TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 26 September 2001
(*Morning*)

Session 1

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TRANSPORT AND THE ENVIRONMENT COMMITTEE
23rd Meeting 2001, Session 1

CONVENER

*Mr Andy Kerr (East Kilbride) (Lab)

COMMITTEE MEMBERS

*Robin Harper (Lothians) (Green)
*Mr Adam Ingram (South of Scotland) (SNP)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Fiona McLeod (West of Scotland) (SNP)
*Des McNulty (Clydebank and Milngavie) (Lab)
*Bristow Muldoon (Livingston) (Lab)
Nora Radcliffe (Gordon) (LD)
*John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Flora Campbell (Scottish Executive Finance and Central Services Department)
Ross Finnie (Minister for Environment and Rural Development)
Lewis Macdonald (Deputy Minister for Transport and Planning)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Tracey Hawe

ASSISTANT CLERK

Alastair Macfie

LOCATION

Committee Room 2

Scottish Parliament

Transport and the Environment Committee

Wednesday 26 September 2001

(*Morning*)

[THE CONVENER *opened the meeting at 10:03*]

The Convener (Mr Andy Kerr): I begin by welcoming members of the press and public alike to this meeting of the Transport and the Environment Committee. We have received apologies from Nora Radcliffe, who is attending the Liberal Democrats' conference in Bournemouth. I hope that her weather is better than ours.

Today's agenda has been revised, primarily to allow us to consider a motion for annulment that was lodged on Monday.

Item in Private

The Convener: Item 1 on the agenda invites the committee to take item 7 in private. Item 7 is our consideration of how to approach stage 1 of the Water Industry (Scotland) Bill, which we expect to be referred to this committee. Do members agree that we should consider that item in private?

Members *indicated agreement.*

Subordinate Legislation

The Convener: I welcome the minister and his officials to discuss agenda item 2, which is to consider a draft affirmative instrument—Special Grant Report (No 4) and Guidance for Local Authorities: The Domestic Water and Sewerage Charges (Reduction) (Scotland) Regulations 2001 (SE 2001/132). We have with us Ross Finnie, who is the Minister for Environment and Rural Development, and Mike Neilson and Paul Neison. Members have received a cover note on the instrument.

The report was laid on 31 August 2001 under the affirmative procedure, which means that the Parliament must approve the report before its provisions may come into force. The Minister for Environment and Rural Development has accordingly lodged a motion—S1M-2192—that the Transport and the Environment Committee recommends approval of the report to Parliament. The Subordinate Legislation Committee considered the instrument at its meeting on 11 September and agreed that no points arose. The committee's 31st report of 2001 indicated that the committee did not wish to draw the attention of Parliament to the instrument. The Transport and the Environment Committee is required to report on the instrument by 1 October 2001.

We will follow our standard procedure for handling affirmative Scottish statutory instruments. Members will have time to ask questions of the minister and his officials; the minister will then formally move motion S1M-2192, which may be debated prior to a decision. The Executive officials may not contribute to any formal debate after the minister has moved the motion—although, of course, MSPs may do so. I caution members that the debate on the instrument must last no longer than 90 minutes—I hope that I am not tempting fate. I invite the minister to make any opening remarks that he wishes to.

The Minister for Environment and Rural Development (Ross Finnie): Thank you, convener, but I think that I would have to speak very, very slowly if we were to take up the whole of the 90 minutes. However, I will not do that; I will simply thank you for the opportunity to present the special grant report which, as you indicated, is subject to the affirmative procedure and is being brought to the committee for its approval.

The report was prepared by officials following discussions with the Convention of Scottish Local Authorities. Put simply, it provides a method of reimbursing local councils for costs incurred in implementing the domestic water and sewerage charges reduction scheme, which was, of course, approved by the committee in spring 2001. The domestic water and sewerage charges reduction

scheme utilises information that local councils maintain and update while administering council tax benefit. The link to council tax benefit places local councils in an ideal position to adjust existing procedures to implement the scheme at minimal additional cost. Such an approach ensures that the costs incurred in introducing and administering the scheme will be less than 6 per cent of the £24 million that is available to the scheme.

I am happy to answer any questions.

Fiona McLeod (West of Scotland) (SNP): The grant deals with the present transition scheme; at present, we have three water authorities and billing is done through the 32 local authorities. Will a similar grant be available to the single authority, Scottish Water, should it be offered and decide to take on the ability to bill its customers directly?

Ross Finnie: We are talking about two separate schemes. We have to be careful and keep the Presiding Officer in mind: I would not wish to presume even the introduction of a bill, far less its passage through Parliament. I hope that the *Official Report* will note that comment, because I know that the Presiding Officer is prickly about such matters.

Fiona McLeod: I should have said "if".

Ross Finnie: The first thing to acknowledge is that the bill will simply provide for appropriate charging mechanisms. I do not think that anyone would expect, in the initial stages of bringing the three water authorities together, any immediate change in those mechanisms. That is not to say that the matter will not have to be addressed by the new authority. However, it is a matter for a later stage, given the complexity of bringing the industry together first.

Whether there will be relief of any type will be a matter for legislation, and it will be for the Executive to introduce such legislation. As ever, it will be for Parliament and this committee to consider those matters and to make recommendations. However, nothing in the present bill rules out such future legislation.

John Scott (Ayr) (Con): In the interim, will the minister consider imposing uniform charging on the three water authorities? They are to be amalgamated but, at the moment, they have different charges for different charitable functions. That seems anomalous.

Ross Finnie: That will be wrapped up with the charges procedures. We are taking instruction from the water industry commissioner about the level and nature of charging. One of the instructions that we have passed on to the commissioner is that he should seek to harmonise charging across Scotland over the charging period 2002-06.

The Convener: I thank the minister for his comments and invite him to move the motion.

Motion moved,

That the Transport and the Environment Committee recommends that the Special Grant Report (No.4) and Guidance for Local Authorities: The Domestic Water and Sewerage Charges (Reduction) (Scotland) Regulations 2001 be approved.—[*Ross Finnie*.]

Motion agreed to.

The Convener: As there are no further questions, I thank the minister and his officials. You were not too taxed this morning, but we will get you next time.

Ross Finnie: We are obliged.

The Convener: I now crave the committee's indulgence in the interests of good time management. We cannot take the motion to annul the other statutory instrument before 10.30 am. However, we could deal with items 4 and 5 on the agenda if we brought those forward. That would save us holding back for 20 minutes. Is that agreed?

Members *indicated agreement*.

The Convener: Item 4 is consideration of the Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2001 (SSI 2001/251). The appropriate covering note on the instrument has been circulated. The instrument was laid on 29 June 2001 and the regulations came into force on 1 July 2001. The order was laid under a negative procedure. The time limit for parliamentary action expires on 7 October 2001. The committee is required to report on the instrument by 1 October 2001.

SSI 2001/251 corrects an error to the principal regulations, SSI 2001/219. The committee considered those regulations on 5 September. Details are contained in the covering note.

Are all members agreed on the contents of the committee's report on the instrument?

Members *indicated agreement*.

European Document

The Convener: The document has been circulated to members of the committee. It is about promoting non-governmental organisations that are active in environmental protection. The document has been referred to the Transport and the Environment Committee by the European Committee. All matters are laid out in the report for members' information.

We are asked to consider the document and to provide the European Committee with any comments that we think should be taken into account when that committee consults Scottish NGOs.

John Scott: I seek clarification on the cost of the policy. The proposal is to extend the programme from a four-year period to a five-year period. The cost appears to go up from €10.6 million to €32 million. Although the geographical spread is to be widened, from what I have read—I might not have read as much as I should have done—I cannot see why there should be a threefold increase in cost. To go from a four-year period to a five-year period implies an increase of 25 per cent, which would be €2.5 million. I do not think that widening the geographical spread should require the remainder of that money. Can you advise me why the increase is so big?

The Convener: I cannot advise you on that. It will form part of our observations and comments to the European Committee. We will seek that clarification when the European Committee discusses the matter in detail.

John Scott: It seems to be a huge increase in public expenditure and, from what I have read, I cannot see that a case has been made for that increase.

The Convener: That is a relevant point and we will seek clarification on it from the European Committee.

10:15

Fiona McLeod: The European Committee intends to consult a number of environmental NGOs. I would like to know what form that consultation will take and when it will take place. If the European Committee is going to call witnesses, could this committee be informed so that some of us could attend that meeting? If the consultation involves written submissions, could they be copied to this committee?

In response to what John Scott said, I argue that the programme has to grow because it has been so successful. That is the whole point. Something that worked is to be continued in future.

If we do not have an opportunity to speak to the environmental NGOs through the European Committee, I would like that committee to find out whether the fact that the NGOs must be active at a European level in at least three countries would hinder Scottish NGOs in applying for the money. As an additional point, do the four UK countries count as more than three European countries?

The Convener: I surmise that the answer to that question is no. You know the answer to that one yourself.

Robin Harper (Lothians) (Green): I reinforce all the points that Fiona McLeod has made. The NGOs have not lobbied me at all on the subject, so I am hesitant to comment on the document at the moment. However, I believe that it would be useful for the committee to listen to the NGOs when they come to the European Committee.

John Scott: For the avoidance of doubt, I am not against the NGOs. I am seeking clarification of why the budget has undergone a threefold increase.

The Convener: Paragraph 13 of the covering note states that the increase

"is necessary to allow for the extended length and geographical scope of the programme."

You are right to say that that seems odd. Fiona McLeod is correct that the scheme has been successful and requires to grow. However, the explanation of the increase is specific; it is to allow for the extended length and geographical scope.

John Scott: I have read the parts about geographical scope but they do not make the issue clear.

The Convener: That is a relevant point and we should make further inquiries about it. We will report back to the committee in due course. The points that members have raised will be forwarded to the European Committee for consideration.

I now crave the committee's further indulgence. Those members who said that they would be coming today are already here. We have another document to discuss, but the problem is that members of the public are expecting the committee to deal with the Caledonian MacBrayne issue at a certain time. We might inhibit their ability to be present for that discussion if we consider the document now.

We have two choices. We can take a break until 10.30 am, when the Deputy Minister for Transport and Planning will arrive to deal with the annulment motion, or we could continue with the items on the agenda.

John Scott: I suggest that we consider item 7 in private now.

The Convener: I therefore crave the indulgence of the members of the public who are present. We will go into a short private session to consider our report under item 7. I apologise for all the confusion, but this is the best management of our time and your time.

10:18

Meeting continued in private.

10:43

Meeting continued in public.

The Convener: I thank the minister and his officials for agreeing to attend this morning's meeting at fairly short notice.

Members will be aware that, last week, we agreed to defer consideration of the Town and Country Planning (General Permitted Development) (Scotland) Amendment (No 2) Order 2001 (SSI 2001/266) and to write to the Scottish Executive to seek clarification of a phrase in the instrument relating to the completion of a telecommunication development.

I have written to the Deputy Minister for Transport and Planning and members have been issued with copies of the response that I received. Members will be aware that a motion to annul the instrument has been lodged by Fiona McLeod. A paper was circulated on Monday setting out the procedure for a debate on a motion to annul.

We had a substantial discussion with the minister of the instrument's provisions at a previous meeting, but members might want to clarify some technical points or raise other issues with the minister and his officials in advance of the debate on the motion. I remind members that the officials cannot contribute once we move to a formal debate on the motion.

I invite the minister to make any opening remarks that he feels are appropriate.

10:45

The Deputy Minister for Transport and Planning (Lewis Macdonald): I will confine my opening remarks to thanking the committee for the invitation to discuss the matter.

I am here with John Gunstone, whom the committee has met before, and Flora Campbell.

Fiona McLeod: I apologise for the fact that we gave you such short notice that we would like you to attend today's meeting, but we received your letter only on Saturday morning, which meant that Monday was the first opportunity we had to invite you.

Before we come to the formal debate, I would like some information on a few specific items. The debate is not merely a political process; it is to do with helping communities that have doubts, local authorities and companies. One of the major areas of doubt relates to the definition of an installation that has been completed within 14 days. Even after our discussion a fortnight ago and the letter that you sent, I am still unclear about the matter. I will take a forensic approach and highlight the areas that I think are causing problems.

In your letter, you talk about what would constitute development under the Town and Country Planning (Scotland) Act 1997. The penultimate paragraph says that the attachment of a cable to the leg of a mast may not constitute development in all cases. Annexe A of the Scottish Executive development department circular 5/2001 deals with definitions—I feel like a lawyer now; it is a pity that I am not paid like one. It says that section 4(1)(d) of the Telecommunications Act 1984 defines as a telecommunications system a system for the conveyance of

"signals serving for the actuation or control of machinery or apparatus".

I would say that that is in contention with your statement that the attachment of a cable may not constitute development.

Section 4(3) of the act defines as a piece of telecommunications apparatus any apparatus

"which is designed or adapted for use in connection with the running of a telecommunications system".

A couple of the on-going disputes between local authorities and power companies relate to the laying of power cables or fibre optic cables that send the information that makes the mast work.

I put it to you that, given the terms of the 1984 act, unless a development was totally completed—built, powered and supplied with data—within 14 days of 23 July, which would be 6 August, the companies could not continue to operate the development. I would appreciate guidance on that matter.

Lewis Macdonald: We have been careful not to say that that need not be the case—I hope that you do not mind my use of the double negative. The question of what may or may not constitute development in that context is not one that is absolutely firmly defined in the legislation. At any point in the planning system, what constitutes a development is open to interpretation. The obvious area for debate on the interpretation of the area that we are discussing is how far a cable that is there for the supply of electric power, for example, is part of the telecommunications system, as distinct from the cables that are there for the broadcasting of radio frequency emissions. I can see that there is perhaps room for dispute in that regard. That is why we have not attempted to

provide an absolute definition of what constitutes development in this context.

The general principle involved in this matter is that it is for Parliament to make law and it is for the Executive, in proposing law, to explain its intention. At the end of the day, the interpretation of law is always a matter for the legal process and the courts. As far as we can, we have explained the intention and have drawn up the legislation to deliver on that intention, but we cannot offer a 100 per cent definition of how the situation should be interpreted in law.

When there are disputes of this kind, we want authorities and operators to seek a positive way forward, rather than try to find infinitesimal legal differences. Those on both sides of a dispute who are unwilling to compromise will, soon afterwards, have to sit down and talk to the same people about another project and might regret not having taken a more positive approach in the first place.

Fiona McLeod: I feel that we have entered an area that would be better dealt with during the formal debate. I hoped that we could use this informal session to seek greater clarification of, for example, the parts of the Telecommunications Act 1984 that I have quoted. If you do not feel able to provide such clarification, we will reach a stalemate and I will have to wait until we enter the formal debate.

The Convener: Minister, would you like to respond to that or move on?

Lewis Macdonald: If we move on, I will return to the matter at a later date. Unless I have misunderstood Fiona McLeod, the fundamental question she is asking is to do with the precise interpretation of the law. The answer to that is that, although we may have views, the law is for the courts to interpret.

Bristow Muldoon (Livingston) (Lab): What would be the impact of Parliament annulling the order? Would it address Fiona McLeod's concerns with regard to improving the ability of communities to object to particular developments that took place around the 14-day transitional period or would it produce less clarity for the courts to interpret?

Lewis Macdonald: I think that it would reduce the clarity for reasons that I will explain in the course of the debate.

The question of what constitutes development is quite separate from that of the transitional arrangements introduced under the order. Had we not introduced a transitional arrangement, the question of what constitutes a completed development would have arisen at another stage. The example that has been used—whether an electrical power cable is part of the telecommunications development—would have had to be dealt with regardless of whether there was a transitional arrangement.

Robin Harper: It seems that the minister is telling us that, where there is confusion, communities might have to go to court.

Does the minister's team have examples of legal judgments in other planning contexts that might reassure communities that going to court could be productive?

Lewis Macdonald: I will defer to my colleagues on that question. For clarification and to assist them, are you asking whether there are other cases of a community or a planning authority wishing to dispute the definition of a permitted development?

Robin Harper: In other planning contexts.

Lewis Macdonald: If you mean in any planning context in which the development has gone ahead, no case occurs to me.

Flora Campbell (Scottish Executive Finance and Central Services Department): I cannot think of any specific cases, although much has been written about what is development.

Development is defined in the legislation. Thereafter it is a matter for the planning authority to assess whether development has occurred in the particular circumstances.

Lewis Macdonald: Another aspect is the authority's enforcement of the planning system, which is a matter for planning authorities. Off the top of my head, I can say that there have been other cases in which enforcement action has been taken successfully when there has been a dispute about whether something was permissible under the terms of planning permission or the conditions attached to it.

The Convener: If there are no further questions, we will move to the debate on motion S1M-2246, in the name of Fiona McLeod.

Fiona McLeod: I want to put on record that it is unhelpful that the only wording that I could use in the motion was that "nothing further be done" because nothing could be further from my intention. I hope that if the committee agrees with my reasoning and votes accordingly, the minister will go away, pick up the points that need clarification and produce a new guideline swiftly, which will negate all the current problems. I feel that it is important to record that in the *Official Report* and that we should also produce a new set of words for the rest of the Parliament.

The main reason that I lodged the motion for annulment is that SSI 2001/266 is deficient. We should not be surprised that it is defective and deficient as it was rushed in at the end of last term

and breached the 21-day rule. A letter had to be sent to the Presiding Officer to explain why that had happened and to make the argument for doing it. We already know that the legislation is defective and deficient because just days before it was due to come into force, the original order had to be withdrawn and replaced with the one that we are discussing now. There have been problems with the guidelines since June.

I have already quoted the example that causes most concern at the moment and I will repeat it in this part of the debate. One of the biggest problems is that the order was introduced within two days, to allow the 14-day period of grace. Therefore, installations had to be completed by 6 August. Much of the order's deficiency hinges on the fact that the legislation was rushed in within two days. It was not thought through and we did not have a definition of "completed". The letter that we received from the minister last Friday contradicts circular 5/2001, national planning policy guideline 19 and planning advice note 62. I have already quoted the parts from circular 5/2001 that give cause for concern. Those are the definitions of what an installation is, contained in the Telecommunications Act 1984—mainly in section 4(1)(d) and in section 4(3), which I have already quoted.

It is important that we take that on board because, as of yesterday, I know of at least four local authorities in Scotland that are facing a lot of pressure from different telecommunications companies. They may eventually have to resolve those problems by going to court and I do not think that it is appropriate that local authorities should have to spend taxpayers' money testing a deficient and defective guideline in the courts.

The issues that the four councils that I have contacted and have information about are facing are not all based on the power and cable supply problems that I brought to the committee's attention. There is talk of one mast for which no fence was erected, although it is clear from the guidelines, the circular and the Telecommunications Act 1984 that a fence is part of an installation. Without a fence, therefore, an installation cannot be complete. In another case, an antenna is missing. Again, the NPPG circular states that an antenna is an intrinsic part of a telecoms mast. If it was not there by 6 August, I would say that that mast had not been completed. Councils face wide-ranging problems relating to interpretation of the guidelines.

11:00

Lewis Macdonald said in his opening remarks that not everything can be firmly defined in legislation, that there is room for dispute and that he wants that. He also said that the Government may have views but that interpretation lies with the courts.

I contest that view on a number of points. I bring to the minister's attention the introduction to the planning series, which says that NPPGs

"provide statements of Government policy"

and that

"Circulars … also provide statements of Government policy".

If it is a statement of Government policy, it should be clearly defined and definitive; it should not be up to the courts to interpret it. My understanding is that the courts will not interpret a defective instrument, but will simply dismiss it. If they did that, we would be back where we are, with the guidelines needing to be clarified and replaced.

It is completely inappropriate that local authorities and communities should have to take on the financial penalty of tackling incompetent legislation through the courts when they are dealing with a brand new piece of legislation that is accompanied by an enormous amount of guidelines, guidance and explanatory notes.

Members will not be surprised to hear me say that, had the Executive accepted the SNP's position on full retrospective planning permission for all masts, we would not be in the position of interpreting what the 14-day grace period means, or what a completed or uncompleted installation is. I hope that the minister and the committee will agree that the legislation is defective and deficient. Rather than put local authorities and communities on the rack, as they are at the moment, and through the courts, with all that expense, the minister should withdraw the order and come back quickly with legislation that is fixed and ready to be implemented throughout the country.

I move,

That the Transport and the Environment Committee recommends that nothing further be done under the Town and Country Planning (General Permitted Development) (Scotland) Amendment (No.2) Order 2001, (SSI 2001/266).

Lewis Macdonald: First of all, I want to take on Fiona McLeod's allegation that the legislation is in some way defective and deficient. We have discussed the reasons for introducing the legislation when we did. It is worth reminding ourselves of the work that was done by the Transport and the Environment Committee, the Executive and the many others who contributed to the consultation, to achieve the outcome that the order that we are considering today implements in law—the introduction of planning controls to the telecommunications industry.

Having reached that point, we were right to press on and implement the order at the earliest date. We did that in June and, as Fiona McLeod

said, we explained to the Presiding Officer our reason for doing so—it was because we were particularly committed to implementation at the earliest date. I therefore make no apology for the timetable. As with all matters legislative, we wished to proceed as quickly as we could. That is what we did, and we have produced the legislation that is before us today.

On the question of completed development—with which we began—there are issues of definition in relation not only to this legislation but to the whole spectrum of development decisions that lie before planning authorities and on which planning authorities have to make judgments. In introducing the legislation, we were mindful of what we regard as a fundamental principle of the planning system, which is that we leave as much discretion and latitude as possible to planning authorities as the representatives of local communities. Having said that, it is true to say that the NPPGs and the accompanying documents are statements of Government policy. Members will be aware from our discussion on the review of strategic planning a couple of weeks ago that we are keen to give the NPPGs even greater force in that regard. However, all policy, like all law, is subject to the interpretation of the courts. The fact that the legislation is Government policy gives it force and is one of the considerations that would come into play in a judgment on a particular case. It is for planning authorities to make planning judgments with regard to carrying out enforcement action.

The Executive's general position is that we should not discourage planning authorities from carrying out enforcement when it is believed that developers have ignored conditions or the terms of any permission granted. As I said, the issues that we are discussing would apply regardless of whether transitional arrangements were in force.

With regard to Fiona McLeod's motion, we must be aware of the consequences of annulment. I want to address the transitional arrangements and the need for the introduction of the second order during the summer.

Having introduced the initial order in June, it was clear that it raised a number of legal possibilities. As I said, legal interpretation must always be a factor, which is why we wanted to reduce the scope for legal uncertainty. That is why we introduced the transitional arrangements when we did. Because there was no previous case of permitted development rights being withdrawn and replaced with a requirement to seek planning permission, there was no existing case law. That meant that differing views might be held by various people. It quickly became clear to us that among planning authorities and developers there were at least two and perhaps three differing views about how the withdrawal of permitted development rights would work in practice. The industry expressed a view that any development that had commenced before 23 July, under permitted development rights, would continue to be permitted. That meant that a construction that began on 22 July 2001 and was completed by 22 July 2002 would benefit from the permitted development rights.

An extreme version of that view was that, as long as a development had been notified under permitted development rights—for example, if it had been on a list of 20 developments that was submitted to a local authority—it would be permitted even if it had not begun by 22 July. Another view was that the withdrawal of the permitted development rights took effect at midnight on 23 July, after which no further development would be allowed.

We were keen to remove such ambiguities, which is why we introduced the order, which made it clear that no development could begin after 23 July and benefit from rights that were withdrawn on that date and that any development that was in progress on that date could benefit from permitted development rights only if it were completed within the 14-day period of grace, which has long since expired. Because that period has long since expired, the annulment of the order would not have any impact on the additional elements introduced by the order.

In answer to Bristow Muldoon's earlier question, it is worth making it clear that anything that was done under the order in that 14-day period would not be affected by the annulment of the order. Therefore, in material terms, the removal of the transition period—the annulment of the order—would not delegitimise or take away the rights under which any development was completed during those 14 days. The annulment has no impact on development on the ground. The legal position is pretty clear from the statutory instruments that govern the work of Parliament—rights acquired under legislation are not removed by the later repeal of that legislation. The fact that acquired rights are not affected is an important point.

Equally, although there is room for conflicting legal opinions, the revocation of the present order would not—in our view—revive the initial order. Again, it is important to be clear that the order, like statutory instruments in general, comes as a whole and includes the entire planning control system that we introduced for other problems, as well as the transitional arrangements that we added. It is our opinion that the revocation of the order would lead us where no one wants to go—into an area of great legal uncertainty. To me, the one certainty is that the planning system that we

introduced under the order would cease to apply.

We have talked before about the fact that many people in the industry recognise the change in circumstances that the planning system has imposed on them and are increasingly willing to talk to planning authorities about how to proceed with the roll-out of their programmes. We do not want to offer any temptation to those in the industry who might take a different view and regard the repeal of the legislation as an opportunity to go out and resume the erection of masts under the former regime.

We do not want to go down that road. The proposed annulment of the order would plunge us all into great uncertainty and would do nothing to assist local communities in making their views known. On that basis, I hope that Fiona McLeod will reconsider and withdraw her motion.

The Convener: Thank you very much.

On the wording of the motion to annul, chamber office and standing orders practice are employed. I am advised that at Westminster they pray against such instruments. The Scottish Parliament's system of conducting its business is much more understandable and orderly.

Bristow Muldoon: The position that Fiona McLeod is coming from is clear: she believes that the legislation should have been tougher. I recognise that that has consistently been her position, but we must analyse what effect the annulment she proposes would have. As the minister clearly laid out, the impact would be to throw the system that has been introduced into disarray. Fiona McLeod's argument is bizarre. She states that she seeks to improve the rights of communities, but annulment would reduce the rights communities currently have to influence the developments that concern them.

It also seems bizarre to argue that the courts should not have a role to play in adjudicating in disputes between planning authorities and developers. I would be interested to hear from others who might support annulment an explanation of what other system of adjudicating on such disputes about legality they would propose to introduce.

The minister has laid out clearly why the revised statutory instrument was produced: to define clearly the transitional period so that if any disputes could not be resolved by discussion between the planning authority and the telecommunications industry, the Executive's intent would be clear and the courts would therefore have information on which to base their decisions.

All that is being rerun is the SNP's loss of the argument about introducing retrospective legislation. It wants to make that argument again and again. Given that the SNP says that it does not want communities or planning authorities to use up time and money in court, it seems bizarre that it is arguing again for retrospective legislation that would have no effect other than regularly to put planning authorities in court with telecommunications companies. We should reject the motion that Fiona McLeod has lodged and allow the statutory instrument to proceed.

11:15

Robin Harper: I have much sympathy with the arguments that Fiona McLeod made and particularly with her reiteration of the committee's original stance that all masts should require full planning control. I regret the fact that the Executive did not take that recommendation on board.

The way in which the committee deals with statutory instruments rarely gives us enough time to discuss them in the detail that we would like. Today's situation is a good example of that problem. We have had only two days in which to consider Fiona McLeod's motion and we are in danger of committing the same mistake as Fiona laid at the Executive's door—rushing in legislation to cover a gap too quickly.

I listened carefully to the minister's explanation of the problems that would ensue if we annulled the order and to what he said about acquired rights not being affected by the order's revocation. At present, I shall continue to listen to the arguments. I offer no consolation to the SNP or the Executive. I am minded to abstain on the motion, because we have had insufficient time to give the instrument the consideration it deserves.

Maureen Macmillan (Highlands and Islands) (Lab): I appreciate that the Executive's instrument will leave some questions about what constitutes a completed development, but most cases could be sorted out with common sense from the planning authority and the telecommunications company involved. Making a list of everything that is allowed and not allowed is inflexible and puts a straitjacket round a planning authority, which may want to suit its local area. We cannot have the inflexibility of everything being cut and dried. Local authorities must have some flexibility in planning.

I appreciate what the minister said. If we annul the instrument, the transitional arrangements will fall and no one will know what is and is not permitted. We could descend into a chaotic system. I do not agree with the SNP on retrospective legislation, which would be a recipe for disaster. As Bristow Muldoon said, people could be in the courts for years on that.

The telecommunications industry is extremely

important to us. We all need our mobile phones. As a Highlands and Islands MSP, I need my mobile phone for communication. Another Highlands and Islands MSP—Mr Duncan Hamilton—has said, "Right enough, as a Highlands and Islands MSP, there are times when I need to know the party line fast and I cannot get through to SNP headquarters on my mobile."

Des McNulty (Clydebank and Milngavie) (Lab): That is because the SNP has no policies.

Maureen Macmillan: That may have been uncalled for.

We must take a sensible decision about whether we want telecommunications to progress in a regulated way, whether we want to allow local authorities flexibility or whether we want to put a straitjacket on them. We do not want to descend into chaos—[*Interruption.*]

The Convener: That mobile phone ringing is an irony. Perhaps it is Duncan Hamilton phoning the Press Association.

John Scott: This is about achieving a balance. I am trying to reconcile in my mind what the minister said about the need to leave latitude for planning authorities with his desire to reduce legal uncertainty. The two seem to conflict slightly, but the balance is probably right—when there is legal uncertainty it is for the courts to decide.

Perhaps I am naive, but it is unfair to Fiona McLeod to say that the SNP is trying to introduce retrospective planning: that is not what she is trying to do. Nonetheless, I will vote to approve the instrument.

Des McNulty: Transitional arrangements are inevitably messy because it is difficult to introduce a new regime and to replace an old one. I am not sure that the mechanism that was introduced was a particularly happy arrangement. In Baljaffray, which is in the area that I represent, people were concerned about the transitional arrangements and the fact that they had to fight a second battle with one of the mobile phone companies. I am concerned that Fiona McLeod's proposal might result in the people of Baljaffray being in the same situation for a third time—they would have to defend their area against an inappropriate development that would be close to a primary school and a nursery. For that reason, I strongly oppose Fiona McLeod's proposal.

One point that was central to the committee's initial discussion has been missed in the debate—of the members present, only Robin Harper, the convener and I were committee members during the lengthy sessions on the matter. We argued strongly that there needed to be continuing dialogue between local authorities and the telecommunications companies that are involved with implementing development plans. We felt that such dialogue was a way of avoiding in the medium term unsuitable new sites and of dealing with some of the existing unsuitable sites. Given that planning controls are with local authorities, I cannot see why it is in the interests of telephone companies to be engaged in a long process of litigation over transitional arrangements because there is a longer-term game. Because of the legislation, those companies must engage with local authorities.

I am not concerned about the legal issues, but it is essential to promote dialogue. Fiona McLeod's motion to annul the instrument is the wrong mechanism to make a political point and it is not well matched.

Mr Adam Ingram (South of Scotland) (SNP): I agree with Robin Harper and John Scott's point about the lack of time for consideration. I have just joined the committee and the volume of material on the telecommunications industry is large.

The gist of Fiona McLeod's argument is to point out the inconsistencies between the circulars—or policy documents—that were produced by the Executive, and the instrument. That is an important point and the minister admitted that one of his goals is to reduce the scope for legal argument and interpretation. The committee and the minister have a duty to produce sound legislation. The allegations that Fiona McLeod's proposal is a party political exercise are unfortunate to say the least.

I have learned something from the debate. If I were to be cruel and party political, I would say that the department has not exactly covered itself in glory with its competent handling of the production of material and policy documents—or even the administrative process—but I will not do that. Fiona McLeod has raised the issue in a valid manner and I will certainly support her.

The Convener: All members have had the opportunity to speak. Unless other members have anything pressing to say, it is my intention to ask the minister to respond to the debate and then to ask Fiona to close on her motion.

Lewis Macdonald: This has been a constructive exchange of views; it is clear that there are a number of views in the committee. It is important to reiterate that the policy of transitional arrangements was deliberately undertaken. Adam Ingram kindly refrained from the temptation to be critical of the process. In fact, in the past few weeks we have produced new versions of the national planning policy guideline and planning advice note, and a further circular, all of which create a clear, positive and helpful framework for planning authorities to determine how to apply the new planning regime to the telecommunications

industry. Planning authorities and telecom operators have commented on the usefulness of those documents in guiding the kinds of development that will be acceptable to all sides and encouraging the kind of positive dialogue that has been mentioned by one or two members of the committee as critical to how we proceed on this matter.

Baljaffray was mentioned—I was very aware of that at the time. It is important to note that the transitional arrangement we introduced was for an extremely limited period for the completion of developments that had already been undertaken. I will not pretend to engineering expertise in the field, but I am talking about the kind of developments—in the one or two disputes that still continue—that are more or less complete. The developments that stood to benefit in any way from the transitional arrangement were those that were already well under way. It was not the planning authorities but the telecom operators who complained to us about the nature of the transitional arrangement and the fact that it did not allow them a lot of latitude in practical terms. The purpose, of course, was that no latitude should be allowed other than for the completion of projects that had genuinely already begun.

John Scott, Robin Harper, Adam Ingram and others have said that there is a need to find a balance between flexibility and local discretion on the one hand and a clear legal framework on the other. The Executive's role is not to provide a detailed guide to case-by-case disputes but to minimise the occurrences of disputes and provide a clear legal framework within which negotiations can go ahead. We have done that clearly and effectively, but we will monitor carefully the arrangements we have put in place and the ways in which telecom operators and planning authorities implement those arrangements.

It is in nobody's interests for planning authorities and telecom operators to get bogged down in detailed legal disputes over the handful of cases that have been mentioned here, where there is some doubt about whether completion was achieved by 6 August. The big picture for planning authorities and telecom operators is maintaining the authority of the planning system as the voice of local communities in dealing with the roll-out of the next generation of mobile phone telephony. If that is to happen, people will have to learn to talk to each other in a positive way and not get bogged down in legal dispute. We will keep the regulations under review and monitor their application.

Fiona McLeod's motion does not assist in any of that: it only offers more uncertainty and instability. We want to provide a period of certainty and stability that will allow negotiations to go ahead positively around the roll-out of third generation networks. Again I ask Fiona McLeod to consider withdrawing her motion. We have heard what has been said and we are keeping a close watch on how matters work out in practice. I urge members to consider the bigger picture.

11:30

The Convener: I offer Fiona McLeod the opportunity to make some concluding remarks and ask her to indicate whether she wants to press her motion.

Fiona McLeod: I will press the motion and I hope to outline why. The minister was with us a fortnight ago discussing this matter, which means that we have now had three debates on it. The reason for that is the ambiguity that surrounds the guidelines. I reiterate that the motion was the only mechanism available to me: we cannot amend guidelines; we can only accept or reject them. I also contend that the motion gave the minister a mechanism for clearing up the ambiguity, especially the ambiguity over the transitional arrangements.

The minister could have cleared up—a fortnight ago, earlier today or in this debate—the ambiguity about what a completed installation is. That action would have saved four local authorities and at least three telecommunications companies the cost of going to court. It would also have saved hundreds of local residents the anguish that they are going through and the pain and cost of having to go to court.

I must press the motion because, in his final statement, the minister introduced more ambiguity when he talked about a completed installation and then added: well, a more or less completed installation. The ambiguity around the 14-day period and what a completed installation is could have been sorted today, but the minister has not taken that opportunity, so I must press my motion.

The minister talked about leaving discretion and latitude to local authorities. Perhaps it is only in the West of Scotland that we have telecom companies coming in and trying to throw things up in 14 days, but I do not believe that I am the only MSP who has suffered what I have suffered in the past six weeks. The discretion and latitude that the minister talked about leaving to local authorities' planning departments has just resulted in loopholes that have been seized upon by telecommunications companies.

The minister said that he wants compromise and dialogue, but where are the telecoms companies going in the future? It does not bode well for the future that telecoms companies are virtually saying to local authorities, "Take us to court. We're going ahead. We're doing it." A telecoms company has billions behind it. A local authority does not have

the money to go to court. Again, those are reasons why I feel that I have to press the motion.

The Convention of Scottish Local Authorities told the Executive, after July, that there were problems. It anticipated the problems. COSLA has now been back to the Executive to say, "We've got these problems. Will you just define it? Will you advise us? Will you tell us what to do?" It is utterly deficient of the Executive to say, "There's your guidelines. Take them or leave them. We leave it up to you." I hope that the committee agrees with me that we say to the minister today, "Please. Go away and come back with no ambiguity, but with a clearly defined guideline that everybody knows how to put into place."

Members ask what would happen if my motion were successful. They say that it would throw everything wide open. Well, the telecoms companies are already in there like sharks. I do not think that we would be making any difference. I remind the committee that it is barely two weeks since this same department brought to the Parliament a piece of legislation that was applied retrospectively. Can we not ask the minister today to go away and produce new guidelines on the same level as he had to do with the Erskine Bridge Tolls Act 2001? Retrospective legislation is possible. We have done it.

The Convener: I now move to the formal bit of our proceedings, which is to put the question. The question is, that motion S1M-2246, in the name of Fiona McLeod, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fiona McLeod (West of Scotland) (SNP)
Mr Adam Ingram (South of Scotland) (SNP)

AGAINST

Mr Andy Kerr (East Kilbride) (Lab)
Des McNulty (Clydebank and Milngavie) (Lab)
Bristow Muldoon (Livingston) (Lab)
Maureen Macmillan (Highlands and Islands) (Lab)
John Scott (Ayr) (Con)

ABSTENTIONS

Robin Harper (Lothians) (Green)

The Convener: The result of the division is: For 2, Against 5, Abstentions 1.

Motion disagreed to.

The Convener: The committee has decided not to recommend annulment. That means that there will be no debate in the chamber, but the committee must still report to Parliament. I therefore suggest that we simply report the results of the committee's debate on Fiona McLeod's motion in the usual manner. We can confirm that we had a discussion and that annulment was not agreed to. Are members agreed?

Members *indicated agreement*.

The Convener: I did not take part in the discussion—leaving it to members was useful.

The committee has almost come to the end of a long process, which has been enjoyable for those of us who have survived it over the months and years. We should not forget that we started from a position of general permitted development rights and progressed to full planning controls over ground-based masts. There are now fairly strict limitations on what can be done in respect of non-ground-based masts. Communities are now much more heavily involved in the process.

We did not get everything we requested, but the arguments have been well rehearsed—health is a material consideration in telecommunications planning—and we have moved forward significantly in involving communities in the process. Significant developments have taken place in the past couple of years, which are a good advert for the Parliament's committee system.

It is ironic that statements have been made about the plethora of documentation—we asked for that documentation. We also demanded that the Executive act quickly. I would argue that the process has been fairly quick and that we have maintained accountability throughout.

It is clear that we need to work with the industry. The message must go out loud and clear that telecommunications are essential—they are part of our social inclusion and economic development strategies—but that we felt that the balance was wrong in respect of involving communities. We have tried to correct the imbalance and the Executive has come a long way towards correcting it. We appreciate the efforts that have been made. Perhaps we did not get everything we wanted, but we got a heck of a lot.

I did not want to involve myself in the debate on the motion, but the committee's significant achievement should be recognised. The Executive came with us on many issues that we raised.

We will close our discussion on telecommunications for the time being, but I am sure that we will return to it in the future. I thank the Deputy Minister for Transport and Planning and his officials for attending the meeting, which I hope they enjoyed. We will see them again.

11:37

Meeting adjourned.

11:44

On resuming—

Ferry Services (Highlands and Islands)

The Convener: Once again, I apologise for the topsy-turvy nature of this meeting, but it has been a productive way of getting through our business. Our final item is a paper by the committee's reporters on Highlands and Islands ferry services, copies of which have been circulated. Before we move to a general discussion, I thank Maureen Macmillan and Des McNulty for the work that they have done. I will give them the opportunity to make opening remarks on their paper, then I suggest that we take general comments from members, after which we will take action based on the report.

Des McNulty or Maureen Macmillan, do you have a view on who will go first? Des, being a gentleman—I use the term loosely—has allowed Maureen to go first.

Maureen Macmillan: First, I am pleased with the report. Everyone whom we approached co-operated, and their views were diverse. Although we have not come to conclusions on all the issues, we have pointed out where the differences of opinion might be, so that the Executive can address them. I will not go into detail, because members probably will want to pick up the aspects that most interest them, but Professor Neil Kay, who gave evidence to us, sent us a congratulatory e-mail and said that our report was excellent. I am pleased to report that to the committee.

The Convener: Des, do you want to say anything before we go through the report in detail?

Des McNulty: Just that we spoke to many people. We were particularly well supported by Tracey Hawe in assembling the evidence and putting together the report, for which I am grateful.

We wanted to ensure that all the issues associated with the tendering process were adequately highlighted, and we have done that, but there are issues that we have taken a position on.

First is the requirement for greater accountability in the way in which the new operating company will operate relative to the existing operational pattern of Caledonian MacBrayne.

Secondly, wherever possible there should be greater flexibility in the specifications, so that services can be improved rather than just maintained at the current steady state level.

Thirdly, we highlighted areas of uncertainty on the issue of the operator of last resort and the role of the vessel-owning company, and identified precautions that should be taken.

Finally, we highlighted the need for flexibility in the way in which services are thought about—for example, by linking transport issues to economic development issues in remote island areas. The report suggests that islands are different, and perhaps we must do more when thinking about transport and economic development strategies and the specific needs and requirements of islands, as distinct from other rural communities.

The Convener: I found the report useful. It raised the issues that the committee was veering towards, following the evidence that we took. The report has brought into relief some of the subjects that were dealt with and the areas that we must examine further. I repeat the thanks to Tracey Hawe, who assisted the reporters, and I invite members to comment on the report.

Robin Harper: I seek clarification. In "open to public tenders" on the third page, what are the exceptions that are referred in:

"awarded to the successful bidder (except in exceptional and duly justified cases the lowest financial bidder)"?

Des McNulty: That would apply in the context of normal tendering procedures. You are not always required to accept the lowest bid, but if you do not, you are required to provide an acceptable justification, based on the specification that you put forward, for accepting the next lowest bid.

Maureen Macmillan: There might also be questions about the viability of the company.

The Convener: The requirement of such a justification is a fairly standard practice in public procurement to ensure the transparency of the process.

Mr Ingram: Are we going through the paper section by section?

The Convener: I am taking only general questions at the moment, but if there are specific questions, we will go through the paper section by section.

The first section, which details the background, is fairly straightforward. The second section identifies the reporters and sets out what they have been doing on this issue. The last point in this section echoes Des McNulty's introductory remarks about the different transport needs in different parts of Scotland.

John Scott: I want to support Des McNulty's view that we need to treat the islands as a special case. In my previous life with the National Farmers Union Scotland, I found that the island communities faced huge problems and fought long and hard to have them recognised.

Robin Harper: I also record my agreement with Des McNulty's remarks.

The Convener: After its previous evidence-taking session, the committee felt strongly that we needed to deal with the issue sensitively as the economic and social viability of the island communities depends on the service. That is why we have taken and will continue to take such an interest in the matter. However, I am happy for John Scott to record his support for Des McNulty's remarks.

Des McNulty: It is obviously up to the committee to decide how we proceed with the matter. However, we might want to ask the Rural Development Committee also to consider the issue more actively as we continue our own work.

The Convener: That is a fair point, and I see members nodding in agreement. Perhaps we should work with Tracey Hawe to find out the best way to do that.

The next section on justification for competitive tendering concludes that, on the basis of the evidence received, such justification is necessary to allow payments to be made in relation to public service obligation contracts in line with community law.

Mr Ingram: I seek some clarification on the regulations on state aid to maritime transport. Are all subsidies that do not comply with the rules unlawful?

Des McNulty: That was the answer that we received from European Commission officials when we specifically pursued that question. We were told that there had been previous derogations on this issue, but the Commission was taking a very strong line on phasing them out as best it could. As a result, there was no scope for us to go outwith the guidelines.

Mr Ingram: So the Government could not simply claim that these services are lifeline services.

Des McNulty: No. The officials were very clear that any such action would expose us to legal pressure that they would pursue energetically.

Maureen Macmillan: We asked the officials about specific examples such as Brittany Ferries, which receives a subsidy but has not been put out for competitive tendering. However, they told us that that was because a fixed-term contract was involved, and that when the contract came to an end, the company would have to do what we are doing. As CalMac had an open-ended contract, it was open to anyone at any time to take the Government to court over it.

The Convener: If members have no other comments on that section, I will move on to the section on consultation. Do members have any questions?

Mr Ingram: The reporters state:

"Fears were expressed that the proposed five-year contract term might not provide sufficient incentives for operators to invest in new services or new vessels."

What are the options? I know that the same argument has been made about other matters, such as the rail franchises. Would it be possible to extend the contracts? Des McNulty has clearly discussed these issues. Could he expand on what is said in the paper?

Des McNulty: It was suggested that seven or 10 years might be a more appropriate period for contracts. That would provide the operator with greater security. However, if there is insufficient flexibility in the service specification, there is a danger of freezing arrangements. There is a trade-off between the greater control that shorter contracts offer and the greater security that longer-term contracts offer. We did not feel equipped to make a recommendation, but we thought that we should highlight concerns about the five-year contract period and ask the Executive to justify that.

Maureen Macmillan: We were particularly concerned that in the Western Isles there is continuing development of ferry services. For example, if a causeway is built, a ferry is no longer required. Operators may also find more efficient ways of delivering services. We were afraid that there was not enough flexibility in the system to cope with such developments and wanted to examine how greater flexibility might be achieved.

The Convener: As members have no further comments, I will move on to the next section of the paper, headed

"Issues relating to costs and transparency".

Mr Ingram: Again, I seek some information and clarification. The paper refers to "unmet demand" and provides some evidence for that from other routes. Are the reporters seeking extra information on the degree of price sensitivity? They state that

"alterations in capacity of vessels and timings of service might stimulate increased demand for services."

Basic economics tells us that cutting prices increases demand. Do we have any sense of the extent to which that may happen?

Maureen Macmillan: We do not know to what extent it may happen over the whole network. However, on the Stornoway-Ullapool route a competitor set up in opposition to Caledonian MacBrayne and took away haulage business from it. When that business was taken away, CalMac had spare capacity that was filled up with passenger cars. No one had previously been aware that that traffic had been trying to get to

Stornoway. Clearly, there was an unmet need. No research had been done into how much potential traffic there was. That traffic was constrained by the amount of service available.

Mr Ingram: It is very expensive for tourists to take their cars over to the islands. Given the tourism crisis that is upon us, which may last for a considerable period, the pricing of services is a key issue.

Des McNulty: The pricing of services is clearly an issue. It is a bigger issue for regular users of the services—those who depend on them week in, week out throughout the year. Such people experience the cost of services as an economic barrier to their development. Later in the paper we suggest that the problems of frequent users, both as passengers and as business people, should be investigated. People such as farmers and hauliers are dependent on the ferries.

Lower prices might be beneficial for tourists, but it is just as important to ensure that there is better information about the availability of ferries. We felt that CalMac is perhaps not as proactive as it should be in getting information that it has available into tourists' hands. CalMac has produced a good booklet, but it is hard to get hold of it in certain parts of Scotland.

Let me turn to flexibility of sailing times. When I went to Tiree, the point was made that three of CalMac's four sailings to the island depart from Oban at 6 o'clock in the morning. That means that anyone who wants to go to Tiree must spend the previous night in Oban. Sailing times have an impact on the extent to which tourists use the service. At the other end of the spectrum is Cumbrae, which I also visited. Cumbrae's difficulty is that the ferry stops at 7 o'clock in the evening, so people who live on Cumbrae cannot have an evening out. There are issues at both ends of the spectrum. We wanted simply to flag up the range of people's concerns to ensure that adequate account is taken of them in the specification process.

12:00

The Convener: There are echoes of our previous discussion about Highlands and Islands Airports Ltd, in which we talked about the need for the company to be more customer-focused and to increase traffic by being more flexible on flight times. It is clear that the same things apply to CalMac.

Mr Ingram: The paper talks about reductions in operating costs based on vessel deployment. Are you arguing for the routes to be tendered as one bundle on the basis that, if the operating company has a lot of vessels and a lot of routes, it will have more flexibility and could cut costs through efficiency savings?

In the final paragraph of the section that deals with issues relating to costs and transparency, the paper states that the operating company should

"be granted a higher degree of commercial freedom".

What do you mean by that? Can you give us examples of what that higher degree of commercial freedom might be?

Des McNulty: It is clear that the way in which the vessels are deployed has a crucial effect on operating arrangements and on passenger revenues. We wanted to highlight that any contract for the operating company must take account of the deployment of vessels and how decisions would be made about when new vessels would be built and what size they would be.

To put it crudely, the more vessels the company has, the more services it will be able to provide, but the more there is a potential for bigger costs. Both vessel deployment and decisions on new vessels will have an impact on operator decisions. The one entails the other; one cannot separate them out as if they do not affect each other. What the vesco decides to do will have an impact on what the opco—or opcos—decide to do.

On the issue of a higher degree of commercial freedom, we found that CalMac got into the practice of relating the service that it provides only to the whole subsidy that it receives. Given the fact that it already has the vessels and that the marginal cost of putting on an extra sailing may come from the need to pay overtime or employ additional staff, we encourage CalMac not to take a narrow view of how the subsidy works across the organisation but to look more at the marginal cost. We ask CalMac to look at the services that it provides in what is, in accounting terms, a more sophisticated way, which would generate a better service for the consumer.

The Convener: If there are no other comments about that section of the report, we will move on to the section that deals with the regulation of service delivery. I share some of the concerns about the use of the specification for regulation. Perhaps those areas will be expanded upon.

Mr Ingram: There is an implication that the reporters would be in favour of a regulator for the operating company. Are we going to move towards recommendations in due course, convener? I would like to endorse that view, if it is the reporters' firm view. The precautionary principle should apply. Although there have not been many problems to date, we must put something like a regulator in place.

The Convener: Recommendations will be made later when we consider how to proceed with the report. The reporters are saying that having a

regulator is something to consider and that we need to examine the matter further and come back to the committee with recommendations. Is that a fair summary?

Des McNulty: Yes.

The Convener: Adam Ingram has expressed his views on how he sees the issue and those are noted.

Item C of the reporters' recommendations states:

"Reporters should meet with consultants to take forward issues regarding regulation and the operation of VesCo".

Some of those issues will be taken up during that process. Perhaps one of the reporters could respond to Adam Ingram's point, but we will take John Scott's question first and maybe we could wrap up the two together.

John Scott: I agree with Adam Ingram that there might be a benefit in having an independent regulator. I would welcome that if it were one of the reporters' recommendations.

Maureen Macmillan: I have no opinion on the matter at the moment. I can see both sides of the issue and will be guided by what the committee wishes. We want to find out what the Executive's response to the paper is and to see what it has in mind in the context of our worries.

Des McNulty: We are flagging up the need to consider carefully the case for a regulator. That will be dependent, among other things, on whether one bundle or many bundles are being tendered. That will be a key factor in the equation.

The accountability regime that is constructed for the opco might be another factor in the equation. There might be a balance between external regulation and a better system of accountability in which the opco can be run. In a sense, we are flagging up the issue of accountability and it is for the Executive to make proposals. The committee's view might be guided by the tendering process and the regulations that will be proposed.

The Convener: Are there any other items on that part of the paper that members want to comment on before we move on to discuss the section on security of service and the need for an operator of last resort? That is a fairly lengthy section of the report and reflects many of the discussions that we had during our evidence-taking meetings as well as the work that the reporters did.

John Scott: The need for a lifeline support vehicle is one of the most important elements of the discussion. The whole discussion flows from that issue. We need an operator that has the economy of scale that will allow operation of a support vehicle. The whole issue turns on that. Unbundling that, in the worst case scenario, into 58 different routes would be a complete nightmare and simply impractical. The issue is key—it is the starting point from which decisions will ultimately be made.

The paper from the reporters states:

"The Minister has said that it is extremely unlikely that this situation would ever arise."

I wonder—I do not remember the minister saying it—from where the minister got that ministerial certainty.

The Convener: Do any of the reporters wish to comment on the latter point? I think that the former point is taken as read.

Des McNulty: We can see further on in the paper that we want to prepare the ground in a fairly systematic way in case the worst happens. One of the issues that we are talking about is whether the vesco is properly prepared in terms of a safety management system for an emergency situation. We have, in a sense, done some scenario planning. We want the Executive to engage, on the basis of what we are saying, in a more detailed scenario plan.

Maureen Macmillan: The Executive has been thinking in terms of a company getting into financial difficulties and not being able to proceed. It has not thought in terms of what would happen and how it would cope if there were a breakdown or some kind of shipwreck or emergency of that sort. We want to get more detail on the Executive's plans.

The Convener: We have already touched on bundling of services. Are there any other questions or comments on that section of the report? If not, we will move on to local employment issues.

Mr Ingram: Are the reporters suggesting affirmative action for Gaelic speakers in the recruitment of crew members, Maureen?

Maureen Macmillan: Yes, but I do not know whether that will be possible. I am not sure whether the European Commission will allow it, but I think that we should make the attempt. It is important, because Gaelic speakers use the services and there is growth in Gaelic speaking. Somebody told me the other day that they have a child whose first language is Gaelic, and who cannot speak English. That is an absolute turn-up for the books. If there are to be further such developments, we will need crews who speak Gaelic in case of emergency.

The Convener: Such a requirement must be developed further.

John Scott: I wish to jump back to multiple ownership of the harbours and harbour trusts,

because I did not turn the page quickly enough. It would be a huge task to try to resolve or rationalise the ownership of ports while also resolving the ferry arrangements. I question the wisdom of insisting that ownership be rationalised as part and parcel of the process.

Maureen Macmillan: Ownership of harbours was mentioned by the way; I do not think that we have any intention of getting into that matter. It is not something that we have discussed in great depth. We have merely noted the current situation and suggested that it might be reviewed.

John Scott: With respect, the wording in the report suggests that there was some intention to get into the matter. The paper reads:

"reporters would urge the Executive to take advantage of the opportunities presented by the tendering process to rationalise the ownership of infrastructure."

Des McNulty: We heard a lot of evidence, in particular from Argyll and Bute Council, about the problems that arise from different patterns of pier ownership. Maintaining piers is often viewed as a heavy burden on local authorities, although they have no voice on the operational matters relating to services. It seemed to us that, in the context of service planning, it would be rational to think about boats and piers in the same context. I do not think that we are making a hard recommendation, that boats and piers should all be rationalised under one roof. We do not indicate a final destination for the matter. It would be inappropriate for us to deal with the development of CalMac services in an area to which we will not return for 10 years without emphasising the planning infrastructure problems that were highlighted to us by the local authorities.

The Convener: Before we move on to the "Next Steps" part of the document, do members have anything else to say?

Mr Ingram: The issue of the Transfer of Undertakings (Protection of Employment) Regulations—TUPE—is alarming in relation to pension rights. The reporters themselves are obviously concerned about that and I want some clarity on it.

The Convener: Indeed. The issue of pensions has dominated our discussions on many other public sector matters and we need to keep the pressure on in that regard. I am aware that steps are being taken on that.

Let us move on to the "Next Steps" section of the report. We need to agree on the action that we will take in response to the report. We will shortly have the *Official Report* of all members' comments on the report, which will be a useful attachment to the document. Unless I am mistaken, I did not detect any mood to amend the document.

Members *indicated agreement*.

The Convener: I see that that is correct. Can we therefore agree to the content of the report?

Members *indicated agreement*.

The Convener: That takes us to point b), which is to

"Note that Reporters have met with the consultants taking forward … issues".

That is a matter of simple agreement. It is a statement of fact with regard to some of the issues that have been discussed.

Members *indicated agreement*.

The Convener: That leads us to point c), which is to continue the process and to

"Agree that Reporters should meet with consultants to take forward issues regarding regulation and the operation of the VesCo, including the proposed role as procurer of last resort".

I think that that reflects our discussions, and I am sure that the reporters will take due cognisance of members' comments. Do we agree that those matters be taken forward?

Members *indicated agreement.*

The Convener: We will forward a copy of the report to the minister and invite her to respond. We should also attach a guidance note on the discussions that members have had on the matter, along with a copy of the *Official Report*, which will give the minister a further insight into the views of committee members. Is that agreed?

Members *indicated agreement*.

12:15

The Convener: Finally, we need to judge how we see the committee's role developing. I would like us to stay tied in to the service specification process because the service specification is the document that will determine what happens. We need to ensure that we are aware of how the document is developing. We should leave it to the judgment of the reporters as to when it would be best to bring that specification document back to us. The committee should be well informed on the way in which that process is developing.

John Scott: On a point of clarification, what is meant by the "draft service specification"? I accept the point about the extent of our involvement, but do we want to take a totally hands-on approach? Would that be wise?

The Convener: In light of the lack of regulation—the Executive is adopting a suck-it-and-see approach—all that we have in relation to the service is the service specification. I refer members to our trunk roads discussions, during

which the specification became critical in relation to service provision. The lesson that we learned there was that we want to be closely involved. We will be guided in that involvement by our reporters who, because of the evidence that they have taken so far, have a greater understanding of and access to networks than we do. Nonetheless, I argue that the closer we are to the service specification, the greater insight we will have and the more we will convince the Executive how seriously we consider the issue.

I understand John Scott's question. I agree that it is not usual practice to become so involved in the service specification, but in the absence of regulation, that seems to me to be the appropriate route forward.

John Scott: I wonder whether we are best placed to judge whether the draft service provision is appropriate, given that we are not experts.

The Convener: We will get plenty of advice on that when the time comes. Interested organisations and our reporters will be there to advise us.

Robin Harper: I support your view, convener. The draft service specification is critical and we should be involved.

Des McNulty: It is a question of trying to bridge the points that were made by Robin Harper and John Scott. We are interested in the principles on which the draft service specification is constructed, rather than in its precise details. We do not want to get involved in deciding whether sailings to Islay should be at 7 o'clock, for example—that is not the level at which we need to be involved. We need to focus on the basis on which the draft service specification is set up.

If the reporters are to have an on-going role, it is important that we continue to talk to people in the island communities. Perhaps there should be some addition to the recommendations to indicate that the reporters have the authority to continue dialogue with people in the islands.

The Convener: I am happy that you raise that point specifically. I had taken it as read that we would want the reporters to continue the process. Perhaps I should have made that clear earlier. If there are any specific issues that the reporters need to bring back to us, such as permissions for going elsewhere and gathering evidence, they should come back to the committee as and when appropriate.

Maureen Macmillan: We have had a meeting with the consultants on the specification and we should continue our relationship with them.

The Convener: Okay. That said, do we agree to all the recommendations and to the point that was made by Des McNulty?

Members *indicated agreement*.

The Convener: I thank colleagues for their co-operation in what has been a useful meeting.

Meeting closed at 12:19.

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