

LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 6 March 2007

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

7th Meeting 2007, 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

Ms Rosemary Byrne (South of Scotland) (Sol)

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 :

Tom McCabe (Minister for Finance and Public Service Reform)

THE FOLLOWING GAVE EVIDENCE:

Russell Bain (Scottish Executive Finance and Central Services Department)

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

Colin Gilchrist (Scottish Executive Legal and Parliamentary Services)

Graham Mackay (Society of Chief Officers of Transportation in Scotland)

Ken McKenna (Scottish Executive Finance and Central Services Department)

Nikola Plunkett (Scottish Executive Finance and Central Services Department)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 2

Scottish Parliament

Local Government and Transport Committee

Tuesday 6 March 2007

[THE CONVENER *opened the meeting at 14:01*]

Interests

The Convener (Bristow Muldoon): I welcome all committee members, witnesses and the public to the meeting. We have received apologies from Tommy Sheridan and David McLetchie, and Michael McMahon has said that he will attend later. Paul Martin is attending the Justice 2 Committee meeting and will come to this committee later. Sylvia Jackson has also given apologies. As a substitute for David McLetchie, we have Murray Tosh, whom I welcome to the committee. I believe that this is the first time since he was appointed as a substitute that he has attended a committee meeting, so I invite him to declare any registrable interests.

Murray Tosh (West of Scotland) (Con): My entry in the register of members' interests is on the public record. There is not an awful lot in it and I do not think that anything in it is particularly relevant to the committee's work.

The Convener: Thank you. It is good to see you and I look forward to your participation in the meeting.

Decision on Taking Business in Private

14:02

The Convener: Does the committee agree to take in private agenda item 10, which is consideration of our draft annual report for the parliamentary year that is just about to finish?

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): No. I propose that we discuss the annual report in public because nothing in it is controversial. I note that just over half our meetings have been partly in private. It would be nice to finish the statistics by showing that most of our meetings are held in public. The annual report is the only agenda item that might be taken in private and it would be a useful exercise to take it in public.

The Convener: In normal circumstances, I would disagree, because the report is a draft. That would apply particularly if the draft report was on a bill or an inquiry. However, given that the report is non-contentious, I am content to agree to discuss the item in public.

Petition

Roads, Pavements and Footpaths (Maintenance) (PE855)

14:03

The Convener: I welcome Bill Barker and Graham Mackay from the Society of Chief Officers of Transportation in Scotland. Both witnesses will give SCOTS's perspective on petition PE855, which is on the maintenance of local authority roads, pavements and footpaths. I invite the gentlemen to give an introduction, after which we will ask questions.

Graham Mackay (Society of Chief Officers of Transportation in Scotland): I thank you for the invitation to appear. We confirm that we are representing SCOTS rather than our local authorities and that we are happy to give a general Scotland-wide view on the information that the committee requires.

The Convener: On that basis, we will move straight to questions from members.

Ms Maureen Watt (North East Scotland) (SNP): Members of the Scottish Parliament get complaints and pass them to local authorities, but what is the direct procedure for complaints on roads for members of the public? Is the process uniform throughout all local authority areas?

Graham Mackay: Complaints procedures vary among local authorities. Some have their own road systems. Some have freephone services while the public have to pay to call other authorities. Some councils have developed corporate first-stop shops. I cannot speak for the Highland Council, which has a range of activities, but generally the industry is trying to make it easier for people to complain. Some authorities have web-based reporting systems to which people can sign on and report faults.

It is also important to distinguish between requests for service—in which it is requested that faults be fixed—and complaints. Authorities have different complaints procedures through which people can say why they have complaints. There are, thereafter, varying degrees of escalation and more senior officers will consider the complaints, which are treated differently to requests for service.

Ms Watt: BEAR Scotland and the other company—I cannot remember its name at the moment—display their signs clearly on roads. Do complaints about local authority roads come through those companies because people have gone there first?

Graham Mackay: I can speak only for my authority on that, but very few complaints are

referred from the trunk road authorities to the local authority. We have an environmental contact number and most of our residents use that to make complaints.

Bill Barker (Society of Chief Officers of Transportation in Scotland): Very few requests for service or complaints are passed to us by the maintaining agents.

The Convener: You will be aware that the petition calls on the Scottish Executive to review the performance of local authorities in relation to repairing and maintaining roads, pavements and footpaths. The committee has been asked to carry out some work and to give its view about whether that would be appropriate.

From recent reports that have been produced by SCOTS and Audit Scotland, I understand that among local authorities there are significant variations in the quality of roads and in what is regarded as being an appropriate standard. Equally, there are significant variations in the levels of investment in roads and the levels of investment in roads in comparison to grant-aided expenditure. Does the Scottish Executive need to take the lead in drawing all that together and to set baseline standards that everyone should seek to achieve? Could local authorities make progress in dealing with some of the inconsistencies in, and different levels of, maintenance that appear to exist?

Graham Mackay: I would not presume to offer advice to the Executive, but I reassure you that local authorities are working together. Following Audit Scotland's report of 2004, SCOTS came together and produced a follow-up report. We eventually got co-operation from all the local authorities and they drew down and provided the information about how much the councils were spending in GAE, and what the funding levels and backlog were like. The report was in parallel with the Audit Scotland report, and it was a voluntary joint report from all the local authorities in Scotland, facilitated by SCOTS and produced in 2006. I certainly commend it to the committee for further information.

The Convener: On maintenance, I am aware that the amount of money that has been put into roads has recently increased, but that came after years of decline in expenditure. Does SCOTS believe that the current level of expenditure is enough to catch up on some of the existing backlog? Is the expenditure sufficient to keep pace and keep the roads in the same condition, or is it not sufficient for even that?

Graham Mackay: The current levels of GAE and aggregate external funding that councils attract are the same as those in 1994-95. They have not been adjusted for inflation, which has been considerable in the construction industry.

The Convener: Are you talking in cash terms?

Graham Mackay: Yes. The amount of cash that we receive now is the same as the amount that we received in 1994-95. That information is in the SCOTS report to which I just referred.

On inflation in the construction industry, from 1994-95 to 2003-04, when the report came out, expenditure on trunk roads rose 165 per cent from £75 million to £199 million. However, over the same period, the local authorities' budget decreased from £250 million to a low of £198 million and now currently stands at £249 million, which, in cash terms, is the same as the figure in 1994-95. I reckon that, over the past five years, inflation in the construction industry has run at 7 per cent on average, mainly because of the cost of fuel and labour. Local authorities face significant cost pressures in delivering services within a budget that is the same as they have received for a good number of years.

As for the condition of roads over the same period, SCOTS has organised the high-speed road condition survey. It has shown—although it is still at a very early stage and we should be cautious about how we interpret its results—a modest improvement in the average number of roads that require to be repaired. We are holding our position with regard to managing moderate risks. We are able to do that because, over and above the GAE funding that we receive, councils have invested significant capital funding. For example, in 2000-01, authorities were spending just under their GAE revenue on roads, but by 2003-04 they were spending about 112 per cent of GAE on roads, which means that, although funding is not ring fenced, authorities are on average spending more than their GAE revenue. Moreover, structural maintenance accounts for something like 39 per cent of the budget. With the addition of capital investment, that figure rises to 51 per cent—or more than half the budget. The carriageway condition survey shows that we are holding our own even though, in real terms, we have less money than we had before.

Mike Rumbles: You obviously know about the petition that is before the committee, which urges

“the Scottish Executive to review the performance of all local authorities in Scotland in respect of maintaining and repairing roads, pavements and footpaths”.

Given that the SCOTS report “Maintaining Scotland's roads” is a follow-up to the Audit Scotland report of the same name, how would you urge us to respond to that petition?

Graham Mackay: I ask you to give the petitioner some reassurance; after all, with the amount of funding that the authorities have been given and the resources that we have, our performance has been good. A new performance indicator has been

introduced on the percentage of roads that require immediate repair and the percentage that require to be considered for repair. That PI is published, which means that the public can see how we are managing to maintain roads.

Moreover, under another new PI, local authorities have to set out the number of street-lighting columns that are older than their design lifespan of 30 years. There is also a new PI for bridges that fail to withstand a 40-tonne load, although it has to be said that it probably does not convey the influence of the infrastructure on the maintenance or condition of the bridge.

Although those indicators provide some good information, information overall could be improved. For example, there is a dearth of information on the infrastructure and condition of footways. It is easy enough to obtain information about the condition of roads because there is consistent use of high-speed monitoring machines throughout Scotland, but there is no mechanical means of obtaining information on the condition of footways, so it is more difficult. People in the Transport Research Laboratory have worked on the matter, but the machines that have been produced have proved not to be reliable and so have not been adopted. There is certainly more work to be done on footways.

14:15

Mike Rumbles: Your report is effective and comprehensive as far as roads are concerned, but it does not contain much comment on pavements and footpaths—the specific issue in the petition. I think that you have answered my next question, but I want to be sure that I have got it right. There is not such information not because you have not considered pavements and footpaths, but because you do not have the technical machinery that would enable you to classify the state of the pathways as you have roads.

Graham Mackay: There are two ways of assessing footways. First, most authorities should be working towards a code of practice and inspecting footways regularly to deal with defects, which are a safety issue. Also, a separate regime is required to survey footways' condition, but the condition surveys are difficult to resource. We could expend a lot of labour in them: a regime to do that is recommended in the code of practice, but it is very labour intensive and would cost an amount of money. My opinion is that it is better to invest the money in fixing the footways than to spend a lot of money on collecting information on them. If there was something readily available on which we could spend a modest amount of money to collect good data, we would use it.

Mike Rumbles: Thank you very much. That is helpful.

Murray Tosh: What do SCOTS and local authorities in general feel lies in the future for them? You have just painted a picture of a steady amount of revenue in cash terms, which means a significant decrease in real terms. We are told that we are about to enter a period of zero growth and even, in selected areas, a decline in public expenditure. The immediate prospect is not likely to become any rosier. Do you have a long-term strategy for managing increasing costs, increasing wear and tear and depreciation of your assets with no additional revenue or even a decline in revenue?

Graham Mackay: We can work only with the budget that we are given and, obviously, we want to do as much as we can within that budget. Various authorities are considering new procurement methods to make efficiency savings in the procurement process to reinvest in front-line services. Authorities have identified efficiency savings as targets so that we might provide a more efficient service. Corporately, the councils are considering the provision of services and are directing resources at front-line services. My authority has received part of the corporate efficiency savings. The Government has set the targets for us and we are determined to achieve the efficiency savings.

In addition, we have to target our resources to the areas of greatest need. The high-speed roads survey has been useful in that. It is not just a survey to see what the overall backlog figure is; it has given us data on our worst roads so that we can target investment in those areas.

We also recently made a bid to the efficient government initiative for asset management plans to be developed, which would be used to drive efficiency savings so that we could direct the money we have to the areas that need it most. Unfortunately, our bid was not successful. At the moment, SCOTS is reconsidering its position to see what we can afford to do to develop asset management plans. Efficiency savings, asset management plans and procurement are the routes that we are considering at the moment.

Murray Tosh: You refer to corporate efficiency savings and the allocation of corporate savings to your authority. Are there significant savings to be made or sought within the procurement process that you manage directly? What sort of savings might those be? Would they be made through joint working and outsourcing? What areas would you consider in trying to reduce your costs and improve the efficiency and effectiveness of your procurement process?

Graham Mackay: SCOTS has not done a lot of work on that, so my comments are made from the perspective of my local authority. We have revised our procurement strategy. Most of my work is

bought from the marketplace and we operate a mixed-market procurement strategy—I know where in the market is the cheapest place for a particular type of work. We have also amended our tender procedures. We used to have a random method for the selection of contractors; we now always invite back the two lowest tenders. As a result, we have come away with a saving of something like 30 per cent over our previous procurement mechanism.

That relates just to the capital programme, but for the revenue programme, we are in a long-term contract that we let voluntarily prior to the introduction of compulsory competitive tendering in 1999-2000. We are stuck with that contract at the moment, but we are reviewing how we will procure our work in the future. We do not have a direct labour organisation, but I know that other authorities that have DLOs are considering market testing to prove their value. I think that Bill Barker can speak about that.

Bill Barker: My authority is examining partnering, outsourcing and a range of other options in an attempt to drive down our costs, particularly our overheads. My authority area is rural, which means that getting to where we need to work takes a lot of time. We are seeking innovative ways of treating common maintenance defects, such as potholes—we want to find cheaper and quicker ways of doing that, so that we can get the same result using fewer resources. We have not seen much of an outcome—although we are working on it—because our funding is so constrained.

Graham Mackay: The other way to make savings is to increase income. We are trying to share information about SCOTS. Various authorities have advertising contracts for lamppost advertising. We are now permitted to introduce charges, which we did not do in the past but are doing now. It is a case of maximising our income by getting more from the procurement process. I have already made 30 per cent savings, so I will in the future face a challenge to make further savings. Our chief executives are all driving us towards seeking new ways to create savings or to increase income.

Murray Tosh: Do you see yourselves as an easy hit when councils are financially constrained, given that a significant part of your revenue budgets are discretionary? If £1 million has to be found, does it tend to be the roads budget that is hit?

Graham Mackay: A graph in the report illustrates that there is wide variation in the proportion of GAE that each council spends. As I said, on average, 112 per cent of GAE is spent on roads. My chief executive has assured me that if savings are made, they will be directed at front-

line services. I am grateful for that, but I know that it might change because funding is not ring fenced and it could go down just as it has gone up. There is some uncertainty about the future.

Murray Tosh: Do you track budgeted amounts and outturn amounts? Do they show significant variations?

Graham Mackay: Could you repeat that?

Murray Tosh: Do you track authorities' beginning-of-year budgets for road maintenance and then look at their outturn figures to see to what extent they are correlated? Are authorities by and large able to deliver what they set out to deliver at the beginning of the year?

Bill Barker: We do that as individual councils. Most of us have keen directors of finance who set tight limits on what we can spend. However, SCOTS has not done that as a body, partly because accounting differences in different authorities makes it difficult to deal with windfall spends. The short answer is no.

Murray Tosh: So, it might be useful to agree on common terms, definitions and whether you are looking at budget amounts or outturn amounts and to find efficient ways of showing the windfall amounts and additional discretionary awards that you are given, so that we can assess the information across the sector systematically.

Graham Mackay: The SCOTS survey tried to do some of that by moving away from GAE and finding out how much money was being spent on structural maintenance, as opposed to looking at the budgets. The Audit Scotland report suggested that authorities might spend less on cyclical activities and more on structural maintenance; for example, they might spend less on gulley cleaning and winter maintenance and more on patching and surfacing within the revenue budget. We are considering that. It would be up to each authority to decide its winter maintenance and drainage and flooding policies to see whether money could be moved. Those are the challenges that we face.

The Convener: I will bring in Fergus Ewing in a second. Many of our questions have concentrated on roads, although Mr Rumbles talked a bit about paths. It is clear that poorly maintained paths are a problem for everyone, but we have an aging population and elderly people might be more susceptible to falls and breaks. Would each local authority be able to tell us what percentage of its paths are up to a good walkability standard and are of low risk to pedestrians?

Graham Mackay: We do not have any information on condition, so we could not do that. To clarify, in the main, the roads authorities maintain footways—footways are contiguous with carriageways, and the carriageway, the footway and the verge are parts of a road—but there exists

a range of authorities that might be responsible for maintaining footpaths that are remote from roads. Some roads authorities that cover new towns, such as mine, are responsible for maintaining the footpath networks. In other local authorities, the housing department or, if the path goes through a park, the parks department might be responsible. SCOTS does not have information on the entire footpath network, because it is not all under roads authorities.

Some councils have rationalised the maintenance of treatments. Although I am the roads manager in North Lanarkshire Council, I am responsible for anything that is black, whether it is in a park or in a housing estate. In other authorities, it might be the responsibility of the housing departments. Other authorities have prepared different maintenance regimes for external housing stock transfer. When housing stock transfer has taken place, they have retrospectively moved responsibility for path maintenance from the housing stock partnership back to the authority. When they have done that, the responsibility has generally gone to the roads authorities. However, as you know, the housing stock transfers are in various states of progress so, throughout Scotland, a range of bodies are responsible for footpaths.

The Convener: What are the disability discrimination requirements on local authorities to ensure that people with some disability are able to negotiate safely footways and paths?

Graham Mackay: Most authorities have dedicated part of their budgets to improving infrastructure to comply with the disability discrimination legislation. The first point is, as I said earlier, that we must maintain the footways in a safe condition. All authorities should have a maintenance regime in place to undertake safety inspections and to ensure that the walking environment is safe. The speed of any repair depends on the path's place in the hierarchy of footpaths: we do quicker repairs in town centres than we might do on remote paths, and the same goes for roads. We also invest in lowering pit kerbs at pedestrian crossings. Most traffic signals now have either tactile cones or audible signals and tactile paving. There is positive investment for disabled people and there should be a safety inspection regime in place. The bit that we are missing is the information on paths' condition.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I apologise for my not having heard the beginning of your evidence. I will ask about the overall picture on Scotland's roads. Have you used the expertise in SCOTS to analyse the cost of carrying out all the work that you believe to be necessary to bring Scotland's roads up to an acceptable standard? Is that information in "Maintaining Scotland's roads" or elsewhere?

Graham Mackay: There has been a variety of work on the backlog of road repairs. I think that work started in 2003, when we produced a figure of £1.5 billion. In its 2004 report, Audit Scotland added inflation to that, which took it to £1.7 billion. If we take that figure and apply inflation of 7 per cent a year, it would amount to something like £2 billion.

We have some idea of how much of that cost is apportioned to roads, footways, pavements, bridge structures and street lighting. At a rough estimate, the cost of the carriageway backlog is £900 million, the footway backlog is about £360 million, and the lighting backlog is £193 million. Those figures are arrived at by different means. The carriageway figure is quite robust because we have the high-speed roads survey, but the footway figure is based on a sample survey. We accept that we need to develop and improve the accuracy of the backlog figures, particularly those for footways. With the new PI for street lighting, we know the age profile of the lighting stock—we certainly know what is beyond 30 years old—so we can do some revised calculations for the backlog of lighting repairs. However, that is work in progress and has not been completed yet. We also have a reasonable idea of the number of bridge structures that have failed the 40-tonne assessment.

14:30

Fergus Ewing: I appreciate that the analysis is very complicated, as we are talking about a great deal of roads, footpaths and lighting. Are you stating that your best estimate is that the total cost of bringing Scotland's roads, footpaths and lighting up to standard would therefore be £2 billion? If not, what would the figure be?

Graham Mackay: The last available published results were from Audit Scotland in 2004. The figure was £1.7 billion, so I have just taken inflation into account. We have not done a lot of detailed work since then, but if we take construction industry inflation as roughly 7 per cent a year from 2004 to 2007, we would arrive at a pro rata figure of about £2 billion.

Fergus Ewing: So, basically, we need to spend £2,000 million to bring Scotland's roads, footpaths and lighting up to an acceptable standard.

Graham Mackay: The figure is £2 billion.

Fergus Ewing: Yes—£2,000 million.

Going back to 2003, correct me if I am wrong—I could quite easily be, as my colleagues might assure you—but my recollection is that you produced a plan and argued that the work should be done in a structured way over a 10-year period. From memory, you said that the total cost, spread over 10 years—obviously, you cannot do

everything at once—would be about £4 billion. Broadly speaking, the amount that we needed to spend each year to tackle the backlog was almost twice what we were spending; well, not quite twice as much, but close to that, even with the small additional amount that the Executive put forward. Is that broadly correct?

Graham Mackay: Yes.

Fergus Ewing: Has the picture improved or changed since then?

Bill Barker: Only the detail—it is broadly the same. As Graham Mackay indicated, we recalculate the carriageway figures annually by running them through a quite complex model. That has shown some changes, but the position is broadly the same.

Fergus Ewing: That is very helpful.

Would it be fair to state that the failure to do work that you identified as needing to be done in year one but which was instead done in years two, three and four means that the remedial work required to do that work would cost rather more than if it had been done in the first place? In other words, the total cost might well increase substantially beyond £4 billion, unless we start to make a significant inroad by giving local authorities more provision to tackle the problem very soon.

Graham Mackay: In financial terms, the longer that you defer spending on something, the more that it will cost. That is why the calculations are always taken back to the net present value.

As far as the condition of the network is concerned, in the past the figures were worked out theoretically, based on the whole life of a road, but we are now getting better information from the high-speed road condition surveys.

I am not sure whether Fergus Ewing was in the room when I said that present figures show that we are managing to maintain the condition of existing carriageway assets as a result of survey information. As I said, I think that, on average, the figure for structural maintenance has varied between 39 and 41 per cent of the budget over the past three years, so there has been a modest improvement on the average indicator, but nothing significant. Generally, I think that we are holding our own. That is slightly contrary to the assumption that, in theory, if we do not invest, the network will deteriorate.

We are showing that we are managing to arrest the deterioration through efficiency savings and putting more into the road network or through better use of technology and modern materials. The signs at the moment are that we are holding our own. The question of the length of period over which investment is made to maintain the backlog

is obviously based on affordability. The 10-year figure was just an illustration of the cost.

Fergus Ewing: Yes, I recollect that. I think that you estimated that the cost under a 10-year programme would be just under £400 million a year. We are currently spending just under £200 million a year. Broadly speaking, that is my recollection of the figures, but I could well be wrong.

Taking that as a yardstick, I want to move on to a slightly different issue. Let us assume that a future Executive decides in May that extra resources are to be put into roads maintenance and that some other project will drop, such as the Edinburgh airport rail link or the tram scheme. In that situation, would it be possible for local authorities to increase substantially the amount of work that is done? Obviously, your workforce already works the full working week, so it would be pretty unreasonable and stupid of politicians to expect that we could go instantly to 50 per cent more work. If a Government said that it wanted you to spend another £X million a year—perhaps a substantial increase of 20 or 30 per cent—would you be able to cope with that? Could you do that by subcontracting and using the private sector? I know that many of your members work with the private sector under existing arrangements.

Graham Mackay: We have not done any work on market capability, although it is fair to say that there is a risk to be addressed. The reason why inflation has increased in the marketplace in the past few years is the lack of resource in the construction industry, not only in relation to local authorities. Some large construction projects have affected the availability of the supply of labour and resources in the market, which has resulted in civil engineering prices rising faster than the retail prices index. The rate of investment should be considered, although I would not like to say what that investment should be. The 10-year plan was a financial illustration, not an illustration of what can be sustained in the market. If we were asked for an opinion on the issue, we would have to do more research to find out the market capability. I assume that most of the money that would be invested would be capital. Most authorities invest capital in the market and a limited amount through their direct labour organisations.

Fergus Ewing: Perhaps you could consider the issue, because I am sure that we all wish the roads to be improved to a greater extent than happens at the moment. We also want local authorities to work with the excellent companies in the private sector in Scotland, not least those in my constituency, such as Highland Quality Construction Ltd, R J McLeod (Contractors) Ltd or Ennstone Thistle Ltd, which are company names that people see regularly as they drive on the road

network in the Highlands. I would be grateful if you considered the issue in your future work, because I would like the job to be tackled to a greater extent than it has been.

The Convener: I presume that you are not on commission with any of those fine companies in your constituency, Fergus.

That brings us to the end of our questions. It would be useful if the witnesses could give us further feedback on the capacity that they feel they would have to expand if the opportunity ever became available. I thank the witnesses for their evidence.

Subordinate Legislation

Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007 (Draft)

14:39

The Convener: Agenda item 3 is an item of subordinate legislation that is to be considered under the affirmative procedure. It is the first of the instruments that we have before us today. We have several instruments to consider under the affirmative procedure, followed by several to consider under the negative procedure. I ask colleagues to be as focused as possible, so that we make good progress through the instruments.

To discuss the draft regulations, we have Tom McCabe, the Minister for Finance and Public Service Reform, who is supported by Rab Fleming and Ken McKenna.

First, I ask the minister to give us some introductory remarks on the draft regulations, following which we will have an opportunity for questions and answers. After that, we will move to a formal debate on the motion in the minister's name.

The Minister for Finance and Public Service Reform (Mr Tom McCabe): Thank you, convener, and good afternoon, everyone. This is a good opportunity to say a few words about this affirmative Scottish statutory instrument, which implements some aspects of the Gambling Act 2005. The committee will recall that, back in January 2005, the Parliament agreed that the Scottish ministers could be given certain powers under the 2005 act. Those powers include the setting of conditions affecting gambling operators in Scotland, and the draft regulations effectively put those into effect.

The 2005 act gives the Scottish ministers powers to make regulations providing for conditions to be attached to premises licences, under sections 167 and 168. Essentially, two kinds of condition may be attached.

The conditions attached to premises licences under section 168 will attach to all specified types of premises licence, unless they are excluded by the licensing authority that is responsible for issuing the premises licence. In Scotland, the licensing authority is the local licensing board, not the Scottish ministers.

The conditions attached to premises licences under section 167 will attach to all specified types of premises licence, and can be amended or excluded only by further regulations made by the Scottish ministers.

It is worth restating some of the licensing objectives that were contained in the 2005 act. First, the act aimed to prevent gambling from being a source of crime or disorder, from being associated with crime or disorder and from being used to support crime. Secondly, it aimed to ensure that gambling is conducted in a fair and open way. Thirdly, it was designed to protect children and other vulnerable persons from being harmed or exploited by gambling.

The Scottish ministers and ministers at the Department for Culture, Media and Sport have stated publicly that increased social responsibility lies at the heart of the new regulatory regime and that protection of the public, especially vulnerable people, is the main priority in implementing the 2005 act's provisions. Within the overall policy framework, the policy objective for the draft regulations is that mandatory conditions will apply basic minimum requirements to all premises licence holders. The draft regulations mostly comprise such conditions.

Default conditions apply where a general industry-wide or sector-wide approach is desirable to assist with national consistency. However, it is important to stress that local licensing authorities have the power to respond to local circumstances, and they can alter the conditions if necessary. The default conditions that are contained in the draft regulations relate solely to the opening hours of premises.

The draft regulations were consulted on widely. We have tried to strike a balance between the interests of the general public and those of gambling operators.

That is a broad overview, but I hope that it is sufficient. If there are any questions, I will do my best to answer them.

Paul Martin (Glasgow Springburn) (Lab): The draft regulations cover default conditions, to which you referred. How has the position on the effective operation of opening hours been arrived at? No premises will be open between 10 pm and 7 am, but according to some of the anecdotal evidence that I have received, there can be incidents of antisocial behaviour surrounding betting premises. Could we consider a possible reduction in opening hours to deal with some of that behaviour?

14:45

Mr McCabe: That is a good question and is exactly the sort of issue that might concern people in relation to a variety of types of licence. At the moment, there are winter and summer opening times. As I understand it, the summer opening times—I am not exactly sure in which months they run—already permit opening until 10 o'clock, whereas the winter opening times are shorter.

At present, licensing boards have no discretion to alter summer opening times. Under the draft regulations, they would have the facility to reduce opening hours to before 10 o'clock, if they thought that local circumstances dictated that. I appreciate that such a change is strongly dependent on local licensing boards taking cognisance or being made aware of conditions that are having a detrimental impact on people. This is a matter for the committee to consider, but the rationale behind the measure is to give local licensing boards more power. Depending on the locality and the proximity of residential properties, there may be isolated instances in which concern arises about when premises are open. I have indicated that we have tried to strike a balance, without taking a sledgehammer approach to the issue. Members are entitled to form a view on whether we have struck the right balance, but boards will now have the power and authority to take cognisance of local circumstances.

Paul Martin: Are you saying that, until the draft regulations are approved, boards will not have the option of reducing opening hours?

Mr McCabe: As I understand it, at the moment they do not have the discretion to reduce the longer summer opening hours.

Paul Martin: I have a technical question. My principles tell me that it would be better to send out a message to premises that the default position should be for them to close at 6 o'clock and to apply for an extension, if they want one. If I were successfully to oppose the draft regulations today, what would the position be? Would that cause difficulties for premises that conduct legitimate business and can extend their opening hours to 10 o'clock without that being associated with antisocial behaviour?

Mr McCabe: It would cause both an administrative difficulty as the year moves on and a wider difficulty. Applications start to roll in around June, but we have no facility to lay another instrument after today, because only a few weeks of the session remain. The ability of whoever is responsible after the election for laying such an instrument to do so within the necessary timescales will be further constrained by the fact that it will take a number of weeks after the election for the Parliament to settle and to get its first meeting under way. We will then come up against the summer recess. As members know, time during the summer recess does not count for the laying of subordinate legislation. Effectively, it would be September before a new instrument could be laid, which might lead to considerable administrative confusion.

Nothing that I have said undermines the basic point that Paul Martin has made—that there can be instances in which there is concern about

opening hours. If it is of any help to members, I would be happy to write to local licensing boards specifically to ensure that they are aware that they now have the facility to reduce summer opening hours to take account of local concerns. One of the officials may be able to provide members with more detail on the administrative difficulties that failure to approve the draft regulations would cause.

Ken McKenna (Scottish Executive Finance and Central Services Department): It would cause difficulty with the overall implementation of the Gambling Act 2005, because on 1 September the act will repeal all the existing legislation from the 1960s. If no mandatory and default conditions are in force before then, the industry will be less regulated than it is at present and we will not get the new protections that have been built in to cover various provisions of the 2005 act.

Fergus Ewing: I begin by stating that Carlton Bingo plc has its headquarters in my constituency, so I have obviously been in touch with the company over the years. Initially, it was highly concerned about the impact that the liberalisation of gambling law would have on the bingo sector. Has the Executive considered what effect liberalising the law on casinos will have on bingo in general? Have any specific concerns about that been expressed during the consultation exercise?

Mr McCabe: The consultations on the liberalisation of gambling have been wide. We are not here to discuss specifically how many casinos there should be or where they should be; we are here for another purpose. Suffice it to say that there has been significant consultation and that, in the draft regulations under discussion, we think that we have struck the right balance between the interests of the general public—and the need to protect potentially vulnerable people—and those of the operators of gambling premises.

Fergus Ewing: Has the Executive carried out any impact assessment of how bingo in Scotland will be affected by the changes in the law on casinos?

Ken McKenna: It is worth mentioning that of the 17 new casinos permitted under the Gambling Act 2005, which fall into three categories—one regional casino or supercasino, eight large casinos and eight small casinos—only the large and the regional casinos are allowed to offer bingo as well as traditional casino facilities. The committee will probably be aware that, as a result of the casino advisory panel's recommendations to the Secretary of State for Culture, Media and Sport down south, there is likely to be only one new casino in Scotland, which will be in Dumfries and Galloway. As it will be a small casino, it will not be able to offer bingo facilities.

Fergus Ewing: I am pleased to hear that that is the case, although that was also my understanding of the rules on casinos that offer bingo.

Does the minister accept as a general proposition that bingo is primarily a social activity in which the gambling element is soft, in that the amounts of money involved in a traditional evening's—or, indeed, afternoon's—bingo are not great and that it is not a form of the hard gambling that one would associate with a casino? Does he agree that bingo performs an important social role, particularly for retired people, and that we should therefore foster, encourage and support it?

Mr McCabe: I would stop short of saying that we should foster, encourage and support it. I must admit that my knowledge of how bingo impacts on people is rather limited and that my knowledge of exactly what people do while they engage in bingo is even more limited, so I am at a bit of a disadvantage.

Fergus Ewing: On one occasion, I called the numbers rather disastrously, so I am perhaps at a slight advantage. My understanding is that, typically, the people who enjoy a game of bingo are retired, tend to be female, may have been—and probably still are—smokers and regard bingo as a social activity that allows them to meet friends in a safe, warm place and have something to eat or drink. Given that the amount of money that is spent is relatively modest, the bingo industry has presented itself as a leisure industry rather than as an industry the purpose of which is to facilitate the hard gambling that we associate with casinos. Will the Executive take that into account when it makes any future policy decisions about the creation of more casinos in Scotland, which is something that I am not too enthusiastic about?

Mr McCabe: Mr Ewing has obviously studied the matter in some depth. I am afraid to say that I am at a bit of a disadvantage. We will certainly bear in mind the comments that he has made if and when the Executive considers the social impact of bingo on the wider community.

The Convener: As there are no more questions, I invite the minister to move motion S2M-5587.

Motion moved,

That the Local Government and Transport Committee recommends that the draft Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007 be approved.—[Mr Tom McCabe.]

The Convener: Do any members wish to speak in the debate on the motion?

Paul Martin: As I have already pointed out, my instincts tell me that we should reduce the opening hours of betting premises—otherwise known as licensed bookmakers—due to the incidents of

antisocial behaviour that surround such premises in my constituency during the summer months. However, I recognise that other facilities within my constituency run reputable businesses and that those should be able to continue, so I will not oppose the motion.

I accept the minister's assurance that he will write to licensing boards to remind them that, where antisocial activities surround licensed premises and cause difficulties, boards should be aware of the opportunity to reduce their operating hours. Although I will not oppose the motion, I want to put on record my concerns about the issue.

The Convener: No other members want to contribute to the opening debate. Does the minister want to respond to Mr Martin's comments?

Mr McCabe: To echo what I said a few minutes ago, Paul Martin's point is well made. I am personally interested in ensuring that local licensing boards are aware of their powers to reduce default hours so that particular, localised difficulties can be dealt with. I know that such difficulties affect communities in different parts of Scotland, at least to some extent. As I said earlier, I am more than happy to write to local licensing boards to point out the concern that has been expressed at a parliamentary committee and to remind them that I want them to pay attention to the new powers that they possess.

Motion agreed to.

That the Local Government and Transport Committee recommends that the draft Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007 be approved.

The Convener: The fact that the motion has been agreed to will be reported to Parliament. We will pause to allow the minister's two officials for this item to leave before we move on to the next item.

Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007 (Draft)

Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Regulations 2007 (Draft)

The Convener: I propose that agenda items 3 and 4 be considered together. We can hear the minister's opening remarks and have a question-and-answer session on both sets of regulations, albeit that a separate debate and a separate vote may be required for each motion. Is the minister content with that?

Mr McCabe: Yes.

The Convener: The first set of regulations is the draft Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007, for which the associated motion is S2M-5590. The second set of regulations is the draft Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Regulations 2007, for which the associated motion is S2M-5589. The minister is supported by Scottish Executive officials Russell Bain, Heather Aitken and Mark Richards. I invite the minister to make any introductory remarks that he may have on both sets of regulations before we move into the question-and-answer session.

Mr McCabe: This is a welcome opportunity to discuss the further legislation on Scottish local government elections that George Lyon referred to when he gave evidence to the committee in January. The draft regulations have now been laid before the Parliament.

The two sets of regulations that we are considering set out the procedures for dealing with specific matters such as the issue and receipt of postal ballot papers and the supply and inspection of documents post election. A third set of regulations, which deal with the procedures for applications for absent voting—that is, voting by post or by proxy—have been laid before Parliament but are subject to the negative resolution procedure and are therefore not included in today's discussion.

The new revised procedures reflect changes in various pieces of legislation, including the Representation of the People (Scotland) (Amendment) Regulations 2006, the Electoral Administration Act 2006 and the Local Electoral Administration and Registration Services (Scotland) Act 2006.

The Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007 will replace the current postal voting regulations, which were first made in 2002.

The main changes will allow applications to be made for replacement ballot papers if the postal voting statement has been spoilt or if the voter claims to have lost or not received the ballot paper, the postal voting statement or the envelopes that were supplied for their return. Previously, the ballot paper could be replaced only if the ballot paper itself had been defaced, lost or spoilt. In both circumstances, applications can be made until 5 pm on polling day. Applications can be made after the 5 pm deadline, but they have to be made in person.

15:00

Voters will be able to ask for confirmation that their postal ballot papers have been received at the elections office. The regulations will also allow returning officers to collect postal ballot papers from polling stations when they have been returned there.

The committee will be aware that the draft Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Regulations 2007 have been revised following comments by the Subordinate Legislation Committee. The regulations set out the procedures for the supply or disclosure of information in the marked register, the marked postal voters list, the marked list of proxy voters and the marked list of proxy postal voters that are used at an election.

Both sets of regulations deal with the detail of administrative and procedural issues that are involved in running an election, and replicate what happens at other United Kingdom elections. Some of the changes have already been introduced for other UK elections; others will come into effect before the various elections on 3 May in Scotland and England.

That deals with the main parts of the regulations. I will do my best to answer members' questions.

Ms Watt: If I remember correctly, when we have asked for marked registers after elections, we have found that the local government register remains with the council and the parliamentary election register remains with the sheriff court, and the cost of getting them has differed substantially. What will the fees be for supplying marked registers and lists?

Mr McCabe: That information is set out in the regulations. I think that there will be a standard fee plus £1.50 per thousand entries.

Russell Bain (Scottish Executive Finance and Central Services Department): I can give the details. The costs reflect the fees that are already in place for a sale of the full register. The fee for information in data form is £20 plus £1.50 per 1,000 entries and the fee for information in printed form is £10 plus £5 per 1,000 entries.

Fergus Ewing: There have been one or two serious cases of electoral fraud in England, although, as far as I am aware, there have been none in Scotland. Postal voting is seen to be a method of voting in which electoral fraud is most commonly found. The committee debated that matter when it considered the Local Electoral Administration and Registration Services (Scotland) Bill. Are the minister and his colleagues satisfied that the procedures that have been set out are as robust as they can be and that they will protect the public against postal vote fraud?

Mr McCabe: Perhaps saying that the procedures are as robust as they can be is risky. We have strengthened the provisions, and various aspects of the legislation have strengthened the penalties for anyone who attempts to distort the process. We will be as vigilant as we possibly can be to ensure that there is no untoward activity.

Fergus Ewing is right to say that there have been serious and well-publicised cases of electoral fraud south of the border, although that has not been so much the case in Scotland. We think that the action that has been taken and the fact that the penalties have been strengthened will be a sufficient deterrent, but nobody is complacent. We must keep an eye on the matter in the forthcoming elections and in the future.

Russell Bain: The Electoral Commission will meet the Association of Chief Police Officers in Scotland next week to discuss the various electoral fraud issues of which the police need to be aware, to ensure that the police service is fully briefed on the new offences, provisions and security measures. The Electoral Commission and the police are working to ensure that we are not complacent and that we do all that we can.

Mike Rumbles: Regulation 18, "Notice of opening of postal ballot paper envelopes," says:

"The returning officer shall give to each candidate not less than 48 hours' notice in writing of each occasion on which a postal voters' box and the envelopes ... are to be opened."

Regulation 7 contains many provisions on candidates' agents. It says:

"Each candidate may appoint one or more agents to attend the proceedings".

I understand that returning officers differ in how they open postal ballots. Some open them face upwards. In my local authority area, ballots are opened face downwards, so no agents can check what is going on. Is there a case for instructing returning officers that the same methodology should be used throughout the country?

Mr McCabe: The more we standardise procedures, the less scope there is for people to worry about the impact of any deviation. We issue guidance to returning officers, but I do not know whether it covers that matter. Perhaps Russell Bain can clear that up.

Russell Bain: The Electoral Commission has produced guidance for candidates and agents and for returning officers, which covers postal vote opening. I know from our discussions with returning officers that they are keen to provide as consistent a process as they can, which includes postal vote opening.

Mike Rumbles: Will postal votes be opened so that agents and candidates can see them?

Russell Bain: Regulation 22(5) provides that when covering envelopes are opened, returning officers

"shall keep the ballot papers face downwards".

That follows an Electoral Commission consultation on the issue. The provision is not designed to ensure that people are not aware of the situation, as the returning officer makes clear what is happening. The ballot papers are opened in that way to preserve the vote's secrecy.

Mike Rumbles: So all ballot papers will be opened face downwards as standard?

Russell Bain: Yes.

Mike Rumbles: So there will be no point in having counting agents or anybody else for verification. Okay—that is fine. At least the practice will be consistent.

The Convener: Members have no more questions.

Motions moved,

That the Local Government and Transport Committee recommends that the draft Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007 be approved.

That the Local Government and Transport Committee recommends that the draft Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Regulations 2007 be approved.—
[Mr Tom McCabe.]

Motions agreed to.

The Convener: We will report our decisions to Parliament in due course.

Before we proceed with item 6, there will be a change to the minister's team.

Local Governance (Scotland) Act 2004 (Allowances and Expenses) Regulations 2007 (Draft)

The Convener: I welcome to the committee Liz Hamilton, deputy team leader, and Colin Gilchrist, who are from the principal legal office. I ask the minister to speak to the draft Local Governance (Scotland) Act 2004 (Allowances and Expenses) Regulations 2007, after which we will have questions.

Mr McCabe: The Local Governance (Scotland) Act 2004 paved the way for regulations to implement a new remuneration structure for councillors throughout Scotland, covering salaries, allowances, reimbursement of expenditures and so on. The new scheme is based on the research and advice behind the recommendations of the Scottish local authorities remuneration committee, which reported in January 2006. It took account of the views of various stakeholders, which were sought during a consultation.

The rationale behind the new system is to value the service that people who stand for public office in Scotland offer. It is an attempt to make public office more attractive to a broader range of individuals. The remuneration committee found that, for the most part, councillors found their role compatible with holding other responsibilities. The new system also moves away from the principle of paying flat-rate allowances to councillors, regardless of their expenditure. To achieve all that, it is necessary to amend primary legislation.

The regulations amend sections 47 to 49 of the Local Government (Scotland) Act 1973, which deal with the payment of allowances to councillors to attend meetings, travel and other expenses, the removal from a local authority of the power to pay attendance allowance, and the requirement for travel, subsistence and other expenditure to be reimbursed on a receipted actual expenditure basis. Section 4(8) of the Local Government etc (Scotland) Act 1994, which allows authorities to pay their convener and vice-convener an allowance, is also repealed. In its place, authorities will have scope to reimburse their civic head with a specified maximum annual amount for actual receipted expenditure incurred by them to enable them to carry out their civic duties. That is in addition to any travel and subsistence costs to which they might be entitled.

The Convener: I would like to ask a question on behalf of an MSP who is unable to attend the meeting. It relates to councillors who represent local authority wards that cover several islands. Will they still be able to claim allowances towards, for example, meal expenses if they are carrying out duties on an island that is not the one on which they live?

Mr McCabe: We have received representations on that point and have taken account of it in the regulations.

The Convener: There are no further questions, so I invite the minister to move motion S2M-5647.

Motion moved,

That the Local Government and Transport Committee recommends that the draft Local Governance (Scotland) Act 2004 (Allowances and Expenses) Regulations 2007 be approved.—[*Mr Tom McCabe.*]

Motion agreed to.

Business Improvement Districts (Ballot Arrangements) (Scotland) Regulations 2007 (Draft)

The Convener: For the last of today's affirmative instruments, we are joined by Nikola Plunkett. I ask the minister to introduce the draft regulations. We will then take questions.

15:15

Mr McCabe: The draft Business Improvement Districts (Ballot Arrangements) (Scotland) Regulations 2007 will enable business improvement districts to involve tenants and owners, and domestic rate payers, in voting on BID proposals. The regulations put in place the option for BID proposers in Scotland to seek the participation of tenants and owners in their BID area. The approach was recommended to the Executive by the BIDs working group and has been broadly welcomed by the public sector and the private sector.

We recognise that the involvement of owners and tenants is not straightforward because of issues such as registration and the tenure of properties. On the whole, though, we are content that the regulations provide a workable solution that meets the wishes of the business community in Scotland. There is a two-part voting system. The regulations concern themselves only with the second part. The system is designed to protect the interests of large and small businesses. The number voting and the rateable value of the properties involved have to be in the majority for the BID proposal to be approved. That approach prevents one group from forcing unwelcome proposals on another.

When only ratepayers are involved in a ballot, there is a simplified voting procedure along the lines of the one that was adopted in England and Wales. However, Scottish stakeholders considered that not just ratepayers benefit from successful BIDs. Owners and tenants also gain through increased property prices and higher rateable values, so it seems fair that, where appropriate, they should participate and have the associated voting rights and liability for a levy. Some of the Scottish BID pilots are investigating the best ways to involve tenants and owners in their proposals. The regulations give them the scope to do that.

The regulations complement two other pieces of legislation on BIDs. First, draft regulations on BIDs are being finalised and will be laid before Parliament later this week. Secondly, a draft section 104 order under the Scotland Act 1998 on the reserved aspects of BID policy will be laid before the United Kingdom Parliament later this week. That is led by the Scotland Office with support from the Department for Communities and Local Government.

The regulations are part of the partnership agreement to establish business improvement districts in Scotland. We provided funding for six BID pilots to kick-start the process and, with the committee's agreement, we hope to put in place the final pieces of the legislative jigsaw after today's meeting. The challenge will then pass to

the Scottish business community to use its expertise to introduce BID projects to boost business areas and add value. There is every indication that they will receive the full backing of local authorities and other stakeholders, such as Scottish Enterprise.

I will do my best to answer any questions.

Fergus Ewing: I wish to raise an issue of which I gave the minister's office notice last week and which I raised during the stage 3 debate on the Planning etc (Scotland) Bill. It arises from what appears to be a serious flaw in the bill. I made the same argument in the stage 3 debate, so it will come as no surprise to the minister.

The BID scheme is, broadly, one in which the Government puts in half the money for a particular project and the business community in a city centre puts in the other half. The Times Square model is often mentioned. There is a contribution from the public and a contribution from the private sector. That is the idea in outline, although there are variants of it.

The flaw that was identified at stage 3 is that a business that rents property—whose tenure is as tenant—will have to pay its contribution, or its BID tax, as a tenant. However, as the minister knows, almost all tenants in Scotland have full repairing and insuring leases. That is certainly true of the vast majority of tenants of more valuable premises. Under such leases, there is routinely a clause that provides that the landlord shall pass on to his tenant liability for all rates, taxes and levies that are imposed by central or local government. I know that because I used to advise clients on commercial leasing.

The clause that one tends to find is, broadly speaking, a standard clause. The idea is to pass on all potential liability for public taxes, whether local or national, from the landlord to the tenant. The landlord's motto is, "Let it and forget it." The tenant is lumbered with the local authority rates and taxes.

The flaw of the Executive scheme, therefore, is that a tenant in a shop on Church Street in Inverness, for instance, will have to pay his BID tax as a tenant, as well as the landlord's BID tax. In other words, under the planning legislation that was passed by the Scottish Executive but opposed by us, some tenants might have to pay two taxes. That seems unfair in principle.

The Convener: Can we have a question?

Fergus Ewing: I just wanted to set out the general argument, so that it is clear for people who happen to be listening, as this is of great interest to the business community. Mr Chisholm, when he answered my point about this issue at stage 3 of the Planning etc (Scotland) Bill, admitted that this

situation might arise. Since that time, have you sought to address and remove that flaw, minister? If not, do you accept that it is a fatal flaw for the legislation?

Mr McCabe: No, I do not accept that it is a fatal flaw, and I do not accept at all that someone will have to pay two taxes. That is perhaps a misunderstanding of how the system will work. Mr Gilchrist can offer some clarification, and I will come back to the question later if necessary.

Colin Gilchrist (Scottish Executive Legal and Parliamentary Services): In considering a particular property on the roll, we are not talking about two levies. There is one levy, which is allocated to the property. The amount of the levy is allocated between the owner and the ratepayer. Mr Ewing claimed that it is routinely the case that commercial leases in Scotland pass the landlord's outlays in that respect down to the tenant. That is a matter of commercial negotiation between the landlord and the tenant. Let us take the example of a short-term lease of six months or one year. Such a lease would not necessarily be on a full repairing and insuring basis. There might be a provision that the tenant pays the gas and electricity costs and the rates, but no reference to costs relating to the landlord's interests. I do not necessarily accept the argument that has been put.

Fergus Ewing: Does the minister wish to add anything?

Mr McCabe: I just restate that there is only one levy on a property. The idea that someone would pay two taxes is flawed. The levy on the property would be the same irrespective of how it might be divided. There may be an agreement between parties on the liability for whatever charges a property attracts.

Fergus Ewing: Suppose that there is one levy in respect of one property—say a retail unit on Church Street in Inverness. That property is leased, so there is an owner—the landlord—and a tenant. How would the one levy be divided between the two parties?

Nikola Plunkett (Scottish Executive Finance and Central Services Department): The BID proposal—which is voted on—establishes how the apportionment between the non-domestic rate payer and the owner is made.

Fergus Ewing: Well, how would it be made? You tell me.

Nikola Plunkett: Let us suppose that the levy for a property is £100 and that the BID proposal says that 10 per cent will be paid by the owner and 90 per cent will be paid by the non-domestic rate payer. The owner will pay £10 for that year and the non-domestic rate payer will pay £90.

Fergus Ewing: I think that you would agree that, if the lease provided that the tenant paid the owner's taxes, as I have postulated, the tenant would pay the £90 plus the £10.

Nikola Plunkett: Our position is that we do not think that that sum would automatically be passed on. When we looked at what has been happening in England, where they did not legislate for the involvement of property owners, we found that property owners have been getting involved voluntarily and have often made quite large financial contributions.

Fergus Ewing: Yes, but it is a matter of simple law that if the tenant leases a property in a place where the BID levy is £100 and he has to pay £90, and his lease says that the owner is entitled to require him to pay all national and local taxation, the landlord is entitled to ask the tenant to pay the £10 as well. The landlord might choose not to do so if he is a philanthropist, but I confess that I have limited experience of landlords operating as philanthropists. The fact of the matter is that in a large number of cases, the tenant will have to pay the whole BID levy.

Nikola Plunkett: Depending on the contract, it might be true that the cost will be passed on in some cases, but our understanding is that it will not be in most cases, even if the contract provides for it.

Fergus Ewing: On what is your understanding based? How are you able to conclude today that in most cases the whole BID levy will not be passed on?

Nikola Plunkett: It is based on what we have heard from all our stakeholders, almost all of whom support the proposed way of providing for the involvement of property owners. It is also based on our understanding of how the situation is playing out in England at the moment.

Fergus Ewing: My specific question is, how do you conclude that in most cases the tenant will not have to pay the whole BID levy? How can you provide any evidence that gives you confidence that in most cases in which landlords are legally entitled to pass on a responsibility under a lease with a routine clause—I assure the minister that such a clause is commonly employed in respect of properties, particularly those of great value—the tenant will not have to pay the whole BID levy?

Mr McCabe: There are different drivers at work here. We are introducing a new concept and a new opportunity in Scotland for people to contribute to improving their environment and business trading conditions. Clearly, if tenants felt that they would be responsible for 100 per cent of the levy, that might influence how they would vote on the BID proposal. That could be a driver that says to tenants, "Well, if I'm going to be

responsible for 100 per cent of the levy, I don't favour that BID proposal." That is another driver that certainly has not been part of the dynamic between tenants and owners so far.

Fergus Ewing: I think that I have put all my questions, convener.

The Convener: As there are no more questions, I invite the minister to move the motion before we proceed to the debate.

Motion moved,

That the Local Government and Transport Committee recommends that the draft Business Improvement Districts (Ballot Arrangements) (Scotland) Regulations 2007 be approved.—[Mr Tom McCabe.]

Fergus Ewing: I move against the motion, because of the arguments that I have just set out. It is clearly the case that there is a serious flaw in the legislation, which was identified during consideration of the primary legislation under which the regulations are made. I raised that flaw at stage 3 with the then Minister for Communities, Mr Chisholm. To be fair to him, he acknowledged that it was a serious problem that those businesspeople who rent property will find in many cases—I believe in most cases—that they will have to pay the landlord's share of the BID levy as well as their own.

My evidence for that is simply two decades of practice in the legal profession, when I dealt routinely with commercial property. I see one of the civil servants shaking his head, as he is entitled to do, but it is routinely the case that commercial leases pass on liability from the landlord to the tenant. Landlords are not in the business of being philanthropists and they are entitled to enforce contracts. I know that the Scottish Executive supports and often has supported such an argument. Those who are entitled under the law to pass on liability will do so—that is the point of having contracts and paying expensive fees to lawyers.

15:30

I will address briefly some of the arguments that were put in response to me. First, Mr Gilchrist said that some premises might be let under a short-term lease on a six-month or one-year basis, which is true. However, such properties are relatively few in number in city centres, they tend to be the smaller retail properties and, I believe, a clear majority of them tend to be occupied under the commercial leases that will pass liability for everything to the tenant.

Be that as it may, even if some tenants do not have to pay the whole bill, an awful lot of them—I believe it will be most of them and the officials believe that it will not—will have to pay the whole bill. Surely that is unfair.

The second argument, put by Nikola Plunkett, was that there is evidence that most owners will not seek to pass on liability to their tenant. When I asked her for the basis for that belief, she said that it was twofold: first, because she understood from stakeholders that that is the case; and secondly, because of the practice in England. I would like to know who the stakeholders are. I am not aware of anyone who has specifically said that landlords will not pass on legal responsibility to the tenants under their contract. I am not aware of any business organisation that would advise its members to give up legal rights that they have won in a contract that they have paid lawyers to draft and execute. I am therefore interested in knowing who the stakeholders are. I know that there are stakeholders who have expressed broad support for BIDs, but that is an entirely different matter.

Ms Plunkett's second assertion was that in England, landlords refrain from passing on responsibility for this tax to their tenants, presumably out of a sense of public-spiritedness. Again, I would like to see the actual evidence for that, if there is any.

Convener, I am not persuaded that the BIDs levy is anything more than a back-door tax on business at a time when we want business rates to be reduced, especially for small premises that are competing against internet-based businesses that do not have to pay business rates. However, the issue that I have identified today is a fatal flaw that the Executive could have addressed by preventing the passing on of such liabilities. That might have been difficult or impossible to achieve, but the fact remains that there is a fatal flaw in the draft regulations and that is why I will vote against them this afternoon.

The Convener: At least Fergus Ewing is being consistent in his opposition to business improvement districts. However, just because he is consistent does not mean that he is right—his argument is fundamentally wrong. I say so because, first and foremost, business improvement districts are not about philanthropic gestures by businesses; they are about businesses entering into relationships with other businesses and local authorities to improve the business prospects of an area. If businesses vote for a business improvement district, they do so on the basis that they think that the proposals for the BID will be good for their businesses. That can apply equally to people who are renting a property for the purpose of doing business and people who own a property that they wish to let for the purpose of doing business.

Fergus Ewing seems to want to deny Scottish businesses access to a tool that is available to English businesses and that has been used

successfully in several towns throughout England. It has been used successfully because businesses have voted for it. It is not, therefore, a tax on businesses—businesses have chosen to go into partnership with the public sector to improve town centres or business districts to enhance their own prospects.

Fergus Ewing's question about tenants is also a red herring. Either tenants will be aware that they have a contractual obligation to pay the business improvement district levy because of the contractual relationship with their landlord or they will be aware that they do not have such a contractual relationship. They will, therefore, be able to make that decision when they sign the contract in the first place, when they vote on the business improvement district or when their lease comes up for renewal.

If Fergus Ewing is concerned about the impact of costs and taxation on businesses and small businesses, the best that he could do is not concentrate on the costs of business improvement districts, which will be a relatively small percentage of any business's turnover, but tell his party leader to drop his policy of a local income tax that would hit local small businesses very hard indeed.

Do any other members wish to contribute?

Mike Rumbles: I was with you all the way, convener, until then. As we all know, a local income tax would help a great many people, but that debate is for another day. Although I disagree with your final comments, I will support the motion.

Mr McCabe: You are right, convener, to say that businesses do not propose BIDs for philanthropic reasons. A BID proposal is designed to improve the business trading conditions, and people want to improve the business trading conditions because they see the potential for more profit and a more viable business by creating an area that is more attractive not only to the businesses but to the population in general.

We seldom have much choice over taxes, but the individuals who involve themselves in a BID proposal have a choice. A democratic vote takes place, and if people do not want to take part in the BID proposal they can cast their votes accordingly. I do not think that anyone is saying that we have created Shangri-La with this piece of legislation or that everything is perfect and tied down, but on the basis of evidence from other parts of the United Kingdom and around the world, this kind of initiative has proved to be successful and worthwhile in growing and improving businesses at a local level. It encourages greater symmetry between the activities of local business and local governance, which can only be a good thing.

Although I appreciate that Mr Ewing expresses genuine concerns, I believe that they are ill-

founded. I therefore urge committee members to vote for the instrument.

The Convener: The question is, that motion S2M-5585, in the name of Tom McCabe, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Watt, Ms Maureen (North East Scotland) (SNP)

ABSTENTIONS

Tosh, Murray (West of Scotland) (Con)

The Convener: The result of the division is: For 4, Against 2, Abstentions 1.

Motion agreed to.

That the Local Government and Transport Committee recommends that the draft Business Improvement Districts (Ballot Arrangements) (Scotland) Regulations 2007 be approved.

The Convener: That brings us to the end of this marathon session of affirmative instruments. I thank the minister for his attendance. I also thank Colin Gilchrist and Nikola Plunkett, and the other officials who assisted the minister with the previous instruments.

Mr McCabe: Thanks very much, convener. I think that that brings to an end my appearances before the committee in this parliamentary session. I thank you for the way in which I have been received every time that I have come along.

The Convener: Thank you, minister, for the way in which you have always presented your case.

**Local Government Pensions Etc
(Councillors and VisitScotland) (Scotland)
Amendment Regulations 2007
(SSI 2007/71)**

**Licensing (Clubs) (Scotland) Regulations
2007 (SSI 2007/76)**

**Personal Licence (Scotland) Regulations
2007 (SSI 2007/77)**

**Public Service Vehicles (Registration of
Local Services) (Scotland) Amendment
Regulations 2007 (SSI 2007/79)**

**Sale of Alcohol to Children and Young
Persons (Scotland) Regulations 2007
(SSI 2007/93)**

**Licensing (Training) (Scotland)
Regulations 2007 (SSI 2007/95)**

**Occasional Licence (Scotland)
Regulations 2007 (SSI 2007/96)**

**Licensing (Designated Airports) (Scotland)
Order 2007 (SSI 2007/97)**

**Licensing Qualification (Scotland)
Regulations 2007 (SSI 2007/98)**

The Convener: Item 8 is a number of negative statutory instruments. No members have raised points on any of the instruments, the Subordinate Legislation Committee has not drawn any instruments to my attention and no motions to annul have been lodged. I intend to put a single question on the instruments, unless any member wants to single out an instrument for specific mention. Is that acceptable?

Members *indicated agreement.*

The Convener: Can I confirm that we have nothing to report on the instruments?

Members *indicated agreement.*

British-Irish Inter-Parliamentary Body

15:40

The Convener: The next item on the agenda is consideration of a letter from the British-Irish Inter-Parliamentary Body, which seeks to arrange a meeting between this committee and the committees with responsibility for transport in Dáil Éireann, the House of Commons and the National Assembly for Wales in order to discuss freight and transport links between Ireland and Great Britain.

Such a discussion would be welcome, of course, but we are close to the dissolution of our Parliament and it would be difficult to arrange a meeting in the time that is available to us. Further, it would probably be of more use to the members who form the Parliament after the election.

I recommend that we write to the BIIPB and suggest that the meeting should take place after the 2007 elections, in order that further progress can be made on the issues and so that relations can be cemented between the various Parliaments and bodies.

Do members have any views?

Murray Tosh: As the note to the committee says, I am a member of the BIIPB, although I am not present at the current plenary session—indeed, I am present at today's meeting to represent Mr McLetchie, who is attending that session.

The BIIPB committee system moves at a somewhat slow pace. I do not think that anyone will be particularly perturbed that you are suggesting that we cannot meet within the next three to four weeks. Even though the letter that we received demonstrates that the BIIPB thinks that we are an assembly rather than a parliament, I think that the people involved will be aware that we, like the National Assembly for Wales, face elections and that the future of the Northern Ireland Assembly is still in the balance. I am sure that the BIIPB will be happy to accept your suggestion that the meeting should take place in the fullness of time.

The meeting concerns issues of importance. The BIIPB began an investigation of trans-European networks and vehicle movements between Northern Ireland and Scotland, but—to the disadvantage of Scotland—that report was never concluded. It would be useful for the meeting to take place and for the body to consider in the round the issues that will arise from it. Many of the issues that affect the south-west of Scotland in particular would be best viewed within a United Kingdom context, which involves several

legislative and executive capacities, rather than in an exclusively Scottish context. A heightened awareness of the flow of traffic from Northern Ireland into Scotland, England and along the trans-European network would be useful to all of the political bodies involved. I am keen that the meeting should take place, but I fully agree that it cannot take place in this parliamentary session.

The Convener: I will write to the convener of the Joint Committee on Transport in the Dáil—

Mike Rumbles: Dale?

The Convener: I apologise for my pronunciation. I will write to him to outline our suggestion about when the meeting should take place and copy the letter to the relevant committees in the House of Commons and the National Assembly for Wales. We will include the issue in our legacy paper to whatever committee of the Scottish Parliament deals with transport issues after the 2007 elections.

I will also draw the attention of the other transport committees to the freight transport inquiry that we undertook earlier in the year. If they wish to, they can peruse the report that we produced and learn about the issues that this committee felt were important from a Scottish perspective.

Do members agree with my suggestion?

Members indicated agreement.

Annual Report

15:45

The Convener: Our final item concerns the committee's annual report, which will be included in the Parliament's annual report. The draft report that has been provided to members summarises the main issues that the committee has dealt with in the past year. Do members have any comments?

Mike Rumbles: I merely wish to note that a glance at the public gallery confirms that the decision not to exclude members of the public from this part of our meeting was the right one.

The Convener: How wise you were, Mr Rumbles.

Mike Rumbles: There you are.

The Convener: Do we agree to approve the draft report?

Members *indicated agreement.*

The Convener: Because we managed to get through a good number of statutory instruments today, it looks like we will have no meeting next Tuesday. I will let members know if that situation changes.

Meeting closed at 15:46.

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