

# **TRANSPORT AND THE ENVIRONMENT COMMITTEE**

Wednesday 19 December 2001  
*(Morning)*

Session 1

£5.00

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### TRANSPORT AND THE ENVIRONMENT COMMITTEE

32<sup>nd</sup> Meeting 2001, Session 1

#### CONVENER

\*Bristow Muldoon (Livingston) (Lab)

#### DEPUTY CONVENER

\*Nora Radcliffe (Gordon) (LD)

#### COMMITTEE MEMBERS

\*Robin Harper (Lothians) (Green)

\*Angus MacKay (Edinburgh South) (Lab)

\*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)

\*John Scott (Ayr) (Con)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Brian Adam (North-East Scotland) (SNP)

Bruce Crawford (Mid Scotland and Fife) (SNP)

Richard Lochhead (North-East Scotland) (SNP)

Elaine Thomson (Aberdeen North) (Lab)

Allan Wilson (Deputy Minister for Environment and Rural Development)

#### CLERK TO THE COMMITTEE

Callum Thomson

#### SENIOR ASSISTANT CLERK

Tracey Haw e

#### ASSISTANT CLERK

Alastair Macfie

#### LOCATION

The Chamber



## Scottish Parliament

### Transport and the Environment Committee

Wednesday 19 December 2001

(Morning)

[THE CONVENER opened the meeting at 09:38]

### Items in Private

**The Convener (Bristow Muldoon):** I welcome the press and public to this meeting of the Transport and the Environment Committee. I have received no apologies.

The first item on the agenda is to decide whether to discuss the following items in private: first, our consideration of the question whether we should pay expenses for the personal travel arrangements of certain witnesses to the aquaculture inquiry; secondly, our consideration of possible visits by the committee and its reporters, which relate to our future work programme and will require approval by the conveners liaison group; and thirdly, our consideration of a paper by the reporters on the proposed appointment of an aquaculture research co-ordinator. The final item relates to contractual arrangements surrounding the post and would normally be discussed in private. Do members agree to discuss those items in private?

**Members indicated agreement.**

## Water Industry (Scotland) Bill: Stage 2

**The Convener:** Our main business today is agenda item 2, which is stage 2 consideration of the Water Industry (Scotland) Bill. I welcome to the committee the Deputy Minister for Environment and Rural Development, Allan Wilson, and his team of officials from the Scottish Executive. I also welcome Bruce Crawford, who I know took much interest in the bill when he was a member of the committee. He has lodged some amendments that will be dealt with today.

Before we proceed, I will explain how we intend to deal with stage 2—some members might not previously have been through stage 2 proceedings. Members should have several different documents to assist with our consideration of the amendments. The first is the bill itself. I ask members to check that they have a copy of the bill. The second document that will be important for members today is the marshalled list of amendments. That list was published this morning, as was the suggested groupings of amendments. I ask members to check whether they have those documents. If you do not, please speak to the clerks and you will be supplied with them.

The amendments have been grouped to help debate to proceed logically, so that amendments that address similar areas in the bill are considered at the same time. Members will have to get used to working between the papers, to determine how the amendments are marshalled and debated and how they are voted upon. The amendments will be called in turn in the order in which they are found in the marshalled list. We will not proceed back and forward through the marshalled list; we will take all the amendments on one section in the marshalled list together. When we move on from those amendments, that will be the end of the debate on those amendments.

There will be one debate on each group of amendments. Members may speak to their own amendment if it is in that group, but there will be only one debate on each group. In some groups there may be several amendments; some will be technical and some will be more substantive. In the debate on amendments, I will first call the lodger of the first amendment in the group, who should speak to and move that amendment. I will then call other speakers, including the lodgers of all other amendments in the group. The lodgers of the other amendments should not move their amendments at that stage, but should only speak to them. I will call members to move their amendments at the appropriate time. Members other than lodgers of amendments should indicate in the usual way their desire to speak. I will also

call the minister to speak to each group of amendments.

Following debate, I will clarify whether the member who has moved the first amendment in the group wishes to press the amendment to a decision. If the member does not wish to press it, he or she may seek the committee's agreement to withdraw it. If the amendment is not withdrawn, I will put the question on it. If any member disagrees, we will proceed to a division by show of hands. It is important to stress that every member should keep his or her hand raised until the clerk has recorded the vote. Only members of the committee may vote; other members of Parliament who are here are entitled to speak to and move amendments, but they may not vote. If a member does not want to move their amendment, they should simply say, "Not moved" when the amendment is called.

After we have debated each amendment, the committee must decide whether to agree to each section and schedule of the bill. Before I put the question on a section or schedule, I am happy for there to be a short general debate to allow members to raise matters that have not been raised in amendments. However, if members feel that they have commented enough on a section, we can move straight to a vote on it.

Members are not permitted to oppose agreement to a section unless an amendment to delete the entire section has been lodged. If no such amendment is lodged, we cannot oppose a section. If a member wishes to oppose an entire section, it would be competent for us to accept a manuscript amendment. If that happens, it will be for the convener to decide whether to accept the amendment. However, it would be competent for such an amendment to be lodged.

### **Section 1—Water Industry Commissioner for Scotland**

09:45

**The Convener:** Amendment 9, in the name of Fiona McLeod, is grouped with amendment 21.

**Fiona McLeod (West of Scotland) (SNP):** I take great delight in opening stage 2 consideration of the Water Industry (Scotland) Bill by the Transport and the Environment Committee.

Amendment 9 is designed to put sustainable development and social responsibilities up front in the bill. Members will know that I pursued that at stage 1. Some of the committee's witnesses told us that introducing sustainable development and environmental issues as late in the bill as section 47 does not show enough commitment to those issues by the water authority. That would have a huge effect on the environment. Section 47(5) is a

catch-all power that would allow Scottish Water to put all other considerations before environmental considerations. Therefore, I consider it important that we state up front in the bill that Scottish Water will act in a manner that befits its social and environmental responsibilities.

The social responsibilities of Scottish Water must also be up front in the bill, because section 37 is not clear enough about the social responsibilities that Scottish Water will have in charging and in exempting from charges. We are still debating whether charity and voluntary sector exemptions should be applied. If Scottish Water is to be a public authority and not a private profit-making company, it is right to make it clear at the start of the bill that its public responsibilities are part of its general function. Anything less would constitute a lessening of its commitment to the Scottish people as their water authority. I am supported in that assertion. At stage 1, Scottish Environment LINK gave evidence to the committee. Zoe Clelland said:

"We agree with the idea of having sustainability up front. Sustainability should underpin everything that Scottish Water does; it should not be an afterthought, as it appears to be at present. The way in which parts of section 47 are drafted seems to indicate that environmental concerns are not placed on a level footing with economic and social concerns. We would like environmental sustainability to be the principle behind the rest of the bill."—[*Official Report, Transport and the Environment Committee*, 31 October 2001; c 2221.]

Amendment 9 would ensure that that happens. I move amendment 9.

**Bruce Crawford (Mid Scotland and Fife) (SNP):** I thank the convener for his introduction, which reminded us of the bill process and helped to clarify in my mind what we are going to do today.

Amendment 21 would remove section 3(7) of the bill. I am not entirely sure why the wide-ranging catch-all power in that section is necessary. Before I move or do not press the amendment, I would like to hear from the minister about the circumstances in which such a power might be used and to provide examples of its possible use. I am concerned that section 3(7) would provide water commissioners with a sweeping power to do what they like within the terms of their functions. I wonder whether the section is designed for circumstances that might occur further down the road after competition, when cherry-picking might take place. Section 3(7) would allow the commissioner to adjust his practice of operation to deal with new circumstances. If that is the case, I understand why the section is necessary, but I would like the minister to tell us whether that is what is envisaged. If I receive a satisfactory explanation, I shall be happy not to move the amendment—it is a tester to find out what is going

on behind the scenes.

I support what Fiona McLeod said in support of amendment 9, but I point out that section 47 falls under part 3, which covers Scottish Water's responsibilities. Fiona is seeking to ensure that the water industry commissioner has responsibilities towards Scottish Water in respect of economic effectiveness, environmental issues and social issues, which are clearly linked to sustainability. If we are serious about the commissioner being able to examine Scottish Water's responsibilities to customers, a prerequisite will be to have issues of sustainability—in other words, the environment, the economy and social issues—at the heart of what the commissioner is responsible for in the discharge of duties towards Scottish Water.

**Des McNulty (Clydebank and Milngavie) (Lab):** Fiona McLeod's amendment 9 is based on a misunderstanding of the water industry commissioner's role in the system. The commissioner's job is to deal with specifically economic interests. In my view, the appropriate people to deal with environmental issues are, on the one hand, Scottish ministers—who are responsible for the oversight of all arrangements for Scottish Water—and on the other, Scottish Water, which I believe should be directed by Scottish ministers to take into account environmental and other considerations when making its decisions. We need to ensure that the water industry commissioner does exactly what he is required to do, which is to ensure economic efficiency, to oversee the system and to ensure that other responsibilities are properly taken up by those who should exercise them.

**Robin Harper (Lothians) (Green):** I wish merely to signify that I support Fiona McLeod's position. I think that it would be safer were amendment 9 to be incorporated into the bill.

**The Deputy Minister for Environment and Rural Development (Allan Wilson):** The bill restates the water industry commissioner's current general function of promoting the interests of water authority customers through Scottish Water. In effect, the commissioner would act by promoting the customer interest in relation to Scottish Water in the same way as he does at present in relation to the existing three water authorities.

I agree with much that Des McNulty said about the degree of misunderstanding that appears to have arisen. Fiona McLeod talked about the responsibilities of Scottish Water, but amendment 9 refers to the water industry commissioner's duties, not to those of Scottish Water. Amendment 9 would replace the clear, straightforward function of the commissioner with a function whose application would be more restricted and whose terms would be unclear, particularly with regard to

how the various parts of the system should relate to one another. If amendment 9 were agreed to, that would involve the water industry commissioner in social objectives, which are properly the domain of ministers who are accountable to Parliament. The commissioner must indeed have regard to sustainable development, as he does to any other duty of Scottish Water in all the recommendations that he will make to it.

I should mention at this point that we plan to lodge a small Executive amendment at stage 3 to clarify the fact that the commissioner's remit does not cover customers who are served by Scottish Water through those of its activities that lie outwith its core functions.

Amendment 21 would remove the water industry commissioner's power to do various incidental things that he requires to do in order to carry out his functions. Section 3(7), which amendment 21 would remove, provides for a standard power, which it is normal to give bodies when they are established. The commissioner currently has that power. In fact, the Water Industry Act 1999 amended the Local Government etc (Scotland) Act 1994 by transferring that power from the customers' council to the commissioner. Section 3(7) of the bill is, as I said, a standard general ancillary power, which allows the water industry commissioner to carry out actions that assist him in, or are conducive or incidental to, his main functions, but which are not explicitly provided for elsewhere. As I said, the commissioner currently has that power, under section 68(5) of the Local Government etc (Scotland) Act 1994, as amended by the Water Industry Act 1999. The power could be used in conducting customer surveys, for example.

We think that the commissioner has worked well and effectively in the interests of customers in relation to his current general function and powers. I believe that the revised and reduced general function that Fiona McLeod proposes and the reduction of powers that Bruce Crawford proposes would diminish, rather than improve, the commissioner's ability to operate effectively. I urge the committee to reject amendments 9 and 21.

**Fiona McLeod:** I understood that the powers of the water industry commissioner in Scotland, as they are now and as they are in the bill, are not the same as those of the Office of Water Services in England. Our regulator is not only an economic regulator, because he is not regulating a private company. Section 1(2), which mentions

"promoting the interests of customers",

already underpins my argument. That phrase is also used in paragraph 8 of the explanatory note that supports the bill. Amendment 9 will simply

ensure that all interests of the customers are covered.

The minister referred to the Local Government etc (Scotland) Act 1994, which set up the water industry commissioner. I refer the committee to section 75A(4)(c) of that act, under which the water industry commissioner's powers include

"providing services to their customers at the same standard, and protection of the environment".

That is already included in the water industry commissioner's powers. Given that Scottish Water will be the largest organisation in Scotland that has an impact on our environment, it is essential that we say up front in the bill that the regulator must take environmental considerations into account when promoting the interests of customers.

**The Convener:** I think that I know what the answer is, but I must ask whether you intend to press amendment 9.

**Fiona McLeod:** I do.

**The Convener:** The question is, that amendment 9 be agreed to. Are we agreed?

**Members:** No.

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

**FOR**

Harper, Robin (Lothians) (Green)  
Ingram, Mr Adam (South of Scotland) (SNP)  
McLeod, Fiona (West of Scotland) (SNP)

**AGAINST**

MacKay, Angus (Edinburgh South) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
McNulty, Des (Clydebank and Milngavie) (Lab)  
Muldoon, Bristow (Livingston) (Lab)  
Radcliffe, Nora (Gordon) (LD)  
Scott, John (Ayr) (Con)

**The Convener:** The result of the division is: For 3, Against 6, Abstentions 0.

*Amendment 9 disagreed to.*

*Section 1 agreed to.*

## **Section 2—Water Customer Consultation Panels**

**The Convener:** Amendment 10, in the name of Tavish Scott, is grouped with amendments 11 and 24. Tavish is not here, but I understand that Nora Radcliffe intends to speak to and move amendment 10.

**Nora Radcliffe (Gordon) (LD):** Amendment 10 is very straightforward. There has been general agreement that the consumer panels are a good idea. Amendment 10 would change the bill to say that there "shall" be, rather than that there "may" be, consumer panels. We want that provision to be definite.

I move amendment 10.

**Fiona McLeod:** Amendment 24 is consequential to agreement to amendment 11. As Nora Radcliffe said, we all accept that water customer consultation panels will be necessary in Scottish Water, once that body has been created. Amendment 10, which says that those panels "shall" be set up, is therefore essential.

I also believe that it is essential that, when we set up the water customer consultation panels, we ensure that that is done through Parliament's passing instruments that are subject to affirmative procedure. The reason for that is, as the committee knows from considering statutory instruments, negative procedure allows Parliament only to refuse to agree to what is put in front of it. If we were to stick with the negative procedure for which the bill provides at the moment, the Parliament could only refuse the creation of water customer consultation panels and the appointment of members of those panels. The Parliament would not want to do that. However, at times, Parliament might wish to influence the areas that the panels cover or their membership. The affirmative procedure would allow Parliament to amend any order, thereby ensuring better and more democratic water customer consultation panels.

10:00

**Angus MacKay (Edinburgh South) (Lab):** On amendment 11, I do not agree that Parliament would—as Fiona McLeod suggested—never want to refuse to agree an order. Parliament might want to do that to make it clear to the Executive that the draft structure was not acceptable because of its scale, the number of structures that were proposed, failure to accommodate local interests or a particular local issue, or because of difficulty in expressing a local view. Negative procedure is not necessarily as blunt an instrument as Fiona McLeod suggests. The bill as it stands is a perfectly sensible way to proceed. There are precedents in other legislation.

**Maureen Macmillan (Highlands and Islands) (Lab):** I agree with Angus MacKay. There are precedents in the Parliament for committees not agreeing to negative instruments. The Subordinate Legislation Committee has agreed that negative procedure is best for the provision. I believe that the affirmative procedure would be time-consuming.

**Bruce Crawford:** Negative procedure is appropriate on some occasions, particularly when we deal with issues that are not likely to be controversial and in circumstances in which there is a time constraint and there is a need to push through legislation. On affirmative procedure,



people may or may not agree with the establishment of a water customer consultation panel, but discussion of the detail of how the panels will be formed and will operate is crucial. Under negative procedure, the only way to reject the detail would be to refuse the whole package. That would not allow the detail to be discussed appropriately. Affirmative procedure would allow issues to be ironed out in a way that would secure the overall support of a majority of members, which would not be possible under negative procedure.

Amendment 11 seeks to ensure that the detail is right before the whole package is agreed. That must be a more informative process for water customer consultation panels, which we have not had before. We are entering uncharted waters. In such circumstances, I am sure that members would wish small adjustments to be made to the customer panels; amendments which would improve the process and might well be accepted by the Executive. That would be a much better way in which to proceed, although I acknowledge that the negative procedure is sometimes more advantageous.

**The Convener:** Before the minister speaks, I should clarify something. I understand that neither a negative nor an affirmative instrument can be amended. The procedural difference lies in whether they are debated in the full Parliament.

**Allan Wilson:** As we are about to spend some time considering the customer consultation panels, it might be helpful if I were to make some general comments about our proposals on them.

The committee's and my objective is to strengthen the representation of customers and provide a strong voice to communicate the views of all customers. I should explain why we think that the bill as drafted provides the best means of achieving that objective.

We have tried to develop a system with a distinctive customer view, without creating new quangos or loading excessive costs on customers. That means that we have decided on a small number of panels made up of customers and led by a single convener with the status and authority to do the job properly.

We think that our objectives can best be achieved by a convener who is operationally independent of ministers and the water industry commissioner and who is appointed in accordance with guidance from the Office of the Commissioner for Public Appointments. The convener will have the stature to provide a strong and effective voice for customers in a way that separate conveners for each panel would not.

**The Convener:** Minister, would you focus more directly on the amendments with which we are

dealing?

**Allan Wilson:** Amendment 10, which the Executive supports, provides an opportunity to inform the debate about the panel's structure. With your kind consent, convener, I would like to use that opportunity.

In accordance with the committee's views, it is not the Executive's intention to impose a requirement on the convener to appoint panel members from particular interest groups, but we should ensure that panels are representative of the customers served within their geographical area, as the purpose of the panels is to give a voice to customers. We do not want the panels to be made up of representatives of representatives, if you like.

In evidence to the committee at stage 1, the Scottish Consumer Council stated that a balance was required in respect of panel numbers to ensure that their operation is effective. We agree—the more panels there are, the less weight each of them will carry.

The provision of customer panels will come at a price to the customer, as the intention is that panel members should be paid for the important work that they do. A balance must therefore be struck in respect of the cost of providing the function, ensuring that all customers are represented and ensuring that the panels are effective.

Final decisions have not been taken, but we think that the right balance would be struck by having five or possibly four panels. There should be enough panels to allow regional concerns to be covered, but not too many to drown each other's voices out. There could be some benefit in linking the panels' areas to the regional structure of Scottish Water, which again points to four or five panels.

Amendment 10 is helpful. It recognises that, for the regime established under this part of the bill to work effectively, ministers will have to establish customer consultation panels. I agree with Nora Radcliffe that it makes sense to establish a duty to that effect in the bill. We recommend, therefore, that amendment 10 be agreed to.

Amendments 11 and 24 provide for the order-making power in section 2(1) to be subject to the affirmative procedure. Our approach to the bill has been to provide that the order-making powers be subject to the affirmative procedure only where they have the effect of amending primary legislation. That is to ensure that the Parliament has a proper opportunity to scrutinise those powers.

Where a power will be used to give detailed effect to provisions that the Parliament has agreed already, our judgment is that the negative

procedure is more appropriate, not least if the burden on the Parliament is to be manageable.

The power in section 2(1) falls clearly into the second of those categories. It provides for ministers to establish the customer panels, which Parliament will have approved, and will be used in the manner that I have described.

If it would help the committee, we will ensure that members have the opportunity to see the draft order establishing the panels before we reach stage 3. I hope that that will be of assistance. In such circumstances, I do not believe that the affirmative procedure is warranted. I recommend that amendments 11 and 24 be disagreed to.

**The Convener:** I invite Nora Radcliffe to wind up on the group and to indicate whether she wants to press or withdraw amendment 10. I will ask all members to indicate whether they want to press or withdraw amendments that have been moved already when they are winding up on groups of amendments.

**Nora Radcliffe:** I reiterate what I said. We feel that there should be a duty to have customer panels. I press amendment 10, in the name of Tavish Scott.

*Amendment 10 agreed to.*

*Amendment 11 moved—[Fiona McLeod].*

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

**Members:** No.

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

**FOR**

Harper, Robin (Lothians) (Green)  
Ingram, Mr Adam (South of Scotland) (SNP)  
McLeod, Fiona (West of Scotland) (SNP)

**AGAINST**

MacKay, Angus (Edinburgh South) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
McNulty, Des (Clydebank and Milngavie) (Lab)  
Muldoon, Bristow (Livingston) (Lab)  
Radcliffe, Nora (Gordon) (LD)  
Scott, John (Ayr) (Con)

**The Convener:** The result of the division is: For 3, Against 6, Abstentions 0.

*Amendment 11 disagreed to.*

**The Convener:** Amendment 12 is grouped with amendments 17 to 20. Before we hear from Robin Harper, I point out that if we agree to amendment 17, amendments 18 and 19 will be pre-empted.

**Robin Harper:** There seems to be a large body of opinion that, as Scottish Water will be a publicly owned company, there should be publicly elected representation among the panel members.

I had a choice between asking whether there

should be a majority or a fixed number of publicly elected members or whether it should be left open to the Executive to fix or modify the number at will. I took the latter course, in the hope that the Executive might accept amendment 12, which leaves it open to the Executive to decide and does not fix a number. It would, however, ensure that local authority councillors are on the panels.

I move amendment 12.

**Nora Radcliffe:** Although there was general agreement that there should be customer panels, there was some concern that their initial layout was too top-down. According to that structure, a convener would be appointed who would then appoint the panel members, other conveners and so on. Tavish Scott's amendment 17 makes the process more bottom-up and therefore more representative by allowing communities and representative bodies to nominate people.

10:15

**Fiona McLeod:** In speaking to my amendment 18, I want to support amendment 17. The same intention lies behind both amendments. We agree that the water customer consultation panels should be the bedrock of customer representation, which means that they must be free of undue political interference or patronage—that is, free of the taint of cronyism. As the convener of the water customer consultation panels will appoint all the other panel members, he or she has great power. However, that must not be the power of patronage. Jack McConnell and the Labour party have recently talked a lot about rising above the taint of cronyism. This is an opportunity to put such grand words into action.

As for my amendment 18, I believe that parliamentary approval of the convener's appointment brings democracy into the equation. The fact that we do not yet have a parliamentary procedure for that should not hold us back. The Parliament is already considering Alex Neil's Public Appointments (Parliamentary Approval) (Scotland) Bill. Indeed, the Executive could put its money where its mouth is and introduce suitable legislation. I understand that such a procedure is used in the United States of America. If it is good enough for America, it is good enough for Scotland.

**Angus MacKay:** I will speak—constructively—against all the amendments in order. Although I understand Robin Harper's intention behind amendment 12, I am not clear how the amendment hits his objective on the head. Its attempt to stipulate how many members of the customer panel should be local authority members is a nod towards an earlier debate on the future of Scottish Water. Although I understand why the

amendment has been framed in the way that it has, I am not sure that it would deliver genuine democratic representation on the customer panels. However, I am particularly anxious to hear the minister's views about achieving a proper spread of representation on the panels.

Amendment 17 is curious, as it sets up the possibility of establishing nominating bodies for individuals appointed to a panel. I am not quite clear how such nominating bodies would be defined. Before I could be comfortable about passing such an amendment, I would want to know a whole lot more about how that definition would be arrived at. A whole range of public, private and hybrid organisations might have an interest in the matter; however, the question is what defines the suitability of one particular body over another. For that reason, I am a bit wary about amendment 17 and the consequential amendment 20.

For me, Fiona McLeod argued against amendment 18 when she said that it was based on the system used in the US. I am opposed to moving towards such a system; I do not like the idea of hearings in which individuals would be dragged before the full glare of committees or the chamber to become part of a party political process that serves only to reduce individuals and undermine the system of appointments.

We need proper accountability, openness, scrutiny and transparency about who we appoint and how we appoint them and I genuinely do not believe that the proposal outlined in amendment 18 represents a way forward. It would be a recipe not just for confusion, but for disaster in public appointments and would lead to fewer and fewer people applying to join public bodies at a time when we are trying to encourage diversity and plurality in the process. As I have said, I am opposed to the idea. It is not just the fact that no such parliamentary process currently exists; it is simply wrong to legislate to establish an appointments system for which no structural process exists in the Parliament.

I think that I understand the purpose behind amendment 19—to allow Parliament or the public the opportunity to scrutinise who is to be appointed—but I believe that that could be better achieved by having a proper appointment process. If the commissioner has to act in a way that is in accordance with the Nolan committee's recommendations, which means that independent scrutineers have to be involved, there will be a clear process governing the appointment of individuals. That should guarantee the legitimacy of the process.

I am sorry that Fiona McLeod used words such as "cronyism" in a parliamentary committee. There is plenty of time for party-politicking elsewhere.

This debate is not the place for it, as we should be as open and constructive as possible. Fiona McLeod's comments were not helpful.

**Bruce Crawford:** I point out to Angus MacKay that a transparently constructive process goes two ways.

The independence of the customer panel will be crucial. It must have a strong voice and be able to stand up for the rights of the customers. That independence can be ensured by means of a process that is seen to be transparent and will result in the public having absolute faith in the idea that the panel has only the interests of the public at heart.

I can see why the normal public appointments process is suitable in some circumstances and I point out that, for example, Alex Neil's Public Appointments (Parliamentary Approval) (Scotland) Bill does not state that all public appointments should be approved by Parliament. However, the process that Angus MacKay outlined is not transparent enough for the appointment of a champion of the customer and will not deliver the level of public confidence that I talked about. Whether we adopt the process that amendment 17 suggests—which, as Angus MacKay identified, could do with being fleshed out, particularly in relation to the nominating panels—or another process, it is necessary to deliver that sense of independence and transparency and ensure that the public can see that the panel is doing the right thing. That appointment process should offer the convener of the panel the protection that he or she would need in order to be able to put the views of the panel to the minister or to Scottish Water in an independent manner.

I understand the thinking that lies behind amendment 12, which deals with the local authority aspects of the appointment process, but I am not sure that it deals with that in the right way. There is a potential for a conflict of interest. Local government councillors—like many members, I was one—are determined to try to get the water industry to spend money on infrastructure in their area. We could end up with councillors on the panel who are prepared to argue for higher prices in an attempt to ensure that money is spent on infrastructure that would not otherwise be, even though that might not be in the interest of the customer. There are other appropriate places for elected members of local authorities to be and I will lodge amendments to place them there.

**Des McNulty:** I am interested in transparency and accountability. The principle of the Scottish Parliament is that, first and crucially, it holds ministers to account for the way in which they conduct their business, and we ought to maintain that position. If we start trying to introduce subordinate forms of accountability and involve the

Scottish Parliament too much in processes of appointment to bodies such as customer panels, that will confuse the lines of accountability and will reduce transparency. That would be a negative step.

I am concerned about Tavish Scott's proposal, in amendment 17, to have nominating bodies that are made up of essentially anonymous people who would represent the non-domestic customers. That proposal is not fleshed out in any sensible way. Amendment 17 would also cause difficulties for local authorities. A number of local authorities are likely to be involved in producing representatives to sit on customer panels, but the mechanism that is set out in the amendment is not sufficient to meet that requirement. It would be easier and more transparent for ministers to deal with appointments and to be held to account for the way in which they do that.

I understand that the paragraph that amendment 20 seeks to amend would instruct the water industry commissioner to provide "property, staff and services" to the customer panels. I do not see what the amendment adds to that.

**Allan Wilson:** My earlier comments on amendment 10, in the name of Tavish Scott, placed this issue in its proper context. I hope that what I said about the structure of and appointments procedure for the panels and about the appointment of the convener reassured those members who have concerns about how the panels will operate.

Like members of the committee, I am concerned that most of the amendments in this group would be very difficult to operate. Moreover, I fear that they would undermine, rather than improve, the manner in which the convener and the panels would give voice to the customer interest.

I will deal first with amendment 12, in the name of Robin Harper. I agree with the committee that panel members should represent the diverse range of customer interests but should not act as delegates of particular interest groups. Amendment 12 would cut across that approach. I fear that, were the committee to agree to it, we would end up in exactly the situation that the committee and the Executive want to avoid. I therefore urge the committee to reject amendment 12.

We have two concerns about amendment 17, in the name of Tavish Scott, both of which have also been raised by committee members. First, it would be very cumbersome and bureaucratic to set up nominating bodies. I hope that the committee is persuaded that our proposals, under which the Executive would appoint the panel convener and the convener would appoint other panel members—in both cases following the Nolan

principles—strike the right balance in terms of ministerial involvement and accountability. Angus MacKay asked how we would achieve a proper spread of representation. The process will be subject to guidance from ministers that is based on principles set out in guidance from the Office of the Commissioner for Public Appointments. That will be made explicit in letters of appointment. There will be provision for equality proofing and so on.

Secondly, I am concerned by the proposal to move away from having a single convener towards having one for each panel. In my view, that would mean losing the substantial benefit of having one individual with the stature and authority to represent customers. Having more than one convener would be very bad for the customer interest. I urge strongly that amendment 17 be rejected, along with amendment 20, which is consequential on amendment 17.

Amendment 18 proposes that Parliament should approve the appointment of the convener. As Des McNulty pointed out, ministers are directly accountable to the Parliament and can be held to account for appointments such as this one. If amendment 18 were agreed to, some of that responsibility would be passed to the Parliament. It is difficult to see how Parliament could hold ministers to account for an appointment in which it had such a significant say. As members have indicated, at stake here is an important point of principle concerning the respective roles and functions of Parliament and the Executive.

As Angus MacKay pointed out, amendment 18 would have practical implications for public appointment procedures. We feel that the possibility of having to appear before a parliamentary committee would deter many good candidates from applying. All applications for public appointments are confidential and are dealt with on that basis. Many candidates would not wish knowledge of their candidacy nor of their personal application forms to enter the public domain. There would also be unnecessary delay in the process. On average, it takes four to six months to complete an appointments round. The additional parliamentary process that Alex Neil's bill proposes could last for up to 56 days and would cause considerable delay in the filling of those posts.

For those reasons, we urge the committee not to support amendment 18.

10:30

Although I support in principle the desire for transparency in the appointments process that is expressed in amendment 19, on the publication of panel members' names before they are appointed,

the proposal is not a practical proposition. More significantly, the purpose that would be served by that form of advance notification is unclear. I hope that the committee is satisfied with our plans for a fair and transparent appointments process that will be conducted according to the Nolan principles with guidance from the Office of the Commissioner for Public Appointments. I recommend that the committee does not support amendment 19.

**Robin Harper:** There seems to be little support for amendment 12. I would have thought that the panels could be a good place in which to hammer out conflicts of interest. However, the principle of amendment 19 is very important and I intend to move it.

I seek the committee's agreement to withdraw amendment 12.

*Amendment 12, by agreement, withdrawn.*

**The Convener:** Amendment 13, in the name of Tavish Scott, is grouped on its own.

**Nora Radcliffe:** We want the customer panels to be representative and embedded in their areas, so that they pick up the real consumer interests. To do that, they must be close to the communities whose interests they are supposed to represent. A strong and effective voice is fine, but it must be an informed and representative voice as well. It is crucial that the customer panels are in communities based on geographical areas that feel themselves to have something in common.

We singled out the northern isles—the Orkney Islands and the Shetland Islands—and the Western Isles for particular mention, as it is essential that there is separate representation in each of those geographic areas. A panel that covered all those areas could not adequately pick up and represent the issues of the consumers in those three distinct remote communities. The customer panels should be led from the bottom up. They should be informed, representative and rooted in the communities. Those are the intentions that underpin amendment 13.

I move amendment 13.

**Des McNulty:** I understand that the Executive is considering appointing three panels, replicating the existing panels for East of Scotland Water, West of Scotland Water and North of Scotland Water Authority. The definition in subsection (2B) in amendment 13 is wide-ranging and could result in separate panels for the Highlands, Grampian, Argyll, Perthshire, Fife and the Borders, as well as Shetland. If we got up to 11, 12 or more panels, it would be very unwieldy. If we are not careful, I might end up being put under pressure to have a separate panel for Clydebank. We have to balance the need for customer representation with the need for sensible scrutiny. I would have thought

that ensuring that the interests of the island communities were represented on a panel corresponding to the North of Scotland Water Authority area would be adequate.

**Maureen Macmillan:** I agree with Des McNulty. Amendment 13 could lead to total fragmentation. I can think of many areas in the Highlands that think they have a distinctive character and should have special representation. I understand what lies behind the amendment—the idea that remote rural areas need to be considered—but other mechanisms exist for doing that.

**Angus MacKay:** I will speak against amendment 13. When I first read the amendment, I had a degree of sympathy with it, but the more I have read the bill, the less sympathy I have had for the amendment's specific proposals. I certainly disagree with the singling out of three areas—Orkney, Shetland and the Western Isles—and no others. It would not sit comfortably in the bill to single out those three areas and leave out the whole of mainland Scotland, although I can understand why amendment 13 does that. As someone who is partly of Western Isles extraction I will probably take some flak for saying that, but the amendment would take us down a dangerous path.

The wording of subsection (2B) in amendment 13 means that it would be possible to argue for separate customer panels at least for each of the 32 Scottish local authorities and even possibly for areas below that level. That would lead to considerable danger of diluting the effectiveness and meaningfulness of any customer panels established. I have strong reservations about that.

Subsection (2B) talks of a definition of an “area whose inhabitants have a distinctive customer interest” and refers to

“(amongst other things) the physical geography or social character of that area.”

I had thought that one of the key reasons, among many, for the establishment of a single Scottish water authority was precisely to take account of the physical geography and social character of the north of Scotland in particular and the effect that that has on the pricing structure of the delivery of water services in those areas and on the ability of the customer base to support that pricing structure. In one sense, it is physical geography and social character that moves us towards having a single water authority for the whole of Scotland. At the same time, amendment 13 argues that physical geography and social character should take us towards having smaller and smaller units of customer panels. That sits uneasily.

Like Maureen Macmillan, I feel that a serious core issue underpins the amendment: how do we ensure that the operation of the customer panels

reflects a range of interests? I would like to hear concrete suggestions from the minister—if not today then later—on how that idea could be enshrined in the code of guidance so that there will be meaningful input and representation across Scotland.

**Allan Wilson:** Amendment 13 poses significant practical problems, a number of which have been outlined by members. For example, how would one go about defining those single geographical areas with their distinctive customer interests? I doubt that that could be done at all. In so far as it could be done, amendment 13 would inevitably mean having a large number of panels representing a relatively small number of customers. If we take things to extremes, there could be a panel for each discrete part of the water network. That would mean having in excess of 400 different panels. Even if we were less extreme, the amendment could be construed to mean having a panel for each independent local authority area, as others have suggested. That would certainly represent distinctive customer interests, but at what cost? We have already said that, if we have too many panels, we risk diluting rather than strengthening the voice of the customer.

The same consideration applies to the idea of having separate panels for the three island groups. We must ask whether the interests of island customers are so distinct from those elsewhere that they could only be covered by providing for a panel dedicated to each island group. My judgment is that customers in the islands would be less well served by having their own small panels rather than being part of a larger body, which would have the stature, force and impact that speaking with a clear voice for a substantial number of customers would bring.

I agree that the representation of the rural voice needs to feature in the appointments process and guidance on that from ministers will be forthcoming. All customers who will be served by a single authority as a consequence of the bill will have better and more effective representation—which is, after all, what we all seek—by having four or, at most, five panels. As amendment 13 cuts across that proposition, we recommend that the committee should reject the amendment.

**Nora Radcliffe:** We need to think about who should serve on the customer panels. Should it be the average water user, who lives in a community and has a job and a family and other commitments but knows what the problems with service delivery are in their community? The panels are supposed to represent the water user.

To get ordinary people to serve on the panels, the barriers need to be removed. If there are only to be four panels, do we expect someone from

Shetland to serve on a panel when their travelling time to get to a meeting could be two days? If we genuinely want grass-roots customer representation from the hearts of communities, we need to make it easy for those whom I call ordinary people to serve on the panels. To do that, we will need more panels than the high-level four or five that the minister has mentioned.

There is a conflict of principle. Do we want a top-down or bottom-up approach? I argue for a bottom-up approach and amendment 13 would be one way of providing for that. The minister has said that having more panels would be unwieldy, but I do not see that as necessarily being so. We simply need the will.

I think that the three island areas were singled out because past experience shows that people tend to lump the three together without giving thought to the practicalities of how people who serve on the panels fit in their ordinary life commitments. Amendment 13 tries to ensure that the panels are truly representative of communities.

**The Convener:** The question is, that amendment 13 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Harper, Robin (Lothians) (Green)  
Ingram, Mr Adam (South of Scotland) (SNP)  
McLeod, Fiona (West of Scotland) (SNP)  
Radcliffe, Nora (Gordon) (LD)

#### AGAINST

MacKay, Angus (Edinburgh South) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
McNulty, Des (Clydebank and Milngavie) (Lab)  
Muldoon, Bristow (Livingston) (Lab)  
Scott, John (Ayr) (Con)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 13 disagreed to.*

**The Convener:** Amendment 14, in the name of Tavish Scott, is grouped with amendment 15.

**Nora Radcliffe:** The intention behind amendment 14 is to strengthen the position of the customer panels so that they can go direct to Scottish Water without always having to go through the water industry commissioner.

I move amendment 14.

**John Scott (Ayr) (Con):** I, too, want stronger panels and a stronger and more independent commissioner, as a check on the minister and the Parliament. That is the point of amendment 15. I want the commissioner to give the reasons for his actions.

10:45

**Angus MacKay:** I understand the intention behind amendment 14, but its outcome would be to create conflict, rather than to be helpful. We are talking about a process that has been constructed to make consumers' voices heard clearly and coherently. If we create possibilities for reports, lobbying or taking action straight to Scottish Water without following a clear process, conflicting points of view could be built into the system between the customer panels and the commissioner. I am not sure whether that would empower, or strengthen the role of, the consumer. I understand the intention behind amendment 14, but it might weaken that role, so I oppose the amendment.

I have considerably more sympathy with amendment 15. In outline, it is not a bad idea to require a clear framework to be established for how the commissioner should respond. My only difficulty is the time scale that is specified in the amendment. Three months is a short period. Substantive or thorny local issues might emerge, and to require the commissioner to accept or reject a recommendation finally and fully within three months is too constrictive. I am interested in what the minister will say. If the amendment specified six months or nine months, I would be more comfortable with it and more minded to accept it.

**Des McNulty:** Amendment 14 is based on a misunderstanding and would produce confusion about the role of the panels, which were established to advise the WIC as it undertakes its regulatory function. Amendment 14 would make the panels quasi-regulatory bodies, directly advising Scottish Water and cutting out the WIC's role. The amendment would create inconsistency.

Like Angus MacKay, I am sympathetic to amendment 15, but the time scale would require to be amended along the lines that Angus mentioned. To be effective, the amendment would also need to be narrowed to the issues that the commissioner considers relate to the interests of customers. The provision should not apply to all recommendations, as that might be too broad. I urge the minister to take on board those two points and to consider lodging an amendment at stage 3 to do some of what John Scott intends to do.

**Robin Harper:** Resistance has been expressed to amendments that would unduly delay appointments. I suggest that we apply the same thinking to the making of decisions. I support amendment 15. Three months is a reasonable time, in the interests of customers and of the operation of the new water board, in which to have decisions ratified and explained.

**Allan Wilson:** Amendment 14 would allow panels to make recommendations to Scottish

Water, rather than just to the water industry commissioner. For the reasons that have been given, we do not think that that would be particularly helpful.

The primary purpose of customer panels is to represent the views and interests of customers to the water industry commissioner, who has a duty to have regard to those representations. It is not clear how much weight would have to be given by Scottish Water to recommendations that it received directly from customer panels, nor—as members have pointed out—what would be done if different customer panels recommended different actions. The danger is that Scottish Water would pick the recommendation that it liked best, which might not be in the customers' interests. There would also be a danger of one panel shouting louder than the rest, if there were competing representations on the location of a treatment works or whatever.

Amendment 15 has merit, as has been pointed out. It provides a clear process for the commissioner to respond to recommendations from customer panels. However, we believe that the process, as it is currently structured, is too rigid to assist in the development of constructive working relations between the panels and the commissioner. The bill requires the commissioner to have regard to the representations, reports and recommendations of panels. The amendment risks setting up an adversarial relationship between panels and the commissioner, which we are anxious to avoid.

I acknowledge Des McNulty's point. We will consider bringing forward something that takes on board what is being proposed but gives the flexibility that we seek in the provisions. We suggest that the provisions in the bill build a coherent role for customer panels. They will ensure local responsiveness and feed information to the commissioner. They will allow the commissioner to fulfil his key function of promoting customer interests.

We ask the committee not to support amendments 14 and 15. We will consider coming up with a proposition that builds in the amount of flexibility that we think would be necessary and that also provides a clear process for the commissioner to respond to recommendations from customer panels, which is the objective of amendment 15.

**Nora Radcliffe:** Amendment 14 was predicated on the idea of having community-based panels. In some circumstances, however, it would be more sensible to approach Scottish Water directly with a local issue rather than through the water industry commissioner. As amendment 13 was disagreed to, I seek the committee's permission to withdraw amendment 14.

*Amendment 14, by agreement, withdrawn.*

**The Convener:** I invite John Scott to move amendment 15.

**John Scott:** Although I accept the minister's comments, I move amendment 15.

**The Convener:** The question is, that amendment 15 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Harper, Robin (Lothians) (Green)  
Ingram, Mr Adam (South of Scotland) (SNP)  
McLeod, Fiona (West of Scotland) (SNP)  
Scott, John (Ayr) (Con)

#### AGAINST

MacKay, Angus (Edinburgh South) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
McNulty, Des (Clydebank and Milngavie) (Lab)  
Muldoon, Bristow (Livingston) (Lab)  
Radcliffe, Nora (Gordon) (LD)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 15 disagreed to.*

*Section 2, as amended, agreed to.*

### Schedule 1

#### WATER INDUSTRY COMMISSIONER AND CUSTOMER PANELS: FURTHER PROVISION

**The Convener:** Amendment 16, in the name of Fiona McLeod, is grouped on its own.

**Fiona McLeod:** The arguments for amendment 16 are similar to the arguments for amendment 18, on the appointment of the conveners of the water customer panels. I stand by those arguments, despite Angus MacKay's comments in the earlier debate. I do not believe that it is party political to try to ensure that the appointments are free from undue political interference or patronage. That is fighting for democracy; it is not petty party politics.

Amendment 16 concerns the appointment of the water industry commissioner. As the water industry commissioner will be the regulator for the Scottish water authority, it is beyond belief that his should be a political appointment. The commissioner must have the democratic legitimacy of parliamentary approval of his appointment. When the committee took evidence in Aberdeen at stage 1, we heard from the water industry commissioner and later from the minister that they both accepted that sometimes the minister may be compelled, by political rather than objective reasons, to accept or reject the water industry commissioner's recommendations. It is therefore paramount that the water industry commissioner is a democratic, not a political,

appointment.

As was the case with amendment 18, there are clear ways in which Parliament could establish a procedure for parliamentary approval of such appointments. Perhaps if the committee were to include this provision in the bill, that would ensure that Parliament would establish such procedures.

The minister, in his arguments against amendment 18, trotted out the sterile modern urban myths about prospective appointees' fear of scrutiny. In the many countries of the world in which there is parliamentary approval or public scrutiny of public appointments, there is no shortage of people coming forward. As is the case with Scottish Criminal Record Office checks for voluntary organisations, the barrier is acceptable. People would be told before they put forward their names that they would be vetted and would have to prove that they were competent and acceptable for the post.

I move amendment 16.

**Angus MacKay:** We are rehearsing our earlier arguments about the principle of whether such an appointment should be brought before Parliament. In addressing Fiona McLeod's remarks, I will begin where we left off earlier.

Fiona McLeod is right to say that it is in no way party political to suggest that there should be a proper transparent process, which is free of party-political interference, for making such appointments. That is precisely what we have now. Fiona McLeod is shaking her head—I wonder whether she is fully acquainted with the appointments procedure under Nolan, which involves independent scrutiny. The people who are independent scrutineers to the Scottish Executive for that purpose represent all political opinions and none. Their integrity is pretty well unimpeachable and they are involved in every appointment process. We must be clear about that. Over the past year or so there have been dramatic developments in the way in which appointments are made. Notwithstanding various bits of press hype and blurb, the vast majority of people who are appointed to public appointments in Scotland are non-political. That should be reassuring.

I agree with Fiona McLeod that it is appropriate not to have party-political interference and to ensure that the process is structured correctly. I did not criticise that; I criticised the gratuitous use of the word "cronyism" in a debate that does not merit that charge. Opportunities exist, not least during First Minister's question time and question time, to indulge in such political rhetoric. The key point is to ensure that, when the appointment is made, we get the right person, at the right time, with the right qualifications. That is precisely what



the current machinery allows us to do. I disagree fundamentally with the idea of bringing appointments before the Parliament. On a number of occasions, members from a variety of parties have shown themselves to be all too willing to engage in party-political processes that would not lend themselves well to the appointments process that is envisaged in amendment 16.

I will finish on a point that I mentioned earlier. It is bad legislation to lodge and pass amendments that rely on a process that does not exist.

**Bruce Crawford:** I read through the public appointments process before we began our consideration of the bill and I am clear about the rigorous nature of the process and the position of the scrutineers. No one at any stage has ever said that there is anything disreputable about the scrutineers, or that they lack integrity. No one would question their integrity. However, the bare facts are that, with the current process, irrespective of whether the Labour party, the Tories or even the SNP were in power, we would end up with increasing numbers of people from a party-political background—and who would represent their Government—in important public posts. The statistics over a long time speak for themselves on the matter. The current statistics would demonstrate the framework that I have indicated. That point was in response to Angus MacKay's point.

11:00

Other issues also support the WIC—whether that is a he or a she—being appointed and approved. The WIC should be appointed on recommendation from the minister, but approved by the Parliament. I will come to those issues.

The position of the WIC will be critical for the water industry's future. No one disputes that. The WIC will need to be independent, robust, rigorous and sometimes determined in the face of political direction, or interference from other quarters. The WIC would have powers to promote the interests of the water industry's customers, which we have discussed already.

The customers' and the Executive's interests will not always be complementary. In those circumstances, the commissioner's independent operation would become even more important. The WIC will be required to be scrupulously fair when investigating complaints and that will require independence. The WIC would report to customer panels and provide advice to ministers on Scottish Water's standard of service. It is evident that the Executive or the minister would not always like such advice.

Investment levels will be required to meet specific standards. That requirement might

conflict, as I suggested earlier, with the interests of the customer, because charges will necessarily rise to cover investment costs. Those important conflicts would require the WIC to be independent, so that he or she could be rigorous and robust.

In view of those powers and the potential areas of disagreement between the WIC and ministers, we can be sure that Scottish Water, if it thinks that the WIC is not doing his or her job, would also put the bite on ministers. Additional pressures would come from that area. It is vital that the WIC is provided with the assurance that he or she can act as independently as possible, in the way that John Scott outlined.

One way to achieve that independence would be to have a process that supports it. Yes, we should continue with the current process for public appointments, but, in addition, Parliament should approve the appointment of the WIC. That would mean that the WIC would not only be considered by the Parliament to be fit and proper to do the job, but would have parliamentary authority to stand up against the minister, Scottish Water and other influences. Parliamentary approval of the WIC is vital; this is not just about the appointment procedure.

It goes without saying that an individual who would be paid the significant salary of £76,000 as the result of a public appointment process would be in a job that would be significant for Scotland. Therefore, Parliament should have a role in the appointment process. There are also issues about transparency and things being seen to be done properly. Amendment 16 would allow that to happen.

Parliament might not have agreed a process about the timing. However, if the bill were to be passed, we can be sure that Parliament would need to have its process in place quickly. We already have a WIC, so there would be no great hurry in that specific arena. Given that Scottish Water does not come into being until 1 April 2002, it should not be beyond the wit of Parliament to produce a procedure that could be used for clearance, approval and vetting of the minister's nominee. That is an important issue for the future.

**John Scott:** I speak in support of amendment 16. In response to Angus MacKay's point, I accept that the appointment should and could be made under Nolan. Nevertheless, I believe that its ratification by Parliament would give it extra authority.

The Parliament could introduce a procedure; that is what amendment 16 invites the Parliament to do. I do not believe that that need be hugely onerous for the Parliament. Parliament's ratifying the appointment would give the commissioner extra authority and would take away from him any

suggestion of cronyism—the word that Fiona McLeod used. I support amendment 16.

**Des McNulty:** I want to make a couple of general points before talking about the specifics.

First, we have to get away from the idea that somebody who has a political affiliation to any party debars themselves from acting in a responsible, realistic and independent way in any public role to which they are appointed. That is an important principle.

Another important principle is that politicians, in the course of their activities, acquire certain skills and experience that may be beneficial to public agencies. In 1998, I was appointed as a member of Greater Glasgow Health Board. I believe that the reason that I was appointed was that I had a fair amount of experience as an elected member of a local council. There was an important argument that people, through councils, should have input to the decision-making process in health authorities. I had something to contribute, but there was also the principle that there should be a mechanism for democratic accountability. That is important. We should be clear about that and get away from the nonsense that somehow politicians take leave of their senses immediately on becoming politicians. Some of them may well do so, but we should not accept that as a general rule or principle.

The water industry commissioner is almost the worst possible example on which to mount the arguments that Bruce Crawford has mounted. The qualifications for the water industry commissioner are that the commissioner is familiar with and well able to operate econometric models, geared towards carrying out the function for which they are appointed. I want the best possible person to hold the position of water industry commissioner. The way in which that is tested is through the person's technical expertise and experience. An independent appointment procedure, such as the one that exists, is well equipped to provide that.

The type of procedure that Bruce Crawford and others have been suggesting, such as the American-style system of confirmation hearings or appointment procedures, would have the practical effect of politicising non-political positions. We ought to be careful before going down that route. It would be a retrograde step and I agree with what Angus MacKay said about that.

My final point is a point that we need to keep making. Accountability in our system is through ministers. Fundamentally, the Parliament holds ministers to account. If ministers oversee the appointment process of the water industry commissioner, there is a clear relationship of accountability. If we go through a procedure in which Parliament involves itself in appointments

then seeks to hold ministers to account, we cloud and diminish ministerial accountability. The Parliament should be most insistent on its role in holding ministers to account.

**Robin Harper:** The process that amendment 16 would introduce would not necessarily undermine the criteria for appointment, as Des McNulty suggested it would. One would hope that such appointments, once made, would last for a considerable number of years. We would not be going through the process regularly.

Secondly, when the appointment is made, it will be one of the principal public appointments in the panoply of public appointments in Scotland. I feel strongly that the appointment must have the highest degree of transparency that we can afford it. Amendment 16 supports that and I will support the amendment.

**Allan Wilson:** I will deal with the last point first, as we are rehearsing arguments that we used in connection with amendment 18—the same arguments can be used against amendment 16.

On transparency, the water industry commissioner's advice to ministers must be published, together with the ministers' reasons for rejecting or modifying that advice where necessary. That transparency underpins the commissioner's operational independence and it is important to have that parliamentary scrutiny.

Scottish ministers are accountable to Parliament for the appointment of the commissioner. It is our view that an additional layer of parliamentary scrutiny would undermine rather than strengthen public appointments. That applies to the water industry commissioner. I agree with Mr McNulty's point that amendment 16 would politicise the process rather than strengthen the independence that I am sure we all seek for the commissioner to enable him to exercise the proper function of his duties and responsibilities.

Other than that, I can add nothing to the authoritative critique delivered by Mr MacKay in response to the amendment. I ask the committee to reject amendment 16.

**Fiona McLeod:** Extra points have arisen in the debate on amendment 16 that follow on from the debate on amendment 18. We talked about getting the best person for the job as if public scrutiny of prospective appointees would prevent that from happening. I think that the absolute opposite is the case. If there were public scrutiny, only those who had the highest qualifications and integrity would put themselves forward.

We talked about the fact that, in our system, accountability is through ministers. The founding principles of the Parliament were openness, transparency and accountability. Our system is not

the Westminster system and it can take on new concepts such as parliamentary approval of ministerial appointments. We are not talking about Parliament making the appointment; the minister will still make the appointment but Parliament will approve it. That appointment will therefore have to be made in the most open and transparent manner.

The minister said that the water industry commissioner's recommendations to the minister will be published and that that will lead to transparency. Will the minister publish all his directions to the water industry commissioner? If he is not prepared to do that, we will not have transparency. If the minister appoints the water industry commissioner and the commissioner holds his appointment at the minister's behest, the commissioner will not be able to publish all the minister's directions.

The issue is about one of the principles on which the Parliament was founded and to which I understood all the parties in the Parliament had signed up. It is about ensuring that public appointments are in the public interest and no one else's.

**The Convener:** Minister, do you wish to respond to the direct question that you were asked?

**Allan Wilson:** Yes, because a direct question was put. We have never issued directions. If we did, we would publish them in the interests of transparency, as I said in response to Mr Harper's point.

**The Convener:** Do you wish to press amendment 16, Fiona?

**Fiona McLeod:** I do.

**The Convener:** The question is, that amendment 16 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Harper, Robin (Lothians) (Green)  
Ingram, Mr Adam (South of Scotland) (SNP)  
McLeod, Fiona (West of Scotland) (SNP)  
Scott, John (Ayr) (Con)

#### AGAINST

MacKay, Angus (Edinburgh South) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
McNulty, Des (Clydebank and Milngavie) (Lab)  
Muldoon, Bristow (Livingston) (Lab)  
Radcliffe, Nora (Gordon) (LD)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 16 disagreed to.*

**The Convener:** I remind members that, if we

agree to amendment 17, I will not be able to call amendments 18 or 19. Does Nora Radcliffe want to move amendment 17?

**Nora Radcliffe:** I would like to give the committee the opportunity to take the bottom-up approach, so I move amendment 17.

11:15

**The Convener:** The question is, that amendment 17 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Harper, Robin (Lothians) (Green)  
Ingram, Mr Adam (South of Scotland) (SNP)  
McLeod, Fiona (West of Scotland) (SNP)  
Radcliffe, Nora (Gordon) (LD)

#### AGAINST

MacKay, Angus (Edinburgh South) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
McNulty, Des (Clydebank and Milngavie) (Lab)  
Muldoon, Bristow (Livingston) (Lab)  
Scott, John (Ayr) (Con)

**The Convener:** That is a tie.

**Callum Thomson (Clerk):** John Scott voted against.

**The Convener:** Is that correct, John?

**John Scott:** Yes.

**The Convener:** Sorry, I did not see you. In that case, the result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 17 disagreed to.*

*Amendment 18 moved—[Fiona McLeod].*

**The Convener:** The question is, that amendment 18 be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Harper, Robin (Lothians) (Green)  
Ingram, Mr Adam (South of Scotland) (SNP)  
McLeod, Fiona (West of Scotland) (SNP)  
Scott, John (Ayr) (Con)

#### AGAINST

MacKay, Angus (Edinburgh South) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
McNulty, Des (Clydebank and Milngavie) (Lab)  
Muldoon, Bristow (Livingston) (Lab)  
Radcliffe, Nora (Gordon) (LD)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 18 disagreed to.*

*Amendment 19 moved—[Robin Harper].*

**The Convener:** The question is, that amendment 19 be agreed to. Are we agreed?

**Members:** No.

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

**FOR**

Harper, Robin (Lothians) (Green)  
Ingram, Mr Adam (South of Scotland) (SNP)  
McLeod, Fiona (West of Scotland) (SNP)  
Scott, John (Ayr) (Con)

**AGAINST**

MacKay, Angus (Edinburgh South) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
McNulty, Des (Clydebank and Milngavie) (Lab)  
Muldoon, Bristow (Livingston) (Lab)  
Radcliffe, Nora (Gordon) (LD)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 19 disagreed to.*

**The Convener:** I ask John Scott to raise his hand a bit higher when he votes, because it is sometimes unclear whether he is voting.

**John Scott:** I beg your pardon.

**The Convener:** Amendment 20 is consequential to amendment 17.

*Amendment 20 not moved.*

*Schedule 1 agreed to.*

**Section 3—Functions of the Commissioner**

*Amendment 21 not moved.*

*Section 3 agreed to.*

*Sections 4 and 5 agreed to.*

**Section 6—Funding of the Commissioner**

**The Convener:** Amendment 22 is in a group of its own.

**Bruce Crawford:** I am not convinced about the mechanism in the bill by which Scottish Water will make payments to the water industry commissioner. However, I am prepared to be convinced, depending on what the minister tells us.

I will explain why I have concerns. If the minister does not make the payments directly to Scottish Water, it is not difficult to imagine circumstances in which the board of Scottish Water would moan to the minister that the payments were unjustified as a result of the treatment that it was receiving from the water industry commissioner. Justified or otherwise, it is the nature of such organisations to bite and bend the minister's ear when they have concerns about the way in which they are being policed.

The situation is similar to that with local

authorities—I am sure that Mr MacKay in particular will be aware of this—which continually complain about having to make payments to organisations that police them, such as the Audit Commission, especially when such payments increase.

I do not think that it would be correct for ministers to put themselves in a position in which they instruct Scottish Water to make payments to the water industry commissioner while they are also being subjected to noise and lobbying from Scottish Water about the commissioner's role. The noise and lobbying are inevitable and are probably a healthy part of the process.

We must ensure that the policeman, in the shape of the water industry commissioner, is as rigorous and robust as possible. I do not think that it would be helpful if Scottish Water had to make payments to the water industry commissioner, as that could begin to undermine the commissioner's policing role.

There may be a good reason that I cannot see for the provision. If so, I am happy not to press the amendment, but I have genuine concerns about the relationship between the commissioner and Scottish Water under section 6(2) and the potential difficulties that that might create.

I move amendment 22.

**Allan Wilson:** Bruce Crawford has clarified in part the purpose of amendment 22. The provisions in the bill are unchanged from those in the Water Industry Act 1999, which amended the Local Government etc (Scotland) Act 1994. The customer council was funded in the same way.

Amendment 22 effectively removes the burden of the cost of funding the water industry commissioner and places it on Scottish ministers. I understand what Bruce Crawford proposes, but that would not alter Scottish Water's influence on the role of the water industry commissioner, because Scottish Water has no such influence.

The bill provides that decisions on how much the commissioner is to be funded and when such payments are to be made are for ministers to take. The independent regulator does the modelling and advises ministers. The decision remains a matter for ministers, regardless of how the funding is channelled, whether through Scottish Water or directly.

The other difficulty with the amendment is that it opposes the principle that customers meet the cost of regulation that is carried out in their interest. Instead, it puts that cost on the Scottish block. I do not think that Bruce Crawford opposes that principle, but that would be the unintended effect of the amendment and it would clearly not be an acceptable way in which to proceed. For

those reasons, we urge the committee to reject amendment 22.

**Bruce Crawford:** I understand in particular the minister's last point, which is a powerful one. On the information about the consultative committees being supported by the three existing water authorities, I understand that the relationship that the bill proposes between the water industry commissioner and Scottish Water is different.

Ministers are giving themselves powers under section 6(1) to make grants to the water industry commissioner in respect of the commissioner's expenses. All that section 6(2) provides for is that Scottish Water must make payments for the commissioner's expenses if so directed. There is still some dubiety in my mind about what is intended by those provisions. Section 6(1) may be intended to be used only in exceptional circumstances. If so, I can understand the minister's argument. However, the minister did not give a lot of information. If I could tease out a bit more information, that would be helpful.

**Allan Wilson:** Section 6(1) is the exception and section 6(2) is the normal practice. To be more precise, that is the practice at present. Does that make matters clearer?

**Bruce Crawford:** That helps, although I think that the relationship between the water industry commissioner and Scottish Water is still a problem. However, in view of the minister's explanation of the negative effect on the block—we do not want to affect the overall capacity of public expenditure—I will need to find a better way of expressing what I want to achieve by way of the amendment. I do not intend to press amendment 22.

*Amendment 22, by agreement, withdrawn.*

*Section 6 agreed to.*

*Sections 7 to 9 agreed to.*

### **Section 10—Enforcement notices**

**The Convener:** Amendment 1 is grouped with amendments 2 to 8.

**Allan Wilson:** Perhaps you can assist me, convener. Do you wish me to go through every amendment in detail? The amendments are refinements to the provisions on the drinking water quality regulator.

**The Convener:** I would like you to make any comments that you may have on all the amendments in the group, particularly those that are more substantive.

**Allan Wilson:** Fair enough.

The purpose of amendments 1 to 4 and 6 and 7 is to ensure that the regulator has all the powers

necessary to discharge the functions of the post effectively. As drafted, section 10(2)(a)(i) does not allow the regulator to issue an enforcement notice in the case of a drinking water quality contravention where that contravention is of a trivial nature. On reflection, we have concluded that the regulator should be able to issue an enforcement notice in the case of any contravention that is continuing or that is likely to recur, even if that contravention had been or is trivial. There may be cases in which a trivial contravention has the potential to lead to a more significant contravention. In such cases, it makes sense for the regulator to have the power to nip the problem in the bud.

Amendment 1 achieves that aim by removing the requirement that the contravention

“is not of a trivial nature”.

The amendment also makes it clear that a notice may be served both when a contravention is happening and when it is over but likely to recur. By combining subsections (1) and (2), amendment 1 brings together in a single provision the requirements that need to be met before the regulator can consider whether he needs to serve an enforcement notice. The regulator is not obliged to act on any contravention; he remains free to judge that a contravention is genuinely trivial or unlikely to recur and so does not warrant the issuing of an enforcement notice.

Section 10(4) and subsections (1) and (2) of section 12 refer throughout to rectifying a contravention. They do not mention preventing a recurrence, although that is one of the grounds for serving an enforcement notice. It is important in those circumstances for the regulator to be able to require steps to be taken to avoid contraventions recurring. Accordingly, amendments 2, 3, 4, 6 and 7 make changes to section 10(4) and subsections (1) and (2) of section 12, to ensure that the regulator has the same powers and duties in relation to a contravention that is likely to recur as he does in relation to one that is considered to be continuing.

Amendment 5 introduces a requirement on a water supplier that has been served with an enforcement notice to consult the health board for the area that has been affected by the contravention. The water supplier must have regard to the health board's views. In practice, the existing water authorities have effective working relationships with health boards in their areas, but there is no legal requirement on them to consult the boards. Amendment 5 establishes that requirement in the context of enforcement notices and provides that the supplier must have regard to the advice received. We will lodge further amendments to part 3 of the bill that will place on Scottish Water a general duty both to consult a

health board in relation to any of its functions that impinge on public health issues and to take account of that advice.

11:30

Amendment 8 responds to a recommendation in the stage 1 report of the Subordinate Legislation Committee. Section 15 of the bill establishes a register of enforcement notices and emergency notices. It does not specify what information should be included in the register, but makes provision for Scottish ministers to do so by order. The Subordinate Legislation Committee recommended that the section should specify at least some of the information that will be contained in the register and we agree with the committee that that would be desirable. Proposed subsection (1A) details what will be required in the register from the outset. It lists:

“(a) the name and address of the water supplier on whom the notice was served,

(b) the date of service,

(c) the compliance date, and

(d) in the case of an enforcement notice, the date specified under section 10(4)(e).”

The date referred to in paragraph (d) is the date on which the notice takes effect.

Proposed subsection (1B) of section 15 provides for the Scottish ministers to prescribe any further information that is to be included in the register and the manner in which the register is to be maintained. Proposed subsection (1C) clarifies what is meant by “the compliance date” in subsection (1A)(c), which is, in effect, the date by which steps that are required to rectify the contravention should be completed.

I move amendment 1.

**Des McNulty:** I generally welcome the amendments, which strengthen measures on enforcement notices. I particularly welcome the fact that the Executive has taken up the commitment that it made at stage 1 to clarify the information that should be held in the register.

On amendment 5, how would the water supplier be required to have regard to views expressed by the health board? I am thinking particularly of the cryptosporidium issue that West of Scotland Water had to deal with. How will the proposals change existing procedures and what new responsibilities will they place on the water supplier?

**Allan Wilson:** Des McNulty, astute as ever, has realised that these sections do not do what he is talking about. However, as I mentioned, the Executive will lodge further amendments to part 3 of the bill that will place on Scottish Water a general duty to consult a health board in relation to

any of its functions that impinge on public health issues, such as those mentioned by Des McNulty.

*Amendment 1 agreed to.*

*Amendments 2, 3 and 4 moved—[Allan Wilson]—and agreed to.*

*Section 10, as amended, agreed to.*

### **Section 11—Enforcement notices: further provisions**

*Amendment 5 moved—[Allan Wilson]—and agreed to.*

*Section 11, as amended, agreed to.*

### **Section 12—Failure to comply with enforcement notices**

*Amendments 6 and 7 moved—[Allan Wilson]—and agreed to.*

*Section 12, as amended, agreed to.*

*Sections 13 and 14 agreed to.*

### **Section 15—Register of enforcement notices and emergency notices**

*Amendment 8 moved—[Allan Wilson]—and agreed to.*

*Section 15, as amended, agreed to.*

*Sections 16, 17 and 18 agreed to.*

*Schedule 2 agreed to.*

*Section 19 agreed to.*

**The Convener:** I advise members that we have reached the end of part 2 of the bill, which we agreed we would go no further than at today's meeting. Our stage 2 consideration of the Water Industry (Scotland) Bill will resume at our next meeting, which is on 9 January. A target point in the bill for that meeting will be published in tomorrow's business bulletin.

I thank all members for their contribution to our consideration of the bill so far. I also thank the minister and the officials from the Scottish Executive for attending.

We will adjourn the meeting for about 10 minutes to give members the opportunity to have a cup of tea or coffee.

11:35

*Meeting adjourned.*

11:46

*On resuming—*

**The Convener:** Before we move to item 3, I welcome to the committee Elaine Thomson, Richard Lochhead and Brian Adam, who are here to speak on item 4. When we reach that item, I will of course give them an opportunity to address the meeting.

## Subordinate Legislation

### Smoke Control Areas (Authorised Fuels) (Scotland) Regulations 2001 (SSI 2001/433)

**The Convener:** Item 3 is consideration of a negative instrument—the Smoke Control Areas (Authorised Fuels) (Scotland) Regulations 2001 (SSI 2001/433). As members will see from the covering note, the regulations were laid on 23 November 2001 and we are required to report by 7 January 2002. No members have indicated to the clerk that they wish clarification of any of the points covered by the regulations. I advise members that the Subordinate Legislation Committee considered the regulations at its meeting on 4 December 2001 and determined that the attention of the Parliament need not be drawn to the regulations.

Do any members wish to comment on the regulations?

**Members indicated disagreement.**

**The Convener:** Can I therefore confirm with members that the contents of this committee's report will be to say that we have nothing to report on the regulations?

**Members indicated agreement.**

## Petition

### Transport Infrastructure (Aberdeen) (PE357)

**The Convener:** Agenda item 4 is petition PE357, which was submitted by Aberdeen City Council and which concerns investment in transport infrastructure. The petition is supported by Aberdeenshire Council, the Aberdeen and Grampian Chamber of Commerce, Scottish Enterprise Grampian and many others in the Aberdeen and Grampian area.

The committee had a very useful evidence session in Aberdeen in November. We heard evidence from the north-east Scotland transport partnership, which comprises many of the bodies that I have just mentioned. At that session, we invited witnesses to submit further written evidence that would be useful to the committee in forming its response to the petition. That supplementary evidence has now been received and circulated to members.

Members will know from the covering note on the petition that we have two possible options for action. Option A is for the committee to conclude its response to the petition by noting its contents and agreeing to bear the points in mind when considering transport budgetary issues. Option B is for the committee to progress the petition by taking evidence from the Minister for Enterprise, Transport and Lifelong Learning and to raise with her points that have emerged in evidence. If we wish to go for option B, we should agree a schedule for such a session around the same time as the transport delivery plan is produced. I understand that that is likely to be early in 2002.

Several members have indicated that they wish to speak to PE357. I will give that opportunity first to Nora Radcliffe. I note that Adam Ingram and Robin Harper have indicated that they wish to speak. I am also aware that three MSPs who are not members of the committee but who have interests in the Aberdeen area wish to speak.

**Nora Radcliffe:** I will try to outline why it is so important for the Transport and the Environment Committee to help to facilitate the petitioners' requests being met by the best means possible. There are two strands to the petitioners' argument. The note that we have received summarises the thrust of the NESTRANS submission, which is that the delivery of a modern transport system is an issue of strategic and national importance. I will briefly say why that is the case.

For a long time, the north-east has been one of the drivers of the national Scottish economy through oil-related business, agriculture and the knowledge economy—which is often missed. We

have a strategic cluster of academic excellence in Aberdeen. We have an ancient university, a new university and world-class institutions in the marine laboratory, the Macaulay Institute and the Rowett Research Institute. Those institutions feed into the business community and into business development.

We have to maintain the academic excellence and the business of the north-east. To do that requires the infrastructure to be maintained. In recent years, as the infrastructure of other places has developed, the north-east has been left out and has fallen further and further behind.

The north-east has a vibrant economy and a cluster of academic excellence. We have got something good and we want to maintain it. One of the threats to that is the underinvestment in infrastructure to connect what is a driver of the economy to the rest of the country and to Europe. If members look at a map of the trans-European transport networks, they will see red lines all over Europe. They will also see a gap in the north-east. We want that gap to be filled.

It is important to say that the north-east has evolved and proposed a modern strategic transport plan for itself that is not based on roads. Although we are asking for the roads gap to be filled, as that needs major funding investment, that request is part of an integrated strategy plan that looks 15 years into the future. The plan is not predominantly road based. It feeds on the strategy that has been followed since the early 1990s, when the two local councils switched their priorities from improving urban roadways and city-centre parking to developing public transport, as that strategy contributed to modal shifts.

The north-east needs help to plug the gap in infrastructure caused by underinvestment. However, that has to be seen as part of an integrated plan involving all the other elements such as increasing investment in public transport, park-and-ride schemes and opportunities for cycling and walking. I hope that I have said enough about the importance of meeting the aspirations of the petitioners in whatever way we can.

**The Convener:** I took Nora Radcliffe first, as she is a member of the committee and she also has a constituency interest in PE357. I intend to invite the members who have a constituency or regional interest to speak next. I will then move on to other members of the committee who have indicated that they wish to speak. I invite Elaine Thomson, who is the constituency MSP for Aberdeen North, to comment.

**Elaine Thomson (Aberdeen North) (Lab):** We welcomed the committee's commitment to meet in Aberdeen and to take full evidence from the

various organisations in Aberdeen involved in NESTRANS. I hope that the visit and the additional information that NESTRANS has sent is starting to give the committee the full flavour and picture of the modern transport system proposal for the north-east. I hope that the committee now recognises the general importance of improving the transport infrastructure in the north-east.

As Nora Radcliffe pointed out, NESTRANS has developed a very good plan for a modern transport system, which covers all modes of transport in the north-east from sea, rail and road to cycle use, pedestrian and bus travel and park-and-ride schemes. Furthermore, part of its aim is to reduce and shift road transport, which means that the plan is not road based. My constituency in particular is severely affected by the lack of a good modern transport infrastructure. Such a situation can only worsen over the next five or 10 years as car use in Aberdeen increases.

The modern transport system plan has been put out for large-scale consultation, and has been accepted and endorsed by a large section of the community. It has the full backing of the business community and many other organisations in Aberdeen, including the NESTRANS partners themselves—Aberdeen City Council, Aberdeenshire Council, the local chamber of commerce and Scottish Enterprise Grampian. However, we need the support of both the Executive and the committee to develop the plan.

I want to expand on Nora Radcliffe's comments about the importance of an improved transport infrastructure to the Scottish and UK economy. The further evidence that the committee has received highlights several issues. For example, it points out that the north-east's gross domestic product, which is estimated at £7.2 billion, is the second highest per capita in the UK. I mention that fact to emphasise to the committee the sheer strategic importance of the economy of Aberdeen and the north-east to Scotland and the UK. Much of that has to do with the oil and gas industry; as that industry will be around for the next 20 or 30 years, we need an improved transport infrastructure.

The extra evidence also points out that Aberdeen was recently ranked second only to London on an index of competitiveness across the UK. However, another study has concluded that Aberdeen city is one of the worst locations in the country for business, simply because of its poor infrastructure, inaccessibility and high transport costs. We have to address that problem for the future of the economy in Aberdeen, the north-east, Scotland and the UK. I am not understating the case when I say that the development of a proper transport infrastructure in the north-east is probably the single most important project still



outstanding in Scotland.

I urge the committee to consider taking further evidence from the minister on the NESTRANS proposals and to acknowledge their strategic and national importance.

**The Convener:** I will call Richard Lochhead next—and, after reading the *Official Report* of a Public Petitions Committee meeting in which he was regularly referred to by the convener as Richard Leonard, I will do so carefully. I assure him that his consternation was shared by the real Richard Leonard, who was concerned at being confused with an SNP MSP.

**Richard Lochhead (North-East Scotland) (SNP):** As members see, the north-east of Scotland speaks with one voice on this issue and there is cross-party and huge public support for the proposals. The Parliament first discussed the issue on 8 May. I hope that the committee can find ways of expediting the whole issue, because it is a matter of urgency for the economy and quality of life of the north-east. The committee's recent visit to Aberdeen will have allowed members to hear the eloquent case put by local agencies, which have been working closely with one another as well as with all the political parties in recent years. We must congratulate them on the case that they have put forward.

12:00

Behind the request is a plea for justice for the north-east. Aberdeen is the only city without a peripheral route or bypass funded from the public purse. To a certain extent, the region is a victim of its own success. The oil and gas industry and the many other industries that contribute to the Scottish and UK economies have generated a lot of wealth, but we have not seen public investment coming back to the region. I draw members' attention to a sentence on page 3 of the NESTRANS evidence that is before them today. It says:

"Whilst the north east represents 8½% of Scotland's population and has approximately 11% of trunk roads, Scottish Executive spending on trunk roads in the north east has not reflected the same level of commitment with an inadequate share of total budget being allocated towards trunk road improvements in the area."

My final point is about the city's role in the region. We are not talking only about the city of Aberdeen; we are talking about the city as the centre of the region. At the moment, traffic from the fishing and agricultural communities in the far north-east has to pass through the city centre. That holds up delivery times and is a disadvantage when it comes to getting goods to market, particularly from the biggest white fish market in Europe, at Peterhead. It is a regional issue as well as a city issue.

Last week, a report was published that highlighted the fact that Aberdeenshire has the lowest level of rural public transport in the whole of Scotland. As a consequence, it also has the highest proportion of car ownership in the whole of Scotland. Rural bus services and other transport services are part of NESTRANS's overall plan. That is why it is so important that we highlight the challenges that face the region.

My final plea to the committee is to play a role in getting us the green light for the plans. Any support that committee members give today will be most welcome in the north-east.

**Brian Adam (North-East Scotland) (SNP):** The Scottish Parliament will be judged in the north-east by what it delivers for the people. Whether it is well judged or not, there is certainly a widespread feeling that the north-east does not receive a fair hearing down here. What the Parliament does with a request for a modern transport system will be the touchstone by which it will be judged by the people.

The modern transport system that has been proposed covers a wide range of means of transport. The Executive has supported moves to shift transport away from roads—or at least away from the car—to other means of transport. Money has been provided from the public transport fund for park-and-ride schemes, bus priority schemes and cycling. How popular such things are in the north-east is perhaps a moot point, but it is not so much a question of doing things that are popular as of finding an efficient transport system, which we do not have at the moment.

The fact that the proposals are widely supported in the north-east is very important. A key element is the western peripheral route. The Executive has not accepted that route as part of the trunk road network. The committee could encourage the Executive to do that. There is no sign, as yet, of any funding for the western peripheral route. There is no doubt that a significant upgrade is needed for the strategic road network in the north-east and the Executive will ultimately be responsible for that.

The same is true of improvements to the rail networks. Aberdeen has been the success story of Scotland over the past quarter century. There is no reason why we cannot continue to have that success, but that will happen only if we support the infrastructure. I urge the committee to do all in its power to encourage the Executive to make the modern transport system a reality.

**Robin Harper:** I do not know whether being a graduate of the University of Aberdeen, a regular traveller to Aberdeen and a contributor to the *Press and Journal* means that I have to make a declaration of interests.

**The Convener:** I hope you went on public transport all the time, Robin.

**Robin Harper:** I did. I am happy to make such a declaration of interest.

The issue has become something of a running sore. It took two years for the committee to meet in Aberdeen. A meeting had been arranged there a long time before, but it was cancelled because of difficulties with public and road transport, oddly enough.

I am strongly of the view that the petitioners' concerns should be heard by the committee and that we should go for option B. We should find time to call the Minister for Enterprise, Transport and Lifelong Learning and put to her the points that have been raised in evidence to the committee.

I do not agree with everything in the NESTRANS proposals, but I agree with the bulk of it. What I do not agree with must be carefully listened to and publicly debated and the proposals must be progressed as fast as possible for the sake of the north-east.

**Mr Adam Ingram (South of Scotland) (SNP):** First, I apologise for my non-attendance at the meeting in Aberdeen in early November; I was stricken with the flu at the time. However, I have read the papers thoroughly and with great interest and I am impressed with the case that the north-east has put. I would like the committee to support the petitioners.

Clearly, what we have been presented with is an integrated transport plan for the medium term. Modal shift is at the core of that plan so, in view of the broad thrust of policy, the plan ought to be supported.

It is equally clear that there is a missing piece of roads infrastructure in and around Aberdeen. The western peripheral route is emphasised as a key missing part of the roads network. I do not think that we should be shy in saying so and advocating additions to the strategic roads network as we see fit.

The obvious limiting factor is the cost of the proposals, which is £247 million. We need to consider the proposals in the context of the transport delivery plan that will be introduced early in the new year. That said, I would not like to see the north-east's case being submerged in the overall discussions about the transport delivery plan. I believe that the committee should take the position that the north-east's proposal is a priority for Scotland as a whole. The proposal should be right at the top of the priority list.

Looking at the options for action on the petition that we have available, I wonder whether we could amend option B. We could ensure that we take

evidence from the minister prior to taking evidence about the transport delivery plan so that we can form a view about what priority should be given to the proposals.

**John Scott:** I, too, welcome the petition, as I have done in the past. I was at the Public Petitions Committee meeting when the petition was first discussed and I heard the allusion to Mr Leonard. I am pleased that Richard Lochhead is in good voice today.

There is no question but that it has been established for a long time that there is a strategic need for the bypass. My party has supported that for a long time and will continue to do so. The need is no longer in doubt; in all honesty, the issue is about how to implement it. I would support any moves to progress the matter as quickly as possible. I support option B.

**The Convener:** I will try to draw the arguments together. I pay credit to the quality of the presentation that we received when we were in Aberdeen. All the members who were present were impressed by the quality of the presentation and by the partnership that was demonstrated at that meeting between the local authorities, the economic development agencies and the private sector.

Much of the debate on transport has often focused on the environmental impact of transport. However, one of the important issues that has been highlighted by the petitioners and by Elaine Thomson and the other visiting members today is the role that transport plays in ensuring that we continue to develop our economy. As someone who represents a different region of Scotland that has some transport infrastructure issues to be addressed, I recognise the relationship between building our transport infrastructure and ensuring that we continue to have a vibrant economy.

I am picking up that members support option B as a way of progressing the issue. Option B is to take evidence from the minister before we conclude our treatment of the petition. That will be worth while. Adam Ingram said that we should do that before we deal with the transport delivery plan. Between now and the end of January, the committee will be busy dealing with the remainder of the Water Industry (Scotland) Bill. If we tried to squeeze evidence on the petition into any of those meetings, we might not spend as much time on the issue as it deserves.

The transport delivery plan may also give us an idea of how the Executive will address transport priorities throughout Scotland. It might not go into great detail, but it might give us an idea of how the Executive intends to proceed on transport. I expect that we will take separate evidence on the issues and will not combine them. It will be

appropriate for us to wait for the publication of that plan before we take evidence on the petition.

**Mr Ingram:** I accept what you say, but I would not like the evidence-taking session with the minister on the petition to be submerged in or combined with evidence taking on the delivery plan. It would be appropriate to have a separate session with the minister on the petition.

**The Convener:** It is my intention that we will take separate evidence, but it is appropriate to wait until the plan is available before we take evidence.

Do we agree to proceed with option B and to invite the minister to give evidence at a date to be negotiated between the clerk and the minister?

**Members** *indicated agreement.*

**The Convener:** I thank members who are not committee members for attending. I am sure that they will all be back when we next consider the petition.

That is the end of the items that we will deal with in public. I thank the members of the press and the public who have attended the meeting.

12:13

*Meeting continued in private until 12:56.*



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