

LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 10 May 2005

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

16th Meeting 2005, 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)

*Paul Martin (Glasgow Springburn) (Lab)

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

David Mundell (South of Scotland) (Con)

*Tommy Sheridan (Glasgow) (SSP)

*Margaret Smith (Edinburgh West) (LD)

COMMITTEE SUBSTITUTES

Bill Butler (Glasgow Anniesland) (Lab)

*Mr David Davidson (North East Scotland) (Con)

Colin Fox (Lothians) (SSP)

Mr Bruce McFee (West of Scotland) (SNP)

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

*attended

THE FOLLOWING ALSO ATTENDED:

Chris Ballance (South of Scotland) (Green)

Nicol Stephen (Minister for Transport)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 6

Scottish Parliament

Local Government and Transport Committee

Tuesday 10 May 2005

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

Subordinate Legislation

Police Pensions Amendment (Scotland) Regulations 2005 (SSI 2005/200)

The Convener (Bristow Muldoon): I welcome members of the committee, public and press to the 16th meeting in 2005 of the Local Government and Transport Committee. Our main item of business today is item 2, which is further stage 2 consideration of the Transport (Scotland) Bill. Before I move to that item and welcome the minister and his team, we must deal with agenda item 1, which is our consideration of subordinate legislation.

The instrument for consideration today under the negative procedure is the Police Pensions Amendment (Scotland) Regulations 2005. No comment has been made by the Subordinate Legislation Committee, no member has raised a point and no motion to annul has been lodged. The committee is asked to agree that we have nothing to report on the instrument. Is that agreed?

Members *indicated agreement.*

Transport (Scotland) Bill: Stage 2

14:05

The Convener: The main item of business today is stage 2 of the Transport (Scotland) Bill. I welcome the Minister for Transport, Nicol Stephen, and his officials, Jonathan Pryce, Caroline Lyon and Frazer Henderson. If all of us stay focused and keep our comments concise, I see no reason why we should not reach the end of stage 2 today—I hope that all members take that hint positively, as I intended.

Section 12—Transport functions of Scottish Ministers

The Convener: Amendment 32, in the name of the minister, is grouped with amendments 33 to 35.

The Minister for Transport (Nicol Stephen): I start by referring to the United Kingdom Railways Act 2005, which we have previously referred to as a bill, but which received royal assent on 7 April. That act will lead to significant new powers being devolved to Scotland; I refer in particular to the transfer to Scottish ministers of the Strategic Rail Authority's role as franchise signatory. The transfer will remove the anomaly of the previous position, under which Scottish ministers—with the authority of Parliament—funded the franchise but were not formal signatories to it. The transfer, along with the transfer of Strathclyde Passenger Transport's rail powers to Scottish ministers, will bring the operation of rail services in Scotland and the franchise process together under a single signatory.

The white paper that we published last June set out our proposals for the future of SPT's rail functions. However, at that time, and at the time of the introduction of the bill, Parliament did not have the powers to make legislative provision for such a transfer. However, a section 30 order to devolve the powers was already in the parliamentary system, both in Scotland and at Westminster. We explained in the policy memorandum that, once the section 30 order was confirmed—which happened last December—we would lodge a stage 2 amendment to limit the scope of section 12. That means that only the rail functions of the Strathclyde Passenger Transport Authority and the Strathclyde Passenger Transport Executive can be transferred to the Scottish ministers.

It remains our intention that all other SPT transport functions will be transferred to the new strong regional transport partnership for the west of Scotland. I remain committed to ensuring that the west of Scotland RTP, as successor body to the SPT, has a continuing role in the development,

management and monitoring of rail services in the west of Scotland. The statutory provision for the arrangements that are to be entered into is contained in a separate amendment.

I move amendment 32.

Amendment 32 agreed to.

The Convener: Amendment 76, in the name of Michael McMahon, was debated with amendment 9.

Michael McMahon (Hamilton North and Bellshill) (Lab): Given that we accepted at our last meeting that the wording in the bill is okay, I will not move the amendment.

Amendment 76 not moved.

Amendments 33 to 35 moved—[Nicol Stephen]—and agreed to.

Section 12, as amended, agreed to.

After section 12

Amendment 36 moved—[Nicol Stephen]—and agreed to.

Before section 13

The Convener: Amendment 77, in the name of Michael McMahon, is in a group on its own.

Michael McMahon: I will try to be as brief as possible, convener, in order to comply with your request. Amendment 77 was lodged because experience shows that we require to take certain measures to protect staff during any transfer of functions. It was felt that the bill needed to offer such protection and I would like to hear the minister's response to that.

I move amendment 77.

Tommy Sheridan (Glasgow) (SSP): Amendment 77 is useful and I hope that the minister will support it. There is a lot of worry, particularly among SPT staff, about the transfer of functions and staff, particularly in the light of experience of transferring staff from public to private bodies. I understand that functions in this case will be transferred from one public body to another public body, but there are all sorts of questions about pensions and conditions of service, which require security. The employees of SPT have worked well for many years and they require that security, so I hope that the minister will agree to the amendment.

Nicol Stephen: I support whole-heartedly the intention behind amendment 77 and I have no desire to see the bill inadvertently undermine any of the work that was undertaken for the implementation of the Transport (Scotland) Act 2001. That legislation remains central to the

Executive's and, I am sure, Parliament's aims for transport in Scotland.

However, sections 10 and 44(4) of the bill are sufficient to ensure that that will not happen. Any order made under section 10 can include any necessary transitional provisions and, at the time of making orders under section 10, I will ensure through transitional provisions that any work that has already been undertaken is not lost as a result of the transfer of functions. I hope that Michael McMahon will withdraw amendment 77 in the light of those firm assurances.

Michael McMahon: I hoped that the minister would say that. He agrees to the principle and has said that the security that SPT and its employees seek will be delivered, so I seek to withdraw amendment 77.

The Convener: Michael McMahon has indicated his wish to withdraw amendment 77. Is that agreed?

Tommy Sheridan: No.

The Convener: The question is, that amendment 77 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

ABSTENTIONS

McMahon, Michael (Hamilton North and Bellshill) (Lab)

The Convener: The result of the division is: For 1, Against 7, Abstentions 1.

Amendment 77 disagreed to.

Section 13—Transfer of staff, property and liabilities

The Convener: Amendment 78, in the name of Michael McMahon, is grouped with amendments 79, 80, 37 and 38.

Michael McMahon: Amendments 78, 79 and 80 were lodged to seek a guarantee that action will be taken to reassure people who currently operate within organisations such as SPT that there will be protection for the jobs that they already do, and that the minister has taken account of concerns that that might not be covered by the bill as it stands. I hope that the minister will say that the

issues are to be addressed and that he can do better than the amendments.

I move amendment 78.

14:15

Nicol Stephen: Amendments 37 and 38 are technical and seek to ensure that the usual legal formulation of property rights and liabilities is applied to cover every possible eventuality that will arise from the transfers.

I turn to Michael McMahon's amendments 78, 79 and 80. I agree fully that staff relations are critical to the success of any organisation and that we should do everything possible to ensure that staff employment rights are protected in this situation. However, I shall explain what is being proposed in terms of the current legislation.

I suggest that it is not necessary for an advisory board to be set up each time a transfer of functions takes place. I understand that amendment 78 was inspired by the approach that was taken during the local government reorganisation in 1996, when a staff commission was appointed to oversee the process of staff transfers. That was sensible at that time because it was necessary to ensure that—during what was possibly the largest and most disruptive local government reorganisation ever in Scotland—a consistent approach to staff transfers was taken across the whole country. At that time, many people were applying for positions and reapplying for their jobs. However, that will not be the situation with SPT; the transfers that are envisaged under the bill will be nothing like as widespread or complicated. In 1996, we did not have the Cabinet Office's "Staff Transfers in the Public Sector: Statement of Practice", which states clearly that the Transfer of Undertakings (Protection of Employment) Regulations 1981 should apply. In line with that guidance, section 13 explicitly states that TUPE will apply in this situation.

We foresee that the most numerous transfer of staff will be from SPT, along with the staff in the west of Scotland transport partnership core team, to the new regional partnership for the west of Scotland. For that reason, we have encouraged officials from WESTRANS and SPT to begin to discuss management of the movement of functions and staff from those organisations to the new regional transport partnership. Those bodies are able to address all the practical matters relating to the transfer, and under TUPE it is rightly the responsibility of the exporting organisation—in this case, primarily SPT—and the importing organisation, the new west of Scotland partnership, to ensure that the transition of staff proceeds smoothly without impacting on the rights

of staff. The bill makes it clear that Scottish ministers have a duty to consult parties before making a transfer, and I do not propose to initiate a transfer of functions without fully exploring all the issues and establishing whether the transfer plans have taken fully into account all staff-related matters.

Similar points apply to amendment 79. The effect of TUPE is that employment contracts are automatically transferred from one employer to another. Amendment 79 is, therefore, unnecessary given section 13(1).

With those clear reassurances, I invite Michael McMahon to consider not pressing amendments 78, 79 and 80 on the understanding that I will continue to support and encourage the process that I have described, which must properly take place between SPT, councils in the west of Scotland and WESTRANS in implementing the transfer of staff to the new west of Scotland partnership.

Tommy Sheridan: My understanding is that SPT may also have inspired the amendments in Michael McMahon's name. It is a tribute to that employer that it has inspired amendments that seek to provide maximum protection for its employees in their transfer to a new employer. For that, SPT deserves tribute.

In the course of our deliberations on the bill, the one area of concern has been the tension between the current functions of SPT and what the new west of Scotland transport partnership will have transferred to it. We have tried to accommodate as best we could a body that we believe is working very well, but that has not always been possible. SPT has, in good faith, suggested a number of amendments that seek to provide maximum security. SPT is aware of the bill's provisions as the minister has outlined them, but it still feels that further amendments are necessary. Nothing that the minister has said today is new; the issue was known about before the amendments were lodged. I am minded to support all the amendments in Michael McMahon's name.

Bruce Crawford (Mid Scotland and Fife) (SNP): I am also minded to support the amendments. I have heard the minister's assurances and I will be interested to hear what Michael McMahon does with those assurances. I seek my own assurances from the minister regarding section 13. Can the minister give us guarantees about the pension rights of individuals who may be transferred under TUPE? My understanding is that TUPE does not always guarantee the transfer of pension rights or of travel and subsistence arrangements that might apply to members of staff currently employed by SPT. Can it be guaranteed that their rights will be continued under the new organisation?

In earlier discussions, the committee accepted that the new partnerships could form a company as recognised under the companies acts, perhaps with joint delivery mechanisms between the new partnerships and the private sector. If, under later joint arrangements, the individuals concerned were to be transferred to one of the new partnerships under the eventual act but were subsequently transferred to a joint partnership company that formed part of the delivery mechanism, would their rights continue in that new organisation, which might be a private sector company?

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I, too, wanted to ask about the consequences for employees' pension rights, but Bruce Crawford has, displaying his telepathic ability, already asked the questions I was going to pose.

Bruce Crawford: If it is telepathy, I am in deep trouble.

Nicol Stephen: My advice is that the Cabinet Office's statement of practice covers pension rights. We are in a position to give assurance on the protection of pension rights when a transfer is made from one public sector organisation to another, but travel and subsistence will be very much matters for the new organisation. I am not sure that travel and subsistence rights are protected in the same way as pensions. However, I am sure that the new organisation will wish to address that issue. Most organisations in the public sector will have a broadly comparable approach in that regard.

I would like to get some solid legal advice on the point about the joint partnership companies, but my understanding is that if an initial transfer between public sector organisations was followed by a move into what was deemed to be a private sector company, different rules might apply. That would depend on a legal evaluation of whether the company in question was in the private sector. We have discussed the approach that was taken with Network Rail, which is regarded as a private sector organisation, despite the fact that its shareholders are to a considerable extent Government bodies. Network Rail was established under unusual circumstances.

Each case should be examined individually. If the City of Edinburgh Council moved staff to Transport Initiatives Edinburgh Ltd or to its bus company, protections would apply. However, the organisation will, when employing staff directly for the first time, do so under its own terms and conditions. As I understand it, there will still be safeguards for staff who move into a private sector company, but those safeguards might not be as solid, secure and firm as the safeguards in this situation for staff who move from SPT to another public sector organisation; that is, the new regional

transport partnership. We can give far more reassurance about that situation.

With that reassurance, we should be able to move forward without having to impose a statutory staff board that would have to be used—as I understand it from Michael McMahon's amendment 80—in every situation in which there was to be a transfer of staff of the kind that is envisaged. I imagine that, in the future, it might not only apply in relation to SPT. I will encourage good co-operation between SPT, WESTRANS and the relevant councils. If they feel that a staff board is the way ahead, there is nothing to prevent their having that; however, I do not think that the bill should impose a staff board in every situation. Some of the transfers will be straightforward and will be accepted by all the staff who are involved.

Michael McMahon: Tommy Sheridan is absolutely right to say that amendments 78, 79 and 80 were lodged because of concerns that SPT had, and to find out what the RTPs could do to address them. SPT feels that the bill lacks reassurance, so the purpose of the amendments was to tease out in debate whether further amendment would be required to ensure that their concerns were addressed. SPT's concerns should be lessened by the fact that the minister believes that those concerns are addressed in the bill, that any gaps that remain can be addressed by order or regulation, and that the powers that SPT believes are necessary already exist. The purpose of the amendments was to tease out those answers from the minister and to ensure that the debate was had, because SPT believed that the matter was not clear enough. I believe that the reassurances that have been given will be satisfactory to SPT, so I will not press amendment 78 or move amendments 79 and 80.

The Convener: Michael McMahon does not wish to press amendment 78, but Tommy Sheridan has indicated that he wishes to do so. The question is, that amendment 78 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Davidson, Mr David (North East Scotland) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

ABSTENTIONS

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 78 disagreed to.

Amendment 79 moved—[Tommy Sheridan].

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

Members: No.

The Convener: There will be a division.

FOR

Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Davidson, Mr David (North East Scotland) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

ABSTENTIONS

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 79 disagreed to.

Tommy Sheridan: For consistency, I also move amendment 80.

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

Members: No.

The Convener: There will be a division.

FOR

Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Davidson, Mr David (North East Scotland) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

ABSTENTIONS

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 80 disagreed to.

Amendments 37 and 38 moved—[Nicol Stephen]—and agreed to.

Section 13, as amended, agreed to.

Section 14 agreed to.

Section 15—Functions of Commissioner

14:30

The Convener: Amendment 120, in the name of Michael McMahon, is grouped with amendment 81.

Michael McMahon: When we were consulting on the bill, there was a clear indication from operators in both the public and private sectors of the utilities industry that the bill did not ensure that there would be a level playing field for the various types of agency or body that are involved in road works. I have lodged a series of amendments that I hope will allow us to have a debate that will address the concerns that were raised. If nothing else, the bill should create a level playing field for all the bodies that operate within the remit of the bill. Amendment 120 is the first of those amendments.

The office of the commissioner will be central to ensuring that there is a level playing field. Therefore, it has to be independent of those who undertake the works and must deal evenly with everyone who undertakes the works, which means that it will have to arbitrate between the different sides of the debate.

From what I understand, only in extremely rare situations is it impossible for agreement to be reached between all the parties that are involved in road works. However, for the avoidance of any doubt, we at least have to hear from the minister that, with regard to the commissioner, those who undertake work on behalf of the Scottish Executive—that is, contractors such as BEAR Scotland and Amey—will be subject to the same rules as everyone else will be. I hope that the minister can give us some assurance that if this area is not already covered, he intends to cover it. I will consider what to do with the amendment when I find out whether that is the case.

I move amendment 120.

Nicol Stephen: The purpose of amendment 81 is to provide a definition of “works in roads”. That term covers all the activities that are required to be recorded on the Scottish road works register, which will be the principal tool by which the commissioner will monitor the carrying out of works in roads in Scotland.

I understand the intention behind amendment 120. However, if the amendment were to be accepted, it would create a large amount of legal uncertainty as it does not specify what disputes are to be subject to arbitration. The advice that I have received is that the amendment is also unnecessary, as section 34 of the bill introduces new section 157A to the New Roads and Street Works Act 1991. The effect of that section is to

confer a power on the Scottish ministers to prescribe the manner in which certain disputes can be settled and to enable those disputes to be settled by the road works commissioner, if that is appropriate. Of course, I hope that disputes will be rare. However, members will note that section 34 lists instances of possible disputes that may be settled by the commissioner. I also draw to members' attention the fact that the commissioner could be engaged in the settlement of disputes arising from new sections 115A, 132D and 137A of the 1991 act, which are introduced in sections 19, 29 and 30 of the bill, respectively—I hope that members are still with me at this point.

In closing, I urge Michael McMahon to withdraw amendment 120. The assurances that he seeks in respect of the commissioner's role in dispute resolution are to be found elsewhere in the bill. Amendment 120 could undermine the commissioner's role.

Fergus Ewing: In paragraph 22 of its stage 1 report, the committee agreed that local authorities and utility companies should be treated equally. That, I think, was the unanimous conclusion of committee members.

I endorse Michael McMahon's comment that there should be a level playing field for those who carry out road works. After all, from the public's point of view, it makes not one whit of difference whether it is Transco. Thus, a local authority, BEAR, Amey or anyone else who has dug a hole in a road. You do not hear people who have been delayed for three hours saying, "Oh, that's okay—it's local authority road works."

It is a basic principle that there must be equal treatment. If there is not, it will cast doubt on the whole purpose of this part of the bill. I therefore thought that it might be useful to state that principle—concisely as always—at the outset. The principle will inform our approach this afternoon.

I am persuaded by the minister's point that the bill already contains provision for an arbitration function. However, will the minister confirm that he accepts totally the principle of the level playing field? If he does not accept it, will he tell us how he would depart from it? That would be helpful in informing our work this afternoon.

Nicol Stephen: I may not be allowed to speak again on this point.

The Convener: You will be allowed to respond shortly.

Mr David Davidson (North East Scotland) (Con): I agree completely with the principle of having a level playing field. We must also have clarity. In any contract, there must be absolute clarity on the expectation of outcomes. Methods of dispute resolution should be firmly stated. That is just good common sense.

I agree with the principle behind amendment 120 but, on the wording, I take the minister's point about the definition of disputes. I will listen to what the minister has to say about situations in which a minister, as opposed to the commissioner, might intervene.

Bruce Crawford: I understand the principle behind what Michael McMahon is trying to achieve, and I agree with the direction that he is taking. The word that worries me in amendment 120 is "arbitrating". If we were going to use any word, I would have thought that it would be "adjudicating". The role of the roads commissioner is more that of adjudicator than that of arbitrator. The arbitrators will probably be found in the roads authorities and utilities committee (Scotland), which is not mentioned in the bill. That committee is where all the arbitration goes on.

When somebody arbitrates, it does not mean that they have the power to make a decision. We need the commissioner to have that power. I think that that is what the minister achieves in section 34(4), on the commissioner's power to settle disputes. I assume—and I hope that the minister will confirm this—that the commissioner will be able to make decisions when arbitration has not been successful.

I do not have it in front of me, but the 1991 act may describe who the arbiter will be. Proposed new section 157A of the 1991 act, which section 34(4) of the bill introduces, mentions "arbitration", but who will be involved in that arbitration? Who will bring the utility company and the road works authority together? That is not clear to me in the bill, although the bill might refer back to the 1991 act where it might be clearer. However, before I am able to accept the minister's views, there will have to be clarity on that issue.

Nicol Stephen: The most important point to make is that I accept the principle of the level playing field. We lodged amendments 87 and 88, which are in a later group, to place responsibilities on the road works authorities. That addresses Michael McMahon's core concern and argument. The amendments reflect the committee's concerns, to which Fergus Ewing has also referred. Although amendment 120 refers to road works authorities and undertakers, the key issue is the use of the words "arbitrating disputes". I have already explained that that could create legal uncertainties and difficulties and the matter is covered by other aspects of the 1991 act. I will leave it at that. We have responded to the committee's main concern, but we deal with it later on. Amendment 120 raises the separate legal difficulties and concerns that I have described.

Bruce Crawford: With all due respect, I do not think that my question has been answered. I asked the minister to describe who will be involved

in arbitration as laid out in new section 157A(b) of the 1991 act, which is introduced by section 34(4) of the bill.

The Convener: Okay. You have made that point. Do you have a response to that, minister?

Nicol Stephen: Yes. Proposed new section 157A of the 1991 act provides for a dispute to be settled by the commissioner or by arbitration. We would want to consult on that and involve RAUCS and others in it. There are normal procedures for and different methods of arbitration. The word arbitration has a clearly defined legal meaning. I do not mean to be flippant or simplistic, but it would be arbitration in the normal, well-defined legal sense of the word, as clarified through further guidance, which would come on the back of the bill following the consultation to which I referred. We would try to conduct arbitration in a way with which both utility companies and roads authorities felt comfortable.

Michael McMahon: As I said at the outset, amendment 120 was very much a probing amendment to ensure that the committee's concerns about the level playing field were going to be addressed. There were concerns about the bill as presented, but the minister has indicated that, both through his amendments and the Executive's interpretation of the commissioner's role, the issue has been addressed. Therefore I will not press amendment 120, but take on board what the minister has said. I hope that the provisions that he has put in place for the commissioner will address the concern that the committee expressed in its report about ensuring that there is a level playing field.

Amendment 120, by agreement, withdrawn.

Amendment 81 moved—[Nicol Stephen]—and agreed to.

Section 15, as amended, agreed to.

Schedule 2 agreed to.

Section 16 agreed to.

Section 17—The Scottish Road Works Register

The Convener: Amendment 82, in the name of the minister, is in a group on its own.

Nicol Stephen: I am grateful to Sylvia Jackson and her colleagues on the Subordinate Legislation Committee for drawing to our attention the need to make an express provision for the charging of fees to enter particulars, information or a notice in the Scottish road works register.

I move amendment 82.

The Convener: Thank you, minister. That was concise.

Fergus Ewing: Can the minister tell us how the fees are to be calculated? I do not expect him to read out the table that will apply, but does he accept the principle that the fees should be no more than the value or cost of the service that is to be provided? In other words, is he clear that it is not a back-door attempt to fund the costs of the commissioner's office?

Nicol Stephen: That is correct.

Amendment 82 agreed to.

14:45

The Convener: Amendment 83, in the name of the minister, is grouped with amendments 84 and 85.

Nicol Stephen: The committee will recall that, in its written evidence at stage 1, the Society of Chief Officers of Transportation in Scotland advised that further activity needs to be recorded on the Scottish road works register. I am grateful to SCOTS for highlighting those omissions. After discussions with representatives of SCOTS and RAUCS to clarify and confirm activities, I am content to extend the requirement to enter activities on the register to those activities that are listed in amendment 83.

Amendment 84 is a technical amendment that seeks to remove an unnecessary duplication of titles. Amendment 85 seeks to provide the appropriate reference within the 1991 act to new section 112B, which the bill inserts in that act. I urge members to support amendments 83 to 85.

I move amendment 83.

Amendment 83 agreed to.

Amendments 84 and 85 moved—[Nicol Stephen]—and agreed to.

The Convener: Amendment 135, in the name of Fergus Ewing, is grouped with amendments 136 to 140, 87, 88, 145, 151 to 153 and 157.

Fergus Ewing: First, I am indebted to the clerks and the national joint utilities group for their assistance in drafting amendments 135 to 140, 145, 151 to 153 and 157, the purpose of which is to ensure that the level playing field applies to certain aspects of the bill, whether we are talking about BT, Scottish Water, a local authority, or BEAR or Amey acting on behalf of the Scottish Executive.

Amendments 135 to 138 seek to ensure that section 114 of the New Roads and Street Works Act 1991 is amended so that not only utility companies but road works authorities and BEAR and Amey all have to give notice of when they have started work. That is a key element in levelling the playing field between public and

private sector undertakers of road works. I hope that the minister will accept that the principle of which he approves and has applied in his amendments—to which I will come—should be applied across the board.

Amendment 139 defines “undertaker”, which means somebody who is carrying out road works, rather than the better-known meaning of the word. That term should apply to all bodies that carry out road works that cause congestion. They should be subject to the same statutory controls, irrespective of who is doing the digging.

Similarly, amendment 140 seeks to extend the principle expressly to local authorities. In particular, it seeks to ensure that the requirement to give notice of emergency works, and to give notice in advance of and when starting works, is applied to all those who dig up the roads.

The remaining amendments are more technical. As the draftsmanship exactly follows the minister's own draftsmanship by adding the phrase “road works authority” to “undertaker”, I hope that they are technically acceptable.

I am pleased that the minister has lodged amendments 87 and 88, which deal with the imposition of penalties under section 119 of the 1991 act. As a result of those amendments, a penalty can be imposed on both local authorities and private sector bodies for not carrying out road works timeously or properly. I am pleased that the minister has applied that principle to the imposition of fines. However, I hope that he accepts that the principle also applies to all the other obligations that are incumbent on those who carry out road works under the 1991 act. The issue is really very simple. Indeed, to argue otherwise is to argue that some craters that are left by road works are good and others are bad. I am sure that the minister would not support such a

“Four legs good, two legs bad”

argument any more than he would support an unlevel playing field in—to pick a topic at random—the rules that govern the election of party leaders. I am sure that the minister will be very happy to endorse a level playing field and I hope that the committee will approve my amendments.

I move amendment 135.

The Convener: I wondered how long it would take before someone mentioned that subject. Well done, Fergus.

Nicol Stephen: On amendments 87 and 88, I reflected on the committee's concerns in its stage 1 report and its challenge to the Executive to bring forward proposals to ensure that road works authorities and utility companies are subject to the same penalty system in a way that avoids the

situation in which local authorities in effect fine themselves.

As drafted, the bill enables the commissioner to give directions to road works authorities. Amendments 87 and 88 seek to supplement that power by enabling Scottish ministers to make provision by regulations for the commissioner to apply penalties to road works authorities and undertakers who fail to comply with their duties. I had thought that those amendments would satisfy the committee's concerns, and road works authorities and utility companies will now be subject to similar constraints and penalties. I believe that those amendments address the committee's core concerns and hope that they will be supported.

Because the amendments in the name of Fergus Ewing were made known to me only on Friday, I find myself in the position of a back-bench committee member. I did not know that they would be lodged and I am told that we did not receive representations on the detailed matters that they address from any of the parties that have been involved with the bill. As a result, I have to respond to them quickly.

I am not prepared to dismiss the amendments in the name of Fergus Ewing out of hand, and indeed think that some of the proposals have merit. However, I intend to scrutinise each and every one of them and to consider whether it would be appropriate to amend their provisions at stage 3. I do not know whether it would be best for the committee to reject them or to accept them with a view to amending them at stage 3. I am reasonably relaxed about that, but I would like to have the opportunity to scrutinise the wording of the amendments in greater detail and to be assured by my legal and drafting advice that they achieve the committee's main intention.

Bruce Crawford: I thank the minister for his rather pragmatic approach, although I am surprised by his comments about when the Executive heard about Fergus Ewing's amendments. I understand that the organisation involved has discussed some of the issues; certainly it has been speaking to civil servants for some time on the matter.

When the minister reconsiders the matter, I ask him to consider why the other amendments in the group should not be included in the bill. Surely the only body that would be affected by the inclusion of the amendments would be the Executive, particularly in its role as a roads authority. The Executive's agents, in the shape of BEAR and Amey, carry out works all over the country. Under the amendments, BEAR and Amey would, for the first time, come under the level playing field principle that the minister spoke about.

I encourage the minister to discuss strongly with his civil servants whether the rules are applicable on this occasion so as to ensure the application of the level playing field that all of us want to see. It would be bizarre if we were to have a set of rules for utilities and local authorities that did not involve the Scottish Executive as a roads authority, even though the Executive undertakes a greater level of expenditure in this regard than do all the local authorities put together.

I hope that the minister will take solace from the fact that the committee will support him if he decides to accept Fergus Ewing's amendments in the group in their entirety, or if he at least accepts the intention behind them. If he is unable to do so, everything that we have said about principle will go by default and that is unacceptable.

Mr Davidson: I back the sentiments that Fergus Ewing and Bruce Crawford expressed. If we are to have a level playing field, that is what we should have and it should be set out as simply as possible in the bill without too many words being used. I hope that the minister and the committee will accept the amendments in the name of Fergus Ewing. After all, if it is necessary to do so for technical reasons, the minister can always amend the wording at stage 3.

Nicol Stephen: As I said before, I am relaxed about the approach that has been suggested. Although I can see the merit in some of the proposals, I would like time to take detailed advice on the subject. It is important to ensure that the bill is strong and effective. That said, we accept the policy aim that members seek of Scottish ministers being subject to penalties and constraints. We will work hard to ensure that we include that policy aim in the bill at stage 3. Almost certainly, Executive amendments will be lodged at stage 3 to reflect the wishes of all members of the committee this afternoon.

The Convener: Thank you. In order to clear up any confusion, I say to Fergus Ewing that the minister is always given the opportunity to respond to a group of amendments. After all, the bill that we are considering is the minister's bill. As the mover of the lead amendment in the group, Fergus Ewing will also be given the opportunity to respond to the debate. Now is your opportunity, Fergus.

Fergus Ewing: I have just a few points to make. The minister said that he had received the amendments only towards the end of last week—indeed, he dwelled on the point when he read from the briefing that I assume those who surround him at the table provided for him. Although I have not seen any documentary evidence, I am told that my amendments in the group were part of a batch of amendments that were communicated to the minister's office over a month ago.

I would not suggest for one moment that the minister seeks to mislead the Parliament—obviously, the suggestion is absurd. However, perhaps the minister will reflect on what he said, take further advice and come back to the committee on the matter. If appropriate, I hope that the minister will correct the impression that he gave that my amendments are new; they are not new.

The argument on the grouping is a simple one; everyone who carries out road works should do so under the same legal duties. The first four amendments in the group, amendments 135 to 138, use exactly the same format that the minister used of adding the phrase “or road works authority” to the word “undertaker”. Given that the minister has accepted that format, I presume that the sauce is good for the gander as well and that amendments 135 to 138 will be accepted. The purpose of the amendments is simply to ensure that, no matter who does the work, they will have to give notification when they have started it. If the amendments are not agreed to, private sector companies that carry out works will legally have to give notice when they have started, but local authorities will not have to do so. What is the point of that? The issue is not complicated.

To respond to the minister, it is reasonable to urge committee members to take the same view as we have taken on other amendments to the bill. My amendments have been introduced with careful work and co-operation between the clerks and NJUG and have therefore been subject to a good deal of thought, but if any further amendment or tweaking is required, that could be done at stage 3. As members will recall, we adopted that approach in relation to Michael McMahon's and Paul Martin's earlier amendments. As always, I would co-operate completely in any such tidying-up work.

I hope that members will take that approach, particularly on amendments 135 to 138, on which the argument is strong. On my other amendments in the group, I am happy to accept the minister's advice and have further discussion about them, but amendments 135 to 138 are fairly straightforward, as far as I understand it, although I never claim to be an expert. I hope that members will feel that there is a basis on which to vote for those amendments at this stage. If it turns out that there is any error, that could be dealt with at stage 3.

Amendment 135 agreed to.

15:00

The Convener: Well done, Fergus. You are obviously becoming all consensual in your old age.

Fergus Ewing: The old age bit is right.

Amendments 136 to 138 moved—[Fergus Ewing]—and agreed to.

Section 17, as amended, agreed to.

Before section 18

Amendments 139 and 140 not moved.

Section 18—Directions as to timing of road works

The Convener: Amendment 121, in the name of Michael McMahon, is grouped with amendments 122 and 86.

Michael McMahon: During stage 1, we heard a lot about the difficulty of addressing the needs of everyone who is involved in the use or the digging up of roads. The bill will allow local authorities to restrict the times at which digging can take place—such as at peak times—to take account of concerns about the issue. As long as that measure is used sensibly, it will be a good thing, because the needs of motorists, utility companies and the customers who ask for services to be delivered must be balanced. We must ensure that the balance is not tilted too far one way or the other, and that takes us back to the issue of a level playing field.

The intention behind amendment 121 is to ensure that the overall duration of works is not prolonged beyond a certain time as a result of using the measure in the bill, as that would have a direct impact on companies' ability to meet their customers' requirements at a reasonable cost.

In their evidence, the utility companies accepted that the balance of road traffic must be taken into account and that they can cause inconvenience. Amendment 122 is about ensuring that their need to comply with demand is matched by the need of local authorities and motorists to have access to roads when they require it.

Amendments 121 and 122 are an attempt to redress the balance and to ensure that the burden that is placed on utility companies is not overwhelming, does not impact on the overall costs to them and does not endanger their ability to deliver services at reasonable cost and in reasonable time.

I move amendment 121.

Nicol Stephen: Again, I am grateful to Sylvia Jackson and the Subordinate Legislation Committee for drawing the matter that amendment 86 addresses to the Executive's attention. The bill makes no reference to appeals in respect of timing restrictions and the amendment seeks to sort out that problem.

On amendments 121 and 122, it is important to realise that section 18 must be read in conjunction with section 115 of the New Roads and Street Works Act 1991. Although I agree with the broad thrust of Michael McMahon's amendments and what they seek to achieve, I believe that they are not needed in the bill. In section 115 of the 1991 act, there are provisions for the Scottish ministers to issue or approve a code of practice that will give practical guidance to road works authorities on how they should exercise their responsibilities.

I am also concerned about the reference to 10 days in amendment 121, on which I would like to consult the road works authorities and the utility companies. As far as possible, we have aimed to achieve consensus on such issues and to work together to get a good balance and a level playing field. I assure members that I will seek to work to ensure that the points raised in Michael McMahon's amendments are addressed through the code of practice.

It is useful that Michael McMahon has lodged the amendments but I urge him to withdraw amendment 121 and not to move amendment 122 because working parties are currently producing recommendations and his concerns and the approach that he has taken should be referred to them so that the parties involved have the opportunity to work together and include those matters in the code of practice.

Fergus Ewing: The amendments in the group all relate to the power to give directions on the placing of apparatus, which I think means cables and pipes and where the road has to be dug up. The provisions in the bill will empower the road works authority to tell the company that is doing the works not to use a particular road. However, interestingly, the power does not seem to extend as far as being able to tell the company to use another road instead. I expect the bill to contain clear criteria and I am concerned that it does not. I support Michael McMahon's amendments because he has tried to suggest some criteria.

The minister referred to a code for which there is provision under section 115 of the 1991 act, but that code is for guidance only. The utility companies will still be subject to the power of local authorities to prevent them from serving their customers. As Michael McMahon has rightly said, a balance must be struck between the interests of road users and the interests of those who want their gas, phone, electricity, and water to be supplied. As consumers, we often need those things fairly quickly, so there is a tension. Although they might need some tidying up, Michael McMahon's amendments merit support.

I will be interested to hear from the minister a little more about the exact criteria that will govern the application of the conditions in new section

115A(2) of the 1991 act. One of those conditions is that

“disruption to traffic would be avoided or reduced if the apparatus were to be placed in the other road”.

The condition in new section 115A(2)(c) is that

“it is reasonable to require the undertaker not to place the apparatus in the proposed road.”

However, how will we determine whether that is reasonable or not? If no criteria are stated in the bill, nobody will know.

Michael McMahon said that it would not be reasonable if there was a huge cost to the customers of the utilities companies, who would have to pay a great deal more. I believe that that could happen. I will be interested to hear whether the minister can be more specific in his response to this rather difficult question. What amendments will he propose if he is inviting us not to support Michael McMahon's amendments?

Bruce Crawford: The minister's amendment 86 will insert the words:

“The Scottish Ministers may by regulations make provision for appeals”.

I cannot imagine any circumstances in which ministers would not want to make such regulations, so can we encourage the minister to return at stage 3 with an amendment to amendment 86? Perhaps someone else needs to do that. The word should be “shall”, not “may”. For the life of me, I cannot understand why we would not want to appear decisive on that point. I cannot see any circumstances in which the word “shall” would not be appropriate. I encourage the minister to make such a change; otherwise, other members might have to consider a stage 3 amendment.

I support the intent behind Michael McMahon's amendments 121 and 122 and commend his approach, but I have a number of concerns. The amendments propose that it would be up to the local authority to satisfy itself that its directions would not cause certain disadvantages. The use of the word “satisfied” would give local authorities a considerable amount of power. What does it mean? What does the word “substantial” mean in the context? The local authority would have to make a judgment on that.

Amendment 122 refers to

“financial disadvantage ... to the customers of any public utility company”,

rather than to the company itself. Would the authority be required to talk to all the customers of the public utility company concerned? The local authority might get involved in a considerable amount of work and might need to talk to several parties. That would not necessarily be a bad thing if that is the intention, but it might have repercussions. The Royal Bank of Scotland might

suffer the financial disadvantage, rather than the public utility company. A protracted negotiation process might be required, involving negotiation between the local authority and a third party. I am sure that the minister can find another way forward.

I encourage Michael McMahon not to move amendment 122 and to allow another solution to emerge.

Nicol Stephen: On amendment 86, I would be pleased to return with an amendment at stage 3 that would change the word “may” to “shall” as Bruce Crawford suggests. That shall happen.

Various points were made about section 19, and I will come to those in due course. On section 18 and the amendments to it, the balance is an important one, and we should not tilt it too much in favour of the road works authorities or the utility companies. We want an agreed approach and as much consensus as possible. The utility companies and the road works authorities have been working well together through RAUCS. I believe that the code of practice represents the best way forward. It can be both strong and fair. I urge members to support the direction in which I think it is right to move, which is to deal with these issues through appropriate discussion, the guidance and the code of practice.

15:15

Michael McMahon: I take on board the points that Bruce Crawford made. It was not the intention to create that type of difficulty. As I said, I lodged a series of amendments to tease out the argument, to see whether what the bill provides for could be done better and to ensure that people's concerns about the intention of the bill were addressed. We have had answers to those concerns.

I agree with the minister that many of the issues that Fergus Ewing raised about apparatus and where it should be placed on the road are covered not in section 18 but in section 19. I have lodged some amendments to probe that issue as well, but amendments 121 and 122 are about the timing of road works and the minister has given an answer to that. He believes that the code of practice on the subject will be sufficient to address people's concerns. I am prepared to accept his assurance on that, and I will not press amendment 121 or move amendment 122.

Amendment 121, by agreement, withdrawn.

Amendment 122 not moved.

Amendment 86 moved—[Nicol Stephen]—and agreed to.

Section 18, as amended, agreed to.

Section 19—Directions as to placing of apparatus in roads

The Convener: Amendment 123, in the name of Michael McMahon, is grouped with amendments 124 to 128.

Michael McMahon: Amendment 123 would ensure that emergency works could not be delayed by the need to wait for a direction on where equipment can be placed or by the need to take a longer route than necessary to deal with the emergency. The whole section is about such practical issues. The utility companies were not satisfied that the bill was clear enough about what they could or could not do to deliver the services that are required, especially in emergency situations.

I will not move amendment 128, which calls for the complete removal of section 19. Suggestions were put to the clerks about the areas that I wanted to have covered, and the only type of amendment that they felt would address the overall concern was one that removed the whole of section 19. I do not believe that anyone thinks that that should happen, and that is not my intention. I simply want to clarify what each section of the bill does in respect of utility companies' responsibilities. The removal of section 19 would not help that, so I will not move amendment 128.

Amendment 124 is similar to amendment 123. A customer's connection should not be delayed because a utility company has to take an alternative route following instructions from the local authority. There must be a way in which the utility company can go in and do the work as quickly as possible without having to wait for everyone else to catch up with its requirements. I am talking about emergency services for gas or what have you. The last thing that a utility company needs when it is approaching that set of circumstances is to have to make a call first to the local authority to find out where it can put its apparatus.

Amendment 125 relates to appeals in respect of that. There is no provision in the bill for an appeals system that would allow aggrieved parties to challenge rulings. There must be reassurance that utility companies will have redress if they are not satisfied with the rulings that are placed on them under the bill, primarily to ensure that they can do their job without incurring any unnecessary additional costs.

Amendment 126 relates to companies being excused for failing to perform their statutory duties if the failure is due to action that has been taken under the provisions of the bill. Certain organisations that work in the telecoms sector will be subject to the regulations of not only the road works commissioner but the Office of Communications. There must be reassurance that,

in complying with directions under the bill, they will not fall outwith Ofcom regulations. Some practical issues must be cleared up and it would be helpful if the minister could assure me that such considerations have been taken into account and that either a mechanism exists whereby such concerns can be addressed or he has taken on board the utility companies' concerns.

I move amendment 123.

Bruce Crawford: I thank Michael McMahon for lodging the amendments. They are good amendments and should be seriously considered.

I imagine that, in 99 per cent of circumstances in which apparatus is being placed and there is discussion between the local authorities and the utilities, consensus will be found. Amendment 124 refers to circumstances in which

"placing the apparatus in the other road would not result in any delay".

What worries me is that "any delay" might mean one minute, one hour or one week. The amendment would give utility companies a lot of power to say to local authorities, "Whatever you say, this will cause a delay. We are going to do what we originally envisaged," and that balance ain't right.

Perhaps the minister or another member could lodge an amendment at stage 3 to deal with the issue. The words "unreasonable delay" might be more appropriate—although then how we define "unreasonable" becomes a problem. The way in which the amendment is currently worded would give the utilities too much leverage to say to the local authority, "We're not really worried about what you're saying. We're bashing ahead because there would be a delay," even though the delay might be for only one minute. That might not be the intent of the amendment, but I think that it would be the effect. I am sure that the minister will tell me if I am wrong. Indeed, Sylvia Jackson might even be about to tell me, too.

Dr Sylvia Jackson (Stirling) (Lab): Altering the word "may" to "shall" in amendment 86 to section 18 would have consequences for new section 115A(5) of the 1991 act in section 19. We should take that point on board since we are dealing with the two sections together.

Paul Martin (Glasgow Springburn) (Lab): During the evidence sessions, the utility companies raised the issue of additional bureaucracy. I would not like to add to bureaucracy by taking unnecessary measures, but the approach must be balanced, to ensure that the utility companies take into consideration discussions with local authorities. If we are to streamline the process for utility companies in the bill, we must see an improvement in their performance. I would want to give the utility

companies more flexibility only if the end-product is that they carry out their responsibilities much more quickly. We must take into account public concern that utility companies not only take a long time when they are on site, but take a considerable length of time to get on site in the first place. That applies not only to operational works but to emergency works.

Fergus Ewing: I endorse Bruce Crawford's argument that amendment 124, which would provide that placing the apparatus in the other road should cause no delay to customers' connection, might give too much power to utility companies. That could be dealt with at stage 3 by qualifying the word "delay". I hope that Michael McMahon will press the amendment at this stage and that we will agree to the provision. If it needs tidied up, that can be done simply at stage 3.

On balance, we might also want to bear in mind that not only do cables, ducts and pipes supply vital services to us all as consumers—we tend to take that for granted—but the financial contribution to non-domestic rates is absolutely colossal. I think that the contribution is more than £100 million—the rateable value is in the order of £600 per kilometre. Although we all like to cuss and criticise and there is inconvenience, there is a huge contribution to the economy, and I am sure that all of us here who support the free-market economy will want to take the opportunity to acknowledge that welcome contribution.

The Convener: Are you trying to provoke a response from anyone in particular, Fergus?

Mr Davidson: I am a bit puzzled because amendment 124 has not been thought out too well. If Scottish Water and an electricity supply company agreed that they would lay on works, there would be no opportunity for a local authority to co-ordinate the works so that one set of holes could be dug and both sets of equipment could be put in at the same time. Amendment 124 would remove that flexibility. I am not sure whether that was the intention, but it could be read that way and could allow somebody to say, "My customers must not experience any delay." The amendment would remove an opportunity to co-ordinate activities under the roads, which are one of the biggest bones of contention among the public.

Nicol Stephen: Amendment 123 seeks to confirm that emergency works are not caught by the provisions that restrict the placement of apparatus. I support that but reassure Michael McMahon that in section 19(2), which references section 116 of the New Roads and Street Works Act 1991, we have included provisions to ensure that the execution of emergency works is unaffected by any directions given under section 19. I advise Michael McMahon and all other committee members that the position of

emergency works is secure, so amendment 123 is not required.

I have significant concerns about amendment 124, which committee members have reflected in their contributions. Inclusion of the amendment would directly cut across our intention to reduce the disruption caused by the installation of apparatus. The purpose of section 19 is to balance the needs of a utility company and its customers with the needs of road users. When assessing whether to issue a direction, a road works authority will have to be satisfied that the direction will reasonably achieve the needs of the utility company. Sections 19(2)(b) and 19(2)(c) cover that, therefore the spirit of the amendment is already contained in the legislation.

Amendment 124 would go further than the bill and would mean that any delay—I emphasise the word "any"—to the utility company and its customers would override the power to give a direction, at road users' expense. The amendment would swing the pendulum in favour of the utility companies and I urge caution about that. Road works authorities and all road users would have difficulty with the amendment, which goes back to my earlier point about being anxious to ensure that local roads authorities have a fair say in the proposals in the bill as well as in the codes of practice.

There is a way forward that would address the utility companies' concerns. There are provisions in section 19 that provide the Scottish ministers with a power to issue or approve the code of practice to which I referred, which will give practical guidance on how road works authorities should exercise their powers to direct the placement of apparatus by utility companies. If Michael McMahon were not to move his amendment, I would be willing to agree to placing Scottish ministers under a duty to produce such a code of practice and to return at stage 3 with an appropriate amendment.

15:30

I am content for Michael McMahon to move amendment 125. There is no doubt about our intention to produce regulations—indeed, a working group has already been established to inform their development.

Amendments 126 and 127 are a different matter. Amendment 126 would tilt the playing field too far in the direction of the utility companies, at the expense of customers rather than road users.

I strongly urge members also to disagree to amendment 127. As members will be aware, telecommunications regulation is a reserved matter. The Executive has not had an opportunity to discuss the issue with Ofcom, so I am reluctant

to agree to the inclusion of any such reference in the bill at this stage. If the proposal proves permissible and an amendment is required, I will return to the issue at stage 3.

That said, the issue again relates to the relationship between a utility company and its customers, as set out in a code of practice that has been approved by Ofcom. The amendment would free a utility company of its obligations under such a code of practice if the matter were related to a road works authority direction. The amendment is similar to amendment 124. We will discuss the issue with Ofcom, but the matter can and should be handled adequately through a code of practice. I urge Michael McMahon not to move amendment 127 on the basis of the reassurances that I have given.

Amendment 128 would delete section 19, but I will not comment further on it as Michael McMahon has already said that he does not intend to move it.

The Convener: I fear that the minister might have swung the SNP behind amendment 127 by pointing out that it relates to a reserved matter. Bruce Crawford was getting quite interested.

Michael McMahon: I have listened to the minister and my colleagues on the committee who have raised concerns, and will not press amendments 123 and 124. I would be happy to see a proposal from the minister that addresses the concerns that have been raised and ensures that the code of practice is covered in the bill.

I am pleased that the minister supports amendment 125. I will not move amendments 126 or 127 on the basis that there are concerns, which he outlined. He agrees that there must be a way of addressing the concerns that I have raised and I am happy to allow him to have discussions with Ofcom to find out where the boundary lies between the requirements on utility companies under the bill and their need to meet the requirements of Ofcom's regulations. I hope that the minister will lodge an amendment if it is necessary for the bill to address the matter. As I have said, I will not move amendment 128.

Amendment 123, by agreement, withdrawn.

Amendment 124 not moved.

Amendment 125 moved—[Michael McMahon]—and agreed to.

Amendments 126 to 128 not moved.

Section 19, as amended, agreed to.

Section 20—Restriction on works following substantial road works

The Convener: Amendment 129, in the name of Michael McMahon, is grouped with amendment 130.

Michael McMahon: These amendments are aimed at teasing out more information from the minister. In discussions on them, there was concern that clarity is required, and I have lodged them to tease out that clarity.

I hope that what the minister has to say will reassure members and that the concerns that remain outstanding following the evidence that we have taken and the points that have been made will at least secure some understanding from him.

I move amendment 129.

Fergus Ewing: I too am interested to hear what the minister has to say on amendments 129 and 130.

On amendment 129, there should be some restriction on those who carry out road works such that they cannot come back and do road works again the next week or month, because that would involve unnecessary inconvenience. Such restriction would perhaps also encourage better performance and more efficient carrying out of work, as undertakers would know that they had to get it right because they could not come back for a certain period. However, three years is an incredibly long time not to be allowed to come back. Therefore, Michael McMahon's objective seems to me to be correct and founded on common sense. After all, the utilities check the robustness of their plant each winter, which suggests that 12 months would be a more sensible and necessary limit, if there is to be such a limit.

The aim of amendment 130 is to provide exceptions that would allow a utility company to return and carry out work within a fairly short period if necessary. Those exceptions are for the purposes of connection of supply and

"to make urgent repairs following a serious disruption to the supply of electricity or gas to customers, or to the water, sewerage or telecommunications networks."

I am sure that we would all support those functions.

I am interested in hearing what the minister has to say about the amendment. He might say, as he has already said, that there is already provision for the carrying out of emergency work in section 19(2), which refers to "emergency works". However, there is a distinction between emergency work that needs to be carried out for safety reasons—such as an interruption in gas supply—and the wording of amendment 130, which refers to making

"urgent repairs following a serious disruption".

Michael McMahon is attempting to allow a company to go back and get things right within a period that is shorter than three years if customers need to be connected or to have urgent repairs

carried out. Amendments 129 and 130 should be supported.

Paul Martin: The principle that the minister set out in the bill reflects public concern at constant upheaval due to continual construction works for various developments throughout Scotland, but the difficulty is in the practicalities of implementing the bill. Michael McMahon is reflecting some of the issues that the utility companies raised about the practicalities, so it would be helpful to hear how the minister will provide clarity and ensure that we are listening to public concern about the lack of co-ordination between the utility companies in the past and that we take a balanced approach to that concern, which is a fact of life.

Although we received evidence from the utility companies that they work well together, it does not look like they do and therefore some form of regulation is needed to implement the basic principle that we cannot have workmen constantly digging trenches throughout Scotland. At the same time, we need to be fair to the utility companies and give them some flexibility, which Michael McMahon is setting out. He has given us a way forward in amendments 129 and 130, but if the minister has a more effective way forward, we could consider it.

Mr Davidson: On amendment 129, I feel that the period of three years specified in section 20(1)(a) is overkill. There is a shortage of housing, and the redevelopment of brownfield sites for housing is taking place all around the country on a creeping basis. It is not always a case of one huge development going up; developments can grow over time. The three-year period is an unnecessary constraint. I have some sympathy with the idea that the undertaker should not come back every second week to have another fiddle, but I would like to think the minister can come up with something a bit more pragmatic that would achieve what he was after without restraining development where it is needed.

Fergus Ewing: It is a muddle, not a fiddle.

The Convener: I am not sure I want to take that any further.

Dr Jackson: I agree whole-heartedly with what Paul Martin said about the balance to be struck, in the spirit of what we wrote about this matter in our stage 1 report. We are dealing with the term "urgent repairs", and the minister previously referred to how emergency situations are covered. Do we have a definition of "emergency works"? I am not sure what the differences are between "emergency" and "urgent".

Nicol Stephen: I will begin with the last point. The term "emergency works" is defined in section 111 of the 1991 act.

On Michael McMahon's explanation of his amendments, given that I have been arguing for consultation with RAUCS and for the development of a code of practice, it would be unreasonable of me to mount a strong defence of the three-year period specified in the bill. I am therefore prepared to return at stage 3 with provisions allowing us to proceed on the issue through regulation. This is a sufficiently important issue for us to require clear information, agreement and guidance from RAUCS. With the agreement of the committee, and if members feel that this is a sensible way forward, I propose to return with suitable amendments at stage 3.

I take David Davidson's point about economic development, but Paul Martin's points were very fair, and there is an expectation that we will make progress on the issue and protect the road surface, particularly where a roads authority carries out substantial works such as a major resurfacing. That is what the bill's provisions intend to achieve. It is important that the integrity of the road surface be maintained for as long as reasonably possible after road works. There is nothing more frustrating for road users and council tax payers than seeing a road that has been newly resurfaced getting dug up by utilities companies, sometimes within days of the completion of work. Given those reassurances, I urge Michael McMahon to withdraw amendment 129.

I understand the broad thrust of the argument on amendment 130. However, I believe that sufficient provisions are already in place to ensure adequate consideration of the issues that Michael McMahon raises. As I have stated on a number of occasions, I am keen for all the regulations arising as a consequence of the road works provisions to be well informed and well balanced. By having working parties of interested individuals and organisations engaged in that work, I am convinced that any recommendations will be practical and will address the needs of stakeholders. Following that reassurance, I urge Michael McMahon to consider not moving amendment 130.

15:45

Michael McMahon: I sense agreement among members that this issue must be resolved. I was not confident at the outset that amendment 129 was exactly what was required, but I lodged it in response to the evidence that we took on the matter. The committee agreed in its report that the issue required to be addressed.

I sought to tease out that argument and I am sure that the minister understands exactly what my intentions were. Often, bills that we deal with require other areas to work in order to achieve their goals. Planning is one of the areas on which

the bill that we are discussing will depend to a great extent. It does not make much sense for a local authority or anyone who is involved in planning to prevent people from moving into a new area because they cannot get gas, electricity or telephone connections as a result of a three-year restriction on digging up a road that has just been laid. That point was well made when we were taking evidence, and my amendments were intended to address the issue.

I take on board the point that the minister has made about the involvement of RAUCS and am reassured that he has listened to what we have said and will introduce something at stage 3 that will address the issue better than amendment 129 does.

Amendment 129, by agreement, withdrawn.

Amendment 130 not moved.

Section 20 agreed to.

Sections 21 and 22 agreed to.

Section 23—Enforcement of section 119 of 1991 Act

Amendments 87 and 88 moved—[Nicol Stephen]—and agreed to.

Section 23, as amended, agreed to.

Section 24—Qualifications of supervisors and operatives

The Convener: Amendment 141, in the name of Fergus Ewing, is grouped with amendments 142 to 144.

Fergus Ewing: The purpose of section 24 is to extend provisions in the 1991 act that require utility companies to assure the roads authority that they have suitably trained and qualified staff and supervisors. Amendment 141 allows us to pay another visit to the playing field to ensure that the utility companies are not playing uphill against the wind and the rain.

The provisions in section 24 state that the utility companies must nominate a supervisor for any road works that are being undertaken and provide evidence of the supervisor's qualifications. The purpose of those provisions is to ensure that the person who is in charge of any road works is competent and suitable.

The purpose of the amendments, which have been drafted for me, is to ensure that the provisions that apply to the utility companies will also apply to local authorities and to the Scottish Executive and its appointed agents, BEAR and Amey. If there is any mistake in the drafting of the amendments, no doubt the minister will inform me.

I move amendment 141.

Nicol Stephen: I understand Fergus Ewing's point and see his argument. However, the roads authority has a responsibility for ensuring that its assets—including the roads—are properly maintained. Through the use and management of its staff, the roads authority can obtain that assurance. The purpose of ensuring that undertakers provide evidence of qualification is so that the roads authority can be assured that other persons, for whom it has no management responsibility, are capable of performing tasks on its assets to an appropriate level of quality.

The provision in the bill that requests evidence of qualification seeks to minimise risk, and the roads authority is given the power to require and obtain assurance by requesting that evidence. On that basis, and given the argument to do with liability and responsibility, I ask Fergus Ewing not to press amendment 141. It is one instance in which there is a distinction between the position of the roads authority and that of the utility companies.

Fergus Ewing: I am persuaded to the extent that the minister is referring to local authorities. However, I wonder whether he could clarify the position as it relates to the contractors who are engaged by the Scottish Executive to carry out trunk road works, who would be responsible for the placing of certain apparatus such as traffic light connections, cabling for streetlights and other works of that nature. Does the argument that the minister advanced in relation to local authorities apply to BEAR and Amey? Should they have to give notification of who the qualified supervisor is? I understand that there are prescribed qualifications such as city and guilds accreditation for the individual skills of placing signing, lighting and guarding, plant detection, excavating, reinstating and so on, which are formally registered by the Scottish Qualifications Authority. The utility companies have to provide all that information.

Can the minister clarify what the impact will be on the private companies that are engaged on behalf of the Scottish Executive in carrying out its obligations in relation to the trunk road network, as opposed to the non-trunk road network? The non-trunk-road network is the responsibility of the local authorities, which carry out maintenance through the public sector.

The Convener: I do not want to reopen the debate and set a precedent that might lead to the meeting being prolonged unnecessarily; nevertheless, I will allow the minister to clarify whether the undertakers would include the trunk road operators.

Nicol Stephen: The same argument that I made for the roads authorities would apply in relation to the trunk roads, which are the Executive's asset

and the responsibility of the trunk roads authority. Whether they were directly employed staff or contracted staff, we would be responsible for ensuring that the staff were appropriately qualified and that the roads were appropriately protected and maintained.

Amendment 141, by agreement, withdrawn.

Amendments 142 to 144 not moved.

Section 24 agreed to.

Section 25 agreed to.

Section 26—Duty of undertaker to notify completion of road works: form and procedure

Amendment 145 not moved.

Section 26 agreed to.

Section 27—Notices requiring remedial works relating to reinstatements

The Convener: Amendment 146, in the name of Fergus Ewing, is grouped with amendment 147.

Fergus Ewing: These amendments relate to the periods of notice for remedial work on road works; such remedial work is required presumably because road works were not done properly the first time. Again, this is a difficult and detailed area. The purpose of the two amendments is simple, and I hope that the minister will agree with their objective of ensuring that, in determining the minimum periods—given the fact that the previous minimum period of seven days has been dispensed with—there will be full consultation with the utilities that are involved.

The purpose of amendment 146 is to ensure that, in issuing guidance in relation to the exercise of the power in new subsection (3A) of section 131 of the 1991 act, ministers take account of the relevant current codes of good practice. I refer briefly to the Highway Authorities and Utilities Committee United Kingdom inspections. HAUC has produced a code of practice promoted by the joint utility and authority inspections working group, which includes Scottish representation. That code of practice defines the prescribed period for undertaking reinstatement remedial works. The agreed period is derived from authority and industry best practice and realistic timescales, to which both the authorities and utilities can work. As the minister knows, it is helpful to have notes in front of us.

The purpose of amendments 146 and 147 is to ensure that when the ministers are deciding how to exercise that power and change the deadlines, the existing corpus of work is not reinvented or replicated but referred to, given the important commercial consequences in many situations.

I move amendment 146.

Nicol Stephen: I thought that Fergus Ewing was getting positively ministerial at one point.

The Convener: I thought that he was getting positive about UK bodies.

Nicol Stephen: SCOTS, RAUCS and HAUC.

I thank Fergus Ewing for his explanation. Although there is no disagreement with the thrust of what he said, it is arguable that his proposed provisions will duplicate information that could be contained in regulations. There is also the fact that he intends to place Scottish ministers under a duty to produce guidance. I have conceded that point elsewhere, but if guidance is not required in this instance because the regulations contain sufficient detail to provide a shared understanding, the production of it would become unnecessary. I expect that the regulations—again, informed by the work of the proposed working groups—would be drafted in such a way that there would be no requirement for additional guidance on how they should be applied. That is the current intention; we should avoid additional guidance. On that basis and given that reassurance, I ask Fergus Ewing to withdraw amendment 146 and not to move amendment 147.

Fergus Ewing: The minister has said that the working group will be consulted, which is, in essence, what the industry wishes. I interpret from what he said that the utilities would be involved in that. If a document is produced that does not require further interpretation, it is logical that there would be no need for guidance. In the light of the minister's assurances, I am happy to withdraw amendment 146 and will contemplate the matter further prior to stage 3.

Amendment 146, by agreement, withdrawn.

Amendment 147 not moved.

Section 27 agreed to.

Section 28—Power of road works authority to require undertaker to resurface road

The Convener: Amendment 131, in the name of Michael McMahon, is grouped with amendments 132 to 134.

16:00

Michael McMahon: One of the things that most shocked me in the evidence that we took was our being told that there might be a loophole whereby a utility company that digs up part of a road might find itself being subjected to a request from a local authority to resurface all the road once the work had been carried out. Given the way in which the bill is drafted, that is a concern, and a measure has to be introduced to address that fear. I do not know whether an authority would ever enforce

such a requirement on a company, but the fact that the loophole exists was enough for me to lodge amendment 131 to ensure that the minister addresses the concern.

Amendment 132 would remove the power of roads authorities to direct utility companies on when to commence works. The utilities believe that powers to direct are not required, but if any such powers are to be introduced, the powers to direct that works should be completed by a given date or time ought to be sufficient to ensure that the works do not cause undue disruption. The roads authorities are not really best placed to determine what utility companies can deliver in a certain timescale. Roads authorities may want to shorten the disruption, but they are not best placed to determine whether a company can complete a job in a given time. I ask the minister to confirm whether the bill would allow that to happen. There is a risk that, under pressure to meet local authority-imposed timescales, contractors might be pushed into compromising standards, which would be a detrimental outcome of a well-intentioned measure.

The intention of amendment 133 is to remove the on-going liability that the bill would place on utility companies. The amendment would ensure that companies would be forced to resurface a road if their works caused problems in a certain period after the work is completed, while recognising that defects that reveal themselves after that might not be linked to work not being conducted well. There must be some point at which utility companies cannot be asked to come back and repair roads. Roads deteriorate over time, so problems may have nothing to do with the way in which the road was reinstated.

I lodged amendments 131 to 134 to address concerns that were raised in evidence that utility companies might be asked to do more reinstatement work than is necessary. The companies accept that they have to carry out work well, timeously and as effectively as possible, but if the bill asked them to do more than is reasonable, that would be unfair. I lodged the amendments to ensure that that unfairness does not come through in the bill.

I move amendment 131.

Paul Martin: As there was in our debate on amendments 129 and 130, there is an issue of balance. We need to take a reality check about the poor standard of some utility companies' resurfacing work. I cannot remember the exact statistics, but the testing that the council in the constituency that I represent—Glasgow City Council—carried out on repair works revealed poor statistics. When we balance the matter, we must take into consideration the fact that some utility companies do not carry out repairs and

resurfacing to the standard that they should. To reflect on public opinion again, people see cones and barriers all over the place, and they are sometimes there for some time. In my constituency, Scottish Water is probably the worst culprit for abandoning works. I am sure that the same happens in other areas. There is no difficulty with attaching a timeframe to works to ensure that people know that the process is not never ending and that the works will be completed.

On the question of balance, I want to be fair to utility companies, but I am not impressed by their current approach. A timeframe must be attached to works and somebody has to do that; it should not be left in the gift of utility companies to decide how long works can take. There has to be some form of regulation to make sure that there is completion, and I think that I represent the public's frustration when they see the large number of remedial works that are carried out; there seems to be no end to it.

Nicol Stephen: I want to ensure that road works authorities can require undertakers to resurface the road when the quality of the road surface has deteriorated as a consequence of a reinstatement. That addresses Paul Martin's concerns. Although the intention is that the notice will be applied to an undertaker, there is no intention that the undertaker will be expected to meet the cost of the entire resurfacing in every instance. Either other undertakers or the roads authority will fund the balance when appropriate. The undertaker will contribute to the cost of resurfacing only in relation to the extent to which the original reinstatement has affected the quality of the road surface. I reassure the committee that the purpose of the regulations that are associated with sections 28 to 30 is to provide detailed specification of the manner and circumstances in which notices will be applied. For instance, the regulations will confirm the date after the original reinstatement on which the undertaker will no longer be liable for any resurfacing activity. Those regulations will be informed by the findings of the resurfacing working group, which has already been established and will report later this year.

The amendments seek to pre-empt the findings of the resurfacing working group, which has representation on it from the utility companies as well as from the road works authorities and the Executive. I hope that that reassures Michael McMahon. Because it contains wider interests, I believe that the working group will arrive at a balanced conclusion taking into account a range of issues, including road engineering matters and the balance-sheet risk, which has been raised by the utility companies.

Amendment 134 would place Scottish ministers under a duty to consult utility companies. Of

course, it is Executive policy to consult widely on the provisions of bills and regulations. I have just mentioned the working party that was established to inform and make recommendations in respect of the regulations and codes of practice that flow from the bill. Amendment 134 seems to focus on one association of utility companies and I therefore ask Michael McMahon to withdraw amendment 131 and not to move the other amendments on the basis that we will of course consult and involve a range of organisations. I believe that detailed matters relating to resurfacing issues will be well addressed by the working group to which I have referred.

Michael McMahon: I have listened to the minister's reassurances, and I made it clear that that is what I was seeking when I lodged the amendments. I am happy to withdraw amendment 131 and not to move amendments 132 and 133 because the minister is awaiting the outcome of a working group that he has set up, and because the utility companies will be given a proper opportunity to bring their engineering expertise to those discussions. In the fullness of time, something will emerge from those discussions that will reassure those companies.

I did not specifically mention amendment 134 in my opening comments. In relation to the amendments in the name of Fergus Ewing that we debated earlier, the minister said that he accepts in principle that something is required and that he intends to lodge an amendment at stage 3. I would like to move amendment 134 to ensure that the appeals mechanism is established in the bill. If the minister wants to lodge a stage 3 amendment that seeks to amend what we have done, that is fine. However, I want to press amendment 134 to ensure that the provision is in the bill.

We must ensure that the bill tidies up such issues. As I said, I am quite happy for many matters to be addressed in codes of practice and by working groups, but the matter that amendment 134 addresses should be in the bill.

Amendment 131, by agreement, withdrawn.

Amendments 132 and 133 not moved.

Section 28 agreed to.

Section 29—Resurfacing: regulations and guidance

Amendment 134 moved—[Michael McMahon]—and agreed to.

Section 29, as amended, agreed to.

Sections 30 and 31 agreed to.

Schedule 3 agreed to.

The Convener: I propose to give members a five-minute break at this point.

16:11

Meeting suspended.

16:21

On resuming—

Section 32—Fixed penalty offences

The Convener: Amendment 89, in the name of the minister, is grouped with amendments 90, 148, 91, 149, 150 and 96 to 99.

Nicol Stephen: On amendments 89 and 90, I am grateful to the Subordinate Legislation Committee for drawing a technical matter to our attention. The bill, as currently drafted, does not state that an order made under it will be made in the form of a statutory instrument. Those amendments, by including the words "statutory instrument", seek to rectify that error—my notes use the word "anomaly", but I will say "error" and be done with it.

Amendments 91, 96, 97 and 98 are technical drafting amendments. They do not change in any respect the intent of the bill.

I am again grateful to the Subordinate Legislation Committee for drawing the matter raised in amendment 99 to my attention. The bill currently provides for the Scottish ministers to make regulations subject to the negative procedure to turn certain criminal offences under the 1991 act into civil offences. I fully endorse the Subordinate Legislation Committee's proposal that any such regulations that change the status of offences from criminal to civil should be made subject to the affirmative procedure in order to give the Parliament the proper and appropriate opportunity to scrutinise the proposals.

On Fergus Ewing's amendments 148 to 150, the central objective of the register is to allow for effective planning and co-ordination of road works. That could be seriously undermined if incorrect information were to be entered—inadvertently or otherwise—in the notice. An example of that could be the entering of the wrong date for the commencement of the works. That might be inadvertent, but it could have serious consequences for traffic operation and road works co-ordination.

The matter should therefore be pursued through a fixed-penalty notice. Any defence that the error was inadvertent and should not be subject to a fixed-penalty notice would significantly reduce the effectiveness of the penalty regime and, consequently, the whole functioning of the road works procedures in the bill. Furthermore, the question

"whether the effect of the offence was trivial"

misses the core point, which is that in different circumstances the same inadvertent offence could have a serious impact. The purpose of the bill's provisions is to instil a level of discipline that ensures an appropriate duty of care is exercised and that appropriate checks and procedures are in place. Even if the majority of such errors have a trivial impact, the approach is justified if it prevents serious problems that may only rarely occur. In the Executive's view, there should be no defence to the commission of the offence if it occurs in the way that I describe. However, there may be mitigating factors and we would expect roads authorities to behave reasonably in deciding whether a fixed-penalty notice should be issued.

Based on what I hope was a helpful explanation, I urge Fergus Ewing not to move amendments 148 to 150. There is the issue of natural justice and there would obviously have to be an appropriate procedure for dealing with situations where a penalty notice is inappropriately issued.

I move amendment 89.

Fergus Ewing: In speaking to amendments 148 to 150, I once again thank the clerks and NJUG for the work that they have done and for their assistance in drafting the amendments. The aim of the amendments is simple. The whole purpose of having an independent commissioner is to ensure that road works are carried out more promptly and more efficiently, and with less inconvenience to road users, within the practicalities of the system, about which we have heard so much this afternoon. However,

"let the punishment fit the crime"

is a pretty good maxim. We all recognise that some of the statutory offences are of a technical nature. The purpose of amendments 148 to 150 is to ensure that, when an offence is inadvertent and arises through a genuine error or misunderstanding, and when its effect is trivial, we should not waste anybody's time in having a long, drawn-out procedure, the upshot of which presumably would be to exact a monetary penalty of low amount—we do not know what the sliding scale of fines will be or even whether there will be a sliding scale.

I put it to the minister that the severity of offences should be related to the degree of congestion. It has been put to me that a minor mistake, such as an inadvertent grammatical error, should not result in anybody's time being wasted with a formal notice or the involvement of the road works commissioner. I believe that the commissioner's office is to cost around £300,000. If there is to be an inundation of minor breaches—as must be the case, and as advocated by the minister—the commissioner will have his work cut out, because there will be only a handful of staff.

The argument that we must prosecute in all circumstances is not robust. If my amendments 148 to 150 simply stated that inadvertent errors should not result in an offence being pursued or, if pursued, should be taken account of in setting the penalty, I would agree with the minister, but that is not what they say. My amendments specifically state that two things must happen for offences not to be pursued or, if pursued, to be subject to a modest penalty: first, the error must be inadvertent and, secondly, the effect must be trivial.

The minister has not persuaded me that where the effect is trivial a penalty must be imposed. I do not know what the penalty is to be and the minister has not said what it should be. The minister argued that, even if the effect of the offence was trivial, in another case it might not be trivial, but I am not talking about another case; I am talking about when the impact is trivial. When the impact is not trivial, I agree with the minister that a commensurate penalty should be imposed.

I am not persuaded at all—in fact, quite the reverse—by the minister's arguments. We do not want to clog up a new regulator with work of this nature. Frankly, the road works commissioner's office could be brought into disrepute if he were seen to pursue things that were of a nugatory and minimal nature. I hope that those arguments persuade the minister to rethink his approach to my three amendments in the group.

16:30

Mr Davidson: We must always bear it in mind that any legislation that we pass must be pragmatic and practical. I do not want a situation to arise in which there is no real case to answer other than on a minor technicality, yet vast amounts of time, effort and money are tied up in legal advice and so on. I agree completely with Fergus Ewing, and with the minister, that any serious outcome must be investigated. Clearly, that is what the process is about. However, on this occasion, we should adhere to the spirit of what Fergus Ewing is saying.

Nicol Stephen: I will focus on the single point that Fergus Ewing and David Davidson have raised. I repeat that the Executive would expect roads authorities to behave reasonably in deciding whether a fixed-penalty notice should be issued.

I say to Fergus Ewing that, in normal circumstances, the roads authority would issue the notice and not the commissioner, although the commissioner will have powers in that regard. If the system were to become clogged up with notices that were issued by the commissioner, the new system would not be working well. That is not the way in which we intend the system to operate.

The provision in paragraph 12(a) of schedule 5 and paragraph 12(a) of schedule 7 allows Scottish ministers, by regulation, to

“prescribe circumstances in which fixed penalty notices may not be given”.

In the light of operational experience, we may find that there is scope to provide the details of the circumstances in which a road authority decides not to issue a fixed-penalty notice. I give Fergus Ewing the assurance that we will investigate the issue further. I hope that that allows him not to move amendment 148. Over time, we want to develop a sensible system under which we can ensure that we do not proceed in situations when the issue at question is trivial.

That said, I believe that, if the bill were to talk about an offence being “inadvertent” or about the effect of an offence being “trivial”, that could lead to a lot more administrative work. In a lot of circumstances, particularly initially, the utility companies will test the system and Fergus Ewing’s amendments would allow them to contend that the error or mistake that led to the fixed-penalty notice

“was inadvertent and that the effect of the offence was trivial”.

It is therefore inappropriate for that wording to be on the face of the bill.

Amendment 89 agreed to.

Amendment 90 moved—[Nicol Stephen]—and agreed to.

Section 32, as amended, agreed to.

Schedule 4 agreed to.

Schedule 5

SCHEDULE 6B TO THE NEW ROADS AND STREET WORKS ACT 1991

The Convener: Amendment 148, in the name of Fergus Ewing, was debated with amendment 89. I ask Fergus Ewing whether he wants to move the amendment.

Fergus Ewing: Just to demonstrate my constant reasonableness, on the basis of the minister’s assurance, I will not move amendment 148.

Amendment 148 not moved.

Amendment 91 moved—[Nicol Stephen]—and agreed to.

Amendments 149 and 150 not moved.

The Convener: Amendment 92, in the name of the minister, is grouped with amendments 93, 104 and 105.

Nicol Stephen: We lodged amendments 92 and 104 in order to overcome a potential legal difficulty. The amendments propose:

“Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.”

That means that in circumstances in which a person is the subject of a formal prosecution for an offence, they cannot also be punished for non-payment of the fixed-penalty notice that is associated with that offence.

Amendments 93 and 105 reflect the necessary changes that are required to schedules 5 and 7, which relate respectively to the New Roads and Street Works Act 1991 and the Roads (Scotland) Act 1984.

I move amendment 92.

Amendment 92 agreed to.

Amendment 93 moved—[Nicol Stephen]—and agreed to.

Amendment 151 not moved.

The Convener: Amendment 94, in the name of the minister, is grouped with amendments 95, 106 and 107.

Nicol Stephen: Amendment 94 seeks to enable the Scottish ministers, by regulations, to permit road works authorities to retain a proportion of the revenue that is collected from fixed-penalty notices, so it will be warmly welcomed by road works authorities. The amount that is retained will be sufficient to meet any cost that is incurred through administering the scheme. The fact that the balance will be handed over to the Scottish consolidated fund will not be as warmly welcomed. However, the Scottish consolidated fund is the most suitable final destination for the fixed-penalty receipts, net of administrative costs. Scottish ministers will be able to allocate the penalties revenue from that fund to the funding of national, regional or local projects.

I move amendment 94.

Fergus Ewing: I have a question for the minister on amendment 94, which provides that the total amount of the penalties will go to the Scottish consolidated fund for ministers to spend. Has the minister estimated how much those penalties will amount to annually? For example, will the total be enough to cover the ministerial travel budget?

The Convener: As no other members have anything to say on what is a serious and important point, I invite the minister to respond.

Nicol Stephen: The important point is that there have been concerns that some local authorities might use the fines as an additional income

stream. As we have discussed, it is important that there is a level playing field and that we are able to assure committee members and utility companies that the regulations will be tightly drafted to ensure that only legitimate expenses will be met and that local authorities will have no such incentive. Provided that the terms of the legislation are complied with, we estimate that the amount that is generated from fines should be nil.

The Convener: To summarise the Executive's position, it will receive the income from fines to prevent local authorities from having it as an additional income stream, but the income stream will be nil.

Amendment 94 agreed to.

Amendments 95 to 98 moved—[Nicol Stephen]—and agreed to.

Schedule 5, as amended, agreed to.

After section 32

Amendment 152 not moved.

Section 33—Civil penalties for certain offences under 1991 Act

Amendment 99 moved—[Nicol Stephen]—and agreed to.

Section 33, as amended, agreed to.

Section 34 agreed to.

Section 35—Fixed penalty offences under the Roads (Scotland) Act 1984

The Convener: Amendment 100, in the name of the minister, is grouped with amendments 101 to 103, 108 and 109.

Nicol Stephen: I will attempt to explain why these technical amendments are necessary. Amendment 100 seeks to clarify that the offences set out in proposed new schedule 8A to the Roads (Scotland) Act 1984 are fixed-penalty offences. Amendment 101 seeks to enable Scottish ministers by order to modify the schedule if—for example, in the light of experience—it is necessary for some offences to cease to be fixed-penalty offences. Amendment 102 has been revised to ensure that the drafting is consistent with the 1984 act. Amendment 103 references section 143 of the 1984 act to confirm that any order made by virtue of the provision that is proposed in amendment 101 will be subject to affirmative resolution. Amendment 108 seeks to ensure that only the offences that are listed in proposed new schedule 8A can be considered for civil enforcement and amendment 109 seeks to ensure that any regulations that are made in connection with the creation of civil penalties should be subject to affirmative resolution.

I move amendment 100.

Amendment 100 agreed to.

Amendments 101 to 103 moved—[Nicol Stephen]—and agreed to.

Section 35, as amended, agreed to.

Schedule 6 agreed to.

Schedule 7

SCHEDULE 8B TO THE ROADS (SCOTLAND) ACT 1984

Amendments 104 to 107 moved—[Nicol Stephen]—and agreed to.

Schedule 7, as amended, agreed to.

After section 35

Amendment 153 not moved.

Section 36—Civil penalties for certain offences under the Roads (Scotland) Act 1984

Amendments 108 and 109 moved—[Nicol Stephen]—and agreed to.

Section 36, as amended, agreed to.

Section 37 agreed to.

After section 37

The Convener: Amendment 1, in the name of Chris Ballance, is in a group on its own.

16:45

Chris Ballance (South of Scotland) (Green):

Amendment 1 is about accountability and ensuring that the Parliament can scrutinise Executive targets. It also centres on the fact that transport is an integrated portfolio—for example, greater car use can affect the financial viability and success of public transport—and the amendment seeks to ensure that the Parliament can debate the whole transport strategy.

Amendment 1 also seeks to ensure that ministers who announce targets can be held responsible for their success or failure. I maintain that the current Executive target, which is set for 2021, is not accountable. After all, the ministers who have set it are unlikely to be in the same job at that time—although I will make no further comment on that. There is a real hole in Executive policy in that the Executive accepts the need for road traffic stabilisation—indeed, that is in the partnership agreement—but has no clear target or strategy for achieving that and no interim target for which it can be held accountable. That is the substance of the matter that amendment 1 addresses.

The need to stabilise road traffic growth is accepted by society and by most political parties. There are problems with congestion. Transport is responsible for 14 per cent of Scottish greenhouse gas emissions and the figure is rising fast. Traffic growth above a certain level is counterproductive to the economy. We should also consider the health effects of pollution, because 2,000 deaths in Scotland per annum are attributable to particulate pollution. However, amendment 1 is not principally about such problems; it would require the minister to set targets that Parliament would be required to debate and then support or oppose. Enshrined in the amendment is the principle that it would be for the minister, as the appropriate person, to set targets.

Amendment 1 has received a great deal of support from organisations such as TRANSform Scotland and Friends of the Earth Scotland; a large number of public transport providers; non-governmental organisations such as Barnardo's Scotland and the Ramblers Association; the Scottish Association for Public Transport; the Chartered Institute of Logistics and Transport in the UK; SPT; and statutory organisations such as the Scottish Environment Protection Agency and, in principle, Scottish Natural Heritage.

I move amendment 1.

The Convener: For clarification, the target to which you referred was not set by the current Minister for Transport—I think that it was set three transport ministers ago.

Nicol Stephen: As recently as that?

Bruce Crawford: I have considerable sympathy for what Mark Ballard—sorry, Chris; I have done that to you before—Chris Ballance is trying to achieve. It would be good if the bill reflected targets that have been set. The Executive's target is to stabilise road traffic at 2001 levels by 2021, but road traffic levels rose by 4.9 per cent in the two years after 2001, so there is work to be done. It would be useful if the Executive lodged an amendment to enable the Parliament regularly to have a proper debate on the issue. I agree that we need signposts whereby we can measure progress towards the target for 2021, because without such signposts we will not be able to measure whether policies to improve public transport or the transport infrastructure are having the desired impact. The year 2021 is a long way off.

Chris Ballance said that there was a need for a debate in the Parliament about the entire transport strategy. I do not disagree with him, but unfortunately amendment 1 does not mention the strategy; it mentions only one target and the approach that it proposes would not enable the Parliament to debate transport as a whole in the

way that it should do. The amendment would require ministers only to set a target for reducing

“the total distance travelled annually by road vehicles in Scotland”.

Does that mean that as many cars as we wanted there to be could be stationary on the Edinburgh bypass all day, pumping out fumes, but it would not matter because they would not cover any miles? That would be the effect of amendment 1. Public transport between Scotland's main conurbations could be improved and the number of miles travelled by road vehicles could be reduced without reducing the amount of CO₂ that was pumped out by cars that were sitting in great big traffic jams. I am not sure that amendment 1 would have the effect that Chris Ballance wants it to have, although I support the intent behind it. The amendment is a little naive in what it is trying to achieve, although the principle behind it is not a bad idea.

It is a pity that no evidence was trailed to the committee on the matter before stage 2. There was nothing stopping the Scottish Green Party asking to give evidence on the matter during our inquiry. That would have allowed us to get underneath some of the issues before stage 2 and we could have come up with an amendment reflecting some of the concerns that Chris Ballance has expressed today. That would have been a more pragmatic way to involve people and go about our business.

Although it is well intentioned, amendment 1 is flawed. I hope that the minister will reflect on what Chris Ballance is attempting to achieve and will recognise that we need better signposts on the road to 2021, as well as considering how we are going to get there and the progress that has already been made. We should recognise that simply adding up the

“total distance travelled annually by road vehicles in Scotland”

is not going to get us there. That is not a measure that we can consider on its own, and there is certainly no reason to bring a debate to Parliament for one single target. We need something much more comprehensive.

Michael McMahon: My comments will not be dissimilar to those just made by Bruce Crawford. We have taken a substantial amount of time to consider how to improve the bill. We have listened to a lot of evidence and we have consulted a host of organisations that did not get the opportunity to send representatives to talk to the committee directly. We produced what I thought was a constructive and, in the main, consensual report on the evidence that we heard and the intentions behind the bill.

Within hours of completing that process, we discovered amendment 1. Members spent a lot of time talking to people, listening to people and addressing the concerns of those upon whom the bill will impact. Before any member of the committee had a chance to do anything on that basis, we found an amendment that was lodged as soon as it could have been and that did not address anything that the committee had considered with respect to the bill. Considering our desire to introduce measures to hold people to account, lodging that amendment displayed an absolute cheek. People had an opportunity to participate in the process. They had the ability to hold ministers to account, question the bill and examine the evidence, but they did not do so. Now they want to lecture us about holding the minister to account.

It takes some nerve and audacity to do what has been done, given the bill's overarching strategies and the all-important desire to ensure accountability on the part of the Executive. I do not particularly want to hear what the minister has to say on the amendment, because I do not think that it deserves comment. There might be a place for the issue that has been raised to be debated, but it is not during discussion of the Transport (Scotland) Bill.

Dr Jackson: My points are similar. I wondered why Chris Ballance, another member of the Green group or the people with whom he says he has been liaising had not come before the committee previously to discuss the matter and put their points across. More substantially, I wonder whether there is some confusion between the national, overarching strategy and the individual transport management strategies, with which we have been dealing in conjunction with the regional transport partnerships.

The Subordinate Legislation Committee considered section 6, which is entitled "Procedure before and after the drawing up of transport strategies". That committee raised issues about whether those strategies should be laid before the Parliament. Even the Subordinate Legislation Committee accepted—the minister confirmed this in his response—that those strategies are more local in nature. We were told by the minister that the strategies would be published and that the Executive would provide details about grants. We were also concerned about the financial arrangements. We have followed up the issue to an extent. In any case, there is much confusion in amendment 1.

Fergus Ewing: I cannot recall having spoken to a poorer, more flawed amendment than amendment 1 in six years in this Parliament. In almost every respect, the amendment ducks every question, dodges every issue, fails to provide any

solution to problems that we all acknowledge and is inconsistent with itself and with the exposition that we have heard.

If the issue is such a major one, why does Chris Ballance say that the Scottish ministers will have a year after the date when the act comes into force in which to publish their target? If it is so important to him, should he not be arguing that the target should be determined now or within a short space of time? He says that the Scottish ministers should

"publish a target for reducing ... the total distance travelled annually by road vehicles",

but does not say what that target should be. Surely he should, because that is what the Scottish Green Party is supposed to be about. I have no idea what the target should be because he has not said what it should be.

In his remarks, Chris Ballance said twice that he wants to stabilise road traffic growth, but that is inconsistent with amendment 1, in which he says that he wants a reduction in, not the stabilisation of, distance travelled by road vehicles. He has contradicted his amendment in speaking to it. He also states that there should be

"a target for reducing ... the annual rate of growth of that amount",

but we do not know what that is, because he has not said so. He then invites the Scottish ministers to spell out what the Green policy should be. That is an invitation that they might decline.

All the committee members—unlike Chris Ballance—have attended 30 or 40 hours of meetings on the bill. We are serious about addressing the issues and have tried to introduce solutions. Chris Ballance has proposed no solutions at all. I will suggest some: a better public transport system and park-and-ride schemes. We also want other effective measures to tackle congestion to be introduced. For example, I would like working hours to be staggered so that public sector workers could avoid congestion. That would not cost much, would it?

The criticism really starts to bite when we consider the measures that Chris Ballance would take. How exactly will he persuade people who need to take Johnny to school or to travel to their work, but have no means of accessing public transport? How will he allow them to live their lives? I have absolutely no idea of the answer, but I know that my constituents would be appalled if the Scottish Green Party came along and told them that they could not take Johnny to school or travel to their work today.

There are solutions, but we do not know what the Scottish Green Party says that they should be. Is it advocating that the fuel tax that we have in Scotland—which is Europe's leading oil

producer—and the United Kingdom is too low, although it is the highest in the world? If it is saying that that tax is too low, how much does it think fuel tax should be? Should it be increased by, for example, 50 per cent, 100 per cent or 200 per cent? Is Chris Ballance saying that cars are too cheap and, if so, would he introduce a car tax to tax people out of being able to buy cars? Those two measures would certainly take traffic off the road. They would be barmy and bonkers, but they might at least have the merit of achieving the objectives that Chris Ballance has not spelled out but says that others should spell out on his behalf.

As far as I can gather, Chris Ballance quoted no statistics, although many are readily available. “Scottish Transport Statistics” is quite a good start. The 2004 edition records that a total of 35,654 million vehicle kilometres were travelled in 1993 and that that figure increased over 10 years to 42,045 million vehicle kilometres. That is an increase of only roughly one seventh over 10 years, so the total traffic levels have not actually increased as much as the public might expect.

My final point—there is not much point in attacking some of the other flaws—is that the safest roads are motorways. Chris Ballance mentioned safety and saving lives; the statistics show clearly that the roads on which the risk of fatality is greatest are not on the motorway network and that the facility to drive on motorways increases the likelihood that lives will be saved. That is nowhere more the case than the M74. Given that Chris Ballance argues that we should very much bear road safety in mind and take whatever practical measures that we can take to protect lives, as indeed we should, I hope that he will agree that the M74 extension should become Scottish Green Party policy—when the Greens decide to have any.

17:00

Paul Martin: Chris Ballance might think that we are being a bit hard on him.

Chris Ballance: I expect no less from Fergus Ewing.

Paul Martin: Chris Ballance probably feels like a Scottish Executive minister today, but it is important that we are honest with him about amendment 1. He said that SPT and a number of other organisations support amendment 1 and it would be helpful if those organisations confirmed their support to the clerks, because I do not remember that SPT lobbied for such an amendment. I remember that Friends of the Earth Scotland lobbied us, but I received no representations from the other organisations that Chris Ballance firmly said had made representations to him. I would welcome clarification on the matter.

As Fergus Ewing suggested, we need a radical approach to a matter that is as important as the one that we are discussing. I have criticised ministers for using the word “strategy”. That is the wrong word; we need a transport action plan. However, the approach that is set out in amendment 1 would not radically overhaul transport in Scotland. The intentions behind the amendment are good, but the amendment would not deliver what Chris Ballance intends, given the focus of the party that he represents. He should rethink his approach and perhaps lodge more serious and radical amendments at stage 3. Fergus Ewing was correct to say that we must get into the detail of matters such as road tolls and the difficult decisions on transport that must be taken, but the Greens need to set out their stall clearly in that regard. We should not agree to amendment 1.

Margaret Smith (Edinburgh West) (LD): Colleagues have expressed many of my concerns about amendment 1. Paul Martin said that Chris Ballance should rethink his approach. Chris Ballance should also rethink the way in which members of the Green group deal with the Local Government and Transport Committee. My colleagues on the committee have been considering the bill for much longer than I have, because I became a member of the committee quite late in the day, but every MSP has the option to attend and take part in meetings from day one. If a party wants to address proposed legislation in the proper fashion and is serious about wanting members of the lead committee to take on board its views, it is not the best approach to get involved so late in the process.

Chris Ballance mentioned various organisations. Green organisations do not have to approach the committee through the Green party; the clerks and members are ready and willing to listen and learn and we want to do that early in the process, so that we can question not only the minister but other people who give evidence on an important subject.

My major concern about amendment 1 is that its scope would be very narrow. Although, like Bruce Crawford, I have sympathy for Chris Ballance’s comments about the need for signposts that we can use to hold ministers to account over a long time, amendment 1 misses the mark by addressing the matter so narrowly. Even if we reduced

“the total distance travelled annually by road vehicles in Scotland”,

we would not know whether we had succeeded in building an integrated transport system. Only if we consider the matter in relation to improvements in public transport and many other areas will we know whether we have succeeded in that regard. Amendment 1 is far too narrow in its scope.

The Convener: I share the disappointment that several colleagues expressed about the Green group's lack of engagement with the committee since its establishment after the most recent Scottish Parliament elections. At those elections, many voters used their second vote to vote Green, perhaps because they expected to hear a distinctive voice in the Parliament on environmental matters. I assure my Labour colleagues that I was not one of those people and that I used my second vote to vote Labour.

Margaret Smith: A wasted vote.

The Convener: Many people in Scotland will be disappointed that this is only the second time that the committee has had the honour of having a Green member attending a committee meeting. I would have thought that, of all the Parliament's subject committees, the Green group would have made a priority of sending a member to the Local Government and Transport Committee. There is no Green member of the committee, but every member has the right to attend meetings of any committee that they wish. They can contribute to the committee's work and listen to evidence. If a member of the Green group had attended meetings, they could have subjected what the Minister for Transport has said to detailed scrutiny. In the past two years, they could have done so when the committee dealt with the Budget (Scotland) Bill and scrutinised the Scottish Executive's various transport targets and how it intended to achieve its targets with the available resources, for example. I take exception to amendment 1 because the Green group has failed to engage with the committee. I urge it to engage properly with the committee if it wants to be taken seriously in the future.

Amendment 1 is badly flawed. It seems to address solely

"the total distance travelled annually by road vehicles in Scotland".

We would probably want to tackle three broad areas if we wanted to consider problems to do with motor vehicles. First, there is the issue of improving safety and reducing the number of accidents on our roads. As Fergus Ewing said, when roads and motorways are being built measures can often be taken that might improve their safety.

Secondly, we would want to address pollution, and CO₂ emissions in particular. Reducing the number of vehicle miles is not the only way of addressing pollution—promoting alternative fuel technologies is another way of doing so. Friends of mine who work in engineering have told me about engineering developments that may be another means of addressing pollution, rather than doing so simply by reducing the number of vehicles on the roads.

Thirdly, there is the issue of congestion. Reducing the number of miles that are travelled in Fergus Ewing's constituency will have absolutely no impact on congestion in Edinburgh and Glasgow. There may be alternative ways of tackling congestion to the simplistic solution that has been proposed.

I will summarise. If the Green group is to be taken seriously by the committee and the people of Scotland, it must work much harder and it must think up more imaginative solutions to Scotland's travel problems than that which it proposes in amendment 1.

Nicol Stephen: I will be brief. I simply question whether we should have legislation for every Executive target. We have several important transport targets and targets across the Executive. Sometimes, the number of targets the Government should have is a hotly debated political issue—and such debates are important—but it is important to have key targets. We have targets for increasing the number of rail passengers, increasing the number of bus passengers, taking freight off our roads, reducing CO₂ emissions, improving safety and reducing accidents. All those targets and others are important for transport, but a statutory underpinning of each and every Government target is inappropriate.

I assure Chris Ballance that we recognise the importance of the target to reduce traffic levels to 2001 levels by 2021. He knows that I have discussed that with the Environment and Rural Development Committee and that I have said that we are seriously considering interim targets. We are working with the Cabinet sub-committee on sustainable development, and external representatives with great authority on the environment—Simon Pepper and Jan Bebbington—are playing a constructive role. That work will continue and amendment 1 is unnecessary.

The Convener: Finally, Chris, you get the opportunity to respond to the debate and to indicate whether you intend to press amendment 1.

Chris Ballance: I would love to respond to the debate. First, I will dismiss the argument that was made about the Greens' attendance at the committee. The fact that the Greens do not have a seat on the committee makes it almost inevitable that we will be in attendance less frequently than at other committees. I am far more likely to attend on a regular weekly basis the Enterprise and Culture Committee, on which I have a place and a vote, than this committee.

I point out to committee members that this evidence was led to the committee at stage 1. I

strongly recommend the submission from TRANSform Scotland to members of the committee who did not read it: it called for exactly the sort of amendment that I have lodged. TRANSform, the leading non-governmental organisation that represents Scottish public transport organisations, was deeply disappointed not to have been invited to give oral evidence to the committee, having sent in a written submission that had things to say that were quite different from what was stated in several other submissions that the committee received. I point out that amendment 1 is in response to a submission at stage 1. That is in perfect order.

As to what the targets and strategies should be, Fergus Ewing has missed the point. This is not a Green party transport policy in an amendment. Amendment 1 is an attempt to turn an Executive target and an Executive strategy into something that the Parliament can measure the success of and which back benchers can consider, debate and support or oppose. That is precisely why the amendment goes for the simplest form rather than for a large quantity of detail, which might be party specific. The responsibility of the minister and the majority party is to create targets and strategies. The responsibility of the Parliament is to scrutinise those and to vote on them. That is what the amendment enables us to do.

The current Executive target is to reduce—or stabilise, depending on whose words we use—road traffic to 2001 levels by 2021. That target is meaningless and unmeasurable. There is no clear strategy for how we will get there and there are no interim signposts. I very much welcome the minister's comments that he hopes to study the idea of interim targets and to consider the possibility of bringing in interim signposts. I look forward to seeing what comes of that. I hope that something will come of it before the bill reaches stage 3, because it is important that we have a measure of whether transport policy is working.

I accept that there are many other possible signs of successful transport policy, but I maintain that road traffic levels are a key driver and a key indicator of how the entire transport policy is working. They are certainly key for inner-city congestion and for inner-city air quality and such matters. That is why amendment 1 has been brought before the committee today and that is why I have kept it as simple and as clean as possible.

I will wait to see what the minister does by way of announcing interim targets. At this point, I will withdraw the amendment.

Amendment 1, by agreement, withdrawn.

17:15

The Convener: Amendment 2, in the name of Fergus Ewing, is grouped with amendments 2A, 2F, 2G, 2H, 2E, 2I, 2J, 3, 154, 156, 155, 158 and 111.

Amendment 158 is a manuscript amendment that rectifies an error in the formatting of amendment 155. Under rule 9.10.6 of standing orders, I have agreed that amendment 158 can be moved straight after amendment 155, which is on page 23 of the marshalled list. Copies of amendment 158 were left on members' desks at the start of the meeting.

Amendments to amendment 2 will be disposed of before the question on amendment 2 is put. When it comes to the winding-up comments on this group of amendments, I intend to call the minister first to respond to the debate. After that, I will call Fergus Ewing, who will have moved amendment 2, and finally I will call Paul Martin, who has lodged a series of amendments to Fergus Ewing's amendment.

Fergus Ewing: The amendments are important. Amendment 2 aims to establish a statutory rail passengers committee for Scotland and was lodged following the emasculation of the system of rail passengers committees that had existed in the UK since 1947. However, the committees were scrapped as a result of the Railways Act 2005. At stage 1, we heard about the excellent job that the Rail Passengers Committee Scotland has done and many of us found that evidence persuasive.

I have had the benefit of a great deal of information and briefing from various members of that committee, some of whom are here this afternoon. Some recent wins for the RPCS have been the introduction by Virgin Trains of cheap day returns between Glasgow Central and Carlisle; bicycles carried free of charge; ScotRail introducing Carstairs as a station where passengers can join the Caledonian sleeper; improvements to Waverley station; and working with Network Rail. I mention but a few examples to illustrate the point that the Scottish committee has been an effective customer champion and watchdog for the passenger, applying not simply enthusiasm for the railways, but expertise and a thorough and long-standing knowledge of the rail network in Scotland.

The purpose of amendment 2, which has the broad support of the RPCS, is to establish a statutory body. The first reason I adduce why that proposal should be supported is that it was argued forcefully at stage 1 that, unless the committee is statutory and has powers to require the operators and Network Rail to provide information, it would be not an effective watchdog but a toothless tabby. It would not therefore be able to have in

future the success that the RPCS has had in the past.

What would replace the current committee? We could have the UK body, which will have one person to represent the whole of Scotland, 335 stations, a huge network and a huge number of passengers per day. The idea that one person in London can solve the vast array of problems that will arise in Scotland is the sort of idea that I would have expected Margaret Thatcher to have proposed. However, it was Alistair Darling, not her, who proposed it.

I am indebted to *The Times*, as I so often am, for a series of articles in February in which it was pointed out that there are strong grounds for suspecting—although one can never prove such things—that the “defanging” of the rail passenger committees was brought about by pressure from Network Rail.

The purposes of amendment 2 and of the associated amendment, amendment 3—which deals with issues such as remuneration, public admission to meetings, proceedings and housekeeping matters—are to ensure that we have a Scottish committee, that we keep the existing expertise and that we have a passengers’ champion. If we do not have such a body, what will be put in its place? In the UK—let me speak up for England as well—the 120 regional passenger representatives will be replaced with 2,500 volunteer champions, which is one for each station in the country. An analogy would be for Tesco or House of Fraser to abolish their in-store customer service desks, centralise all complaints and pick one unpaid customer per store to deal with every complaint. I am sure that the minister would not support such an absurd regime. *[Interruption.]* I am corrected by Mr Crawford—I hope that the minister will not support such a regime.

The wording of amendment 2 has been arrived at with the technical skills and knowledge of the committee and, as always, the total commitment of Alastair Macfie and the clerks. I do not want to dwell on the details of the amendment, but if there are technical flaws, they can of course be amended at stage 3. I could say an awful lot more, but I do not want to trespass on the remaining time. I hope that the committee will agree to amendment 2, which is important, as it will ensure that in the future, as in the past, rail passengers in Scotland have an effective champion to fight on their behalf.

I move amendment 2.

Paul Martin: My main purpose in lodging amendments 2A, 2F, 2G, 2H, 2E, 2I and 2J is to accept the principles of Fergus Ewing’s amendment 2, but also to involve a number of

other passengers in the proposed new body, including users of bus, ferry, tram and underground services. I thank the Rail Passengers Committee Scotland for asking me to include underground and tram services. A joined-up approach to delivering transport is crucial. Therefore, it is crucial to ensure that all users are represented at the top tier and that they work together to deliver the transport service.

Amendment 2 presents an opportunity to create a powerful lobby to improve transport services and to hold the various companies to account. For example, we have seen that FirstGroup has responsibilities for bus and rail transport. Therefore, we need a joined-up approach to user representatives at the top tier, but one that ensures that the various representative groups are autonomous within that organisation, through its sub-committee structure. That would be a welcome approach.

I have not heard of any opposition to my proposals. I ask the minister at least to accept the principles that are set out in my amendments and perhaps, at stage 3, to produce clarity about how the organisation would be delivered. The basic principle is that the representatives would work together in a transport user council, while at the same time respecting the various autonomies and the importance of retaining the existing expertise in the various organisations.

I move amendment 2A.

The Convener: I call Sylvia Jackson.

Dr Jackson: I hope that there has never been any doubt—

The Convener: Sorry, I have got the procedure slightly wrong. I should give the minister the opportunity to speak to amendment 111 before inviting you to speak, Sylvia.

Nicol Stephen: Amendment 111 seeks to extend the remit of the Bus User Complaints Tribunal. I am proposing the amendment as a direct response to issues raised by the committee in its report on the Transport (Scotland) Act 2001 and I thank the committee and the Bus User Complaints Tribunal for drawing the matter to my attention.

The extension of the tribunal’s remit is consistent with the intention of the 2001 act—that the tribunal should cover bus services that are available to the general travelling public. As members know, services such as some express services are currently excluded from the Bus User Complaints Tribunal’s consideration. That creates confusion in the mind of the travelling public, because all that people see is a bus or coach providing a scheduled service and they have no awareness of the statutory underpinning of the

tribunal. Amendment 111 will sort out that anomaly and should make things clearer and simpler for all members of the travelling public who use normal bus services and coach services.

The amendments lodged by Paul Martin and Fergus Ewing touch on passenger representation. We discussed that important issue briefly at stage 1, when I indicated to Paul Martin that I believed that there should be some sort of Scottish passengers council. That remains my view and I welcome the proposals that both Paul Martin and Fergus Ewing have made. I agree with the principles behind their amendments. I strongly support the involvement of passengers and users both in influencing the delivery of transport services and in the development of policy at all levels. A strong passenger voice is important if we are to achieve the kind of improvements across all modes of transport, and the integration between those modes of transport, that we all want. One of the moves in that direction was the establishment of the Bus User Complaints Tribunal in 2003. We are also currently reviewing the arrangements for ferry user representation, both for passengers and for freight interests.

The picture at the moment is sometimes complex. It involves a mixture of statutory and non-statutory bodies dealing with bus, rail and ferry services and with other modes of transport. There is not one multimodal body that looks across the spectrum of transport provision in Scotland and it is my view that we need such a body. However, the issue is significant and requires careful consideration and, if at all possible, some appropriate public consultation. That may be difficult within the time constraints of the Transport (Scotland) Bill, but I propose a solution, which I would like to mention to the committee at this stage to see whether members believe that it would be a satisfactory way forward.

I would like a statutory multimodal passenger representative body that covers all of Scotland. I believe that that is the thinking behind amendment 2 and the amendments to amendment 2. I propose to lodge an amendment at stage 3 to give Scottish ministers the power to create a wide-ranging passenger representation body by order. That body would have an overview of other passenger groups, as I believe that it is important that we should still have such groups for rail, for ferries, for buses and for other modes of transport.

I hope that members will respond positively to that approach. We would take the power to create such a body, but we would consult widely on the best form for that body to take and would then proceed by order. There would obviously then be a further opportunity for the committee to consider our proposals if members so wished or if there were any controversy. However, I hope that what I

propose will work with the grain and will be seen as a positive announcement by everybody involved in passenger representation in Scotland and by passengers and users of transport services.

I hope that, based on that proposal, Paul Martin's amendments to amendment 2, in the name of Fergus Ewing, will be accepted, but I shall return at stage 3 with the sort of proposals that I have described today. In the meantime, I do not support amendment 155, in the name of Fergus Ewing. I do not think that it is appropriate to apply the Scottish Public Services Ombudsman Act 2002 provisions to companies such as Caledonian MacBrayne Ltd or NorthLink Orkney and Shetland Ferries Ltd. I suggest that that amendment should be resisted.

17:30

Dr Jackson: I can be even briefer now that the minister has come back on the matter. My impression is that we are all in agreement about the need to have groups that represent passengers. As the minister said, he has taken up the suggestion and has come back with proposals.

I agree with the thrust of Fergus Ewing's argument. I am intimately aware of the good work of the Rail Passengers Committee Scotland. I am also aware that the group that represents bus passengers gave us strong evidence about its lack of powers. The consultation that the minister mentioned is therefore important; we need to beef up some of the areas about which we heard in evidence. We need to strike the correct balance between taking an integrated approach and retaining the autonomy of the separate groups of travellers, particularly in relation to rail.

Bruce Crawford: I welcome the amendments that Fergus Ewing has lodged and the approach that Paul Martin has taken. Although I also welcome to some extent what the minister said, I am not sure that it takes us far enough. Surely, before stage 3, we need more than a commitment to undertake further work. Perhaps Fergus Ewing should press his amendments, in the hope that the minister will lodge further amendments at stage 3 to put something more specific on the table.

I accept that further work needs to be done. That said, I suspect that there will be disappointment on the subject of ferry passenger representation. Back in December 2004, the minister said in the "Clyde & Hebrides Ferry Services Draft Service Specification" that

"a new Scottish Ferry Committee (SFC) with a wide-ranging membership should consider strategic interests."

We have moved some way down the road, but it is slightly disappointing that the minister has not taken the opportunity today of moving things

further forward in terms of what can be achieved on the ground. The Caledonian MacBrayne users consultative committee, which is to be abolished in the summer, is concerned that it should not be replaced by a weaker or less representative structure. Like the consultative committee, we should encourage the Executive to bring forward a meaningful proposal to establish a genuinely independent consumer committee.

I share the view of the Caledonian MacBrayne users consultative committee that the Scottish ferry committee should be a statutory body. The minister has said that he plans to bring forward a proposal at stage 3, but I encourage him to provide for such a body on the face of the bill. The proposal should be for a statutory body, albeit that he might want to discuss the way in which it will operate. He should also ensure that the body has the power to call for persons and papers so that it can hold to account the providers of ferry services not only at public meetings but through papers that are submitted to ministers and the Parliament.

Another important issue that the Caledonian MacBrayne users consultative committee raised concerns the membership of the body. The committee holds the view that membership should be drawn from the communities that are served by the ferries, as that will provide local accountability.

If the minister does not want Fergus Ewing's amendments to succeed today—although they should succeed, as the minister has time to come back on the issues at stage 3—I hope that he will replicate the intention behind them in anything that he brings forward at stage 3.

Mr Davidson: A number of interesting points have been made in the debate. It is important that the committee and the Parliament recognise the work that the Rail Passengers Committee Scotland has done in the past. It has proved its worth and it is vital that a new statutory body be established in its place.

I will not rehearse all the arguments that Fergus Ewing made. He could have gone much further. I note that Paul Martin recognises that different user groups need a statutory voice. That is a separate issue from that of having the multimodal structure that the minister talks about, which would be similar to an assembly of such groups. I do not want some user groups to influence others and to dilute the focus of passenger groups, whether they are for ferry, bus or rail passengers.

Groups have much work to share, but we do not start from that position. We start by ensuring that the basic representative body has the powers to deal reasonably with service providers. That must involve a bit of a partnership, which should not be held up as belonging to one side or the other. We have talked about having a level playing field. I would like user bodies to work on a level playing

field with operators and I would like the minister ultimately to be responsible for ensuring that they function well, because that is the purpose of making them statutory.

I am concerned about the dilution that seems to be suggested—perhaps Paul Martin can advise me whether I am wrong about that—by having all the groups in one body or as one function. The functions should be separate and distinct. If a mechanism is to allow groups to come together on general national issues that concern integrating transport, which will ultimately happen, that should be stated clearly, so that we move forwards. The minister said that he would return to the issue at stage 3, but he was a little unclear and gave no hostages to fortune in what he said today.

I support amendment 2, in the name of Fergus Ewing, and I hope that Paul Martin will explain further how the integration of bodies would work.

Margaret Smith: I pay tribute to the Rail Passengers Committee Scotland for its work and to the various passenger bodies—not only nationally, but locally—that many people give up much time to participate in. Those bodies are important, because national and local transport is important in people's lives. Whatever the minister and the committee decide on in the end, it is fundamental that we provide real powers to hold service providers to account. That must be strongly provided for in the bill. I would prefer to have more detail on that in the bill, rather than to say—with the greatest respect to the minister—that we will leave it to the minister to produce something by order.

Members around the table agree that much can be gained from a multimodal approach. I support Paul Martin's amendments to develop that. However, in going down that road, we must retain real powers and not allow them to be diluted by saying that all that we need is to have everybody talking to one another. We need that, but we also need the real powers to hold service providers to account.

I appreciate that the minister said that we should consult and I have no problem with that, because through consultation we will be more likely to produce something that will work on both levels. However, I am a bit concerned about the slippage of time. We should agree to the amendments to encapsulate the multimodal approach that we have talked about, but I say strongly to the minister that we want service users to have real powers to tackle matters.

The Convener: I echo members' comments about the important role that the Rail Passengers Committee Scotland has played. Members have drawn attention to many of its achievements. The committee has been a well-respected organisation

in the railway industry and has advocated railway users' views effectively.

Paul Martin will have the opportunity to wind up on his amendments, but I think that they are valid and worthy of support, because we want to have transport policies that achieve greater integration between the different modes of transport. Few of us are users of a sole mode of transport; we all use many different modes of transport. The more effectively those modes of transport are integrated, the more effectively the people of Scotland will be able to move around the country, which will help our economy to be successful. I certainly believe that it is important to get together in one body people who have different perspectives on, and experiences of, the use of different modes of transport, so that that body can represent consumers on behalf of all users of passenger transport. Paul Martin's amendments are worthy of support.

As regards the minister's proposal to lodge amendments at stage 3, my view is that we should agree to Paul Martin's amendments to Fergus Ewing's amendment 2 and to amendment 2, as amended. We will await with interest the minister's amendments at stage 3 and consider whether they adequately meet the committee's aims. I suggest the proviso that if amendment 2, as amended by Paul Martin's amendments, is agreed to, it might be appropriate for amendment 3 not to be moved, to allow the Executive to lodge an appropriate amendment at stage 3—if it intends to run with the changes that we propose to make to the bill at this stage. With that proviso, I encourage members to support Paul Martin's amendments and amendment 2, as amended.

Nicol Stephen: I am content with what the convener proposes, as it is a sensible way forward. I can guarantee that we will lodge an amendment at stage 3 that will seek to include on the face of the bill reference to a multimodal passenger committee. We will give as much detail on that as we can, but we must take into account the views of the existing committees. Such consultation is important. We must consider some of the complexities of the situation. For example, the Bus User Complaints Tribunal and the Mobility and Access Committee for Scotland are statutory bodies, which should be involved in what is an important change.

The other guarantee that I can give is that it is our intention to continue to have representative committees for rail, buses and ferries, although I do not think that those committees would need to be statutory. It is important that we continue to have a rail committee for Scotland in addition to the representative place that we have on the UK rail committee; I have already given reassurances on that. I support the convener's approach.

Fergus Ewing: First, I will address—

Bruce Crawford: On a point of order, convener. Will Paul Martin get a chance to respond?

The Convener: He will respond after Fergus Ewing, as I have already set out.

Bruce Crawford: I was in the loo at that point; I apologise.

Fergus Ewing: The effect of Paul Martin's series of amendments would be to transform the proposed rail passengers committee into a public transport users committee. In other words, the committee would be multimodal rather than unimodal—it would deal with all public transport rather than just rail.

My preference would be to stick with the proposal to have a rail passengers committee for Scotland because it is thought out and detailed and, in effect, it seeks to reinstate the status quo. Unlike some other amendments, amendment 2 is a solid piece of work that could become law, probably with only a little tweaking. Basically, it would reinstate an extremely satisfactory existing arrangement, which no member of the committee would have voted to scrap, had it been in our power to do so.

That said, I have listened carefully to the views of other members and it seems that there is consensus in favour of having a multimodal committee, to which I want to respond. Although, as I say, my preference is to stick with the rail passengers committee that is proposed by amendment 2, I am inclined, subject to what he says when he winds up, to support the amendments in the name of Paul Martin, provided that we consider three points. First, the proposed committee will need clear objectives and boundaries, which must be recognised by all those involved. Secondly, it must be properly resourced. Thirdly, it will need to walk before it is expected to run. Nonetheless, none of those barriers is insuperable, nor is there any reason—this is a key point—to delay establishing such a committee.

17:45

I must confess to having been slightly unclear as to what exactly the minister promised in his most recent remarks, which seemed to go further than his opening remarks. He said previously that he would lodge an amendment at stage 3 to insert an enabling provision, which would say not "There shall be a Rail Passengers Committee for Scotland" or "There shall be a Public Transport Users Committee", but that ministers shall establish something at some later unspecified date. However, in his most recent remarks, if I understood them, he said that he would ensure on the face of the bill that such a committee was established.

In responding to the debate, I want to make two points that have not yet been made and that should provide reassurance to members. First, subsection (1) in amendment 2 states:

“The Scottish Ministers shall establish a Rail Passengers’ Committee for Scotland”.

By virtue of amendment 2A, the words “Rail Passengers” would be changed to “Public Transport Users”. Given that amendment 2 as amended would not specify when the proposed public transport users committee should be established, there could be an intervening period during which the consultation to which the minister referred could be conducted. The consultation need not take long, but the wording of amendment 2 does not tie ministers to establishing the proposed committee tomorrow or within any specified timescale. Such consultation as is necessary could be conducted after the bill is passed, although it could be instituted even before the bill becomes law.

Secondly, if the proposed committee is to have a multimodal responsibility covering ferry, bus and rail, that will have a bearing on the number of members that it should have. Amendment 2 proposes that the number of members should be “not less than ten nor more than twenty”.

That is probably a reasonable size, which should be sufficient to allow the range of knowledge and expertise that is required for all modes of transport to be considered.

In conclusion, I feel strongly that the amendments in this group are a test of whether we in the Scottish Parliament are prepared to do what we all believe in our heart of hearts to be correct, which is to stand up for Scotland. The proposals in question might not be of massive significance to the lives of everyone, but we all know them to be correct. Alistair Darling, in his wisdom, killed off the RPC; we have the chance to resurrect a Scottish RPC. The first step towards doing that is to agree to amendment 2 as amended by the amendments in the name of Paul Martin. We must first build on the consensus that exists, make any improvements that are needed to the bill at stage 3 and then carry out the necessary consultation. I very much hope that members support the approach that I have advocated.

Paul Martin: For the benefit of David Davidson, I clarify that I am advocating a multimodal transport users committee. I make no apologies for doing so, because we need to establish parity. I recognise that the RPCS was a successful and effective organisation, but the public transport users committee will be able to be more effective if it learns from the experiences of the RPCS. The multimodal committee will lend itself to ensuring parity of capacity among the various organisations. If the organisations can work

together, they will be able to share that capacity and expertise in a more effective way than they might do if they remained in their current various forms. I want to see ferry, tram, bus and rail services all working together.

We have mentioned Stagecoach, Virgin and FirstGroup, three massive multimillion-pound public limited companies with interests throughout the world. For passengers to be represented seriously, those companies must work together and increase their capacity. Doing so in the forum of the new organisation would make users a much more effective lobbying power than they perhaps are now. As I am sure the RPCS would confirm, there is room for improvement. Working in partnership with companies and other organisations, the RPCS could increase its capacity to be an effective lobbying machine and help to ensure the delivery of a more effective service. I welcome the minister’s commitment to setting up an organisation in consultation with the various user groups that have been mentioned. We should start from the bottom up and set in place an ambitious multimodal system, respecting the various interests that are in place.

I am keen for the new organisation to be set up as soon as possible, but it is important to get it right. We must give the minister time to deliver a new, effective multimodal representative system, of which everyone can feel part. I do not want to say to the minister that, by stage 3, there should be full provisions for a new system, with all the details set out in the bill, if that means that we get things wrong. We should, however, put in place a timeframe at stage 3, stating an agreed time by which the new representative organisation will be delivered. At that point, we could consult the various organisations concerned and build up an effective passenger representation body to deal with some of the serious challenges that the transport industry faces.

Amendment 2A agreed to.

Amendments 2F, 2G, 2H, 2E, 2I and 2J moved—[Paul Martin]—and agreed to.

Amendment 2, as amended, agreed to.

After schedule 7

The Convener: Does Fergus Ewing wish to move amendment 3?

Fergus Ewing: Yes. Amendment 3 is the housekeeping amendment; it is not the one about the Scottish ferry committee. Amendment 3 follows on from amendment 2, I believe.

The Convener: I suggest that it might be better not to move amendment 3, on the basis that it might need tidied up after other amendments have been agreed to.

Fergus Ewing: Yes, I see. That is fair enough. Amendment 3 has not been amended in the way that amendment 2 has. I will leave it for the moment, in that case.

Amendment 3 not moved.

After section 37

Amendment 154 not moved.

After schedule 7

Amendment 156 not moved.

After section 37

Amendments 155 and 158 not moved.

Sections 38 to 42 agreed to.

After section 42

The Convener: Amendment 110, in the name of the minister, is in a group on its own.

Nicol Stephen: Amendment 110 seeks to change the word “institution” in the legislation relating to the disabled person’s badge—the blue-badge scheme—to the word “organisation”. I am sure that members will agree that the word “institution” is no longer appropriate.

I move amendment 110.

Amendment 110 agreed to.

Amendment 111 moved—[Nicol Stephen]—and agreed to.

Section 43—Minor amendments of Transport (Scotland) Act 2001

The Convener: Members will be delighted to hear that we have reached the second-last group of amendments. Amendment 116, in the name of the minister, is grouped with amendments 117, 118, 112 and 119. Amendment 116 and amendment 113, which will be debated in the next group, are direct alternatives. If amendment 116 and amendment 113 are both agreed to, amendment 113 will replace amendment 116.

Nicol Stephen: I will start with amendments 116 and 117. I read the committee’s stage 1 report and its recommendation that I reconsider the proposal to provide councils in the west of Scotland with concurrent bus powers. I have reflected on that and have decided, on balance, to respond positively to the committee’s request. That is the Executive’s reason for lodging amendments 116 and 117.

I am, however, aware that some councils in the SPT area are lobbying to retain the concurrent powers provisions in the bill. It is important that the new regional transport partnerships work closely

with councils in the west of Scotland to achieve the best for regional bus services and local services in council areas. In one view of the world, it should not be necessary to provide councils with concurrent powers if that happens. However, the west of Scotland regional transport partnership may, like partnerships in the rest of Scotland, be content for there to be concurrent powers.

The committee’s general view is that concurrent powers are coming and will be introduced once the regional transport partnerships have been developed. If the committee has been at all influenced by the latest round of lobbying, I would be interested to hear members’ views. I would be happy not to press amendments 116 and 117 and to reconsider our position for stage 3. I listened to the committee’s arguments and responded positively to them, but I sense that there may now be movement back to the original position. Concurrent powers may be constructive, if councils work in partnership with the new west of Scotland regional transport partnership. I do not have a firm view on the matter.

I turn to amendments 118 and 119. The Transport (Scotland) Act 2001 provides the powers that are necessary for local authorities to introduce road user charging schemes. Section 64 in particular makes provision for determination of disputes relating to charging schemes and appeals against such determinations. However, the 2001 act does not contain an express power to appoint an adjudicator to determine such disputes or to hear such appeals. That is the reason for section 43(4)(b) of the bill.

We think that, as well as having the power to appoint an adjudicator, we should have the option of conferring adjudication functions on another already existing or appointed body or person, which would provide us with maximum flexibility. Amendment 118 will do that and will ensure that we are well placed to make best use of existing skills and resources, if that is considered to be the best way forward, rather than duplicating effort. Amendment 119 will ensure that, should the adjudication function be conferred on an existing body, the regulations that effect the conferral will be subject to the affirmative procedure.

Amendment 112 will rectify a drafting imperfection in section 66(4) of the 2001 act by substituting “subsection (3)” with “subsection (2)”.

I move amendment 116.

18:00

Paul Martin: I ask the minister not to press amendments 116 and 117, in order to allow further clarification at stage 3 of the opportunities that would be created if local councils were empowered to deliver bus quality contracts and

bus corridors. I hope that the minister will take the opportunity to reconsider what I regard as the constructive approach of giving councils the same powers as regional transport partnerships will have.

Nicol Stephen: As I explained, I am content not to press amendments 116 and 117 to give us time to reconsider the issue. If there is a firm view that we should proceed with the approach that the amendments take, I will lodge amendments on the matter at stage 3. If there is no such view, I will not bring back amendments and what Paul Martin suggests will be achieved.

Amendment 116, by agreement, withdrawn.

The Convener: We come to the final group of amendments. Amendment 113, in the name of Chris Ballance, is grouped with amendments 114 and 115.

Chris Ballance: I speak to the amendments in the group with some trepidation, given the discussion on amendment 1, in which members of the committee objected to lodging of amendments by non-members.

TRANSform Scotland, which is the leading NGO for public transport providers and users in Scotland, asked me to lodge amendment 114. Although the amendment is long, it is fairly simple in that it would remedy what I suspect is an oversight in the bill. The bill will place regional transport strategies on a statutory footing, but local transport strategies will continue to be voluntary. However, local transport strategies are of greater importance for the vast majority of transport trips, because most transport trips are short and local. Statutory local transport strategies would be subject to environmental assessment, including strategic environmental assessment, and would have to meet the minimum requirement for public participation.

The approach would not be particularly onerous for local authorities, given that all local authorities have already produced local transport strategies; it would merely place a responsibility on local authorities to produce and update their local transport strategies, just as there will be a responsibility to produce regional transport strategies. Indeed, it could be argued that the existence of a local transport strategy should be a precondition for receipt of Executive funding. The equivalent tool in England—the local transport plan—is a statutory requirement. I suspect that there was an oversight in the drafting of the bill and I trust that the committee will agree that it is important that local transport strategies should be on a statutory footing, as regional transport strategies will be.

I move amendment 113.

The Convener: Chris Ballance does not need to speak to this group of amendments with such trepidation. I might be wrong, but I do not think that members intend him to suffer the experience that he suffered after speaking to amendment 1. However, for clarification, members of the committee certainly do not object to the lodging of amendments by other members of the Scottish Parliament. Members of the committee simply made the point that we would prefer other members to have a more sustained involvement with the committee before they lodge amendments.

Fergus Ewing: I would have liked to have heard evidence at stage 1 from local authorities on the matter that amendment 113 addresses. Given that we do not have a clear response from local authorities, we cannot support the amendment. The whole point of regional transport partnerships is to recognise that in modern European countries the way transport is organised is by having regions like the Lothians devise transport strategies at regional level.

I am not persuaded that amendment 114 would add anything to the bill, although without a great raft of evidence from all those who, ironically, Chris Ballance states in the amendment must be consulted, we are in the dark about what the proposal would mean.

At some time, the strategies must stop and the building of public transport must start. The requirement that there should be more than 30 additional strategies on top of the regional strategies, a national strategy, a UK strategy and no doubt a European strategy seems to me to add up to rather too many strategies, particularly when we have no idea what the evidential base is for the proposal.

In proposed subsection (2) in amendment 114, we learn that the

“local transport strategy shall set out how the authority proposes to promote and encourage transport facilities and services which—

(a) are safe, integrated, efficient, accessible and environmentally sustainable;

(b) meet the needs of the people living ... in the area”;

and

“(c) are required for the transportation of freight.”

I give the amendment full marks if the aim is to set out the blindingly obvious. It is completely unnecessary for that to be stated in the bill.

Amendment 114's proposed subsection (3) says that

“In preparing a local transport strategy, the authority shall”

consult various people. As I said, we have heard from none of those people because Chris Ballance

has not carried out his work in such a way as to ensure that we had the chance to hear any evidence on the matter.

I will pick one paragraph at random. Paragraph (a) of proposed new subsection (3) states that the local authority shall consult

“persons ... as appear to them to be representative of local residents, local businesses, road users, public transport users, pedestrians, people on low incomes, and elderly persons and persons with limited mobility;”

That would be a very large consultation. Is it really correct that the local authority should determine who represents others? I do not think so. I know whom I represent and I know whom councillors represent, but it is not at all clear to me that local authorities should be able to determine who represents people on low incomes. That proposal is flawed.

Finally, although the bill is inadequate in some ways, as I have argued at various meetings that Chris Ballance has not attended, at least it sets out a coherent idea that there should be regional strategies and that they should be prepared within a month of their bodies being set up. That idea can be criticised, but at least it is fairly clear. Goodness knows where local transport strategies would fit in. For those reasons I will not support the amendment.

Mr Davidson: I did not have a go at Chris Ballance last time round, but I will not necessarily do the same this time.

We have talked about integration; the focus of much of the bill is on integration, but amendment 114 is not about integration. If anything it is about a bureaucratic load of nonsense being added to work that is already being done elsewhere. The amendment is absolutely pointless.

Paul Martin: Can Chris Ballance clarify whether he said that local authorities currently carry out this function? I know that my local authority in Glasgow has a transport strategy and that it consults in similar terms to those that are suggested in amendment 114. I am only guessing because I am not an expert—perhaps the minister will confirm this—but I think that most authorities throughout Scotland already carry out that function. What would be the point of introducing legislation to tell local authorities that they have to do this when they already do it?

Nicol Stephen: I will be brief. There are already existing local transport strategies and the Executive gives guidance on them. I am sure that they will continue and that councils will continue to play an important role in delivery of transport.

Fergus Ewing and others are correct to say that we are moving towards a new regional transport partnership model. It is important that those new

strategies have statutory authority because they will place a duty on individual councils to act in accordance with the regional strategy, which is important if we are to put in place a coherent, effective strategy and ensure that it is delivered at local level. I do not see a need to place local strategies on a similar statutory footing.

Chris Ballance: I begin by responding to Paul Martin. Local authorities already carry out the function, but the purpose of amendment 114 is to give local transport plans the same emphasis as regional transport plans. Most journeys, and particularly most journeys by public transport, are local journeys of less than 3 miles. The danger in emphasising the importance of regional travel rather than local travel is that we start to put too much emphasis on long-distance travel and not enough emphasis on short-distance travel.

Fergus Ewing asked where regional transport plans would fit in if amendment 114 were agreed to, but I ask where local transport plans fit in at the moment. It is clear that they are not given the same importance as regional transport plans, which is why I lodged my amendment, which I wish to press.

The Convener: The question is, that amendment 113 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

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

Amendment 113 disagreed to.

The Convener: Does Chris Ballance wish to move amendment 114?

Chris Ballance: No. It is consequential.

Amendment 114 not moved.

Amendment 117 not moved.

Amendments 118 and 112 moved—[Nicol Stephen]—and agreed to.

Amendment 115 not moved.

Amendment 119 moved—[Nicol Stephen]—and agreed to.

Section 43, as amended, agreed to.

Section 44—Orders and regulations

Amendments 39 and 40 moved—[Nicol Stephen]—and agreed to.

Amendment 157 not moved.

Section 44, as amended, agreed to.

Sections 45 and 46 agreed to.

Long title agreed to.

The Convener: Members will be delighted to know that that brings us to the end of stage 2 consideration of the Transport (Scotland) Bill. An announcement will be made in the *Business Bulletin*—I hope tomorrow, if it is not too late, or otherwise the day after—about the timetable for lodging amendments for stage 3 consideration. We look forward to participating in the stage 3 debate in a few weeks' time.

I thank members of the public who have been with us for much of the afternoon and any members of the press who have been present. I also thank members, the minister and the Executive officials for their participation today, and indeed the official report staff and the clerks for their sterling work during the past four and a bit hours.

Meeting closed at 18:14.

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