

# **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE**

Tuesday 7 December 2004

Session 2

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## **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE**

**28<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:**

Councillor Andrew Burns (Convention of Scottish Local Authorities)

Iain Duff (Scottish Council for Development and Industry)

James Fowle (Convention of Scottish Local Authorities)

Councillor Alison McInnes (Convention of Scottish Local Authorities)

Councillor Alison Magee (Convention of Scottish Local Authorities)

Councillor Dr Joan Mitchell (Dumfries and Galloway Council and Convention of Scottish Local Authorities)

David Morrison (Turiff Contractors Ltd)

Stuart Ross (Alfred McAlpine Infrastructure Services Ltd)

Jim Shields (Alfred McAlpine Infrastructure Services Ltd)

Findlay Taylor (Roads Authorities and Utilities Committee (Scotland))

Alan Watt (Civil Engineering Contractors Association (Scotland))

### **CLERK TO THE COMMITTEE**

Eugene Windsor

### **SENIOR ASSISTANT CLERK**

Alastair Macfie

### **ASSISTANT CLERK**

Euan Donald

### **LOCATION**

Committee Room 4



## Scottish Parliament

### Local Government and Transport Committee

*Tuesday 7 December 2004*

[THE CONVENER *opened the meeting at 14:08*]

### Items in Private

**The Convener (Bristow Muldoon):** I welcome committee members, the first group of witnesses and members of the public to the 28<sup>th</sup> meeting in 2004 of the Local Government and Transport Committee. Before I introduce our witnesses, we will deal with a couple of brief items of business. The first of those is consideration of items in private. I ask members to consider taking in private agenda item 6, which relates to the possible contents of our report on the Transport (Scotland) Act 2001 inquiry. Are members content that we take that item in private?

**Members** *indicated agreement.*

**Tommy Sheridan (Glasgow) (SSP):** Please note my usual dissent.

**The Convener:** Absolutely.

The second item on the agenda is subordinate legislation.

**Bruce Crawford (Mid Scotland and Fife) (SNP):** Sorry, convener, but two items are down to be taken in private this afternoon. The other is item 5, on forthcoming Sewel motions.

**The Convener:** I do not propose that we consider that item in private, if that has the agreement of the committee.

**Bruce Crawford:** Okay. That is not what the agenda states, but I am delighted.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Why does the agenda state that

“The Committee will consider whether to take items 5 and 6 in private”?

Item 5 is on Sewel motions and it is not now being proposed that the item be taken in private. Will you clarify why the situation has changed?

**The Convener:** It is simply that, when the agenda was sent out, the clerks had not had a full opportunity to consult me on the issue and my view is that we should take item 5 in public. That is the only reason for the change and I am sure that the committee will agree with my view.

**Fergus Ewing:** I am delighted that the fresh air of democracy is blowing through the meeting, but the press were aware that, on the agenda, it was proposed that the item should be taken in private. However, I guess that, if the press are here, they can watch this space and hear the public debate later on.

**The Convener:** Absolutely.

## Subordinate Legislation

### Police Pensions Amendment (Scotland) Regulations 2004 (SSI 2004/486)

14:10

**The Convener:** Agenda item 2 is consideration of a piece of subordinate legislation. No members have raised any points on the regulations and no motions to annul have been lodged, so I ask the committee to confirm that it has nothing to report on the regulations.

**Fergus Ewing:** I received the papers only on Saturday. Can we clarify whether the regulations will prejudice the interests of any police officers in relation to their pensions or have any deleterious impact on any entitlement or provision? As far as I could see from reading the explanatory note and the Executive note, that will not be the case, but we are duty bound to be clear about that before we approve the regulations. I am sorry that I was not able to give earlier notice of that point, but I had a problem with getting the papers at the weekend, which I explained to the clerks.

**The Convener:** I am not in the same position as the Scottish Executive is to respond to those points, but I see from the Executive note that

"The Regulations have been the subject of consultation with police authorities"

and police officers' representatives. I am sure that, if the police officers were concerned that the regulations would have a deleterious effect on their pensions, they would have made us aware of that, and that the Executive would have highlighted any such concerns, so I am fairly satisfied that that is not the case. Does the committee agree that there is nothing to report on the regulations?

**Members indicated agreement.**

## Transport (Scotland) Bill: Stage 1

14:12

**The Convener:** Our third item is further stage 1 consideration of the Transport (Scotland) Bill. Our first group of witnesses represents the Convention of Scottish Local Authorities. I welcome to the committee Councillor Alison Magee, who is the transport spokesperson for COSLA; Councillor Andrew Burns, who is the transport spokesperson for the City of Edinburgh Council; Councillor Dr Joan Mitchell, who is the chair of the Dumfries and Galloway Council planning and environment services committee; James Fowlie; and Councillor Alison McInnes, who is not on the list in front of me.

The presentation is, on the whole, by COSLA members about COSLA's overall position, but I draw attention to the fact that Councillor Mitchell also wants to present the Dumfries and Galloway Council perspective and we felt that, rather than taking evidence from her at two separate meetings—and if it is okay with the other COSLA representatives—we would allow her to put across the council's views on boundaries and whether Dumfries and Galloway fits well with other proposed regional transport partnerships.

I invite Councillor Alison Magee to make some introductory remarks.

**Councillor Alison Magee (Convention of Scottish Local Authorities):** Thank you for giving us the opportunity to speak to you this afternoon. We have tried to bring a balanced membership to you. Councillor McInnes is from Aberdeenshire Council and I am from Highland Council, so you can see that we have tried to give you a north-south, east-west representation. As you have said, Councillor Mitchell will speak for Dumfries and Galloway Council on a specific issue, but I will give a brief overview of COSLA's initial response to the bill, which I hope the committee will recognise is an interim response. I also hope that you have the paper that we have written and that it has been circulated.

**The Convener:** Yes.

**Councillor Magee:** It would be fair to say that, when local government first learned of the proposals for a new transport agency, we had serious concerns about what might lie ahead. We did not want a single, stand-alone agency that simply sucked up powers from local government, because we feel that local government has a great deal of experience and skill in delivering transport across the widest spectrum.

I am glad to say that, since the publication of the white paper, a lot of our concerns have been

addressed, both by the white paper and in discussions with the minister. We are particularly glad that the white paper highlights the case that we made for the importance of the links with economic development, community planning and structure planning. We should not lose sight of that as the bill progresses.

14:15

Over the years, we have also argued strongly for a proper, long-term national transport strategy for Scotland, so we particularly welcome the commitment to that. We believe that that strategy should be developed by the Executive in partnership with local government and other stakeholders. The voluntary regional partnerships have been developing regional strategies, so the lack of an overarching, long-term national strategy at the top seemed to us to be a complete hiatus. We would like to see all that fitting together.

I highlight the good track record of the existing voluntary partnerships and we hope that what lies ahead will build on those. The partnerships have been good at developing their own strategies, at lobbying for increased transport funding and at securing outside funding from Europe and elsewhere. In many cases, their membership includes the private sector, whether that is chambers of commerce or other bodies—the partnerships are not limited to local government.

We agree that transport partnerships should not just come into being in April 2006. A lot of preparatory work has to be done to effect the transition. I will return to the question of funding in a minute.

Dumfries and Galloway Council is represented here today because some local authorities have concerns about boundaries and voting systems—a lot of debate is going on about that at the moment, but I do not want the whole debate to be bogged down with those issues. COSLA would like the existing transport partnerships to be able to come up with an acceptable solution where there are particular issues about boundaries and voting systems. Only as a last resort should anything be imposed.

It is important to recognise, as the white paper does, that it is not a case of one size fits all in Scotland. The existing partnerships are of a different size and are at a different stage in their development and it is important that they can negotiate the arrangements that best suit their particular needs and pressures. As I have said before, we welcome the option to have external members. The regional transport partnerships should be able to consider what sort of external membership they want.

Obviously there is concern about funding. We welcome the £34 million grant that the Executive is making available, but we are concerned that start-up funding appears to be for one year only. We feel strongly that there should be a longer lead-in time and we argue for transitional funding to apply during the lifetime of the forthcoming spending review—over the next three years. If start-up funding is to be given only for a year, it might not deliver what the Executive wants.

Local authorities' other concern relates to how the partnerships are to fund themselves. There is an issue around requisitioning, which is the system that the joint boards currently use. At the moment, we do not have a consensus across member councils. Some councils are fairly relaxed about requisitioning; others have strong concerns about it. However, there seems to be unanimity that, if we end up with a system of requisitioning, only those regional transport partnership members who represent local government should have a vote on the matter—members from the private sector or an enterprise company should not have a vote on requisitioning.

The alternative seems to be that local authority funding would simply be top-sliced and handed directly to the partnerships. An initial trawl of members' views has found that that would be even less acceptable than requisitioning. However, we are unable to give a conclusive answer on the question at the moment. A longer period of start-up funding and what I would loosely call transitional funding might help to cushion the funding problem.

The other main aspect of the bill is concessionary fares. The cities and Strathclyde Passenger Transport have an on-going concern that funding for concessionary fares has been insufficient to meet demand. Conversely, the concerns in remote and rural areas relate to the fact that concessionary fares money is used to deliver support to a range of services, such as inter-island ferries, demand-led bus services, supported taxis and supported bus services. We do not want the bill to create a concessionary fares scheme that delivers less than the current scheme. There should be flexibility for local enhancements to continue.

I will stop there and ask Alison McInnes and Andrew Burns whether they want to add anything that I have omitted in my remarks.

**Councillor Alison McInnes (Convention of Scottish Local Authorities):** I will expand on the point made by Councillor Magee about the need for flexibility and local solutions in the constitution of regional transport partnerships. In particular, I refer to the proposals in the consultation document for the membership of the regional transport partnerships, which are that there will be one

councillor per council, with the other third of the membership made up of external members. Although that is probably acceptable for most of the proposed partnerships, it will have a particular impact on the proposal for the north-east of Scotland regional transport partnership, which will be composed of only two councils. Under the bill, we would create a board of possibly only three people. That seems inappropriate in reality. I submit that there has to be some flexibility within the parameters of the partnership constitution to reflect that local situation. Perhaps the way round the problem would be to stipulate a minimum and maximum membership of a transport partnership board.

**Councillor Andrew Burns (Convention of Scottish Local Authorities):** I have nothing to add at this stage.

**The Convener:** Okay. Would Councillor Mitchell like to make opening remarks, or shall we deal with the points that she wants to make in questions later?

**Councillor Dr Joan Mitchell (Dumfries and Galloway Council and Convention of Scottish Local Authorities):** I would like the opportunity to make opening remarks. On behalf of Dumfries and Galloway Council, I thank the convener, the committee and COSLA for allowing us to make our own presentation.

We have some concerns that the consultation process is being progressed in parallel with the progression of the bill. I understand that the consultation process does not end until the middle of January and I hope that the results will be in no way anticipated. We, as a council, maintain the view that Dumfries and Galloway should remain a regional transport authority for its own administrative area. If that sounds like special pleading, the consultation document says that Dumfries and Galloway is different. I quote from paragraph 18 of that document:

"The geographical position of Dumfries and Galloway means that its partnership options are limited."

The proposal to include Dumfries and Galloway in the current Strathclyde Passenger Transport area is recognised as "uniquely" requiring the transfer of powers to SPT. Therefore, the consultation document recognises that we are different and a bit awkward. I will explain to the committee why that is.

The first reason is the geography of the area. I have a map in front of me—members might not be able to see it, but they have been to Dumfries and Galloway, so they are aware of the issues—on which Dumfries and Galloway is the big green-shaded bit in the south-west adjacent to the Solway firth and across the watershed from both Edinburgh and Glasgow. We do not fit into any city

region or any travel-to-work area of any city in Scotland. We are a large rural area. There is no problem of scale—we are as big in terms of acres as Aberdeen and Aberdeenshire. The area is sparsely populated and rural and has little commonality with central belt travel-to-work areas.

The committee was kind enough to go to Stranraer, so it is aware that Dumfries and Galloway Council has a successful record of delivering the transport function locally. We have a consistent track record of delivering transport against national expenditure programmes and priorities, in consultation with partners. That culminated in our winning the rural authority award in this year's Scottish transport awards. The council and the service are not failing.

We have no problem with partnership working. We believe and have an acknowledged record in community planning, because we have the great advantage—of which I am sure the committee has often heard—of coterminosity within our boundaries. We work closely with agencies and communities in our boundaries. We also have partnership links in transport with the private sector, with Northern Ireland, through our north channel partnership, and across the border to England. The authority is not one that does not work in partnership.

There is nothing isolationist about our position. In the spirit of the bill, we have attempted to form partnerships with other local authorities. We asked South Ayrshire Council, East Ayrshire Council and Scottish Borders Council whether they were interested in forming a rural southern partnership, but for understandable reasons those councils place themselves in Glasgow or Edinburgh travel-to-work areas.

The most important point is that we are being uniquely targeted as the only authority that will suffer compulsory removal of its transport function, staff and budget to an established statutory agency—SPT. That is different. SPT represents model 3 in the consultation document—the most established model that is available. I hope that I have shown that the proposal would remove a statutory function from a local authority to a situation that does not suit that authority's special circumstances. That has profound constitutional implications.

The committee will hear no strategic transport or service delivery justification for the proposal, because there is none. Agencies that we have worked with support the Dumfries and Galloway case. The committee will hear no governance or accountability argument for the proposal, because the proposal goes in the opposite direction. The only justification that members will hear for uniquely targeting a local authority is bureaucratic



convenience and conformity. For a country as diverse as Scotland, that is unacceptable.

**The Convener:** I thank the COSLA representatives and Councillor Mitchell for their comments.

**Fergus Ewing:** I welcome all the witnesses. I will ask about COSLA's general approach to the bill, especially the funding aspects. Alison Magee said that COSLA's submission was an interim paper. Am I right to say that, unless the funding position is made clear and is satisfactory, COSLA will not support regional transport partnerships?

**Councillor Magee:** I would not use such black and white terms. COSLA has no final position on funding, because its member councils have diverging opinions, as I said. However, there is a common position on the fact that one-year start-up funding will not be sufficient. We cannot support a system that would allow non-local authority members of partnerships to have a vote on requisitioning from local authorities, because we think that that is undemocratic. We also have concerns about how any prudential borrowing would be funded.

I stress something that I highlighted earlier: the voluntary partnerships have a varied approach to funding and try to obtain it from a variety of sources. There is an issue about revenue funding, which Councillor Burns might want to comment on. It reflects what Councillor Mitchell said about the diversity of Scotland. In remote and rural areas, the priorities still tend to be big infrastructure projects, such as causeways and major road upgrades, but in urban areas the situation is different. The funding question is complex and we have not yet got to the bottom of it—we need to do further work. What I am describing is work in progress, on which we have reached a common position. Andrew Burns might want to say something about revenue funding for cities, which is an important issue.

14:30

**Councillor Burns:** First, to answer Fergus Ewing's question, a move away from one-year transitional funding, which we regard as inadequate, to a three-year transitional fund would alleviate some of the concerns that members of COSLA have about requisitioning. I am not saying that every constituent authority in COSLA would then support requisitioning, but a three-year transitional fund for the period of the spending review—up to April 2008—would go a long way towards alleviating most of the concerns.

I will expand on Alison Magee's comments on revenue funding. Some of the larger urban authorities are concerned about the continuing revenue costs of the regional transport

partnerships. Without doubt, all the large urban authorities support the RTP route and we recognise that large capital sums will be required for the majority of the projects, particularly in rural areas, but many of the transport infrastructure projects in urban areas will require significant continuing support. There is little mention of that in the bill and its accompanying documents, which bothers several members of COSLA. There is no detailed discussion of either the potential need for continuing revenue support for RTPs or mechanisms for raising revenue.

**Fergus Ewing:** At the committee's meeting on 23 November, Councillor Gordon pointed out that only one respondent out of 176 favoured requisitioning. A councillor from Orkney was virulently opposed to the funding arrangements, because he said that it could result in a fourfold increase in the contribution that his council currently makes to the voluntary partnership. We do not know how much funding there will be, which councils will be in which regions, what the powers will be, where the boundaries will be or who will have votes. We know that COSLA opposes various aspects of the proposals and that you are not satisfied that the funding arrangements have been sorted out because you have not been told about them, but what puzzles me is why COSLA does not oppose the bill as it stands. Why do you not say, "Until we have answers to our questions, we will not support the bill"? It seems to me that to half-support it, as you are doing, is tantamount to signing the political equivalent of a blank cheque. I am genuinely puzzled about why COSLA is taking that approach.

**Councillor Magee:** You have outlined many of the concerns that we had at the outset, when we thought that a one-size-fits-all solution might be imposed on local government and that functions would be removed from local government. However, we think that the bill recognises many of those concerns.

Voluntary regional partnerships already exist and in our view they work well. We welcome the suggestion that it will be up to the partnerships to determine issues such as boundaries and voting systems. We welcome the fact that the partnerships will be able to come up with their own solutions rather than have a one-size-fits-all solution imposed on them.

As I said, we welcome the commitment to a national transport strategy. We welcome the fact that transport has risen up the Executive's agenda and that it is receiving considerably more funding, although it is arguable that it will never receive enough funding. As I recall, when the Scottish Parliament and Scottish Executive first came into existence, the priorities were things such as the

education, social work, police and fire services, with no mention of transport.

We have reservations about the lack of detail and the lack of clarity in some aspects of the bill. Clearly, there will be on-going discussions between COSLA and the Scottish Executive on all those issues. We may well want the bill to be amended. However, it would be counterproductive for us to tell the Executive simply to go away because we dislike the bill and will have nothing to do with it.

**Councillor McInnes:** Let me elaborate on that. We welcome the bill. Having talked at great length with the minister and the Executive last year about the need to raise awareness of transport issues, we now have a proposal to implement a national transport agency. In our view, it would be wrong not to have a regional transport partnership in the middle to reflect the need for subsidiarity. The bill will mean that we will have a strategic level, a regional level and a local level. It would be entirely wrong to implement one thing without the other.

**The Convener:** In practical terms, what benefits will passengers on public transport gain from the establishment of regional transport partnerships that could not be gained from the existing partnerships?

**Councillor Burns:** Economies of scale will be gained in both urban and rural authorities from the development and implementation of regional transport partnerships. As Alison Magee said in her opening comments, the existing voluntary partnerships have made significant gains for transport infrastructure delivery, but there is a limit to what can be achieved under the current arrangements. That is why, collectively, we broadly welcome the principles and the thrust of the bill while still having concerns about some details. A lot of that is to do with timing, as the consultation on the detail is still continuing.

For projects such as congestion charging, which is causing so much discussion here in Edinburgh, a regional approach would arguably be much more beneficial and effective than a single-authority approach. That is just one of the numerous examples in which transport infrastructure bears no relation to local authority boundaries, which are purely administrative. For that type of cross-boundary project, of which there are many in both urban and rural Scotland, a regional approach could be hugely beneficial.

**Councillor Magee:** Another example is the work of the Highlands and Islands strategic transport partnership—HITRANS—which has done a lot of work on air travel, including work on public service obligations, slots and routes. No single local authority could have done that working on its own. As HITRANS moves to being a statutory

partnership, it will be able to strengthen that work and, with more clout, it will be able to take that work forward. Each area of Scotland can see different benefits from having a regional approach. That does not detract from the fact that some issues still need to be debated and some concerns still need to be addressed. However, by and large, we have moved forward considerably from our initial position, when we thought, "Oh my goodness, a single transport agency—what does that mean?"

**The Convener:** As Councillor Burns raised the issue, let me explore further the general issue of congestion charging. I will not comment on City of Edinburgh Council's current proposals, as I am sure that I will have plenty of chance to do that in other forums over the next few months. As the present witnesses may be aware, I have already asked a couple of previous witnesses whether it would be appropriate that the power for congestion charging be transferred from individual local authorities to the new regional partnerships once those are established. Would the cross-boundary issues that Councillor Burns raised be addressed by ensuring that the interests of people in all parts of a travel-to-work area were properly taken into account?

**Councillor Burns:** My current understanding is that the Executive has no intention of including that type of transfer within the scope of the bill.

**The Convener:** Basically, I am suggesting that it might be sensible to consider such a proposal. Does COSLA or any of the individual authorities have a view on that?

**Councillor Burns:** I think that it would potentially be a backward step in the current environment, given that the Transport (Scotland) Act 2001 has been on the statute book for almost four years and not a single local authority has taken forward one of its key elements. It would be a retrograde step to slow the process down at this very late stage. I am speaking personally, as the matter has not been discussed at a COSLA level.

**Councillor Magee:** There is a case for the partnerships having greater insight and more input into the plans. Integrated transport, which it is extraordinary that we have not mentioned today, is one of the key matters that a statutory partnership should get into.

I will give an example from the Highlands and Islands. Although bodies such as Caledonian MacBrayne and Highlands and Islands Airports Ltd are key to transport in the Highlands and Islands, they do not have a presence on HITRANS. I am not suggesting that HITRANS or whatever succeeds it would want to run ferry services or air services, but there is an opportunity for bodies such as Caledonian MacBrayne to have

much greater input and to have a seat at the table when the matter that is being considered is relevant to them. For example, I understand that Highlands and Islands Airports Ltd recently drew up a 10-year capital plan with no reference to other agencies and other bodies. The partnerships should have the capacity to overcome those kinds of problems. There is potential for two-way traffic.

The issue of trunk roads is another example. Is there a case for going for greater reintegration there? There is considerable potential to broaden the scope of what some partnerships are currently doing.

**Bruce Crawford:** The convener asks a relevant and pertinent question, particularly of the City of Edinburgh Council. On the one hand the council, which I assume is part of COSLA, is saying that regional transport strategies are a good idea, but on the other I think that Andrew Burns is saying today that that is apart from on congestion charging.

I have not been as close to the argument in this part of the world as the convener has, but to me there seems to be a contradiction there. That throws up concerns that have been raised in earlier evidence sessions about the fact that under section 8 of the bill a constituent council will be required to perform the duties only "so far as possible". Forgive me, but it makes me, as a committee member, begin to wonder whether the words "so far as possible" should stay in the bill if some councils are saying that the regional transport strategies are fine, provided that they do not include certain elements.

**Councillor Burns:** With the greatest respect, I think that there is no contradiction whatsoever in what I have said. The Transport (Scotland) Act 2001, which many committee members passed through the Parliament, makes it plain—I have to say, again with the greatest respect, that this is something of a side issue—that the revenues from congestion charging have to bear a relation to who pays and who gains. Even under the current proposals for a single-authority scheme, some 45 per cent of revenues will go to partners around Edinburgh and not to Edinburgh. It is incorrect to say that we are not taking a regional approach.

**Bruce Crawford:** That is not what I was saying. I was saying that it seems that, as far as the regional transport strategies are concerned, the City of Edinburgh Council wants to approach the issue of congestion charging slightly differently from other areas that you will affect by way of delivery and change of services.

**Councillor Burns:** That is not the case at all. Under the 2001 act, which many members of the committee passed, we are taking forward a scheme in Edinburgh that is entirely separate from

what we are discussing this afternoon. If an RTP wants to introduce a congestion charging scheme, it can do that. There is no contradiction in my statement.

**Bruce Crawford:** But why, in those circumstances, could an RTP not in the future adopt what Edinburgh has been doing and make it its own?

**Councillor Burns:** In due course that may happen, but my understanding is that RTPs will not be formed until at least the middle of 2006, which is some way beyond when the Edinburgh scheme could be operational.

14:45

**David Mundell (South of Scotland) (Con):** I have a general question on the subject of the boundaries, functions and finances of the proposed regional transport partnerships. Do you agree that it is unsatisfactory that those matters will be dealt with in secondary legislation, which in effect means that the measures cannot be amended or subjected to the sort of scrutiny that we are carrying out at present? If the issues that Councillor McInnes mentioned about the constitution of the partnership boards arise, MSPs will have to either vote down the whole proposal or accept it. Do you agree that it is unsatisfactory to proceed with a bill when much of the detail will be contained in secondary legislation?

**James Fowlie (Convention of Scottish Local Authorities):** We acknowledge that the method that is used in the bill has pros and cons. The advantage of using secondary legislation is that if time shows that the legislation is not working, it can be amended relatively easily. If the regional partnerships were specified in the bill and if, further down the line, a local authority realised that it would fit better in a different partnership, it would be difficult to change that. However, we accept that relying on secondary legislation has disadvantages because of what future ministers might do through amending orders. COSLA is discussing how much should be done by secondary legislation and how much should be in the bill and we will come to a view on that before the end of stage 1. If we find that local authorities will not be able to deliver unless certain aspects that are key to the future delivery of transport services are put in the bill, we will seek amendments accordingly.

**Councillor Magee:** Argyll and Bute Council may want to be split between two partnerships or to be within just one. If the council decided on the first option, but after a year or so found that that was unsatisfactory and failing to work, it would be difficult to change the situation if the details of the partnerships were in the primary legislation,

because further primary legislation would be required. That is a potential disadvantage. However, if everything is done through secondary legislation, there are the issues of scrutiny and clarity that David Mundell raised. We have not reached a final view on the issue.

**David Mundell:** I turn to the submission from Dumfries and Galloway Council that Councillor Mitchell kindly circulated. Will she clarify whether Dumfries and Galloway seeks to be part of a regional transport partnership? Section 1 states that ministers will “divide Scotland into regions”, but is it your suggestion that Dumfries and Galloway should not be included in any of the regions and should operate as at present, or that the area should, in effect, be a region on its own?

**Councillor Mitchell:** I am not sure whether I understand the exact distinction that you are making. Dumfries and Galloway Council should be identified as a regional transport authority on its own, on the basis that it makes no transport sense for us to be linked to anywhere else, given our specific circumstances.

**David Mundell:** I fully understand and support the points that you have made. Other than the Scottish Executive, everyone who has given evidence has made it clear that they do not understand the rationale behind making Dumfries and Galloway part of the west of Scotland partnership. Within the legislative framework, the Minister for Transport will either create a partnership that covers Dumfries and Galloway or he will not. It is important for the committee to know whether the council thinks that the area should not be covered by a partnership, or that it should be covered by one, at least in the legal sense, but with only a single council. That would create extenuating difficulties of the sort to which Councillor McInnes referred in relation to the north-east—you would have to have a board of one and a half.

**Councillor Mitchell:** We are seeking recognition of the fact that the Dumfries and Galloway area functions well and that the council forms partnerships with private bus operators and other adjacent authorities in perfectly satisfactory ways. If that requires us to be identified as a one-authority partnership, so be it. I do not think that a special arrangement for Dumfries and Galloway would have implications for anywhere else in Scotland. I genuinely believe that the consultation document recognises that our situation is uniquely difficult. We are not setting a nasty precedent that would undermine the bill as a whole.

**David Mundell:** That is quite clear. You have made the unique position of Dumfries and Galloway clear in the evidence that you have submitted, which has been backed up by others. The Scottish Executive evidence was very much

along the lines that you would be required to fit in—almost as a tidying-up exercise—that you had to be put somewhere and that the west of Scotland was as good a place as any. Clearly, that is not an acceptable position to the council.

**Councillor Mitchell:** I have made clear that it is not acceptable. I have no hesitation in saying that, if the only rationale for including Dumfries and Galloway in the west and south-west regional transport partnership is to end up with something that is bureaucratically neat and tidy but that does not address the transport and service needs or the democratic accountability needs of the public in Dumfries and Galloway, that is not a strong enough reason for forcing us down this line.

**David Mundell:** It is not clear to me from section 1 whether, if the bill is passed, the minister will be required to divide up the whole of Scotland into partnerships or whether he can say that Dumfries and Galloway will not be included in a partnership. As we approach the end of stage 1 and begin stage 2, we must be clear on that point. We will be able to cross-examine the minister on the issue.

**Councillor Mitchell:** That is a fair point. I presume that if we were in a partnership, there would be a board that included private sector partners and so on. We would have no problem with that. That is the type of joint, open partnership working that we are doing in the meantime.

**The Convener:** I want to move on from that point, as a parallel consultation is taking place on the issue.

**David Mundell:** Yes. However, it is important to make the point that this is not just an issue of boundaries. There is a debate about whether Dumfries and Galloway should be in one partnership, but there is another debate about whether the partnership arrangements should apply to the area at all. That is the point on which I have tried to expand with Councillor Mitchell.

**Councillor Mitchell:** We have no problem in principle with partnership working, but we have difficulty with the geographical boundaries that are proposed. The regional partnerships will evolve and develop policies in which every local authority will have an equal say, but that is not what is proposed for Dumfries and Galloway. Instead, it is proposed that we will be included in an existing statutory authority that has been in being since local government reorganisation, is the most extreme model and within which we will have little influence. We will certainly have no influence on the direction or speed of travel.

**David Mundell:** I have a separate question on a general issue. In the Scottish Executive evidence that was given at the start of stage 1, one of the reasons for regional transport partnerships that was most strongly presented was that local

authorities could not work together and therefore a statutory basis was required to force them to work together, but little evidence has been presented on that front. What are your views on that as a rationale for introducing RTPs?

**Councillor Magee:** If the Executive really said that, it is interesting because, as you said, there is little evidence to support it. The evidence that we would cite to show that it is not the case is the progress that the voluntary partnerships have made in a fairly short time. Our original position was that we wished the voluntary partnerships to evolve naturally and not become statutory partnerships at this stage, and that is why we have had concerns about flexibility on voting rights, flexibility on boundaries and transitional and lead-in funding.

To say that local authorities cannot work together on transport is, to be frank, incorrect. The examples that I know best are, of course, from the Highlands and Islands, where there is an extremely good track record of local authorities working together, not only on the work on air travel that I have cited, but also to prioritise projects for European funding. It requires a deal of confidence in my partner authorities for me to vote for a spinal route in the Western Isles to get European funding over and above my project in the Highland Council area. We have done that successfully in HITRANS from an ability to appreciate the case that is being made elsewhere in the partnership area.

It is incorrect to say that local authorities cannot work together, because they work together on a raft of things that are nothing to do with transport. The sheer existence of COSLA proves that they work together. I do not know whether the Scottish Executive was winding the committee up, but it is not our experience that local authorities cannot work together, and I hope that my colleagues will endorse what I said.

**Councillor McInnes:** I am the vice-chair of the north-east Scotland transport partnership—NESTRANS—and we have demonstrated clearly that the two local authorities involved in that partnership can work together. All the voluntary transport partnerships work well together but within certain limits, and when we responded to the initial consultation on the setting up of statutory regional partnerships, there was recognition that the voluntary partnerships were operating at their limits.

There are particular constraints on the voluntary partnerships at the moment—budgetary pressures, issues of duplication, with numerous strategy teams trying to come together to build regional transport strategies, and councils working at different paces—so there would be clear benefits from moving from voluntary to statutory partnerships. Those would include the greater

efficiency and better delivery of projects, about which Andrew Burns has spoken, the longer-term vision and, in particular, constituent authorities and Government paying due and equal regard to the regional transport strategies once they are in existence—NESTRANS has a regional transport strategy, but it would have more clout if it was statutory. There would also be more consistency for public transport operators in dealing with local authorities if there were statutory partnerships.

**Iain Smith (North East Fife) (LD):** I want to pursue a little bit longer the wording in the bill that means that every local authority will have to be in a partnership. Is that the right approach or would you prefer more flexibility? Would it be better if the partnerships could be set up, but not necessarily in certain areas where that might not be appropriate? It is not entirely clear from the boundary maps why Dumfries and Galloway Council—for which Councillor Mitchell has made a strong case that we will almost certainly put to the minister—is in the same RTP as Glasgow City Council or why Stirling Council is in the same RTP as Dundee City Council, other than that it has to be in an RTP somewhere. Is COSLA's view that it is better to have more flexibility so that only those authorities for which it makes sense to be in a partnership are required to be in one, rather than require everyone to be in a partnership regardless of whether it makes sense?

15:00

**Councillor Magee:** COSLA's view is that it is extremely important that all local authorities that are concerned about that issue have the opportunity to identify and quantify those concerns and to express them in a forum such as this. COSLA does not exist to take the view of one council against that of another. We try to reach a consensus, but if we cannot, we will say that we have been unable to.

Dumfries and Galloway Council has an issue with regard to the removal of powers and Councillor Mitchell eloquently expressed her authority's point of view in that respect. The issue is not the same for councils such as Shetland Islands Council, which is reluctant to be in any sort of partnership, Stirling Council, or Argyll and Bute Council, which is uncertain as to which way it should go.

Leaving aside Dumfries and Galloway Council, I think that the risk for a council that says that it does not want to be in a partnership at all is that if every other council in Scotland were to become a member of a partnership, that council would become marginalised. The local authorities that are in that situation will have to reflect carefully before deciding whether to lobby on the issue. The situation that Councillor Mitchell told the

committee about today is the unique case of a local authority losing existing powers and staff. Dumfries and Galloway Council rightly feels that its situation is different from that of any other council.

There will always be grey areas. Some councils will always feel that they belong more strongly in one or another partnership. However, it is important for councils to have the opportunity to make their case. It is not COSLA's role to take one side against another or one view against another. The only thing we can do is to suggest to a council that does not want to have anything to do with a regional partnership in any shape or form that it runs the risk of becoming marginalised. That said, the council might not get what it wants in any event.

**Iain Smith:** I appreciate what you are saying, but is there not a danger of COSLA establishing its policy objective for every council to be in a partnership whose base function is to produce a regional transport strategy, only to end up creating something that is not a regional strategy at all because no links will be formed between bits of an area. We could end up with two local transport strategies that are stuck into the same document for the sake of having a regional transport strategy.

**Councillor Magee:** I am sorry—could you repeat that?

**Iain Smith:** Two areas will have been put together because the law says that they have to be in a regional transport partnership despite the fact that, they do not have any regional transport links between them. Will you not end up simply amalgamating two local transport strategies and calling it a regional one just to meet the legal requirement under the bill? Is there not a danger of doing things unnecessarily because the bill says that authorities have to be in a partnership?

**Councillor Magee:** Apart from the situation of Dumfries and Galloway Council, local authorities are unlikely to be combined in such a way that they have no link whatsoever with a neighbouring local authority. Customs posts and boundaries are not going to be set up between regional transport partnership areas. I happen to know that HITRANS and NESTRANS are working closely on the case for the upgrading of the A96 and on other projects. It is wrong to suggest that if an authority is in one partnership rather than the next, its relationship with the neighbouring partnership will be a case of never the twain shall meet. Clearly, there will always be cross-boundary issues. I hope that we are mature enough to recognise that and deal with it.

**Councillor McInnes:** Transport needs do not recognise local government boundaries, which

means that cross-boundary issues will nearly always have to be addressed. The member raised concerns over whether councils would be forced to operate in a certain way. The converse danger applies of councils being allowed to opt out of a regional transport strategy. If that were to be allowed to happen, it could compromise the national transport strategy. The process should be a two-way process with the national strategy needs being informed by local and regional information. If one or two authorities are allowed to say, "We don't feel any need to be part of that," the delivery of integrated transport in Scotland could be compromised.

**Dr Sylvia Jackson (Stirling) (Lab):** I am indebted to Councillor Mitchell. I had not appreciated Stirling Council's position until I saw the map that she held up. As particular issues seem to pertain to Stirling, I hope that Councillor Mitchell does not mind my asking a question about the map, given that I am the member for Stirling.

Although the map shows Stirling as sitting in two partnerships, it is not in the partnership area to which most people travel from Stirling, which is the Glasgow area. It would have been interesting if the COSLA panel had included a representative from the central area, as they could have talked around the issue. Perhaps you can tell me about the issues that pertain to Stirling as you see them.

**Councillor Magee:** We have a bill team, of which Councillor Burns and Councillor McInnes, who are here, are members. Councillor Gillie Thomson of Stirling Council is also a member of that team, so Stirling Council's views certainly inform COSLA's deliberations. If we were giving evidence again, Councillor Thomson might be one of us. I assure you that we make the biggest effort that we can to get cross-party and good geographic spread when we form teams. The Executive group is made of a transport spokesperson from every COSLA member, but we have a smaller working group—of which Councillor Thomson is a member—to deal with the bill, as we had with the previous Transport (Scotland) Bill. Stirling Council is certainly represented on that group. Councillor Thomson has strong views on funding and community planning, and they are being taken on board as we proceed.

**Dr Jackson:** What are the issues for a council that sits on two regional transport partnerships and has a particular interest in a third partnership, in which it does not have a part?

**Councillor Magee:** I used the example of Argyll and Bute, with which I am more familiar, but there should be flexibility for a council to do that, if it thinks that that is in its own best interests. That is included in the proposals.

I also think—and this returns to a previous question—that if what we end up with does not work in the best interests of a particular area, there must be a mechanism for change. If regional transport partnerships are seen to deliver fragmentation, for example, there must be a mechanism for change that does not necessarily have to resort to primary legislation. We must think about that carefully as we proceed. To be honest, I am not familiar at first hand with what Stirling Council feels, but it is, as I said, represented on our group and its views are taken into account in our response.

**Bruce Crawford:** I have a general question about functions. From what you say, you accept in principle that a council area may well be differently represented in different regional transport strategies. I am not sure whose the map is, but I see from it that Kinross-shire, for example, is part of the bigger area that would take in Dundee, Tayside, Clackmannan and so on. However, although it is part of the Perth and Kinross Council area, it might be more appropriately located in the Lothian and Fife area. A principle is involved. Do you accept that a council area can be split in two, or that bits of it can be taken into other transport areas?

**Councillor Magee:** We accept that principle, but I am not clear as to how many councils it would affect. At the moment, we have a feeling for the Helensburgh area in the Argyll and Bute Council area. I do not know whether a final conclusion has been reached on that.

**Bruce Crawford:** As long as the principle is accepted, that is fine.

**Councillor Magee:** It is up to the individual council and perhaps its neighbours to think carefully about how things best serve them.

**The Convener:** For the sake of clarity, I am aware that it has been proposed to split two areas. It has been proposed to split the Helensburgh area from the Argyll and Bute Council area, and that Arran could be part of the HITRANS area, whereas it is part of—

**Councillor Magee:** The North Ayrshire Council area.

**Bruce Crawford:** I want to talk about a slightly different aspect of functions, which you have also mentioned. Your written evidence states:

“The Scottish Executive’s acknowledgement that partnerships will evolve at different speeds has been welcomed and COSLA has accepted that, in the longer term, in some areas, functions may well transfer to the new regional partnership.”

It is interesting that your evidence proceeds to say:

“There must not be an opportunity for a future Minister to move powers around without reference to Local Government.”

Flexibility in voting and boundaries have been mentioned, but the actual functions of the regional transport partnerships are interesting, particularly in the light of section 10(1) of the bill, which states:

“The Scottish Ministers may, by order, provide for any function relating to transport ... to be carried out by that Transport Partnership”.

The ministers give themselves even more powers through section 10(6), which states:

“An order under subsection (1) above may modify any enactment.”

There is a requirement to consult local authorities and the transport partnerships, but are you concerned about how wide ranging the minister’s powers might be? Those powers would be exercised through secondary legislation rather than—under the functions issue—being on the face of the bill.

**Councillor Magee:** We have concerns about that. The COSLA view on the transfer of functions is that it might take place in some cases, but only with the agreement of the partnership concerned. I took your remarks to refer to the transfer of functions from local authorities to new partnerships, and that need not be one-way traffic. There is no reason why some functions of other bodies, such as the Executive, could not be transferred to partnerships in the long run. We see the transfer of functions as a two-way process, but it must be done with the agreement of the partnership concerned. James Fowle can confirm that we have concerns about that and that we might consider an amendment to that part of the bill.

**Bruce Crawford:** That is fine. You say that you want any transfer of functions to happen by agreement, but that is not currently proposed in the bill and an amendment would be necessary to achieve that. I will look with interest to see if that happens.

Another area related to functions is regional transport strategies and their impact on the Scottish Executive. We might have a national transport plan, to which the Executive signs up and on which everyone else has a chance to be consulted, but if an area decides to have its own transport strategy and the Executive, as one of the main funders, does not agree with one part of it, that strategy could be invalidated, because the Executive ain’t playing. That could be the current Executive or any future one. How do you feel about including in the bill a requirement that, once regional transport strategies have been set in stone and agreed, ministers are required to abide by them?

**Councillor Magee:** We would certainly expect the Executive to recognise regional transport strategies. They will inform the national transport strategy. One cannot have a load of regional strategies that say one thing and a national strategy that says something completely different, because that will not work. There has to be sign-up to regional transport strategies and if there is not, there have to be clear reasons why not.

**Bruce Crawford:** I do not disagree with what you say, but the problem is that the bill does not make a requirement on ministers; it would only be an understanding. I am trying to tease out whether that requirement should be included in the bill.

**Councillor Magee:** That is certainly something that we would want to explore.

**Michael McMahon (Hamilton North and Bellshill) (Lab):** Let us go on to another aspect of the bill. I notice from your written submission that you welcome the establishment of a Scottish road works commissioner, but you go on to say that you want to discuss further some aspects of the relevant financial arrangements. I will leave it to Tommy Sheridan to pursue that and I will focus on another part of your submission in which you say that there are some technical aspects that you wish to pursue. Will you indicate what those technical aspects are?

**James Fowlie:** We will come back to the committee with more detail about that.

**Michael McMahon:** Okay. In the initial discussion about road works the focus has been on the perception that the utilities contribute most to the problems of congestion and reinstatement, although some people believe that local authorities are just as culpable as the utilities. Is that statement fair? Would you like to defend the local authorities' position?

**Councillor Magee:** That is an assertion. The perception of utility road works is that—whoever is digging up the road—there is a lack of co-ordination, and there are concerns about the quality of reinstatement and the timescale of the works. Whoever undertakes the work, those matters need to be addressed. As we say in our submission, the aim must be faster reinstatement to a higher standard. There cannot simply be a system of fines—there must be improvement. The question of who is responsible for what is important, but one hopes that a better result will be achieved for those who use the roads.

15:15

**Michael McMahon:** I accept that that is the important thing, regardless of who does the work. However, in the consultation on the bill, it was suggested that the statistics that were used to

identify the utilities as the main culprits were misleading and that local authorities contribute just as much as the utilities in the way of road works. If the aims of the bill are based on a misconception, surely that will have to be addressed. Does COSLA accept the Executive's position that the utilities are the main culprits, or do you believe that local authorities are just as responsible and that the bill should be changed to make its focus different?

**Councillor Magee:** I do not have an answer to that.

**James Fowlie:** We believe that the utilities are more to blame than local government for the problems. The answer to your question is, therefore, no.

**Michael McMahon:** Okay. Thanks. That is fair enough. I will take the matter up with the utilities.

**Tommy Sheridan:** You seem to suggest that, regardless of who is involved in road disruption, there should be a system to provide for the earliest and highest-quality reinstatement. Would it be fair to suggest that, if a fine system or a penalty system was introduced, it should be even handed and applied to local authorities as well as to private operators?

**Councillor Magee:** Yes, of course.

**Tommy Sheridan:** You have no problem with that.

**Councillor Magee:** We want to see a better end product across the piece.

**Tommy Sheridan:** It is just that we may hear evidence later to suggest that local authorities may be looking for some form of exemption from that type of system. COSLA's evidence to our committee is that local authorities should not be exempt from the duty to provide the most rapid and highest-quality reinstatement of road works if they are involved in disruption.

**Councillor Magee:** The legislation should apply across the piece. I cannot see any reason why it should not.

**James Fowlie:** As is obvious, we have not had detailed discussions around the whole road works issue. We have had some initial discussions; however, from the local government politicians' point of view, which is what COSLA represents, the main issues are around the setting up of the regional partnerships, and that is what we have concentrated on so far. We need to come to a more detailed view on the issues surrounding road works. In simple terms, we want roads to be opened up and closed in a much more joined-up fashion in the future. We accept that there have been problems in the past, which we need to resolve.



I gave a blunt answer earlier on the technical detail. As I understand it, some very technical documents or orders are required to back up what is in the bill. We need to take advice from experts in the field on whether there are any political or resource implications for us, as an organisation for local government. That is what they will look at, and they will feed that information back to us by the end of January. We will discuss it in more detail in the bill task group that Alison Magee mentioned earlier.

**Tommy Sheridan:** I ask that you try to prioritise issues in that task group. You make the point that you are here representing the political views of COSLA. However, as politicians, you will be aware how high in the order of complaints road traffic problems are, especially when roads have to be dug up several times. That is why I am pressing you on this. As a high priority, we must try to ensure proper reinstatement so that we do not have to go back over such things again. It has been suggested that the introduction of a strong penalty system may encourage local authorities and others who are involved in road disruption to reinstate to the highest quality, so that they do not have to be asked to revisit something. I hope that COSLA will prioritise that issue.

**Councillor Magee:** As James Fowlie has said, that is something that we will consider. There is a great deal in the bill, and our focus has been on the regional transport partnerships. However, I would not want anyone to think that we do not think that proper reinstatement is an important issue, too, for all the reasons that you have given.

**Dr Jackson:** I want to raise two points in relation to that. I echo what Tommy Sheridan says about substandard reinstatements being one of the big issues. That is especially the case in my constituency. First, why is the legislation that we have at the moment not working? Why can we not pursue the penalties, and so on? I thought that we could. I would like you to consider that and come back to us with material on that. Secondly, previous witnesses have told us that there are not enough inspections, although the inspection of reinstatements is critical if penalties are to be imposed. Can you canvass local authorities to see what the general picture is and whether the information that we have received about there not being sufficient people on the ground to carry out those inspections is accurate?

**Councillor Magee:** An issue for Highland Council is the capacity to undertake the inspections, which have to be carried out within a specific timescale.

**Councillor Burns:** Under the current legislative framework—which is the root of the problem—local authorities are allowed to carry out only a certain number of inspections. The issue is not just

about capacity; many local authorities have the capacity to conduct more inspections or to divert resources to inspection, but the current legislative framework does not allow us to do that. I would not deny the fact that the utilities and local authorities play a part in it, but the root of the problem is the current legislative framework. That is why the broad thrust of the road works section in the bill is to be welcomed, although there is a lot of devil in the detail. Any increase in the capacity of local authorities to inspect must be welcomed. There is obviously a resource implication, but COSLA would broadly welcome the new provision. Without inspection, we cannot deliver the level of replacement road work that, as members have mentioned, is badly needed.

**Councillor Mitchell:** That is an issue in Dumfries and Galloway as well. The problem lies possibly with the centralisation of the public utilities. Very little work is overseen by public utilities such as Scottish Water, even on their local contracts. Local authority staff are basically overseeing the work that is being done by contractors for the public utilities.

**Councillor Magee:** It is not only an urban problem; it is a problem in rural areas as well. It is especially marked in areas that experience severe winters, where the road surface cracks up very quickly. The damage is not due simply to a high volume of traffic on the roads; other factors can lead to problems. It is a national issue.

**Fergus Ewing:** Your written submission says that COSLA welcomes the creation of a road works commissioner. However, the submission from the roads authorities and utilities committee (Scotland), from which we will hear shortly, states that the creation of a Scottish road works commissioner appears to be completely unnecessary. That is a persuasive and attractive argument. Is COSLA's official position that the road works commissioner should replace the functions that are carried out by RAUCS?

**James Fowlie:** Yes.

**Fergus Ewing:** From the public's point of view, it makes not a jot of difference whether road works are instructed by Scottish Water, British Telecom, a utility company, a local authority or BEAR Scotland. The situation is exactly the same: they are a problem and a hassle. For clarification, does COSLA agree that there should be in the legislative framework—whatever is set up—an equal playing field, so that local authorities, utilities and anyone else who digs up the road are subject to exactly the same laws, duties and penalty regime?

**Councillor Magee:** I think that we have already answered that question.

**Fergus Ewing:** I just want you to make your position on it clear. It is a simple question. If I did not hear the answer, I am sorry. Do you want me to ask it again?

**Councillor Magee:** No.

**Michael McMahon:** The answer was yes.

**Councillor Burns:** The answer is yes.

**Fergus Ewing:** So COSLA's position is that local authorities should also be liable to the regime of penalties that the commissioner can impose on utility companies.

**Councillor Magee:** We have not taken a different position from that.

**James Fowlie:** As has been said, that is our position at the moment. We need further discussion of the detail of the issues. Elected members who attend our organisation's meetings have not had an opportunity to discuss the road works details in the bill. We want to open up, close and reinstate roads to the best quality and as soon as possible; it is as simple as that. We need a bill and orders that deliver that.

We accept all the points that MSPs have made. When we examine the detail, we will take the matter on board as a priority. However, it has not been a priority yet. We have had some initial discussions and our view is stated in our submission.

**Fergus Ewing:** At present, local authorities are subject not to penalties, but to scrutiny by the Accounts Commission for Scotland. Civil servants clarified that when they gave evidence many weary weeks ago. Is COSLA's position that if fines and penalties are to be imposed, utility companies and local authorities should in principle be treated in the same way?

**Councillor Magee:** That is the position in so far as we have discussed it. I know of nothing that says that that is not the position. As James Fowlie said, much further work has to be done on that.

**The Convener:** Is that okay?

**Fergus Ewing:** I do not understand how further discussion is possible about a position in principle. It sounds as if COSLA wants to go away and think about it, then return with an answer that represents a U-turn. Will COSLA assure me that my fears are—

**Tommy Sheridan:** We will keep COSLA to its initial answer, which is that local authorities will be liable to penalties. We will not let COSLA U-turn.

**Fergus Ewing:** COSLA has allowed itself a little leeway. If it wishes to, it can remove the doubt now. Is the principle not clear? It would be unacceptable to depart from the principle that local

authorities and utilities should be treated in the same way.

**Councillor Burns:** That principle is clear.

**The Convener:** The question has been answered and I want to move on.

**Bruce Crawford:** Who speaks on behalf of local authorities on the matter? Roads authorities tell us that they support the bill's provisions on fines. We are about to hear evidence that will contradict what COSLA has told us. The roads authorities, as part of RAUCS, say that they oppose the road works commissioner. I understand that their evidence is that RAUCS could become the statutory body, but COSLA has a different perspective. Who speaks with authority for local councils? Roads authorities say one thing and COSLA says another. Local authorities need to put their house in order and speak to us with one voice.

**Councillor Magee:** We have made it clear that we have not reached final positions on the issue. We have not had the in-depth discussion, and further technical information is required. At the moment, our position is that we should have a level playing field. I am not prejudging the outcome, but when we go into the technical detail, we may find something, so the position might change. I will not give categorical answers about subjects on which we have not concluded our discussions.

**Tommy Sheridan:** COSLA's written evidence is not very expansive on concessionary fares. I know that part 3 contains miscellaneous provisions, but COSLA represents local government's political will and part 3 is probably the most important part for punters, citizens and constituents. What national concessionary fares scheme would COSLA like to be introduced? Would it be similar to or mimic the Welsh scheme? Do you have a different scheme in mind?

**Councillor Magee:** We have always supported the creation of a national concessionary fares scheme. We are concerned that it must be fully funded. We think that it is particularly important that the local variations and enhancements are not lost in a one-size-fits-all approach. We would support the adoption of a smart card. Our position is that, under a national scheme, we do not want people to end up getting a service that is less good than the service that they are getting under their local scheme.

15:30

**Tommy Sheridan:** Do you agree with having time limitations?

**Councillor Magee:** Are you referring to the rush-hour limitations?

**Tommy Sheridan:** Yes.

**Councillor Magee:** We would like those limitations to be removed—there is no question about that. We will be interested to hear what the Executive's proposals for young people are, because no detail has yet been provided on that.

**Councillor McInnes:** A number of local authorities already have local enhancements. For example, my authority does not have a peak-hours restriction. Councillor Magee's point was that she hoped that those local enhancements would roll out nationally.

**Tommy Sheridan:** We are aware that, like the Welsh scheme, some local authorities' schemes have no time restrictions. From a personal point of view, I would like us to have a national scheme that has no time restrictions. That is why I am asking what COSLA's view is. It has been suggested that such a scheme might not be workable and that it might lead to a requirement for extra vehicles, but that is a red herring. It is important that COSLA states that it is in favour of a national scheme that is not time restricted and that does not undermine locally enhanced schemes that may involve trains and ferries. Is that broadly what you are saying?

**Councillor Magee:** Yes. That states the position very well. The issues of capacity that you have mentioned are matters for the Executive and the bus companies to deal with.

**Councillor McInnes:** But they are legitimate issues.

**Councillor Magee:** That is right; there is no doubt about that.

**The Convener:** I want to tease that out a bit more. It is clear that you are saying that you would prefer to have a scheme that was not time restricted. As part of the implementation of the previous scheme or in preparation for the introduction of the proposed scheme, has COSLA calculated the likely difference between the cost of having a non-time-restricted scheme and that of having a time-restricted scheme?

**Councillor Magee:** No, we have not.

**Councillor Mitchell:** I want to raise an issue that we spoke about in Stranraer. I remind members of the concerns that we in Dumfries and Galloway have about the proposed concessionary scheme. Some of the funding that was used to establish an earlier, generous scheme in that area supports uneconomic rural services. We would be concerned if we lost that funding and ended up with free transport but no buses.

**Councillor Magee:** If we cannot fund locally enhanced services, which include inter-island ferries, the dial-a-bus scheme and subsidised

taxis, we will be able to have all the concessionary fares that we want, but there will be no transport on which to use them.

**The Convener:** That brings us to the end of our questions for the COSLA panel. I thank Councillor Magee, Councillor McInnes, Councillor Burns, Councillor Mitchell and James Fowlie for their evidence.

While we are waiting for the members of the next panel to take their seats, we welcome Bill Butler, who is here as an official substitute for Paul Martin. Can I ask you to confirm that and to indicate whether you have any interests to declare that are relevant to the committee's work?

**Bill Butler (Glasgow Anniesland) (Lab):** I am delighted to be here as the substitute for Paul Martin and I have no interests to declare, other than those that are in my entry in the register of members' interests.

**Tommy Sheridan:** In light of Bill Butler's statement, can he confirm that the Local Government and Transport Committee is the only committee of which he has ever wanted to be a member?

**Bill Butler:** I would like to take more part in the committee's proceedings and it is probable that I will do so in the new year, along with Tommy Sheridan and others.

**The Convener:** I am tempted to ask Tommy Sheridan whether he is sure that he is in the only political party of which he has ever wanted to be a member.

We move on to our second panel. I welcome Findlay Taylor, who represents the roads authorities and utilities committee (Scotland). I am sorry that we are starting this part of the meeting later than indicated, but I am sure that you heard our interesting session with COSLA.

**Findlay Taylor (Roads Authorities and Utilities Committee (Scotland)):** It was very interesting.

**The Convener:** Without further ado, I invite Findlay Taylor to make introductory remarks before we move on to questions.

**Findlay Taylor:** I thank the committee for allowing me to attend the meeting and present our paper on the Transport (Scotland) Bill. RAUCS is a national committee, which is made up of the major utilities and the 32 councils. Our purpose is to ensure that the utilities comply with the New Roads and Street Works Act 1991. We work on an area basis and our local co-ord meetings co-ordinate works as much as they can.

The bill would strengthen the Scottish road works register. RAUCS is proud of the current register, which started on paper and is now on an

electronic system that covers not just noticing but plant protection matters. We are concerned that the establishment of a Scottish road works commissioner could cause problems for us, because through our committee authorities and utilities work closely together on many matters. RAUCS already has an arbitration process that can deal with issues that arise—although they rarely do.

We are concerned about regional transport partnerships because we work closely with roads authorities and we do not want a situation in which a roads authority tells the utilities to work—or decides to carry out its own work—on one day of the week but the regional transport partnership says they must work on a different day.

The establishment of a Scottish road works commissioner is unnecessary, because the RAUCS remit seems to work. We might have differences of opinion, but the fact that I am here to represent both sides—the authorities and the utilities—demonstrates that we work closely together.

**Bruce Crawford:** Given the evidence that we just heard from the previous witnesses, it is interesting to hear your comments on the Scottish road works register and the proposed Scottish road works commissioner. We will park what COSLA said for the time being. Are you saying that RAUCS already has the powers and carries out the functions that would be conferred on the commissioner under section 15? If so, how would RAUCS feel about being the statutory authority in relation to such issues?

**Findlay Taylor:** We do that work already; we run the 1991 act. We would be happy to take on the additional role that the commissioner would have, because the right way forward is to have a single body, rather than a single person who tells everyone else what is required of them. RAUCS is the best body for the utilities and we would like the roads authorities' work to come under the same umbrella.

**Bruce Crawford:** The Executive has set aside money in the budget to support the Scottish road works commissioner. Have you made any judgment about what additional funding—if any—would be required for RAUCS to become the new statutory body for Scotland?

**Findlay Taylor:** We do not foresee any additional finance being required for that, but we seek additional finance further to enhance our Scottish road works register. At the moment, the system is based on the issuing of electronic notices between utilities and roads authorities, but we are trying to move to a system whereby a screen will tell people who is working in particular

places. We seek investment from the Scottish Executive to upgrade our system.

**Bruce Crawford:** Have you made an estimate of how much investment you need for that?

**Findlay Taylor:** Our estimate is about £600,000.

**Bruce Crawford:** That is useful.

You have confirmed that the RAUCS could undertake the tasks that are envisaged for the road works commissioner and could start doing that work for £600,000, which is considerably less than the amount that the Executive set aside in its budget to support the road works commissioner. I think that that is pretty powerful evidence.

**The Convener:** I do not doubt that much of the work that Findlay Taylor describes is being undertaken by RAUCS, but if RAUCS were to take on the role of the commissioner would there not be a potential conflict of interest? RAUCS represents the local authorities and the utilities, both of which might be subject to criticism by the proposed commissioner. How could that function be managed within RAUCS?

**Findlay Taylor:** Whenever we go to arbitration there is always a split, with 50 per cent of the committee members from the utilities and 50 per cent from the roads authorities. We have always found that that works well. Committees that we set up are always split; we find that that is the best way in which to move forward and improve the system because it gives us a wider view.

**The Convener:** Do you appreciate that if RAUCS were to perform the role of the proposed commissioner there would be a potential conflict of interest? Do you think that it is a good general principle for the person who acts as the referee to be separate from the players?

**Findlay Taylor:** The bill sets out the commissioner's role, but it does not indicate that he will have much power. He can ask for information and will be in charge of the Scottish road works register, but he does not seem to have real powers.

**The Convener:** Would you see more relevance in the role of the commissioner if the powers were greater?

**Findlay Taylor:** We would like more powers for RAUCS so that it could fine utilities and take away qualifications from people who are not able to do the work correctly.

**Fergus Ewing:** At our meeting on 16 November, when we had the civil servants before us, there was some discussion about what proportion of congestion is caused by road works carried out by the utilities and what proportion is caused by other road works, notably those carried

out by local authorities. The position seems to be that nobody knows, partly because road works by local authorities are not entered in the road works register. Do you have a position on that? Will you tell us, if you can, what proportion of road works, and therefore congestion, is carried out by utilities and what proportion by local authorities?

**Findlay Taylor:** A report by the Transport Research Laboratory, which was quoted in the "Highways Agency Business Plan 2002-03", states that 65 per cent of congestion is caused by traffic volumes, 25 per cent is caused by incidents and 10 per cent is caused by work by roads authorities and utilities, with 5 per cent caused by utilities and 5 per cent caused by roads authorities.

**Fergus Ewing:** That is extremely helpful. Utilities are the guilty party in only one in 20 instances of road works and yet the presentation of part 2 of the bill suggests that utilities are in the dock and it is time that they went down. However, the situation is quite the opposite: 19 out of 20 cases of road works are not caused by utilities.

**The Convener:** Mr Taylor was not talking about road works, but about causes of congestion.

15:45

**Findlay Taylor:** Yes; 5 per cent of congestion is caused by utilities work and 5 per cent by roads authority work.

**Fergus Ewing:** You will agree that the bill as drafted does not provide a level playing field because undertakers—utilities and others—will have to pay fines if they transgress the provisions, but local authorities will not be subject to the same regime.

**Findlay Taylor:** That is correct. Under the bill, all roads authority works will go on to the Scottish road works register, but there will be a separate system of fines for the utilities.

**Fergus Ewing:** Do you have as clear a view as COSLA has on whether local authorities should be subject to the same regime of fines and penalties to which utilities will be subject?

**Findlay Taylor:** RAUCS has not discussed that issue.

**Fergus Ewing:** In principle, do you agree that it is an obvious requirement of the dictates of fairness that everybody should be treated in the same way and that any system of fines and penalties should be the same for everybody who is involved in carrying out road works? If not, why not?

**Findlay Taylor:** I represent councils and utilities. My submission contains the results of our discussions on the bill. We did not come to an

agreement on whether both utilities and roads authorities should be subject to penalties.

**Michael McMahon:** Your submission states:

"disruption is inherently short-term, however, the benefits from laying apparatus are normally long-term and in the case of all utilities but particularly telecommunication equipment can have significant economic benefits."

Will you expand on that? Are you comparing the overall cost of reinstatements or work with the overall benefits or is there some hidden meaning that I do not get?

**Findlay Taylor:** Under the bill, if a utility wishes to go down a specific street, the highways authority could say that it cannot do so, but that it could go down a different road. Our submission argues that the people in that street still require services, whether they have existing ones or wish new ones. We need a clear code of practice for such situations. If trunk road operators and councils decided not to let utilities go down any of their roads, the utility would not be able to go anywhere. The bill must be clear. Our submission points out that utilities cause disruption for only a short period and that they need to get in to do the associated work.

**Michael McMahon:** Should that issue be covered in the bill or should your group's role, or the commissioner's, be enhanced to adjudicate in such situations?

**Findlay Taylor:** If the bill is passed as it stands, a robust code of practice must be introduced to cover cases in which utilities are directed down a different street.

**Michael McMahon:** Who would adjudicate on the implementation of the code of practice?

**Findlay Taylor:** RAUCS would probably end up arbitrating on such issues.

**Michael McMahon:** You do not envisage a role for the commissioner in that.

**Findlay Taylor:** Going by the bill as it stands, the commissioner would probably do that, but given that the commissioner's workload could be substantial, it would probably be left to RAUCS to arbitrate.

**Tommy Sheridan:** I suppose that I am looking for similar guidance from Findlay Taylor as Fergus Ewing was looking for. Most ordinary people want to know that if there is going to be disruption to the roads and highways, it will be kept to a minimum and the reinstatement will be of the highest quality. We are looking for a regime to be put in place that encourages that to happen more often than it does currently. Is your evidence that you think that the current system of penalties is sufficient and that we do not need a stronger regime?

**Findlay Taylor:** RAUCS feels that penalties should be introduced. In recent years we have gone through four coring exercises to improve the quality of reinstatement. Each time, the quality was improved on the previous exercise but we still accept that introducing penalties is the way forward. They would provide a financial inducement to get the job done. We are also asking for the facility to withdraw someone's qualification for working on the roads. So yes, we would agree to the introduction of penalties.

**Tommy Sheridan:** That is why I am still confused. You are saying that your organisation wants a penalty-based scheme that will provide a financial incentive for work to be done quickly and to a high quality, and then for the road to be reinstated. However, you have told us that you are not sure whether the local authorities should be liable for those penalties. That seems inconsistent: we hear from you that half the congestion that is caused by road works is the responsibility of local authorities. Is it not inconsistent to argue for a set of penalties but to apply them only to the utilities?

**Findlay Taylor:** I accept what you are saying. The purpose of the legislation is for the roads authorities' work to go on to the Scottish road works register. The local authorities work to the Roads (Scotland) Act 1984, and the utilities will still be working to the New Roads and Street Works Act 1991. In our document, we are discussing the penalties within the latter act; therefore, it is the utilities that will be penalised.

**Tommy Sheridan:** Can you understand where I am coming from?

**Findlay Taylor:** Absolutely.

**Tommy Sheridan:** Ordinary people across Scotland do not really care whether the person disrupting the road is working to one act or the other. What they want is the work done as quickly as possible and the road reinstated to the highest quality possible, and I think that the committee would like that to happen. We think that a system of penalties could help but it would have to be consistent. We could not have a system of penalties for one group of road disruptors—for want of a better description—but no system for another, as surely there would be no incentive for that other group to adhere to the same required quality of reinstatement.

**Findlay Taylor:** I totally agree with you, but I can only say what has come from the RAUCS meeting. The local authorities work to a different act from that to which the utilities work so they would not expect penalties against them.

**Dr Jackson:** I have a question on reinstatement. Obviously some of it is poor quality and has to be redone. You talked about withdrawing qualifications and I would like to know

what that means. We have heard from one of the councillors—and we have been told this previously—about subcontractors being used by utility companies for reinstatements. The situation does not seem to have improved during the five years of the Parliament's existence. Why have you not been working on a proposal for withdrawing qualifications? Have you made representations to the Scottish Executive? What work is in hand to try to improve the situation?

**Findlay Taylor:** I will try to remember all those questions. The first was about qualifications. Under the New Roads and Street Works Act 1991, anyone who works on the street must hold a certain qualification, no matter whether they are signing and guarding, digging or laying fancy slabs. Given that the Scottish road works register will record who performed the work, we suggest that the Executive should introduce legislation so that, where bad workmanship has been shown to have continued even after training, the qualification can be taken off the person. At the moment, there are moves to retrain people before their qualification is renewed, which must happen every five years, but there are no powers to take a qualification off someone. Most utilities' contractors and subcontractors try to train any worker who is found not to be up to standard, but if that does not work they ask him to leave the company. However, as he still retains his qualification, he can just move to another company, so the same bad workmanship still comes through. That is why we are asking that legislation be introduced to take the qualification away from such people.

The problem with reinstatements was identified by RAUCS many years ago. We got together and decided to initiate a national coring programme—coring involves drilling 200mm holes in the road and taking the core out to check it—and we have now had four such programmes. That is quite a major achievement, as it involved getting all the roads authorities and utilities to agree both on a specification and on where cores should be checked. That work has now moved forward. I am glad to say that the programme that is currently nearing completion has shown that there has been an improvement. Results have been returned for only three out of four areas so far, but they show that there has been an improvement in workmanship. RAUCS is very aware of the quality of workmanship and is trying its best to improve that.

**Dr Jackson:** I have two further questions. First, can you guarantee that all those who are employed by subcontractors have qualifications? Secondly, is there any supervision or inspection once a subcontractor has carried out a reinstatement? How have you looked at that supervision programme?

**Findlay Taylor:** We can never absolutely guarantee that all workers have the qualification. However, most utilities have supervisors who carry out quality and safety checks on gangs. Supervisors will usually ask to see people's qualification when they carry out those checks. In addition, each utility holds a record that they receive from their contractors or subcontractors of who has received the qualification. The system is not foolproof, but I am confident that the folk out there have the correct qualification. However, whether people need to be retrained is a different question.

Sorry. I have forgotten your second question.

**Dr Jackson:** My other question was about supervision. Do you have details about how many jobs the utilities supervise? Do they supervise every job or just some jobs? What is the procedure?

**Findlay Taylor:** It depends on the size of the job, but utilities tend to employ quality inspectors. They also employ contractors to provide supervision and quality checking who usually have a contract with a subcontractor to do that work. Therefore, a supervision regime is in place.

The Scottish road works register provides some interesting stats. Under the inspection regime under the New Roads and Street Works Act 1991, the utilities are running at a pass rate of 89 per cent. I feel that that shows that the workmanship out there is not quite as bad as people tend to make out.

**Iain Smith:** I reckon that to be a one in 10 failure rate, which is not that good.

On the enforcement of the 1991 act, your submission states:

"in the past two financial years, 22 charges were reported and only four have been prosecuted."

Have you discussed with the procurators fiscal the reasons why they do not prosecute more of the charges that have been reported?

16:00

**Findlay Taylor:** Yes. We discussed the issue in depth and it was felt that procurators fiscal would not proceed with prosecutions because of the low fine rates. Because of their workload, procurators fiscal were not willing to take on charges under the New Roads and Street Works Act 1991.

**Iain Smith:** I hope that the new regime, which sets fixed-penalty fines for minor offences and higher fines for more serious offences, will obviate the need for prosecution. Where prosecution is necessary, is it more likely to be successful?

**Findlay Taylor:** Yes.

**David Mundell:** My question follows on from what has just been said. In your submission, you refer to the answer that I received from the Solicitor General for Scotland on prosecutions. I am still awaiting the detail of those prosecutions, because she did not tell us whether they were successful. She has also agreed to investigate why fiscals have not been prosecuting these cases.

Section 25 relates to the duty of authorities and undertakers to ensure competence of employees on site. In your submission, you state:

"This section is felt to be weak and thus difficult to enforce."

**Findlay Taylor:** It goes back to the issue of qualifications. If folk have a qualification, it cannot be taken away from them. It is difficult to ensure that employees are always competent to do the work that is required, and we believe that more should be done in that area. That is why we are seeking the power to withdraw qualifications. There is nothing that forces people to continue to do a good job.

**David Mundell:** How would an assessment of someone's competence be made as part of a criminal prosecution? What happens if someone is doing their best but is not very good?

**Findlay Taylor:** It would be difficult to prove that in the context of a prosecution. It would be easier under fixed penalties to show that someone had not done a job correctly, but it would be quite difficult to take such a case to court.

**The Convener:** That brings us to the end of our questions. I thank Findlay Taylor for his evidence this afternoon.

I welcome representatives of the Civil Engineering Contractors Association (Scotland). David Morrison is the managing director of Turriff Contractors Ltd; Stuart Ross is the operations manager of Alfred McAlpine Infrastructure Services Ltd; Jim Shields is the business development director of Alfred McAlpine Infrastructure Services Ltd; and Alan Watt is the chief executive of CECA. I invite Alan Watt to make some introductory remarks on behalf of the panel.

**Alan Watt (Civil Engineering Contractors Association (Scotland)):** I do not intend to reiterate what is said in our written submission, which you have seen. A number of points have been raised, both today and in the committee's previous meetings, and the evidence is heading roughly in the direction in which we hoped that it would head.

We make it clear that part 2 of the bill could affect our businesses. The sanctions that it suggests could have an effect on full-time jobs and

the businesses that are represented here; hence, I have asked two of the leading contractors in Scotland to come along. Between them, they employ more than 1,000 people in full-time paid jobs, and the bill will potentially impact on them.

We acknowledge from the outset that there is a congestion problem in Scotland. There is absolutely no question about that. As well as being contractors, we are major users of the roads—they are the arteries whereby we get to our business, and vehicles are the tools of that business. Nevertheless—and we are glad that others have raised the issue—we question the impact of utility road works in comparison with other causes of congestion. A figure of between 5 per cent and 7 per cent has been mentioned thus far, showing that such works make up only a small proportion of the cause. We therefore ask the committee, in its further deliberations, to consider whether utilities are a major root cause of congestion.

Utility road works in Scotland serve a purpose. I am sure that the committee does not need to be reminded that the infrastructure that has been inherited is in a poor state of repair. We are trying to upgrade that, so that there is potable water, safe gas, safe electricity and state-of-the-art telecoms. I echo what previous witnesses have said about the road works being, in many cases, short-term pain for long-term gain, regarding what follows from them.

We noted that, at your meeting of 16 November, there was a general feeling that all those who carry out road works in Scotland should be judged by the same rules. We certainly support that and we were heartened—if a little surprised—by COSLA agreeing to that in principle today. We look forward to seeing its detailed follow-on from that.

We have no fear of regulation. The industry would welcome a widening of the Scottish road works register. We would have no difficulty with having a properly empowered, resourced and impartial body—whether it was an enhanced existing body or a new one—that would ensure that there was equity across all road work contractors. We would like there to be equality of sanctions. If two crews are digging up a road, it would seem to be perverse for them to be subject to differing sanctions regimes. We would also like there to be equality in relation to quality testing. Mention has been made of inspections and, in that regard, I am glad that I am accompanied by experts who can answer any questions that the committee might have about inspections and quality testing. We would also like there to be equality in relation to the qualifications that are held by those working on the roads, including a compulsory health and safety element, for both the workers and the general public who travel on the

roads. The basis of what I am saying is that we cannot see the logic in having separate arrangements.

If there are to be sanctions and fines, we would like there to be clarity around where the money goes. We would be concerned if the money were hypothecated and kept locally as that might create a conflict of interest for councils. That aspect might be a bit downstream, of course.

In summary, the contractors wish to be clear that utilities are considered to be a major cause of congestion; if they are not, the premise of part 2 requires some reconsideration. We would be looking for clarity in any legislation and equity and consistency in its implementation, so that we and our employees can get on with the job of upgrading Scotland's infrastructure.

**Michael McMahon:** In your submission, you voice concern, which you have almost reiterated, about the local authorities' role in adjudicating on or inspecting the work that is done on the roads in their areas. You also express concern that local authority officers might interpret the bill so as to apply to you a different standard to the one that they would apply to themselves. Will you expand on that and clarify your concerns?

**Alan Watt:** Consistency is a problem throughout Scotland at the moment, because there are local interpretations. Perhaps Stuart Ross would like to say a few words on that, as it is his field.

**Stuart Ross (Alfred McAlpine Infrastructure Services Ltd):** One of the problems is that every local authority has different inspectors within its boundary and, because the interpretation of what is acceptable differs from inspector to inspector, there is a lack of consistency. We are trying to safeguard against the bill giving exacerbated power to what is, in essence, a subjective interpretation and application of the legislation.

**Michael McMahon:** Would the proposed Scottish road works commissioner help in that kind of arbitration and adjudication?

**Stuart Ross:** I would support the creation of any vehicle, whether it was a commissioner or a committee—call it what you like—that was truly independent and which was given powers to fine or otherwise bring to book those who were not practising properly, provided that that vehicle applied the law even-handedly to every organisation that works on Scotland's roads.

**Michael McMahon:** So you support COSLA's principle that a level playing field is required.

**Stuart Ross:** Yes, a level playing field is required. To echo what Tommy Sheridan said, the people of Scotland do not care who digs up their roads; they just want somebody to dig them up, put them back together to the appropriate



standard and be gone to minimise the congestion. We are in favour of minimising congestion, because, as Alan Watt stated, for us to discharge our duties, we have to use the roads and we in turn get caught up in congestion, so it affects our business.

**Michael McMahon:** CECA has stated that it is concerned about the statistics on which the consultation was based, which it believes were skewed. The statistics showed that utilities were more culpable than local authorities. Has the bill that has come out of the consultation addressed that concern or is there still a focus on utilities rather than on local authorities?

**Stuart Ross:** You have heard from various witnesses that the bill seems to be more applicable to utility companies than to roads authorities, primarily because utilities and their contractors are working to the New Roads and Street Works Act 1991, whereas the roads authorities are working to a different legislative framework. That just muddies the water. The bill should provide a vehicle for a level playing field and bring to the fore consistency of approach, workmanship, quality and speed of response.

**Michael McMahon:** Is your bottom line that the bill does not do that?

**Stuart Ross:** If the cumulative congestion that is caused by road works is 10 per cent of congestion and the split is 5 per cent road works and 5 per cent utility companies and their contractors, the bill's focus seems to be on 5 per cent of the problem.

**Bruce Crawford:** You talk about a level playing field, being judged by the same rules, having no fear of regulation and seeking equity across the board; that is the common theme. Local authorities are subject to the Accounts Commission looking over their books and examining the way that they do the road works. Are contractors prepared to be subject to the same?

16:15

**Jim Shields (Alfred McAlpine Infrastructure Services Ltd):** As Alan Watt said in his introduction, and as was amplified by Stuart Ross, we are working hard to ensure that we deliver a good service to the people of Scotland. There is no incentive whatever for us to be out there on the roads for any longer than is necessary—indeed, it would cost us money. There is also absolutely no incentive for us to become involved in poor-quality workmanship. Under existing legislation—and, I am sure, under future legislation—we must rectify any poor-quality work. We would have to wait for a long time, therefore, before we saw a return for our business or any return at all. There is no

incentive for us to become involved in delays or poor-quality workmanship.

We welcome the opportunity to work in a fair and balanced environment, in which we can all provide a good service to the right standard. Indeed, we welcome the opportunity of being able to go forward and secure the employment of nearly 1,300 people in Scotland. We have our own training centre, which David Morrison will look to in the future. We are working hard to fill a void in the workplace. The average age of our workforce is 49, and our industry is not thought of as a glamorous one to come into. Nevertheless, we want to make it more attractive and the way in which to do that is to secure a future that is based on good-quality work and a balanced environment.

**Bruce Crawford:** I think that none of us would have any objection to anything that you have just said. We share your vision of where you want things to go. However, you made a big play about a level playing field and equity. We have heard a fair bit of evidence today in support of the idea that, if local authorities create a problem, they should be subjected to the same fines, constrictions and difficulties that are placed on contractors. However, there is another side to the coin. The Accounts Commission is responsible for looking into what the local authorities do and whether value for money is being achieved. If there is to be a level playing field, should contractors not be subject to the same process?

**Alan Watt:** In truth, we have never thought about the situation that way round. It is a very good question. If we are espousing fairness, we can only answer the question in the affirmative. Yes, we would be prepared to do so. Obviously, the devil would be in the detail, but how can we say that there must be a level playing field but that it must be a level playing field of our own making? If equity is to prevail, we would be prepared to look at the standards that are applied elsewhere.

**Bruce Crawford:** That is very useful.

**Tommy Sheridan:** Alan Watt's last answer is important. Jim Shields made the point that there is no incentive for contractors to be on the road for longer than is necessary. However, if there is not a level playing field in terms of evaluation when a contractor tenders for a job, someone could say that a job would take 12 weeks when they knew that it could be done in only nine weeks. There will always be the nagging suspicion that, although someone is being paid for those extra weeks, they are not out there on the job. It is important that Alan Watt, who represents CECA, is talking about a level playing field in all those areas.

I think you will find that the committee is trying to be even handed on the question whether a penalty scheme should be in place. We think that there

should not be a scheme for the private sector that is not also in place for the public sector. Would you be willing to work with others to ensure that such transparency was in place in relation to job evaluations and timescales?

**Alan Watt:** Yes, is the quick answer. The industry is used to a culture of sharing pain and gain, as that is the modern way in many construction contracts. I gave that answer without turning to the colleague on my right, but having now done so, I am pleased to say that I can see him nodding his head. The construction industry is developing into that culture—we share the pain if we overrun and we share the gain if we get the job done more quickly. I think that that is the idea behind the concept of lane rental.

**Jim Shields:** Nevertheless, we operate in a competitive environment. The harsh truth is that the contractor who builds in a longer timescale has built in costs and will therefore not win the job.

**Tommy Sheridan:** I have a question on a linked issue, although you have more or less covered the point. You said that you support some sort of incentivisation mechanism to ensure that there are no overruns and that poor-quality reinstatements are not made. In addition, Alan Watt said that you support a penalty scheme, but one that is evenly applied. Is CECA willing to suggest appropriate amendments to the bill to ensure that there is a level playing field? We, as committee members, are listening to you and to other experts, and it would be helpful if CECA were willing to produce amendments that were an appropriate means of delivering what we have been discussing.

**Alan Watt:** We would have to answer yes to that. We have said that we wish a certain thing, so we must be able to play our part in achieving it.

**Fergus Ewing:** I wish to ask about the lack of consistency in different council areas with regard to the required level of quality. I think that Mr Ross referred to that matter. Since you are here, Mr Watt, as well as Mr Morrison and Mr Shields, and given that, unlike the rest of us, who talk about road works, you actually do road works, could you give us some practical examples of that lack of consistency and of the different standards among local authority areas? It seems that we have not fully investigated that problem yet, and that you are the people who could perhaps put us right and help us to tackle the problem as we consider the bill.

**David Morrison (Turriff Contractors Ltd):** The committee has been discussing inspections. As was mentioned earlier, there is formal inspection, which is revenue generating, depending on the number of openings for local authorities. There is also a vast array of informal inspections. I would say that our work gets inspected every day—

certainly by members of the public. In more rural areas, those inspections are done by the local inspector, who probably knows more about what is going on with the job than other people do. Despite some misinterpretation, there is continual inspection at the works. The regime has changed recently and there are vast differences in how it is applied. Inspection units are allocated to our clients but, when it comes down the line to us—at the sharp end—our work is being inspected every single day. If we get it wrong, there is an impact on safety at the sites and on our performance. That is not good for business.

The application of more stringent fines could ultimately have an effect on jobs. It is very hard to attract people to our industry as it is. The over-zealous application of statute, which is sometimes perceived, is difficult for the guys I employ to understand. One day, things are okay; the next day, there is a formal inspection and some guy gets picked up on it.

**Fergus Ewing:** Do you have any suggestions about how those inconsistencies could be addressed in practice?

**David Morrison:** That could be done by more open dialogue in some respects. There also needs to be a more consistent approach to how things are applied. That means ensuring that quality is applied through the whole programme, all the way through to how coring is done. It is about bringing the contractor to the fore when programmes are being decided. We work for utilities, but we are at the sharp end.

**Fergus Ewing:** Inspections are carried out by local authorities at the moment.

**Jim Shields:** Yes. David Morrison has just mentioned coring. I should clarify that coring is where we—or local authority inspectors or people working on their behalf—remove a circular section of a reinstated road, which is then inspected. That is a difficult job. We examine our own quality of reinstatement very closely. Sometimes, ours can be a wee bit skewed. If we identify a problem area, whether it concerns the materials or their application, we examine that area closely and we concentrate on it. We take the matter seriously. Taking a view on a piece of reinstatement is a difficult job. There is no doubt that laboratories can help, but even the expert eyes in the laboratory can take conflicting views.

To put all this in perspective, making the judgment on reinstatement is a difficult job for whoever does it, and that is the starting point that might lead to inconsistency. As David Morrison and the representative from RAUCS said, collaborative working will be the key. There needs to be discussion, agreement and a willingness to advance things for the wider benefit, with a view to

making genuine improvements rather than just penalising someone.

**Fergus Ewing:** Or just raising cash.

**Jim Shields:** That view could be held.

**Fergus Ewing:** I am aware of that.

The bill provides for there to be a code of practice—there is provision for just about everything else in section 29—which might address that point. I had a meeting with representatives of the national joint utilities group, during which the point was made that at present the inspectors are from local authorities, but that the new system will introduce the independent element of the road works commissioner. Given that there will be such an independent element and that local authorities and utilities are to be treated equally, is there a case for having a system of joint inspection? Instead of local authorities being legally responsible for having the say on whether someone has passed or failed the inspection and whether they need to redo work or to do more work, the commissioner could have a system of inspection practice that involved somebody from the utilities and somebody from the local authorities as joint assessors of whether the work had been completed satisfactorily. I hope that I am not misrepresenting the NJUG's suggestion. Would you be interested in that, if I have described it correctly?

**Jim Shields:** Like CECA, we would consider that and suggest that it is taken a stage further. Given that our friends in the utility companies trust us to carry out the work and the reinstatement for them, we would like some sort of representation at the forum.

**Fergus Ewing:** I was not thinking so much of a forum.

**Jim Shields:** We would like representation, whatever form the suggestion takes. I am sure that the utility companies, which are, in essence, our employers, would put forward a fair and reasonable argument. If the organisation itself is carrying out the reinstatement, the debate would be much more purposeful.

**Fergus Ewing:** I support that in principle. If we have road works in Main Street, Anytown, it seems odd and unacceptable that local authorities should be the sole arbiter in deciding whether the works have been done properly. Under the new regime, with an independent third-party commissioner, there should be a different system whereby you would have an equal say with the local authorities as to whether you have done your job completely and properly. The commissioner would then come in as the ultimate arbiter.

**Alan Watt:** That has a resource implication, which, I am sure, has not escaped you. Bruce

Crawford, who has just left, was concerned about the resource implication in relation to the commissioner. What you suggest would not be the cheap option, but, given the equity and consistency argument, perhaps it would be a better system. Where would the resources come from? In the end, given the chain of payment in utilities, it would appear on utility bills.

**Fergus Ewing:** Right. I do not want to suggest anything that would add to expense—that is not my habit. I feel that we are getting close to the nitty-gritty and any suggestions and recommendations that you can provide would be of great help in the next stage of our consideration of the bill.

**Jim Shields:** Mr Ewing mentioned Main Street, Anytown. We talk about congestion in Scotland and utility works and we come back to the 5 per cent figure for congestion that is caused by utility road works, which has been mentioned often. We do not often find ourselves working on main streets, thoroughfares or trunk roads. We tend to work where people live and work—on industrial estates or housing estates—because we take facilities and services to people. Our impact on congestion is low. The 5 per cent figure provides perspective on where we sit in the wider congestion debate. When I saw the title of the original consultation document, I could not balance congestion with utility work.

16:30

**The Convener:** I suppose that the Executive would respond by saying that it has embarked on a range of measures to tackle congestion, including investing in public transport and implementing measures to deal with road traffic safety. It would say that this is not the only area in which it is trying to tackle congestion.

**Jim Shields:** Indeed, but that was how the paper was entitled. You can understand our confusion when we first saw the title.

**Iain Smith:** I am a little confused about what your organisation is concerned about in terms of the bill. If, as Jim Shields said, your aim is to do the job as quickly as you can and to get it right first time, your companies will have nothing to fear. Only those who try to cut corners and fail to do the job correctly the first time have anything to fear from the bill. As Mr Shields said, it is much more sensible, economically, for a contractor to get it right first time than it would be to cut corners and perhaps incur additional costs. What is the concern?

**Alan Watt:** You are absolutely correct, in that the firm wants to be in and out as quickly as possible and does not want to go back. The difficulty can arise in relation to the judgment

criteria for completion and the inconsistency with which those criteria are applied. We are beginning to distil the debate to a point at which that emerges as one of the crucial areas.

**Iain Smith:** Is the solution to do with improving the codes of conduct and the guidance so that everyone knows exactly what standards they are working to?

**Alan Watt:** That could be part of a suite of measures.

**Iain Smith:** I am sure that every elected member, whether MSP or councillor, has a number of horror stories about contractors who have taken significantly longer than they should have done to complete a job or who have failed to do the reinstatements properly and have had to come back and do them again.

An aspect that arises again and again is the level of supervision of contracts by the client. I could give you a good example of a situation in which the client's supervision of the utility company's operation was not adequate, but I do not want to name names. What is your position on the suggestion that there should be a requirement for supervision to ensure that contracts are completed properly?

**Alan Watt:** One of the criteria for membership of our organisation is that a prospective member should have ISO 9001:2000 and a rising proportion of construction skills certification scheme cards, which are both a qualification card and a demonstration that the holder is up to date in relation to health and safety requirements. Member firms have quality assurance systems, and both of the companies that are here today will have those as well as other qualifications.

**Stuart Ross:** We actively pursue reinstatement quality. We conduct in-house coring and tabulate the results, note trends, find out who the offenders are, impose retraining programmes and, if that proves to be ineffective, dismiss people. We take the quality of reinstatements seriously and invest heavily in terms of training, supervision and ISO 9001 accreditation.

That we should get the job right first time is implicit in everything that we do, not only for the commercial reasons that Jim Shields mentioned but because we do not want to draw attention to ourselves in a negative way by being the source of congestion or other road traffic annoyance. While I will be the first to admit that there is always room for improvement, our internal coring mechanism shows that our failure rate is between 4 per cent and 6 per cent, which means that our pass rate is up around 96 per cent. I do not have the facts and figures relating to how many road openings we undertake or how many square metres of reinstatement we can undertake to do in a day, a

week or a month, but I suggest that that pass rate reflects the importance that we place on training, the calibre of our workforce and the quality of the product that we leave behind.

**Jim Shields:** I would like to respond to the question about supervision. With the certificates that we are delighted to have achieved goes some responsibility. We view ourselves as self-supervising. With a number of large clients, some of which are national, we have fully integrated management. If you walked into one of the offices, you would not be able to determine easily which member of the team was a client and which was from the contracting side in the traditional sense. We are working in an integrated, collaborative fashion.

As I said, there are limited resources in our business, so we must work closely with our clients. The clients with whom we work and are proud to work are forward thinking in their approach. Together, we are raising the standard. In many cases, we no longer play a subservient role. In the majority of cases, we play a partnering role, aimed at improving quality and taking infrastructure in Scotland to a higher standard.

**Dr Jackson:** Iain Smith has raised the issues that I intended to raise. I refer to an instance of reinstatement where work was obviously substandard, because there was sinking. What goes wrong when there is sinking after reinstatement? What has not happened that should have happened?

**David Morrison:** Two things could have happened. First, there may have been faulty workmanship. As the material was inserted, it may have been compacted with the wrong number of passes or with incorrect apparatus. Secondly, there may have been failure of the material. Because excavation was taking place on an existing road, there may have been water ingress or, for some unexplained reason, there may have been a wash-out around the apparatus that has been laid, which caused a dip in the reinstatement. The issue may be to do with the material or the workmanship.

**Dr Jackson:** Why are such problems not picked up by the supervision that you have described?

**Jim Shields:** We cannot answer for the organisation that was involved in the case to which you refer.

**Dr Jackson:** If sinking has taken place, as in my constituency, why is it not picked up at supervision time?

**David Morrison:** There are instruments that one can use to check the compaction at the top before laying the black surface—the wearing course of the road. When those instruments are dropped on

to the compacted surface, they can give a reading that is satisfactory and that allows laying of the blacktop to proceed. The defect may be around the apparatus that has been laid further down in the excavation.

**Dr Jackson:** You are saying that supervision is needed throughout the period of the reinstatement, not just at the end point.

**David Morrison:** There must be supervision at various angles and at different times during the job. We would not expect a supervisor to be present 100 per cent of the time, but we would expect them to see the compaction around the apparatus, at the backfill level and at the point where the new black surface is laid.

**David Mundell:** I want to explore your concerns about sections 27 to 30 of the bill, which enable local authorities to instruct the undertaker to reinstate an area of either half the width or the full width of the carriageway. Would you like to elaborate on your concerns and the difficulties that the provisions might cause for you?

**David Morrison:** That goes back to the issue of consistency—who applies the rules and says that a road must be reinstated. We are going back to the situation that existed under the Public Utilities Street Works Act 1950, the legislation that preceded the New Roads and Street Works Act 1991. At that time, utilities made what we might call donations to local authorities and temporary reinstatement was done. The local authorities used that money in their budgets to relay footpaths and to resurface roads. The issue is the possibility of a resurfacing order being placed before works are started. It would be very difficult if that could be done before a job was started.

**David Mundell:** In effect, there is a danger that local authorities might use the provisions to get a street resurfaced without that being in their budget.

**David Morrison:** It could be the last one in who pays.

**The Convener:** That concludes questions for the panel and I thank the representatives of CECA for coming.

We move on to our final witness. Iain Duff represents the Scottish Council for Development and Industry. Thank you for your written submission, which sets out the SCDI's comments on the bill. I invite you to make introductory remarks before we move on to questions.

**Iain Duff (Scottish Council for Development and Industry):** I thank the committee for inviting the SCDI to provide evidence on the bill. I will repeat a little of what is in our written submission by way of introduction. The SCDI supports regional transport partnerships and has done so

since the mid-1990s, when our transport policy was revamped and such partnerships were recommended as the mainstay of the policy. We are a member of an existing transport partnership, HITRANS, in which our role is to allow a broader view of transport issues to be presented, because we are a broad-based, independent economic development organisation. Our members are drawn from throughout Scottish society and represent not just businesses, but the public and voluntary sectors and trade unions. We act as a source of advice and as a sounding board for the partnership's proposals. Obviously, we support the existing regional partnerships and we welcome the proposal in the bill to create statutory RTPs with increased powers.

Our written submission also mentions the road works provisions in the bill, which the committee discussed today. We support the proposals to establish a Scottish road works commissioner and to improve the scope and accuracy of the road works register for all undertakers of road works.

**The Convener:** It has been suggested that the proposed statutory RTPs would not necessarily provide more benefits in relation to public transport or roads than the existing voluntary partnerships provide. What is the SCDI's view on the matter?

**Iain Duff:** As I said, back in the 1990s we thought that the way forward was to establish statutory partnerships that have the proper powers to deliver on strategies that they develop, instead of having to rely on their constituent members, particularly the local authorities. That must happen in partnership and through discussions round the table, but we thought that it would be better to give RTPs powers to deliver their own strategies.

Other powers—for example, powers on congestion charging or some roads powers—could move down or up to RTP level as the partnerships progress. Statutory bodies would have the teeth to deliver on such matters and would be better prepared to do so than voluntary regional partnerships are.

**The Convener:** Paragraph 7 of your submission suggests that congestion charging schemes could be provided at regional level. Should the responsibility for introducing such schemes lie at regional partnership level? If so, why?

16:45

**Iain Duff:** In our submission, we said that one appropriate function could be congestion charging. That would allow the revenue that is raised in areas of congestion, such as Edinburgh, to be used to improve transport throughout a larger area. It is not just car users in a small area who will be subject to congestion charging and will benefit from the transport projects that will be

funded by it. We have always thought that the best way forward is for RTPs to use the extra revenue source on their wider view of what needs to be done in an area to improve transport.

**The Convener:** I have a final question before I bring in my colleagues. Some members have suggested that it will be difficult to get broad representation on some of the smaller partnerships—particularly the proposed north-east partnership—because of the proposed balance between council members and non-council members. Do you have any views on how the structure of the partnerships should work if we are to ensure that there is broad representation, at the appropriate level, both of local authorities and of other interests in the community?

**Iain Duff:** We have always envisaged that the regional transport partnerships would be local authority led, because democratic accountability is important—our experience with HITRANS shows that. The opportunity for the SCDI and other appropriate bodies to be represented—such as the chambers of commerce on NESTRANS—brings an added dimension. We think that decisions about which organisations should be represented are for the partnerships. The partnerships must define what role they want those external bodies to have—perhaps a business role, as in NESTRANS, or the wider economic development role that the SCDI has in HITRANS. In the parallel consultation on the issue, we are considering how other bodies are involved.

The smaller partnerships obviously have a problem with getting broad representation. The way forward is probably to have stakeholder groups below board level. That is certainly how HITRANS interacts with the multitude of users and operators in the Highlands and Islands. The RTPs must be consultative bodies and must look out with the narrow board that they could have. The role that the SCDI plays in HITRANS seems to be welcomed and we are happy to provide that role in the Highlands and Islands.

**Bruce Crawford:** In paragraph 12 of your submission, you say:

“In its response to Transport Scotland, SCDI recommended that funding to RTPs is sourced in the main directly ... from the Scottish Executive.”

You go on to qualify that because of opposition from the local authorities. Why have you backed down just because the local authorities do not think that that is a good idea?

**Iain Duff:** We have always thought that the regional transport partnerships should have central funding. It is not the case that we have changed our mind. We think that direct funding from the Executive via section 70 grants, which

was one of the options in the previous consultation, is the way forward. Our experience in HITRANS—and conversations that we have had since the consultation and the bill were published—show that the requisition route of funding is a source of controversy. It seems to cause problems with the functioning and principle of the partnerships right from the start, so we think that the Executive should rethink the way in which the partnerships should be funded. Funding should come direct from the Executive so that the partnerships have adequate resources and so that there are not, under the statutory regime, conflicts right from the start about pressures on local authorities to find the money.

**Bruce Crawford:** Obviously, there is a certain pot of money to be spent. If the SCDI believes that central Government should support most of the funding, that inevitably leads to the conclusion that you think that local authority funding should be top-sliced so that money can be made available.

**Iain Duff:** No, not at all. We do not want to put any extra pressure on the local authorities. We feel that the Executive should find the money in its pot to fund the transport partnerships directly. There is already pressure on local authority funding and, if the money is top-sliced, that will inevitably put pressure on the partnerships and on local authorities from the start.

**The Convener:** Let us develop that point further. The local authorities could agree to carry out some of their functions through the new partnerships. Do I take it that, where local authorities decide to do that, you would expect them to provide the appropriate finance?

**Iain Duff:** That all depends on what is contained in the regional transport strategies that are drawn up. However, if there is agreement within the partnership that certain sources of finance will come from the local authorities, that decision must be reached in partnership with the local authorities. There must be discussion round the table. We would have no problem if local authorities and the other partners agreed that different sources should fund aspects of a strategy. However, that would have to be done with the agreement of all partners so that the partnership could progress as efficiently as possible.

**David Mundell:** You said that the new partnerships should be statutory, rather than a development of the current arrangements, because that would give them teeth. However, there are no teeth in the bill as currently drafted. The only requirement in the bill is for the partnerships to produce a regional transport strategy. That is not teeth.

**Iain Duff:** You are right. The only real teeth that the bill provides for is the duty on the local authorities in the partnership to co-operate, or at least to agree, to carry out the functions that are drawn up in the strategy. A lot hangs on that duty to enable the statutory partnerships to deliver the strategy. Being optimistic, we think that the duty will allow the partnerships to deliver their strategies appropriately. Other than that, you are right that there does not appear to be much more in the bill to enforce delivery of the strategy.

**David Mundell:** Do you or your members know of instances in which the fact that local authorities have not worked together has impeded major strategic transport development? That has been cited as a reason for establishing the partnerships on a statutory basis. You might have heard COSLA's evidence today, which is the general evidence of local authorities, that that has not been the case. Can you point to a specific defect of the current voluntary arrangements?

**Iain Duff:** Not in the case of HITRANS, which is the body of which we have most experience. In HITRANS, all decisions are made consensually. There has been good discussion about the proposals, but there have been no major disputes that the voluntary system has been unable to iron out. The voluntary system has allowed the strategies to be delivered as they are at the moment. The strategies for some areas are better defined than those for others, but in HITRANS everything has been done on a voluntary basis and has worked well.

**David Mundell:** I do not want to single out organisations, but every group that we have asked, including the AA Motoring Trust and the Freight Transport Association, from which we heard evidence last week, has said that they should be members of the statutory partnerships. To ask for the interests of the haulage industry and of the ordinary motorist to be taken into account is not an unreasonable request. However, if we include the interests of cyclists and walkers, for example, I wonder where the process will end. Who is to be on the RTPs? We cannot have everybody on them, because that would mean that they were unable to achieve one of the other objectives, which is to take strategic decisions. What would the bodies' legitimate membership be?

**Iain Duff:** All the groups that you mentioned have a case for being on the RTPs, as they are transport experts and they know the industries and the sectors that they represent. I would not like to say that they do not have the right at least to apply to be members of the partnerships. It will be up to the partnerships to decide, based on the strategies that they put together—or the vision for those

strategies—the types of organisations that they wish to have as external members.

The SCDI has a role on HITRANS that the other partners seem to feel is appropriate, in that our broad membership can allow us to interact with many of the organisations that you are talking about as well. I would not necessarily say that the SCDI is appropriate for all the partnerships—that depends on resources—but the partnerships will have to consider what they want the external members to do. Guidance from the Executive is expected, which may give a bit more information to the partnerships about the role of the external members.

As an external member on an existing partnership, we have a role to bring as wide a view as possible to the transport discussions that are at the table. However, there is a case for many other bodies at least to be considered for membership. I would not like to preclude any bodies, but it is up to the partnerships to decide what they want from their external members. I think that that is provided for in the bill. The decision will be for the partnerships, based on, in the first instance, the go-ahead from the minister. We would not like to preclude anybody from at least being considered for the partnerships and from putting forward their own reasons why they should be at the table. We must remember that there is the chance for wider stakeholder groups. We would be very supportive of the partnerships and the boards being inclusive in the views that they take when the strategies are being prepared, so that the views of all potential operators, users and pressure groups are considered.

**Fergus Ewing:** What is the point in having regional transport partnerships when we already have—you would say—successful existing voluntary partnerships, such as HITRANS, in which I know the SCDI has performed an invaluable role, with many thoughtful contributions to the transport debate? In your paper, you are critical of the funding mechanism. You have acknowledged, in response to questions from Mr Mundell, that we do not know what the partnerships will be empowered to do; that we do not know how much they will cost to run; that we do not know what budgets they will have or what those budgets will be spent on; that we do not know what the boundaries will be; and that we do not know who will sit on them, apart from one councillor per council area. Is there merit in the argument that we cannot make a judgment about the partnerships, any more than a jury could if it were deprived of hearing nine tenths of the evidence in a case?

**Iain Duff:** Many of the issues that you spoke about are subject to our internal discussions. As you would expect, we are putting a submission

into the parallel consultation. Issues such as boundaries, voting rights and funding are still subject to consultation and the SCDI is still working up its own views on those.

Although HITRANS has operated successfully, there are ambitions to do more and to deliver more of a strategy for the area. There is a view that, to do that, extra powers will be needed. The duty in the bill to force a little more pace in pushing through on what the strategies are intended to deliver is felt to be the way forward. It is an ambition for the proposed Highlands and Islands regional transport partnership to have powers to develop and deliver more areas through the strategy.

In our submission, we envisage quite powerful organisations that will have control of some roads and, as I say, other issues, such as congestion, although that is perhaps not such a problem for the Highlands. Over time, the RTPs should seek to gain more powers, which a statutory basis would allow them to do more easily.

17:00

**Fergus Ewing:** I understand that. You are advocating a case for stronger bodies, but you must accept that the bill gives no clear indication whether extra powers would be conferred.

**Iain Duff:** No, not at all. We envisage that, over time and through discussions and preparation of the strategy, it would become clear what the Highlands and Islands partnership wanted and needed to deliver. We do not want any major argument about who does what—that should be discussed over time around the table. Decisions would be taken about what powers would be appropriate for the partnership to have and which body is best placed to carry out which role, whether local authorities or the proposed national agency—the fact that there is not an awful lot of detail about the national agency's role is also an issue. Over time and through the support of the partnership's members, the understanding of what powers would be appropriate for the partnership to hold would develop.

**Fergus Ewing:** The partnerships can discuss and decide what they want but, unless the Executive agrees, they are just talking, are they not?

**Iain Duff:** At the minute, yes. There is nothing to impel the passing over of more powers. There would be a process of discussion and agreement round the table.

**Michael McMahon:** This afternoon, we have discussed quite fully the proposed Scottish road works register and Scottish road works

commissioner. With commendable foresight, you state in your written submission:

“The goal is to reach a balance between the right of undertakers to carry out their works and the right of road users to avoid disruption and alleviate congestion.”

I expect that you heard the discussion about the balance between the obligations of the utilities and those of the local authorities. Will the bill bring about the right balance?

**Iain Duff:** We would like the proposed road works commissioner to be responsible for all road works. In previous submissions on the matter, we have made no distinction between who carries out what road works. From the SCDI's point of view, the problem is the disruption to business and domestic users that road works cause, whoever is undertaking them, so we would support a new body that was designed to arbitrate independently only if it supervised and monitored all road works. From what I have heard, the bill seems to target the utilities more than local authorities. I must say that I did not pick that up on first reading the bill, because I am not an expert on the ins and outs of the transport legislation, but we would be looking for a level playing field and proper monitoring of all road works.

**Michael McMahon:** In our discussions with witnesses with three different sets of opinions, RAUCS—a body that seeks by its nature to find consensus and compromise—told us that it believed that it would be usurped by the establishment of the commissioner. Do you believe that external, independent scrutiny of road works and reinstatement of the roads is needed, rather than for the balance of interests to be represented in one organisation?

**Iain Duff:** The SCDI is not in the business of wanting new systems or organisations to be established for no apparent reason, so if an existing body could be adapted or given the powers to do the job and to adjudicate fairly in a way that would be acceptable to all players and undertakers, we would have no problem with that. However, the attraction of the proposal in the bill is that the Scottish road works commissioner would be independent and acceptable to all utilities, contractors and local authorities, which is the situation that we seek. However, if an existing body could take on that role and have the support of all the players, there would be no reason to set up another body—but I heard that suggestion for the first time today.

**The Convener:** That concludes the evidence session. Thank you for giving evidence.



## Petition

### Taxis (Use by Disabled People) (PE568)

17:06

**The Convener:** The next item is consideration of petition PE568, on accessible taxi transport, which was lodged by Alan Rees. The committee has considered the petition before, when we asked for more information about the number of accessible taxis in local authority areas in Scotland. That information has been provided and a table, which is attached to the committee papers at annex A, indicates the percentage of wheelchair-accessible taxis in each local authority area. Also provided are details of each local authority's policy and whether accessible taxis form part of the local authority's concessionary travel scheme.

The petition calls on the Scottish Parliament to encourage all local authorities, first,

"to have at least 50% of the vehicles in their licensed taxi fleet fully accessible for wheelchair users and other disabled people",

and secondly,

"to have a standard concessionary scheme for taxis".

The position is certainly variable throughout Scotland. Some authorities have excellent records, but others have disappointing records on the matter.

The paper from the clerks indicates first that the United Kingdom Department for Transport will initiate a consultation on the specification of accessible taxi vehicles early next year and secondly, that the Executive intends to embark on research into the public transport needs of disabled people in Scotland. The committee will shortly consider the proposed new concessionary travel scheme for Scotland. I therefore suggest that we write to the petitioner to make those points and to encourage him to take part in the consultation on the proposed national concessionary travel scheme and in the other consultations that I mentioned. On that basis, I propose that we conclude consideration of the petition. Do members want to comment?

**Michael McMahon:** It would be useful if you could write to the Public Petitions Committee, of which I am convener, to say how the Local Government and Transport Committee arrived at its conclusions. When that does not happen, the Public Petitions Committee does not know what has happened to a petition.

**The Convener:** I am sure that Eugene Windsor has noted your point and will ensure that that happens.

**David Mundell:** I agree with the course of action that the convener outlined. In passing, it should be noted that the committee carried out a useful piece of research. The paper at annex A is a public document, so the table and the summary that follows it are available to individuals and groups in every local authority area and will enable people to challenge their local authorities, seek an explanation of their policies and hold them to account for the positions that they take.

**The Convener:** I agree and I encourage the petitioner, members of the Scottish Parliament and members of the public who are concerned about the issue to use the information locally to best effect. On that basis, do members agree to conclude consideration of the petition?

**Members indicated agreement.**

## Sewel Motions

17:09

**The Convener:** Item 5 on the agenda is consideration of a paper on Sewel motions. I do not want members to debate the content of the individual items, which will be discussed at future meetings of the committee. Instead, I propose that we discuss how we will consider the Sewel motions at those meetings.

The first is the Sewel motion on the Gambling Bill. It is proposed that at next week's meeting, on 14 December, we take evidence from the Deputy Minister for Finance and Public Service Reform. I propose that at the meeting the minister should be given an opportunity to set out the content of the Sewel motion and the Executive's reasons for lodging it. There would then be a question-and-answer session with the minister, similar to those that take place during consideration of statutory instruments. I also propose that members have an opportunity to debate in committee the appropriateness of the Sewel motion. That debate would not necessarily have formal status under the Parliament's procedures, but it would be appropriate for both the minister and members to set out their views on the Sewel motion and for there to be a vote on the issue if there were no agreement. Such a debate would provide to Parliament guidance on the committee's views when it considered the Sewel motion.

We have more time to consider the Sewel motion on the Railways Bill, because the timetable for that bill at Westminster is less pressing. I suggest a similar format for our consideration of that motion in due course, so that we are able to consider the reasons for the motion and members have an opportunity to comment on it.

Given the timetable for consideration of the Sewel motion on the Gambling Bill, I do not think that we will be able to produce a formal committee report on it. However, it is possible for us to produce a report that records the decision that we take on whether to recommend that the Sewel motion be approved. The *Official Report* of the meeting could be appended to that report, so that views that are expressed by members during the debate may be taken into account by colleagues when Parliament considers the motion.

I have set out the actions that I propose we take when considering the Sewel motions. I invite members' comments on that proposed course of action.

**Bruce Crawford:** I welcome the convener's statement on the course that he intends to pursue. I recognise that there is no set format for consideration of Sewel motions. The proposed

timescales were not decided by the committee and we should go about our job properly.

Today I will address the Sewel motion on the Gambling Bill in particular. The convener said that we should not debate the motion today, and I will try not to do so. However, the motion deals with important powers relating to casinos. I refer in particular to the power to establish permitted areas for casinos, which Scottish ministers will lose as a result of the motion. Ministers will lose the ability to determine the number and location of casinos. The motion also deals with the restrictions that are currently applied to casinos regarding general entertainment.

Those are big issues for Scotland to consider. I would have thought that it was the committee's role to hold a wider evidence-taking session involving the trade unions, the churches, the police and the licensing boards. The Executive's consultation on the draft bill indicated that the licensing boards were not enthusiastic about the removal of restrictions on live entertainment. Under the Sewel motion, we will pass that issue back to Westminster for consideration.

There is a role for the voluntary organisations that deal with people who become addicted to gambling. We should also have the chance to ask the United Kingdom Secretary of State for Culture, Media and Sport what she thinks, especially about the changes that will be required under the Sewel motion. I know that that will take time, but this is an important issue that will affect legislation in Scotland. It is appropriate that we deal with it in the proper fashion, so that Parliament has democratic oversight of any decisions that are taken under the motion. We cannot do that properly without holding proper evidence-taking sessions. This is a fundamental issue of democracy for Parliament.

17:15

**Iain Smith:** My understanding is that the power is being taken from Scottish ministers and given to local licensing boards, which does not strike me as being necessarily a bad thing, although I obviously want confirmation from the minister on that when we take evidence from him. It is not a matter of powers being taken away from Scotland, but of their being transferred from one body in Scotland to another, where it might be more appropriate for the decisions to be taken.

**David Mundell:** I do not believe that the matter is appropriate for a Sewel motion, because it is not urgent and the motion would be for Westminster to legislate on licensing, which has traditionally been distinct in Scotland. If we are to consider the proposals, we should consider them as if they had been introduced by the Executive, therefore I am

sympathetic to the approach that Bruce Crawford outlined.

**Fergus Ewing:** I would like to address only the Gambling Bill and deal with the Railways Bill later. When I raised the Gambling Bill with the First Minister at First Minister's question time, my understanding was that he was at least reported as being opposed to supercasinos in Scotland and that he was worried about the possibility of slot machines with unlimited prizes being introduced. In particular, the First Minister is quoted as saying that we would use planning and licensing law to ensure that there was no place for them in Scotland. If that is the case, we must be able to debate the impact on planning and licensing here.

As an illustration, I will mention a facet of the debate that Westminster has not even touched on as far as I can see, which is the effect that the reforms might have on the bingo industry and bingo players in Scotland. As it happens, Carlton Clubs plc, which has 14 bingo halls in Scotland and four in the north of England, is based in my constituency. It is one of the three largest bingo companies along with Gala Bingo Ltd and the Rank Group plc. I mention that because many tens of thousands of people in Scotland play bingo, which is a mild form of gambling and a form of social activity in safe surroundings, which we have never debated. I know for a fact that the people who run bingo in Scotland are extremely concerned that—as has happened in Australia and New York state—bingo customers will be attracted to forms of harder gambling if supercasinos and slot machines with huge prizes are introduced.

In addition to all the evidence that Bruce Crawford rightly suggested we take, there are areas on which we in this Parliament need to do our job in scrutinising the impact that the Gambling Bill would have on our people and communities. I mention bingo only as an example—it is an important one, but it has not even been given the time of day in Westminster. It has been completely overlooked and all the signs are that it would continue to be overlooked if we were foolish enough to allow Westminster to legislate for us in the Gambling Bill through a Sewel motion.

I hope that I will be able to come back to discuss the Railways Bill, because there is a series of issues related to that.

**The Convener:** I will respond to members who have spoken. I do not want to get into a debate on the Gambling Bill today because we will in due course, and irrespective of whether the committee agrees the proposals that I have suggested, have the opportunity to debate the merits of the Sewel motion on the Gambling Bill.

On the timeframe, the final stage of consideration at Westminster will be concluded

before 12 January, so there is a pressing time constraint if Parliament wishes to pass a Sewel motion and allow Westminster to legislate and pass some powers to the Scottish ministers.

On that basis, it would not be practicable to give wider consideration to the views of various bodies as some members suggested. I propose that we take the action that I outlined: at next week's meeting we can take evidence from and have a question-and-answer session with the minister and we can take the opportunity to have a debate in the committee. We can then consider whether a Sewel motion would be the right approach and, if necessary, vote on the matter. As I said, under Parliament's procedures the committee does not have a formal role in the process, but we can certainly convey our view to Parliament and recommend an appropriate way forward.

If a Sewel motion were agreed to and concerns remained that some issues would not be appropriately scrutinised, it would be open to Parliament, ministers and individual MSPs to make recommendations to colleagues at Westminster to ensure that those issues were discussed—of course, that is a hypothetical situation. We should scrutinise the Gambling Bill through consideration of the Sewel motion, as I outlined.

**Bruce Crawford:** In that case, is the appropriate procedure to suggest an amendment to your proposal at this stage?

**The Convener:** If you want to do that, that is fine.

**Bruce Crawford:** I heard the convener's words clearly. It is not the fault of the Local Government and Transport Committee that we are in this situation. The Leader of the House of Commons and the Minister for Parliamentary Business in the Scottish Executive should perhaps have got their heads together to ensure that we would not be faced with such a time constraint. If 12 January is a problem for Westminster, so be it; we might have to ask Westminster to wait so that we have a chance to hold a wider evidence-taking meeting that includes the churches, the police, the licensing boards, the voluntary organisations that deal with people who have a gambling habit, and the UK minister. It is important that the committee put its stamp on the issue. If we are to agree to a Sewel motion, we should do so with full knowledge of all the facts. We did not even know about some of the facts until Fergus Ewing brought them to our attention today and I am sure that other issues could be considered in our evidence-taking session. I move that the committee hold a wider evidence-taking session.

**The Convener:** We have already debated the matter, but do members want to comment?

**Iain Smith:** Bruce Crawford's proposal and the comments from David Mundell and Fergus Ewing demonstrate a lack of understanding of the Sewel motion. We are not giving Westminster permission to legislate on a matter in Scotland; we are giving Westminster permission to give Scottish ministers powers that they do not have. Westminster can legislate on the issue irrespective of whether a Sewel motion is agreed to in the Scottish Parliament, but if the Sewel motion is not agreed to Scottish ministers will not have the powers to regulate what is being proposed in Scotland.

If we agree to the Sewel motion we will increase our influence in relation to the Gambling Bill, which can be passed at Westminster irrespective of anything that we do in Scotland. If we do not agree to the Sewel motion, UK ministers will determine how the bill's provisions are implemented and Scottish ministers will have no powers to do so. That is what the Sewel motion is about. Sewel motions are not just about asking Westminster to legislate on devolved matters; they can enable Westminster to give Scottish ministers powers to deal with reserved matters, on which we do not have the power to legislate. Bruce Crawford's proposal is fundamentally mistaken, so I support the course of action that the convener suggested.

**The Convener:** Will the members who are indicating that they want to speak try to address the issue about the process that we follow, rather than the Gambling Bill itself?

**Fergus Ewing:** I will reply briefly to Iain Smith's comments. With respect, that was not the point that I was making, which was that there is a strong body of opinion in Scotland that the Westminster Gambling Bill will pave the way for supercasinos and unlimited cash-prize slot machines, which are not wanted and will have undesirable consequences. Iain Smith said that the Sewel motion would enable Westminster to give Scotland more powers, but Scotland does not want powers to be created that would pave the way for that new virus to enter our society.

**The Convener:** Are you not moving towards a debate on the motion, Fergus?

**Fergus Ewing:** Iain Smith made an invalid point. It is because of the impact of what is happening at Westminster that we should not be passing a Sewel motion on the powers that we have. The other point that Iain Smith has not taken into account is that there are already planning powers to designate under the Town and Country Planning (Use Classes) (Scotland) Order 1997 whether planning should be granted for bingo halls and for casinos. We already have powers, but Iain is saying that the UK bill will create powers. We already have them; perhaps he has misunderstood that point.

**Michael McMahon:** On the process, I support the convener's position and oppose Bruce Crawford's suggestion that we make up our minds to delay consideration of the issue before we have the debate, but I want to have the debate. The best time to arrive at a conclusion is after the debate, not prior to it.

**The Convener:** We have a proposal and an amendment to that proposal. The question is, that we consider the Sewel motion as I have outlined. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Butler, Bill (Glasgow Anniesland) (Lab)  
Jackson, Dr Sylvia (Stirling) (Lab)  
McMahon, Michael (Hamilton North and Bellshill) (Lab)  
Muldoon, Bristow (Livingston) (Lab)  
Smith, Iain (North East Fife) (LD)

#### AGAINST

Crawford, Bruce (Mid Scotland and Fife) (SNP)  
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
Mundell, David (South of Scotland) (Con)

**The Convener:** The result of the division is: For 5, Against 3, Abstentions 0. We will consider the Sewel motion in the manner that I outlined earlier in the meeting.

Fergus, do you want to make further comment on the Railways Bill?

**Fergus Ewing:** Thank you for remembering that, convener.

I draw members' attention to the minister's remarks on 2 November about the rail industry. He was asked—by me—about the proposed transfer of powers to the Scottish Parliament that is being envisaged by the UK Railways Bill. I asked whether the cash will be allocated according to population, the Barnett formula or need. Will it be based on the length of track and the number of stations, and will it reflect the historic over-investment on capital projects down south such as the chunnel, the west-coast main line and the jubilee line extension? Will it take the London underground into account? The question of how the cash will be allocated is extremely important if there is any question that Scotland's share is going to be inadequate.

We could be receiving more powers but locking ourselves into serious financial problems if we do not get a proper share. When I asked the question, the minister was not able to clarify the criteria and we are today no further forward. I have had various meetings with interested parties, such as Network Rail, who seem to indicate that the allocation will be on the basis of historic and planned spend. If that is the case, the change will

be an absolute catastrophe for the rail network in Scotland.

We cannot pass a Sewel motion on the bill without taking full evidence from Network Rail, FirstGroup plc, the Rail Passengers Committee Scotland, the Strategic Rail Authority, the minister and civil servants. The idea is ridiculous that we could give away powers over Scotland's share of the cash that is currently spent by the UK bodies and how that share will be calculated.

I was, however, comforted by the convener's approach to the question on the Sewel motion on the UK Gambling Bill. The only reason why the convener advocated that we pass a Sewel motion on the gambling proposals was time. Obviously there is no time pressure on the Sewel motion on the Railways Bill, so I assume that the convener will apply the same argument and agree that because we have time, we can take the evidence, and that our approach should be to plan now what evidence we should take to ensure that we can tackle the important question of securing a fair and proper share for Scotland in relation to the new powers of monitoring and managing the rail network.

17:30

**The Convener:** First of all, it is not the case that there are no constraints on time. I believe that the matter is quite pressing, although I do not have a specific date. I could make further inquiries about that and advise the committee at our next meeting. However, I understand that the bill will be progressing fairly swiftly. I would not necessarily jump to the conclusion that the news is bad because the minister has not concluded discussions with the UK Government. As I understand it, Network Rail in Scotland gets a substantial share of the resources that are being invested in the railways so, based on existing and planned spend, there might not be the catastrophe that Fergus envisages.

At this stage, the UK Government and the Scottish Executive are in discussion about the financial arrangements that would work alongside the transfer to the Scottish Parliament of powers that I thought would have been welcomed by SNP members. I do not necessarily believe that the outcome will be as negative as Fergus Ewing suggests.

However, I am more than happy to make further inquiries about the timing of the bill and to update the committee next week. I am not proposing to timetable a debate on the Sewel motion because we do not yet have clarity on the timing of the bill.

**Iain Smith:** I agreed with much of what Fergus Ewing said in the first part of his comments, but I am not sure that I agreed with very much of what

he said in the second part. The key is that we have to get the Executive's memorandum and clarification from the minister about what transfer of powers is going to happen. At that stage, the committee can decide whether it is satisfied that it has all the answers it needs or whether it needs to take more evidence.

**The Convener:** Yes.

**Fergus Ewing:** Will we revisit the issue next week when the convener comes back with a clear indication of the timetable for the UK bill?

**The Convener:** I am not proposing to timetable that specific debate at this moment.

**Fergus Ewing:** Will we consider the matter next week when you report back?

**The Convener:** Absolutely.

**Fergus Ewing:** Do you agree in principle that if we have the time, we can take the evidence and have the debate?

**The Convener:** I prefer to give my view on the situation as I know it, rather than on any hypothetical situation that you might want to postulate.

**Fergus Ewing:** In your previous comments on the Gambling Bill—

**Bill Butler:** That is quite clear, convener. I follow you; I hope that Fergus Ewing does.

**Fergus Ewing:** Convener, in your comments on the Gambling Bill, the argument for proceeding was that we had no time. If we have time for the Railways Bill, surely we should take evidence. Can we not agree on that in principle today?

**The Convener:** We can consider the issue once the position is clarified next week.

**Iain Smith:** We cannot agree to take evidence until we know what evidence we need and we will get that when we have spoken to the minister.

**Bill Butler:** Convener, you have put the matter succinctly. I follow what you said, even though I am a substitute member. I hope that Fergus Ewing can follow it; he is a permanent member.

**The Convener:** We will note the position at this stage.

**Michael McMahon:** I think that the convener's answer makes sense.

**The Convener:** That concludes the public part of the agenda. We have one more item to consider in private.

17:33

*Meeting continued in private until 17:35*



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