

# **EDINBURGH TRAM (LINE TWO) BILL COMMITTEE**

Wednesday 21 December 2005

Session 2

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### **EDINBURGH TRAM (LINE TWO) BILL COMMITTEE** **19<sup>th</sup> Meeting 2005, Session 2**

#### **CONVENER**

\*Bill Aitken (Glasgow) (Con)

#### **DEPUTY CONVENER**

\*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

#### **COMMITTEE MEMBERS**

\*Marilyn Livingstone (Kirkcaldy) (Lab)

Kate Maclean (Dundee West) (Lab)

\*Alasdair Morgan (South of Scotland) (SNP)

\*attended

#### **CLERK TO THE COMMITTEE**

Terry Shevlin

#### **LOCATION**

Committee Room 3



## Scottish Parliament

### Edinburgh Tram (Line Two) Bill Committee

*Wednesday 21 December 2005*

[THE CONVENER *opened the meeting at 10:08*]

### Edinburgh Tram (Line Two) Bill: Consideration Stage

**The Convener (Bill Aitken):** Good morning, ladies and gentlemen, and welcome to the 19<sup>th</sup> meeting this year of the Edinburgh Tram (Line Two) Bill Committee. Please switch off your mobile phones and pagers.

We have received apologies from Kate Maclean, who cannot attend the meeting because of a bereavement. She is attending the funeral this morning.

Agenda item 1 is phase 2 of the consideration stage of the Edinburgh Tram (Line Two) Bill. The committee must consider and make decisions on all the admissible amendments to the bill that have been lodged. The procedures that we will follow are similar to those that are followed for a public bill at stage 2. However, only members of the committee have been able to lodge amendments and only they may participate in the meeting.

The admissible amendments that have been lodged fall into three main categories: amendments that have arisen from issues that the committee's consideration stage report highlighted; minor or technical amendments that the promoter has provided and that have been lodged on the promoter's behalf by members of the committee; and amendments that have arisen from discussions that the committee clerks and our legal adviser have held on our behalf with the promoter on certain aspects of the bill.

Before I begin the formal proceedings, I state that we have reached this stage almost in spite of, rather than because of, the bill's draftsmen. There was a significant delay in the draftsmen's provision to the committee of some amendments that the promoter asked us to lodge on its behalf, which created all sorts of problems for the meeting's organisation.

One consequence of the delay in producing amendments is that the committee will not deal with the amendments to section 16, which relates to the discharge of water, as the promoter wished. However, notwithstanding the promoter's proposed amendments, I still have concerns about the effect of that section.

In the circumstances, I believe that the best thing to do is simply to wait until the final stage, when the amendments can be resubmitted and the provision can be comprehensively amended. A member is likely to lodge the amendments to section 16 on the promoter's behalf at the final stage—on the assumption, of course, that all problems have been fully resolved. Frankly, the handling of the matter has left a great deal to be desired, put our clerks to a tremendous amount of extra work and made the organisation of today's meeting extremely difficult to manage.

I highlight our groupings of amendments—particularly group 3, which contains amendments 11 to 14. Alasdair Morgan lodged amendments 11 and 12 and Jeremy Purvis lodged amendments 13 and 14. However, for the purposes of the proceedings, it will be simpler if Alasdair Morgan speaks to all the amendments in the group at the appropriate point. Is he content with that?

**Alasdair Morgan (South of Scotland) (SNP):** Indeed.

**The Convener:** Does Jeremy Purvis agree to that?

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** Yes.

**The Convener:** Having agreed that, we can begin to consider the amendments.

#### Section 1—Power to construct works

**The Convener:** Amendment 1, in the name of Marilyn Livingstone, is the only amendment in group 1.

**Marilyn Livingstone (Kirkcaldy) (Lab):** Amendment 1 will rectify a drafting error. Section 1(7)(a) suggests that the works must be within both the limits of deviation and the limits of land to be acquired or used but, in fact, few of the works are likely to be within both areas, as they generally serve different purposes. The bill should specify that works that are authorised by subsections (3) and (4) must be carried out either within the limits of deviation or within the limits of land to be acquired or used. Amendment 1 will make that position clear.

I move amendment 1.

*Amendment 1 agreed to.*

*Section 1, as amended, agreed to.*

#### Schedule 1

##### SCHEDULED WORKS

**The Convener:** Amendment 2, in the name of Jeremy Purvis, is grouped with amendments 3 to 10, 17 to 19, 23, 29, 40 to 47 and 100 to 102.

**Jeremy Purvis:** This is a large group of amendments that, taken together, will make all the necessary changes to reflect the agreement for the high-level crossing at Baird Drive; the change of alignment through Haymarket Yards; the change of alignment at the Gyle; the changes in the airport area that were agreed with BAA; and an agreement with the objectors Mr Hamilton and Judith Sansom covering a major alteration in the alignment near their property.

In its consideration stage report, the committee agreed that all those changes should be made. Unless any member requires further information, I see no purpose in giving more extensive descriptions of the amendments.

I move amendment 2.

*Amendment 2 agreed to.*

*Amendments 3 to 6 moved—[Jeremy Purvis]—and agreed to.*

*Schedule 1, as amended, agreed to.*

### **Schedule 6**

#### ACQUISITION OF CERTAIN LAND

*Amendment 7 moved—[Jeremy Purvis]—and agreed to.*

*Schedule 6, as amended, agreed to.*

### **Section 2—Power to deviate**

*Amendments 8 and 9 moved—[Jeremy Purvis]—and agreed to.*

*Section 2, as amended, agreed to.*

*Section 3 agreed to.*

### **Schedule 2**

#### ROADS SUBJECT TO ALTERATION OF LAYOUT

*Amendment 10 moved—[Jeremy Purvis]—and agreed to.*

*Schedule 2, as amended, agreed to.*

*Section 4 agreed to.*

### **Section 5—Power to execute road works**

10:15

**The Convener:** Amendment 11, in the name of Alasdair Morgan, is grouped with amendments 12 to 14.

**Alasdair Morgan:** The first four sections of the bill provide for the authorised work to be undertaken. Section 4 gives the authorised undertaker the power to keep apparatus that is associated with the tram in or on the road. In addition to the authorised works, further road works may be required as a consequence of

works under various other sections of the bill and the powers contained in those sections. However, those sections do not authorise the placing of apparatus in roads to enable construction to take place. Section 5 is required to allow the authorised undertaker to carry out any road works that are required under the bill. The exercise of that power is subject to consents or authority from any other body that has powers over a private road.

The amendments arose from discussions that the clerks and the legal team held on our behalf with the promoter in relation to the general drafting of the bill. As drafted, section 5(1) consists of an extremely long sentence of more than 100 words and its precise meaning is difficult to discern. In producing a revised version that is more accessible and more in keeping with Scottish drafting style, the promoter observed that a couple of powers that would be helpful had inadvertently been omitted. Under amendment 12, those powers will be found in paragraphs (c) and (d). In other respects, the purpose of the section is unchanged. We are grateful to the promoter for the improved wording that has been produced.

The amendments to schedule 9 will remove the references to “navigation authority”, as no navigable waters are crossed by the route that is proposed in the bill.

I move amendment 11.

*Amendment 11 agreed to.*

*Amendment 12 moved—[Alasdair Morgan]—and agreed to.*

*Section 5, as amended, agreed to.*

### **Schedule 9**

#### PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

*Amendments 13 and 14 moved—[Jeremy Purvis]—and agreed to.*

*Schedule 9, as amended, agreed to.*

### **Section 6—Permanent stopping up of roads**

**The Convener:** Amendment 15, in the name of Marilyn Livingstone, is grouped with amendment 16.

**Marilyn Livingstone:** It is inevitable that there will be some disruption for road users while the tramline is constructed. Section 6 makes provision to deal with that. Section 6(2)(b) states that where certain named roads are stopped up—that is, where the public’s right to use the roads is cancelled—a temporary alternative route must be provided and maintained until a new road is complete. Amendment 15 will ensure that, in such cases, the temporary alternative route must be provided and maintained until the new road is both complete and open.

There was doubt about whether it was necessary for all or most of the conditions in section 6(4) to be met. Some of those conditions are mutually exclusive. Amendment 16 clarifies the intention and makes it clear that, before a road is stopped up for which no substitute is provided, any one of the conditions in subsection (4) must be met.

I move amendment 15.

*Amendment 15 agreed to.*

*Amendment 16 moved—[Marilyn Livingstone]—and agreed to.*

*Section 6, as amended, agreed to.*

### Schedule 3

#### ROADS TO BE PERMANENTLY STOPPED UP

*Amendments 17 to 19 moved—[Jeremy Purvis]—and agreed to.*

*Schedule 3, as amended, agreed to.*

### Section 7—Temporary stopping up of roads

**The Convener:** Amendment 20, in the name of Jeremy Purvis, is grouped with amendment 21.

**Jeremy Purvis:** Amendments 20 and 21 are drafting amendments that are intended solely to make the section more comprehensible by reducing the length of the text. They do not affect the intent, purpose or effect of the existing drafting.

I move amendment 20.

*Amendment 20 agreed to.*

*Amendment 21 moved—[Jeremy Purvis]—and agreed to.*

**The Convener:** Amendment 22, in the name of Alasdair Morgan, is the only amendment in group 6.

**Alasdair Morgan:** The bill currently provides that a person who suffers loss from a permanent extinguishment of a private right of way is entitled to compensation under the Land Compensation (Scotland) Act 1963. The amendment will ensure that a person who suffers loss from the temporary suspension of a private right of way will also be entitled to compensation. In short, the committee is ensuring that people who suffer such losses are treated equally.

I move amendment 22.

*Amendment 22 agreed to.*

*Section 7, as amended, agreed to.*

### Schedule 4

#### ROADS TO BE TEMPORARILY STOPPED UP

*Amendment 23 moved—[Jeremy Purvis]—and agreed to.*

*Schedule 4, as amended, agreed to.*

### Section 8—Access to works

**The Convener:** Amendment 24, in the name of Marilyn Livingstone, is grouped with amendments 35 and 36.

**Marilyn Livingstone:** These amendments rectify a drafting error. The works that the bill authorises are referred to in the bill as “authorised works”. However, on some occasions, they are erroneously referred to as “scheduled works”. The amendments ensure that the drafting reflects the intended meaning.

I move amendment 24.

*Amendment 24 agreed to.*

*Section 8, as amended, agreed to.*

*Sections 9 to 12 agreed to.*

### Section 13—Agreements with Network Rail and Strategic Rail Authority

**The Convener:** Amendment 25, in the name of Alasdair Morgan, is grouped with amendments 26 and 27.

**Alasdair Morgan:** At the committee’s meeting on 28 November, it considered evidence relating to an objection that was lodged by BRB (Residuary) Limited. Following discussion with the promoter, BRB indicated that it was willing to withdraw its objection if certain amendments were made to the bill. The committee stated that it would amend the bill at this stage to ensure that the necessary changes are made. The amendments reflect the fact that the Strategic Rail Authority’s powers have been transferred since the bill was introduced. Given that the title to any land to which section 13 refers will now be held by BRB rather than by the Strategic Rail Authority, the section should be amended to refer to BRB. Members will recall the promoter’s assurance that these amendments will have no impact on a third party and I confirm that the only change relates to the identity of the organisation with which the authorised undertaker can enter into agreements.

I move amendment 25.

*Amendment 25 agreed to.*

*Amendments 26 and 27 moved—[Alasdair Morgan]—and agreed to.*

*Section 13, as amended, agreed to.*

### After section 13

**The Convener:** Amendment 28, in the name of Alasdair Morgan, is the only amendment in group 9.

**Alasdair Morgan:** There are likely to be historical statutory obligations on BRB (Residuary) Limited, as a successor body of the original railway companies, which subsist notwithstanding the closure of the former railways. The amendment transfers responsibility for those obligations that are applicable to any part of a former railway corridor that falls within the limits of deviation to the authorised undertaker from the date on which the bill comes into force. The terms of the amendment have been agreed between the promoter and BRB.

I move amendment 28.

*Amendment 28 agreed to.*

*Section 14 agreed to.*

### Schedule 5

#### LEVEL CROSSINGS

*Amendment 29 moved—[Jeremy Purvis]—and agreed to.*

*Schedule 5, as amended, agreed to.*

### Section 15—Attachment of equipment to buildings for purposes of works

**The Convener:** Amendment 30, in the name of Alasdair Morgan, is grouped with amendments 31 and 32.

**Alasdair Morgan:** The replacement of subsections (2) and (3) and the other amendments to section 15 are further changes as a consequence of the discussions that were held on our behalf with the promoter. In general, section 15 provides the authorised undertaker with the power to attach any necessary equipment to any building. As drafted, subsection (3) requires a person who wishes to object to fixings being placed on their building to refer the matter by summary application to the sheriff. The replacement subsections require that the authorised undertaker must obtain consent from the owner before carrying out any such work. Only where consent is refused, or is granted subject to unreasonable conditions, can the authorised undertaker refer the matter to the sheriff to determine. Thus, amendment 30 transfers the onus to take matters to court on to the authorised undertaker, which is fairer and more appropriate.

Amendment 31 amends section 15(4). The tram system will involve overhead wires that transmit electricity to the vehicles. In general, section 15 allows wires and other equipment to be attached to neighbouring buildings, rather than having them

fixed to poles in the road. Section 15(4) enables the owner of the building to require the authorised undertaker to remove the attachment at the undertaker's expense to allow the owner to reconstruct or repair the building, providing that at least 28 days' notice is given. Amendment 31 is simply a plain English rewrite and does not affect the effect, purpose or intent of subsection (4).

The purpose of amendment 32 is to simplify section 15(6) and to reflect the practicalities of property law in Scotland. The amendment will mean that where, under that section, the authorised undertaker proposes to attach equipment to buildings for the purposes of the works, notice must be given to the owner of the building. As drafted, subsection (6) enables notice to be given to the occupier of the building only in some circumstances. Amendment 32 will offer more protection to the owners of buildings. As the section is drafted, notification could have been served on the tenant only, and the owner might have been unaware of the situation and therefore unable to challenge the notice.

I move amendment 30.

*Amendment 30 agreed to.*

*Amendments 31 and 32 moved—[Alasdair Morgan]—and agreed to.*

*Section 15, as amended, agreed to.*

*Section 16 agreed to.*

### Section 17—Safeguarding works to buildings

**The Convener:** Amendment 33, in the name of Alasdair Morgan, is the only amendment in group 11.

**Alasdair Morgan:** Section 17 provides for safeguarding works where the installation, operation or maintenance of the tram works may threaten or damage buildings lying within the limits of deviation. The definition of what safeguarding works are is set out in section 17(11). Section 17(11)(c), as drafted, covers works whose purpose is to secure the safe operation of the authorised works or to minimise the chances of that work being disrupted. The deletion of paragraph (c) removes one of the definitions of what constitutes safeguarding works in relation to a building—a definition that, on closer inspection, goes beyond what is usually considered to be safeguarding works, having nothing to do with the building in question. That is considered inappropriate, given that section 17 includes powers to enter and survey buildings. For the avoidance of any doubt, amendment 33 in no way undermines the obligations on the authorised undertaker to secure the safe operation of the authorised works.

I move amendment 33.

*Amendment 33 agreed to.*

*Section 17, as amended, agreed to.*

### **Section 18—Power to construct temporary tramways**

**The Convener:** Amendment 34, in the name of Alasdair Morgan, is the only amendment in group 12.

**Alasdair Morgan:** Section 18 gives power to the council, as undertaker, to divert the tram on to a temporary tramway if necessary or expedient because of road works on the road on which the tramway is laid. The road works need not necessarily be connected with the tram itself. The power to divert is an essential power to ensure, as far as is practicable, the continuing operation of the tram. Amendment 34 follows from discussions held with the promoter on our behalf by the clerks and the legal officers. Given the inconvenience that would arise from the use of that power, the committee was concerned about its availability on expediency grounds.

10:30

In deleting the expediency power, the promoter accepts that the authorised undertaker will divert the tram only when that is necessary as a consequence of road works that are executed on the road on which the tram normally runs. As soon as the interfering road works have been completed, the power to divert no longer exists and the tram will need to return to the promoted route.

The amendment should ensure that disruption to affected persons by any diversion is kept to a minimum period.

I move amendment 34.

*Amendment 34 agreed to.*

*Section 18, as amended, agreed to.*

*Sections 19 to 21 agreed to.*

### **Section 22—Power to acquire land**

*Amendments 35 and 36 moved—[Marilyn Livingstone]—and agreed to.*

*Section 22, as amended, agreed to.*

### **Section 23—Powers to acquire new rights**

**The Convener:** Amendment 37, in the name of Marilyn Livingstone, is the only amendment in group 13.

**Marilyn Livingstone:** Section 23 gives the authorised undertaker the power to acquire rights over land that may otherwise be acquired compulsorily. In other words, the undertaker will

not own the land but will just have certain rights over it, such as the right to enter the land to maintain the tramway. The amendment makes it clear that the power to acquire rights may be obtained either by acquiring rights that are already in existence or by creating new rights.

I move amendment 37.

*Amendment 37 agreed to.*

*Section 23, as amended, agreed to.*

### **Section 24—Rights under or over roads**

**The Convener:** Amendment 38, in the name of Alasdair Morgan, is the only amendment in group 14.

**Alasdair Morgan:** Amendment 38 relates to section 24(5), which is a technical subsection. The amendment provides simplification and clearer drafting. The overall effect, purpose and intent of the subsection are unchanged.

I move amendment 38.

*Amendment 38 agreed to.*

*Section 24, as amended, agreed to.*

### **Section 25—Temporary use of land for construction of works**

**The Convener:** Amendment 39, in the name of Marilyn Livingstone, is grouped with amendment 48.

**Marilyn Livingstone:** The amendments will remove some unnecessary words from sections 25(7) and 26(8). As drafted, the subsections explicitly make it clear that their application does not restrict the application of section 37, which is concerned with ensuring that compensation cannot be paid twice for the same loss. However, it is clear that section 37 stands on its own terms and that its application is wider than the subsections. Therefore, the words that are to be deleted are superfluous; they add nothing to the effect of the section and should be removed.

I move amendment 39.

*Amendment 39 agreed to.*

*Section 25, as amended, agreed to.*

### **Schedule 7**

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

*Amendments 40 to 47 moved—[Jeremy Purvis]—and agreed to.*

*Schedule 7, as amended, agreed to.*

### **Section 26—Temporary use of land for maintenance of works**

*Amendment 48 moved—[Marilyn Livingstone]—and agreed to.*

*Section 26, as amended, agreed to.*

*Section 27 agreed to.*

### **Section 28—Power to retain, sell, etc., lands**

**The Convener:** Amendment 49, in the name of Marilyn Livingstone, is grouped with amendments 54, 87 and 88.

**Marilyn Livingstone:** The amendments in the group are necessary as a consequence of changes to the general law that came into effect after the bill's introduction. In particular, the feudal system of land tenure in Scotland has now been abolished, so all references in the bill to the creation of "feus" and the payment of "feu duties" and "ground annuals" are redundant. The amendments are tidying-up amendments.

I move amendment 49.

*Amendment 49 agreed to.*

**The Convener:** Amendment 50, in the name of Alasdair Morgan, is the only amendment in group 17.

**Alasdair Morgan:** The purpose of amendment 50 is to delete a subsection that is unnecessary. Section 28(2) restricts the use that may be made of any capital sums that the authorised undertaker raises by selling land that it acquires under the bill but ultimately does not require for the scheme. However, it was observed that the City of Edinburgh Council, which is the present authorised undertaker, already has a general duty to account for incoming funds, whether capital or revenue. Subsection (2) would also be irrelevant in the event that the statutory undertaker changed. As any new undertaker would not be a local authority, the provision could well be inconsistent with its articles of association as well as its accounting policies. In practice, subsection (2) is meaningless unless it applies to a local authority and local authorities are already required to apply capital in the way that is set out in subsection (2).

I move amendment 50.

*Amendment 50 agreed to.*

*Section 28, as amended, agreed to.*

### **After section 28**

**The Convener:** Amendment 51, in the name of Jeremy Purvis, is the only amendment in group 18.

**Jeremy Purvis:** In its report, the committee stated that it would amend the bill to ensure that

the Crichton Down rules were applied. A number of objectors had raised with us the general issue of whether the promoter would be required to return land that it had acquired compulsorily in the event that it was no longer necessary for the scheme.

Members will recall that the Crichton Down rules set out the circumstances in which surplus Government land that has been acquired compulsorily should, as a matter of good practice, be offered back to former owners. The committee is satisfied that those rules should be binding on the authorised undertaker in respect of land that is acquired compulsorily under the bill. The effect of that is that if such land, or part of it, is no longer required by the authorised undertaker for the scheme, the authorised undertaker will be obliged to offer the land back to the person from whom it was acquired. Amendment 51 will ensure that the Crichton Down rules are incorporated and applied by the authorised undertaker or its successors.

I move amendment 51.

*Amendment 51 agreed to.*

*Sections 29 and 30 agreed to.*

### **Section 31—Set-off against betterment**

**The Convener:** Amendment 52, in the name of Jeremy Purvis, is grouped with amendments 53 and 99.

**Jeremy Purvis:** The amendment to section 77 that amendment 99 seeks to make will ensure that the bill incorporates section 6 of the Railway Clauses Consolidation (Scotland) Act 1845. That will enable compensation to be paid for a reduction in property value that arises from construction works, in line with a recommendation that the committee made in its consideration stage report.

The promoter has suggested that because of that amendment, consequential amendments will need to be made to section 31. Section 31 provides that if, in addition to land that is acquired under the bill, a landowner has other contiguous or adjacent land that increases in value because of the bill—through being more accessible, for example—compensation for the lost land will be reduced by any increase in the value of the other land. That principle is known as betterment.

Just as the effect of betterment will be taken into account in respect of compensation payable for land that is acquired under the bill, the amendments in this group propose that the effect of betterment should be taken into account in respect of compensation payable because of a diminution in property values as a result of construction works.

I move amendment 52.

*Amendment 52 agreed to.*

*Amendment 53 moved—[Jeremy Purvis]—and agreed to.*

*Section 31, as amended, agreed to.*

*Section 32 agreed to.*

### **Section 33—Persons under a disability may grant servitudes, etc**

*Amendment 54 moved—[Marilyn Livingstone]—and agreed to.*

*Section 33, as amended, agreed to.*

*Sections 34 and 35 agreed to.*

### **Section 36—Correction of errors in Parliamentary plans and book of reference**

**The Convener:** Amendment 55, in the name of Alasdair Morgan, is grouped with amendment 56.

**Alasdair Morgan:** I have serious reservations about the provisions contained in section 36 as currently drafted. In particular, I have reservations about the width of the power that the sheriff appears to be given.

This is another issue that has been raised with the promoter by the clerks and legal advisers on our behalf. One of the concerns is that of fairness to other parties whose rights are the subject of omissions or errors by the promoter in the documents. If the parliamentary plans or the book of reference, which were submitted by the promoter along with the bill, are inaccurate in their description of any land or in their statement or description of the ownership or occupation of any land, section 36 allows the authorised undertaker to apply to the sheriff for the correction of the inaccuracy.

The authorised undertaker is first required to give at least 10 days' notice to the owner or occupier of the land that is the subject of the error. If the sheriff agrees that the inaccuracy arose from a mistake, the sheriff must certify the fact accordingly. It would then be lawful for the authorised undertaker to take the land or, as the case may be, a right over the land in question, and carry out the works in accordance with the certificate.

The reason for my concern about section 36 is that it gives the authorised undertaker fairly wide powers to take land from an individual, without that individual enjoying the same rights as would be enjoyed by those who objected to the bill. It would even be possible for the promoter to take such land—or a right over the land—where a mistake has been made by the promoter.

I appreciate that there needs to be some mechanism for the promoter to be able to correct

such errors, or we could end up with a worst-case scenario whereby the promoter is unable to operate the tram because it does not have the required land. However, I am unconvinced by the promoter's explanation, in the explanatory notes to the bill, of why the power should be so wide. In subsequent discussions with the clerks and legal advisers, the promoter has been advised that the intention was never to allow new land to be included if the promoter simply "forgot" to include that land in the original limits.

A new subsection has now been produced. It restricts the scope of the application to the sheriff to instances of pure clerical or similar errors, and I commend the promoter for making the scope of the power clearer.

The amendment to subsection (3) is a minor tidying-up amendment. It ensures that copies of certificates relating to any amendments approved by the sheriff after we have passed the bill—amendments to correct inaccuracies in the book of reference—are also sent to partner libraries that hold copies of the original book of reference.

I move amendment 55.

*Amendment 55 agreed to.*

*Amendment 56 moved—[Alasdair Morgan]—and agreed to.*

*Section 36, as amended, agreed to.*

*Sections 37 and 38 agreed to.*

### **Section 39—Extension of time**

**The Convener:** Amendment 57, in the name of Jeremy Purvis, is grouped with amendment 94.

**Jeremy Purvis:** Our consideration stage report made clear the committee's determination that certain people likely to be impacted by the bill should not be blighted by having the threat of compulsory purchase hanging over their land indefinitely. The report confirmed that the committee would amend section 39 of the bill to ensure that the time during which land can be acquired is limited to no more than 15 years.

Amendment 57 will ensure that the authorised undertaker cannot seek to delay indefinitely the purchase of land that it would require for the construction of the line. It will also ensure that any extensions up to the 15-year limit must be sought from Scottish ministers before existing periods expire.

Amendment 94 to section 70 is a consequential amendment that arises from the proposed amendment to section 39. Section 70(2) makes it clear that where planning permission is in effect automatically granted by the enactment of the bill—in what is known as "permitted

development”—that permission for development is limited to 10 years from the date when the bill is passed. It would be incongruous to have this particular time limit set at 10 years when the time during which land can be acquired has been limited to no more than 15 years.

I move amendment 57.

*Amendment 57 agreed to.*

*Section 39, as amended, agreed to.*

*Sections 40 to 42 agreed to.*

### **Section 43—Penalty fares**

**The Convener:** Amendment 58, in the name of Jeremy Purvis, is grouped with amendments 59 to 66.

**Jeremy Purvis:** The amendments to section 43(2) are essentially technical and reflect the role of the authorised persons—or, in non-billspeak, ticket inspectors—in checking that tickets are validated for use before passengers’ travel. As a consequence, the definition of “the required imprint” in subsection (8) is no longer necessary.

The amendments to subsections (6) and (7) improve the drafting by making it clear that the “passenger” will be the “defender” and the “authorised undertaker” the “pursuer” in any court action for the recovery of a penalty fare. In particular, the use of “passenger” instead of “defender” in subsections (6) and (7) is now consistent with the use of that term in the remainder of the section.

I move amendment 58.

*Amendment 58 agreed to.*

*Amendments 59 to 66 moved—[Jeremy Purvis]—and agreed to.*

*Section 43, as amended, agreed to.*

### **Section 44—Amount of penalty fare**

10:45

**The Convener:** Amendment 67, in the name of Alasdair Morgan, is the only amendment in group 23.

**Alasdair Morgan:** Amendment 67 was lodged on behalf of the promoter. The existing drafting of section 44 would require the promoter, in calculating the penalty for non-payment, to establish in certain circumstances the full single fare that a non-paying passenger would have been liable to pay. That requirement is unnecessary, which is why amendment 67 will insert the phrase

“maximum single adult cash fare”

to simplify the calculation of any penalty, which will be a multiplier of that figure.

Amendment 67 also relates to a passenger’s liability to pay a penalty fare—it will set the penalty at 25 times the maximum single adult cash fare. Members will note that that is quite a large increase in the proposed fine compared with the original provision. However, the promoter argues that the figure sets a visible deterrent to fare dodging and that anybody who is subject to a penalty fine has only themselves to blame for attempting to avoid payment in the first instance. The level of the penalty will also ensure that the administration costs of imposing and collecting penalty fares are covered from the penalty fares.

Given that the maximum single adult cash fare will increase by inflation, there is no need for the Scottish ministers to have the ability to increase the penalty fare, as section 44(3) currently provides. The promoter therefore seeks to delete that subsection.

I move amendment 67.

*Amendment 67 agreed to.*

*Section 45 agreed to.*

### **Section 46—Notice of penalty fare provisions**

**The Convener:** Amendment 68, in the name of Marilyn Livingstone, is the only amendment in group 24.

**Marilyn Livingstone:** Amendment 68 is a very minor one, to modernise the language of section 46.

I move amendment 68.

*Amendment 68 agreed to.*

*Section 46, as amended, agreed to.*

*Sections 47 to 52 agreed to.*

### **Section 53—Obstruction to operation**

**The Convener:** Amendment 69, in the name of Alasdair Morgan, is the only amendment in group 25.

**Alasdair Morgan:** Section 53 will create an offence of deliberately obstructing the operation of the tram. Section 53(2) will require the obstruction to be removed and, if that is not done by the obstructing person, will allow the authorised undertaker to do so. As currently drafted, section 53(2) would require the authorised undertaker, before it can remove any obstruction that is placed on the system, to request the person who has placed the obstruction to move it. Only if that person fails to do so would the authorised undertaker be able to take action and remove the obstruction. Amendment 69 will give the promoter

the power to remove any obstruction immediately, which will thereby minimise any adverse impact on the running of the trams.

I move amendment 69.

*Amendment 69 agreed to.*

**The Convener:** Amendment 70, in the name of Alasdair Morgan, is the only amendment in group 26.

**Alasdair Morgan:** Section 53, which will create an offence of deliberately obstructing the operation of the tram, also states what the authorised undertaker can do with any obstruction that it removes under the section, if it is not removed by the obstructing person. As the bill is drafted, one of the grounds on which the authorised undertaker can decide to sell or get rid of such an obstruction is if it is inconvenient for the authorised undertaker to keep the item. Following discussions, the promoter has accepted that it might be relatively easy for the authorised undertaker to claim that it was inconvenient to hold on to an object that it had removed and that therefore the item could quickly be disposed of under section 53(5). Amendment 70 seeks to ensure that the authorised undertaker can no longer get rid of or sell an item on inconvenience grounds; to restrict its ability to dispose of an object to circumstances in which holding it would involve unreasonable expense or in which it proved to be perishable; and, in so doing, to achieve the right balance between the rights of the third party and the burden on the authorised undertaker.

I move amendment 70.

*Amendment 70 agreed to.*

*Section 53, as amended, agreed to.*

*Sections 54 and 55 agreed to.*

*Schedule 8 agreed to.*

*Sections 56 to 58 agreed to.*

### **Section 59—Power to make byelaws**

**The Convener:** Amendment 71, in the name of Alasdair Morgan, is the only amendment in group 27.

**Alasdair Morgan:** Section 59 deals with the authorised undertaker's power to make byelaws in connection with the tramway, and provides a non-exhaustive list of subjects that such byelaws could cover.

The promoter feels that, although the list is meant to be non-exhaustive, it would be helpful to include in section 59(2) a further example of a byelaw setting out how residents and property owners whose properties are in close proximity to the tram should maintain them. For example, such

byelaws might stipulate that property owners who wash their windows with metal handled brushes might in future be required to use brushes with wooden handles.

The authorised undertaker has indicated that it will produce a policy on how residents and property owners whose properties are in close proximity to the tram can maintain their property. A draft is currently available on the tramtime website.

I move amendment 71.

**The Convener:** I am sure that that part of the website makes compelling reading.

*Amendment 71 agreed to.*

**The Convener:** Amendment 72, in the name of Alasdair Morgan, is grouped with amendment 73.

**Alasdair Morgan:** Under section 59, the authorised undertaker can make byelaws to regulate specified aspects of the tram's operation. Notwithstanding the possibility that such byelaws might create criminal offences, section 59(4) permits the authorised undertaker to take immediate action to avoid danger or annoyance to the public or to avoid the operation of the tram being hindered. In other words, it can remove people and things from the tramway.

As I have indicated, "annoyance" is one of the grounds for taking such action. However, a concern was expressed that the authorised undertaker could feasibly interpret that term subjectively and make it a wide-ranging power. As a result, amendments 72 and 73 seek to delete the word "annoyance" from section 59(2) to limit the application of the section and to restrict the authorised undertaker's powers.

I move amendment 72.

*Amendment 72 agreed to.*

*Amendment 73 moved—[Alasdair Morgan]—and agreed to.*

**The Convener:** Amendment 74, in the name of Alasdair Morgan, is grouped with amendment 75.

**Alasdair Morgan:** Scottish ministers are required to confirm any byelaws that the authorised undertaker makes. Given the impact of such byelaws on members of the public, amendments 74 and 75 seek to clarify how the public will be made aware of them.

Under the terms of amendment 74, which amends section 59(10), once Scottish ministers confirm any byelaws, the authorised undertaker will be required to publish them in local newspapers over two successive weeks, along with a statement of their general effects and when they will come into operation.

Section 59(11) requires that a copy of the byelaws be made available for public inspection at the authorised undertaker's principal office. It was suggested to the promoter that, in order to improve accessibility, it would be advantageous to go a little further and publish copies on the authorised undertaker's website. The promoter has accepted that suggestion and the provision set out in amendment 75 should make the content of byelaws more accessible to the public.

The further obligations that these amendments seek to impose on the authorised undertaker will benefit third parties by ensuring that relevant information on byelaws is more readily available to them.

I move amendment 74.

*Amendment 74 agreed to.*

*Amendment 75 moved—[Alasdair Morgan]—and agreed to.*

*Section 59, as amended, agreed to.*

#### **Section 60—Power to contract for police services**

**The Convener:** Amendment 76, in the name of Alasdair Morgan, is grouped with amendments 77 to 82.

**Alasdair Morgan:** Since the bill's introduction, the Railways and Transport Safety Act 2003 has come into force. That act created an independent police authority for the British Transport Police, transferred responsibility for the force from the Strategic Rail Authority to the new police authority and gave the British Transport Police a wholly statutory jurisdiction over railways. The amendments ensure that the bill is consistent with the 2003 act, but do not substantively alter the effect, purpose or intent of the section.

Members will recollect that the British Transport Police were concerned prior to withdrawing their objection that the bill be amended to reflect the changes in the legislation and that the amendments take full account of their requests.

Unless members want specific information on each of the amendments, I do not propose to say anything further on this group.

I move amendment 76.

*Amendment 76 agreed to.*

*Amendments 77 to 82 moved—[Alasdair Morgan]—and agreed to.*

*Section 60, as amended, agreed to.*

#### **Section 61—Insulation against noise**

**The Convener:** Amendment 83, in the name of Jeremy Purvis, is the only amendment in group 31.

**Jeremy Purvis:** This is a very minor amendment to the drafting to ensure that advertising of the making of the required noise insulation scheme takes place as soon as possible after the making of the insulation scheme.

I move amendment 83.

*Amendment 83 agreed to.*

*Section 61, as amended, agreed to.*

*Section 62 agreed to.*

#### **Section 63—Repeal of sections 61 and 62**

**The Convener:** Amendment 84, in the name of Alasdair Morgan, is the only amendment in group 32.

**Alasdair Morgan:** Section 63 allows Scottish ministers in certain circumstances to repeal by order sections 61 and 62 of the bill, which are concerned with noise insulation schemes.

Section 63(2) sets out the kinds of provisions that any such order may contain. In addition, the bill contains at section 79 a more general power to include those kinds of provisions in any order made under the bill.

Section 63(2) is therefore unnecessary because the power that it contains is already covered in the general power available under section 79(2).

I move amendment 84.

*Amendment 84 agreed to.*

*Section 63, as amended, agreed to.*

#### **After section 63**

**The Convener:** Amendment 85, in the name of Alasdair Morgan, is the only amendment in group 33.

**Alasdair Morgan:** Members will recall that at paragraph 30 in our consideration stage report the committee discussed the key documents through which the promoter intends to mitigate the environmental impact of the tram scheme. In particular, the committee considered the promoter's approach to controlling noise and vibration, as set out in the noise and vibration policy and the code of construction practice.

Although the committee broadly welcomed the commitments made by the promoter in those documents, we felt it important that the measures proposed should be given some form of statutory backing in order to reassure objectors that the standards of mitigation set out in the noise and vibration policy, the code of construction practice and subsequent local construction plans will be applied by contractors. We therefore stated our intention to amend the bill to make sure that those standards—at the very least—are met by the authorised undertaker and contractors.

More specifically, the committee also stated its intention to amend the bill to ensure that noise insulation will be provided in residential properties on the basis described in the noise and vibration policy. At present, the bill does not state the noise levels at which noise insulation would be provided.

I am pleased to confirm that the amendments that I have lodged will meet all the committee's requirements for the standards set out in the code of construction practice, the noise and vibration policy and local construction plans to be met. That will provide comfort to objectors that mitigation will, where promised, be carried out.

I move amendment 85.

*Amendment 85 agreed to.*

**The Convener:** Amendment 86, in the name of Alasdair Morgan, is the only amendment in group 34.

11:00

**Alasdair Morgan:** Amendment 86 was produced for us by the promoter and meets the requirements that we undertook to add to the bill that are set out at paragraphs 31 and 32 of our report on the objections.

The amendment is in two parts. First, having considered the evidence, we agreed that it was imperative that the environmental impact of the tram should be no worse than the residual impact identified in the environmental statement that was produced along with the bill. If the impacts can be improved on, we expect that to happen, but amendment 86 makes it clear that, as a minimum, the design, building and operation of the scheme must reach the standards set out in the environmental statement. The amendment will allow the promoter flexibility in how it meets those standards and should enable the benefits of good design and developing practices to be incorporated. For example, if technological advances mean that the trams are quieter than those assumed in the environmental statement, and specific noise mitigation measures are therefore not required, the authorised undertaker is not obliged to institute any stated measures if the quieter tram achieves the same end result on the level of noise.

The second part of the amendment ensures that the standards that were embodied in specific pledges made by the promoter to objectors or to the committee will be delivered. That means either that the proposed mitigation will be provided or that the standard of protection envisaged by the pledge will be met. Again, that will give flexibility to include technological advances. For example, if the promoter has agreed to provide a noise barrier to reduce noise to an acceptable level for a

particular objector, and that level of noise can be reached by using a quieter tram, there will be no obligation on the authorised undertaker to provide the barrier as well. I hope that the inclusion of this requirement in the bill will give some comfort to those who expressed a degree of cynicism that the promoter would deliver what it promised.

I move amendment 86.

*Amendment 86 agreed to.*

#### **Section 64—Powers of disposal, agreements for operation, etc**

*Amendments 87 and 88 moved—[Marilyn Livingstone]—and agreed to.*

**The Convener:** Amendment 89, in the name of Alasdair Morgan, is the only amendment in group 35.

**Alasdair Morgan:** Amendment 89 was also produced following discussions with the clerks and legal staff on our behalf. Section 64 contains an open-ended power that will allow the council as authorised undertaker to enter into an agreement with any organisation to carry out the provisions of the bill. In other words, it may pass on or subcontract the construction, operation or maintenance of the tram or any other powers contained in the bill. The amendment seeks to increase openness by requiring that Scottish ministers are notified of the details of those with the new responsibilities and rights within 21 days of any transfer. That should ensure that it is clear who is liable or responsible in relation to, for example, an issue of enforcement.

I move amendment 89.

*Amendment 89 agreed to.*

*Section 64, as amended, agreed to.*

*Sections 65 to 67 agreed to.*

#### **Section 68—Listed buildings and conservation areas**

**The Convener:** Amendment 90 is grouped with amendment 91.

**Marilyn Livingstone:** Amendments 90 and 91 are minor amendments to the drafting of paragraphs (c) and (d) of section 68(2). The amendments seek to add the words "of this subsection" to each. They will help to clarify that both refer to provisions contained in the bill.

I move amendment 90.

*Amendment 90 agreed to.*

*Amendment 91 moved—[Marilyn Livingstone]—and agreed to.*

**The Convener:** Amendment 92, in the name of Marilyn Livingstone, is the only amendment in group 37.

**Marilyn Livingstone:** Section 68 is entitled “Listed buildings and conservation areas”, but it does not define the term “conservation area”. Amendment 92 will provide such a definition by reference to the legislation under which conservation areas were created. It will therefore improve the clarity of the drafting.

I move amendment 92.

*Amendment 92 agreed to.*

*Section 68, as amended, agreed to.*

*Schedule 10 agreed to.*

### **Section 69—Ancient monuments**

**The Convener:** Amendment 93, in the name of Jeremy Purvis, is the only amendment in group 38.

**Jeremy Purvis:** Amendment 93 seeks to delete section 69. As the bill is drafted, section 69 disapplies section 2 of the Ancient Monuments and Archaeological Areas Act 1979, which makes it a criminal offence to carry out works to a scheduled monument without consent. Members will recall that section 69 was raised in the committee’s preliminary stage report. The committee recommended that the promoter should discuss the section with Historic Scotland, which had argued that the section was unnecessary.

During the consideration stage, the promoter agreed that it would seek to remove section 69, which was a factor in Historic Scotland subsequently withdrawing its objection to the bill. The committee agreed in its consideration stage report that it would make the necessary amendment to the bill.

In legislative terms, the deletion means that the authorised undertaker will now be required to obtain consent under the Ancient Monuments and Archaeological Areas Act 1979 for works under the bill that impact on scheduled ancient monuments. Further, because section 69 sought to disapply various provisions of the 1979 act, its deletion will mean that those sections will now apply to the works authorised under the bill. In reality, however, surveys carried out by the promoter for the environmental statement suggest that none of the works will impact on any scheduled ancient monuments. Therefore, the amendment may well have no real, practical implications. However, it will give Historic Scotland reassurance.

I move amendment 93.

*Amendment 93 agreed to.*

### **Section 70—Town and country planning, etc**

*Amendment 94 moved—[Jeremy Purvis]—and agreed to.*

**The Convener:** Amendment 95, in the name of Marilyn Livingstone, is the only amendment in group 39.

**Marilyn Livingstone:** Amendment 95, which amends section 70(4), makes it clear that tram stops would be subject to the prior approval of the planning authority. It avoids doubt and gives third parties some comfort and certainty that the final design of tram stops will be considered by the local authority.

I move amendment 95.

*Amendment 95 agreed to.*

**The Convener:** Amendment 96, in the name of Jeremy Purvis, is in the only amendment in group 40.

**Jeremy Purvis:** Given that the Conservation (Natural Habitats, &c) Regulations 1994 (SI 1994/2716) do not apply to any of the authorised works, section 70(6) is unnecessary.

I move amendment 96.

*Amendment 96 agreed to.*

*Section 70, as amended, agreed to.*

*Sections 71 and 72 agreed to.*

### **Section 73—Certification of plans, etc**

**The Convener:** Amendment 97, in the name of Jeremy Purvis, is the only amendment in group 41.

**Jeremy Purvis:** Section 73 states that, as soon as is practicable after the bill is enacted, the authorised undertaker is to submit copies of the book of reference, the parliamentary plans and the parliamentary sections to Scottish ministers for certification—in other words, confirmation that they are the documents that they claim to be. Amendment 97 will ensure that the provisions of section 73 are more logical. Given that the clerk of the Scottish Parliament has the original book of reference, parliamentary plans and parliamentary sections, it is the clerk who should have responsibility for certifying the documents, not Scottish ministers.

I move amendment 97.

*Amendment 97 agreed to.*

*Section 73, as amended, agreed to.*

*Sections 74 and 75 agreed to.*

### Section 76—Arbitration

**The Convener:** Amendment 98, in the name of Jeremy Purvis, is the only amendment in group 42.

**Jeremy Purvis:** Amendment 98 is another amendment lodged as a result of the committee requesting the clerks and legal adviser to scrutinise some of the technical aspects of the bill. Section 76 sets out the procedure when the authorised undertaker does not agree with some other person or body from whom it is seeking consent or agreement or to whom it is giving consent, with the exception of cases in which the Lands Tribunal for Scotland or Scottish ministers are to resolve a dispute involving the authorised undertaker and another party.

In relevant cases where there is dispute, either the parties can agree an arbiter, or one will be appointed by the president of the Institute of Civil Engineers. The amendment also makes it clear that either party has the right to refer a dispute to an arbiter. The committee is therefore ensuring that the rights of parties to go to arbitration are clear.

I move amendment 98.

*Amendment 98 agreed to.*

*Section 76, as amended, agreed to.*

### Section 77—Incorporation of enactments

*Amendment 99 moved—[Jeremy Purvis]—and agreed to.*

*Section 77, as amended, agreed to.*

### Section 78—Interpretation

*Amendments 100 to 102 moved—[Jeremy Purvis]—and agreed to.*

*Section 78, as amended, agreed to.*

*Sections 79 and 80 agreed to.*

*Long title agreed to.*

**The Convener:** That ends the committee's consideration of the bill at consideration stage. Before the meeting closes, I will make some remarks. Members will agree that, despite my remarks at the start of the meeting, this morning's business has been conducted in a fairly efficient and expedient manner. That reflects the commitment of my colleagues, who have spent much time in reading the voluminous documentation that came with the committee's consideration of the bill. Committee members are to be congratulated and, as convener, I am exceptionally grateful for the professionalism that they have displayed.

I also thank the clerks and our legal advisers. As I stated earlier, this has been a difficult week for them. I am well aware of the pressures under which they have to operate. In some respects, I regard those pressures as having been unnecessary; however, on the basis of their response to those pressures, I can say that the Parliament has been extremely well served, and I express my appreciation.

**Members:** Hear, hear.

**The Convener:** I also express my thanks to the solicitors representing the promoter and to those who have represented the promoter in general terms over the past month. This has been a long and convoluted process, which is now reaching its end. It is unlikely that, in future sessions of the Parliament, committees will be required to deal with such bills along the same lines. Possibly as a result of our involvement with this form of legislation, it has been agreed that the matter will be looked at in a different light.

I thank all those who have been involved for their contribution, commitment and professionalism. On a personal note, I wish everyone involved a very merry Christmas and a happy new year when it comes.

*Meeting closed at 11:12.*



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