

# **TRANSPORT AND THE ENVIRONMENT COMMITTEE**

Wednesday 15 May 2002  
*(Morning)*

Session 1

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## TRANSPORT AND THE ENVIRONMENT COMMITTEE

16<sup>th</sup> Meeting 2002, Session 1

### CONVENER

\*Bristow Muldoon (Livingston) (Lab)

### DEPUTY CONVENER

\*Nora Radcliffe (Gordon) (LD)

### COMMITTEE MEMBERS

\*Robin Harper (Lothians) (Green)

\*Mr Adam Ingram (South of Scotland) (SNP)

\*Angus MacKay (Edinburgh South) (Lab)

\*Fiona McLeod (West of Scotland) (SNP)

\*Maureen Macmillan (Highlands and Islands) (Lab)

\*Des McNulty (Clydebank and Milngavie) (Lab)

\*John Scott (Ayr) (Con)

\*attended

### WITNESSES

Janette Anderson (Railtrack Scotland)

Gary Backler (Strategic Rail Authority)

Michael Beswick (Office of the Rail Regulator)

Richard Clifton (Health and Safety Executive)

Gerald Kerr (Health and Safety Executive)

Graham Sibery (Strategic Rail Authority)

### 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 15 May 2002

(Morning)

[THE CONVENER opened the meeting in private at 09:25]

10:32

*Meeting continued in public.*

### Item in Private

**The Convener (Bristow Muldoon):** I welcome members of the press, the public and our first group of witnesses to this meeting of the Transport and the Environment Committee. No apologies have been intimated for today's meeting.

Before we turn to the rail inquiry, we will deal with item 3, which concerns our aquaculture inquiry. We need to consider whether to take in private possible lines of questioning for witnesses, including representatives from Tesco, at our next meeting. We need also to consider possible lines of questioning for the Deputy Minister for Environment and Rural Development. We should do that in private, as is usual when we consider lines of questioning. Are we agreed?

**Members indicated agreement.**

## Rail Inquiry

**The Convener:** Item 4 is the first evidence-taking session in the committee's inquiry into the rail industry in Scotland. To aid us with the inquiry, I welcome Gary Backler, executive director of regional networks, and Graham Sibery, director of regional networks (north), from the Strategic Rail Authority; Michael Beswick, director of infrastructure regulation at the Office of the Rail Regulator; and Richard Clifton, director of the directorate of railway policy, and Gerald Kerr, principal inspector, both from the Health and Safety Executive.

I understand that all three organisations want to make a brief opening statement. I invite one of the representatives from the Strategic Rail Authority to make the first statement.

**Gary Backler (Strategic Rail Authority):** I will set out briefly the SRA's role in the rail industry. The SRA was set up by the Transport Act 2000, which set out the authority's three purposes: to promote the use of the railway network for passengers and freight; to secure the development of the railway network; and to contribute to the development of an integrated transport system for passengers and freight.

We take directions and guidance from the secretary of state and we are directed to provide leadership to the rail industry in delivering the Government's 10-year plan targets for passenger and freight growth and for reducing overcrowding. We do that by specifying, letting and managing franchise agreements for passenger rail services and by promoting the development of rail freight enhancements.

**Michael Beswick (Office of the Rail Regulator):** The regulator's role is the regulation of the monopoly and dominant elements in the railway industry, particularly Railtrack. The key jurisdictions are: setting Railtrack's charges; monitoring delivery of Railtrack's outputs and other licence obligations; Railtrack's relationship with its customers; access to the network for train operators; and appeals on matters such as timetabling and standards. The regulator's focus is very much on the sustained network. It is an appeal body for enhancement but it is up to funders to negotiate enhancements with Railtrack.

As shown in our written evidence, the current regulator has been carrying out a reform programme in relation to Railtrack's accountability. In contrast with the SRA, the regulator is independent of Government direction. He has public interest objectives, which are set out in the Railways Act 1993, as amended by the Transport Act 2000.

The regulator is independent because there has to be a balance between the different stakeholders in the industry, including the funders, who are Government bodies, and the private sector, including private sector investments. We work closely with the SRA and the HSE—we have working arrangements with both bodies.

**Richard Clifton (Health and Safety Executive):** It might help the committee if I explain that the Health and Safety Executive—together with the Health and Safety Commission—is the safety regulator for the rail industry in Great Britain. We regulate health and safety at work for the railway industry. That responsibility covers the health, safety and welfare of passengers, workers and the public.

We do that within the legal structure established by the Health and Safety at Work etc Act 1974 and related regulations. The legislation establishes general duties on the railway industry to protect safety and health as defined in the act; a body of general health and safety law, such as requirements to conduct risk assessments, which apply to all enterprises including railway enterprises; and certain specific health and safety regulations that apply to the railways.

The most important of those specific regulations is the Railways (Safety Case) Regulations 2000. They require all rail companies, infrastructure controllers and train operating companies to submit to and have accepted by the HSE a safety case, setting out systems to ensure that risks are properly controlled. Our mission statement is to ensure that risks that arise from work activities are properly controlled.

The role of the HSC and the HSE as the safety regulator was examined in detail by Lord Cullen when he was conducting the Ladbroke Grove rail inquiry. His report endorsed our role as the safety regulator, but made some proposals for change, which we are implementing.

Although railway safety is a reserved matter, the HSE has a concordat with the Scottish Executive and we have regular meetings and discussions.

**The Convener:** I advise witnesses that we tend to address groups of questions to specific organisations, but some questions might overlap. If you have something to contribute, I will try to draw you into the discussion.

The first group of questions is addressed to the SRA, but if any of the other witnesses have something to add, please indicate.

**John Scott (Ayr) (Con):** Excluding the ScotRail replacement franchise, how much SRA funding is expected to be available for Scottish rail infrastructure improvements over the next five to 10 years? How will allocations to particular projects be determined? How do the present

status of Scottish projects and their expected completion dates compare with the lists included in the SRA strategic plan?

**Gary Backler:** There is an envelope of funding available to the SRA to deliver the 10-year plan targets. The strategic plan is structured around that envelope, and specifically against those targets. Within that, the funding is allocated to a mix of franchise support payments and to projects. It is drawn down against those factors across the rail network.

I will ask my colleague to deal with your second question.

**Graham Sibery (Strategic Rail Authority):** There is a wide range of Scottish projects. For example, the IOS projects are provided for in the existing control period and should be completed by 2006. Other individual projects are moving through development stages, so each of them will have a different time scale. For most of them, full funding, final specifications and so on have not been finally committed. They are moving through a design stage, which will get them to the point of final decisions. We will be happy to follow up any specific questions that the member has.

**The Convener:** You say that the projects that are included in the IOS until 2006 are committed. Will the fact that Railtrack is in administration cause any difficulties in delivering those projects?

**Graham Sibery:** No. The projects are funded with a fixed price. The issues around a few of the more involved IOS projects are about securing matters such as signalling design resource, but all the projects should be progressing. The list of stations and projects that was in existence before Railtrack went into administration is still in existence. It is business as usual.

**Nora Radcliffe:** Could you tell me what IOS means, please?

**Graham Sibery:** I am sorry. It stands for incremental output statement. Essentially, the concept relates to relatively short to medium-term improvements that are enabled through the regulatory settlement, which would otherwise not have happened, including about 100 track and signalling schemes across the network, of which about 22 are in Scotland. IOS projects also include about 140 stations that are being given what is increasingly given the label of “modern facilities”.

**Mr Adam Ingram (South of Scotland) (SNP):** You talked about an envelope of funding. Could you give us a little bit more detail on that? How much is it? What are the sources?

**Gary Backler:** There was an initial figure of about £60 billion, comprising a mix of private sector and Government funding. The Government's part of that was increased by about

£3 billion when the strategic plan was issued. That means that slightly more than half comes from the Government and slightly less than half comes from the private sector.

**Mr Ingram:** How much of that will be spent in Scotland?

**Gary Backler:** As Graham Sibery indicated, at one level, the money is linked to specific schemes. We have built up a general view of the funding requirement for the whole of the rail network in Britain, based on assumptions, with sensitivity analyses attached, about funding requirements for subsidies for particular franchises.

**Mr Ingram:** So you cannot give me a ballpark figure for how much of that is allocated specifically to Scotland?

10:45

**Gary Backler:** The money is not allocated on a specific basis like that. For example, a large element of the funding is for support payments and franchise subsidy payments, which are built up at a network level. The true subsidy level for an individual franchise will be determined by a competitive process, so it is difficult to be specific about a figure for any individual franchise—in this case, for the ScotRail franchise.

**Mr Ingram:** When will that become clearer?

**Gary Backler:** That relates to the franchise replacement process. We are working with the Scottish Executive and will be involving Strathclyde Passenger Transport Executive in developing the specification for the rail services, particularly passenger rail services, that Scotland wants. We will put that specification to the market and run the process to get the services delivered over the time frame of the franchise.

**John Scott:** How much private funding does the Strategic Rail Authority anticipate can be levered into Scottish rail infrastructure projects through public funding?

**Gary Backler:** As I said, we are looking for a general mix of public and private sector funding. We remain optimistic about the scope for getting private sector funding through the franchise, but I cannot specify a figure because the funding is not built up in that way.

**John Scott:** How optimistic are you about getting private funding into Railtrack?

**Gary Backler:** We recently signed a 20-year franchise agreement with Chiltern Railways south of the border, which has significant private sector resources both for infrastructure upgrades and for rolling stock enhancements. We see no reason why such agreements cannot read across to Scottish services. In fact, we believe that there are

many positive reasons why such agreements will read across.

**Mr Ingram:** Do you have any views on the directions and guidance for the ScotRail replacement franchise in advance of the Scottish Executive issuing the draft guidance on such matters as fares and service levels?

**Gary Backler:** At the moment, we are discussing with the Scottish Executive the nature of the directions and guidance that it might want to issue. We see it as a two-stage process. There are the directions and guidance to us and then there is the franchise proposition that we put to the market to get priced. Our view at this stage is that the directions and guidance should probably be more general, to allow a clear framework. The detail of what the Scottish Executive, the passenger transport executives and all the stakeholders want for their passenger services—on issues such as fares, regulation and service frequencies—is probably best placed in the franchise proposition.

The franchise proposition deals with pricing and delivering the contract. The directions and guidance are much more about the statutory framework in which the services are provided. In essence, there is more flexibility in the directions and guidance and, depending on the requirements, more prescription in the franchise proposition.

**Nora Radcliffe:** Most of the stations are leased under the present franchise. How will issues around how stations are run, whether they have left-luggage facilities and disabled access improvements mesh with the new franchise discussions?

**Gary Backler:** Those issues would be addressed in the franchise specification, through schedules attached to the main contract. There is a schedule about station standards. The issues could be specified in the schedule and performance could be managed and monitored against that.

**Nora Radcliffe:** We are going ahead with the franchise on the assumption that all the stations will continue to be leased by the franchisee.

**Gary Backler:** Essentially, yes. We are not proposing to change the structure of the franchise or the roles of the various parties in the franchise. We have considered the matter south of the border. We have attempted to lock parties into major infrastructure enhancements but it has proved difficult to do. It is mainly an issue of risk. From the market perspective, it is risky enough to price against a franchise proposition that will be good for 15 years. Getting parties to be firm about investment projects has proved difficult. We see the basic structure of the franchise remaining

similar to the structure that is in place now, although obviously the requirements that are written in will reflect the particular aspirations and requirements of the Scottish Executive and the other parties.

**Mr Ingram:** Do you have a view on the notion of vertical integration, particularly when we are talking about the replacement ScotRail franchise taking over responsibility for track and stations?

**Gary Backler:** In general, the SRA's view on vertical integration is that the priority should be stabilising the network and working to improve its performance, rather than undertaking structural reform. Fundamental structural reform would, to an extent, be a distraction from what passengers and freight operators are looking for, which is a reliable network. We are much more focused on that than we are on the issue of vertical integration.

The SRA and other parties in the industry are examining ways of making the current framework better and there is a concept of virtual boards. The Scotland virtual board met just last week. The virtual boards bring together the main players in the industry around the table to address issues. While issues about the performance of the network and service remain the priority, the focus is best placed on improving the framework, particularly in the short term. That is reflected in the virtual board approach.

**Angus MacKay (Edinburgh South) (Lab):** Do the virtual boards encompass the train operating companies and those who are responsible for the track, signalling and safety? Do they include all the main players?

**Gary Backler:** They do. From a train operating perspective, that links to the previous question. Although the ScotRail franchise accounts for more than 90 per cent of passenger services in Scotland, other passenger operators and freight operators are involved. They are represented on the virtual board along with Railtrack, the regulator and the other main parties.

**Angus MacKay:** Okay. I can visualise the concept of the virtual boards—I understand where you are going with that. What progress do you hope the virtual boards might make in the medium to longer term? Do you have in mind a pooling of budgets and investment or joint development of policy and practice? What initiatives do you hope will result from the potential success of the virtual boards?

**Gary Backler:** It is early days. The virtual board for Scotland met for the first time last week. The main focus, certainly in the short term, is on improving performance. We anticipate that addressing performance will be the main thrust for a year or two. That is a key priority for the

Strategic Rail Authority and for customers. Beyond that, progress will depend to an extent on what issues emerge, apart from performance, and on how the process develops.

**Angus MacKay:** I want to press a little further. I presume that virtual boards are in operation elsewhere in the United Kingdom. The first meeting of the virtual board for Scotland has only just taken place and I assume that the other virtual boards are a little further on in their work. You say that the first target of the Scottish virtual board will be to improve performance. Will you give us concrete examples of ways in which the boards might work co-operatively to do that?

**Gary Backler:** The virtual board for Scotland is one of the earlier virtual boards. Scotland is one of the first places where the concept is being piloted. The other early virtual board is the Great Western virtual board, which has met twice. The concept is in its early stages across the network. My colleague Graham Sibery can talk about last week's virtual board meeting, because he attended it. One of the main items on the agenda was the number of temporary speed restrictions on the network and the effect that those restrictions have on performance. Ways of removing or mitigating the effects of the speed restrictions were also discussed. That is a specific example of what the board is working on.

**Graham Sibery:** A speed restriction at Dolphinstone on the east coast main line is causing significant difficulty. Members may be aware that mining subsidence in adjacent fields has had a significant impact in that area. Railtrack has rightly imposed a substantial speed restriction for safety reasons. There is an issue about planning to do the necessary work, which will be a large engineering project. The virtual board has no contractual status. Its purpose is to get the relevant people in the same room; to get them to agree on the issues, the main focus and how to progress the work; and to help them to ensure that the work takes place without any contractual spats getting in the way. Purposeful co-operation is the thrust of the virtual boards. The Scottish virtual board has got off to a good start.

The geography of the virtual boards might vary, depending on what the pressing issues are. On a main line artery, a pressing issue might be how a major upgrade is dealt with. In addition to performance, that is a key issue for the west coast main line virtual board. In Scotland, getting performance back on an even keel and bringing temporary speed restrictions under control are the primary issues. Fleet and good co-operation on matters such as timetabling are also important. We should not oversell the virtual board concept, but it is a useful mechanism. To some degree, it is a new label for meetings that took place before.



**Maureen Macmillan (Highlands and Islands)**

**(Lab):** How do the processes work if a community wants an improved service? How does that community go about feeding into the tendering process? Do you consult communities about what they would like to be included in the tender? For example, the Caledonian MacBrayne tender was put out to consultation and when the draft specification is produced it, too, will go out for comment. How do you assess what should be included in the tender? What criteria do you use?

11:00

**Gary Backler:** Mechanisms are in place and funding is available to enable individual, local schemes to go ahead. I am referring to the rail passenger partnership, which, in the 10-year plan funding envelope, has £400 million allocated to it across the whole network. Several schemes have been bid for and implemented through the partnership. If communities want specific schemes to be developed, they should not have to wait for the franchise replacement process to progress those schemes. The mechanism has existed for the past two or three years and we are still accepting and processing applications. There is funding and a mechanism to meet local needs.

**Maureen Macmillan:** Yes, but it would be different if a community wanted a scheme that impinged on services elsewhere.

**The Convener:** The Executive carried out major consultation on aspirations for Scotland's passenger railway. I expect that the responses to that consultation will inform the directions and guidance that the SRA produces.

**Gary Backler:** The consultation processes that the Scottish Executive chooses to adopt are obviously a matter for the Scottish Executive. It may be necessary to refresh the changes, but I understand that the consultation process was thorough and should form the basis of an informed proposition.

**Fiona McLeod (West of Scotland) (SNP):** Can I take you back to vertical integration? We seem to be jumping backwards and forwards. What evidence did the SRA have, over the past two years, of virtual chaos in our rail network? On what evidence did it base its decision not to look more closely at vertical integration, to which Scotland seems especially geographically suited? The SRA has opted for virtual boards. If they prove to be a vehicle for ensuring that all the work happens—essentially a virtual vertical integration—would you recommend, two or three years down the line, that there is a full-scale move towards that system?

**Gary Backler:** You refer to virtual chaos. The key issue for users of the network—freight shippers as well as passengers—is the way in

which the network performs. When they want to make a journey or send freight, the train should go when it is supposed to go and it should get to where it is supposed to get to. We maintain that that is the real priority. The structure of the industry is a lot less interesting to passengers and freight shippers than the performance that the industry delivers. We have taken a view of what the priorities should be, which we think are performance and getting the network to do what it is supposed to do. That is what we are funding it to do.

As for structural reform, it took a lot of time and legislation to put the current structure in place. There is no reason to believe that it would be much quicker to dismantle that structure and put another in its place. Indeed, that would be a distraction from the task of improving the performance of the network. In the short term, we remain focused on improving performance. Although we acknowledge that there are flaws and imperfections in the structure, our priority is to make the structure that we already have work better. At this stage, it is uncertain what virtual boards will do or recommend. However, there is no doubt that any kind of structural reform would be a major exercise.

**Mr Ingram:** How will rail track and signalling enhancements be achieved in Scotland? Since privatisation, there appears to have been a lack of training infrastructure for specialist engineers such as signalling design engineers. How will you tackle the problem of skills shortages in the industry?

**Gary Backler:** In answer to your first question, a number of schemes are already being developed and firmed up, as Graham Sibery has pointed out. The outcome of that development and design work will shape the mechanism that is used to deliver the schemes. We are considering a range of mechanisms. For example, we have examined whether the franchise operator could take some stake in the funding of schemes and we are looking at the concept of special purpose vehicles, in which multiple investors come together to work up a scheme and then hand it over. Our choice of mechanism will depend on the nature of the particular scheme.

**Mr Ingram:** We have had one or two problems with projects in Scotland. I am thinking in particular of the Larkhall to Milngavie line, where the likes of Railtrack fell out of the picture. You are obviously aware of such problems, but how can we avoid them?

**Graham Sibery:** Each problem has its own story. With Larkhall, we had an early national case that allowed us to get the bottom of some of the performance benchmark issues that are still a problem for several schemes. However, we have made proposals about the Larkhall to Milngavie

line through the Office of the Rail Regulator and are currently working through them. I think that we will reach a solution.

Signalling resource is a problem not only for Scottish projects but for a number of smaller projects, including the IOS schemes. With the co-operation of Railtrack, we have been trying to find a way of ensuring that minor works and schemes are not blighted by large projects that demand large chunks of signalling resource. That constraint is being worked on at the highest level; indeed, the chief executives of Railtrack and the SRA have discussed it. Again, proposals to unlock the situation are currently under consideration.

**Gary Backler:** I should add that we have also announced a national rail academy, which is intended to lead the process of addressing a range of skills shortages in the industry. You have rightly identified signalling and engineering as a key area in that respect, although there is a range of skills shortages. The SRA intends to take a co-ordinated view of those shortages and of the mechanisms for addressing them. We see that as part of the task of getting the network performing and delivering what we are paying it to do and what users—passengers and freight operators—want. The national rail academy, which was announced in the strategic plan, is intended to address precisely the shortages to which you refer.

**Mr Ingram:** Will the academy have a Scottish division? Will it be based in one location or will there be delivery from a number of points?

**Gary Backler:** The concept is being developed at the moment. So far the main focus has been on identifying the skills shortages that we face—an integrated view of those shortages has yet to be taken across the industry. When we have identified priority needs more clearly, we will be able to devise mechanisms for addressing them. It is not yet clear whether that will mean the establishment of one or more institutions. The concept is still at a formative stage.

**The Convener:** I ask Adam Ingram to restrict himself to one more question, as I would like to move on to other areas of questioning.

**Mr Ingram:** There is a problem with the capacity of rail freight in Scotland. Recently, the ORR cut rail freight track access charges by 50 per cent. Does that have a cost implication for the SRA with respect to rail freight in Scotland? Is it sufficient to meet the SRA target of an 80 per cent increase in rail freight in 10 years or must we consider other measures?

**Gary Backler:** We aim to hit the target of 80 per cent across the industry. It is important that we get the network to perform in such a way that it is possible to achieve that. The increase will be

delivered by tackling the competing road freight market, which offers a high level of service. It is therefore essential that the rail network also performs to a high level.

I invite Mike Beswick, from the ORR, to comment on access charges. As with the rail passenger partnership, the SRA takes the view that there are other funding mechanisms, such as the former freight facilities grant and the track access grant, that support the development of specific freight schemes. There have been a number of such schemes in Scotland.

**Michael Beswick:** At issue was simply whether we should allocate part of the common costs of the passenger and freight railway to freight. We discussed the matter with the SRA and agreed not to do that. Instead, the SRA indicated that it would pick up the common costs of the railway as part of the costs of the passenger railway. That meant that the costs to freight were halved.

**The Convener:** Our second area of questioning relates mainly to the role of the ORR.

**Des McNulty (Clydebank and Milngavie) (Lab):** What are the variations in track access charges between different areas of Scotland and between Scotland and England? How are those variations arrived at? Can you supply us with a model or framework that makes sense of the current arrangements?

**Michael Beswick:** We have set access charges for five years—to 2006. We did that by working out the total cost of operating, maintaining and renewing the network over that five-year period. We also allowed for the significant efficiency savings that we believed Railtrack could achieve and for a fair return on capital investment. From our analysis, we concluded that Railtrack needed £15.9 billion, at current prices, to operate, maintain and renew the network up to 2006. That amount is split into £4.4 billion for operating, £3.3 billion for maintenance and £8.2 billion for renewals. The SRA said that it wanted to pay £4.9 billion of the £15.9 billion directly in network grants to Railtrack. After various adjustments in relation to property and freight, we concluded that £9.5 billion in access charges must be raised.

Some of the charges vary directly with the use of the network. Those variable charges include such things as track wear and tear. A large chunk of the charges—about £7.8 billion—are difficult to allocate to individual services. We had to find a way of allocating that £7.8 billion. After extensive consultation, we concluded that the best way of doing so was by the number of vehicle miles that each operator runs. ScotRail, for example, pays just over £120 million a year, which is just over £600 million for the five years. We made a split between passenger transport executive services and other services. Last year, the split was £43

million for PTE services and £75 million for other services.

Effectively, the variable charges, which are about 20 per cent of the total, are based on our best assessment of the wear-and-tear and congestion costs of additional trains. We think that the basis on which the fixed charges are allocated across the network gives the right long-term cost for each operator, although, depending on which part of the railway is being renewed at any time, the cash figures might be different for different operators.

11:15

**Des McNulty:** You did not comment on the differences between Scotland and England.

**Michael Beswick:** We did not carry out an exercise to discover what the railway in Scotland will cost and what it will cost in England. We took a figure for Great Britain and then allocated it essentially on the basis of the vehicle miles that are run in each area. As I said, we also took out of the calculation the large sum of money that was paid through the SRA network grants.

**Nora Radcliffe:** As I understand it, you made no weighting for sparsity of population in relation to track miles, although that obviously has an impact on profitability.

**Michael Beswick:** We considered the matter carefully and consulted on it. We believe that we found the best measure of the long-term cost allocation. If one examines Railtrack's network management statement for last year, one will see that its spending plans for Scotland involve around £400 million for maintenance and £900 million for renewal in the five years. That is £1.3 billion, which is a lot more than ScotRail pays in access charges, although a bit must be added for Great North Eastern Railway and Virgin Trains. Railtrack spends large amounts of money on the network in Scotland.

**Des McNulty:** Is it possible to provide us with a model that will help us to understand the mechanism? The bottom line of the scheme seems to be what you think Railtrack will cost, from which the allocation of charges is worked out. From a regulatory point of view, surely there must be a better way of determining the charges.

**Michael Beswick:** In principle, it would be possible at a future review to use a different mechanism, which would begin by identifying the costs that are incurred in Scotland. Effectively, there would be a periodic review for Scotland and one for England. We would want to discuss such a system with the Scottish Executive, the Parliament and the SRA; it would be important that the funders were happy with it.

Such a mechanism would have the advantage of providing visibility in relation to costs. The downside would be that a major allocation exercise would then have to be entered into, taking into account the charges to GNER and Virgin. We would also have to consider the implications for Scotland of the variability of access charges. Railway assets are renewed over long periods and the variability between access charges over a five-year period would be greater if the mechanism was not spread across the UK.

We are happy that our approach gives a pretty good indication of the long-term cost of the railway in Scotland. The question for Scotland and for the SRA is whether to do things differently and to focus more on the shorter-term cost to the railway in Scotland.

**Angus MacKay:** In many ways, the mechanism for allocating costs is not unlike the local government finance distribution mechanism in Scotland, with which no one is entirely happy, which no one entirely understands and which we review annually—or perhaps slightly less frequently—without coming to a particularly satisfactory conclusion. It is like the pursuit of the holy grail.

I am not sure that I would agree with the idea of having separate reviews for Scotland and for England or one for Scotland and one for the rest of the UK. Perhaps what committee members are nudging at is a desire for more transparency with regard to exactly how the existing charges are allocated and a desire to ensure that there is a clear, understandable process for the whole UK network. This is a personal view, but there does not seem to be much point in having an excellent Scottish rail network if we do not also have an excellent UK rail network. We need that integration in order to get the maximum benefit for Scotland.

**Michael Beswick:** There was significant transparency at the time of the review, and we consulted extensively about how we should go about things. We suggested that, as a large chunk of fixed costs had somehow to be allocated, there should be different ways of doing that. In the light of the consultation, particularly of the views of the then franchising director, we took the view that it would be best to allocate the franchises on a long-term basis and that vehicle miles were the best available measure to use.

**Angus MacKay:** When was that?

**Michael Beswick:** The review took place during 1999-2000.

**Des McNulty:** Could you explain in detail your reforms of the performance regime, dealing in particular with the concerns that people have expressed about the system of fines and incentives for punctuality, which seem to have

been highlighted under the performance regime. Are we ending up with a Soviet-style system, under which things are driven towards performance and other relevant measures? It is all very well having a punctual rail service in Scotland but, if the trains are moving at only a snail's pace, that is not effective from the customers' point of view.

**Michael Beswick:** In the real world of operating a railway, train operators are faced with the fact that their revenues depend on their performance. Therefore, it seems fair that the revenue effect that is caused by poor performance by Railtrack should go from the operator through to Railtrack. The reality is that, if an operator performs poorly, it loses income, as has been the case post Hatfield.

The feeling from our discussions with the SRA was that, if we based our decisions only on the train operators' income, that would tend to work against the interests of those operators that did not have a lot of income but had a lot of costs. There was also a feeling that the regime that was in place was not sufficiently incentivising good performance; performance improvement had stalled for a while between 1997 and 1999, after which we had used an enforcement order to force performance up.

The end result was that, following an extensive consultation period, an arrangement was arrived at that increased significantly the contractual penalties on Railtrack for poor performance and created incentives so that it got more money for good performance. Our view is that those performance incentives are a good thing, as they should strongly incentivise investment to improve performance.

We would be prepared to discuss the matter further with the Scottish Executive, the Scottish Parliament and the SRA if there was a feeling that those incentives were too big and were causing Railtrack to refuse to put new trains on the network or to run trains slowly. A lot of protections are in place for operators, should Railtrack try that on. We think that, in the medium term, it is important to incentivise investment to improve performance.

**Des McNulty:** I have some concerns about the performance not only of Railtrack but of the operators. That question should be addressed in the franchise.

Given that you recently cut the rail freight track access charges, what scope is there for the reform of passenger track access charges in the next three or four years?

**Michael Beswick:** The charges are fixed until the next review. There is a process for what is called an interim review, if holding such a review were felt to be appropriate. There has been a lot of

discussion about whether a review should be held, given Railtrack's current situation. We want to get a better handle on Railtrack's efficient costs and continually to improve our knowledge of them. We also want to improve our knowledge of the extent to which track access charges could better reflect the costs on the network. It always grates that 80 per cent of those costs are fixed, which might not give out the right incentives. For example, on the freight side, we are working on encouraging track-friendly suspensions. That will give us a better understanding of how to incentivise the use of trains that do not do too much damage to the track, rather than vehicles that cause more damage.

**The Convener:** I have a couple of supplementary questions, the first of which goes back to the performance regime and enhancements to the network. I do not expect you to be able to provide details in response to the example that I will give, but I want to highlight the problem. There is a proposal to develop a new station at Edinburgh Park on the outskirts of Edinburgh. From my discussions with many of the people who are involved in that proposal, I have learned of the problems that Railtrack has identified with a potential performance risk in the order of £1 million to £1.5 million to which it will be subject if the proposal goes ahead. That risk could act as a blockage to the development of the station. I want to ask the witnesses from the ORR and the SRA what can be done about a potential blockage around the performance regime when a project has widespread support and funding is in place for it.

**Michael Beswick:** It is important to understand the performance effects of new projects. It would be silly to implement a new project on a wing and a prayer without considering performance. It is important that proper analysis is undertaken, that realistic figures are generated and that proper modelling is carried out. Then the question of money arises. The reality is that performance regimes are a means to an end—they are about getting a better railway. If the performance regime creates perverse effects, because Railtrack is paying out a lot of money and therefore will not invest in new projects, it is important that we find ways of examining that regime. For example, we have suggested pragmatic solutions in the case of Larkhall and, with Edinburgh Park, we want to work on finding such pragmatic solutions. That may involve changing the parameters of the performance regime in order to reflect the circumstances.

**Nora Radcliffe:** I have a couple of examples of how passenger services were delivered unsatisfactorily by GNER in Scotland. After the Hatfield accident, GNER needed diesel rolling stock for its loop, so it withdrew the service north

of Edinburgh. Recently, it has withdrawn the service north of Edinburgh because of delays down south. Is GNER penalised for that? Does it have to ask for permission to do that? Why is GNER allowed to do that when it has guaranteed a service to Aberdeen?

**Michael Beswick:** Passenger services that are run by train operators are a matter for the SRA.

11:30

**Gary Backler:** Yes. GNER discussed with us the alternative services that it wished to put in place in the event of major incidents, such as the two cases to which Nora Radcliffe referred. It is regrettable that both incidents occurred in similar places on the network and therefore had the same knock-on consequences for GNER.

**Nora Radcliffe:** GNER has chosen to react to those incidents in a certain way.

**Gary Backler:** Yes, but given the rolling stock that it has on lease, its options are limited. We have stressed—we hope it has been achieved—that GNER and ScotRail, the two franchised operators, should co-operate. We also encouraged changes to the ScotRail pattern of services so that journey frequencies and available rolling stock could fill the gaps that might be left because of the way in which GNER responds to major incidents.

**Nora Radcliffe:** Do you monitor how effective those compensatory mechanisms are? Why should ScotRail have extra rolling stock to pick up the slack when it did not have it previously?

**Gary Backler:** We monitor the operators individually and together, and we monitor the effectiveness of the responses. We encourage the operators to consult locally before they put contingency plans in place, in order to ensure that the plans are effective. We then review with them how effective those plans were. The plans evolve.

Nora Radcliffe is right. Given that there are no surplus resources, there will be prioritising; we are interested only in those prioritisation decisions; the companies are in a good position to know whether the prioritisation decisions that they make are appropriate.

**Fiona McLeod:** Do you think that the priorities might be slightly different if the SRA had a Scottish division that was responsible to the Scottish Executive?

**Gary Backler:** I have two comments about that question. We have recently opened a Scottish office so that there is a presence in Scotland that works directly with Scotland's interests and ensures that they are related to the rest of the network. Secondly, after the current franchise

expires in 2004, the new franchise will be specified locally by Scottish interests and it will be funded by Scotland. Given those changes, the management of that franchise will be more locally responsive than you might believe the current one is.

**The Convener:** I would like to make some progress. We will move on to questions for the Health and Safety Executive.

**Robin Harper (Lothians) (Green):** My first question is on travelling safety. It is recognised that rail passenger safety has increased decade on decade since the 1950s. In view of that, is there a risk that setting even higher standards for rail safety might compromise overall safety? New safety mechanisms might necessitate higher fares, which might lead to an increase in car travel, which is a less safe mode of transport. Would public funds be better spent on things such as accelerating rail service enhancements, and accelerating small-scale but effective road safety measures, rather than on rail safety improvements?

**Richard Clifton:** I acknowledge the points about the safety of rail transport compared to other forms of transport. We are, of course, meeting in the immediate aftermath of the tragic railway accident at Potters Bar. Our objective is to try to ensure that we have safe railways and to encourage the duty holders to fulfil their responsibilities to achieve adequate and acceptable levels of safety on the railways. The public has high expectations of safety on the railways.

Robin Harper made a point about the comparisons that can be made between the safety of the railway and the safety of road travel. People's expectations of the safety of different forms of travel have been investigated extensively. There is a view that when people travel on the railway they put their safety into somebody else's hands, which is not the case when they drive their cars, and that consequently people have a legitimate expectation of high standards of safety on the railways. Ultimately, decisions about what it is right to spend on safety enhancement on roads and railways are for a number of different organisations and Government ministers to make. Our objective remains to try to achieve the highest railway safety standards that are reasonably practicable.

**Robin Harper:** This question is rather more specific and it links in with Bristow Muldoon's question on Edinburgh Park. Given the low population density and light traffic on several Scottish rail routes, is the HSE willing to introduce greater flexibility in deciding on appropriate safety standards for Scottish conditions? The opening of Beaulieu station was delayed for six months because of safety concerns that were not raised when the short-platform station was first proposed.

Can similar situations be avoided?

**Richard Clifton:** Our general view is that acceptable safety standards, and railway group safety standards, must be complied with. We are receptive to situations in which precise adherence to a particular safety standard is not practicable because of particular circumstances.

We have to have undertaken a risk assessment. There are a number of novel ways in which we can control risk, which will achieve the same standard of safety. Our objective is to achieve an acceptable standard of safety, but we are open to suggestions of novel forms of protection that will achieve that standard by a different route.

My understanding is that there were safety concerns about the short platform and the alignment of train and platform lengths at Beaulieu station. There were significant safety issues about which we had to be concerned. My understanding is that the station is open and that discussions continue about possible ways of mitigating the risks that are involved. My colleague Gerald Kerr might want to add something about the particular issues that might be involved.

**Gerald Kerr (Health and Safety Executive):** It is true that rail travel has increased dramatically. The landscape now is totally different to that which we had some years ago.

One of the greatest risks that the railway faces arises from trespass and vandalism. We insist that railway duty holders spend more money on that problem, which did not exist 20 years ago. Similarly, the increase in road traffic means that many level crossings receive public traffic that they used not to have to deal with. We are asking railway companies to spend more resources on enhancing those level crossings. As Richard Clifton said, we are considering several schemes for novel forms of protection at user-worked crossings, and for supporting Railtrack down that route.

**Robin Harper:** My final question might lead into questions that other people—particularly Fiona McLeod—might like to ask. Would you like to make general comments on problems that are caused by the present system of subcontracting maintenance work?

**Richard Clifton:** The Health and Safety Executive believes that one of the strengths that we bring to the regulation of safety on the railways is experience of regulating safety throughout British industry. Subcontracting is a fact of life in every industry. Subcontracting of processes creates additional safety problems and risks, because it involves additional interfaces and might involve questions about whether the right information has been given to the subcontractors. However, it is not true that that means that risks

cannot be properly controlled. It is clear that they can be properly controlled, but that involves additional challenges to the duty holders to ensure that a safe system of work is in place and is followed.

I mentioned the safety case system, which was introduced for Britain's railways after privatisation and fragmentation of the rail network. That was one method of enhancing safety in the light of the problems that might follow fragmentation of the railway. That requires duty holders, including Railtrack, to set out in detail a specification of safe systems of work, including specifications or systems for managing the contracting process. They must submit that for acceptance by the Health and Safety Executive every three years.

Recently, those specifications were resubmitted. That involved a formal process whereby we returned to Railtrack to raise issues. Virtually all the issues that we raised related to its procedures for dealing with subcontractors. They were exhaustively worked through. Eventually, last month the HSE accepted the safety case on the basis that it described systems of work that, if properly followed, would deal with subcontracting or ensure that work was done safely.

My general answer is that systems exist and that there are ways in which the problems of subcontracting—they are known and understood—can be dealt with safely. However, those systems must be followed. That is the responsibility of the railway duty holders.

**Maureen Macmillan:** Do you always reassess safety priorities? You mentioned unmanned level crossings that were considered safe in the past but which now, perhaps because of population changes, require re-examination. Sometimes, safety priorities seem a bit out of kilter. People thought that the Beaulieu station episode was amusing—the station's opening could not be advertised in case too many people turned up for it, which would prevent the station from opening. People were concerned not so much about the shortness of the platform as about the danger of that railway line where it runs through a housing scheme in Inverness and is not properly fenced off. Important issues sometimes seem to get pushed into the background; but perhaps that is a perception rather than reality.

**Richard Clifton:** Like any organisation, we have internal mechanisms to review priorities. We have an annual planning process. When there is a major accident—as there has been recently—people ask us serious questions about our priorities. At other times, people pick up on particular safety concerns that we have and tell us that we are being picky and difficult and that we attach disproportionate importance to some issues. Our organisation's aim is to ensure that in

society there is proper appreciation and management of risk. Our aim is to enable people to manage risk proportionately. We do not seek Rolls-Royce solutions in every circumstance. Our concern is proper appreciation and management of risk on a risk-assessment basis. We review our priorities.

11:45

**Fiona McLeod:** I want to pick up on a few of your earlier comments. You said that last month you went through a process with Railtrack of ensuring a safe system of working with contractors. Has that system changed greatly from the previous one?

**Richard Clifton:** I was not part of the team that assessed that safety case, so I cannot answer that question. Perhaps Gerald Kerr can do so.

**Gerald Kerr:** I was not part of that team, but the overarching aspect is the Health and Safety at Work etc Act 1974. The point is that a safe system of work should always be in place. To pick up on the earlier point about Beaulieu station, we must remember that by far the greatest number of injuries on the railways are slip-and-trip accidents on station platforms. We must guard against human error. The 1974 act refers to a hierarchy of risk control, so we look for engineering solutions prior to engaging procedures. We have been following that hierarchy for Beaulieu station.

**Fiona McLeod:** Can you send the committee information about the new safer system of working with contractors that will show how great the changes are from the previous situation? That information would be useful for us.

**Richard Clifton:** I can ask the team that undertook the acceptance stage of the process whether they could write to the committee describing the principal changes in the management of contractors.

**Fiona McLeod:** On more general matters, is it feasible for the industry to move forward by taking the regulation of safety away from the HSE and giving to the ORR, for example? Is it appropriate for safety to be regulated by someone whose focus is economic regulation rather than health and safety at work?

**Richard Clifton:** Lord Cullen undertook an extensive and exhaustive public inquiry after the Ladbroke Grove disaster. He heard a great deal of evidence on the matter to which you referred. His report endorsed the role of the Health and Safety Executive as the safety regulator for the railway industry.

As I said, the argument in favour of railway regulation remaining with the Health and Safety Executive is that we are an organisation that can

achieve a wider perspective. That is because we regulate health and safety at work across the whole of British industry. We are not a sector-specific organisation. Lord Cullen accepted that there would be disadvantages in there being a safety regulator that regulated only the safety of the railways.

I mentioned earlier that we emphasise the safety case regime for the railways. That is one way in which we seek to ensure safety on the railways. The HSE operates similar schemes in other sectors, such as the offshore oil sector, in which a safety case has to be produced for an offshore oil installation or for a major hazard site. We have taken the experience that we have gained from those regimes and applied them to developing the safety case regime for the railways. We take a broader perspective.

Lord Cullen considered various alternatives that were put to him. One of those was the Civil Aviation Authority model. I understand that, in that model, the economic regulator and the safety regulator are brought together in a single organisation in which a set of Chinese walls exists between the two sets of regulators. That means that safety regulation is not crowded out and overwhelmed by issues of funding. Lord Cullen considered and rejected that model.

There are a number of different models, but the most recent comprehensive consideration of the question reached the conclusion that the HSE should continue as the railway safety regulator.

**Fiona McLeod:** On that—

**The Convener:** Will you please be brief, Fiona?

**Fiona McLeod:** Yes. How will the rail accident investigation board work alongside the HSE?

**Richard Clifton:** There are similar models in the aviation and marine sectors and I expect that the relationship in the railways will work in much the same way. However, it will need close attention and the presence of agreements between the different organisations. If a major rail accident occurs, the railway accident investigation body will take priority in terms of accident investigation. That body will conduct an investigation with the aim of finding out what went wrong in order to learn lessons and provide answers.

The British Transport Police and the HSE will nonetheless need jointly with the rail investigation body to undertake some investigation of such an accident, but with a degree of separation. That is because the public would expect the question whether criminal acts have taken place to be investigated. The British Transport Police would examine the question of manslaughter. We would consider whether there were breaches of the Health and Safety at Work etc Act 1974 under

criminal law. In respect of a rail disaster in which people were killed, the public would expect the question whether someone was culpable to be investigated in order for those who were culpable to be brought to book.

We will have to work out fairly carefully the procedures for the development of separate but joint accident investigations. To do so would result in changes to the existing procedures, which would enable the HSE to get to the bottom of what had happened and learn lessons quickly. However, Lord Cullen and others believe that there would be an advantage in moving to a new set of arrangements. We look forward to that. Primary legislation will be required. We can move towards an effective system.

**Fiona McLeod:** I have one final, specific question, convener.

**The Convener:** Okay.

**Fiona McLeod:** I understand that the SRA favours the European rail traffic management system. Does the HSE agree that that system should be put in place as one of the overriding safety systems in the UK rail network?

**Richard Clifton:** Gerald Kerr might want to add something about the HSE's attitude towards that. There are automatic train protection systems in parts of the rail network. Following the publication of the Railway Safety Regulations 1999 and the recommendations of the Health and Safety Commission, the train protection and warning system is being introduced throughout the rail network. Through European directives, there is a commitment to introducing the ERTMS—the European rail traffic management system. That is a mandatory requirement of European directives; however, there is a question mark over the timetable for that, and implementation of the system will be relatively slow.

Following the Ladbroke Grove disaster, an inquiry was undertaken by Professor Uff and Lord Cullen, which is referred to as the joint inquiry. In their report, they proposed a much shorter time scale for the introduction of the ERTMS. The Health and Safety Commission endorses that time scale, but only if it can be demonstrated that it is practicable—given the difficulties that the report refers to—concerning the development of the systems. We must also be convinced that we are developing the system at an appropriate speed. Perhaps we should not move as quickly as possible, but more slowly so that we can develop a more sophisticated system that will have other advantages.

The industry recently completed a helpful study of the different systems and the likely pace of full development of those systems. The Health and Safety Commission is studying that report. The

answer to the question is therefore that there will be progress on the introduction of the European rail traffic management system, but the issues of exactly which version of it will be used and the speed of its introduction have still to be sorted out.

**Gary Backler:** We are working closely with the HSE on the variance of safety schemes and the rate of progress, because it is clear that there are many implications for the rest of the network.

**The Convener:** Members have a few more questions to address to you, but we have other items on the agenda. I propose that we put those questions in writing to each of the organisations and gather their responses as part of our evidence. If members have other supplementary questions, the clerks can include those.

**Nora Radcliffe:** Can I ask a question that requires a one-word answer?

**The Convener:** Yes, if it will get a one-word answer.

**Nora Radcliffe:** Does the east coast main line terminate at Edinburgh or Aberdeen?

**Gary Backler:** Aberdeen. The franchise services run to Aberdeen.

**The Convener:** You have kept Nora Radcliffe happy with that answer. I thank the representatives of the Strategic Rail Authority, the Office of the Rail Regulator and the Health and Safety Executive for their evidence. It has been very useful and has given us a good basis for the inquiry in which we are engaged. I would be obliged if those organisations could respond to the written questions that we will submit to them in due course.

11:58

*Meeting suspended.*

12:03

*On resuming—*

**The Convener:** I welcome Janette Anderson, the director of Railtrack Scotland. I am sorry that we are running a little late. I am sure that your evidence will be useful in our rail inquiry. I will give you the opportunity to make some brief remarks before we move to questions.

**Janette Anderson (Railtrack Scotland):** Thank you for inviting me to address this inquiry into rail. We welcome the inquiry, and the opportunity to give evidence. Before I make my opening statement, I would like to take a moment to reflect on Friday's tragic accident at Potters Bar. Obviously, our thoughts are with all those who were involved. It was a terrible accident, and one for which the whole industry is truly sorry.



Although we know how the accident happened, we do not know why it happened, which is why the investigation is so important. We must find the answers and act on them. Railtrack is fully assisting those investigations, as are our industry partners. We have put checks in place across the network and have examined, as members have probably read in the press, more than 800 sets of points. In Scotland, we examined more than 100 over the weekend. We believe that the accident was an isolated incident. We are committed to providing a safe and reliable rail network by maintaining the network round the clock. Reliability and safety are our number 1 priorities.

I discussed with the convener the fact that, as the accident is the subject of an on-going investigation, it would be inappropriate for me to comment any further. I am sure that the committee understands that. As soon as the facts are known they will be made public. It is fair to say that the accident is a savage blow to everyone in the industry at this time, when we are making a concerted effort to move forward, but we will ensure that the committee is kept fully informed of any developments on the accident.

I thought that it would be appropriate to tell the committee what Railtrack Scotland actually does. We are responsible for the operation and management of the rail infrastructure in Scotland. That means 4,200km of track, of which just under 1,300km is electrified. We look after 337 stations, more than 5,000 bridges, more than 200 viaducts and 80 tunnels. We are also responsible for all the signalling and overhead line equipment.

Investment in infrastructure in Scotland is significant. In the year that began in April, we will spend £255 million on the network, compared with £227 million last year. That represents a 12 per cent increase, or £28 million. On maintenance we will spend £96 million, which is split between £84 million on track maintenance and £12 million on structures. This year, our renewals expenditure is up £23 million on last year. We are concentrating that renewals expenditure on the upgrading of signalling and electrical equipment in Edinburgh and at the Mossend rail hub. We are also starting to renew signalling at Glasgow central station. We will also be renewing 58 miles of track and carrying out some major bridge repairs on the Forth and Tay bridges.

I mentioned safety. One of our key targets is the installation of the train protection and warning system in Scotland. At the end of April, we had achieved 900 installations. Up to today, we have achieved 914 installations. Our target is 1,300 installations by the end of December. So far, we have spent £17 million on that work. Right now, 70 per cent of the Scottish network is covered by TPWS. We have striven to reduce the number of

signals passed at danger. Last year, there were 36 such incidents, which is the smallest number ever recorded. We are also focusing on driving down trespassing and vandalism, which was touched on by the HSE earlier.

Further opportunities will arise in the future from trying to deliver on the Government's commitments and the SRA's 10-year plan. The Scottish Executive's transport delivery plan highlights four points relating to rail. In case members do not have them to hand, I will tell them what they are. Priority one is the letting of the 15-year Scottish rail franchise, and new links for Larkhall, Stirling, Alloa, Aberdeen crossrail and Gourrock. Priority two is the redevelopment of Waverley station. Priority three is the opening of Glasgow and Edinburgh airport links. Priority four is the reopening of the central Borders rail link.

All those priorities are important, but in particular the redevelopment of Waverley station is crucial. That is a £400 million development that will involve the entire rebuilding of track and signalling in the station. We have done a considerable amount of work on that. To deliver the project, we require a partnership approach with the Scottish Executive, the SRA and the City of Edinburgh Council. A steering committee has been set up to drive forward the project, which demonstrates the partnership approach that we have tried to nurture in Scotland. I am sure that the committee welcomes and endorses that approach.

**The Convener:** Thank you for those opening remarks. All members of the committee echo the sympathy that you expressed to people affected by the Potters Bar accident. I understand why you do not want to go too deeply into the issues surrounding that.

**Nora Radcliffe:** You pre-empted my first question. I intended to ask which enhancements to the Scottish rail network continue to have active Railtrack involvement, and you have given us a comprehensive view of that. Are more projects likely to be added?

**Janette Anderson:** The SRA witnesses touched on a few of those projects, which are currently at the stage of incremental output statements. We have been asked to work up nine projects to final cost stage. Most of those projects relate to platform extensions that would allow longer trains to be run. That is a relatively quick and easy way of getting more people on to the railways. An increased, half-hourly service from Glasgow to Kilmarnock is also being promoted.

The other schemes that are in development relate to the provision of modern facilities at stations, an issue that was touched on earlier. The aim is to provide what many people would regard as quite basic facilities, such as waiting rooms and

toilet facilities, at about 140 stations that do not currently have them. That is a £30 million programme over three years.

**The Convener:** You may have heard me ask Michael Beswick about the performance regime and how it applies when a new station is opened. You do not have to comment specifically on the project that I mentioned, but how do you think the relationship between Railtrack and the Office of the Rail Regulator works to ensure that the performance regime does not stand in the way of new developments?

**Janette Anderson:** We are about to set some precedents with two schemes that are under way. The Larkhall to Milngavie scheme, to which the Scottish Executive has committed £25 million, is at a well-developed stage and will introduce a new service to a congested stretch of railway. Under the current rules, Railtrack will be subject to a performance disbenefit; that is how the money-go-round works. There are various ways of mitigating that. We could set aside the current rules, as the ORR suggested. That has not been done before now, but it would be a great solution. Alternatively, one could put in place performance enhancements, such as more signalling. That would cost money and require the £25 million that has been made available for the project to be increased. The problem is not insurmountable, and we are in discussions with the ORR about it. However, the process is bureaucratic and time consuming.

**Nora Radcliffe:** As a passenger, one of the things that I find irksome is the withdrawal of left-luggage facilities. Will that measure be reviewed?

**Janette Anderson:** Two services have been withdrawn—left-luggage facilities and bins, the disappearance of which the member may or may not have noticed. Those are national security issues. I do not decide that there are no longer to be bins or left-luggage lockers at stations. That decision is taken by the Home Office, as part of its responsibility for security throughout the UK. However, we keep an eye on such matters. I appreciate that it is horrendous for members of the travelling public if there is nowhere for them to dispose of a coffee cup or heavy luggage.

**Nora Radcliffe:** That is true, particularly given that neighbouring bus stations do not apply the same rules. It is also possible to find bins just outside station precincts.

**Janette Anderson:** I do not make the rules—I just try to comply with them.

**Nora Radcliffe:** Your submission states that Railtrack concentrates scarce resources on essential renewals, and we understand why that is the case. Is there a risk of track access charges that are levied on Scottish operations being

diverted to fund schemes in other parts of the UK? Was the intention that track access charges should be available for use in the regions in which the charges arose?

**Janette Anderson:** On the danger that Scottish track access charges will be diverted to other parts of the UK, we do not produce sets of accounts for Scotland, as we are not a separate subsidiary. What I am about to say is therefore not publicly available. We are a net loss-making operation. In other words, the amount of money that we spend running, maintaining and enhancing the network in Scotland is in excess of the track access charges.

We are part of a UK-wide network, so any proposals in respect of renewals in particular are prioritised on a network-wide basis. Therefore, if I seek funding for track renewals or structure renewals, I do so in a UK-wide context and my colleagues and I discuss such issues in a UK-wide context. Obviously, there are swings and roundabouts, but things are done on an asset condition prioritisation basis.

12:15

**Des McNulty:** I want to return to what you said about the Larkhall to Milngavie line. There is concern in Bearsden and Milngavie about the number of trains that go through danger signals at the Westerton junction. Has that situation improved? The single tracking of line there is a bottleneck in the utility of that line and in what we can achieve. For some time, proposals have been in the pipeline for a halt at Allander, which, I understand, single tracking prevents. Three weeks ago, I noticed that a double-track bridge had been replaced by a single-track bridge close to Milngavie. What is Railtrack's view on that? Is a line being built that cannot be used as effectively as it could be if there was proper investment right the way through to Milngavie?

**Janette Anderson:** There are two or three issues there. First, you mentioned the Westerton junction. That was a multi-SPAD signal—SPADs are signals passed at danger—that had been passed more than twice in its lifetime. We have done quite a lot of work not only at Westerton, but on a number of multi-SPAD signals in upgrading infrastructure and driver training with ScotRail, which is our key industry partner. Westerton is no longer a multi-SPAD signal and has fallen out of our top 22, so you can rest assured about that. I would be happy to provide exact details of the infrastructure and our work with ScotRail, if that would be of interest.

Secondly, on the Larkhall to Milngavie upgrade, the sponsors made the specifications. We are agents of the build and obviously make proposals relating to capacity issues—and there are capacity issues on the network. The specification has been

determined and the cost is currently £25 million. It has taken an age to reach this point and I am about to press the go button, notwithstanding performance implications, part of which are capacity issues. We have considered where we would ideally like to enhance the capacity at Larkhall with the Scottish Executive, SPT and ScotRail. The scheme is SPT sponsored. The current preferred specification costs £25 million. It leads to a problem in terms of performance.

I do not think that we should be overly dismayed about capacity. If I may broaden the discussion beyond Larkhall to the whole Scottish network, two studies are being done on general capacity issues. One is a capacity study commissioned by the Scottish Executive, on which we are working in an advisory capacity, and the other has been commissioned by the SRA. I believe that the Scottish Executive study is still work in progress. The SRA study has been completed—again with our input—and the SRA is considering the output from that study. In general, that will mean upgrading signalling and key junctions.

**The Convener:** Before Nora Radcliffe asks another question, I congratulate Des McNulty on his opportunism. I appeal to other members not to make bids for pet projects in their neighbourhoods.

**Nora Radcliffe:** Janette Anderson will know that many rail improvement schemes have been held up by the lack of skilled signalling design engineers. Is Railtrack exploring tapping into outside sources to try to alleviate that shortfall?

**Janette Anderson:** Again, I have a few points to make in response to that. Why is there such a lack of signalling resources for enhancement projects? The priorities for signalling resources are, first of all, installing the TPWS throughout the UK, which was recommended following the Paddington disaster, and, secondly, the west coast main line upgrade, which has huge signalling implications. Enhancement projects, which this committee would be keen to have implemented, are fourth in the queue behind those projects and the project to renew existing signalling installations such as those at Edinburgh Waverley and Glasgow central, which are 30 years old.

We do not have enough signalling engineers to tackle the first three priorities that I mentioned. Through our key suppliers, we have sourced signalling engineers from Romania and the Philippines. However, for the past six months, absolutely everything that they have done has been checked by us. We have therefore yet to see the benefit of those engineers, but we are just getting to the stage at which we are comfortable that what the Romanians and Filipinos are doing is absolutely in accordance with what we would expect them to be doing.

We are working with universities to put in place key modules for railway engineering and, in June, we will open an education centre in Glasgow. We have invited Lewis Macdonald to open it but he has not responded—perhaps this committee could encourage him to do so. That is a Scottish initiative that we are working on with our partners in Scottish industry, the trade unions and so on. It is about lifelong learning and the enhancement of the skills of people in the railway sector. We are a little bit ahead of the game in that area, although I have not heard about how the national rail academy will be placed in Scotland.

None of those projects will come to fruition next week, but we are not sitting here doing nothing.

**Maureen Macmillan:** I promise not to mention any of the Highland lines, as dealing with those would take forever.

You have talked about the fact that, due to the bureaucracy involved, it takes an absolute age to get projects off the ground. Is there scope for changes to procedures or legal requirements that might allow rail projects to be delivered more quickly and in time? Perhaps changes to the structure of the rail industry or planning system could speed up the process.

**Janette Anderson:** A couple of developments that are in progress should help the situation. The Scottish Executive has set out its priorities in relation to the SRA. The bit of the jigsaw that is still missing is clarity around the financing, but I am relieved to see that the Executive's priorities seem to be aligned to the strategic plan. What is not clear is who is holding the cheque book for the schemes. I encourage the committee to seek clarity in relation to the funding mechanism and to find out how the money-go-round between the Scottish Executive and the SRA will underpin the projects. That is unclear to me.

The second development is to do with the virtual boards, which were mentioned earlier. I was at one last week and, obviously, did quite a lot of the talking. One key thing that came out of that meeting was that the train and freight companies are keen to make the enhancements happen. We think that agreeing some key enhancements will be a mechanism by which pressure can be brought to bear—albeit in an informal way—to ensure that there is movement in relation to some of those projects. I have medium hopes for the virtual board initiative, rather than high hopes. I think that it is a good mechanism, however.

**Maureen Macmillan:** So, you have the money—

**Janette Anderson:** We do not have it yet.

**Maureen Macmillan:** Let us pretend. Say that you had the additional finance and the virtual

board system, what barriers would there be to the delivery of improvements in a short time scale?

**Janette Anderson:** We would have to find pockets of signalling resources and schedule them in an appropriate time frame, so that the key projects—the west coast main line, TPWS and other renewals—were not prejudiced by the enhancements. I do not think that you would expect us to put in enhancements that would jeopardise any of those three projects. It is not beyond the wit of man to do that—we can do it if the financing is sorted out.

The last bit of the jigsaw would be to ensure that the resilience of the network's performance was not denigrated by the introduction of new services. That goes back to the issue of not only sorting out the money-go-round for performance, but including as a key part of the project how to address any performance discrepancy or dilution of existing performance that might result from, for example, putting in enhancements or re-timetabling. It is not just a question of money. It would be very easy to say that we should write a blank cheque for performance and get on with it. However, if we are building a new bit of infrastructure that has a devastating impact on the resilience of services that were in the place the day before, the whole complexion of the reliability of the network could be jeopardised. It is important that, as each incremental enhancement is assessed, we understand the big picture implications of any new build.

**Maureen Macmillan:** So it is necessary to consider the knock-on effect on the rest of the network.

**Janette Anderson:** Yes.

**Maureen Macmillan:** What about planning procedures? Are they very time consuming?

**Janette Anderson:** It depends on what one wants to build. Rebuilding Edinburgh Waverley, which was subject to a public inquiry and full planning, took a long time. However, in my experience, incremental enhancements, such as loops, sidings and additional signalling, are not a big deal.

**Mr Ingram:** Would enhanced powers for the Scottish Executive be helpful in cutting through the problems that you have described?

**Janette Anderson:** The only issue that I face in that respect is parliamentary powers to rebuild the east coast main line. I do not know yet whether I need the powers, but I am trying to find out and as far as I am aware the Scottish Executive does not have such a power. Those powers rest with Westminster, but I understand that a bill will be going through during the summer that will confirm that the power to rebuild any bits of railway in

Scotland will rest with the Scottish Executive after that time. I have a work in progress issue, which was mentioned earlier, called Dolphinstone, which means that I might need to rebuild a bit of railway. I have discussed that with the Scottish Executive and it has directed me to Westminster.

In the past two years, there have been no immediate issues that have caused me to ask the Scottish Executive why it does not have a certain power and why I have to go to London for permission. The key issue is funding. Clarity on funding between the SRA and the Scottish Executive is paramount.

**Maureen Macmillan:** What do you see as the future role of Railtrack's successor? What are Railtrack's views on the concept of a Scottish Railtrack company limited by guarantee, with separate accounting?

**Janette Anderson:** As far as I know, the future of Railtrack will be something called network rail, which is likely to be a company limited by guarantee with an executive board comprising a variety of interest groups. Below that, it is likely that there will be an operating board where the real day-to-day operational responsibility will sit. In terms of accounting, we are not a subsidiary company, but we are a business unit with a profit and loss account and a balance sheet that is audited and then consolidated into the UK-wide accounts. I do not predict a big change in the financial structure and accounting regime.

Personally, I do not think that a Scottish board is necessarily the best option. However, a Scottish seat on the board is essential. There must be a seat at that table to represent Scottish interests. I do not think that a Scottish board is needed because there would be a danger of marginalising Scotland from the rest of the UK. The network is UK-wide; it does not stop at the border. The timetabling, engineering and safety standards and the standard of interfaces with customers that we work to are UK-wide issues, not solely Scottish issues. From a personal point of view, I would not recommend to the committee that there should be a Scottish board. However, if I were you I would insist on a seat on an operating board and/or an executive board.

**Maureen Macmillan:** As somebody who has a great interest in the west Highland line, which obviously depends on the length of the platform at Euston and on rail track going up through England, I think that I agree with you.

12:30

**The Convener:** That brings us to the end of our questions for Janette Anderson. I thank her very much for her evidence, which has been useful.

The information that we have got from all the witnesses this morning will aid the committee extensively in its inquiry.

## Subordinate Legislation

### Home Zones (Scotland) Regulations 2002 (SSI 2002/177)

**The Convener:** The next item of business is the Home Zones (Scotland) Regulations 2002 (SSI 2002/177). The instrument raised some concerns for the Subordinate Legislation Committee as it contained significant and serious drafting errors, with the result that the instrument will be revoked by the Scottish Executive. The Executive has agreed to introduce a revised instrument, which will revoke this one, probably within the next couple of weeks. However, since the instrument has not yet been revoked it continues its parliamentary progress.

We are, therefore, in the unfortunate position of having to consider an instrument that is recognised as flawed. No motion to annul has been put before the committee. In such cases, we would usually report that we have nothing to report and I recommend to the committee that we still do that. However, I suggest that we should flag up in writing to the minister and to the Subordinate Legislation Committee our concerns that an instrument that has serious flaws has come before the Parliament and this committee, although we note that action is under way to correct the flaws. Are members happy that we do that?

**Nora Radcliffe:** I concur with that approach. The situation is symptomatic of a wider disease. The fact that we are getting instruments that contain serious drafting defects is a reflection of the pressure on the drafting capacity of the Parliament. That is a serious issue, which seems to be holding up other legislation. I am concerned about the bill that will arise from "The Nature of Scotland" consultation, which seems to be held up as a result of lack of drafting capacity. I am sure that other legislation is being affected. The Parliament should examine ways to remedy this serious problem.

**John Scott:** I agree with that point, which Fiona McLeod raised last week. Too many instruments that come before the committee are acknowledged by the Executive to be defectively drafted. We should do more to avoid that situation. We are not making good legislation.

**Robin Harper:** I signify my total agreement with what Nora Radcliffe and John Scott have said. There must be a review of the drafting capacity; it needs to be increased.

**Fiona McLeod:** Would it have been correct for the committee to lodge a motion for annulment, so that the report would have been that we do nothing further? As the instrument is being withdrawn, we could have stopped it coming into play.

**The Convener:** That would have been possible, but it is probably unnecessary for us to take that course of action. We might have done so if we had not been given the clear indication that another instrument would be introduced. Do members agree on the course of action that I outlined, to which Nora Radcliffe added some suggestions?

**Members** *indicated agreement.*

## Petition

### Genetically Modified Crops (PE470)

**The Convener:** Item 6 is consideration of petition PE470, which is on genetically modified crops. The relevant papers, which are the letters that we sent to the Minister for Environment and Rural Development and his responses, were circulated to members with the papers for previous meetings. We first considered the petition on 27 March, after which we wrote to the minister and he responded to us. We sent copies of the correspondence to the convener of the Health and Community Care Committee and we agreed to write to the Environment Directorate-General of the European Commission making inquiries about European policy on GM crops.

We considered the issue again on 17 April, following which we wrote to the minister making some specific recommendations about the trials. We received a response from the minister and, as members will be aware, we took evidence from him at last week's meeting. I seek members' views on how the committee should approach the matter.

**Maureen Macmillan:** I do not believe that the committee can take the petition any further. We have had an inquiry into GM crops and we have a full work load, which involves us in regular four-hour meetings. We have had to postpone the consideration of other petitions through lack of time. However, there are still concerns. We await the minister's response to the developments in Belgium and a copy of the site-specific risk assessment for the Munlochy trials. The questions about the effect on human health of the inhalation of GM pollen, which the chair of the British Medical Association's public health committee raised, are still to be answered.

I suggest that the committee end its consideration of the petition at this time and write to the petitioners with the answers that we have received from the minister and any subsequent information that we receive from him. We should also forward the minister's written responses to the Health and Community Care Committee and refer that committee to the minister's verbal responses, which are in the *Official Report* of last week's meeting. It would then be up to the Health and Community Care Committee to decide whether to pursue the matter further.

**Robin Harper:** I hope that Fiona McLeod will move the motion that is left over from last week, so I will not pre-empt it. I have two short statements.

First, I pay tribute to the exemplary conduct of Anthony Jackson, Linda Martin and Nigel Mullen in pursuing the petition. I am sure that members of

all parties share that view.

Secondly, I will read a part of the latest e-mail from Mr Jackson to indicate my absolute belief that the issue is very much alive. The e-mail states:

"Mr Finnie talks about the 'voluntary' nature of the agreement with SCIMAC. This confuses the whole issue:

1 GMOSR cannot be grown commercially as it does not have a Part C Commercial Consent, only a Part B experimental one.

2 Mr Finnie either has legal powers or he does not. In fact it is the case that he does. EPA 111/10 and EU Directive 90/220/EEC Article 4 provides him with them."

**Fiona McLeod:** I could not disagree more with Maureen Macmillan. I am sure that members were ready for me to say that. In reviewing the minister's evidence to us last week, I find that we are still waiting for answers on a number of issues. I will highlight the two issues on which I questioned the minister. The first is about the scientific evidence on which he claims he bases his decisions.

As members know, I put forward six different items of scientific evidence—out of a total of 31 that I have—that contradict the minister's statement and demonstrate the scientific consensus on this issue.

Robin Harper has already mentioned the other aspect—the minister's legal position as far as decisions on the trials are concerned—on which I questioned Ross Finnie. Although I asked the minister specifically about the fact that section 111(10) of the Environmental Protection Act 1990 clearly gives him the power to stop the trials, he has not yet told us why he has not used that power. As a result, there are still compelling reasons to investigate the issue further.

One compelling reason is that the field has now been damaged three times. The committee has to follow the parliamentary process rigorously and timeously to ensure that people do not lose faith in it and take direct action.

A few meetings ago, I was asked which items I would drop from the committee work timetable. I do not want to drop anything in order to take evidence on the scientific and legal aspects of this issue. However, I should tell the committee that a board member of Aventis has offered to give evidence to the committee. As the competence of the Advisory Committee on Releases to the Environment's decision-making processes is now being questioned by leading scientists, we should also ask its representatives to give evidence. I therefore suggest that we have a meeting either on Thursday 23 May or Monday 10 June. We do not have any meetings scheduled for those days. Indeed, we have already timetabled extra meetings over the three weeks in which the

general assembly will be using the chamber. If we schedule a meeting on either of my suggested dates, we could invite witnesses to submit evidence and ensure that we find out whether the minister's decisions are in Scotland's best interests.

**Robin Harper:** I second that proposal.

**Nora Radcliffe:** On a point of clarification, Fiona McLeod mentioned that she had put forward six items of scientific evidence. Did they include the points that the minister had already checked with ACRE?

**Fiona McLeod:** That is why we have to take further evidence. I did not feel that the minister answered the six points that I put to him. As I said, I could have produced more evidence.

**Nora Radcliffe:** Were those six points of evidence run past ACRE, which then said that it had taken them into account?

**Fiona McLeod:** No. None of the six points was among the four pieces of evidence that we previously questioned the minister about.

**Nora Radcliffe:** Okay. I just wanted to clarify that point.

**The Convener:** Do any other members wish to speak?

**Robin Harper:** Yes.

**The Convener:** Before I let Robin Harper back in, I want to make a few comments myself. I agree with Maureen Macmillan's suggested course of action. The committee conducted a fairly significant inquiry into genetically modified organisms and produced its report only a year ago. Given the range of issues that fall within the committee's remit, we cannot afford to embark on further inquiries on subjects that we already inquired into a short time ago, unless we are convinced that significant new evidence has emerged. I am not convinced that such evidence has emerged since the committee produced its report last year. Many of the organisations that we would likely take evidence from gave evidence to the committee towards the end of 2000 and therefore have had an input into our consideration of the issue.

Maureen Macmillan noted the fact that concerns about health have been raised. I am not convinced that there is significant evidence that health is an issue. As it is not within the remit of the Transport and the Environment Committee to deal specifically with health issues, I am comfortable with the suggestion that we refer the relevant matters and the answers that the minister has given to the Health and Community Care Committee, so that it can decide whether to take further evidence or action.

12:45

Committee members should acknowledge that conducting any further inquiry would affect not only the work load of committee members, but that of the committee's clerks, which is already extensive. In the latter part of this year, the committee will be involved in consideration of at least one major bill and perhaps in other significant pieces of work. There is no such thing as a free lunch. If we embarked on such a major piece of work, I suspect that it would take more than just one meeting and that the work load of the clerks might reach intolerable levels. We should take cognisance of that fact before we reach a decision.

**Robin Harper:** You hit the nail on the head when you said that further meetings might be required if we held an inquiry on GMOs and took more evidence on the subject. Science has not stopped—more evidence has come to light and the argument is whether it is significant. There is plenty of new evidence and many new questions need to be asked. We did not exhaust the questioning by a long chalk in the original investigation into GMOs. It is clear that many questions are still to be answered.

Although I sympathise utterly with the clerks for the work load that they would have, Fiona McLeod expressed a wider concern about whether we are doing our job in relation to GMOs. I would have thought that holding at least one meeting to interview two of the leading protagonists in the affair would be the least that we could do. Maureen Macmillan's proposal is not mutually exclusive. We can send the matter to the Health and Community Care Committee, but we can also hold a meeting on the subject. I would argue strongly for holding the meeting on 23 May or 10 June; 10 June would be preferable.

**John Scott:** I believe that we must take the line that Fiona McLeod suggests. The fact that new evidence is emerging all the time means that, at the very least, our report needs to be updated. I accept that the burden on the clerks might well become intolerable, but that is not a reason for us not to discharge our duty to Scotland. The issue is important.

I was unhappy with the response that the minister gave on liability last week. If he is as certain that there are no problems as he claims to be, he ought to be fully prepared to pick up the tab for any damage that the experiment might cause. It is intolerable for people to be forced to go through the courts to prove negligence by the Government if damage has occurred as a result of the trials, given the high-profile nature of the protests.

We should extend the ultra-precautionary principle and it is therefore incumbent on us to

take further evidence to update our report. We might come to the same conclusions that we reached before, but if we do not at least update our report we will not have discharged our duty adequately.

**Maureen Macmillan:** One day's evidence taking will not solve the problem of assessing the new science.

I am a member of more than one committee and the dates that were mentioned are already filled with evidence-taking sessions on the prison estates review for the Justice 1 Committee. I do not have space in my parliamentary life to contemplate fitting in extra meetings for an inquiry. I do not think that there is a great urgency to take evidence—the issue is not one that we have to deal with next week—because the committee has already said that the trials at Munloch should be halted. Perhaps we could make a decision about it at a later date, when we look at our forward work programme.

**John Scott:** With respect, Maureen, substitutes can be involved in committees now. Therefore, the fact that, much to the regret of everyone on the committee, you cannot attend—

**The Convener:** I would like to hear people's comments in the order in which I indicated they would be called, John. I will let you come back in later, if you want, but I will let Nora Radcliffe in now, if Maureen Macmillan has finished.

**Nora Radcliffe:** I do not think that it is our role to evaluate new scientific evidence. It is our role to satisfy ourselves that new scientific evidence is taken into account as it emerges and that the body that evaluates that evidence is credible and properly constituted and has the right credentials. The work that we did on our original report on GMOs satisfied me that ACRE fitted the bill. The minister's answer to previous questions about new evidence was that ACRE takes new evidence on board. I do not think that it is necessary for us to hold meetings to take evidence on the new science, because I am satisfied that that issue is being dealt with adequately.

Liability is emerging as an issue, but it may be premature for the committee to start to consider that issue, as work is being done on it at the European level. It would be more appropriate for the committee to wait until there is greater clarity about the proposals that will be made at the European level in the coming months. It would be a better use of our time to assess those proposals at that stage.

**Mr Ingram:** I would like to have another session on the minister's powers. I find it unsatisfactory that, even though we have had several meetings at which we have asked the minister to say precisely what powers he has, we still have not



had a definitive answer. The minister has a particular view, but ministers in other parts of the European Union appear to have a different view. We must get a definitive answer to that question, and I do not think that we should drop the matter until we receive such an answer.

**The Convener:** Did you want to come back in, John?

**John Scott:** No.

**Angus MacKay:** The discussion has raised some interesting issues. To be fair to Fiona McLeod, I was one of those—*[Interruption.]* I cannot speak into the microphone and turn to speak to Fiona at the same time because she is sitting behind me.

**Fiona McLeod:** Speak into the microphone, or I will not be able to hear you.

**Angus MacKay:** All right. When it was suggested that we should have another inquiry into GM crops, I said that we should first take a close look at our timetable, because we would have to decide what work to take out in order to fit that work in. To be fair to Fiona, I note that she tried to be imaginative by suggesting that we should schedule in some additional time, rather than swapping work. If we have a vote on the matter, I will vote against scheduling additional committee time on the dates that have been suggested, but that is not because I think that we should not consider the issue further.

Interesting questions have been raised, such as those raised by Adam Ingram about the minister's powers. It seems to me that we keep asking the minister the same question, to which we keep getting the same answer. Although some members are satisfied with that answer, others are not. Perhaps we should put that question to someone else. If the issue is covered by European legislation, and another European country seems to be taking a different view, perhaps we should seek information from a different source on why that country—I believe that it is Belgium—is taking a different position. We do not have to schedule time for an inquiry to do that, as there other ways in which that information could be elicited and brought to the attention of the committee.

As I was not a member of the committee at the time, I cannot say when the previous reporters were appointed or when the previous inquiry was carried out.

I take the point about new scientific evidence emerging continually on both sides of the argument, but that in itself does not determine that we should revisit the matter with a second inquiry. I am not sure whether we ought to take a decision on what we must do now. What has been proposed today does not seem to be germane to

the issue of whether the crop is flowering; it seems to be about the broader context of the Munloch protest. It seems to me that we need not rush to judgment about whether to schedule committee time for those particular dates.

Could we take a little more time to consider how important the issue is in the broader context of the issues that we are considering? If we want to consider the issue again, perhaps we should revisit it one, two or three years on from when we reported last time, rather than making a snap judgment today. If I were forced to make a snap judgment, I would say that we should not schedule meetings on those dates, not least because not everyone would be able to attend then. However, we should not kill the possibility of reconsidering the issue.

**The Convener:** My preference is that we come to a decision today on how to proceed, because the issue has been on the agenda for a number of weeks. I note that there will be a debate in Parliament on the issue when we are in Aberdeen. I understand that one of the Opposition parties will use its time to bring the issue before Parliament so that everyone will be able to express a view. We do not know the exact terms of the motions and amendments that will be debated, but Parliament will be able to take a general view on the issue.

**Robin Harper:** Can I ask a brief question?

**The Convener:** Fiona McLeod wants to come back in. I would prefer not to let you back in for a third time, Robin, but I will let you in if the question is very brief.

**Fiona McLeod:** You said that the committee had conducted a report on GMOs and that there had been no significant new evidence since then. Over the past few weeks, we have learned that there has been significant new scientific and legal evidence. Our report was not set in stone at that time; it should be a growing organic report, which takes cognisance of significant changes.

Nora Radcliffe said that, after taking evidence, we said in our report that ACRE was a credible body. ACRE is now being questioned and it has admitted that it ignored evidence that it should have considered on chickens being fed with genetically modified maize. We need to review the position on ACRE.

I remind the committee that the petition was not just on the GM crop trial at Munloch; it was on trials throughout Scotland. Sadly, the crop at Munloch is flowering, but another crop will be sown there at the end of the year and other crops are being grown throughout Scotland.

As John Scott said, we have identified two days on which we can meet. We are not taking away from items of business and we are able to use

substitutes on the committee to ensure that the work gets done. I would be very disappointed, as would the majority of the population of Scotland, if the committee were to say that this is the end of the story and that we should just let the trials happen.

**Robin Harper:** When I was flying down from Kirkwall, I saw more than 300 fields of oil-seed rape in the Peterhead area. I do not think that they were of genetically modified oil-seed rape—at least I hope that they were not. I would like us to go to a motion, but we should consider Angus MacKay's sensible proposal for seeking further clarification on the legal position, perhaps by referring to the European Court of Justice.

**The Convener:** I want to consider the two proposals that have been made. I do not know whether you are trying to make a third proposal, Robin.

**Robin Harper:** That is a suggestion. I am not making a proposal.

13:00

**The Convener:** Two proposals have been put forward. Maureen Macmillan suggests that we conclude consideration of the petition by corresponding with the petitioners on all the evidence that we have taken, the information that we have gained and the correspondence between us and the minister. In addition, we should refer the issue to the Health and Community Care Committee for consideration of some of the health matters that have been raised. The other proposal, which Fiona McLeod has made, is that we schedule at least one meeting in which to take evidence from the bodies that she mentioned. I cannot remember them all off the top of my head, but I am sure that they will be in the *Official Report*.

I do not think that anyone has opposed Maureen Macmillan's suggestion that the issue should be referred to the Health and Community Care Committee. If that is not opposed, we can agree that that part of Maureen's proposal should proceed. Am I correct in understanding that members are not opposed to that suggestion?

**Fiona McLeod:** Can I clarify that we will say to the Health and Community Care Committee that it should examine the public health aspects of the GM crop trials?

**The Convener:** We will highlight the fact that questions have been raised on the issue, that we have corresponded with the minister on it and that the minister has responded. We should state that we do not think that it is in our remit to come to conclusions on the public health aspects and that the Health and Community Care Committee

should consider whether it wants to investigate the matter. We will not be telling it to carry out work on the matter. We will draw the matter to that committee's attention and allow it to make its own decision. Is that agreed?

**Members indicated agreement.**

**The Convener:** We are left with two proposals. The first proposal is that we conclude our consideration of the petition by writing to the petitioners to inform them of the work that we have carried out on the issue, which includes referring the health aspects to the Health and Community Care Committee.

The other proposal is that we conduct a further evidence-taking session, as specified by Fiona McLeod. I suggest that we take a straightforward yes/no vote on each of the proposals. Given that Maureen Macmillan's proposal was raised first, we shall consider it first. If Maureen Macmillan's proposal is passed, that would preclude Fiona McLeod's proposal from being passed. If members want to support Fiona's proposal, they will have to vote against Maureen's.

**Fiona McLeod:** I suggest that, procedurally, the proposal that suggests that we proceed to do something should be taken before the one that suggests that we call a halt on the matter today.

**The Convener:** There is not necessarily any procedural consideration that suggests that we should do that, but I am not worried either way, so I am happy to accede to that suggestion.

There will be a simple yes/no vote. If Fiona McLeod's proposal is passed, that would preclude Maureen Macmillan's one from being considered. The question is, that the committee should take oral evidence on other issues raised by the petition. Is that 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)  
Muldoon, Bristow (Livingston) (Lab)  
Radcliffe, Nora (Gordon) (LD)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0. I will use the casting vote against our taking further oral evidence. On that basis, the proposal is defeated by five votes to four.

The second proposal, put forward by Maureen Macmillan, is that we conclude consideration of

the petition and correspond with the petitioners. We have already agreed that we will refer the health aspects to the Health and Community Care Committee.

**Mr Ingram:** Could I add to that the suggestion that we follow through on our questions about the legal powers of the ministers?

**The Convener:** I do not want to amend the proposal at this stage.

**Mr Ingram:** Could we not continue correspondence on that matter?

**The Convener:** We have already debated the issue. Clear proposals have been put forward. Members are by all means entitled to press the issues. We still await a response from the Environment Directorate-General of the European Commission. That response will be made available to members and we will advise petitioners of that response once it has been received.

We will now vote on Maureen Macmillan's proposal. The question is, that the committee should conclude its consideration of the petition. Is that agreed?

**Members:** No.

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

## FOR

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

## AGAINST

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

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0. I will use the casting vote in favour of the proposal that we conclude consideration of the petition. On that basis, the proposal is agreed to by five votes to four.

**Fiona McLeod:** Can I check that it will be recorded in the *Official Report* who voted which way, so that I do not have to say at this moment that I want it recorded in the *Official Report* that I think that we have taken the wrong decision?

**The Convener:** That is recorded.

That brings us to the end of the agenda and the end of the meeting. I thank members for their attendance. I hope that as many members as possible can stay for the briefing that Dr Kenneth Black will now give us.

*Meeting closed at 13:05.*



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