regional transport partnership is basically creating and monitoring a regional transport strategy, it will not create a huge bureaucracy. That is what HITRANS is doing at present.

**Councillor Mitchell:** The figures that I have been given show that, at the moment, Shetland Islands Council is paying something like £14,000 a year for its share of the bureaucracy. However, I am afraid that when the new regional transport partnership is formed—if the council is part of it—that amount will go up to more than £100,000 a year to pay for the extra services that the new partnership will put in train.

**Iain Smith:** It would be helpful if you could provide the committee with those figures, because I am not sure where they come from. To be honest, because HITRANS is already fulfilling most of the functions that are included in the minimum requirements for regional transport partnerships, I cannot see where the huge increase in cost comes from. That is the bit that is confusing me.

**Howard Brindley (Highlands and Islands Strategic Transport Partnership):** We have given a statement and a range of figures to the Finance Committee. The figures are not quite as high as those that Councillor Mitchell gave, but the current operating cost of HITRANS is about £250,000 and we estimate that, if it carries on as a model 1 partnership, the cost might become something between £400,000 and £500,000. If the Scottish Executive’s share of that cost is removed, the current share of about £100,000 that is borne by the local authorities would be multiplied by five. How the authorities divvy that up between them will vary if it is done by population share, but if the cost has to be borne from current local government finance without any additionality, the money will have to come from another pot.

**Iain Smith:** That is helpful. We have not yet received a report from the Finance Committee, so we were not aware that those figures had been made available. We will obviously study them—at least, I will.

17:00

**Bruce Crawford:** I heard what Councillor Gordon Mitchell said about secondary legislation. There are a number of provisions in the bill that give ministers the power to do things by order. I am especially concerned about sections 2 and 10, which allow ministers to make orders about anything. Would the witnesses from HITRANS like to reflect on those provisions? What problems do you think that they might cause?

**Councillor Mitchell:** If extra powers are granted, we do not know what will be done with them. That is the big problem. We are concerned about the financing of extra duties that may be imposed, as we do not know how the extra costs will be met. We suspect that some of those costs—whether they are extra administrative costs or potential borrowing costs, about which we still do not know—will come back to local authorities.

**Bruce Crawford:** I understand that HITRANS is organised on a consensual basis. One large project that needs to be completed in the Highlands is the upgrading of the A9. If the new regional transport partnership drew up a transport strategy that included that project, all the partners would have some responsibility for delivering it. Are you suggesting that smaller and island councils should be able to say that they do not want to contribute?

**Councillor Mitchell:** We expect that the partnership would find a way of spreading the cost among those councils that would benefit from the new project. We in Shetland would not expect to pay for something that was happening on the mainland, on roads that we would never use.

**Bruce Crawford:** In that case, why should you expect the mainland to pay for additional ferry services?

**Councillor Mitchell:** Which ferries?

**Bruce Crawford:** Any extra ferries that the partnership decided to run as part of its strategy.

**Councillor Mitchell:** The problem is that we are out on a limb. All our internal ferries are run by Shetland Islands Council. The ferries between Shetland and the mainland are run by NorthLink Orkney and Shetland Ferries, with a direct subsidy from central Government. At the moment, there is no HITRANS input into the ferry system.

**Bruce Crawford:** The new regional transport partnership will draw up a transport strategy for the Highlands and Islands. It may decide either to upgrade the A9 or to improve the ferry services between Shetland or Orkney and the mainland, because they are not what they should be. There would be a compulsion on members of the partnership to contribute to whichever project is chosen. I am trying to establish how you will get things done. How do we get big projects to happen unless everyone is prepared to contribute? I am sure that you have a good answer, but I need to hear it.

**Councillor Duncan MacIntyre (Highlands and Islands Strategic Transport Partnership):** Councillor Mitchell has spoken from a Shetland point of view. Shetland is unique. The borrowing provisions that were mentioned earlier would be perfect for us, if they were in place. Bruce Crawford spoke about the A9. All the councils in the area and members of HITRANS support the A82 project. A few months ago, all the members of HITRANS gave their support to the spinal route in the Western Isles, which has gone ahead in the past few weeks. We have big projects in mind. HITRANS is committed to expansion in the whole of the west Highlands and Islands. Shetland does not see that it needs to contribute to projects in the HITRANS area, because it does not really use them.

Your point about air routes and ferries was well made, but there remains a unique situation in Shetland, because there is no requirement to borrow money to make things work. The concessionary fares scheme works in Shetland, but there is no benefit from that on the mainland. We must try to bring the two sides together. I am not here to represent the opposite side to Shetland—

**Bruce Crawford:** I understand that.

**Councillor MacIntyre:** I am just trying to explain the other side of HITRANS. We have a difficulty because there is a unique situation in Shetland, which is very independent and has a forward-thinking local authority, but wants to retain control.

**Bruce Crawford:** Is that unique? I do not know whether you arrived early enough to hear David Mundell talk about the problems in Dumfries and Galloway in relation to that area's involvement in a west coast TRANS that would include the greater Glasgow area. Big projects might go ahead in greater Glasgow that would bring no benefits to Dumfries and Galloway. Aspects of the situation might be unique to Shetland, but all the peripheral parts of Scotland have problems.

**Councillor Mitchell:** Everybody has problems. I am not in favour of breaking away from HITRANS or changing the current system; I am trying to describe the problems that the smaller authorities perceive that the bill would create. It would be easier if the bill were amended slightly to allow us to operate almost as we did before. The changes to the bill would involve, first, removing the threat of requisitioning and including provision for some other system of finance that would not place a great burden on a small authority but would bring in central Government grants without disturbing the council's usual financial system. Secondly, nobody wants the new system of voting that would be imposed on us—that is not just our view, but that of almost everybody in HITRANS. As things stand, we can argue our way into a decent compromise on any subject, but if we are forced into a vote every time we are likely to find ourselves disenfranchised.

**The Convener:** It strikes me as dangerous to argue that Shetland does not want to contribute to the A9 because its residents do not use it much, but instead wants central Government to contribute to the road. Does that not imply that people who live in the central belt, who might not often use the A9 north of Inverness should pay for the road, whereas people who live in peripheral parts of Scotland should not have to pay? That seems a strange argument to make.

**Councillor Mitchell:** We are not saying that we should not pay for the A9. Under the current system, the A9 is paid for by central Government. We were concerned that a situation could arise in which central Government could not find enough money to pay for the A9 and required HITRANS to borrow money to pay the remaining costs, which would put us in a difficult position. We cannot be involved in prudential borrowing, because we do our own borrowing within Shetland Islands Council.

**Bruce Crawford:** That leads to the inevitable question that I put to SCOTS. If HITRANS or its successor body were to agree a particular strategy, constituent councils and other public bodies would have a duty "so far as possible" in relation to the strategy, but there would be no such duty on the Scottish Executive. Do you think that the bill should place a duty on the Executive to be

involved in the same way as the constituent councils and other public bodies might be?

**Howard Brindley:** That is fundamental to our position. The HITRANS strategy has tended to consider what the Executive and the national transport agencies are doing in the Highlands and to try to influence their policies, rather than to concentrate on individual local authorities. Our strategy does not say what Shetland Islands Council should do in relation to its internal ferry services, for example, but it comments on how the links between Shetland, Orkney, the Western Isles and the mainland should work. We see our strategy as a fairly high-level document, which is almost a dialogue with transport Scotland—as it will be—and the national providers, such as Highlands and Islands Airports Ltd, CalMac and so on, rather than something that imposes on the local authorities, but if we cannot influence what they are doing through our strategy, it is not worth very much.

**Bruce Crawford:** In that case would you support the Executive, through transport Scotland, being required to set out in statute a national transport strategy?

**Councillor Mitchell:** Yes.

**Councillor MacIntyre:** Yes.

**Howard Brindley:** Yes. I would also support its being required to have regard to what comes from the regional strategies.

**Bruce Crawford:** I understand that.

**Fergus Ewing:** I have a number of points. I have read the submission regarding the costs of HITRANS and have heard your concerns about requisitioning. The existing costs are set out helpfully in the written submission and detailed as £250,000 a year. We have heard from Mr Brindley that they are set to increase approximately fivefold if one model is adopted. This committee does not consider the costing aspects specifically—that is what the Finance Committee does. However, on a point of procedure, have you sent a separate detailed submission to the Finance Committee so that it has the benefit of the detail of the computation of your cost estimates?

**Howard Brindley:** Yes, we have. The predicted increase was not fivefold. The submission that we sent the Finance Committee says that our current costs are £250,000 a year. A lot of provision is made in kind by our partners. For example, we do not pay office costs and we receive a lot of help in kind from the partners' staff. Once a new organisation is up and running, it will have to pay for an office, its admin and its telephones and it will not be able to call on members of the councils' staff to help it out so easily. We have said that the figure could double; it could rise from £250,000 to £500,000. I made an estimate of about £400,000,

which would be for a model 1 authority dealing with a strategy.

The second thing we said was that if local government has to meet the whole cost instead of just 45 per cent of it, which is what happens at present, there will be a significant knock-on effect on local authority budgets. The cost will rise from something in the order of £100,000 to the total of £400,000 or £500,000, spread throughout the local authorities. That is a significant hike in the costs from what they are at present.

**The Convener:** Will you clarify that? From what you have just said it seems that the increase in cost will not be as much as you indicated initially. You are suggesting that many staff members are already employed by the public sector bodies. Given that many of them are employed by the councils, I presume that the councils are already paying for them.

**Howard Brindley:** Yes, there is an element of that. The councils are providing help in kind. They will benefit, because they will be able to use their staff to do other things.

**The Convener:** Although you have provided information to the Finance Committee, it would be useful if you could break down all the figures for us, so we can understand them properly.

**Fergus Ewing:** I want to be clear about this. Councillor Mitchell said that he was speaking to some extent for his own council, Shetland Islands Council, rather than for HITRANS. Am I right in saying that as things stand, given the serious question of funding and local authorities facing a substantial, up to fivefold, increase in their contribution to the new body, HITRANS and its constituent members would oppose the regional transport partnerships?

17:15

**Councillor Mitchell:** I was speaking for Shetland Islands Council and to a certain extent for Orkney Islands Council and I happen to know that Western Isles Council takes a similar line. As I said at the beginning, there is a spectrum of views within HITRANS, which I feel could eventually be reconciled if small changes were made to the wording of the bill. HITRANS does not have a clear view on the bill at the moment. To a certain extent, things will depend on the committee's findings, but in round figures, we do not oppose it. I am here to point out to members the problems that the legislation would bring to us. Indeed, my council is taking a much stronger stance than are the other councils; we have already informed the minister that we are considering the possibility of having a separate TRANS with Orkney. We are considering that possibility mainly with financial and voting problems in mind.

As I said, I am not giving the views of HITRANS, but views from within HITRANS. I have worked in HITRANS for five years and am very much in favour of it. It is an excellent organisation, and it would be a bonus if we could continue to run it in more or less the same way that we have done in the past. In the detail of the bill as it stands, I can see that it is possible that we would be able to run it in that way, but there would have to be small changes to the bill.

**Fergus Ewing:** Will Mr Brindley answer the question?

**Howard Brindley:** I do not know whether HITRANS would say that it could not afford to do what has been proposed if it was imposed on local government. The bill's financial memorandum says that a start-up cost will be provided by the Executive. I have forgotten the figure, but around £1.5 million will be made available for year 1 start-up. After that, it implies that people are on their own. Baldly, I have said to the Finance Committee that if the cost to local government rises from its current level of around £100,000 to something in the order of £400,000 to £500,000 and no provision is made in grant-aided expenditure to allow for that—in other words, costs must be met from existing commitments—it will be quite hard for some authorities to meet costs. At this stage, I do not know whether they would reach the point of saying that they could not afford to meet the requisition.

**Fergus Ewing:** I appreciate that candour is not always possible, especially if it involves criticising those from whom you are seeking funding in various other ways. However, it seems inconceivable to me that HITRANS could support the bill as drafted, or that any of its constituent members could, unless assurances are given.

Paragraph 9 of your submission is a helpful summary of the current work programme of HITRANS, which, as you have pointed out, was set up in 1996. Elements of a transport strategy in the HITRANS area are set out, including consideration of improving the A82—which is long overdue—public service obligations, and consideration of air and ferry travel and transport in the round. Has HITRANS not already worked on producing a transport strategy for the area? Has it not done so for a long time?

**Councillor Mitchell:** We have been commended for that work, which is why we are rather puzzled that we are being forced into a corner by some parts of the bill, which does not really stack up, as far as we are concerned.

**Fergus Ewing:** I want to deal with another matter that has not been mentioned. I do not think that we will have the opportunity to take oral evidence from Highlands and Islands Airports Ltd,

which has a unique place with respect to airports in Scotland, as it is wholly owned by the Scottish Executive and is reliant on public funds. I think that a witness from SCOTS—although I might be wrong—said that it was expected that responsibility for HIAL would pass to a national body. Presumably, HITRANS would oppose that tooth and nail if it were true. I must admit, however, that the suggestion came as something of a surprise to me. It did not appear to have been mooted under the HIAL proposal. I wonder if any of the witnesses can comment on that. HIAL has built up a lot of expertise over the years in staff, personnel and so on. I think that the prospect of control passing down to Edinburgh would be of concern.

**Councillor Mitchell:** We would be concerned if control went down to Edinburgh. However, control over HIAL really comes from Edinburgh already, to an extent. At the stage when HITRANS was considering the various options that might be open to it, one of them was for HITRANS to take over HIAL, CalMac, NorthLink Orkney and Shetland Ferries and all the rest, running them as part of a bigger organisation. We pointed out that, if we found ourselves involved in such a venture, and if there was a major catastrophe in one of those organisations—which, as you will probably recall, took place with NorthLink—we would not have sufficient funds in HITRANS to bail that organisation out. Central Government funds are required to deal with such situations. We rapidly backed off the concept of taking over any of the quangos that we could, theoretically, have under our wing.

**Howard Brindley:** My understanding is that there is currently a small team in the Executive's transport division that is responsible for HIAL's operation, although day-to-day management is based in Inverness. The industry is nationalised and the Executive team considers the broad strategy, ensuring that the funding is in place. That team will move to transport Scotland, or whatever the agency will be called.

As far as I am aware, there will be no other difference in how HIAL is managed. Representatives of HITRANS have said that they want HIAL to pay attention to the HITRANS strategy. That takes us back to a point that was made earlier: bodies such as HIAL should be required, in statute, to have regard to the strategy, just like other bodies. I am not aware that there would be any other change.

**Fergus Ewing:** On another matter that is important for transport funding in the Highlands and Islands, I wonder if HITRANS could give us any information on whether it would like to be in a position to argue for continued funding from European regional funding sources for major



transport projects of all types. Such funding has been invaluable to many major projects. Without it, many projects, including those involving the A9, the A830, harbours, piers and air travel, would never have happened. In particular, could you indicate what you expect to happen after 2005, when the axe falls?

**The Convener:** I am not sure that we need a lengthy answer on that. I am not sure that that falls entirely under the remit of the bill.

**Howard Brindley:** There is £38 million in the current European regional development fund programme for transport, which has made a significant contribution. HITRANS has worked with the managers of that programme to set the strategic projects and to determine which projects get that money. We would like that to continue. However, it is not up to us to say. Without that money, there would be a significant loss to the infrastructure programmes that we have in the Highlands.

**Fergus Ewing:** I think that the bill confers a power on the regional transport partnerships that could be used, for example, to enable the partnership for the Highlands and Islands to negotiate directly with the European Commission directorate-general for energy and transport, at least in relation to the trans-European network, which I think includes the A82, as was mentioned earlier. Would going directly to the European Commission—cutting out the middlemen—assist you?

**Councillor Mitchell:** That question has not been asked. Therefore I cannot speak for HITRANS, but my own view is that that would be a step forward.

**Councillor MacIntyre:** I will come back to Mr Ewing about HITRANS's strategy.

HITRANS is a voluntary organisation and as such we have gone as far as we can; we must now have formal standing. Bruce Crawford talked about having some teeth and we feel that we have to go that next step. HITRANS works well, but we have taken it to the limits. To go forward we have to get backing from the Executive in the form of some powers.

I will move away from Shetland to talk about Argyll and Bute Council, and perhaps the same applies in Moray and North Ayrshire. Argyll and Bute is in both WESTRANS and HITRANS. The situation is that Helensburgh and Lomond are in the WESTRANS camp. It is of concern to us that there will be a conflict if we are still split and WESTRANS goes down the road of the third option and HITRANS takes the first option. We want assurances about how that would work. It might be better in some ways if we were in one transport partnership rather than two, but there are concerns about which way to go.

We will talk later about concessionary fares: that is only one of the concerns. There are difficulties within all the local authority areas. Shetland has its problems and we have ours. We must strike a balance for all in Argyll and Bute. When we get more information the council will decide which route it is best to go down. The council has not yet taken a decision and HITRANS has not yet formally put in a response.

**The Convener:** We will move on to parts 2 and 3 of the bill.

**Michael McMahon:** Does HITRANS take a view on the establishment of a road works commissioner to look after what already exists?

**Councillor Mitchell:** We have not discussed that yet, so I cannot give you an answer on behalf of HITRANS.

**Michael McMahon:** Could you submit an answer once HITRANS has made that decision?

**Howard Brindley:** Yes. We meet on 10 December and I will ensure that we respond to the committee on that point.

**Michael McMahon:** What is your general experience of the existing regime? Is it working? Will the proposals in the bill make the relationship between local authorities and utility companies better or worse, or will they make no difference?

**Howard Brindley:** Discussions with my colleagues suggest that we tend to see that as more of an urban issue than a rural one. I think that SCOTS also said that to a certain extent. There is no evidence of major problems in the Highlands and Islands; I cannot give you examples of where the current system is not working. At the meeting on 10 December I will try to get a response from HITRANS to establish whether we have the same problems with the procurators fiscal not taking forward cases when action could perhaps be taken. However, I am not aware of a significant problem. No one I have spoken to says that the provision of a commissioner will make any difference to what happens.

**Councillor MacIntyre:** I will mention Scottish Water. That seems to have been a problem in most authorities; it has certainly been a problem in Argyll and Bute. The matter may well come down to a budget change. Scottish Water was going to do certain work and did only part of it. The job seemed to start and stop and appeared to go on for ever. In parts of Argyll we have had problems all the way through with road works and utilities.

Roads are an asset, whether they belong to the local authority or, in the case of trunk roads, the Scottish Executive. We suggest that, because the roads belong either to the council or the Scottish Executive they should do the reinstatement work,

rather than leave it to anyone else. That would lead to a reduction in complaints about reinstatement work. If the Scottish Executive or the local authority did the work to a set standard they could complain only to themselves, rather than continually having to go back to say that the work is substandard and needs to be reinstated yet again. The council is considering that approach. We are looking to make comments about that matter with regard to utilities.

17:30

**Fergus Ewing:** I have one last question. As I understand it, the purpose of part 2 is to accelerate the time that it takes for utilities in particular to complete road works and to ensure that they are of improved quality. We would usually expect the duration of road works to be weeks or at most months. Councillor MacIntyre might be in the best position to answer this question. Am I right in saying that road works on the A82 between Tarbet and Inverarnan, in the form of temporary traffic lights, have been in place for a period of time that is measured not in weeks, months or even years but in decades? Does Councillor MacIntyre agree that tackling that problem on the A82, where there is an extended single-track section in two parts, should feature largely in the transport strategy of HITRANS in future?

**Councillor MacIntyre:** The A82 is part of our strategy. For the record, the traffic lights that you mention have been there for 32 years—although they are only temporary. A study is on-going to try to get to some sort of conclusion. We are looking at the stretch from Inverarnan up to Fort William. It seems, sadly, that it will take another year or 18 months to get the results of that survey, although Highland Council and Argyll and Bute Council have both conducted their own surveys and have information about the matter. Howard Brindley is conducting some detailed work.

**Fergus Ewing:** The First Minister referred to the A82 at First Minister's question time on 4 November, in the context of it being classified by the Automobile Association as a black route—in other words, one of the most dangerous routes—in response to a question from Jackie Baillie about a tragic accident in her constituency of Dumbarton. Why should it take so long to produce the report, which the First Minister referred to as a priority? I do not understand why it should take so long, particularly if information is already available from the local authorities.

**Councillor MacIntyre:** Howard Brindley can perhaps answer that question.

**Howard Brindley:** We have been working with Executive officials and consultants on the matter. I

believe that early next year all the main surveys will be completed. It will then take a further six months to produce a report that identifies what needs to be done. Once the report has been produced it is necessary to go through a process of statutory traffic orders and perhaps public inquiries, so it is not necessarily the case that work can be started on the ground once that point has been reached. Delays will occur. If the report is produced by the end of next summer, we will still not have reached the point at which it is possible to go to contract and have the work done. More statutory work will have to be done.

**The Convener:** There are no further questions, so that brings us to the end of the evidence session. I thank Councillor Mitchell, Councillor MacIntyre and Howard Brindley for their evidence.

That brings us to the end of the committee meeting. I thank members of the committee, the press and the public for their attendance.

*Meeting closed at 17:33.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

**Thursday 25 November 2004**

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Astron Print Room, the Document Supply Centre or the Official Report.

#### PRICES AND SUBSCRIPTION RATES

##### OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament and annual subscriptions: £350.00*

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

##### WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Standing orders will be accepted at the Astron Print Room.

Published in Edinburgh by Astron and available from:

**Blackwell's Bookshop**  
53 South Bridge  
Edinburgh EH1 1YS  
0131 622 8222

**Blackwell's Bookshops:**  
243-244 High Holborn  
London WC1 7DZ  
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

**Blackwell's Scottish Parliament Documentation**  
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

**Telephone orders and inquiries**  
0131 622 8283 or  
0131 622 8258

**Fax orders**  
0131 557 8149

**E-mail orders**  
[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)

**Subscriptions & Standing Orders**  
[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)

**RNID TYPETALK calls welcome on**  
18001 0131 348 5412  
Textphone 0845 270 0152

[sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)

All documents are available on the Scottish Parliament website at:

[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron