

# **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE**

Tuesday 12 December 2006

Session 2

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## LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

32<sup>nd</sup> Meeting 2006, Session 2

### CONVENER

\*Bristow Muldoon (Livingston) (Lab)

### DEPUTY CONVENER

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

### COMMITTEE MEMBERS

\*Dr Sylvia Jackson (Stirling) (Lab)  
\*Paul Martin (Glasgow Springburn) (Lab)  
\*David McLetchie (Edinburgh Pentlands) (Con)  
\*Michael McMahon (Hamilton North and Bellshill) (Lab)  
\*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)  
\*Tommy Sheridan (Glasgow) (Sol)  
\*Ms Maureen Watt (North East Scotland) (SNP)

### COMMITTEE SUBSTITUTES

\*Mr Bruce McFee (West of Scotland) (SNP)  
John Farquhar Munro (Ross, Skye and Inverness West) (LD)  
Dr Elaine Murray (Dumfries) (Lab)  
Murray Tosh (West of Scotland) (Con)

\*attended

### THE FOLLOWING ALSO ATTENDED:

Donald Gorrie (Central Scotland) (LD)  
Tavish Scott (Minister for Transport)

### THE FOLLOWING GAVE EVIDENCE:

Russell Bain (Scottish Executive Finance and Central Services Department)  
Tom McCabe (Minister for Finance and Public Service Reform)

### CLERK TO THE COMMITTEE

Martin Verity

### SENIOR ASSISTANT CLERK

Alastair Macfie

### ASSISTANT CLERK

Rebecca Lamb

### LOCATION

Committee Room 1



**Scottish Parliament**  
**Local Government and Transport**  
**Committee**

*Tuesday 12 December 2006*

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

**Subordinate Legislation**

**Non-Domestic Rating  
(Telecommunications and Canals)  
(Scotland) Amendment Order 2006 (SSI  
2006/557)**

**The Convener (Bristow Muldoon):** I bring this meeting of the Local Government and Transport Committee to order. I have received apologies from Fergus Ewing, although I expect Bruce McFee to come along later as a substitute. I also welcome to the committee Donald Gorrie, who joins us for agenda item 2.

The committee is asked to consider two pieces of subordinate legislation. On the first, the Subordinate Legislation Committee has not drawn any issues to our attention, no member has raised any points and no motion to annul has been lodged. Are members agreed that we have nothing to report on this amendment order?

**Members indicated agreement.**

**National Health Service (Superannuation  
Scheme and Compensation for Premature  
Retirement) (Scotland) Amendment  
Regulations 2006 (SSI 2006/561)**

**The Convener:** No issues have been drawn to the committee's attention on these regulations. Are members agreed that we have nothing to report?

**Members indicated agreement.**

**Transport and Works (Scotland)  
Bill: Stage 2**

14:06

**The Convener:** Agenda item 2 is consideration of the Transport and Works (Scotland) Bill. I welcome to the meeting the Minister for Transport, Tavish Scott, who is supported by Frazer Henderson, Andrew Brown and Catherine Wilson. For this item, members should have copies of the bill, the marshalled list and the groupings of amendments.

*Sections 1 and 2 agreed to.*

*Schedule 1 agreed to.*

**Section 3—Crown land**

**The Convener:** Amendment 1, in the name of the minister, is grouped with amendments 2 and 3.

**The Minister for Transport (Tavish Scott):** Most of the amendments under consideration are technical, and many of them address issues that the Subordinate Legislation Committee has raised with this committee. I apologise in advance for some of the somewhat dry and legal explanations of some of these measures.

Members will be aware that, as part of the drafting process, we are required to provide the Queen's representative with a draft of our proposed legislation. We subsequently received representation from the Queen's solicitor to adjust the bill to cover Her Majesty's interests in the private estates. We are happy to accede to that representation, which is why we have lodged these amendments.

I move amendment 1.

*Amendment 1 agreed to.*

*Amendments 2 and 3 moved—[Tavish Scott]—  
and agreed to.*

*Section 3, as amended, agreed to.*

**Section 4—Applications**

**The Convener:** Amendment 4, in the name of the minister, is grouped with amendments 5 and 6.

**Tavish Scott:** I am grateful to the Subordinate Legislation Committee for drawing to the Executive's attention the apparent contradiction in section 4(7), in which the Scottish ministers seem to have the power to make rules to give themselves special or general directions in providing environmental information to the promoter. Amendment 4 therefore seeks to remove the Scottish ministers from an already non-exhaustive list.

I move amendment 4.

*Amendment 4 agreed to.*

*Section 4, as amended, agreed to.*

*Sections 5 and 6 agreed to.*

### **Section 7—Model provisions**

*Amendments 5 and 6 moved—[Tavish Scott]—and agreed to.*

*Section 7, as amended, agreed to.*

### **Section 8—Objections**

**The Convener:** Amendment 7, in the name of the minister, is grouped with amendments 8 to 10, 12, 15 to 19, 27 and 28.

**Tavish Scott:** Amendments 9 and 10 follow through on the commitment that I gave the committee on 3 October—to extend to regional transport partnerships, navigation authorities and Network Rail the statutory right to require an inquiry or hearing if they raise valid objections to a proposal.

Amendment 7 enables us to be confident that the policy intention will be met through the legislation. It has always been our intention that, as well as objections, positive or neutral views about a transport project should be able to be expressed. We have therefore decided to provide for rules to be made for representations as well as for objections.

Amendments 8, 17 and 19 result from the change established by amendment 7; they ensure consistency of drafting.

As currently drafted, the bill states that the minister is obliged to notify only the person who applied for the order and the people who made an objection that was referred to an inquiry or hearing in accordance with section 9. We think it appropriate that the additional bodies given in amendment 12 should be identified in primary legislation.

Amendment 28 ensures that the drafting fulfils the policy intention. The policy behind section 17(3) as introduced was not to subject the board of British Waterways to any requirement to seek consent or permission from any party when it was seeking to promote or oppose an order under section 1.

Amendments 15, 16, 18 and 27 are technical; they simply improve the drafting.

I move amendment 7.

**The Convener:** I welcome the amendments in this group, particularly amendment 7, which adds representations. MSPs who have been involved in private bills have been surprised to find that, to

make representations, they have had to lodge objections if they want to be heard. For example, some MSPs who strongly support the Bathgate to Airdrie railway line had to lodge objections before they were able to argue the case for additional stations.

Equally welcome is the fact that the minister have listened to the committee's recommendations on the bodies that should be added to the bill—Network Rail, the navigation authorities and the regional transport partnerships. I am sure that the committee will welcome that, too.

**Tavish Scott:** I am grateful for those comments.

*Amendment 7 agreed to.*

*Section 8, as amended, agreed to.*

### **Section 9—Inquiries and hearings**

*Amendments 8, 9 and 10 moved—[Tavish Scott]—and agreed to.*

*Section 9, as amended, agreed to.*

*Section 10 agreed to.*

### **Section 11—Making or refusal of orders under section 1**

**The Convener:** Amendment 11, in the name of Donald Gorrie, is grouped with amendments 13, 14, 20 to 25 and 51. If amendment 20 is agreed to, I will not be able to call amendment 21 as it will be pre-empted.

**Donald Gorrie (Central Scotland) (LD):** Amendments 11, 13, 14, 20 and 51 are in my name. They are a package and relate to the same issue—an issue that greatly concerned the Procedures Committee, which dealt with the bill as a secondary committee to this committee. The Procedures Committee made arguments in its report that this committee did not accept. I made the same arguments in the stage 1 debate, but the minister did not accept them either.

The Procedures Committee did not wish to lodge official committee amendments, but it was happy for the point to be made in amendments lodged by an individual. I am the convener of the Procedures Committee, so I lodged the amendments.

14:15

The issue is purely about procedures; it is in no way party political. I do not know whether any party has views on the matter, but we think that the Parliament should have an opportunity to consider all orders that are made under the bill. Under the bill as introduced, some would be considered by the Parliament and others would

not. We think that the relevant committee should have an opportunity to scrutinise all orders on public works projects. The committee may be content with what is proposed and nod it through, but we think that committees should have an opportunity to scrutinise all proposals.

Also, the Parliament should have as much say as the minister in deciding which projects fall into which category. Under the bill as introduced, the minister has the power to decide which will be considered by the Parliament and which will not. It would be possible for a minister who was less scrupulous than the present one to cherry pick so that proposals came before the Parliament only if that suited him. That would be unsatisfactory.

The minister argued that the Parliament will have enough opportunities to debate and scrutinise all projects, but the Procedures Committee believes that that is not the case. There will doubtless be debates on the national planning framework, but major rail or roads projects will figure in those debates in only a small way. A speaker might concentrate on a particular project, but it will not be properly debated. Questions to ministers are sometimes of value, but they are not an effective way to scrutinise a proposal thoroughly. The national planning framework and the strategic projects review will give some opportunities for debate, but they will be inadequate opportunities.

I leant heavily on professional advice in lodging my rather complicated amendments. They have the simple effect of ensuring that all orders made under the bill are scrutinised appropriately by the Parliament. Such scrutiny need not hold things up. If the Parliament is guaranteed an opportunity to consider all orders, that will improve the quality of decision making. Members might or might not agree with the simple proposition that I put forward. I will not go through the technicalities of my amendments, but they would achieve what I have described.

I move amendment 11.

**Tavish Scott:** I will speak first to my amendments in the group. I will then speak to Donald Gorrie's amendments.

Amendments 21 and 24 are technical amendments. Amendment 21 seeks to clarify, for the avoidance of doubt, that the Parliament will be informed of all orders that are made under part 1 of the bill. Amendment 24 also has a simple objective: it seeks to clarify that it is the latest version of a plan or book of reference that must be presented to the Parliament with an order on a development of national significance.

On amendment 22, I refer members to the Subordinate Legislation Committee's concern that powers in the bill could be used to amend

provisions in a private transport act without being subject to any parliamentary procedure. The Subordinate Legislation Committee therefore sought a provision that would make a section 1 order to amend a private transport act subject to a parliamentary procedure. We agreed with that and have therefore taken appropriate action.

As a consequence of amendment 22, I have lodged amendment 25, which is necessary to ensure that when an order seeks to amend a previous order that was subject to an affirmative measure, the new order can be subject to that procedure, too.

Amendment 23 is a consequential drafting amendment.

I understand the sincerity of the arguments that have been made for Donald Gorrie's amendments. Like, I am sure, all other members, I endorse the general principle that Parliament must have an opportunity to call ministers to account for their decisions. We argue that we are delivering that through the bill and that Donald Gorrie promotes the wrong mechanism. I see little additional value in subjecting minor local projects to the negative procedure.

Donald Gorrie will appreciate that most public transport projects—even relatively small ones—are supported in one way or another by the Government, so ministers are accountable through a range of existing parliamentary mechanisms, including scrutiny by the committee. Such scrutiny has often happened in my time as Minister for Transport and in my predecessors' time. I am therefore genuinely unsure as to why we would wish to clutter Parliament with ever more orders under the negative procedure. That would not be an efficient use of Parliament's resources.

If Donald Gorrie is after more scrutiny of a proposal, he will note that we have proposed in the draft secondary legislation that promoters be placed under a statutory duty to consult and engage with MSPs in the locality of a proposed transport development. I assure the convener and the rest of the committee that no transport project promoter—and certainly not Transport Scotland as promoter of Government projects—would take that requirement lightly.

If, however, Donald Gorrie is after more information about decision making, I confirm that the process that we have designed will operate in accordance with full communication about and transparency over the decision-making process, including ministerial accountability to Parliament. I will not go over at length the arguments that we have rehearsed in this committee and in Mr Gorrie's Procedures Committee, but I ask him to reflect on the assurances that I have given, on the concrete measures that are in the bill and, for the

reasons that I have outlined, to consider withdrawing amendment 11 and not moving his other amendments.

**Michael McMahon (Hamilton North and Bellshill) (Lab):** I want clarification of where Donald Gorrie is coming from. First, he said that the Procedures Committee considered the matter and decided not to act as a committee, but that it felt that it might be appropriate for an individual to do so. He then said that that was why he lodged the amendments as the Procedures Committee's convener. He cannot have it both ways: the amendments either do or do not come with the Procedures Committee's authority.

In arguing the case for the amendments, Donald Gorrie used terms such as "we, the Procedures Committee", "collectively" and "we looked at", but he also referred to "the simple proposition that I put forward" and used phrases such as "I move", "I consider" and "I believe". I do not know where he is coming from.

The Local Government and Transport Committee considered the same issues and debated the ministerial powers. No member of this committee felt it necessary to lodge amendments on the matter and the Procedures Committee did not feel that that was necessary. Donald Gorrie said that he took advice from professional counsel, which underpins his amendments, but in all the evidence that we received on the bill, no one felt it necessary to ask members of this committee to lodge amendments on the subject. I do not know where he is coming from and I hope that he will withdraw amendment 11 and not move his other amendments.

**The Convener:** The minister's position is right. Detailed parliamentary scrutiny will—rightly—be of developments that are of national significance, which will be clearly set out in due course.

I do not think that it is necessary to use up parliamentary time on a discussion about minor projects, or even projects of regional significance, because those projects will have been extensively scrutinised locally, by MSPs and, more important, by the communities and local authorities in those areas.

The minister is also right to point out that, for most of the projects that will be considered under the procedure, the main promoter is likely to be an individual authority or a regional transport partnership, or a body established by a local authority or regional transport partnership. The only other likely significant exception is Network Rail, which is obviously significantly funded by the Executive and whose plans are discussed by Transport Scotland, so the minister is held to account in that way.

I feel that Donald Gorrie's amendments are not

necessary, so I encourage him to withdraw or not move them. If no other members wish to comment, I shall invite the minister to respond to the issues that have been raised in the debate.

**Tavish Scott:** I have nothing to add, convener.

**The Convener:** I therefore invite Donald Gorrie to respond to the debate and to indicate whether he wishes to press his amendments.

**Donald Gorrie:** I am sorry that I failed to make clear the sequence of events. I shall try to explain them properly. The Procedures Committee was asked for its views on the subject. It took evidence from the minister and from others, and it set out its view, which was conveyed in a document to the Local Government and Transport Committee, which felt, as is its right, that it would not accept the Procedures Committee's arguments.

The Procedures Committee then agreed that we should keep to our argument and put it forward in the stage 1 debate on the bill. The committee's position was duly set out at that stage. After the Parliament agreed to the bill at stage 1, we discussed the matter again. The committee as a whole did not support lodging an amendment, but it did not see that as retreating from its point of view: its view was merely that, in the light of the rejection of its views in the previous debate, there was no point in lodging an amendment. The amendments in this group are therefore my amendments, but they set out the views of the Procedures Committee as stated in evidence to the Local Government and Transport Committee at stage 1 and in the stage 1 debate in Parliament.

The minister has paid some attention to the Procedures Committee's line of argument, but in my view he still does not go far enough. I think that there should be an opportunity for every proposal to be scrutinised by the Parliament. Even quite a minor proposal can be controversial locally, and can raise important issues of principle. The Parliament should have the opportunity to consider each proposal, so that it can pass quickly those proposals to which no controversy is attached but examine more carefully those proposals that are controversial.

I still think that I am trying to make an important point, which the Procedures Committee has made in the past. To test the water, I shall press amendment 11, but if it fails I will not move the others.

**The Convener:** The question is, that amendment 11 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Sheridan, Tommy (Glasgow) (Sol)

**AGAINST**

Jackson, Dr Sylvia (Stirling) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Watt, Ms Maureen (North East Scotland) (SNP)

**The Convener:** The result of the division is: For 1, Against 7, Abstentions 0.

*Amendment 11 disagreed to.*

**The Convener:** Am I correct in assuming that Donald Gorrie does not intend to move any of the other amendments in his name?

14:30

**Donald Gorrie:** You are. I thank the committee for its consideration.

*Section 11 agreed to.*

**Section 12—Publicity for making or refusal of order**

*Amendment 12 moved—[Tavish Scott]—and agreed to.*

*Amendments 13 and 14 not moved.*

*Amendments 15 to 19 moved—[Tavish Scott]—and agreed to.*

*Amendment 20 not moved.*

*Amendment 21 moved—[Tavish Scott]—and agreed to.*

*Section 12, as amended, agreed to.*

**Section 13—“Developments of national significance” etc: special procedure**

*Amendments 22 to 25 moved—[Tavish Scott]—and agreed to.*

*Amendment 51 not moved.*

*Section 13, as amended, agreed to.*

**Section 14—Consents etc under other enactments**

*Amendment 27 moved—[Tavish Scott]—and agreed to.*

*Section 14, as amended, agreed to.*

*Sections 15 and 16 agreed to.*

**Section 17—Powers of certain bodies to apply for, or object to, order under section 1**

*Amendment 28 moved—[Tavish Scott]—and agreed to.*

*Section 17, as amended, agreed to.*

*Section 18 agreed to.*

**After section 18**

**The Convener:** Amendment 29, in the name of the minister, is grouped with amendments 43 and 44.

**Tavish Scott:** As the committee will be aware, one of the policy drivers behind the bill is to permit the Scottish ministers to act as a promoter of developments. Amendment 29 is required to enable ministers, when acting as the promoter of a development, to operate a voluntary purchase scheme. The drafting of the amendment is consistent with the Roads (Scotland) Act 1984 and will ensure that roads, inland waterways and any transport system authorised under section 1 of the bill will be treated in a similar manner.

Amendment 44 is a technical amendment. According to the bill as introduced, ministers would be able to provide only to a third party funds to purchase properties from the landowner for a voluntary purchase scheme. We have reflected on the matter and decided that the qualifying interest for receipt of a payment under a voluntary purchase scheme should be extended to cover certain tenants' interests.

The new drafting means that owner-occupiers, tenants, agricultural interests and small businesses now fall within the definition of a qualifying interest. Amendment 44 ensures consistency between the approach taken on roads where the Scottish ministers are operating the voluntary purchase scheme, the approach under proposed new section 18A, and the approach taken on other projects where third parties are reliant on funding from ministers to operate a voluntary purchase scheme.

Amendment 43 makes a necessary change to ensure consistency with new section 18A.

I move amendment 29.

*Amendment 29 agreed to.*

*Sections 19 to 22 agreed to.*

**Section 23—Amendment of Roads (Scotland) Act 1984**

**The Convener:** Amendment 30, in the name of the minister, is grouped with amendments 31 to 33.

**Tavish Scott:** Amendment 30 is an involved, technical amendment that is worthy of a full explanation.

An anomaly has been identified in the drafting of new section 143A, which the bill inserts into the Roads (Scotland) Act 1984. The affirmative procedure is to be applied to an order under

section 5 or a scheme under section 7 of the 1984 act that authorises the carrying out of work that would constitute a national development.

However, although section 5 orders are used when a trunk road is being constructed, the order itself does not authorise the works. Section 5 orders are used to direct that a road should become or cease to be a trunk road. The power to construct new trunk roads is contained in section 19 of the 1984 act. This issue does not arise in respect of special roads under section 7 of the 1984 act because that section provides powers for the construction of the scheme. However, it is orders and schemes for trunk roads and special roads that are likely to feature in the national planning framework and, therefore, it is those mechanisms that will be subject to the affirmative procedure.

Amendment 31 is a drafting amendment that consequentially adjusts the bill to reflect amendment 30. The inclusion of amendment 30 now means that two subsections now form a single subsection and therefore a further reference to “the instrument” is redundant.

Amendment 32 is a consequential amendment to ensure that a section 5 order can be captured within the definition of a national development.

Amendment 33 seeks to address three matters. The first matter, suggested by the Subordinate Legislation Committee, is to provide for roads—as we have provided for in section 13(6) for rail, guided transport or inland waterway projects—that a subsequent order that seeks to revoke or amend an earlier affirmative order is subject to the affirmative procedure if the Scottish ministers, for whatever reason, decide that the new order should be subject to the affirmative procedure. That provides consistency of approach for all modes.

The second matter that amendment 33 seeks to address is compliance with the public participation directive. The amendment ensures that, where a road project is a nationally significant development, such as the creation of a new trunk road, and the order is therefore subject to the affirmative procedure, the public will be informed that the order cannot come into force until and unless approval is given by the Scottish Parliament.

The third matter, which was, again, highlighted by the Subordinate Legislation Committee, is a consequential amendment in section 144 of the Roads (Scotland) Act 1984, to include a reference to section 143A, in order to ensure consistency with the current wording of section 144.

The amendments address the concerns of the Subordinate Legislation Committee, as well as clarifying and confirming that certain road orders will be subject to the affirmative procedure.

I move amendment 30.

*Amendment 30 agreed to.*

*Amendments 31 to 33 moved—[Tavish Scott]—and agreed to.*

*Section 23, as amended, agreed to.*

## **Section 24—Amendment of Harbours Act 1964**

**The Convener:** Amendment 34, in the name of the minister, is grouped with amendments 35 to 41.

**Tavish Scott:** Amendment 35 ensures that if a harbour order seeks to amend a previous order that was subject to the affirmative procedure, the new order too can be subject to the affirmative procedure. In the circumstances to which the amendment refers, a new order, even though it amends an earlier order, would still be subject to the affirmative procedure. The likelihood of those circumstances arising is remote, but it is best that we make the necessary provisions at this stage. The amendment also picks up a suggestion made by the Subordinate Legislation Committee that orders can be subject to the affirmative procedure if ministers so direct.

Amendment 34 is consequential to amendment 35.

Amendment 37 adds harbour authorities to the list of statutory objectors to proposals for harbour revision and empowerment orders.

Amendment 38, which is similar to amendment 37, adds harbour authorities to the list of statutory objectors to proposals for a harbour revision order, where the order is being made by the Scottish ministers of their own motion.

Amendment 41 ensures that the objections of a harbour authority to a harbour reorganisation scheme, as a statutory objector, cannot be dealt with by means of correspondence and that there must always be a statutory right to an inquiry or hearing.

Amendments 39 and 40 are consequential on amendment 41.

By making amendments 37 to 41, we ensure that a harbour authority whose interests are affected is now designated as a statutory objector for all transport-related orders, for example, an order under the bill, a roads order, a pilotage order or a harbour order.

Amendment 36 is a technical amendment that provides clarification in the Harbours Act 1964 of the definition of “act” and “enactments” in respect of Scottish Parliament legislation.

I move amendment 34.

*Amendment 34 agreed to.*

*Amendments 35 to 41 moved—[Tavish Scott]—and agreed to.*

*Section 24, as amended, agreed to.*

### **Section 25—Amendment of Pilotage Act 1987**

**The Convener:** Amendment 42, in the name of the minister, is in a group on its own.

**Tavish Scott:** This is a technical amendment to replicate standard provisions for obtaining evidence and documents in relation to, and expenses for, local inquiries and hearings under the Pilotage Act 1987. It is required because of the removal by the bill of special parliamentary procedure for transport projects and its replacement by a ministerial decision based on an inquiry or hearing. There is no existing provision for inquiries or hearings in the 1987 act. The amendment replicates the provision that is made for inquiries or hearings held under part 1 of the bill.

I move amendment 42.

*Amendment 42 agreed to.*

*Section 25, as amended, agreed to.*

### **Section 26—Amendment of Transport (Scotland) Act 2001**

*Amendments 43 and 44 moved—[Tavish Scott]—and agreed to.*

*Section 26, as amended, agreed to.*

### **Section 27—Further provision as regards rules, regulations and orders**

**The Convener:** Amendment 45, in the name of the minister, is grouped with amendments 46, 47, 49 and 50.

**Tavish Scott:** Amendment 45 is a technical amendment, lodged on the advice of the parliamentary authorities. It extends to an order made under section 12(18) or an order made under section 29(3) the requirement to be subject to affirmative resolution, if the order seeks to modify primary legislation.

Amendment 46 has been lodged in response to a technical oversight that we noticed. We have provided the committee with draft indicative secondary legislation that in its current form is likely to involve elements of sub-delegation. The amendment makes express provision for the bill to enable sub-delegation of functions, as we believe that that is appropriate in respect of secondary legislation. By placing the provisions in the bill, we ensure that our intentions are properly conveyed and that we leave no doubt on the matter.

Amendment 47 addresses a different issue. The Subordinate Legislation Committee expressed

concern that the powers under section 27(6), read with section 27(8), would allow the modification of the act—not just other enactments—following on from the bill. By removing subsection (8), the amendment ensures that any subordinate legislation that is made under the act cannot be used to modify the act. I am grateful to the Subordinate Legislation Committee for pointing out the problem.

Amendment 49 seeks to address concerns that the Subordinate Legislation Committee raised in paragraphs 51 and 52 of its stage 1 report.

As members are aware, section 26 gives the Scottish ministers powers to fund a voluntary purchase scheme operated by a third party. Amendment 50 enables section 26 to be commenced automatically two months after the bill has received royal assent. The reason for making special provision is to ensure that the voluntary provisions are commenced within that timeframe, because the provisions are required to operate quickly a voluntary purchase scheme for the Waverley Railway (Scotland) Act 2006. Transport Scotland and Scottish Borders Council, the promoter of the Waverley Railway (Scotland) Bill, are concerned that arrangements for such a scheme need to be put in place as quickly as possible. Given the risk of delays due to the Scottish Parliament elections, I have sought to give them that assurance through amendment 50.

I move amendment 45.

**The Convener:** The number of amendments that the minister has lodged that have been inspired by the Subordinate Legislation Committee is testament to the diligence of Sylvia Jackson and her colleagues. Well done.

*Amendment 45 agreed to.*

*Amendments 46 and 47 moved—[Tavish Scott]—and agreed to.*

*Section 27, as amended, agreed to.*

*Section 28 agreed to.*

## **Schedule 2**

### MODIFICATION OF ENACTMENTS

14:45

**The Convener:** Amendment 48, in the name of the minister, is in a group on its own.

**Tavish Scott:** I will be brief on the amendment. Having reflected on matters, we believe that it is not appropriate to fetter the discretion of procurators fiscal by restricting the options that are available to them. By deleting paragraph 5 from schedule 2 to the bill, amendment 48 ensures that procurators fiscal will continue to operate in an

unrestricted manner. Therefore, we are reverting to the status quo.

I move amendment 48.

*Amendment 48 agreed to.*

*Schedule 2, as amended, agreed to.*

*Schedule 3 agreed to.*

### **Section 29—Short title and commencement**

*Amendments 49 and 50 moved—[Tavish Scott]—and agreed to.*

*Section 29, as amended, agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the Transport and Works (Scotland) Bill. I thank the minister and his team for their contribution to this afternoon's proceedings. I also thank all the members of the committee for their contribution to the debate and, indeed, I thank Mr Gorrie for his amendments and contribution. We look forward to debating the bill at stage 3. Given remarks that were made at stage 1 and the support for the amendments that have been made to the bill so far, it seems likely that the bill will receive widespread support in the Parliament when it is considered at stage 3.

Because the stage 2 proceedings have gone a bit quicker than we had planned, the Minister for Finance and Public Service Reform is not yet available for us to take agenda item 3. He will not be available until half past 3 at the earliest. I propose that we suspend the committee meeting and resume then. Is that agreed?

**Members** *indicated agreement.*

14:48

*Meeting suspended.*

15:30

*On resuming—*

## **Local Government Election Rules**

**The Convener:** As it is now 3.30, I reconvene the meeting and welcome along for agenda item 3 Tom McCabe MSP, the Minister for Finance and Public Service Reform, and two Executive officials who are here to support him: Rab Fleming, who is the head of local governance and licensing, and Russell Bain, who is from the local democracy team.

We have received a letter from Tom McCabe about the draft regulations that will contain the local government election rules, in which he seeks our views on alternative ballot paper designs for next year's local government elections, for which the single transferable vote system will be used. The minister will speak to the letter that he sent to us and to the two alternatives that are before the committee. Once it has reflected on the views that we express, the Executive will produce draft rules, which we will consider in due course.

After giving the minister the opportunity to set the scene as regards the decision that the Executive faces, I will offer members the opportunity first to ask questions and then to comment on the options. I invite Tom McCabe to make some introductory remarks.

**The Minister for Finance and Public Service Reform (Mr Tom McCabe):** Good afternoon. I thank the committee for the opportunity to come along to discuss an extremely important issue.

As I am sure that members know, the Local Governance (Scotland) Act 2004 legislated for the introduction of the single transferable vote in local elections, which required a new form of election and a new form of ballot paper to service it. For some time, we have been considering the design of the ballot paper. We have looked at the experience of other countries and have commissioned research to assess the opinions of the voters who will use the new system when election day comes around.

When we examined the ballot paper designs that are used abroad, we found that there is no common approach. In other words, there is no given when it comes to the design of an STV ballot paper. Candidates are ordered alphabetically in Northern Ireland and in the Republic of Ireland, but in places such as Australia, Tasmania and Malta the candidates are grouped by party. An analysis of practice in other countries reveals that no particular method is used consistently.

As an Executive, we realised that it was important to undertake research that would give us

a clear idea of which layout of ballot paper the elector would find easiest to use next May, so we commissioned some independent research on the subject. Four ballot paper designs were tested, two of which were based on ordering candidates alphabetically by surname and two of which were based on grouping candidates alphabetically by party name. Importantly, the research sought the opinions of people who will be able to take part in next May's election.

The results of the research demonstrated a clear preference for alphabetical listing by party name rather than by candidate surname and for the party name to appear in an additional column to the left of candidates' names. It is clear that people felt that that option would make the ballot paper easier to negotiate and read and would allow them to express their individual preferences during the election. Seventy-one people preferred alphabetical listing by party name, whereas 23 preferred alphabetical listing by candidate name. In addition, 71 people preferred party names to be given in an additional column to the left of candidates' names, while 26 people preferred there to be no column at all to the left of candidates' names.

In addition to the research that we have carried out, we have received a series of representations, the most pertinent of which came from Age Concern Scotland, which wrote to me on behalf of the four national Scottish older people's organisations—Age Concern Scotland, Help the Aged, the Scottish Pensioners Association and the Scottish Pensioners Forum—to advise that they would prefer a ballot that was listed by party, because, in their view, that would be easier for people to negotiate and would make it easier for them to express their preference. I have also received correspondence from a variety of individuals, some of whom have expressed a preference for listing by party and some of whom have expressed a preference for straightforward alphabetical listing.

There are a variety of opinions on the matter, which is why I have taken the unusual step of presenting the committee with two options. I am absolutely convinced by the research that we have conducted and am persuaded by the representations that I have received that whatever else we do in this new form of election, we should make it as easy as possible for the elector to express their preference. It is undoubtedly the case that, in constructing a system that is more reflective, we as politicians have complicated the electoral process, therefore we should do as much as possible to make it as easy as possible for individuals to express their preference.

There is no consensus within the coalition Executive, which is why I have presented two

options. I would appreciate the committee's view, which I assure members we will reflect on.

**The Convener:** I first invite members to clarify any points of detail or ask the minister technical questions, but I ask them to restrain themselves and not express their views at this stage. I will then give them the opportunity to express their views—and the reasons behind them—on the two options before us. At the end, I will give the minister the opportunity to respond to the points that have been raised before I ask the committee for a clear decision on which ballot paper we want to recommend that the Executive adopts.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** I thank the minister for asking for our opinion. You said that you were convinced by the research, but when I followed the internet link to the information on the methodology I was astonished to find that the four researchers—Lisa, Africa, Tim and Amy—picked 100 people entirely at random off the street and showed them four options for ballot papers. They spoke only to the first 25 people who would speak to them in four city centres in Scotland. As far as I understand it, the findings were not adjusted for representation or in any other way. I would like further clarification of that technical point.

Sixty-one of the 100 people stopped identified themselves as party supporters and, curiously, 30 identified themselves as Labour Party supporters. You said that you were convinced by the research. Is my interpretation of the methodology accurate? The survey does not seem to have been methodical, accurate or representative.

I have one more technical point. It struck me as strange that all four of the ballot papers that were given to the 100 people put the party label first. They were not given a paper such as the one that I have here, which is normal in Northern Ireland, normal in the Republic of Ireland and normal in all our elections, on which the individual's name is first, followed by their address, their party identification and then the label. From the information that was given to us, it seems that all four of the forms that were handed to individuals in the research put the party logo first, which indicates that the party logo, rather than the individual's name, is important. Can you confirm that that is the case?

**Mr McCabe:** I am surprised that you have that impression. I am happy to confirm that your information is wrong—you have clearly been misinformed. The individuals were selected using the normal criteria for objective research. They were selected to achieve a balance in respect of gender and age. They were not, as you suggest, the first 100 people whom the researchers met in the street. That would not have been an

appropriate approach. A balance was sought in the people who were interviewed.

I am not clear how you arrived at your point about the ballot paper. My understanding is that the party logo was always on the right-hand side of the papers that were presented to people in the survey.

**Mike Rumbles:** That is not the case according to the information that you provided to the committee. On all four forms, the party logo—sorry, not the party logo, but the party identification—is on the left-hand side.

**Mr McCabe:** I ask Mr Bain to clarify that point.

**Russell Bain (Scottish Executive Finance and Central Services Department):** Four designs were tested in the research. Two designs were based on grouping by party and two were based on alphabetical listing by candidate. The alternative option in each design had an additional column on the left-hand side that contained the party name. The examples that came with the minister's letter to the committee contained the party column on both designs, because the research reflected that that was very popular. We think that that is a helpful step, whether the names are listed alphabetically by candidate or grouped by party. The people who took part in the research saw alternative designs: an option with the party name listed on the left-hand side and an option without that.

**Mike Rumbles:** Can you clarify the situation? I am not at all clear about it from that response. The information that you have given us indicated clearly that the party was listed on the left-hand side, but you have just said that of the four options that were given to individuals, two had that and two did not. Did the ones that did not have the party name on the left-hand side start alphabetically with the candidate's name? Was the candidate's name the first thing that they saw?

**Russell Bain:** Design 1 that was given to the individuals was done alphabetically by candidate name, with no party name on the left-hand side. Design 2 was done alphabetically by candidate with the party name on the left. Design 3 was grouped by party with no party name on the left-hand side and design 4 was grouped by party with the party name on the left.

**The Convener:** For the assistance of members, I think that that is all explained in the Scottish Parliament information centre paper by Stephen Herbert.

**Mike Rumbles:** It is not.

**The Convener:** It is. I have it in front of me.

**Mike Rumbles:** I have the information that was e-mailed to us.

**The Convener:** The SPICe briefing by Stephen Herbert contains all that information. It was circulated to you with your papers.

**Mike Rumbles:** Okay.

Were people given an option such as the one that I have here? It is quite normal. We were all elected using such a ballot paper, with the individual listed first then the emblem on the right-hand side and the party identifier on the right.

**Mr McCabe:** Yes.

**Mike Rumbles:** Can you answer the question that I asked about representation? You said that people were selected to achieve a balance in respect of gender and age. Was there any balance by socioeconomic background? Was there any balance in respect of individuals' addresses? The information that we have been given indicates that 30 out of 61 people were identified as party supporters and that 50 per cent came from the Labour Party. That does not strike me as balanced. Can you comment on that?

**Mr McCabe:** That is quite reflective.

**Mike Rumbles:** My question is a technical one; we can come to the politics later.

**Russell Bain:** As the minister said, the methodology used was a standard methodology to ensure a representative sample. The researchers would consider that they conducted the research using such an approach and that the sample of people to whom they spoke was representative.

**Mike Rumbles:** Do you consider that 30 out of 61 is a representative sample?

**Russell Bain:** I think that 30 out of the 61 said that they had a party—

**Mike Rumbles:** It is 30 per cent of the entire—

**The Convener:** Could you let witnesses respond and not interrupt them when they are mid-sentence?

**Russell Bain:** I was going to say that the figure for Labour Party members was 30 people out of the 100 in the sample, and 30 out of the 61 who said that they had a party affiliation. Of course, that does not mean that the other people did not have a party affiliation—they may just not have wished to pass that on.

**Mike Rumbles:** My question was whether you think that the poll is representative.

15:45

**Russell Bain:** The researchers, who are independent, would consider that it is representative.

**Mike Rumbles:** Do you?

**Mr McCabe:** Convener, I am not entirely convinced that that question is appropriate, as it puts a civil servant in a difficult situation. I am here, as the minister, to give evidence and to hear the committee's view. If Mike Rumbles wants to ask for my view on the matter, I am happy to give it, but I am not sure that it is entirely appropriate to ask the civil servant to give a view.

**Mike Rumbles:** My question stands, then, minister. Will you answer it?

**Mr McCabe:** Yes. I regard that as representative.

**Mike Rumbles:** So you think that a 50 per cent—

**The Convener:** I want us to get technical questions out of the way.

**Mike Rumbles:** I am asking a technical question.

**The Convener:** You have had an answer to your question and you are moving towards a political debate. We will have an opportunity later to have such a debate, if that is what members want.

**Mike Rumbles:** There are no politics here at all; I am asking technical questions and I would like an answer to them.

**The Convener:** You are straying beyond technical issues. If you have a technical question, you should ask it. The question that you put has been answered.

**Mike Rumbles:** Thank you, convener. At your invitation, I will ask the technical question.

I say to the minister that he suggested that the civil servant should respond to my question—I did not ask for that. Does the minister consider that a poll of only 100 people, 30 per cent of whom identify themselves as Labour Party supporters—which is 50 per cent of the people who identified themselves as having a party affiliation—is a fair, appropriate and accurate representation? I just want to get the answer on the record and to be clear about the issue.

**Mr McCabe:** It would be entirely spurious and inappropriate to suggest that independent professional researchers would take a brief that was influenced by politicians. It is entirely wrong to suggest that and to draw the conclusion that, if 30 individuals expressed a political allegiance to the Labour Party, it follows necessarily that they would hold the same view that I or other individuals in the Executive hold on the design of the ballot paper. The idea that we have that kind of communication link and that we can manage to achieve such consistency with people who have an affiliation with the party is fanciful to say the least.

**The Convener:** I am going to move on to other committee members.

**Mike Rumbles:** If I may say so, I find that sort of response objectionable—

**The Convener:** It is up to me to convene the meeting and you have asked enough questions, so I will ask other members to come in.

**Paul Martin (Glasgow Springburn) (Lab):** I have a technical question about the process that has been followed. Is there any academic evidence in the commentary surrounding single transferable vote elections or in the research that we are discussing to suggest that, if we had the block method, with the candidates grouped together by their parties, that would in some way result in one party benefiting from the process?

**Mr McCabe:** I am not aware of any such evidence.

**Paul Martin:** So we have no evidence of that, either from the civil servants or from any of the academics who have contributed material on STV, including international examples. Nobody has said that if one particular method is followed, one party will benefit.

**Mr McCabe:** I am not aware of any such evidence. It is inconceivable that, if someone stands for election, whether they represent a party or they are standing as an individual, they will not have an absolute conviction that the policies or points of view that they put across will have a strong resonance with the electorate. Any system that makes it easier for people to identify with that strong resonance is predicated on the interests of the electors, who have a right to express a preference, and not on the interests of the politicians who are standing for election. I say strongly that that is exactly the approach that I am taking. We have complicated the processes, but we have done that with the best of intentions and in the pursuit of a more representative system. However, we have not always taken the electors with us, so we should do our best to ensure that we make the system as easy as possible for them.

**Paul Martin:** I have another technical question. As this will be the first time that STV has been used in local government elections, should the Executive be very careful about the system that is introduced? The matter may be debated after the elections, but should it ensure that the process is simple?

**Mr McCabe:** One driver behind the views that I have expressed is the aim to arrest the clear decline in participation in the democratic process. We need to convince people that it is as easy as it possibly can be for them to take part in that process and to express the views that they want to express.

**Paul Martin:** Have the issues that Age Concern Scotland raised with you been followed through with it? Did that organisation give its members an opportunity to contribute to the debate and then respond to you as the minister with responsibility for such matters?

**Mr McCabe:** Age Concern Scotland told me that there were broad discussions within the four organisations that I mentioned. Its written representation reflected the outcome of those discussions.

**Paul Martin:** The Executive must take its own decisions, but when it has received representations from organisations such as Age Concern Scotland, has it, in your experience, been proactive in ensuring that its final decisions have been influenced by those representations?

**Mr McCabe:** From day one of the Parliament, Age Concern Scotland's representatives and business representatives, for example, have thought that they can put forward views much more directly than they could have done in the past. That is one of the positive outcomes of the establishment of the Parliament. Empirical evidence is beginning to suggest that people think that they have a greater opportunity to influence public policy in Scotland than they had under the previous constitutional arrangements.

**David McLetchie (Edinburgh Pentlands) (Con):** I want to clarify points that arise from answers that were given to Mr Rumbles. I have been given the description that appears on the Scottish Executive's website of the research procedure that was adopted, which is helpful. Paragraph 2.1 of the paper that I have is entitled "Methodology". The third bullet point in that paragraph states:

"respondents were recruited spontaneously on the street and interviewed immediately".

Is that correct?

**Mr McCabe:** No. The information that I have received is that it is not.

**David McLetchie:** Mr Rumbles has just given me a piece of paper on which the relevant page has been downloaded. The page is entitled "Scottish Executive Publications"; underneath that is the heading "Single Transferable Vote Ballot Paper for Scottish Local Elections May 2007: Qualitative Research to Inform Design". The words underneath that are: "Chapter Two Research Procedure". The third bullet point under the heading "2.1 Methodology" states:

"respondents were recruited spontaneously on the street and interviewed immediately".

That is what the Scottish Executive's website says.

**Mr McCabe:** It may well do so. I will certainly ensure that it is checked very soon. I was asked for my views on the procedures that were applied and I gave a categorical answer. I understand that the information on the piece of paper from which you are quoting is wrong and that the individuals who took part in that work were selected on a scientific basis.

**David McLetchie:** I accept that that is your understanding, minister, but it is odd that the Scottish Executive's website describes a completely contrary and wholly unscientific procedure as the methodology that was used. Who invented what is on the website?

**The Convener:** I will try to be helpful. It is important to clarify matters, which one of the minister's officials may be able to do. If the Executive's website contains inaccurate information, it would be useful to the committee to know exactly what the position is.

**Mike Rumbles:** We were all sent the e-mail, convener.

**The Convener:** I simply want matters to be clarified so that we know whether the information on the Executive's website is accurate. I am not disputing where you got the information; all that I am saying is that we need to clarify whether it is accurate.

**David McLetchie:** That is fair.

**Russell Bain:** Someone can be contacted spontaneously and asked to participate, but the researchers would have tried to ensure that the people to whom they were talking met certain profiles so that they would have a reflective sample. I can give the committee more information on that in due course.

**David McLetchie:** That implies that more than 100 people were stopped. It implies that the four researchers were standing with their clipboards in Aberdeen, Edinburgh, Dundee and Glasgow, compiling a profile of a number of people whom they met before they decided which 25 to have a spontaneous interview with. At the end of the day, 100 people would have been taken as representing some kind of scientific sample.

**Russell Bain:** To ensure that they got a spread of people across age groups and the various socioeconomic groups, as researchers do, they would have needed to ask some questions. As I have said, I will get some more information for you.

**David McLetchie:** Are you suggesting that more people were stopped and that, when the researchers had got their quota of what they had previously determined to be the appropriate profile of interviewees, they filled up the quota there and then?

**Russell Bain:** I will need to check that and get back to you, but I think that that is correct.

**Mr McCabe:** I imagine that that would be the case.

**David McLetchie:** I just wanted to establish that. Do you accept that simply pulling the first 25 people whom the researchers met off the street and asking their views would be a wholly unscientific and unreliable basis on which to assess the matter? Would it be fair to say that?

**Mr McCabe:** It would.

**David McLetchie:** Can you clarify how many names were on the ballot paper that was shown to the people who were quizzed?

**Russell Bain:** Fourteen.

**David McLetchie:** The sample relating to the two options that you have given, which is attached to the draft statutory instrument, has 10 names on it.

**Russell Bain:** Yes.

**David McLetchie:** I put it to you that, in my view—which is based on the evidence that is accruing around wards in Scotland—in three and four-member wards it is likely that the number of candidates appearing on the ballot form will be five, six or seven rather than 10 or 14. Parties will tend to limit the number of candidates who appear on ballot papers to the number that they think will be elected, and in three-member wards that is more likely to be one from each of three parties, or whatever. Therefore, a more representative—or likely—number of candidates for a ballot paper will be five, six, seven or, possibly, eight rather than 10 or 14. A list of 14 candidates is unrealistic, given the way in which STV will work and the way in which the parties will shape their campaigns to reflect the voting system.

**Russell Bain:** That is an observation about the position that parties may adopt. Of course, independent candidates may choose to stand in great numbers. The researchers put the paper together in that way in order to test people's reactions to seeing ballot papers with more than one candidate from the same party on them and different numbers of candidates from different parties. It was important for them to get a reaction from the various party groups that could be represented.

**David McLetchie:** I understand that. However, the analysis of the merits and demerits of ballot paper design talks about alphabetical listing by candidates' names, and the second-last bullet point states that the number of candidates appearing on the ballot paper has a bearing on people's perceptions as to which of the ballot papers is more appropriate. I suggest that, if you

presented people with options and there were 14 names on the ballot forms rather than six or seven names—which, I would argue, is more likely to be what the typical ballot paper will look like next year—it is unsurprising that more people favoured the clustering of candidates' names by party group than favoured an alphabetical list of individuals' names.

Is that a fair comment? Would it not have been better for the 100 people to have been shown one ballot paper or set of ballot paper designs with a multiplicity of names—say, 14—and another one with, say, seven names, which I would regard as a more realistic number? It could then be seen whether there was a difference in approach.

16:00

**Mr McCabe:** To be fair, it is a supposition on Mr McLetchie's part that the average number will be six or seven.

**David McLetchie:** We will see what is borne out by the evidence on 3 May.

**Mr McCabe:** If only we could judge everything based on evidence. We introduced the single transferable vote for a reason. We have launched a public information campaign. We have spent quite a bit of time explaining to people the benefits of standing for office. We have actually attracted some criticism for that public information not being predicated on people being members of parties and for the fact that individuals can consider playing a part in public life. Any straightforward assumption that the average number of candidates is likely to be around six or seven is, of course, not yet backed up by empirical evidence. Given the public information campaign and what people were trying to achieve when we set out to introduce STV, I think that the indications are that the average number will be higher than that.

**David McLetchie:** We shall see which of us is right. I shall follow the nomination process in Lanarkshire with considerable interest.

**Mr McCabe:** That will make two of us.

**The Convener:** Elections are taking place right across Scotland, in case David McLetchie had not noticed.

**David McLetchie:** We know where the important ones are.

**Michael McMahon:** I seek clarity on the research methodology. I am trying to remember back to my days at university when I did this sort of thing for my sociology degree.

In assessing or profiling a group to be questioned, the researchers could be told in advance that they have to have a certain number of men and women, including a certain number of

men of a particular age group and so on. For example, the researchers could be told that they must get 25 people who fall into a number of given categories. Clearly, such methodology would create a profile reflecting wider society. It would then be for the researchers to go out on to the streets, spontaneously select people who fitted each of the various categories and interview them on the spot as they identified them. That would mean that both statements that have been made would be correct: the group that has been identified reflects the profile of society, yet, as Mike Rumbles said, the individuals have been identified spontaneously. The two positions that have been made today do not contradict each other. Is that correct?

**Mr McCabe:** We could cut to the chase here. If I thought for a second that commissioning a fresh piece of research using a greater number of people with agreed scientific principles behind the methodology would convince people that, whatever the outcome, that is the one that we should adopt, I would commission it tomorrow. If the committee is telling me that, given members' views, it is not sure whether enough people were used or whether the methodology was completely robust, and is suggesting that we should agree on a number of people and a methodology and carry out the exercise again, I am happy to give the committee an assurance on behalf of the Executive that I will commission that work immediately.

**Tommy Sheridan (Glasgow) (Sol):** I am interested in one of the points that you made about the make-up of the ballot paper. If I noted down your words correctly, you said that you were concerned to make it as easy as possible for people to express the view that they want to express. Is that the principle? Has any consideration been given to having an additional box on the ballot paper marked "none of the above"?

**Mr McCabe:** No, I do not think that there has been. If that view comes forward from the committee, we will certainly consider it. As someone who has been involved in elections for a long time, I, like other members, have seen how effectively people express that view, sometimes in quite colourful ways. It may be that there should be the possibility to indicate that view on the ballot paper.

**Tommy Sheridan:** We are all concerned at the disengagement by the electorate, judging from the number of people turning out to vote at both national and, in particular, local government elections. We are often told by opinion polls that people do not feel that anybody represents them. Rather than people not turning up at the voting booths, it would be great if we could give them an

option to do exactly what you have described—to express their view that none of the above represents them. Would you be willing to consider including a "none of the above" box?

**Mr McCabe:** If it is a suggestion that comes from the committee, yes. If the committee tells me that the ballot paper should be made as clear as possible and that blocking by party does that but that it is important that we give a range of options to individuals who have taken the time to turn up at the polling station, I will take that suggestion on board.

**The Convener:** I know that some jurisdictions in the United States of America have that option, but I suspect that to introduce such a change in the ballot paper would require primary legislation. At the moment, the names that appear on the ballot paper are the names of those who are nominated as candidates to the returning officer, and I do not think that there is currently a means by which people could request that such an option be on the ballot paper.

**Mr McCabe:** I am not entirely sure about that. We can certainly check the legal position, but the principle behind the suggestion is not one that I would automatically recoil from. I do not have the full text of the legislation in front of me, but I am willing to ask my officials to check that.

**Dr Sylvia Jackson (Stirling) (Lab):** I return to the question of Scottish Executive research. There are different ways of conducting research and we have heard about one particular way of doing so. Do you have any doubts about the people who conducted the research? Was their research similar to the sort of research that would be conducted by a unit at the University of Edinburgh or the University of Stirling? Do you think that there are any problems with the quality of the research—albeit that it is a particular type of research—and are you quite confident about it?

**Mr McCabe:** The research was conducted by a well-respected professional organisation that regularly carries out work of that nature. The research was commissioned by Government, but it is completely independent. I do not think for one second that the organisation would allow itself to be influenced by a political preference.

**Dr Jackson:** I would like to ask more about Robson rotation, which sounds intriguing, to say the least. Why would you not favour that? Is it simply because of the cost of the different types of ballot papers that would be needed, or are there other reasons?

**Mr McCabe:** There is a range of other reasons. I do not think that the Electoral Commission is keen on Robson rotation, as it feels that that would complicate the whole administrative process behind the production of the ballot paper. It is

particularly concerned that, at a time when we are introducing a variety of new aspects to the electoral process, things are difficult enough for returning officers and their staff.

Rotation in that manner also makes it harder for political parties to manage their vote, because there is so much difference between the papers. The Electoral Reform Society also points out that the number of candidates of the same party in any ward is unlikely to be more than two, so that any effect from ordering a ballot paper in that way would be negligible.

**David McLetchie:** That is exactly the point that I just—

**Mr McCabe:** I do not think that that was exactly Mr McLetchie's point. My point was that we have introduced a new system and encouraged far more people to get involved in the electoral process. Mr McLetchie is failing to think outwith the straightforward party structures that we are all overly familiar with.

**Mike Rumbles:** It strikes me that members cannot interrupt ministers, but ministers can interrupt members.

**The Convener:** Mr Rumbles, will you please keep order? I have asked you before to keep order and to ask questions through the convener. You had plenty of opportunity to ask questions earlier. I want to give other members the same opportunity.

**Ms Maureen Watt (North East Scotland) (SNP):** Minister, you mentioned that you had received letters from some organisations representing the more elderly members of our society. Did you write to those organisations asking for their views, or did they write spontaneously?

**Mr McCabe:** No, I had no contact with those groups before I received correspondence from them.

**Ms Watt:** Why do you think that you received representations from Help the Aged and similar organisations? During the passage of the Local Governance (Scotland) Bill, many representations were made by organisations such as Capability Scotland, which represents another group of people in our society who might have difficulty with new ballot papers, but their views are not represented in the proposals on ballot design.

**Mr McCabe:** I do not understand the point that you make about their views not being represented. I would appreciate it if you were a bit more specific about what they wanted and what you think is not going to appear. I stress that I am here to discuss the design of a new ballot paper with the committee and will listen to the suggestions that members make, whether they be on

accommodating clarity for the electorate or accommodating the needs of specific groups.

**Ms Watt:** The elderly seem to have expressed a view on the ballot paper design, but I suspect that if you had consulted other groups that are concerned about more vulnerable people in our society and given them the chance to influence the ballot paper design, you might not have got the same response. Capability Scotland, for example, was involved on accessibility to polling stations throughout the passage of the bill. Given that it took such a great interest in the passage of the bill, one would have thought that you would have given it the opportunity to respond to questions on the design of the ballot paper.

**Mr McCabe:** First, I restate the point that I did not seek the representations from Age Concern and the other groups that I mentioned. Secondly, I have been involved in public life for a good number of years. Before I was elected to the Parliament, I was a council leader and was heavily involved in ensuring greatly improved access to polling stations for a range of groups that previously had difficulty accessing them—in fact, I think that I am right in saying that my council won an award for that. A range of representations has been received over the years and attempts have been made to ensure equal accessibility to the democratic process regardless of the challenges that an individual faces in life. There is good empirical evidence to back that up.

**Mr Bruce McFee (West of Scotland) (SNP):** Correct me if I am wrong, minister, but you seem to suggest that the straightforward alphabetical listing of candidates is complicated and that it might lead to reduced turnout. Is that your contention?

**Mr McCabe:** I am saying that, under STV, the alphabetical listing of candidates produces a more complex ballot paper, that we politicians have complicated the system and that we should put ourselves in the place of the electors, not those who seek election, and do whatever we need to do. That might be not solely to block candidates by party but to strip out as much information as we can from the ballot paper to make it as understandable as possible. Anyone who produces a newsletter, for instance, will know the benefit of having the maximum amount of white space and not cramming too much information into a limited area. We are trying to ensure that we construct a ballot paper that is as modern and user friendly as it can be.

**Mr McFee:** My specific question was whether it was your contention that employing a straightforward alphabetical listing would reduce voter turnout.

**Mr McCabe:** If the impression is given beforehand that expressing one's view at a polling station will be a complicated process, it could impact on turnout. We will only know whether that is the case as a result of the empirical evidence that is built up after we use STV for the first time.

**Mr McFee:** One would hope that nobody would say that it would be a complicated process. The reason why I ask is that it is not so many years since the party emblems did not appear on ballot papers and turnout was higher then. In fact, when there were no party affiliations on the ballot papers, general election figures were regularly in excess of 80 per cent, so there does not seem to be a direct correlation. Perhaps at some later point you could go back to the question of what information you are thinking of stripping out of the ballot paper. That could be of some interest.

On the matter of complicating the process, is the big complication not the fact that there are three different elections using three different systems on the one day? If you wished to uncomplicate the process, particularly for local government, you could have done so by decoupling the elections.

16:15

**Mr McCabe:** I do not think that that is the case. In much the same way that we sometimes hear about people getting consultation fatigue, there is a danger that people's propensity to take part in the democratic process has been affected by the many societal changes that have taken place. The law of averages tells us that the more often we ask people to come out and express their view, the less inclination they will have to take part on such a regular basis, given the other calls on their time and the busier lives they lead today.

**Mr McFee:** Is it really your contention that a ballot paper on which the names are listed alphabetically, which people understand and which has been the system in this country for many years, is more complicated than trying to master three elections using three different systems at the one time?

**Mr McCabe:** I am not saying that those things are mutually exclusive. I believe that, as people are asked to express a preference in local government elections, blocking candidates by party will ease their ability to make their choice, whatever it is.

**Mr McFee:** Is that predicated on your belief that people will vote only along party lines? What research have you carried out that would indicate that?

**Mr McCabe:** It is predicated on a belief that people go into polling stations having already formed a view. I would hope that people will have

formed their views because of the policies that political parties put forward and the way in which they put them forward, as well as because of the individuals that the parties put up to enact those policies. Judging from my experience of public life, when voters get to the polling station, the vast majority of them have already made a decision. The point that I am making is that we should make it as easy as possible for people to express their decision.

**Mr McFee:** Your view seems to be predicated on people voting simply along party lines—and I concede that some will. However, given that some parties are unlikely to offer the full quota of candidates for some wards, there could be some transfer over in some cases. If, for example, Mr McLetchie's party is only standing one person in a three-member ward, a Conservative voter, if they are to exercise their second, third and fourth preferences, will have to look outwith that party's list. What research have you carried out that suggests that people intend to vote along party lines, which would back up what you are saying?

**Mr McCabe:** I do not think that that does back up what I am saying—I am not necessarily saying that someone will go into a polling booth and maintain the same allegiance consistently throughout their voting preferences. Some people might go in and vote Labour twice; they might think that there are some bits of Tommy Sheridan that they quite like, so they vote for him next.

**Mr McFee:** So, what you are suggesting helps only those who want to vote along one party line, and nothing else.

**Mr McCabe:** No—although I do not think that there is anything wrong with individuals coming to a conclusion before they enter the polling booth. It is an optimistic notion that, between the front gate of a polling station and the booth, people have some sort of conversion on the road to Damascus. I do not think that that happens in reality.

**Mr McFee:** I do not believe that it happens either. I am interested that you believe that, in order to suit that group of voters, whose size you have not been able to quantify, the order on the ballot paper should be changed, and the ballot paper should be structured in a way that has not been the case before.

**Mr McCabe:** Not necessarily. If someone wished to vote Labour twice, for instance, blocking the candidates by party would allow that individual to find those candidates on the paper. If they then wanted to transfer their vote to some other party, that design would make it far easier for them to find the other party, make that transfer and leave. Overall, that would be a far more satisfying procedure for the elector to express their view.

**The Convener:** I intend to give all members the opportunity to express their view, so I ask them to keep their remarks concise and to express clearly which ballot paper they prefer. I will hold a vote afterwards to allow members formally to express their opinions. I ask members to say which ballot paper they prefer and to give the key reasons for their preference, but please do not go on too long. There is no need for us to go on extensively or to filibuster to some degree. We can give our views and the reasons for our views and reach a decision. I presume that everyone wishes to express a view, so I will take people in order.

**Tommy Sheridan:** Alphabetically.

**Mike Rumbles:** Or in groups.

**The Convener:** Will we have a consultation first?

**Mike Rumbles:** It will have to be representative.

**The Convener:** In calling members, I will alternate between the party groups.

**Paul Martin:** I support option A, which involves listing by party in alphabetical order. I welcome the minister's assurance to me in the debate that whatever system is adopted, no party will have political advantage. The clear point that has emerged is that no academic research—that I have seen—on the single transferable vote or evidence from whatever research has been conducted shows that any party will obtain a political advantage from either option.

The issue is how we present the ballot paper to the electorate on 3 May. We live in an age in which information is constantly presented in an easier-to-use form, whether on websites, in newspapers or wherever. We now present images to achieve ease of use for people. If we are serious about tackling the challenges that face us in our democracy, such as spoiled ballot papers, participation is an issue.

I do not support Tommy Sheridan's suggestion that people should be able to vote to opt out of choosing a candidate, because the way to opt out is not to complete a ballot paper. People have been pretty good at spoiling their ballot papers. I have seen some ballot papers on which people have been explicit about their views on the candidates, and that will be the case whatever ballot paper design is adopted.

I support option A, which presents no advantage to anyone except the electorate in participating in the process. That is what the debate is about—the option that allows the electorate to participate in the first election by the single transferable vote system in living memory and the option that allows people to participate with ease and to make their choice clear.

**Ms Watt:** I was a regional councillor in Grampian, where we were in coalition in the mid-1990s. I suspect that STV will not make much difference in the north-east, where the split has been fairly even among parties, but people will be careful when they vote at the next council elections.

I was a member of the McIntosh commission and of the Kerley committee, which looked into STV and produced the system that was in the Local Governance (Scotland) Act 2004. One reason for going for proportional representation was to put democracy back in the hands of the voter, because it was felt that parties had too much choice of who was on the ballot paper and that democracy was kept internal to parties.

Initially, there was a fear among independents that the new system would not help them at all, but that has disappeared because it has become apparent to people that they will have a great choice in a multimember ward.

The most recent Scottish Parliament election showed that when we put choice in the hands of the voter, they are perfectly capable of exercising it. That has been evident from the way in which they have made use of the party vote, which has allowed many more parties to be represented in the Parliament. The fact that people have seen that their vote counts will help to encourage more people to go to the poll. The idea that proportional representation is complicated has been floated, but given that the system is used in most social democratic countries—including Sweden, where the turnout is 89 to 90 per cent of the electorate—it is patently absurd to say that the electorate will not be able to get a handle on the new voting system.

Throughout the passage of the Local Governance (Scotland) Bill, we were given assurances by ministers that there would be a great deal of publicity to explain to the electorate how the new system would work. That will not be left to the Scottish Executive alone, but I hope that it keeps its promise that it would do that. The Electoral Commission, the Electoral Reform Society and the parties have an obligation and a duty to help people to understand the new system. For all those reasons and because candidates are listed in alphabetical order in most social democratic countries that use the STV system, the suggestion that the new system might be gerrymandered at this late stage by candidates being listed in party blocks is anathema and does the Parliament no good and I hope that it is thrown out.

**Tommy Sheridan:** I am very much in favour of option B, which is the listing of candidates alphabetically. Most members probably made up their minds before we debated the issue, but I find

it a wee bit concerning that there has been a sudden interest in the views of academics, of groups such as Age Concern and of professional organisations on the ground, such as the Convention of Scottish Local Authorities, all of which argued vehemently for the decoupling of local elections and Scottish Parliament elections so that turnout could be maximised, attention could be focused on the elections and voters would not be faced with three voting systems in one day. Given that none of those views on the decoupling of the elections was important to members of the Labour Party, I find it surprising that the views of academics and others are now considered to be important.

When it comes to the new system, all of us in the political process will have to suck it and see. I do not think that there will be a huge list of candidates in the overwhelming majority of seats, although there may be in some seats. The evidence shows that there is a greater tendency for independent candidates to stand in some of the more rural constituencies. I hope that there will be independent candidates all over the place, but I do not think that that will happen this time round. I do not foresee that there will be a huge problem with people not being able to understand the system and having to wade through a number of candidates.

My final point is that I hope that we have agreed at least to seek information from the minister on the “none of the above” option. I disagree vehemently with the point that Paul Martin made. I think that it would be much more positive for democracy if people could go into a polling booth and have the choice of opting for “none of the above” as an alternative to spoiling their ballot paper or doing to it some of the things that we all know about. People have a democratic right to exercise that choice. If they had that option, more people might vote. I do not know about other members, but people constantly tell me that we are all the same and that they will not bother to vote because none of us are any good.

**Paul Martin:** Can I ask Tommy a question?

**The Convener:** I do not want us to get into a two-way debate.

16:30

**Tommy Sheridan:** We should encourage the Executive to make available the “none of the above” option. If it does not work, it does not work. It is more positive for democracy to have a load of people voting “none of the above” than it is not to have them turning out at all. At least they would be registering their opinion positively instead of negatively by not turning up. I thought that we agreed to find that out; I hope that we do not rule

out at least considering that suggestion if the response is that we can do it. If the convener is right and we cannot do it, that is fine and let us drop it. However, if we can do it, we should consider it.

**Dr Jackson:** I have two quick comments. Tommy Sheridan almost decried academic research and the seeking of academic views. How on earth can he do that—why would we not want research that would help us to make the ballot paper as simple as possible for people to ensure that their vote will count in the way that it should? I am astounded by that comment.

Maureen Watt spoke about there being no party groupings, but the SPICe briefing showed that nearly all the Australian elections were structured according to party groupings. Is she saying that that is gerrymandering? I do not know—those are just initial comments.

I support option A and I will use some of the key points in the SPICe briefing to demonstrate why. The Farrell and McAllister research from 2003 says:

“The more the voter is taxed by the system, the greater the likelihood that she will make use of shortcuts, in effect voting for candidates on the basis of list-order rather than out of sheer preference.”

Option A, which proposes a ballot paper structured by party groupings, would make the ballot paper simpler so that electors can see what is in front of them. That is a big reason for my preference. It is important to remember that STV was introduced for the coming elections to ensure that votes count. We do not want ballot papers to be spoiled, and option A would help guard against that.

The SPICe briefing refers to the Electoral Commission’s use of research by Rallings et al, which states:

“a smaller proportion of ballots were cast for candidates found in the middle or at the bottom of the alphabetical order. The analysis does show that when voters do not cast all available votes for one party’s candidates there is a marked bias towards those listed higher in the alphabetical order”.

Grouping the candidates by party would move us away from that tendency. That is pretty strong support for option A.

I turn to the Scottish Executive research that tested four ballot paper designs. I was keen to know about the quality of the research, but from what I can see, the designs look like recognisable ballot papers and the minister told us that we would have had a similar result from any academic or research unit in a university, which would use similar methodology for the ballot paper design. I am pretty much swayed by some of the points in table 2 on page 7 of the SPICe briefing. It says

of the option A paper:

“• this was clearly the preferred format, primarily because it came across as easier to negotiate and read

• because parties were grouped together, people felt they could find the candidates they wanted to vote for easily and quickly

• even those who did not vote along party lines believed they could identify candidates quickly because they would look for the individual's party first”.

On all those counts, I go for option A.

**Mike Rumbles:** I am disappointed that Tom McCabe has put the party first in both option A and option B. That was the point that I tried to get across in my question about the technical approach. We do not have a choice. Whichever ballot paper is chosen, the Scottish people will be faced with a list that is blocked in parties and which identifies the party first. I do not like that. It is a departure from what we have done before.

I agree with Maureen Watt. The point of STV is to give more power to the voter and not the political party. Therefore, it helps voters to have the candidates listed alphabetically, especially when the individuals who are standing for election are more important to them than the parties. Everyone, including the minister, seems to be saying that the party is more important, and he has put the party first in both options. The names are listed in party order in one option and alphabetically by candidate in the other. Both are wrong, although one is less wrong than another.

We have a precedent in Northern Ireland, which is part of the United Kingdom, so what is the dispute over? STV already operates in one part of the UK, and we are putting the system into operation in another part. Why are we trying to depart from the precedent that has been set? It is a good precedent that works well.

Paul Martin said that there is no party advantage. Well, by the facts, let us know them. I would listen to the argument more if I were convinced that any other party but one was coming forward with the proposal. All the other parties that are represented in the committee seem to back an alphabetical list because it would help voters. Only one political party wants candidates to be blocked by party, obviously because it feels that there is an advantage to it in doing that.

The minister said that he was convinced by the research, and he has attempted to convince us that people prefer candidates to be blocked by party. We put technical questions on the research earlier, and I return to my point that I do not consider that recruiting 25 people spontaneously on the street in Dundee, Inverness, Edinburgh and Glasgow city centres and interviewing them immediately has produced a representative

sample of the people of Scotland. The facts speak for themselves—the research is not worth the paper that it is written on. I do not put any standing by it whatsoever.

The precedent is Northern Ireland. We have STV there, so why are we changing the system? Only one party seems to want to change it. The fundamental point for me is that STV gives power to the voter away from the political party, which is what we should be encouraging.

**David McLetchie:** The minister referred several times to members' responsibility for complicating the voting system. I want to put it on record that I am the only member of the committee who bears absolutely no responsibility for complicating the voting system. Had the Scottish Executive followed my sage advice, we would not have been having this discussion.

I value academic research as a guide to decision making; I think that Tommy Sheridan, who was talking about it, values it too. In fairness, his point was about selective recourse being made to academic research when it suits certain people's purposes, rather than an objection to the principle of commissioning academic research. There are question marks about the methodology that has been used in the research. Mike Rumbles referred to that in his speech, so I will not repeat it.

I return to my point that the number of candidates that is shown in the sample ballot paper is not representative. The minister referred to the Electoral Reform Society's perception of the likely number of candidates on a ballot paper, and its analysis is correct—it accords with what, in my experience, political parties are gearing up to do. I do not think there will be a single ward in Edinburgh or Lanarkshire that will have anything like 14 candidates. The reality is that there is likely to be a decline in the number of independent candidates who will stand in the forthcoming election. If one looks at the areas of the country in which independent councillors were elected, one can see that a number of them are opting to stand under a party and not an independent label. That is because of the much larger geographical area that they are being asked to represent.

I stand by what I said earlier. In a three-member ward, we will be lucky to see five or six candidates—that will be the typical number; in a four-member ward, the likelihood is that there will be six or seven candidates. I will wager with anyone at the committee that that is the likely outcome, when we see the nomination process. That being the case, the research is flawed. Never mind whether the people were spontaneously dragged off the street, the research proceeded on the wholly erroneous assumption that there would be 10 or 14 candidates. The ballot paper that

people were presented with and asked to decide on was not a typical ballot paper.

One of my great mottoes as a Conservative is, "It is not necessary to change any more than it is necessary not to change." As members have said, people are familiar with the established order of our ballot papers. On the basis of the research, the case for change has not been made. If the case for change is not made, we should stick to what we have.

**Michael McMahon:** In my consideration of all aspects of the matter, including during the passage of the Local Governance (Scotland) Bill that brought about the change, I have always taken the view that every party in Scotland is a minority party. I have always believed that it is wrong that people should have power invested in them when they do not have the support of a majority of the people. That is a principle to which I have always adhered.

As a member of the Labour Party, I have always made it clear that I consider myself to be a minority in my own group, because I believe in that principle. I have always supported electoral reform and take a keen interest in it. That is why I took a lot of interest in the subject when we made our visit to Ireland. I spoke to a number of Irish politicians about the system that operates in Ireland, because of its similarity to the system that we are introducing in Scotland.

In evidence that we heard from people, particularly those in Northern Ireland, I discovered that they thought that Northern Ireland was not a good comparator to use in considering the situation in Scotland. The social and religious divisions in that part of the world make the STV elections in Northern Ireland entirely different from those that are held in any other part of the world. That is a sad fact, but it is a fact. Using Northern Ireland as an example of how things operate was therefore not a good idea.

Members of different political parties in the Republic of Ireland, whom I met when on business with the British-Irish Inter-Parliamentary Body, told me that the only thing that people who take part in elections in the republic believe could make their system better would be for the parties to be grouped together. That was the only suggestion that people made in relation to simplifying the system. The suggestion would make little difference to the outcome, but would make it simpler for people to make their choice at the ballot box. I have taken those comments very much on board.

That viewpoint seems to be reflected in the evidence that the researchers obtained. Mike Rumbles's argument is a weak one. Mike Rumbles is a member of an Executive party. In disparaging

the research that the minister presented, he disparages the Executive in commissioning the research and those who conducted it. That is not a strong position to take in making an argument.

When I hear talk of voter confusion, as I often do, my argument is that the electorate should be given much more credit than it is given. The electorate is a much more sophisticated body of people than the perspective of those who take part in the electoral system from the elected representative side would lead us to believe.

It was unfortunate that the phrase "donkey voting" was used in the paper. We should worry about donkey parties putting forward arguments that do not merit the time of day. We want to take forward a system that will benefit the electorate and the governance of this country. For that reason I will support option A, because it does all the things that we want. It simplifies the system but allows the electorate to choose by whom it wants to be governed, bearing in mind that no party in this country has a majority.

16:45

**Mr McFee:** It is unfortunate that Michael McMahon referred, in his summing up, to the expression "donkey voting". That expression is to be found in the Farrell and McAllister report of 2003, on which Sylvia Jackson relied so much in her observations. The member shakes her head, but I refer her to page 3 of the SPICe briefing.

The fact of the matter is that the minister has been unable today to validate the research that was carried out. The research is suspect for that reason. We do not know whether it was weighted. All research depends on the questions that are asked. As David McLetchie indicated, if we present people with a sample voting paper that resembles a ballot form in an Indian general election, we should not be surprised when they say that it looks terribly confusing, whereas the reality is somewhat different.

Michael McMahon made a point about social and religious divisions in Northern Ireland. I understand that there are such divisions, but I do not see how their existence makes people more able to identify the party for which folk are standing. People in Northern Ireland read the ballot paper, which is what folk here would do.

The minister contends that his suggestion would make the system less complicated. However, he ignores totally the fact that decoupling the Scottish Parliament elections from the local government elections would have done that. People are used to the current system, which is to list candidates alphabetically. The minister proposes to change that by listing candidates alphabetically within

party blocks that are listed alphabetically. That change could be somewhat confusing.

The examples that were used to support the blocking system are extremely poor. Reference was made to Malta, which has extremely polarised voting trends—for other reasons—and to Australia, where there is compulsory voting. In Australia, the political parties now determine the prioritisation of candidates on the list; in some states, when people vote for a party, that party orders the list on their behalf. The regional list system for the Scottish Parliament elections, which involves much the same thing, is discredited in many people's opinion. The SNP and I do not believe that the system should continue in its current form, because it gives the parties too much control. The system that the minister proposes is the first step down that road. It goes against the ethos of STV, which is to put power back into the hands of the people, delivers it into the hands of the parties and makes it far easier for the parties to regiment and order the process so that they can achieve the outcome that they seek.

Such an approach is alien to our system. The two instances in which it has been adopted—the second vote for the Scottish Parliament elections and the requirements for the ordering of lists in European Parliament elections—are not a great advert for it and suggest that we should not go down that road for local elections. At the end of the day, people elect individuals, not parties. That is a fundamental part of the process. In local government, in particular, we should not start to nibble away at it.

**The Convener:** I am intrigued by some of the comments that were made about Australia. Are members trying to suggest that in some way Australia is not a proper democracy? I thought that we would all regard Australia as a fully functioning democracy; it is certainly not a country that would take kindly to the suggestion that its electoral system is gerrymandered. That is the implication of Maureen Watt's comments about gerrymandering.

Tommy Sheridan made points about research and academics, and suggested that the Executive chooses the academic research with which it agrees. However, all members of the Parliament tend to quote research that supports their position. The Executive is no different from any political party that is represented in the Parliament. People tend to draw attention to the research that bolsters their own position.

I find it surprising that people disparage the submissions that have been made by the likes of Age Concern. After all, that group has a lot of experience in working with older people. The view has been expressed that older people in particular may find the new ballot papers confusing, which

would suggest that the first option that the minister put forward, option A, would be the better one.

I would not want the committee to make a recommendation at this stage in response to Tommy Sheridan's suggestion of a "none of the above" option, because we have not discussed that possibility in any detail or taken any evidence on it. To add such an option would strike me as making policy on the hoof. I do not see that it would necessarily add to the democratic process. I think that that is a debate for another day—Tommy Sheridan is perfectly entitled to advance it and others are entitled to argue for or against it. However, I would not advocate that the committee make such a recommendation today.

Mike Rumbles spoke about more power being given to the voter. In fact, that does not apply to every voter. More power is given to the voter only when there is a choice between different candidates from the one party. However, many parties will stand just one candidate in each ward so the voter will still have no choice—they either vote for that party's candidate or they do not. That is no different from the first-past-the-post system. Voters will have more choice when more candidates are put forward, but that will not happen in all cases.

On the question of party advantage, I do not think that there will be a great difference to the outcome of the election when it comes to how many candidates of each party are elected, whichever ballot paper is used. It is more likely that a small number of electors will, by accident, not cast their vote in the manner that they intended. However, I do not think that that will work to the advantage of one party or another. All that it will mean is that the voting intentions of a number of people—a small number, I believe—will not be properly reflected in the ballot.

For most of the people who are complaining about the research that was conducted, I suspect that it would not have mattered if the sample size had been a million. If it was simply a matter of the research being faulty, it would have been encouraging if some members had said to the minister that they would like the matter to be researched further, using a sample size of 10,000, 50,000 or whatever, and that they would take cognisance of what that research indicated about what the voters want.

Bruce McFee spoke about decoupling the local elections from the Scottish parliamentary elections and so on. The debate about decoupling has been had. Others have mentioned COSLA's view, which changed during the passage of the Local Governance (Scotland) Bill—it was not consistent throughout.

Responding to Bruce McFee's point about the regional lists being largely discredited, I suggest that that is more to do with voters seeing people whom they have rejected at the ballot box emerging in the Parliament. We could perhaps reform the system in that area.

The key issues that we should be taking on board should not include the spurious arguments that have been made by a number of members. They should be about what the voters want. The whole point of a democratic system should be to reflect the views of the voters at the ballot box. It is clear from the research that has been done that the voters who were surveyed want a system that would allow the candidates to be grouped by party. If people had concerns about whether the survey was robust enough or whether a big enough sample was used, they should have made those point earlier, and we could have listened to the voters' views on the issue. My preferred option is to group candidates by party, which is option A as set out by the minister.

The minister may now respond to the debate before I ask members to make their decision.

**Mr McCabe:** First, I will respond to Maureen Watt's point about the public information campaign. Within the next few days members will receive a pack that will explain everything that has been done, from the compilation of boundaries straight through to the content and timeline of the public information campaign. It will also give more information about the order that will be placed and some of the election rules that will be required under the system. I hope that members will be reassured by our intention to do that.

In response to Mr Sheridan, it is important for me to say that I am not taking a sudden interest in Age Concern. During my previous public life and my time as Deputy Minister for Health and Community Care, I did my best to work with such organisations, to take on board their views and to examine ways in which we could further their causes. My views on that particular topic are certainly not the result of taking a sudden interest.

If members' objections are based on the idea that the research that has been conducted is not sound or wide enough and they are not sufficiently reassured about the methodology that was used, I will be more than happy to go away and commission a far wider survey of the more usual number of just over 1,000 people. I will even be happy to agree the terms of reference with the committee if it believes that a further survey would be of benefit before it makes its decision.

I hear Mr McLetchie's plea that he is not responsible for the new STV system, but it sounds to me as if he is going to try and get some responsibility for a system that is more

complicated than it needs to be. Mention was made of selective recourse to research. That is disappointing, because it seems to me that that merely tries to undermine the research that has already been conducted rather than proposing other methods of gathering information.

I did not use Malta and Australia as part of my case; I merely pointed out that although there were some areas—in Ireland, for example—that use that particular system, other areas of the world use the system that I prefer.

If the list system that is used for the Scottish Parliament elections is discredited, I would expect anyone who is a first-past-the-post candidate not to add to that discredit by allowing themselves to be a list candidate at the same time.

**Mr McFee:** I am sure that you will tell Mr Peacock that.

**Mr McCabe:** Would you like to make that trade?

**Mr McFee:** I am going anyway, so I do not mind.

**The Convener:** I will let Tommy Sheridan in, but I do not want to reopen the debate.

**Tommy Sheridan:** You said that I would have another opportunity to make my point about the ballot paper and I do not see another opportunity coming. I am quite happy to take a drubbing in the committee, but I would like to suggest formally that my suggestion be investigated.

**The Convener:** The issue was not on the agenda and it is not being consulted on in any way. If the committee were to vote on an issue that we had not debated or taken evidence on, that would be poor practice. I do not intend to create such a precedent.

**Tommy Sheridan:** I am asking only for the possibility to be investigated. The minister said that he would be willing to consider it. Are you ruling that out, convener?

**The Convener:** I cannot rule out the minister considering your suggestion; that is a matter for the minister. I do not want to put the committee in a position whereby it is making policy on the hoof and deciding on something that a member has just thrown into a debate but which the committee has not examined in any way. That would be bad practice. What the minister does about the question that has been raised is entirely up to him; you can pursue that with the minister independently.

**Tommy Sheridan:** So the letter from the minister is to me and not to the committee—

**The Convener:** I do not want to go any further with this debate. We should move to consideration. The minister has offered to do further research before the committee makes a

decision. That is an option for the committee; do we want to do that?

**Mike Rumbles:** I thought you said that we were going to have a vote after this hour and a half of debate.

**The Convener:** The minister made an offer. I thought that I would put it to the committee.

**Mike Rumbles:** It sounds to me as if you are not sticking to what we decided to do, which was to have a vote.

**The Convener:** If the answer is no to the question about further research, that is fine.

**Dr Jackson:** An awful lot of what we have heard so far concerns the difficulty that some members have had with the research. The logical conclusion would therefore be to ask for further research to be done.

**Mike Rumbles:** You just do not want to lose the vote; that is the point.

**Mr McFee:** I seek clarification with regard to the fourth paragraph of the minister's letter. Minister, are you quite happy for there to be further research, and for all those dates to be sacrificed?

**Mr McCabe:** I have indicated to the committee that we will do all we can to facilitate further research if the committee feels that that will be of benefit. We will do that as speedily as possible.

17:00

**David McLetchie:** The issue will come back to the committee on 16 and 23 January.

**The Convener:** Yes, it will.

**David McLetchie:** Will we have to vote again on 16 or 23 January?

**The Convener:** We will have to vote if any member opposes the statutory instrument.

**David McLetchie:** If the minister wants to come to the committee on 16 and 23 January and give the committee the benefit of the further research that has been conducted by the Scottish Executive, he can do that whether or not we agree today. Is that correct?

**The Convener:** I think that that is correct.

**David McLetchie:** We can therefore get on with our business, hold the vote, and the minister can publish his draft order. Then, on 16 and 23 January, and for the benefit of the Parliament on 25 January, if the minister has further research to lay before members, he can do so.

**The Convener:** Yes. That is a possibility. I do not know how difficult it will be to get that research done over Christmas and new year, but the issue will come back to the committee.

It is clear that members want to convey their views at this stage. Will those members who believe that the Executive should adopt option A in the minister's letter—the grouping of candidates by party—please raise their hands? There are four. Will those members who favour option B—the alphabetical listing by candidate's name—please raise their hands? There are five.

The committee will send the minister, for his consideration, a letter that reflects the debate and our recommendation. I thank Tom McCabe and his officials for their presence at and participation in the committee's business this afternoon.

*Meeting closed at 17:02.*



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