LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 27 March 2007

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE
8th 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:

Mr Tom McCabe (Minister for Finance and Public Service Reform)

THE FOLLOWING GAVE EVIDENCE:

Colin Gilchrist (Scottish Executive Legal and Parliamentary Services)
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 6

Scottish Parliament

Local Government and Transport Committee

Tuesday 27 March 2007

[THE CONVENER *opened the meeting at 14:02*]

The Convener (Bristow Muldoon): Today's meeting of the Local Government and Transport Committee will be our last of the current parliamentary session. I place on record my thanks to all committee members for their contributions over the past four years—not only those members who are present at the moment, but those who have served on the committee over the course of the whole four years. This has been a very effective committee. It has carried out a lot of effective business and has scrutinised the work of the relevant ministers in a thorough manner. Thank you all for your help on that. I also place on record my thanks to Martin Verity and his team of clerks for their professional support throughout the four years.

We now come to the business of today's meeting. The agenda as originally published had the item on the Scottish statutory instrument that the Minister for Finance and Public Service Reform is coming along to address at the top, but he is not available until about 3.30, therefore I have rejigged the agenda so that the item will come at the end. If we get through all the other items before then, it will be necessary for me to suspend the meeting until 3.30. Apologies for that, but it is unavoidable.

Petitions

Common Good Assets (PE875)

Listed Buildings (Consultation on Disposal) (PE896)

Common Good Land (PE961)

14:04

The Convener: The first agenda item—as it is now—is consideration of petitions PE875, PE896 and PE961, which members will recall are the three petitions on common good property. Members have received a copy of a letter from the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, responding to the points that the committee made on issues around the recording of common good assets and funds; the valuation of assets; whether there should be additional guidance to local authorities; and the promotion of common good assets and funds to allow communities to have influence over their use.

Do members feel that the minister's letter responds sufficiently to the petitioners' issues? In addition, what should our recommendation be in concluding our consideration of the petitions? In particular, do members believe that new legislation is required to improve the management of common good assets, or could that be adequately covered by guidance to local authorities?

Michael McMahon (Hamilton North and Bellshill) (Lab): I just want to see progress being made on the issues. I have been enlightened by the information that I have received on the issues since the petitions first came to the Public Petitions Committee, which I convene.

Although the minister does not say that he wants to do exactly what the petitions call for, his letter offers a way of progressing. His suggestion could be a first step, and the issues could be revisited if the unacceptable current situation does not improve. In that case, legislation could be the way forward.

We could give the guidance a chance to work first and see whether matters improve at the local government level such that there is a beneficial outcome that addresses the concerns raised in the petitions.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Michael McMahon's suggestion is the right approach. Regarding registers, the minister says in his letter:

"local authorities are best placed to balance the competing objectives of comprehensiveness on the one

hand and clarity, accessibility and cost … on the other hand".

He goes on to say that his letter to local authorities

"invites views on whether more detailed guidance would assist them in … their obligations under Best Value."

The minister is therefore prepared to provide detailed guidance. He adds:

"I am sure officials will advise Ministers after the Scottish Elections"—

whoever those ministers are—

"about the extent and nature of feedback … In addition, COSLA is taking forward separate work to improve the ability of local authorities to manage their assets effectively."

The position is therefore that attention has been drawn to the problem and the Executive and the Convention of Scottish Local Authorities are trying to do something about it. I agree with Michael McMahon that it is worth while giving them a chance to do that. I am sure that the future Local Government and Transport Committee could re-examine the issue if a solution was not forthcoming.

Ms Maureen Watt (North East Scotland) (SNP): I concur with Michael McMahon and Mike Rumbles. The topic has had a good airing and has been enlightening for everybody involved, including those who were contacted to make submissions to us.

The council elections will bring a substantial swathe of new councillors into our local authorities and I hope that, during their induction process, they are made aware of the unique nature of the common good funds and of their duty and responsibility to ensure that they are administered properly.

I agree that, if it is brought to our attention at a later date that things are not working regarding good practice and best value obligations, the topic should be revisited.

Dr Sylvia Jackson (Stirling) (Lab): We do not know what will happen regarding parliamentary committees after the election. However, will this committee leave a legacy paper on local government issues that we think should be examined?

The Convener: It was not my intention to leave a legacy paper as such, as most of the items that we have considered have been concluded or are about to be. However, our conclusion on the petitions could be drawn to the future committee's attention. That committee will be aware that we have done work on the issue and it will know about our final disposal of the petitions. If it wishes, it could monitor the situation to check that it improves in the way that people want and, if that does not happen, it could take further action.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I do not disagree entirely with the remarks that have been made but, after looking at the precise wording of the letter from George Lyon, the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, it seems to me that it does not provide a direct response. However, that is not to say that I disagree with many of the statements in the letter.

I will address a few of the points that have arisen during our consideration of the petitions, which has been useful in casting light on issues that have never before been debated in the Scottish Parliament. The committee's initial standpoint was that there should be a clear record of common good assets. The minister's letter states that, in response to that recommendation, he has written to local authorities

"to remind them of their responsibilities to hold records of all common good assets and to make this information available to the public if asked."

However, that is not quite the same as having a distinct register of such assets.

The minister goes on to quote from the useful evidence that we received from Audit Scotland and SOLAR—the Society of Local Authority Lawyers and Administrators in Scotland. In relation to the way in which the records are kept, the letter points out that Audit Scotland stated:

"many common good assets have existed for centuries and these might not have the same form or level of completeness as transactions that have been completed more recently."

Already, we are moving into technical lawyer speak and away from the point of principle. The letter states that SOLAR said in oral evidence that

"information about common good assets could be held in a range of formats, such as Ordnance Survey plans",

which is true, but how would that prevent there being a list of the assets that are marked on Ordnance Survey maps? Creating a simple register that states, "See Ordnance Survey map X," would not place an onerous obligation on local authorities.

My central point, which I argued in response to the petitioners' case, is that every local authority should hold a register of common good assets. It has occurred to me—this may not be the first time that the point has been made—that anyone in Scotland or elsewhere could, under the Freedom of Information (Scotland) Act 2002, ask each local authority for a list of its common good assets. That would be a fairly simple way of forcing the issue. Perhaps that approach has already been tried by people who are listening to this discussion—I see heads nodding. I suspect that, as is the way with FOI, requests were made and the response was that the task would be expensive as it would

involve the time of too many officials and would cost more than the permitted limit—a kind of "You'll have had your tea" reply. If that is so, I hope that Mr Dunion, the Scottish information commissioner, is listening assiduously to the discussion and will put matters right if the requests go to appeal. It is only a matter of time before the issue is forced.

It would have been better if we had had a clear response from the minister that, at the very least, there should be a register. That is not to say that I disagree with the points that my colleagues have made about the elections and new councillors having their say. Nor do I disagree with the minister's statement that a review of asset management throughout the public sector should be carried out. However, that is a slightly different point. On that basis, I would prefer it if we adhered to our recommendation that councils should have a register of common good assets, which need not be elaborate or complicated and could be compiled over a period of time negotiated between the Executive and local authorities and their representatives. As a basic principle, we should at least have such registers in Scotland.

14:15

Paul Martin (Glasgow Springburn) (Lab): I was going to raise the issue that Sylvia Jackson raised about a legacy paper. It would be helpful to ensure that a future committee considers the issue in detail. We have had scope to consider whether legislation is necessary, but it would not be fair for us to consider the introduction of legislation without ensuring that we had interrogated every possible alternative. We have not had time to do that, nor have we had sufficient information from ministers or COSLA on how we can take the matter forward.

However, there is scope to seek greater compliance with the existing requirements to provide information. I am sympathetic to the petitioners in that respect. As Fergus Ewing said, they have asked for legitimate information, but the issue is how it is provided. Providing such information can promote the work that councils are doing through common good funds. Many common assets that are of interest to many parts of the world can be promoted by their work.

We have the usual response from ministers that various groups have identified some of the issues and that they will meet in the autumn to conclude some of the work. There must be greater clarity from the minister about when all the work will be concluded. It is only fair to the petitioners to seek clarification from the minister on that. If the minister says, "Yes, a future Executive should be committed to completing the work at some point," or at least if we can ensure that the next committee seeks that information from the Executive, it will give the petitioners clarity that we have brought the investigation to the conclusion that it deserves.

The Convener: I point out that the current Executive cannot bind the future Executive on its priorities after the election. If we sought a further response from the minister, I suspect that we would not receive it until Parliament is dissolved. Our best option is probably to note the points that Paul Martin, Fergus Ewing and other members feel are important in a paper that we make available to the future committee. It will be for that committee to decide whether it wishes to pursue the matter further with the Executive that is formed after the election.

David McLetchie (Edinburgh Pentlands) (Con): I agree with the remarks that have been made and I welcome the fact that the Executive has written to councils about the importance of improving standards of record keeping and the importance of effective asset management.

I will pick up on a point that Fergus Ewing made when he referred to the fact that SOLAR said that records might be held on Ordnance Survey maps. We have moved to a system of registering title of all properties in Scotland on Ordnance Survey maps, so it should not be too demanding to have a proper record and an Ordnance Survey mark that creates a proper title to common good assets, given that our aspiration for all property titles in Scotland is to have a register of titles instead of the register of sasines.

I am disappointed by the minister's response. The purpose of having accurate records is to distinguish between property that is held for common good purposes and property that is held for other purposes. If all assets were held for a single purpose, or were wholly within the statutory powers of councils, there would be no point in differentiating between their common good assets and their other assets. There should be a record of what is common good and what is part of the general estate of local authorities. Perhaps there should be a third category, because as trustees councils have assets that have been bequeathed or donated to them and are held for specific trusts, as set down in the trust deeds.

There are at least three categories of asset holding, of which common good is one. The whole reason for having records of trust assets, general estate assets and common good estate assets is that they are necessary, because a differentiation of purpose applies to the assets. As far as I understand it, that goes to the heart of some of the complaints about the current record keeping. Fundamentally, people are saying that assets that should be in the common good pot are treated as if they are in a general pot and are therefore used

for a purpose that might be contrary to the terms of the common good fund.

Unless we distinguish the purposes for which assets are held, it will not matter whether we have all the records in the world. We have to determine whether assets are common good assets or are part of the general estate, and therefore what they can be used for. Councils and councillors should clearly understand the distinction between the two. I must say that, even at the end of the evidence sessions, I was not wholly convinced that that was entirely grasped by the minister or his officials.

The Convener: Let me try to draw the arguments together. There seems to be broad agreement that the petitioners have raised an important issue and that the way in which at least some councils currently record and manage common good assets is far below the level that we want to apply. The petitioners have identified that, throughout Scotland, a range of local authorities do not have either a good record of their common good assets or appropriate procedures to ensure that, as David McLetchie mentioned, common good assets are used and, when appropriate, disposed of only in accordance with the terms of the common good bequest or other manner by which the council came into possession of the property.

I recommend that we agree to conclude consideration of the petitions but, in doing so, reiterate the fact that it is important that every local authority in Scotland has a publicly available common good asset list. We could also reiterate, as David McLetchie suggested, that there should be a clear statement—whether it comes from the Executive or individual local authorities—that common good assets can be used only for certain functions. That would mean that the public would be aware of what are common good assets and the terms under which the local authority can use them.

Those could be our recommendations. We recognise that the minister has indicated some ways in which the Executive hopes to improve how common good assets are managed, but we will also draw our report to the attention of the successor committee that deals with local government issues, in whatever shape that takes after the election, so that it can decide whether to monitor the Executive's dealing of the issue or carry out further work on the subject. Are members content to conclude consideration of the petitions in that way?

Members *indicated agreement*.

The Convener: We will correspond with each petitioner in that regard, and Martin Verity will produce an appropriate report for the successor committee.

Roads, Pavements and Footpaths (Maintenance) (PE855)

The Convener: Petition PE855, which is on the maintenance of local authority roads, pavements and footpaths, was submitted by Leslie Morrison on behalf of Kirkside area residents. The petition calls on the Scottish Parliament to urge the Scottish Executive to review the performance of local authorities in Scotland in maintaining and repairing roads, pavements and footpaths.

As members know, we have had a long-running interest in the maintenance of non-trunk roads and we took evidence on the petition from the Society of Chief Officers of Transportation in Scotland on 6 March 2007.

How would members like us to respond to the petition? Again, as we are almost at the end of the parliamentary session, I hope that we can conclude our consideration of the petition today. However, given that the maintenance of roads and of other local government assets, including paths and pavements, is undoubtedly a continuing issue, the report of our conclusion could be made available to our successor committee, so that it is aware of this committee's work. I would expect any such paper to draw attention to the witness sessions that we have held and the evidence that we have taken on the maintenance of local authority non-trunk roads. I invite comments from members.

Dr Jackson: As you know, convener, I am particularly interested in the subject. We have held several evidence sessions and we have started to move the agenda on, but much monitoring and discussion has still to take place. I endorse your suggestion that the issue is significant and that it should be passed on to the committee that takes over responsibility for local government concerns. As you say, we should highlight what has been done and the ways forward.

Fergus Ewing: Leslie Morrison is to be congratulated on raising this bread-and-butter issue that all of us who are regularly contacted by constituents about the state of our pavements, roads and streets know is a cause of concern and, in some cases, anger. It is also a safety matter. Not maintaining pavements leads to people tripping, falling and suffering serious damage. Many people make fun of pothole politics as if it is somehow of a lower order than high-level policy making, but my impression is that for the people whom we represent, the issue is extremely important.

The evidence that we received from Bill Barker and Graham Mackay of the Society of Chief Officers of Transportation in Scotland was particularly useful—as SCOTS has been throughout my period on the committee—in its

factual specificity and helpful detail about how to address the problem. I was struck that Mr Mackay said that although expenditure on trunk roads has risen, local authorities' budget has substantially fallen. Money has been made available to tackle some of the problems on trunk roads, but local authorities cannot meet their obligations in the way that they would like to.

I was struck in particular by Mr Mackay's evidence to me. When I asked him what the total cost would be of bringing Scotland's roads, footpaths and lighting up to standard, he said that it would be £2,000 million. He also agreed that a programme to tackle that over 10 years would cost £4,000 million. That is the scale of the problem that we face. All Governments—whether the current Executive or another Executive in a month's time—will have to grapple with the problem, which is extremely serious. I therefore concur with the recommendation that we should draw the matter to the incoming Administration's attention. As committee members who represent different parts of Scotland, I hope that we can all convey that more urgently needs to be done to tackle the problems, prevent avoidable injuries and provide safe transportation for people on their local streets, roads and pavements.

David McLetchie: I am broadly satisfied that monitoring of the condition of roads and pavements is adequate. The reports that we have received from Audit Scotland and the local surveys that councils undertake show that the scale of the problem is understood and has been evaluated.

Councils have been ranked relative to their performance. Not long ago, an Audit Scotland report ranked my local authority—the City of Edinburgh Council—28th out of 32 for the standard of roads. We hope to correct that situation in a month or so's time. A council survey ranked 37 per cent of roads in my constituency of Edinburgh Pentlands as poor or very poor.

In the last analysis, the condition of roads and pavements has been well documented, audited and monitored. We are left with an issue of political priorities that concerns how local authorities apply their budgets and how much weight they give to road and pavement maintenance.

The fact is that the scale of the problem throughout Scotland, which was highlighted in the evidence that we took from SCOTS and other bodies, suggests that road and pavement maintenance has been a very low priority for local authorities in comparison with the other demands on their budgets. My view is that the situation must change because we cannot simply allow the local road network to deteriorate. Sooner or later, councils—regardless of their political complexion after May—will have to attach greater priority to that responsibility, if the situation is not to deteriorate further.

I am afraid that we are talking about a situation in which it is easy for councils, because of competing demands and pressures on their budgets, to postpone the repair of a road for another year or two. When our councils are under such pressures, by and large capital maintenance programmes tend to be deferred, but there is invariably a day of reckoning and that day is arriving. Fergus Ewing is quite right—as I am sure that the rest of us are aware from our postbags, the poor state of our roads and pavements is one of the most common subjects of complaints from constituents. People are demanding action and our councils will have to respond through their budget setting.

14:30

The Convener: Although I do not necessarily agree with David McLetchie's political attack on his local authority, I agree with what he said about local authorities having to decide on their priorities. From our examination of the issue, it has been clear that some local authorities have spent their full grant-aided expenditure allocations on roads and pavements; in fact, in some cases, spending has been well above that level. Some councils have a good record on maintaining their roads—West Lothian Council, for example, has been one of the better councils in that regard in recent years, partly because of its decision to invest more than its GAE allocation to tackle the issue.

I agree with David McLetchie that it is for each local authority to decide what priority to attach to road maintenance. Given that, in general, local authorities have received above-inflation increases in their total resources over recent years, a significant amount of the responsibility must lie with them and the decisions that they have taken. I am sure that Audit Scotland will continue to keep the situation under review.

Road maintenance is an important issue Scotland-wide, in that it has implications both for public safety and for the economy. If the economy is to continue to function well, we must ensure that our entire road network, not just our trunk road network, is well maintained. I expect our successor committee to continue to take interest in the subject and, to help it to make progress, we should draw its attention to the evidence that we have received from SCOTS and the work that Audit Scotland has done.

David McLetchie mentioned local authorities deciding to postpone investment when their budgets are under stress, but I remind him that one such occasion was when the Conservatives were in power—that is when much of the backlog

built up. Equally, I remind my colleague Fergus Ewing that the Scottish National Party's proposal to withdraw £1 billion from local authority funding would put council budgets under stress, with the result that, if Fergus Ewing got his way, they would find it all the more difficult to invest in roads in the years ahead. Thankfully, I am sure that the electorate will come to a different decision.

Mike Rumbles: Let us stick to the petition. The election campaign is coming up in the next five weeks, so we do not need to hold such debates now.

The Convener: You want to take the politics out of politics.

Dr Jackson: I agree with the convener that the backlog has not built up overnight.

With regard to David McLetchie's comment about the additional money that councils have or have not made available, the fact is that it has not dealt with the huge backlog that Fergus Ewing highlighted and which will cost hundreds of thousands of pounds to clear. That is the problem that our successor committee will have to address.

Fergus Ewing: I omitted to say earlier that, as politicians, we tend to focus on cost rather than on people's capacity or ability to carry out additional work if they are entrusted with more resources. If this budget were to be increased from about £250 million to £500 million, it would mean that twice as much work would have to be done. Can the industry deliver that? The fact is that, instead of having to deal with peaks and troughs, it wants a long-term, secure, continuous flow of work. Indeed, according to, among others, Alan Watt from the Chartered Engineering Contractors Association, that is one of the industry's key demands.

As far as the legacy paper is concerned, it might be relevant to point out to those who succeed us that when money is allocated they need to examine not only the figures but the capacity of the industry and local councils to deliver the greater volume of road and street improvements and pavement repairs that we require. Moreover, no matter who is in charge, the next Executive, perhaps very early in the next session, will have to come up with a long-term plan to ensure that those who engage local authority roads engineers and workers, and people who carry out work on trunk roads—very often both have contractual relationships and co-operate to solve the problem of local authority responsibility—know that there will be a secure and guaranteed increase in funding. In fact, they should know that as soon as possible in the next four years.

I do not want to go on all afternoon—after all, I have a lot to say a bit later on—but I should point out that Dr Malcolm Reed, the head of Transport Scotland, told me not so long ago that there is no preparation pool in Scotland for trunk road projects. If, like the A74 project, the proposals for the Aberdeen peripheral route are taken to the Court of Session by fanatics and if the project has to fall as a result, the real victims will be the thousands of people throughout Scotland who rely on getting work from such projects, because there is nothing to fill their place. Continuity of work and the industry's capacity are as important—if not more so—than the headline allocation. It would be easy to say to local authorities, "Do 50 per cent more," but local authorities could just as easily say to us, "How? Where are the people to do all this work? Haven't you thought this through?" As the industry and local authorities have made clear, this is a real problem, and I hope that it can be included in our legacy paper.

The Convener: I suggest that we conclude our consideration of this petition by writing to the petitioner, drawing attention to the work that we have already done with SCOTS and to the Audit Scotland report. We should also highlight the points made by Fergus Ewing, with which I agree, on the requirement to take account of the capacity to deliver this work and the need for forward planning over a period of years.

We will also draw the matter to the attention of the successor committee with responsibility for transport issues. I suppose that it could also fall within the local government remit; it all depends on whether our successor committee has the same combined role. In any case, we will recommend that the matter be examined by the committee or committees with responsibility for transport and local government issues. Are members agreed?

Members *indicated agreement*.

Subordinate Legislation

Local Government (Allowances and Expenses) (Scotland) Regulations 2007 (SSI 2007/108)

Valuation Appeal Committee (Electronic Communications) (Scotland) Order 2007 (SSI 2007/124)

Licensing (Appointed Day and Transitional Provisions) (Scotland) Order 2007 (SSI 2007/128)

Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2007 (SSI 2007/162)

Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007 (SSI 2007/170)

Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007 (SSI 2007/183)

Gambling Act 2005 (Premises Licences and Provisional Statements) (Scotland) Regulations 2007 (SSI 2007/196)

Gambling (Premises Licence Fees) (Scotland) Regulations 2007 (SSI 2007/197)

Firefighters' Compensation Scheme (Scotland) Amendment Order 2007 (SSI 2007/198)

Firefighters' Pension Scheme (Scotland) Order 2007 (SSI 2007/199)

Firefighters' Pension Scheme Amendment (Scotland) Order 2007 (SSI 2007/200)

Police Pensions (Scotland) Regulations 2007 (SSI 2007/201)

Valuation Appeal Panels and Committees (Scotland) Amendment Regulations 2007 (SSI 2007/212)

Council Tax (Discounts) (Scotland) Amendment Regulations 2007 (SSI 2007/213)

Council Tax (Discounts) (Scotland) Amendment Order 2007 (SSI 2007/214)

Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2007 (SSI 2007/215)

Non-Domestic Rates (Levying) (Scotland) Regulations 2007 (SSI 2007/216)

14:39

The Convener: Agenda item 3 is consideration of a series of Scottish statutory instruments. Rather than read out the names of the 17 instruments, I ask members to refer to the list on the agenda. Under agenda item 4, we will consider separately a set of regulations that is subject to a motion to annul.

Unless members are otherwise minded, I propose to put a single question on the instruments. The Subordinate Legislation Committee has drawn to our attention its comments on the Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2007 (SSI 2007/162), the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007 (SSI 2007/183) and the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2007 (SSI 2007/215). A cover note on those comments is attached.

Moreover, the Subordinate Legislation Committee considered the Firefighters' Pension Scheme Amendment (Scotland) Order 2007 (SSI 2007/200) and the Police Pensions (Scotland) Regulations 2007 (SSI 2007/201) only this morning. A further paper on those instruments was circulated to members before this meeting started.

No motion to annul has been lodged on any of the instruments. Does the committee agree that it has nothing to report?

Members *indicated agreement*.

The Convener: I suspend the meeting. We will reconvene at 3.30 pm.

14:40

Meeting suspended.

15:33

On resuming—

Business Improvement Districts (Scotland) Regulations 2007 (SSI 2007/202)

The Convener: I reconvene the meeting.

Agenda item 4 is another item of subordinate legislation. The committee will debate and reach a decision on motion S2M-5784, in the name of Fergus Ewing, that the Local Government and Transport Committee recommends that nothing

further be done under the Business Improvement Districts (Scotland) Regulations 2007.

Before we debate the motion, members will have the opportunity to question the Minister for Finance and Public Service Reform, Tom McCabe, whom I welcome to the meeting. I also welcome his officials, Nikola Plunkett, from the local taxation and policy team of the Scottish Executive Finance and Central Services Department, and Colin Gilchrist, from the office of the solicitor to the Scottish Executive.

I invite the minister to make some remarks on the aims of the regulations before members ask questions.

The Minister for Finance and Public Service Reform (Mr Tom McCabe): Thank you for this opportunity to say a few words in the light of the motion that has been lodged. We regard the regulations as being very important, so the opportunity is welcome. I apologise if I have delayed the committee this afternoon. The request for me to come here was obviously at short notice, and other things had already been pencilled in.

The Business Improvement Districts (Scotland) Regulations 2007 provide much of the detail on how business improvement districts will operate in Scotland from 1 April 2007. The procedures that are set out in the regulations are similar to those that already operate in England, where a significant number of BIDs are now operating—thankfully, they are operating quite successfully. The changes that we have made for the regulations for Scotland take account of comments that were made by business organisations and others who responded to our earlier consultations.

The regulations are lengthy and detailed. Their main purpose is to complement part 9 of the Planning etc (Scotland) Act 2006 and the BID ballot arrangements, which were approved by Parliament; and the section 104 order on the BIDs levy—that is, section 104 of the Scotland Act 1998—which is currently awaiting approval at Westminster.

There are two main themes in the regulations. The first is broadly to provide for the procedures that were proposed by the BIDs working and steering groups, which included broad cross-sections of stakeholder bodies from across the public and private sectors. The regulations have been the subject of wide consultation.

The second theme is to provide appropriate safeguards for the Executive and local authorities to protect the integrity of business improvement districts in Scotland. To that end, the regulations cover the following areas. First, they cover the information that the BID proposer, working in conjunction with the local authority, needs to gather and process to create a robust BID proposal. The local authority is also required to assist the BID proposer by providing information—most notably about existing and planned baseline services and about those who are liable to vote. The regulations cover the rules that govern the BID ballot, renewal ballots and alteration ballots. They also cover the safeguards that will be put in place to ensure the propriety of BIDs, which involves protection of the interests of people in BID areas, the appeals procedures and the declaration of a ballot as void, where necessary. Furthermore, the regulations cover the BID revenue account and how it is to be maintained.

Those are the main aspects of what is, as I have already said, a lengthy and complex document. If the committee has any questions, we will do our best to answer them.

Fergus Ewing: Will the BID proposal that is put to each business that is eligible to take part in the vote include, first, how much it will cost in total to implement the whole proposal and, secondly, how much the levy will be for that business?

Nikola Plunkett (Scottish Executive Finance and Central Services Department): Do you mean the proposal that they vote on?

Fergus Ewing: Pardon?

Nikola Plunkett: That is in the schedules.

Fergus Ewing: I quote from schedule 1, on the "Content of BID Proposals". Paragraph 1(1) says that

"a BID proposal shall include"

the items that are listed in subparagraphs (a) to (g), but nothing in those subparagraphs states that either the total cost of the BID or the bill—that is, the individual levy that a business is required to pay—must be included. If I was a tenant on Church Street in Inverness, for example, when I received the proposal, I would want to know how much I was going to have to pay and how much the whole thing would cost. I cannot find that—perhaps I have missed it, which is why I am asking the question. At first glance, I could not find anything in the SSI that says that the BID proposal must contain these two salient pieces of information: the total cost of the BID proposal and the actual bill that is to be paid by each business.

Mr McCabe: I understood that we had covered those points in the regulations. Even if we have not, my reaction in such a situation would be simply to say that I had no way of knowing what the levy would be, or of knowing what the overall cost would be. Therefore, so as not to go into the proposal blind, I would vote no.

Fergus Ewing: So, if I were a business, I would not know how much the levy would be that I was being asked to—

Mr McCabe: I never said that. As I understand it, we have already covered that point in the regulations.

Nikola Plunkett: I refer Fergus Ewing to regulation 5.

The Convener: Paragraph 1(1)(d) of schedule 1 says that there will be

"a statement providing details of any additional financial contributions or additional actions for the purpose of enabling the project specified in the BID proposals to be carried out, by the local authority or any other person authorised or required to do so by the statement".

Would I be correct to say that

"any other person authorised or required to do so by the statement"

implies the people who would be required to pay the bid levy?

Colin Gilchrist (Scottish Executive Legal and Parliamentary Services): Regulation 5(2)(a) provides that the bid proposer requires to send to the local authority and the billing body a summary of the consultation that had been undertaken; the proposed business plan; the financial management arrangements for the BID body; and the names and addresses of persons eligible to vote.

Mr McCabe: Some members are unclear about which part of the instrument we are reading from.

The Convener: I was referring to schedule 1. Mr Gilchrist was referring to section 5(2)(a) on page 4.

Fergus Ewing: Regulation 5, on page 3, states:

"BID proposals … shall include the matters mentioned in Schedule 1"

and schedule 1 states that

"a BID proposal shall include"

the items that are listed in paragraphs 1(1)(a) to 1(1)(g), but there is in those paragraphs no requirement for the BID proposal to include either how much the total cost will be or how much the bill will be. According to regulation 5(2), certain information must be sent to the local authority and the billing body. My point is that although the BID proposal does not need to contain that information, if I were a business I would want to know how much the BID would cost and how much I would have to pay. There is nothing in the regulations to say that the BID proposal must contain that information.

Mr McCabe: I disagree. Reference has already been made to different parts of the regulations, which clearly show that that is a requirement. Requirements in the section 104 order that is awaiting confirmation at Westminster will further reinforce that.

Colin Gilchrist: Article 4 of the section 104 order, which was laid at Westminster on 9 March, provides that the details of the imposition, amount and calculation of the BID levy require to be included in the BID proposal.

Fergus Ewing: Do we have that document?

Nikola Plunkett: No. It is United Kingdom legislation.

Fergus Ewing: Are you saying that the effect of the section 104 order—which we do not have before us and to which the minister has not previously alluded—will require the BID proposal to contain those two bits of information: the total cost and how much each business will have to pay?

Colin Gilchrist: That is correct. Article 4(3) of the levy order provides that

"The calculation of BID levy for any chargeable period shall be specified in the BID proposals and the amount of the BID levy for such chargeable period is to be calculated in such manner as provided for in the BID arrangements",

once those are approved.

Fergus Ewing: Why are there parallel arrangements governing the implementation of BIDs in Scotland?

Mr McCabe: I take exception to Mr Ewing's inference that we have never referred to a section 104 order. Committee members are well aware that an integral part of the package that allows us to implement BIDs in Scotland is the section 104 order that requires to go through Westminster.

Fergus Ewing: With respect, I remain to be convinced. Given that that information is not referred to in the instrument, I am not convinced that it will have to be provided in the proposal. If it is, that is one defect that would be removed.

I seek clarification of a further area. Shall I do that now or will you come back to me later?

The Convener: I am happy for you to continue.

15:45

Fergus Ewing: Thank you. My question arises from the evidence that the committee heard at our meeting on 6 March, when Miss Plunkett, Mr Gilchrist and the minister said that if a property had a tenant and an owner, the BID levy would be allocated between the two in the BID proposal. How would the allocation be made?

Mr McCabe: I am sorry, will you repeat your question?

Fergus Ewing: On 6 March, Mr Gilchrist said:

"The amount of the levy is allocated between the owner and the ratepayer."—[*Official Report*, *Local Government and Transport Committee*, 6 March 2007; c 4622.]

How?

Colin Gilchrist: The BID proposal must provide for the allocation of the levy between the owner and the ratepayer. The BID proposer must assess the respective benefits of the BID to the ratepayer and the eligible owner or tenant in percentage terms.

Fergus Ewing: Does the law give guidance about the percentage of the levy that should be allocated between tenant and owner, or will that be left entirely to the BID proposer?

Colin Gilchrist: The matter will be at the discretion of the BID proposer. The draft affirmative order that deals with the rateable-value element of the vote provides that, in determining the percentages to be apportioned between the ratepayer and the owner, the BID proposer must assess the respective benefits of the BID.

Mr McCabe: We have tried our best not to be overly prescriptive, particularly in matters that would be of direct relevance to the BID. We have tried to allow for appropriate local discretion, particularly on matters such as those we are considering.

Fergus Ewing: I will move on. On 6 March, I suggested that tenants who have commercial leases on a full repairing and insuring basis—as is frequently the case—will often have to pay the landlord's part of the BID levy. I argued that it is foreseeable and likely that if a landlord has a lease that entitles him to require the tenant to pay the BID levy, the tenant will be expected to do so. From my experience of commercial lease work, landlords tend not to be philanthropists. A landlord who has hired expensive lawyers like Mr McLetchie and me to execute a commercial lease, under the terms of which the tenant must pay the rent, insurance, running costs and taxes—including local authority rates—that are attributable to the property, is unlikely voluntarily to pay a charge for which the tenant is responsible under the lease. That means that in many cases, tenants will pay the whole BID levy: the tenant's part and the part that has been allocated to the owner. When I asked about that on 6 March, Miss Plunkett said:

"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."

I then asked the minister and his team what evidence there is that landlords in England are of such a philanthropic mien and are choosing to pay financial charges for which their tenants are responsible. I asked about that because—if I may be frank—I do not believe that there is any such evidence. If there is such evidence, I would like to see it. I asked Miss Plunkett:

"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?"

She replied:

"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."—[*Official Report*, *Local Government and Transport Committee*, 6 March 2007; c 4623.]

On 7 March, I e-mailed the minister to ask again—

The Convener: Could you get to your point, Fergus?

Fergus Ewing: The matter is pretty relevant, convener. I am just about—

The Convener: Could you get to the point?

Fergus Ewing: Certainly.

On 7 March, I e-mailed the minister to ask whether the evidence to which Miss Plunkett alluded could be provided. The minister has not responded and I have raised that with Mr Elvidge; we are making the law, so we should have any evidence to which officials allude. Will the minister now let us have that evidence, and will he name, say, five landlords in England who have chosen to pay the BID levy when the tenant is legally responsible?

Mr McCabe: A number of points arise there. I want to start with Mr Ewing's statement that he simply does not believe what was said by me and the officials. I take exception to that. We do not come here deliberately to mislead a parliamentary committee. Mr Ewing should have rephrased his comments.

Mr Ewing did indeed e-mail my office on 7 March, but people who e-mail my office do not short-cut the correspondence system, which is extensive. Correspondence is dealt with in the order in which it is received. That applies to Mr Ewing's correspondence, too. That is right and proper; otherwise, it will become fashionable to try to short-cut the normal correspondence system. That is why, to date, Mr Ewing has not received a reply.

Before I give specific answers on the evidence that Mr Ewing has requested, I say to him that he is making an assumption. We do not yet have any operational BIDs in Scotland, but Mr Ewing is assuming that property owners will take the approach that he suggests. Neither Mr Ewing nor anybody else has any evidence to suggest that that is how people will behave. It is important to remember that point now, before any BIDs have come into force.

We have evidence from expert advice that has been received and from consultations that have been carried out. It will be worth the committee's while to remember that the proposals came from public and private interests—from people who took part in the various working groups. We consulted again last summer and the responses endorsed our approach. There is operational evidence from BIDs south of the border that landlords are, indeed, contributing. The Department for Communities and Local Government report entitled "Review of the Role of Property Owners in Business Improvement Districts" shows that property owners have been prepared to play a part and to make contributions. The evidence exists: in particular, the DCLG report is there for anyone who wishes to read it. When Miss Plunkett said that we had evidence, that was a reference to sources such as the DCLG report. It was not simply an off-the-cuff remark.

Fergus Ewing: I have listened carefully to the minister and I am afraid that he did not answer my question. There has been no evidence of any individual case in which a landlord in England who could require a tenant to pay part of the BID levy that is exigible from that landlord has chosen instead to pay it himself. No evidence whatever to that effect has been produced.

Mr McCabe: Have you read the DCLG report, Mr Ewing?

Fergus Ewing: No such evidence has been produced. If the minister wants to refer to any specific page of any specific report, or to any specific business that has, when it has been able to require its tenant to pay the BID levy, chosen not to, I ask him to do so. I asked him on 6 March and 7 March and I have asked him again today, but he has not given an answer. I therefore conclude that there is no evidence.

The Convener: The minister has referred to a report, which he cites as evidence. That was the minister's answer to the question.

Dr Jackson: I have two points to raise with the minister. Fergus Ewing mentioned the section 104 order. Can the minister confirm that that is mentioned in the Executive note that accompanies the regulations?

Secondly, I want to ask about financial contributions and about whether people know the amounts. Paragraph 1(1)(d) of schedule 1 seems to cover what Mr Ewing was asking about. Do any other parts of the regulations clarify the issue further; or is further clarification not required?

Mr McCabe: On the first question, I can confirm that the Executive note does mention the section 104 order. Miss Plunkett may be able to refer to other sections for clarification.

Nikola Plunkett: Because the levy is a reserved matter, all matters regarding the levy are covered in the section 104 order. That part of the schedule refers to other relevant donations, from whomever, that the BID could accept in addition to the levy, which is in the section 104 order.

Dr Jackson: Okay. That has clarified the matter. My second point concerns subordinate legislation—I am sure that you would expect me to raise the matter. The Subordinate Legislation Committee raised the issue of the joint vote, and you wrote an explanation for us that we were happy with when we met this morning. We thought that any points arising from it were more a policy matter to be raised at this committee.

On the joint vote, you say:

"There is no mechanism provided for resolving disputes between persons entitled to exercise a joint vote. If there is disagreement as to how a joint vote is to be exercised, the parties will not be able to cast a vote."

Obviously, if there were only two such persons and their views were different, they would just cancel each other out. You continue:

"It will therefore be for the parties concerned to seek to resolve their differences in order to enable a joint vote to be made."

Is there any likelihood that there could be three parties in a joint vote? If that were the case, would not it be easier to say that, if there were a two to one split—as there could be—the decision would be in favour of the majority? It seems silly to say that there would be no vote if there were three parties and the split was two to one.

Mr McCabe: I do not know the exact answer to that question, but I strongly suspect that, in such a situation, one of the parties could, to try to resolve the dispute, easily refer the matter to one of the expensive lawyers that were mentioned earlier. I do not know how the issue would be resolved.

We have made it clear that, if two people have a joint vote but cannot agree, they will not be able to vote. If the balance was two to one, the result would depend on how the one person chose to react. If they felt that their interests were being infringed and, therefore, did not want the vote to be cast in that way, they could decide to take legal advice of their own. At the moment, that is why the matter has been left as it is.

Ms Watt: Is it the intention of the current Executive to provide full funding to local authorities for their share of the cost of BIDs?

Mr McCabe: Do you mean BID pilots or BID areas?

Nikola Plunkett: It is not necessarily the case that a local authority would incur any costs in relation to a BID in its area. It may do, and it may choose to provide financial or in-kind support

voluntarily, but it is not our expectation to put a new financial burden on local authorities.

Mr McCabe: I will go further. It is not our expectation that this will be some kind of new mechanism for public subsidy; rather, it is a mechanism that will allow businesses to have a more direct influence over their trading environment and their own area. We have given money to BID pilots and have tried to pump-prime the process, but as the process has moved on, we have made it clear that the process should stand on its own two feet and should not attract public funds.

Ms Watt: In many cases, city centre partnerships have a big local authority influence, and it may well be city centre partnerships that propose bids. The local authorities may be the owners of some of the buildings; therefore, they may have a substantial part to play in the BIDs. I ask again whether it is the Executive's intention to provide finance to the local authorities.

Mr McCabe: Absolutely not. It is part and parcel of their duties as local authorities to ensure that the business environment is as good as it can be. Involvement in a BID area may mean that that environment can be enhanced. However, as far as I am concerned, that is part of their responsibility as local authorities and would not, in itself, attract additional finance.

16:00

David McLetchie: I will pursue some of the issues that Mr Ewing raised. Regulation 2 requires the local authority to prepare

"a document showing … the name of each non-domestic ratepayer"

and, where the property is unoccupied, the owner of the business. Am I right in thinking that the document that is produced for a BID ballot or consultation—the list of names—is, in effect, the electoral roll?

Nikola Plunkett: It will probably be based on the valuation roll.

Mr McCabe: It will be the valuation roll, not the electoral roll.

David McLetchie: I use the term "electoral roll" loosely. For the purposes of conducting a BID ballot, is the document that lists the non-domestic rate payers, which is mentioned in regulation 2, effectively the list of those who are eligible to vote in the BID ballot? Is that the purpose of compiling it?

Nikola Plunkett: Yes.

Mr McCabe: Yes.

David McLetchie: If I read the regulations correctly, regulation 2(1)(a) refers to the

"non-domestic ratepayer and the … rateable value of each relevant property which is occupied, or (if unoccupied)",

the owner. It does not refer to the owner of a property that is tenanted—that is, a landlord. Is that correct?

Nikola Plunkett: Yes.

David McLetchie: So a landlord of a tenanted property will not be on the list. Is that correct?

Nikola Plunkett: They will not be on that list, no.

David McLetchie: The landlord of an occupied property—a landlord who has a tenant—will not be on the list. Is that correct?

Nikola Plunkett: Yes.

David McLetchie: If a landlord who has a tenant is not on the list, and the list is, in effect, the electoral register for the conduct of the BID ballot, how can the landlord vote?

Nikola Plunkett: We acknowledge that it is not straightforward to identify property owners. The document that is mentioned in regulation 2(1)(a) will be the starting point for most BIDs. Many BIDs will not involve property owners anyway, so the list is all that they will need. For those BIDs that want to involve property owners, the onus will be on the BID board to identify the relevant property owners using, for example, the land registry. We do not have a definitive list that we can give to a would-be BID board and say, "There you go. That's your list of property owners." The onus will be on the board.

David McLetchie: With respect, I do not fully understand that. You said that, if a property has a tenant, you might not know who the landlord is, but you seek to impose on local authorities a statutory requirement to state who the landlord is if the tenant gives up the lease and quits the property. How is it that you can know who the landlord is if the property is empty but not know who they are if the property is occupied?

Nikola Plunkett: If the property is unoccupied, liability for rates will revert to the owner.

David McLetchie: Not necessarily. That assumes that the property is rated. The owner might get relief on an empty property.

My point is that, if a tenant gives up a lease on a property, the council, for the purposes of assessing rates that it might be required to levy on empty properties, will have to ascertain who the landlord is. That being the case, why would it be so difficult to identify the landlord of a property that is occupied? Why is one more difficult than the other? Frankly, I would have thought that it would be easier to identify the landlord of an occupied property because all that the council would have to do is to go to the tenant and ask, "Who do you pay your rent to?" Is that right?

Nikola Plunkett: Yes, and that is perhaps what the BID board could do, rather than—

David McLetchie: But you said that the list is the electoral register. Also, in the discussion with Mr Ewing, we heard that landlords will be consulted and balloted, if I understood that correctly.

Mr McCabe: To be fair, Ms Plunkett also said that it was a starting document, which can be added to, not a final document. Is that correct?

Nikola Plunkett: Yes.

David McLetchie: So, it is not the electoral register. I asked specifically whether it was and the answer that I was given was, "Yes, it is."

Mr McCabe: At a particular point, it will become the register, but there is not a full stop after it.

David McLetchie: So, it is not the definitive electoral register.

Mr McCabe: It will be at a particular point, but not at the point that you just described. It is a starting document, as was said.

David McLetchie: But there is no other provision regarding the document. Where are the other provisions in the regulations that say that new names can be added to the list as and when they are found?

Nikola Plunkett: The onus is on the BID board to identify the relevant parties. Given that the local authorities already have an extensive set of valuation roll data, it makes sense for them to get the BID board started on that task. That is what is provided for.

David McLetchie: I would have thought that the purpose of regulation 2 would be to get the local authority—the official body—to produce the register of electors from the official records.

Nikola Plunkett: But at that point it is about obtaining information from a local authority for the purpose of developing BID proposals. At that point, all the BID board is doing is getting the first draft of who it wants to talk to, going to talk to them and working up its proposals.

David McLetchie: Where do the regulations prescribe who is on the register of electors if that is not the list that is compiled under regulation 2? Where do the regulations specify what is, in effect, the definitive list of voters in a BID ballot?

Nikola Plunkett: Again, the onus is on the BID board to identify the relevant property owners, if it wishes to involve them.

David McLetchie: So, you are saying that the people who make the BID proposal, who have a vested interest in its outcome, are the people who make and determine the definitive list of voters in a BID ballot. Is that right?

Nikola Plunkett: If they did so fraudulently, there are procedures for declaring the ballot void.

David McLetchie: I am not suggesting that they would do it fraudulently. It seems to me that the whole purpose of regulation 2, which is, apart from the omission that I have identified, well conceived, is to establish the definitive list of people who can vote, which is perfectly laudable. The outcome of the ballot will determine the liability to pay what is a tax. It is only fair that there is a definitive list and that you know at the outset all the people who are eligible to vote. If you do not know that, you do not know whether you have achieved the requisite degree of approval to carry the BID proposal and, in effect, create a legal liability for payment of the levy. Where is the definitive list produced? You are telling me that the proposer compiles the list of voters. Is that correct?

Mr McCabe: We are saying that the proposer gets information from the local authority. That is what the regulations say. We are also saying that that is a starting point for the list. It would be in no one's interest deliberately to exclude owners. It is not the responsibility of the local authority to draw up some kind of electoral roll. In the final analysis, it is the BID board—the BID proposer—that has the responsibility for compiling the final list, which is then put to the people who are involved in the BID.

David McLetchie: With respect, that might be your intention, but it is not what the regulations say.

Mr McCabe: Do the regulations specifically preclude that from happening?

David McLetchie: I suggest, with respect, that we are being presented with regulations that govern the establishment of and registers and voting procedures for BIDs. Given that they extend to 25 pages—dear knows how many regulations there are, because I have not counted them all—it is not unreasonable for us to expect to see a definitive voting list. Your starting point is that a council can tell the BID proposer who the landlords of unoccupied properties are, but not who the owners of occupied properties are. To me, that seems quite bizarre.

Nikola Plunkett: I refer you to regulation 6(1)(b)(ii), on the instructions to hold a BID ballot, which says that a local authority shall

"provide the ballot holder with the names and addresses of each eligible person entitled to vote".

That is at the point of ballot. I wonder whether that is what you are looking for.

David McLetchie: That leads me to the next question. What is the meaning of the term

"eligible person entitled to vote"?

Nikola Plunkett: On eligibility, I refer you to the Planning etc (Scotland) Act 2006.

Colin Gilchrist: Yes. Section 39(2) of the 2006 act provides that

"When submitting BID proposals to the local authority, those who have drawn up the proposals are also to submit a statement as to which eligible persons are to be entitled to vote in the ballot."

David McLetchie: It is a pity that we did not discover that provision 15 minutes ago.

I return to my first question: if we now know, as a result of regulation 6, that the local authority knows, and is required to know, who all the landlords are—

Mr McCabe: With respect, Mr McLetchie, you were here 15 minutes ago, just as we were.

David McLetchie: Why are those landlords not referred to in regulation 2? The council must know their names in order to comply with regulation 6, as you have just told me, so why are they not among the people who are listed in regulation 2?

Nikola Plunkett: Regulation 2 refers to an early stage of the BID proposals. The difference is that that provision prompts people to say, "Do I want a BID in my area, and is it viable? I think I want to take some first steps."

David McLetchie: Consultation.

Nikola Plunkett: Yes.

David McLetchie: So why will you not consult the landlords?

Nikola Plunkett: The expectation is that they will be consulted. I am not sure that it would necessarily be appropriate for a local authority to do a lot of legwork to identify those landlords at such an early stage in a proposal for a BID that might or might not be viable.

Mr McCabe: Ultimately, the BID board is responsible, rather than the local authority. We are not placing an onerous burden on local authorities. The BID proposer—the board—will cover the proposal, and it is those people who are expected to pursue the entire initiative.

David McLetchie: Okay. In relation to the business of the transfer of liability from landlords to tenants, is there anything in the section 104 order that has been laid at Westminster that prohibits a landlord from transferring liability for payment of the BID levy to a tenant?

Mr McCabe: No.

David McLetchie: So, as Mr Ewing pointed out in his questions and as I pointed out several times in the debates on the Planning etc (Scotland) Bill, clearly, a landlord cannot be compelled to pay a BID levy. Is it correct that, under a normal, full repairing and insuring lease, a landlord is not liable to pay a BID levy? I mean that he is not legally liable—I am not talking about voluntary contributions.

Colin Gilchrist: The section 104 order will impose a liability on the landlord to pay the landlord's allocation of the BID levy.

David McLetchie: But, under a standard, full repairing and insuring lease, does the section 104 order prohibit the landlord from transferring responsibility for payment of that liability to the tenant? Is there any prohibition on the use of the normal rules of freedom of contract in commercial leases, which would transfer the liability in the same way that a landlord ensures that all rates assessments and so on are transferred to a tenant?

Mr McCabe: No.

David McLetchie: Is it correct that a landlord who suitably contracts under the terms of a normal, standard, full repairing and insuring investment lease—such leases are commonplace in Scotland—effectively does not have to pay a BID levy because he can contractually transfer the responsibility for payment of that levy to his tenant?

Nikola Plunkett: That could happen in some cases.

David McLetchie: Have you studied the terms of full repairing and insuring leases in a number of shopping centres or malls as part of the development of your proposals? Have you considered the normal contracted terms between landlords and tenants?

Nikola Plunkett: I think that we took advice from our stakeholders on that particular point, and the feeling—

David McLetchie: Did you take advice from your lawyers?

16:15

Mr McCabe: We consulted people in the public and private sectors who would be interested in BID proposals. On more than one occasion, the advice that came back very strongly was that the route that we were proposing was the route that they strongly preferred.

David McLetchie: I am not talking about voluntary contributions; I am trying to establish—as I repeatedly tried to do in the course of the debates on this subject—that there is no prohibition on the contracting out of the transference of liability from landlord to tenant.

Mr McCabe: We have acknowledged that.

David McLetchie: I am also asking whether, in relation to the existing full repairing and insuring leases for current tenancies of commercial properties in Scotland—those that are in what I would call fairly standard full repairing and insuring terms—a landlord's BID levy can be transferred to a tenant. Is that the case?

Mr McCabe: Yes, it can.

David McLetchie: So, basically, a landlord in Scotland who has an existing or new full repairing and insuring contract will not have to pay a BID levy, unless he voluntarily chooses to do so. Is that correct?

Mr McCabe: Yes.

David McLetchie: So, when I said in the debate that the aspiration to have landlords pay their BID levy was no more than that—an aspiration—because people could contract out of it and the Executive could not prevent them from doing so, I was absolutely correct.

Mr McCabe: You are crediting yourself with quite a bit of foresight. With experience, we will be able to see how landlords have behaved. However, the experience of landlords' behaviour in other areas does not suggest that their behaviour in Scotland will be as you suggest that it will be. That is what I indicated to Mr Ewing earlier.

David McLetchie: I will leave it at that, other than observing that we have not seen any specific landlord in any specific tenancy south of the border, which means that we have not seen any examples of any landlord's behaviour.

Mr McCabe: To be fair, the DCLG report that I referred to earlier relates specifically to the role of property owners in BIDs.

David McLetchie: Does it have specific examples of a landlord in a particular development?

Nikola Plunkett: I think that it does. The DCLG's research covered a number of BIDs and considered the way in which property owners voluntarily engaged, how much money they put in and what their behaviour has been. I cannot remember whether the report contains case studies, but I know that it contains a number of pieces of relevant evidence.

Mr McCabe: In other parts of the world, it is property owners who are the driving force behind this sort of initiative—

Fergus Ewing: No wonder; they do not have to pay.

The Convener: I ask you not to interrupt, Mr Ewing.

Mr McCabe: What Mr Ewing says is not the case. We have referred a number of times to behaviours that we have seen in other parts of this country and in America and Australia, and those behaviours are not of the sort that Mr Ewing has alluded to.

The Convener: Is it not the case that the liability for a BID levy on someone who is leasing a property would be only a small percentage of the overall liabilities that a tenant would accept, even if they signed up to the sort of lease contract that Mr McLetchie described?

Mr McCabe: Yes, it would be an extremely small part of their liabilities.

The Convener: I think that that exhausts members' questions, so we will move on to the formal debate. I invite Mr Ewing to move his motion.

Fergus Ewing: In moving the motion to annul the regulations, I make the following case.

It is clear from the evidence today and on 6 March that BID levies are a tenants tax, because many tenants in city and town centres will have to pay not only their own allocated share, but the share that is allocated to their landlord. That is because it is commonplace for commercial leases in Scotland to pass on such matters from the landlord to the tenant. I know that because, before I entered this place, I gained about two decades' experience of engaging in such work. The clauses are pro forma and routinely pass on the landlord's liability in respect of taxes—whether local or national—to the tenant.

A tried and tested pro-forma clause, which can often extend over two or three pages, is used for the clear purpose that the landlord wishes to ensure that the tenant pays for such matters. That is for negotiation between the parties, as Mr Gilchrist said at our previous meeting. However, my riposte is that although the matter is for negotiation, such a clause is almost invariably found in commercial leases.

On 6 March, Mr Gilchrist said—and he had a point to an extent—that short leases might not contain such a clause. However, many—probably most—of the commercial premises in high street locations are let under commercial leases, for the good reason that there is a clear relationship that has been established in law and worked on over decades. It is accepted that tenants of high street premises routinely enter into commercial leases.

I tell the minister from my experience—I do not know whether Mr McLetchie agrees, but I suspect that he might—that a tenant has very little chance in such negotiations of persuading any landlord to remove the clause. In practice, the clause remains, and the tenant can either sign up to the

lease or not do the deal. That is the commercial reality. The minister and his civil servants have admitted that that means that although the proposal will allocate the tax between the tenant and the landlord, in practice, many tenants will have to pay all the tax. That is why I call it a tenants tax.

Tenants in city and town centres who operate retail or office premises often pay very high rents and business rates. The Scottish National Party's position is that those rates have been too high. In the past eight years under this Executive, higher business rates than in England have been paid in Scotland. After eight years, the Executive eventually decided that that decision was a big mistake. It would have been better if lower rates had been agreed to at the outset, before Mr McConnell imposed the higher tax. However, I will look forward, as we must. The SNP is not persuaded that, just when we end the higher tax that tenants in Scotland have had to pay, it makes sense to impose a new tax on them. For that reason, we believe that the proposals do not represent a sensible means of proceeding.

In addition, it should be made clear that BIDs will not be able to generate the action that many of the public would like in our city centres. In my part of Inverness, trees grow out of some buildings' fascias and plants grow in gutters. People would like buildings to be cleaned. However, improving buildings remains the responsibility of property owners, so a BID will not make that happen.

Small businesses have a concern—it was expressed to the committee by bodies during the passage of the Planning etc (Scotland) Bill—that local authorities will be in the driving seat. I note from the regulations that that is so. The minister has made it clear that local authorities will not be expected to contribute as of law and that is the clear implication of paragraph 1 of schedule 1 to the regulations, which says that a local authority may make an additional contribution. In other words, the minister has said that it is expected that there would not be a "public subsidy", to use his phrase. That means that, unlike BIDs as developed in the United States of America, the state would not pay a share. There would not be a carrot—only a stick. Businesses would pay for the whole BID, which seems to be against the original concept of BIDs.

In addition, businesses were concerned that BIDs would be used by local authorities to put forward schemes that may involve matters that should really be covered by local authority services. The regulations do nothing to tackle that fear. In my city of Inverness, for example, there are a number of small traders in the old town in the city centre. It is expected that that would possibly become a BID area, although there can be more than one under the proposals. However, Tesco, which has acquired a somewhat infamous reputation in Inverness, is not located in the old town area of the city centre. Therefore, if the BID boundaries include only the old town, Tesco will pay nothing while the small city traders will pay a new tenants tax courtesy of the Labour-Liberal Executive. I do not think that they will look on that kindly.

The minister may say that it would be a matter for the ballot to determine whether a BID was wanted, and he would be correct. However, how much is it all going to cost, and how complex will it be?

I would like to make many other points, but I do not want to detain members any longer. I conclude by saying that the proposals are a muddle and a mess. On 6 March, the minister appeared to accept that the proposals were flawed, saying that they are not a "Shangri-La". Of course, he may now say that they are perfect, but most people will disagree, especially those in the business communities who, when asked to pay for a BID, will not know what their bill is and may not know how much the whole scheme will cost, because that information will not necessarily be communicated directly to them—it will be communicated only to the local authority. They will deliver a resounding no to the new tenants tax from what is—for now—a Labour-Liberal Executive.

I move,

That the Local Government and Transport Committee recommends that nothing further be done under the Business Improvement Districts (Scotland) Regulations 2007 (SSI 2007/202).

The Convener: Thank you, Mr Ewing. I invite the minister to respond.

Mike Rumbles: Do we not get a shot?

The Convener: You will get an opportunity later.

Mr McCabe: There are various ways in which I could respond to Mr Ewing's elongated contribution, which was not based on the legislation that we are considering; it was more of a political statement, which was highly inaccurate and showed clearly the anti-business agenda of the party that Mr Ewing represents. If a successful company such as Tesco had been listening to the comments that were made about its operation in Inverness, it would have much to worry about. If that is the SNP's approach throughout Scotland, any company that achieves success will have a lot to worry about.

Mr Ewing referred to Tesco in Inverness, but he failed to mention that there is already a BID pilot in Inverness. The last time that I looked, we had not corralled owners into a pen and starved them for a

week to ensure that they agreed to a BID pilot—they did so voluntarily. It is an unfortunate reflection of Mr Ewing's comments that he is unaware of business intentions in his own town. Perhaps he should spend less time offering inaccurate remarks to this committee and more time listening to his constituents. Clearly, he is minded not to do that.

Mr Ewing was hugely inaccurate in his comments about business rates in Scotland. When all things are considered, including the poundage and other factors in business rates, Scottish businesses have always paid less than other areas in the United Kingdom. Their competitive advantage is now even higher.

I know what businesses in Scotland have to worry about: when the SNP tries to perpetrate its 3p local income tax and when the huge gap in local services is still there, there is only one place that the SNP will go—to the business community. We will then know what a true tenants tax is, as the SNP hammers business and creates a disincentive to work and to grow our economy in Scotland. That is what Mr Ewing has explained to us clearly this afternoon.

16:30

The regulations are the subject of wide consultation and are based largely on experience in other parts of the United Kingdom, which can now be shown to be clearly successful; more than 30 BIDs are operating south of the border. In the final analysis, the decisions would involve property owners, tenants and people within the BID. This is a local initiative for people who want to improve the trading environment in their area. Those people will take the initiative and will make the final decision. The regulations are not being introduced in a prescriptive way that is determined centrally—they are an enabling piece of legislation. If people at any level anywhere in Scotland do not want to take up the initiative, they are not required to do so.

David McLetchie: Before I make some criticisms of the regulations, I would like to praise the Executive for one provision—the requirement that there be a description of baseline services against which a ballot is conducted. That regulation flows from an undertaking that the minister gave during consideration of the Planning etc (Scotland) Bill, in response to an amendment that I lodged in committee. I thank the Executive for taking up that important principle. I regret that the regulations do not contain another important principle—that people in a BID should not be required to pay for something that people in an adjoining area are getting for nothing. An amendment that I lodged to the Planning etc (Scotland) Bill sought to prohibit such an outcome. Unfortunately, that provision is not included in the regulations, but it is a good principle that might be revisited at some point in the future.

If we leave aside the more partisan policy points, Mr Ewing's analysis of the legal position of the landlord-tenant relationship in commercial leases in Scotland is absolutely correct and has not been seriously disputed by anyone who has given evidence to the committee. When the primary legislation was going through Parliament, I said that the Scottish Executive proposition that somehow it could compel landlords to contribute to the cost of BID arrangements was a delusion, because by doing so it would disturb an investment property market that is a UK market. I said that we could not have a two-tier property market in Britain, in which people had to differentiate between the returns from their Scottish portfolio of properties and the returns from their properties elsewhere. That has proved to be the case, because the section 104 order that we discussed earlier does not include a ban on contracting out of the arrangement. The notion that landlords could be compelled to make a contribution is a total delusion. Frankly, the Executive was kidding Parliament when it suggested that that could happen. We are left with a provision for contributions on a voluntary basis, which I do not think will apply.

I am not agin the concept of not prohibiting contracting out, because the fundamental principle that we must establish is that of freedom of contract between landlord and tenant, which applies north and south of the border. The Scottish Executive was trying to interfere with that principle. Only in the light of harsh reality, after a few home truths were pointed out to it at earlier stages of the legislation, has the Executive been forced to acknowledge that this is in no way, shape or form a compulsory levy on landlords and that there is no prohibition on transfer of liability from landlord to tenant under a new lease or an existing full repairing and insuring lease.

That is the situation that we have reached; I said at the outset that we would reach it. It is a great pity that the Executive does not acknowledge that more, instead of clinging to the wreckage of its proposal and hoping that someone, somewhere, will put a voluntary contribution into the pot. I said at the start that that was a delusion and so it has proven to be. The whole BID proposal is misconceived. I voted against all the BID provisions during the passage of the Planning etc (Scotland) Bill and, with the exception of the endeavour to establish a proper baseline, I do not approve of the regulations. I am opposed to the BID concept and I will not support the regulations that seek to implement BIDs.

Mike Rumbles: In listening to the debate, I could not make my mind up about one point. Are Fergus Ewing and my friend David McLetchie vying for the role of the new Jeremiah, or trying to see who can be more like Jeremiah?

The minister confirmed that, in a full repairing and insuring lease, it would be possible for a landlord to contract out his or her liability for a BID levy. As David McLetchie just said, such contracting out is surely part and parcel of normal contract law for businesses. It is a commercial decision and is part of the commercial negotiations in which landlords and business tenants engage. What is wrong with that? I do not know how Fergus Ewing can perceive that as a sort of Achilles' heel in the legislation, which has suddenly been discovered—that is a bizarre perception.

I do not support Fergus Ewing's motion. I think that the Scottish Executive is introducing useful legislation. Let us not forget that the regulations are about improving business districts—they are enabling legislation. I want to see real encouragement for improving businesses in Scotland and the regulations are a way to do just that.

The Convener: The debate has tried to make a mountain out of a molehill. The issue that is being debated is a relatively small aspect of the proposals for business improvement districts. The cost for any business to take part in a BID would be only a small proportion of its outgoings. In any case, any participating business would have had the opportunity to participate fully through a debate and a ballot. A BID would go forward only if a majority of businesses, in terms of numbers and rateable value, was in favour of it. That would mean that a majority of businesses in an area believed that the business improvement district would be to their commercial advantage.

Fergus Ewing and David McLetchie wish to deny an investment tool to Scottish businesses that is available to many businesses in other parts of the world, including England. I just do not know what point they are trying to make.

Further, if business people are going to be concerned about levies or taxes, it seems to me that most of them would worry not about business improvement districts but about the nightmare scenario of the SNP coming to power, with the £11 billion gap in its plans. If Fergus Ewing is worried about impacts on businesses, perhaps he should look to his own party and get the SNP to drop the various uncosted spending pledges in its programme. I support the regulations and will oppose Mr Ewing's motion.

No more members wish to contribute, so the minister may respond to the debate.

Mr McCabe: I will be brief, convener, because we have had a full session.

Mr McLetchie said that people in one area would pay for something that others would get for nothing. That claim misses the whole point of the BID concept. BIDs are designed to add value and would be at the discretion of business people in an area, who would vote on them.

At no time did we say that there would be compulsion in the process. Any assertion that we indicated that we would be able to compel people not to comply with the terms of their legal arrangements is simply not true. We have never tried to disturb that legal situation. Indeed, the basis of Mr Ewing's criticism is that we have not tried to disturb it. He would quite like it to be disturbed and for us to interfere with it, but we have said that we simply would not do that.

It is unfortunate that the debate has moved away from the regulations that we are here to discuss. It has been an opportunity for members to make considerable political points. I am interested in the symmetry between the Conservatives and the SNP—I have always thought that the two names were interchangeable, so perhaps the term "tartan Tories" would be the most appropriate.

Fergus Ewing: I have only two points to make, neither of which will trespass on party-political terrain. I have left that to the minister, who has done very well.

The Convener: What about your opening remarks?

Mike Rumbles: The convener did a good job, too.

Fergus Ewing: The minister says that there will be no compulsion. However, section 40 of the Planning etc (Scotland) Act 2006 states that a BID can go ahead if

"25% of the persons entitled to vote … have done so"

and if, in relation to

"25% of the aggregate of the rateable values",

people have voted. That means that a BID can go ahead if 75 per cent of persons have not voted or if, in relation to 75 per cent of the properties, going by rateable value, people have not voted. All the businesses that do not vote for the proposal, or that do not vote, will have to pay for the BID, so there is compulsion. It is a tenants tax. With respect, minister, to say that there is no compulsion is misleading.

I want to tackle the minister's rather disappointing remarks about my attendance in my constituency. When I was in Inverness city centre yesterday, going round shops and speaking to businesses, as I do frequently, none of them

mentioned BIDs or was aware that a pilot scheme is running. That may be for the good reason that they have not been asked to pay a penny piece. The minister used the word "pilot", but the scheme is not a pilot at all, because a BID is a scheme in which businesses pay but, in the schemes that the minister described, the state or the taxpayer has paid. Therefore, there has not been a pilot. Unsurprisingly, as no business has been asked to pay anything, the question of businesses being corralled—to use the minister's word—into supporting the BID does not arise, because there has been no BID.

I wanted to put that on the record. I do not wish to repeat my main arguments, as I think that I put them reasonably coherently in my opening remarks. Therefore, I will rest at that.

The Convener: I take it from your remarks that you do not intend to withdraw the motion. Therefore, the question is, that motion S2M-5784, in the name of Fergus Ewing, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
Watt, Ms Maureen (North East Scotland) (SNP)

AGAINST

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

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Motion disagreed to.

The Convener: We will report to Parliament accordingly. I thank the minister and his team for attending.

Before I close the meeting, I repeat my thanks to committee members and clerking staff for their support and work in the past four years. During those four years, we have held 116 meetings and taken evidence from 533 witnesses, which makes us one of the busier committees in this session of Parliament. We have been the lead committee on eight parliamentary bills and we have held committee meetings here and in Motherwell and had a videoconference with a witness in Ethiopia. The committee's longest meeting, which lasted for seven and a half hours, took place on 18 January 2005, from 2.08 to 9.40, to discuss the UK Railways Bill. That is probably the longest committee meeting in the Parliament to date and is a record that we may well hold for some time, although, at times today when Mr Ewing was speaking, I thought that we were going to beat it.

It has been a pleasure to convene the committee in the past four years. Although we all want different outcomes from the election that we are about to face, I am sure that we all hope for energetic engagement with the people of Scotland and a strong turnout in the election.

Meeting closed at 16:44.

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