



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 29 September 2010

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**Wednesday 29 September 2010**

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**ECONOMY, ENERGY AND TOURISM COMMITTEE**

**26<sup>th</sup> Meeting 2010, Session 3**

**CONVENER**

\*Iain Smith (North East Fife) (LD)

**DEPUTY CONVENER**

\*Rob Gibson (Highlands and Islands) (SNP)

**COMMITTEE MEMBERS**

\*Ms Wendy Alexander (Paisley North) (Lab)

\*Gavin Brown (Lothians) (Con)

\*Christopher Harvie (Mid Scotland and Fife) (SNP)

\*Marilyn Livingstone (Kirkcaldy) (Lab)

\*Lewis Macdonald (Aberdeen Central) (Lab)

\*Stuart McMillan (West of Scotland) (SNP)

**COMMITTEE SUBSTITUTES**

Nigel Don (North East Scotland) (SNP)

Alex Johnstone (North East Scotland) (Con)

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

David Whittton (Strathkelvin and Bearsden) (Lab)

\*attended

**THE FOLLOWING ALSO ATTENDED:**

Hugh Henry (Paisley South) (Lab)

**THE FOLLOWING GAVE EVIDENCE:**

Colin Borland (Federation of Small Businesses)

Bill Jamieson (The Scotsman)

Sam Jennings (Capability Scotland)

Julie McComasky (First ScotRail)

Alan McCreadie (Law Society of Scotland)

Bill McVicar (Law Society of Scotland)

Alasdair Northrop (Business7 and Scottish Business Insider)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

Committee Room 4



## Scottish Parliament

### Economy, Energy and Tourism Committee

*Wednesday 29 September 2010*

[The Convener opened the meeting at 09:33]

### Protection of Workers (Scotland) Bill: Stage 1

**The Convener (Iain Smith):** I welcome everyone to the 26<sup>th</sup> meeting in 2010 of the Economy, Energy and Tourism Committee. We have received apologies from Lewis Macdonald, who will be here in due course, and Wendy Alexander, who is attending a conference and will be here for later items on the agenda. I also welcome to the meeting Hugh Henry, the member in charge of the Protection of Workers (Scotland) Bill. He is welcome to stay for the rest of our business, but I am sure that he has better things to do.

The first item is stage 1 consideration of the Protection of Workers (Scotland) Bill. I welcome to the committee the first of our two panels of witnesses: Sam Jennings, who is health and safety manager of Capability Scotland; Colin Borland, a well-known figure to the committee, who is public affairs manager for the Federation of Small Businesses; and Julia McComasky, who is head of human resources at First ScotRail.

As the witnesses have indicated that they do not wish to make opening remarks, we will move to questions. Is there a need for the common law on assault to be extended in the way that the bill proposes, or does the current common law provide sufficient protection for workers?

**Colin Borland (Federation of Small Businesses):** The figures reported by our members show a persistent problem that, regardless of economic circumstances and other factors, has stayed at the same level in recent years. As we say in our written evidence, over the past 12 months, 20 per cent of our members have reported some form of intimidation, abuse or assault. Unfortunately there is massive underreporting of incidents. It is difficult to get reliable figures, but when we ask about the issue about three times as many people say that they have been subjected to such behaviour as have actually reported it to the police. When we ask them why they have not done so, the strong feeling that we get is that the incident would not be treated sufficiently seriously.

As a result, we must welcome any measure that underlines the unacceptability of such behaviour and backs up the vital work carried out in communities particularly, from our point of view, by small businesses and self-employed people in delivering services and providing jobs. For that reason, we broadly support the bill's aims and agree that it is a sensible and effective step forward—with the caveat, however, that there must be clarification in the bill that it also covers the self-employed.

**Sam Jennings (Capability Scotland):** We, too, broadly support the bill's principles, mainly because we think that it sends out a clear message to the people with whom our staff come into contact that such behaviour is unacceptable and will not be tolerated, as well as a message to our staff that they are not expected to put up with it.

The majority of Capability Scotland staff provide care and support services to people with disabilities and, by extension, their parents and carers, and there can be a feeling that putting up with verbal abuse or aggression is part of the job. Our policies, procedures and processes already make it clear to our staff that that is not the case but, as I say, we want to send a clear message to our staff and other members of the public that such behaviour is not expected, is not acceptable and will not be tolerated and therefore we broadly welcome anything that raises that profile. That said, we have a number of questions of clarification on the bill.

**Julie McComasky (First ScotRail):** First ScotRail supports the bill's introduction for many of the reasons that have already been outlined. For a start, we think that it will raise the profile of these issues and highlight that such behaviour is unacceptable and that our workers, who provide a vital service to the public, should be valued for their work. Over a number of years we have done a lot of work and reduced the number of assaults, but we think that the bill provides another means of maintaining that downward trend.

**The Convener:** So it is not that the bill would change the legal position on assault—an assault would still be an assault—but that it would make the public feel that the prosecuting authorities would take the issue more seriously.

**Julie McComasky:** That is correct. As we have said, raising the profile of such issues would act as a deterrent, and it is the bill's deterrent factor that we really support.

**The Convener:** Instead of changing the law and making such incidents statutory rather than common-law offences, could the Government or others take measures that would have a similar impact?

**Julie McComasky:** As an employer, we have done a lot of things to mitigate assaults on our staff but I am not quite sure what else could be done under the law. We have extended closed-circuit television coverage and given staff extensive training. We have DNA kits on trains and in stations. All that has led to a slight reduction, but we would like to get out the clear message that such behaviour is unacceptable.

**Colin Borland:** I take your point, convener. There might be other ways of achieving the aims, which are laudable. However, the bill is what we have: its proposals are in front of us and we are considering the changes that it will make. On that basis, we support it. You and Julie McComasky are right to say that a piece of legislation is not a silver bullet and that it will not solve the problem on its own. Murder has been illegal since Moses descended from the mountain, but the jails are still full of lifers. Legislation has to go alongside a proper enforcement campaign. However, that is probably beyond what we can do as employers and as a lobbying organisation. There are questions for the criminal justice system that are probably outwith the sphere on which we, as a business organisation, should be commenting.

**Sam Jennings:** I do not have anything to add, other than to agree with what Colin Borland and Julie McComasky have said.

**Rob Gibson (Highlands and Islands) (SNP):** Good morning. I thank each of you for your comments about the profile of the problem being raised.

It has been suggested that the way in which sentencing and prosecution guidelines are drawn up is one of the things that would heighten the procurator fiscal's attention to incidents of assault. Capability Scotland talks about non-physical abuse. How can the procurator fiscal deal with the trauma of such abuse? Could the bill improve the prosecution rate and send out a signal that such behaviour is not acceptable?

**Sam Jennings:** Yes, I think that it could. It gives a clear message about abuse or aggressive behaviour towards our staff, or other public-facing staff, being a specific offence over and above a normal common-law assault. It could make it easier to prosecute.

**Rob Gibson:** Yes. Your submission says that you have a problem with the definition of a "member of the public".

**Sam Jennings:** Yes. We wanted to be clear that the definition would extend to the clients who use our services—our service users—and to their parents and carers. Our staff might be providing a service to the individual, but the risk of violence or aggressive behaviour can also come from a service user's parents, family, or other carers. I

wanted to clarify whether that would be an offence under the bill.

**Rob Gibson:** Does anyone have further general comments on the bill? I assume that people who work on trains get quite a lot of verbal abuse.

**Julie McComasky:** Yes. As Colin Borland said, there is a massive amount of underreporting. Every weekend, staff can quote lots of verbal abuse. We move many people around late at night on Fridays and Saturdays—they get thrown out of the pub and come to the station to get home, so we have to deal with them.

Staff are often worn down over a period of time, which has a psychological effect on them, and they can come to dread the Friday and Saturday night shifts. A piece of legislation that recognised verbal assault, and the fact that it might happen not just once, would be of great benefit. Verbal assault can go on and on, and can have an adverse effect on people and their ability to do their work.

**Rob Gibson:** I can understand that. I give the example of travelling between Glasgow and Edinburgh on the 11.30 train in January after a Celtic Connections concert: the variety of behaviour to be seen is something that we want to move away from. In dealing with that, there are issues around highlighting sentencing guidelines to procurators fiscal and the judiciary. I accept the point about heightening the profile, but how do we get more convictions?

09:45

**Colin Borland:** I am not sure that it is necessarily an either/or question. I absolutely agree that we need to consider the sentencing guidelines and use all the weapons in our armoury to deal with such problems. It is not that we cannot do that alongside strengthening the law. We have sentencing guidelines for things that have limited impact in the wider public consciousness, but in this instance we can send a very strong message—that, without the people who deliver the services in communities, those communities would often, in effect, cease to exist, particularly in rural and more hard-pressed urban areas. The bill gives us a peg on which to hang that message. It gives us a focus for what the three of us on the panel—and, I imagine, a wider range of stakeholders—would agree is something that we must address and send a united message on.

**Gavin Brown (Lothians) (Con):** Colin Borland's submission gives us some statistics from fieldwork that the FSB did at the start of the summer. For me, the main figure is the one on

"Threatening behaviour, intimidation or aggression".

Most of the other figures would not be covered by the bill, I guess. We might imagine that assault, in particular, would be covered by the common law anyway. Your submission says that 28 per cent of those who responded to your survey had suffered threatening behaviour over the past year. Is that figure broken down at all between employees and business owners? Some of your main points about the bill concern business owners.

**Colin Borland:** The people who were asked the question were the business owners—our members. That figure is the percentage of our members who have been subject to those offences over the previous 12 months.

**Gavin Brown:** So the people who responded to the survey were not doing so on behalf of their businesses; they were saying what they, personally, had suffered as business owners.

**Colin Borland:** The question was:

"In the course of your business activities, have you suffered from any of the following".

We were asking specifically about their experiences. The figures are not broken down by sector, although it would be interesting to see that; they cover all sectors. Only about a quarter of our members are in retail, where we know there is a particular problem. If we asked retailers specifically, the figure would be higher, particularly compared with similar data from, for example, the British retail crime survey.

**Gavin Brown:** You said that you felt that a lot of such crimes are underreported; I am sure that that is right. Do you think that they are underreported in your survey or, from your knowledge of your members, do you think that they were pretty straight with you on this point?

**Colin Borland:** The survey is anonymous apart from people telling us where their business is located and their membership number; their names are not on the survey forms. Twenty-eight per cent of them told us that they have been subject to that sort of behaviour. We asked how many of those respondents reported it, and the answer was about a third. The actual figure might be greater but I imagine that, if the two thirds are confident enough to say that they have been subject to it but have not reported it, the statistic should be fairly reliable.

**Gavin Brown:** The witness from First ScotRail has described different types of incident that take place on the trains, particular at weekends and later in the day. What is ScotRail's policy for dealing with such issues? Do you have a robust policy whereby such incidents are always reported to the police, and do you push for something to happen, or are things swept under the carpet? What happens in practice?

**Julie McComasky:** We have a robust policy in place for dealing with such incidents. All our people who work on trains and in stations can communicate with British Transport Police, which is our main partner for dealing with such matters and with which we work very closely. We like to think that the vast majority of the more serious incidents are reported. We have a central reporting system and we share intelligence with British Transport Police. We have "help us help you" forms so that we can share intelligence and hotspots can be identified. British Transport Police resources can then be targeted to support staff on particular services or at particular locations.

All our staff are trained in our no contact policy, the first rule of which is that they should get themselves out of harm's way. Points of conflict can often occur when staff are trying to perform their duties, particularly revenue protection duties on late-night trains. All that they have done is tried to get someone to pay the fare for their journey. The message in training is clear, and written briefs are constantly refreshed. If someone is becoming aggressive, the member of staff should forget about the fare and get themselves out of the situation. Their safety is the number 1 priority.

**Gavin Brown:** It sounds as though you have a robust education, staff training and reporting policy, but what happens when incidents are reported? Do you get notes back from the police or procurators fiscal that say that nothing can be done because the incident was not serious enough, there is not enough evidence or there were no witnesses? Do you log what comes back? What proportion of incidents end up going to court?

**Julie McComasky:** I do not have information on that with me, but we could get it through the British Transport Police.

**Gavin Brown:** It would be helpful to have that information. I will not hold you to any figures, but do you have a feel for the proportion of incidents that go anywhere? Are most incidents simply not treated seriously and discarded? What happens?

**Julie McComasky:** There seems to be a feeling during discussions that the procurators fiscal often do not take incidents seriously and that common-law assaults are not thought to be significant enough to be taken any further.

**Gavin Brown:** So the British Transport Police treat incidents seriously, but when incidents get to the procurators fiscal—

**Julie McComasky:** That is the feeling, but I do not have the figures with me to support it.

**Christopher Harvie (Mid Scotland and Fife) (SNP):** First, I have a personal declaration. In another world, I am president of the Scottish

Association for Public Transport. My status there should be borne in mind with any questions that I ask the railway representative.

I want to consider two marginal issues with which all the witnesses are involved: situations involving disabled people and elderly people. Those people may find it difficult to comprehend the situations that they are in, and adherence to the letter of the law may seem inhumane to them. I have parents who are in their 90s. One of my projects in the SAPT is getting people active on public transport for much longer so that they are not really disadvantaged when they give up driving. There are various situations that some people find difficult—for instance, when none of the lavatories on a train works, or when people do not help when they are faced with very high steps into a carriage. A person, who may be very deaf as well, may or may not know that they are in the right or in the wrong, but they may find that they are being treated brusquely and possibly irrationally. People may become a bit noisy and obstreperous in such situations. How are such issues dealt with? They can be awkward and can leave someone who might be in the wrong, but is in the right in a moral sense, with a sense of injustice.

**Sam Jennings:** A number of the people whom we support have a learning disability. Our staff are given training on how to manage people who have known challenging behaviour. That is mainly about trying to avoid triggers and proactive strategies to reduce the incidence of such behaviour. Our staff are given information and guidance on how to de-escalate and deal with known challenging behaviour, and they learn skills in that. We also offer post-incident debriefing and link into counselling if that is required.

Our staff know that they have the option of pressing criminal charges if they wish. I do not have statistics on that or know whether it has ever been done, but I know that the general feeling is that staff are reluctant to do it when it is known that somebody does not necessarily have sufficient capacity to understand their actions or the consequences of those actions. We have robust policies in place. We have policy statements, processes and training and we have put in place on-going support.

Our question about the bill is about the need to establish capacity and to establish whether somebody

“knows or ought to know”

that the worker was acting in the course of their employment. That relates to our staff providing a service for service users and also, as you say, to service users who might act in a way that could be

perceived as violent or aggressive towards other public-facing workers.

**Colin Borland:** To add to what Sam Jennings said, there are clear pre-existing rules on issues of capacity. We need to be careful to define our terms and know what we are talking about. In the sort of situation that the member describes, I do not think that a small business owner would seek to prosecute a customer who was confused and who became obstreperous or who thought that she had paid or whose change was not right. Such things happen. We would not have many customers if we started treating them like that.

I will give an example of the sort of issue that we are thinking about. There was a case in Mr Henry's constituency—it was certainly reported in his local paper—in which a customer tried to steal a till and, when they were unable to do, sprayed the shopkeeper with a syringe-full of blood. I believe that the court report was along the lines that the sheriff was considering what should happen to the person and whether a custodial sentence would be appropriate. That is the end of the spectrum that we are talking about—the completely unacceptable behaviour. There is no grey area there. The problem comes when such cases are not treated sufficiently seriously by the prosecuting authorities or when people wonder whether it is worth going down that road. That shows a worrying lack of respect towards people who are serving our communities. From a small business point of view, I am happy to allay Christopher Harvie's concerns on the issue that he raises.

**Julie McComasky:** Our staff often deal with customers who are frustrated, for a number of reasons. Through frustration, people can sound off a bit. Our staff are absolutely experienced and trained to deal with those situations. We differentiate those situations from situations that we consider go beyond that and become a verbal assault. If we were to report everyone who was a bit frustrated and who sounded off a bit, we would be doing nothing else.

**Christopher Harvie:** Do you not consider that there is an issue because of the law that governs transport, particularly the imposition of competition criteria? For instance, bus companies are specifically told not to confer and reach agreement to maintain connections. So one can expect that the X95 bus coming into Galashiels will see the supposedly connecting bus to Melrose leaving as it comes in. That happens about six or seven times a day. On one occasion a very helpful shunter at Galashiels depot stopped a bus from leaving so that I could make a connection. I referred to that in a blog that I wrote for one of the newspapers and he was reprimanded by the company for doing so. That seems to me a point



at which, if the law is an ass, there ought to be a certain flexibility.

**The Convener:** I am struggling to see how that is relevant to the bill. Could you get to your question, please?

**Christopher Harvie:** I am asking whether workers who work in a situation in which an inflexible and poorly conceived law is being enforced ought to consider themselves justified in upholding that law if it contributes to the inconvenience of others. The impact of privatisation on public transport has had that effect all over. May I say that if a train in Germany is late by an hour, the staff go down the train distributing €25 vouchers in compensation. They are therefore probably the most popular people in the country at the time. Have I made my point?

**The Convener:** You have made that point, but the point that I was trying to make is that I am not entirely sure what its relevance is to the bill.

10:00

**Julie McComasky:** The only response I can make on that point is that our staff have to work within the rules of competition and the context of privatisation. They do so to the best of their ability and do not deserve to be abused for upholding those rules.

**Marilyn Livingstone (Kirkcaldy) (Lab):** Good morning. I will ask about parity of esteem. We have heard that the Emergency Workers (Scotland) Act 2005 has promoted further prosecutions and, I hope, encouraged more people to report incidents. Do you think that the bill will have that effect? Is it a good message to send out to workers? Crucially, do you think that the bill will encourage more people to report incidents?

**Colin Borland:** On parity of esteem, we are particularly interested in whether the bill would apply to people who are self-employed and to small business owners. I assume, given the notes in the policy memorandum that refer specifically to taxi drivers, that the intention of those who drafted the bill is that it should apply to those groups. However, as the Scottish Parliament information centre briefing says, it is arguable whether section 1(3) as drafted would include them. If the legislation ever got to a court of law where it was being argued over by clever lawyers, that lack of clarity would certainly dilute the very strong message that I think we agree we are trying to send.

It would be unacceptable, for example, for a shop assistant—an employee—in a small shop to have a level of protection that the shop owner did not have. We think that the bill should deliver parity of esteem; it should underline to people how

important these services and these people are in their community, and that will happen effectively only if we ensure that it applies to the self-employed.

**Marilyn Livingstone:** If the bill is passed, would the fact that such legislation was in place encourage more people to come forward?

**Colin Borland:** On its own, perhaps it would not, but it would if it was accompanied by a proper campaign, which should not be down only to the Scottish Government and public authorities, as business and others would also have a role to play. We are members of the Scottish Business Crime Centre, which takes a lead and delivers a lot of good work on awareness campaigns and the like. Provided that the legislation is accompanied by such work, with the message of the campaign being that such behaviour is unacceptable, that people will be prosecuted for subjecting others to it and that incidents will be taken seriously, there is every chance that the bill should raise the frankly appalling underreporting rates.

**Sam Jennings:** I agree. Having a specific offence would encourage people to go for a prosecution if they were otherwise swithering about whether that was a good idea or worth while doing. When it comes to some of our service users who have a disability but have been deemed to have the capacity to understand their actions and the consequences of their actions, we have occasionally found that the police do not always know what to do when they are called out to deal with an incident.

We try to build up relationships with community police, so that they are aware of some of our clients, particularly those who have a history of violent and aggressive behaviour towards our staff. However, we find that the police are often at a loss as to how to handle such individuals. We would welcome anything that can support staff and the police to know how best to handle a situation in which staff feel that their personal safety has been threatened when they have been assaulted, or threatened with assault, by an individual who, despite their disability, knows what they are doing and understands the consequences of their actions.

**Julie McComasky:** I remember all the publicity surrounding the introduction of the Emergency Workers (Scotland) Act 2005. The discussion that that engendered could only raise awareness of the legislation, which has had an impact. We would like the same for our workers as well. As has already been said, if employees and the travelling public knew that there was a specific offence of assaulting a worker who was trying to do their job, that would act as a strong deterrent.

**Stuart McMillan (West of Scotland) (SNP):** I am sorry for my lateness, convener.

I have a couple of quick questions for ScotRail and Capability Scotland. What percentage of your employees are public facing and what percentage are back-office staff who never deal with the public?

**Julie McComasky:** Two thirds of First ScotRail staff are directly customer facing.

**Sam Jennings:** I do not have precise statistics, but the majority of our staff are public facing. The only non-public-facing staff are our head office, administrative and other support staff. The majority of our staff are support workers, nurses, teachers and other people who provide a direct service to our clients and interact with their families. Our shop workers are public facing as well.

**Stuart McMillan:** If the bill were passed without any amendment, it would create a two-tier system within your organisations: two thirds of ScotRail employees would be covered by the bill, but one third would not. The vast majority of Capability Scotland staff, who are public facing, would also be covered. How would your employees deal with that?

**Julie McComasky:** It would not be a problem. There is already recognition that the staff who do the late-night shifts on trains and at stations deserve additional protection. The third of staff who are not customer facing do not face the same challenges as the other two thirds, and would be covered under the common law if they were assaulted.

**Sam Jennings:** I agree. The response needs to be proportionate to the risk. The risk of violence, aggressive behaviour and assault to our non-public-facing staff is much lower than the risk to our public-facing staff.

**Hugh Henry (Paisley South) (Lab):** Do First ScotRail staff ever operate in what would be described as emergency situations?

**Julie McComasky:** Yes. For example, in a high-profile derailment, which happens very occasionally, everyone has to get into an emergency situation and our staff are highly trained to do that.

**Hugh Henry:** As the law stands, if the police and fire services attended such a derailment and some of the aggrieved passengers who were referred to earlier started to lose their cool because of delays, the police officers and firefighters would have the protection of the Emergency Workers (Scotland) Act 2005 but the rail workers would not. We heard from the Scottish Police Federation last week that it was important that that protection continue, but the federation's

representative did not think that rail workers should have it. Is it equitable that, in an emergency, your employees have less legal protection than others who attend?

**Julie McComasky:** As you describe it, the situation does not seem fair at all. After all, a brick thrown at a train driver's window can cause a derailment. Given that an assault or attempted assault can cause an emergency situation, it does not really seem fair that those workers do not have the same protection.

**Hugh Henry:** I acknowledge that as others have said—and, indeed, as the police said last week—someone who created a serious situation by throwing a brick at a train would, as we would expect, face significant legal penalties. The Parliament and all the parties in it—with one exception—believed that it was necessary for workers in emergency situations to have additional protection in law, but there is a debate about whether such protection should be extended to other workers who deal with the public. You have described a situation in which some of your staff might well find themselves in emergency situations but under the law that the majority of politicians in the Parliament have constructed some of the workers attending such situations get additional protection while others do not.

**Julie McComasky:** That is right.

**Hugh Henry:** Do any of Sam Jennings's staff ever have to operate in what could be described as emergency situations with life-or-death issues at stake?

**Sam Jennings:** Not really. They might find themselves having to administer emergency first aid or cardiopulmonary resuscitation to one of our service users, but I cannot think of anything that would fit in with the 2005 act or any situation where they might be hindered or obstructed.

**Hugh Henry:** I am thinking not about occasions where there might be hindrance or obstruction, but about certain crisis situations in which things get out of hand, emotions start to run high and there might be a threat to the wellbeing of individuals. Do your staff ever have to operate under such circumstances?

**Sam Jennings:** Yes, they could do. The behaviour of some of our service users, particularly those with mental health problems and learning difficulties, can lead to crisis situations and staff might find themselves having to protect themselves, the individuals in question or the wider public who might be in the area of the incident.

**Hugh Henry:** My next question is for Colin Borland. What would be the social consequences of small businesses feeling that they cannot

operate in certain areas as a result of sustained attacks? Leaving aside the implications for the individuals involved—the self-employed and others—do you think that that would have wider social implications?

**Colin Borland:** If businesses think that it is not worth operating in certain areas because of the behaviour that they are continually being subjected to, they will simply pull down the shutters and leave. In many hard-pressed urban and rural areas, the small businesses are the glue that holds the community together. No matter whether they are the local post office, the local pub or whatever, without the services or, indeed, the employment that they provide, communities become nothing more than a collection of houses. As we know, once one business goes, the others start to shut down and leave, which only adds to the feeling of rejection in that community.

**Hugh Henry:** The convener mentioned other measures that might be taken and Rob Gibson touched on sentencing and prosecution guidelines. In 2004, there was a commitment that additional measures would be taken and I believe that, since then, action has indeed been taken on sentencing and prosecution guidelines, with the feeling that that move would give additional protection to workers who are not covered by the 2005 act. Also in 2004, the Administration of the time committed it and subsequent Administrations to taking forward a wider package of measures, including awareness-raising and educational campaigns, to educate the public and reinforce the message that attacks on public service and other workers were totally unacceptable. Have those campaigns had the desired effect in improving protection for the people whom the witnesses represent?

10:15

**Julie McComasky:** I do not have any evidence one way or the other on whether such campaigns have been a factor. As I said, the number of workplace assaults on our employees has decreased slightly over a number of years, but I could not comment on whether such measures have been a factor.

**Colin Borland:** As I said at the outset, the proportion of our members who report that they have been subject to such incidents in the previous year has remained fairly constant at 28 per cent, but I do not have figures that go back before 2004. We could certainly find out whether that question has been asked in earlier tracking surveys and come back to you, if that would be helpful. For the past three or four years, the figure has remained relatively static.

**Hugh Henry:** So when people who do not support the bill say that other things can be done, which was similar to what was said when the 2005 act was brought in, you would say to them that you have not seen any historical evidence to suggest that that approach has worked. Presumably, the analysis would be no different in relation to the bill.

**Colin Borland:** It may well be that other things can be done. As I said to Mr Gibson, it should not be a case of either/or, but our figures tend to suggest that the action that has been taken to date has not had the intended effect.

**Sam Jennings:** I cannot comment on whether that approach has worked, but one of the reasons why we welcome the idea of the bill is that it would allow us to send a message, perhaps at an early stage, when we might be dealing just with a bit of verbal abuse, that if that behaviour continued, we had a tool that we could use to take further action and to prosecute. Many of the people whom we deal with are family members who may have mental health difficulties over and above those of the person whom we support. They might be experiencing high levels of anxiety and stress, and there might be child protection orders in place.

In addition, some of our shops are in quite deprived areas, so we could be talking about people with drug and alcohol abuse problems who will not necessarily be aware or care that in 2004 additional measures were put in place. We feel that the bill could act as a deterrent, with campaigning and publicity, and that we could use it to step in at an early stage and say to people that if their behaviour continued, we had the option of prosecuting.

**Hugh Henry:** You say that many of your staff operate in circumstances in which there are high levels of drug and alcohol dependency. I presume that those are situations in which there are potential flashpoints.

**Sam Jennings:** Not so much in the services that we provide; that would apply more to our shop staff. Some of our shops are in quite deprived areas and there are incidents of shoplifting and people trying to steal money. Often, the people involved are under the influence of drugs or alcohol. In addition, some of our clients with learning disabilities have been known to act under the influence of drugs and alcohol, and staff may have to deal with that. When staff deal with new referrals and go into the family home for the first time, there might be an issue, not necessarily with the person we are supporting, but with members of the wider network of friends and family who could be there.

We have two policies. We have one for managing known challenging behaviour and we have another for managing risks of general

violence and aggression at work, which involves a tiered approach. We recognise that people who are raising a child with a disability are in a difficult position—I cannot even begin to imagine how difficult that must be for families—so we do not want to adopt a zero tolerance approach. We need to recognise that tensions run high and that there is stress and anxiety. Stage 1 of the tiered approach involves people being told that their behaviour is not on. If the behaviour continues, stage 2 involves the issuing of what we call a behavioural contract, whereby we say what we expect of people and what they should expect of us in return. That can lead on to sanctions and restrictions and, eventually, a service might need to be withdrawn. We feel that the bill would help us between stage 1 and stage 2 of our tiered approach in dealing with the parents, carers and families of our service users.

**The Convener:** I have a couple of final questions. Some of the evidence that we received suggested that the bill might make it more difficult to secure prosecutions because of the additional proofs that might be required—for example, in the case of a statutory offence, proving that somebody was a public-facing worker or that they were assaulted in the course of their work. Does that issue cause you concern, or are you satisfied that what is proposed is unlikely to lead to such difficulties?

**Sam Jennings:** It would not be such an issue for our organisation. The only issue would be to do with the capacity of our service users, but that will not change the options that staff currently have for choosing whether to press criminal charges. Most people who come into contact with our staff know that they are working—for example, shop staff are behind the shop counter. Our support workers are known to the service user, and their parents and carers know that we are Capability employees who are providing a support service.

**Colin Borland:** Similarly, it should be a clear-cut issue for most of our members, although we are not legal experts, to whom we are more than happy to defer.

**Julie McComasky:** It would not be a problem at ScotRail because all our customer-facing staff wear uniforms and name badges so it is clear that they are at work.

**The Convener:** My final point is a general one on which it would be helpful if witnesses could provide any information either immediately or, more likely, in writing. It is difficult to assess whether the legislation is required. When deciding whether to accept its general principles, we have to assess the impact of the 2005 act because of the lack of evidence of assaults. We would appreciate any information from surveys or work that you have done with your staff about how

many assaults go unreported to the police and the reasons for that; of those cases reported to the police, how many go on to prosecution; the reasons why those that do not go to prosecution are not proceeded with; and how many prosecutions result in convictions. That would help us to get a feeling for how necessary—or not—the bill is.

As there are no other questions, I thank Sam Jennings, Colin Borland and Julie McComasky for their evidence, which has been very useful. I suspend the meeting while we change panels.

10:23

*Meeting suspended.*

10:26

*On resuming—*

**The Convener:** I welcome our second panel of witnesses this morning to give evidence on the Protection of Workers (Scotland) Bill. From the Law Society of Scotland are Alan McCreddie, deputy director of law reform, and Bill Maciver, convener of the criminal law committee. Do the witnesses have any opening remarks before we proceed to questions?

**Bill McVicar (Law Society of Scotland):** My name is Bill McVicar.

**The Convener:** I am sorry—it is far too early in the morning for me.

**Bill McVicar:** It is much the same for me.

My view is that every member of the community is entitled to protection from assault, harassment and abuse. As far as I understand it, the law currently provides some protection for all members of the community. The question that arises is whether it is necessary to introduce further legislation when the bill would not lead to an increase in the penalty that is available under identical common-law offences.

In 2007, the law on sentencing was changed, and now all summary cases that are called before a sheriff carry a maximum sentence of 12 months' imprisonment. When the Emergency Workers (Scotland) Bill was introduced, the penalties under common law were three months for a first offence and six months for a second offence, and, generally speaking, the maximum sentence for breach of the peace was three months. The Emergency Workers (Scotland) Act 2005 increased the sentence to nine months, which was in line with the sentence that was available to courts dealing with offences of police assault, police harassment or obstruction under the Police (Scotland) Act 1967. As the law now stands, the police have greater protection at common law, in

terms of the sentencing abilities of the court, than was available up until 2007. While the Law Society is of the view that all workers should be protected from any assault or harassment, the question is whether the bill would achieve that aim.

**Alan McCreadie (Law Society of Scotland):** I endorse Mr McVicar's comments. The Law Society accepts fully the principle that all workers should be properly protected, but it questions whether the bill is the best way to achieve that.

**The Convener:** You seem to suggest that because of changes to sentencing under common law, the bill would not provide any additional protection to workers than is currently available under the common law.

**Bill McVicar:** Yes. The previous panel asked whether particular types of worker might have less protection than others. The answer is that obviously they have the same protection, because the sentencing regime that operates in the courts is identical in each case.

**The Convener:** Other witnesses have suggested to us that the point of the bill is not so much the sentencing that is available to the courts as the fact that having a specific law on the protection of workers sends a strong message that assault, harassment and abuse of workers is unacceptable. Is that a reasonable argument?

10:30

**Bill McVicar:** It is a reasonable argument, but I am not sure that it has any practical effect. More effective means of dealing with the matter would require to be raised with the Crown. Domestic abuse is an example of something that is dealt with more successfully and taken much more seriously by prosecutors now than it was in the past. That involves various measures. For example, the police will keep people in custody overnight before they appear in court if they have been involved in an incident of domestic abuse, and all cases that are reported are prosecuted in so far as they can be prosecuted and there is sufficient evidence.

Another example is the policy on marking, which is the process by which the Crown decides which courts cases should go to. That is relevant to the current attitude to knife crime. I know that the Parliament is considering and discussing knife crime, but apart from that I understand that the Lord Advocate has set out guidelines that require cases that involve someone with a previous conviction for carrying a knife to be prosecuted on indictment, which gives the court that deals with the matter a much stronger sentencing possibility.

It seems to me that those would be more effective means of dealing with problems relating to the harassment or abuse of workers.

**The Convener:** We have evidence that there has been an increase in the number of prosecutions and convictions under the Emergency Workers (Scotland) Act 2005. Is that a result of more assaults on emergency workers being reported or is it simply a transfer of prosecutions from the common law to the new legislation?

**Bill McVicar:** I do not have any figures on that. The Crown Office would have to give you that information. All that I can say is that, anecdotally, any case that I have come across in which a worker has been assaulted has been taken seriously by the court. If a bus driver is assaulted in the course of his employment—if he is spat at or whatever—that is always taken seriously by the sheriffs and the courts in which I practise. Similarly, even before the 2005 act, cases involving hospital staff were taken seriously by the sentencers when such cases were prosecuted.

**The Convener:** I have one more question before I open it up to other members. Your written submission states:

"the evidential burden of proof under a statutory offence such as the one proposed here may therefore be greater and, conversely, it may be more difficult to secure a conviction."

Will you expand on your thinking about that?

**Bill McVicar:** When we prepared the submission we were concerned that the bill would add to what the prosecution needed to prove to secure a conviction. For example, the prosecution would need to prove the proximity of the individuals, the status of the complainer as an employed person or a worker, and the knowledge on the part of the accused person.

Having said that, because of the change in the sentencing regime, it is open to the court to convict in a case where a statutory offence is brought of the common-law equivalent. For assault either under statute or at common law, the penalties are exactly the same. If a sheriff hears evidence during a trial that an employee or a worker, who is the complainer, was assaulted by the accused, the court will take that information into account in imposing the sentence. It is probably unnecessary to require the Crown to produce additional evidence that it would not need to use in other circumstances.

**Alan McCreadie:** That is pretty much where we are coming from in our submission. The point is simply that the bill would detract from the current common-law flexibility because it would place an additional burden on the Crown, which would have to prove that the person was a worker, that the

accused knew that they were a worker, and that the worker was acting within the scope of their employment. As we heard, the penalties under the bill would be exactly the same as the penalties at common law, where the crime of assault would be prosecuted summarily.

**The Convener:** I said that that would be my last question, but I would like to follow up on that particular point. Presumably there would have been similar concerns about the burden of proof in relation to the Emergency Workers (Scotland) Act 2005, yet the number of prosecutions under that legislation is increasing rather than decreasing. I am not sure whether that is because there are more assaults or because offences are being transferred from the common assault category to the category of assaults against emergency workers. I am trying to get that information.

**Alan McCreadie:** As I understand it, the Law Society would have voiced those concerns at the time. One difference between the Protection of Workers (Scotland) Bill and the Emergency Workers (Scotland) Act 2005 is that section 1 of the act includes hindrance as well as assault, which means that there is greater latitude.

**Rob Gibson:** The previous panel told us that the level of assaults in the small business sector and ScotRail seemed not to have increased in recent years. It is easy to prove cases of assault when you have witnesses, but the issue of verbal abuse that leads to trauma for people-facing workers does not seem to have been tackled, although it is probably prevalent.

**Bill McVicar:** It might be worth noting that abusive conduct on the part of a customer—shouting and swearing, for example—is punishable by a sentence of up to 12 months on summary complaint, as well.

**Rob Gibson:** So the prosecution service is not taking forward as many of those cases as the public-facing workers organisations would expect. Assaults seem to be taken more seriously than instances of abusive behaviour.

**Bill McVicar:** That might be so, but the Crown Office would have to respond to that. It is not a matter over which I have any control. I am a small businessman, and I would be indignant if one of my staff were abused by a member of the public in the course of their employment and the prosecutor did not do something about it. If I were in that situation, and the matter were reported, I would expect it to be taken seriously by the police and the prosecutor.

**Alan McCreadie:** There is nothing that I can usefully add to that, other than to say that, in relation to other legislation, you might want to consider an aggravation provision, which would cover all crimes and offences that are prosecuted

under common law. Such a provision exists in relation to racial and religious offences. If the proposal goes ahead, that could be considered.

**Rob Gibson:** Is there a problem for workers such as railway workers who are presented with the alcohol-fuelled late-night situations that were described earlier, as it is difficult for them to report on the incidents in detail because of the amount of time that it would take? Might we not be getting to the bottom of why these events take place?

**Bill McVicar:** I agree.

**Lewis Macdonald (Aberdeen Central) (Lab):** Bill, you said that there were different ways to deal with aggravated offences, and you spoke about domestic violence and the marking of offences. How and why has the process around the reporting of domestic violence cases changed?

**Bill McVicar:** My understanding of the history is that by prosecuting certain offences publicity was given to what was perceived to be a problem. That actually turned out to be a problem, and the Crown recognised as much by changing its policies in a way that some sheriffs have recently made adverse comments about. There is a degree of inflexibility in some of the guidelines that the Crown appears to be enforcing, but that is a matter more of adjusting the guidelines than of passing or imposing new legislation.

**Lewis Macdonald:** Do you accept that those guidelines reflect the views of Parliament and, particularly, the opinion of the wider public about what is socially acceptable and the feeling that, for example, degrees of domestic abuse that the courts did not pursue rigorously a generation ago should now be pursued?

**Bill McVicar:** Yes, I agree entirely.

**Lewis Macdonald:** Does the same hold true for the way in which the Crown Office marks certain offences, for example the second-offence knife offenders you mentioned? Although the guidelines issued by the Lord Advocate or the Solicitor General for Scotland are only that—guidelines—do they reflect the views expressed in Parliament and in the wider community?

**Bill McVicar:** Yes.

**Lewis Macdonald:** Is your critique of the bill based on the view that legislation is not appropriate or do you acknowledge that legislation can also be an appropriate vehicle for expressing public opinion and for allowing Parliament to give direction to the prosecuting authorities and the courts on the degree of seriousness with which a particular offence should be treated?

**Bill McVicar:** I am not sure that legislation would assist in that respect. Certainly it is very important to debate the matter and the more

debate we have, the more attention the public will pay, as long as such debates are reported accurately and thoroughly. I do not think that passing legislation will of itself make any difference, but discussion of problems is very worth while and should be encouraged.

**Lewis Macdonald:** That is helpful.

In the previous evidence session, Sam Jennings from Capability Scotland said that the bill would be extremely useful to her staff and organisation in sending a signal to, for example, the families or associates of the people they support with regard to what is and is not acceptable and what would be the consequences of abusive behaviour. Do you accept that it is legitimate for someone in her position to consider legislation as being able to convey a clearer signal to the people with whom her staff deal daily?

**Bill McVicar:** It is a perfectly reasonable viewpoint. The question, though, is whether, as a matter of practical reality, we need legislation that the courts must enforce when it is not necessary for them to take that particular approach.

**Lewis Macdonald:** You have expressed your clear view on the substance of the bill. Do you support the continued use of the Emergency Workers (Scotland) Act 2005 or do you think that it does not serve any additional purpose?

**Bill McVicar:** It is not necessary now because of the change in the sentencing regime that I mentioned earlier, as a result of which you can receive a longer sentence under common law than you can under the provisions of the 2005 act.

**Lewis Macdonald:** Correct me if I am wrong, but could that change in the sentencing regime be reversed without Parliament's explicit consent?

**Bill McVicar:** No. The change was enshrined in the Criminal Proceedings etc (Reform) (Scotland) Act 2007.

**Lewis Macdonald:** So any reversal would require parliamentary approval.

**Bill McVicar:** Yes.

**Lewis Macdonald:** That was very helpful.

**Gavin Brown:** I should declare that I used to be a practising civil solicitor and that I am still retained on the roll of solicitors, although obviously I do not practise any more.

I want to explore the weight that the Law Society's helpful submission puts on the additional evidential burden. With regard to the bill, the Law Society says:

"there is an evidential burden of proof for the Crown to establish that the assault was by reason of that worker's employment and also motivated, in whole or in part, by

malice towards the worker by reason of the worker's employment."

If the bill were to become law and someone were to be charged under its provisions, could that person still be convicted of, say, common-law assault or breach of the peace if the Crown could not prove either or both of the above points and even though that was not libelled in the initial charge?

10:45

**Alan McCreadie:** The Crown could indeed ask for the alternative conviction. As I understand it, the bill contains no proposal to change the common-law offence of assault. An assault would still have to take place. We very much appreciate the perfectly fair public policy point about the legislation sending out a message, but you would still have to discharge evidential burdens that you would not have to discharge if the charge was libelled as the common-law crime of assault. If the fiscal depute was not able to secure a conviction under what would be the Protection of Workers (Scotland) Act, he or she would simply have to ask the court to convict under the common-law offence.

**Gavin Brown:** Could that happen mid-trial or would such a decision have to be taken at the beginning of the process?

**Bill McVicar:** When the Crown seeks a conviction in a case in which a statutory offence has, for some reason, not been made out, it is entitled to ask for an alternative charge of common-law assault at the end of the case. The bill itself says:

"A person, being a member of the public, who assaults a worker ... commits an offence."

As the bill does not define assault, it must be referring to common-law assault. The Crown would therefore be entitled to ask for that charge—and indeed has done so in cases involving assaults on police. For example, common-law assault convictions could be sought in cases involving individuals who did not know that they were having a fight with a police officer because, say, the officer was in plain clothes. That sort of situation could arise in the future, but the point is that assault is assault.

**Gavin Brown:** I just wanted to be clear on the point. Although the evidential burden to secure a conviction under this proposed legislation would be greater, the Crown would not lose a conviction if it proceeded under the bill's provisions and subsequently decided to ask for the charge of common-law assault instead.

**Bill McVicar:** That is correct.

**Gavin Brown:** That is helpful.

In your opening remarks, you said that the current law already provides protection and a remedy for what the bill seeks to cover. I think that you are without question right in theory, but the question is whether that is the case in practice. You both referred to the court taking seriously incidents in which a bus driver is spat at, but surely you would expect the same if a member of staff in your own small business was treated in such a way, yet evidence that we have heard this morning suggests that such incidents are not being taken as seriously as they ought to be. In a survey conducted by the FSB, for example, its members said that they do not bother reporting incidents in which staff are told, for example, "We're going to find out where you live," or, "We're going to wait for you outside," because they do not see any point in it.

We also heard from First ScotRail which, on the face of it, seemed to have quite a robust system for tracking and reporting incidents and working hand in hand with the British Transport Police. However, we were told that when such incidents get to fiscal level they seem to get nowhere. The witness was unable to give us statistics this morning—she has agreed to send them in to the committee—but her hunch was that in many cases such incidents were looked at, not taken terribly seriously and simply allowed to fizzle out. Do you think that in practice such incidents are treated as seriously as they ought to be?

**Bill McVicar:** From my experience of dealing with workers who have been the victims of the sort of crime you describe, the courts take such cases seriously. I do not know whether the Crown has too many other things to do, but it would have to answer that question. Of course, some courts are much busier than others, and perhaps some cases are not dealt with as effectively as they might be. As I say, that is a matter on which the Crown can offer its own comments and reassurance to the committee. I hope that cases are being taken seriously and are not simply being brushed aside because, for example, there are too many other things to do.

**Alan McCreadie:** Absolutely. On any view, the situation to which you refer is deplorable. Clearly, it may be a matter for police guidelines to officers and, subsequently, Crown Office guidelines. For what it is worth, I will recount an example from my past employment with Fife Council. As clerk to Kirkcaldy district court, I recollect the court taking a very dim view of anyone who was involved in an assault or a breach of the peace at the Victoria hospital in Kirkcaldy or elsewhere.

**Gavin Brown:** Is it a fair summation of your evidence to say that when that type of incident goes before a sheriff the case is treated seriously

and dealt with accordingly, but you are not sure whether the Crown treats it seriously.

**Alan McCreadie:** I agree with that summation.

**Christopher Harvie:** I have a general point that leads on from something that Rob Gibson brought up. A lot more drinking goes on in Scotland in socially and technically awkward places, such as on trains, than is the case on the continent.

There is a relationship between consuming drink and having facilities to get rid of it—I mean functioning lavatories and so on. You may remember that the origin of the phrase "steaming drunk" comes from the fact that people could go on a Clyde steamer and drink all they wanted because there were capacious heads to get rid of it. On the continent, it is rare that drink is sold on local trains. Indeed, the sale of drink frequently is banned totally over the weekend. In Scotland, railway personnel and the police are placed in the awkward and often threatening position of having to deal with the sort of person about whom the rest of us would say automatically, "Avoid eye contact with them," if we could not get off the train. I say that in justification of the bill.

The situation could also be used to justify a much tougher policy line on the availability of drink. We have talked about the problem of supermarket drink taking over from controlled drinking in pubs. The example that I have cited has the disadvantages of both: the availability of cheap supermarket booze in a public space where the majority of people are not drinking and feel threatened by others who are drinking. Of course, the guardians of public order are faced with such flashpoint situations. The bill seems appropriate and right, but the problem is part of a more general problem.

**Alan McCreadie:** I understand that licensing boards now have a locus in the matter. I stand to be corrected, and I would have to check the terms of the Licensing Act (Scotland) 2005, but I understand that a change was made and boards can now consider alcohol sales on trains.

Again, I recollect from my days in the district court that such offences on trains were taken as an aggravation—fiscals made that point in court. If a breach of the peace happens in the high street, a member of the public can move away, whereas if someone commits a breach of the peace on a train, they cannot. The offence is aggravated: people are sitting on the train and they have nowhere to go. The situation would be similar for public workers who are doing their job and cannot simply walk away from the situation. By virtue of the offence having been committed against that background, the offence would be aggravated. I take the point entirely with regard to the situation on trains.



**Hugh Henry:** At one point in your evidence you said that you believed that the bill would detract from common-law flexibility.

**Alan McCreadie:** Yes.

**Hugh Henry:** Does the Emergency Workers (Scotland) Act 2005 detract from common-law flexibility?

**Alan McCreadie:** It can do, because it involves having to prove a situation and discharge evidential burdens that would not have to be discharged under common law. The point about emergency workers is taken, but whether they are afforded additional protection is a matter of debate, certainly with regard to the sentencing provisions, which are now exactly the same. It could be argued that there is a need for the bill from a public policy point of view. I entirely accept that it may be that assaults should be seen to be prosecuted under statute rather than common law but, from a practical point of view with regard to securing a conviction and thereafter sentencing, I am not sure that there is much difference.

**Hugh Henry:** So, using that sort of logic, you believe that the bill is pointless.

**Alan McCreadie:** I would not go as far as to say that it is pointless. If the bill comes to fruition, it might send out a message, as was alluded to earlier. However, from a purely practical point of view, it is—

**Hugh Henry:** That same analysis applies to the Emergency Workers (Scotland) Act 2005. You believe that the common law protects all members of the public from assault, including workers, as you have said. Therefore, you believe that the bill is not necessary, but you also believe that the 2005 act is not necessary to achieve that effect.

**Bill McVicar:** We see that against the background of the 2005 act being superseded by the change in the sentencing regime. We are not saying that people were not entitled to greater protection than they received under the former common-law regime. However, there has been a change and things have moved on. That is the background against which—

**Hugh Henry:** So you are saying that, since 2007, the need for the emergency workers legislation has disappeared because the sentences that are available under common law are equal to those under that legislation.

**Bill McVicar:** It has been superseded in that sense.

**Hugh Henry:** So when ministers of the present Administration decided, after 2007, to extend the groups of workers who are covered by the Emergency Workers (Scotland) Act 2005, in your opinion that was a pointless exercise.

**Bill McVicar:** It was unnecessary.

**Hugh Henry:** Your perspective is that the bill is unnecessary and that the actions of ministers in the present Administration in extending the 2005 act were also unnecessary. Ministers say that there was a purpose to extending the 2005 act, but you differ from that. You do not think that it was necessary, although ministers might think that it was, from a public policy perspective. In effect, your attitude to ministers extending the emergency workers legislation and to me trying to bring in the bill is the same.

**Bill McVicar:** In what sense?

**Hugh Henry:** You do not think that it was necessary for ministers to extend the emergency workers legislation and you do not think that it was necessary for me to introduce the bill.

**Bill McVicar:** That is what we are saying, because the legislation is not necessary. However, as we said earlier, public debate is being raised and that is to be encouraged. It is helpful from our point of view to be able to try to assist in increasing public knowledge of the issues.

**Hugh Henry:** Absolutely. As members have said, we need a debate about better public education, more individual responsibility and more awareness of the dangers that excessive alcohol consumption can bring. All that is taken as read. However, from a purely legislative point of view and from your analysis as legal practitioners, you think that the bill is not necessary and, equally, that the extension that present ministers made to the Emergency Workers (Scotland) Act 2005 was not necessary. Is that correct?

**Bill McVicar:** Yes.

**Hugh Henry:** And you also believe that, despite the present Administration's support for the 2005 act, there is no need for that stand-alone legislation, because sentencing has now caught up.

**Bill McVicar:** Yes, that is right. We are saying that things have moved on and that the concerns that people had up to 2005 or thereafter have been taken into account by the changes that have been made.

**Hugh Henry:** That is what I am trying to get at. The legal profession's view, which has been fairly consistent, is that we should use current powers, particularly when sentencing provisions have caught up. There is a difference of opinion between the legal profession and me as an individual promoting a bill and Government ministers. They are on the same side as me when it comes to the emergency workers legislation, which you believe is not necessary. Equally, you believe that my bill is not necessary. Your attitude to my bill is exactly the same as your attitude to

the emergency workers legislation. Some people support that legislation but not my bill, but you believe that neither is necessary. However, it is for us as politicians to make a decision about what we believe the law should say and what the impact on public policy should be.

**Bill McVicar:** Yes, of course.

**The Convener:** There are no further questions, so I thank Bill McVicar—I got it right this time—and Alan McCreddie for their evidence.

Unfortunately, the witnesses for our next panel, which is on the enterprise inquiry, are not available until 11.45, so I will suspend the meeting.

11:00

*Meeting suspended.*

11:48

*On resuming—*

## Enterprise Network Inquiry

**The Convener:** I welcome Alasdair Northrop, who will be joined shortly by Bill Jamieson. Alasdair is the editor in chief of *Business7* and *Scottish Business Insider*. I invite Alasdair to make some opening remarks if he wishes, then we will take questions. Bill Jamieson from *The Scotsman* will join us in due course.

**Alasdair Northrop (Business7 and Scottish Business Insider):** I am delighted to give evidence today for this important inquiry. As you can tell by my accent, I am English by birth, but I have plenty of Scottish blood coursing through my veins. My mother was Scottish, and she would be proud to see her son here today.

Before coming to Scotland 10 years ago, I was business editor of the *Manchester Evening News*, and before that I was editor of the *Western Daily Press* in Bristol. As a journalist in England in the 1980s and 1990s, I was well aware of the work of Scottish Enterprise and its tremendous success in attracting many inward investors and creating thousands of jobs. Scottish Enterprise and its predecessor, the Scottish Development Agency, were seen as role models for how to do economic development properly. I was also aware of the good work being done by Highlands and Islands Enterprise and its predecessor, the Highlands and Islands Development Board.

Scotland is blessed with great people, great entrepreneurs and great businesses. They are our assets and, no matter what happens in an economic downturn or a fast-changing world, good entrepreneurs will change, adapt and thrive. Over the past decade, I have written about many of them, and I have reported stories about the development of the financial services district in Glasgow, the growth of the life sciences sector in Dundee, the further growth of the oil and gas industry in Aberdeen and many other things that are easy to forget at times like these.

Today, Scotland's unemployment level is above the United Kingdom average. With deep public sector cuts having started, we have some real challenges on our hands. Today, I will argue that it is more important than ever to have agencies such as Scottish Enterprise and Highlands and Islands Enterprise and services such as business gateway to provide support to indigenous businesses, high-growth businesses and start-ups, so that they can create more jobs. None of the agencies is entirely perfect—they have made mistakes in the past, which undoubtedly we need to learn from—but

they fill a gap that cannot be filled by the private sector.

Many businesses believe that the public sector has grown too big and needs to be pared back. Inevitably, Scottish Enterprise, Highlands and Islands Enterprise and business gateway will all face cuts in their budgets, like everyone else. The Scottish Government must be careful about where the cuts are made to organisations that are essential instruments for future economic growth.

**The Convener:** I am very pleased that Bill Jamieson, the executive editor of *The Scotsman*, has now made it. I invite you to make some opening remarks if you wish—if you have had time to catch your breath. You might prefer just to take questions.

**Bill Jamieson (The Scotsman):** I am happy to take questions.

**The Convener:** I will start with a general one. The focus of our inquiry is primarily on the effectiveness of the changes that have been made to the enterprise networks since 2007, particularly the reversion of business gateway to local authorities and the more focused sectoral approach of Scottish Enterprise and Highlands and Islands Enterprise. Does either of the panellists wish to comment on whether they think that those changes have settled down in a way that ensures that Scottish businesses are getting the support that they need, or have you identified any problems with the network that is now in place?

**Alasdair Northrop:** I can talk to you about business gateway first. I have spoken to people in a number of councils where there has been an increase in the number of companies that have been helped by business gateway, and they have taken on their new responsibilities enthusiastically. Figures that I have obtained confirm increases in the numbers of start-ups that were helped in 19 areas. In one area the figure was unchanged, and in only one area was there a decrease.

I would like more information about the performance of business gateways—which were originally brought together under the Scottish Enterprise umbrella to tackle inconsistencies across the network—to be publicly available. There is now a risk that services across Scotland could again be inconsistent. Some of them are run by local authorities, some by chambers of commerce and others by third-party suppliers. My concern is over future funding for business gateways. Will it be ring fenced or is it vulnerable to local authority cost cutting? Where will it come among the various priorities? I have spoken to some people in chambers of commerce who feel that it would be more appropriate for them, rather

than local authorities, to run business gateways, as they have more relevant expertise.

Turning to account-managed businesses, each year we do an issue of *Scottish Business Insider* in which we profile about 40 rising stars in business in Scotland. We send them a questionnaire asking them their views about what should be done to help the economy. We found that 59 per cent of this year's rising stars received help from Scottish Enterprise in its new format, and 14 per cent got help from other organisations such as the Prince's Scottish Youth Business Trust and business gateways. A total of 27 per cent received no help from any publicly funded organisation. The rising stars were mostly complimentary—albeit not totally—about Scottish Enterprise and other agencies. They argued, however, that there was not enough publicity about the services that they provided and that it was not easy to find information about what was available to entrepreneurs.

One person who was account managed was Fergus Clark of the Inveralmond Brewery. He said that he had a good working relationship; that his account manager had great empathy with his business, aims and objectives and often asked questions that he would not have thought to ask himself; that the assistance to the company from Scottish Enterprise had ranged from project management to rebranding programmes; and that the account manager had encouraged the company to apply for support in many facets of its business.

I have other examples, if you want me to talk about them, but I have also given you all copies of the magazine in which we covered that issue and talked to the various entrepreneurs involved so that you can get a feel for the sort of areas in which Scottish Enterprise is helping. Generally, the account management approach appears to be working.

There has been some controversy about whether non-account-managed companies are looked after properly. There are 2,000 account-managed companies, but Scottish Enterprise tells me that it has helped far more than that—something like 7,000 or 8,000 companies that have come to it for help. The question is whether companies are aware that they can go to Scottish Enterprise or whether they feel that it will not be possible to get help. That needs to be explored further.

**Bill Jamieson:** I will make two points on the business gateway. There is no doubt that Scottish Enterprise is much changed from the organisation that the committee examined in 2007. It has targeted what it calls businesses of scale—that is, businesses with a turnover of £500,000 or more, of which there are about 2,000. Its detractors say

that that is cherry picking from the business gateway universe, but there is a strong argument for doing that.

Scottish Enterprise wrestled in its early years with the lack of business formation in Scotland, which has remained a big problem for us, but another problem that was at least as important was identified: the very thin number of middle-sized businesses. That is where the problem is. We have a big base of small businesses and sole traders, a very small stem of companies in the middle and then big public limited companies at the top. Identifying and targeting the 2,000 companies that are scalable—that can be helped to develop—and concentrating resources on building them is the right strategy.

On the business gateway, there is a problem with the monitoring and assessment of the quality of service that small firms get from a range of local authorities. It is difficult to understand how the governance of the business gateway is followed through. In other words, are we sure that models of good practice by one local authority are picked up by other local authorities, and what sanctions are applied to local authorities whose work on the business gateway is almost nominal? I am not sure that we have got that right. We need to have more independent and objective feedback on how the business gateway system is doing. We have happy customers' glowing testimonials from Scottish Enterprise, but we are looking for something a bit more independent and objective.

**The Convener:** One concern that has been expressed is that a number of companies are missing out. They do not fit into the business gateway group because they are already established or are slightly too large for it, but they are not high-growth, account-managed companies. They may be going through a temporary problem because of the economy and in need of some temporary help. Have you heard any evidence of concern that the enterprise networks might be failing a number of companies because they do not fit into the current criteria?

**Bill Jamieson:** I have heard that anecdotally, not in quite the systemic way that has been outlined. There has been some good assessment of the scale of the problem.

A number of companies may feel that their problems lie elsewhere. In other words, particularly in the current climate, their problem is how to access more funding from their banks and how to deal with the severe increase in charges and fees that they are suffering from their banks. On a scale of one to 100, the complaints that I receive by e-mail and telephone from businesses about their treatment at the hands of their banks probably registers about 90, whereas the number

of complaints that Scottish Enterprise does not reach out to them is less than five.

12:00

**Alasdair Northrop:** Companies have not come to me to say that they are not getting help from Scottish Enterprise, but I have spoken to chambers of commerce, business gateway people and councils, which are working to resolve problems when they arise. The business gateway has been approached for help by companies that have said that they were not getting any help from Scottish Enterprise, and a solution has been found, so there is some joined-up thinking going on. I cannot say that that is happening everywhere, because I have not been everywhere, but I have travelled around many regions in Scotland this year doing a series of regional surveys, so I have quite a good feel for things.

**Marilyn Livingstone:** I would like to explore two areas with you, the first of which is local economic development/regeneration. I represent a Fife constituency, which is probably quite a good example of the extent to which things are working—or rather, failing to work. It is clear what is happening with the business gateway and it is clear what is happening with account-managed companies but, as the convener said, there is less clarity about the bit in the middle.

When Scottish Enterprise Fife existed, Scottish Enterprise had a presence in Fife and people felt that they could get help and expertise. There was budget flexibility—I think that the local managing director had flexibility of £1.5 million—and the organisation was seen to have a presence around the constituency. Now in Fife, everything has moved to the council, and there is some evidence that the funding might not have followed. There are issues to do with what happened to that expertise and that funding. I know that some councils are doing economic development extremely well—Fife Council is—but there is a gap that I am concerned about. I think that it was Bill Jamieson who said that it was hard to get a handle on how that landscape was panning out. How are you finding it, now that you have a little more experience?

There has been another restructuring recently, as you know. In areas such as the one that I represent, there is a feeling that Scottish Enterprise is becoming even more Glasgow-centric. For example, the east of Scotland has lost its business growth director. There is a feeling that everything now has to go through Glasgow. I know that it is a big question, but what are your feelings on that?

**Bill Jamieson:** There is a board or committee that oversees the work of the business gateways

across Scotland and which links in with the local authorities. The Scottish Government is represented on it, as is Scottish Enterprise. The issue that you raise certainly ought to be taken up at that level.

Having said that, my sense is that regeneration has fallen off the list of five or six priorities that Scottish Enterprise addresses. My sense is that it is better for the organisation to be focused on a few things than it is for it to be focused on so many things that we forget what the first points on the list were by the time we get to the final points on it, as was the case previously. Scottish Enterprise seems to be focused much more on providing assistance to companies than on taking a wider view of what it is doing for specific areas or counties, but I would certainly raise the issue with that board.

**Alasdair Northrop:** There seems to be quite a lot of inconsistency across the country and people are having to adapt. I was in Ayrshire recently. Scottish Enterprise Ayrshire, the Ayrshire economic forum and the Ayrshire tourism partnership were removed, which left a void. The local chamber of commerce has put together an open space event and is bringing together people to discuss issues such as tourism, economic development for Ayrshire and marketing Ayrshire, but there is some disjointed working. For example, in east Ayrshire, there is the Kilmarnock campaign. As a result of the loss of Scottish Enterprise Ayrshire, there is no overall strategy that is working for Ayrshire.

One thing that has not happened everywhere is the visible formation of the regional advisory boards that are supposed to work with Scottish Enterprise. That is working extremely well in the Aberdeen area. The regional board in Aberdeen city and shire is extremely active and is involved in the city centre development to form a new city square, among other projects. It has a highly sophisticated set-up. However, I cannot find anything on the internet about the boards for the west and the east of Scotland that were supposed to be formed. However, councils are working with Scottish Enterprise in local areas. For example, the economic forum in Lanarkshire has continued.

Development is extremely piecemeal—there is no consistency across the piece. Nevertheless, things are happening. Regeneration projects are taking place. Only yesterday, the competition results for the design of the new Victoria and Albert museum were announced in Dundee. Interesting projects are being developed, but Scottish Enterprise is not at the back of them, and there is a different format in every area.

**Marilyn Livingstone:** I know that some of my colleagues want to come in on that issue, but I would like to ask about a different one. Skills are

crucial. I chair the cross-party group in the Scottish Parliament on construction. Skills and not looking across Scotland are the issues at every meeting of that group. We have had huge examples relating to stonemasonry, funding to planners being cut and so on, and it looks as if policies are not joined up. The new Skills Development Scotland was meant to bring together all the policy areas. Has there been an improvement in skills development and planning in Scotland since Skills Development Scotland's inception?

**Alasdair Northrop:** From my point of view, Skills Development Scotland has not been very visible. I do not know whether it has had problems getting itself together, but I have not seen much from it. Nevertheless, from talking to various people, I know that there are signs that things are starting to improve. Tomorrow, we will have a round-table debate about skills, so I hope that I will be able to give members more information about that; I will pass on to the committee the relevant magazine when it is published.

Skills are undoubtedly critical to Scotland's future, and trying to get a properly joined-up approach is vital. I hope that the new structure will work, but it is inevitable that restructuring will cause initial problems. I suspect that the restructuring at Skills Development Scotland is taking its time. It certainly seems to be doing so from a visibility point of view, although I might not be aware of things that are happening.

**Bill Jamieson:** Where there are problems with Skills Development Scotland, they reside within that organisation. I am not convinced that there should be a reintermeshing with Scottish Enterprise. Around 10 or 12 years ago, there seemed to be a compelling case on paper for bringing together in one organisation the premier economic development agency and skills development work. The case looked fantastic on paper, but in practical terms we are talking about quite separate areas of expertise. I used to hear many people in Scottish Enterprise say that they were not up on skills and that there was not much that they could add to skills, which is a specialist area. Therefore, I am a bit sceptical about reintegrating Skills Development Scotland with the enterprise agency. Equally, there seems to be a case for having a good look at what Skills Development Scotland is doing and what its problems are.

**Marilyn Livingstone:** Finally, a criticism that I hear in my constituency and in my work with the construction industry is that there are too many players and that the funding for some modern apprenticeships, for example, goes through so many layers that by the time it gets to the right people it has been top-sliced. Do you hear such

things? Is that your view? How can we consider that issue?

**Alasdair Northrop:** I have heard that from some people in industry, but I cannot speak authoritatively about the matter until we have had our discussion tomorrow. In Scotland, there is often a problem with too many organisations working on the same thing. Streamlining is needed. That is the idea behind Skills Development Scotland, but there are other organisations. It will be interesting to see what evidence the committee receives in its inquiry. I will be watching the inquiry very carefully.

**Rob Gibson:** I want to change our focus and think about an all-Scotland perspective. Inevitably, we have received evidence that the cities are the drivers of the Scottish economy. We heard that from Edinburgh Chamber of Commerce last week.

I represent, in the Highlands and Islands, an area where the city, Inverness, is doing quite well. That is the easy bit, but the success of development in the Highlands has been judged, by HIDB and everyone since, according to how well the economy of remote areas and islands has been transformed. That could also be applied to other parts of Scotland. Does Scottish Enterprise face up to that issue, if so how, and which aspects of HIDB—sorry, HIE, as it is now—need to be altered to make more of the resources in smaller communities?

**Bill Jamieson:** I will make two points. First, connectivity is essential to economic development in the Highlands, whether it is transport connectivity—roads, rail or whatever—or broadband and information connectivity, which is increasingly important for a renaissance in the Highlands. I am surprised that that has not come round more quickly.

Secondly, I think that I am right in saying that Scottish Enterprise supports a number of businesses in the Highlands and Islands. Inevitably, that poses the question, why have two agencies working on economic development when one might be better and might put in more resources? You will know that the two organisations are constitutionally separate and that there are marked differences between their constitutions.

I think that I am right in saying that HIE has a social remit for community development. If you put that point to people at Scottish Enterprise, they readily admit that it is neither willing nor able to take on such a remit. Therefore, to the extent that there could be any bringing together of the two agencies, first, it would have to be partial; secondly, it would have to be limited specifically to what is done for companies, firms and developing that area; and, of course, thirdly, you would have

to ensure that any bringing together would save money.

**Rob Gibson:** I will pick up in particular on the willingness aspect of your argument. I quote from a press release from HIE this morning, which is entitled “Ambitious communities get HIE support”. It states:

“We looked at the best strategies for engaging with local communities as well as how to develop an action plan. The project’s main aim is to bring the whole community together to take advantage of assets or projects they have which if developed could have an impact on income levels, population retention and growth, enhanced infrastructure, better local services and new income streams.”

I contend that many parts of the Scottish Enterprise area require such an approach. It is about creating businesses, but it is also about finding ways in which you can find the impetus to create businesses rather than relying on an individual with an idea coming to Scottish Enterprise.

**Bill Jamieson:** That is very well put, if I may say so. I struggle to see how Scottish Enterprise could be credible in that area of competence. Does it have the competence to do what HIE is doing? What is it that Scottish Enterprise—or an enlarged Scottish Enterprise—could do that is better than or different from what HIE is doing?

The way that I am leaning on the issue is to look for ways to pool common costs and resources behind the two organisations—quite a lot could be done by way of back-office rationalisation—but Scottish Enterprise could not credibly undertake the community development remit.

**Rob Gibson:** We could explore that issue a little further. We should bear it in mind that the evidence from the chambers of commerce last week was that Glasgow, Edinburgh, Aberdeen and so on drive the economy, but Aberdeen started to do that only when oil was discovered. It was certainly a regional centre. The resources that are driving the economy are not necessarily to be found in the large population areas. They can be found in small communities, but they require efforts from the Government and companies. Is Scottish Enterprise more able to deal with such developments? I have had my own criticisms of HIE, which was slow to catch up with renewables at the start, but it is very committed now.

12:15

**Bill Jamieson:** I would pause on that, because if you open up Scottish Enterprise’s annual report, which is my starting point, the first thing that you see on page 1 is a list of its five or six strategic priorities. Now, that is a slimmed-down list. You can imagine what it was like before. I would hesitate before adding yet another dimension for

Scottish Enterprise to take on. The whole thrust of its approach in the past three or four years has been to slim down, to focus, to get out of areas where it has less confidence and less credibility, and to focus on what it reckons it can do best.

**Alasdair Northrop:** Highlands and Islands Enterprise has its own way of working and it works extremely well. As you say, it has had its faults, but unemployment levels in the Highlands and Islands in the summer were lower than the UK average and the Scottish average. That is pretty good going and it shows the strength of parts of the region, although I know that there are areas where the position is not so brilliant.

Scottish Enterprise can learn from what HIE is doing and adapt it for isolated rural areas in Scotland such as the Borders and perhaps Dumfries and Galloway. Many people have argued that it should do that. I hope that you will consider that point. HIE has a good case for remaining independent. It works closely with Scottish Enterprise, but it works in a very different environment.

**Rob Gibson:** I have to put this point about the way in which the fàs aig an oir—growth at the edge—approach is going. HIE states:

“The agency plans to spend almost £1.5 million over the next three years on this aspect of its strengthening communities remit. HIE’s contribution is being matched by an additional one million pounds from the European Union’s LEADER programme and local authority sources.”

That is very much the mix that happens in the Scottish Enterprise area too, but where is the evidence that Scottish Enterprise can actually do that for the south-west, the Borders and other rural parts of its area?

**Bill Jamieson:** That opens up a whole new configuration. In other words, we are saying that we need perhaps not two separate bodies but two approaches, one for the central belt—Strathclyde, Glasgow, Edinburgh, Dundee—and another for the Highlands and Islands plus the Borders and Dumfries and Galloway. That kicks off a profound debate about where we think Scotland strategically is going to go in the next 20 or 30 years. I am not convinced that we should treat rural areas as separate zones.

**Alasdair Northrop:** I will be going to southern Scotland for my next regional survey, so I will be able to give you more on that, but I cannot speak with authority on the subject today. Of course, the problem will be budgets. There is just not going to be any more money to develop things at the moment.

**Rob Gibson:** The very small sums of money that I mentioned in the HIE area illustrate that, but there must be an issue to address, because an all-Scotland policy must recognise that there are

resources in many of these areas that may become more important in the next 30 years. Thank you.

**Lewis Macdonald:** We have heard from witnesses about regeneration. I think that Bill Jamieson said that it might be no bad thing if regeneration was no longer a focus for the enterprise agencies. Given that our remit covers the whole range of areas for which the enterprise agencies have been responsible, that raises an obvious question: if enterprise agencies are not doing regeneration, who is? If nobody is doing it, what are the consequences? I would be interested in the views of both witnesses on that.

**Alasdair Northrop:** From what I have seen, it seems that the councils are taking on more of that responsibility, but they are working with other local partners such as chambers of commerce and Scottish Enterprise representatives.

**Bill Jamieson:** The other point is about the assessment of big infrastructure projects, whether in transport, housing or whatever. Such projects have hugely significant wider impacts on their economies. You are absolutely right to spot the weakness that Scottish Enterprise has no remit in respect of infrastructure projects, yet such projects can be great economic generators. Decisions about them probably lie with the Scottish Government rather than Scottish Enterprise.

**Lewis Macdonald:** We asked this question of witnesses at our meeting last week: are there examples of local regeneration projects that have gone from the enterprise networks to local authorities and which have been carried through successfully? Alasdair Northrop’s initial answer about local councils was right in that it is to them that responsibility should be allocated formally. I am not terribly sure that we have many good examples of how that works in practice. Are there examples of either success or failure where local authorities have taken on that responsibility?

**Alasdair Northrop:** I do not have any deep knowledge on that one, I am afraid. I cannot think of any examples off the top of my head, but I will think about it.

**Bill Jamieson:** I know of certain local authority areas that are struggling. A few moments ago, Alasdair Northrop mentioned Ayrshire, where I know that there has been a real problem, particularly in east Ayrshire, in trying to kick-start sustainable development in some of the areas that used to have coal mining, engineering and lace manufacturing—all those industries have gone. How do we set about regeneration there? My sense is that local authorities need outside help to get critical mass.

**Lewis Macdonald:** Again in an earlier answer, Alasdair Northrop referred to Aberdeen, which is

the area that I represent, and the active role of its regional advisory board. That begged another question about the transparency and accountability of those boards. The Aberdeen project that was referred to does not command much general support from the public and I am not even sure how much business support it commands. Has the shift away from clear, coherent and consistent structures throughout Scotland created a problem for who makes decisions about regeneration and who implements and drives them?

**Alasdair Northrop:** The project in Aberdeen is an interesting development—certain business figures are pushing it and the council has given them obvious support. Despite the poll that the council took, which showed that people do not want the development, the council is pressing ahead with it. As a question of local democracy, that is a crucial example. However, some people could argue that the scheme is so important that to abandon it because of the results of one poll would not be great, particularly as somebody is willing to put up £50 million towards improving the city centre, which undoubtedly needs improving. The question is a political one to which I cannot give an answer.

**Bill Jamieson:** Because of the difficult times that we are in and which are set to get more difficult, we might see more collaboration and interagency approaches to regeneration. In many cases, necessity is the mother of invention. I notice that in Edinburgh over the past year different and disparate organisations have been reaching out to a far greater degree to see how they can combat the effects of job losses in the financial sector. People cannot just rely on the council, the chambers of commerce or small organisations; people working together can have a much bigger effect. Over the next two years, I think that there will be a far greater predisposition towards exploring those options and putting them into effect than there has been over the past five to seven years.

**Lewis Macdonald:** In the public sector, there is a theoretical division between, on the one hand, regeneration projects of national or regional significance and, on the other hand, local regeneration projects. In theory, Scottish Enterprise retains an active interest in national and regional regeneration. In your experience, is that theoretical construct reflected in practice? In other words, there was mention of major infrastructure projects not being Scottish Enterprise's direct responsibility; however, the redevelopment of Ravenscraig has clear Scottish Enterprise input. Does the separation of local projects from regional and national projects work? Do the public agencies, in partnership or otherwise, know what their responsibilities are?

**Bill Jamieson:** It works when people know what the boundaries are between local regeneration projects and big infrastructure projects. I have no idea where the boundaries are. You have raised an extremely interesting issue.

**Alasdair Northrop:** I do not feel qualified to answer that one, I am afraid.

**Stuart McMillan:** On the regeneration theme again, I know that the urban regeneration companies are extremely lean anyway, but is there a greater role in the URCs for the likes of Scottish Enterprise?

**Alasdair Northrop:** It already plays quite a role working alongside them. I spoke to Irvine Valley Regeneration Partnership when I was doing my Ayrshire feature. It is doing some really good work to prepare the ground for future investment in the area and to improve the environment.

Scottish Enterprise needs to have an input because it is about future economic development, attracting people to particular areas and knowing what infrastructure will be there to attract particular industries. One of the areas that Irvine is going for is the life sciences, so it is important for that URC to work with Scottish Enterprise on the issues that a life science company would consider if it were relocating or being set up there.

**Bill Jamieson:** On the extent to which Scottish Enterprise makes the most of its business and economic intelligence, the agency is extremely well placed to suss out what is going on in certain areas of Scotland. It has access to or looks after some 2,000 companies and it also has quite a range of account-managed companies. Interestingly, it does a regular survey of those companies' sales, turnover, profit experience, problems with the banks and expansion plans. That is a rich source of information and perhaps it could do more with it, for example by using it to inform the Government—I get it from time to time, when I ask politely. The information might be interesting to a company that is thinking about coming in to a particular area and wants to know what the pie chart—if you like—is of existing companies and whether they are making progress. A lot of the information that we get from the Scottish Government is rather tardy; this information is quite fresh. Maybe we should ask Scottish Enterprise whether it can develop its business intelligence to be more effective than it is.

12:30

**Stuart McMillan:** I know that Scottish Enterprise works well with the URCs and will be working closely with the local authorities and other agencies in those areas as a result of that.



If the information that you are talking about were to be made more widely available, would that have a major effect on the URCs' proposals for the areas that they cover? Would they have to change the plans that they have already put in place?

**Bill Jamieson:** Possibly. However, the depth of the economic information would be on a different scale. Currently, they supply small-scale survey work from their account-managed businesses. However, I would have thought that there is sufficient brainbox power and enough people with connections within Scottish Enterprise to scale up that operation so that it becomes a useful tool for not only local authorities but incoming businesses.

**Stuart McMillan:** I have a question on regeneration that follows on from Rob Gibson's question about the city focus, which was raised in the committee last week.

For many years, many of the economic drivers in Scotland have been focused on the cities. I am aware of the issues that Rob Gibson raised about Highland communities and more rural communities in general, but I am concerned about the peripheral areas that surround the cities, which I do not think have had enough attention over the years. I am not for one minute suggesting that there should not be a high degree of focus on the cities, but I feel that the local authority areas around Edinburgh, Glasgow and Aberdeen have not had enough focus. As a regional MSP for the West of Scotland, I am thinking in particular about Inverclyde. I know that there is a URC there at the moment, but I am thinking about the decline of the core industries that we used to have and the fact that IBM, which used to employ more than 5,500 people, now employs just under 2,000. I feel that there is a massive disconnect between what has happened in the peripheral areas and what has happened in the cities and rural areas.

**Alasdair Northrop:** I agree. We should concentrate more on the needs of small communities that used to have huge employers but no longer have them. It is a huge issue, and one that is not easy to tackle. There is no doubt that some of those places feel neglected and unloved and there must be more of a focus on them.

One thing that particularly concerns me is the out-of-town developments that are erected without any concentration on what is happening to town centres. The planning regime should be examined closely in that regard. Businesses always complain about planning decisions being too slow and so on, but we must have a planning system that works and helps local communities.

Some interesting things are going on in Dumbarton at the moment, with the local chamber of commerce working with the council to make the

town centre look better, by putting new frontages on shops to make them look as if they are open and so on. Things are happening in that town, but such efforts need to be spread out across Scotland, where, currently, nothing like that is happening.

More work needs to be done by Scottish Enterprise and chambers of commerce to improve local communities.

**Bill Jamieson:** I agree.

**Stuart McMillan:** Either since the pre-2007 period or in the period from 2007 to now, has there been a change, with people trying to take a wider approach to regeneration rather than focusing only on city centres?

**Alasdair Northrop:** I am not aware of it. That said, I cannot be everywhere at once. I assume that members of the Convention of Scottish Local Authorities will look at the issues and try to work together. Somehow or another, we need a national focus on regional development. I am not sure whether there is a national regeneration conference in Scotland. If there is not one, there should be one.

**Bill Jamieson:** Over the past four years, the greater concentration on reshaping and recalibrating Scottish Enterprise to achieve efficiency savings and enable it to focus on a shorter list of objectives means that one area—regeneration—has been left to one side; it is not getting the attention that it ought to be getting. The question has to be asked: if Scottish Enterprise is not doing regeneration, who is? Who is co-ordinating that effort? As far as I understand the situation, Scottish Enterprise sees its main remit as being to encourage three things: company formation and growth, employment growth and companies from overseas locating in Scotland. Unless those things happen, we will not get very much regeneration.

**Gavin Brown:** I am keen to explore the effectiveness of the changes to business gateway that were implemented two years ago. Both of you have touched on the issue. I find it difficult to judge the effectiveness of the change, partly because of the enormous downturn, which we must factor in, but also because we have found it extremely difficult to get data and figures from the various sources. We put out a call for evidence to which, I think, only six councils out of 32 responded, and we have not yet received a submission from COSLA. If I took down correctly what you said, Alasdair, 19 out of 21 areas have seen an increase, one has stayed the same and one has seen a decrease. I am not sure whether those are local authorities or areas on your Highlands and Islands trip. What is your sense of the effectiveness of business gateway on the ground?

**Alasdair Northrop:** I agree that it is very difficult to get information, but I managed to get some figures yesterday from the public relations agency that looks after business gateway. I am not sure where the figures came from, but I now have them. They show that, for example, in Aberdeen city and shire, new start-ups have gone up from 903 to 1,001. There are figures out there for all areas except the Highlands and Islands, where different comparators apply. The information I have is brief; I would like to see much more.

Bill Jamieson spoke of quality assessment. As I said, there are problems when different people are involved and in trying to ensure that we know what is going on. I do not have figures on how many companies business gateway has helped or whether the figures are up or down. I also do not know what size the companies are and what their needs are. That sort of information would be extremely useful. As far as I am aware, COSLA has responsibility for gathering the information. The committee and all of us would find the information of use.

**Gavin Brown:** Who did you get the figures from?

**Alasdair Northrop:** I got them from the PR agency that looks after business gateway. I can pass the figures to the committee.

**Bill Jamieson:** I, too, would like more information—you would not expect a journalist to say anything other than that. Indeed, it would be good discipline for the governance of business gateway for it to have to provide such information in, for example, shortform interim reports or annual reports of progress.

It would be very useful to have the information, and we all would feel more confident if a separate or independent body and not a PR firm were to bring together the figures.

**Alasdair Northrop:** To be fair to the public relations firm, I am sure that it did not collate the figures; it simply handed them over. I just happened to get the figures from the agency.

**Gavin Brown:** The committee will push for the figures.

I have a question for each of you: what is your gut saying to you about the effectiveness of giving the business gateway to local authorities as opposed to running it centrally through SE? Is your gut feeling that it has worked, it has not worked, it is too early to say or the picture is mixed?

**Alasdair Northrop:** My gut feeling is that it has worked. Local authorities have taken control of things, have taken an interest and have realised that they have to do something because the economy is the most important thing to stimulate at the moment. I get the feeling that they are

taking the situation seriously, are watching it and are making changes to and improving the service. I spoke to Glasgow City Council, which is trying to improve its business gateway. The City of Edinburgh Council is doing the same.

Overall, I get the feeling that things have got better. However, the big problem is that we do not have evidence to show that.

**Bill Jamieson:** The picture is mixed.

**Ms Wendy Alexander (Paisley North) (Lab):**

In the evidence that we have heard so far from business organisations, anxiety was expressed about the vulnerability of Scottish Enterprise and Highlands and Islands Enterprise in the forthcoming budget if we are to find £1.7 billion of cuts in the coming year alone. There has already been a 30 per cent like-for-like, real-terms cut in HIE and a 14 per cent cut in Scottish Enterprise in the past three years.

There is a sense that that vulnerability is driven by those organisations somehow becoming marginal to Government strategy—a kind of benign neglect. Scottish Development International has not had a chief executive for a year and Scottish Enterprise paid its outgoing one not to be there for six months. VisitScotland did not have a chief executive for six months; the Minister for Enterprise, Energy and Tourism makes an annual visit, if that; the board has become entirely operational, rather than strategic; and the international advisory board has been disbanded with no public comment. That leaves those organisations vulnerable in the context of a budget cut of such magnitude in a few weeks' time.

Do the witnesses share that anxiety about the organisations' budget vulnerability and whether they have become rather marginal to Government strategy, such that three can be without a chief executive in the same year when we are trying to turn round from recession?

**Bill Jamieson:** You may be surprised to hear that I share that concern. I may not have articulated it seven or eight years ago, but I certainly do now because we are in something close to a national economic emergency. What are we going to do to create the new jobs that will work like a sponge to soak up the redundancies and cutbacks in the public sector? We really have to do that, so when I look at the figure for the Scottish Enterprise budget—which is £282 million, I think—as a percentage of overall Scottish Government spending and compare that with the figures from seven or eight years ago, I get the impression, which I am sure is unintended, that the Scottish Government does not care much about economic development or growth. That is not at all the case; of course it cares.

The problem is that, for the past four years, the focus at Scottish Enterprise has been to try to make the agency more efficient and to cut out the surplus people that it had. There is no doubt that there was fat to be trimmed from it and the multiplicity of functions had to be addressed. Now, Scottish Enterprise has slimmed down to a core area and I reckon that any further cut would bring about an almost existential threat to it. It can be cut so far to the point at which we have to ask what the point would be of keeping it on and why we should not do away with the whole thing.

We should not do away with the whole thing. That is not to say that we should not be vigilant about how Scottish Enterprise spends its money. There is certainly a case for examining how effectively it uses its resources. I am not clear why it has to keep about £100 million in cash, including keeping £30 million aside for the Scottish Investment Bank. We might want to get into that in a moment.

I am not sure what the new Scottish Investment Bank will do, who the board of directors are or whether it is a bank in the sense that the Financial Services Authority understands. A bank has to be legally constituted. You will understand my apprehension about the word “bank” after what has happened in the past two years. What is that organisation doing within Scottish Enterprise? What is its governance? Who is running it? What will it do differently from or better than other agencies? It might have a fantastic case to exist and a lot to do, but we need to bring out that hidden flower in Scottish Enterprise and have a little more information on it; a little more light is needed to help it to grow. Keeping it as almost a two-line thing in the annual report is utterly inadequate.

12:45

**The Convener:** You might have lit Wendy Alexander’s blue touchpaper.

**Ms Alexander:** It is tempting, convener, but I am alert to the time.

I will offer another titbit on the neutering of the enterprise agencies. It is probably unarguable that the greatest success of Scottish Enterprise was its joint venture in the 1980s on Scottish Development International, which was then called Locate in Scotland. In a focused way, it decided to go after the market gap that it saw in electronics, and it did so hugely successfully.

Just this morning, we received information from John Swinney that, in a year’s search for a new chief executive of SDI, the appointment panel of four, which did not even include anyone from Highlands and Islands Enterprise—one of the

three partners—and which had one person from Scottish Enterprise, has been unsuccessful.

The Government now wants to look for a leader who

“could meet the representational requirements”.

There is to be

“greater emphasis on the ambassadorial role of the Chief Executive position”.

The person is to

“work with embassy-based Scottish Government colleagues”

in the US and China, and their role will include

“contributing to the Scottish Government’s International Framework.”

I spent this morning at the low carbon investment conference at which, overwhelmingly, the issue was how we meet the market opportunity in renewables. Everybody was clear that it is a policy-driven market and that the country in Europe that puts together investment-grade packages first will win out. On the supply chain, the evidence is that four turbine manufacturing companies are coming to Britain, but none yet to Scotland. Last week in England, Stephen Green was appointed. That is a wonderful appointment if you want to put together investment-grade packages. However, a chief executive whose role is

“contributing to the Scottish Government’s International Framework”

is not likely to be somebody who has shown leadership in the oil and gas community in the past 20 years in Aberdeen, or who is the head of energy at the Royal Bank of Scotland, and who might exploit the opportunity in renewables in the same way as we exploited a market gap 30 years ago.

That is one little bit of evidence that came to light this morning about the neutering of the organisation in a way that means that we risk missing the big opportunity on the horizon.

**Alasdair Northrop:** The delay in appointing a new chief executive has been unfortunate, but SDI has still been doing an awful lot of work on the international side. We are involved in helping on that and writing about it. Every month, we do a piece in the magazine on countries to which Scottish companies should be exporting. That is one of the driving forces of the magazine. It would distort things to say that everything has stopped and that SDI has been neutered, because it is still working actively. I do not know the ins and outs of the search for a new chief executive, although I agree that it has taken a ridiculously long time. The process is still going on.

On renewables, the process is a long one and every part of Scotland wants a piece of the action. Again, it is taking too long, but things are happening and I hope that conclusions will come through soon. It is essential that Scottish Enterprise can do the things that it already does with companies. The company that is on the front cover of the current issue of the magazine, which is one of the fastest-growing companies in Scotland, was helped by Scottish Enterprise. If Scottish Enterprise had not helped it with overseas trade visits, it would not have the clients that it now has and which have made it a company that has enjoyed growth in turnover of about 800 per cent in the past three years.

**Bill Jamieson:** One of the corrosive effects of Scottish Enterprise over the past three or four years has been its senior people's reluctance to assert themselves as leaders. They have been so focused on slimming down, getting their budgets right and so on that I suspect that it has lost an awful lot of its confidence and the leadership function that it had 10 or 12 years ago. There were people in Scottish Enterprise—or the SDA, as it was—who were seriously big hitters and represented the voice of business and enterprise to Government. Given what lies in front of us over the next three years, such a role is important because we will need the strongest leadership in this area.

**Ms Alexander:** If Bill Jamieson is able to recant his comments on the lack of policy leadership, I might be able to recant my comments on how close skills issues are to Scottish Enterprise. One consequence of the constant churn and change in the organisation over the past 10 years has been to teach the leadership that if it is timid in its support to 2,000 companies it will never be on the front page of *The Scotsman* for taking risks, and one of the original purposes of the development agency was to take risks. Of course, some risks do not pay off; for example, I do not think that anyone 10 years ago could have second-guessed the extent to which Scottish Enterprise tried to support the life sciences industry and, although that has not come to fruition in quite the way one would have wished, the call was not necessarily wrong.

Let me leave you with some of the choices facing the committee as we formulate our advice on what Scottish Enterprise should do with a future reduced budget. Going back to AOL broadband, which Bill Jamieson mentioned, I point to outstanding reports that Reform Scotland and the Royal Society of Edinburgh have recently published on what Scotland needs to do to provide connectivity. Understandably, I detect little appetite in Scottish Enterprise to take on an incredibly difficult policy challenge, because it does not hold the regulatory levers. However, as I

say, we have generated a climate of policy timidity.

Finally—and more important—on energy, Scottish Enterprise published an outstanding report on 12 possible sites for port infrastructure in Scotland, but what it did not do two years ago was to place a bet on one of those options. The National Renewable Energy Centre received the investment instead. The UK Government made a £60 million commitment, which of course might not now go ahead, and four turbine manufacturers are now going to England and Wales. The courageous thing for Scottish Enterprise to do, instead of producing a report setting out 12 possibilities for port infrastructure sites, would have been to place a bet on one of them. If it had done that, it might have been in a better position today. All of us—politicians, the Parliament and the media—have to take some collective responsibility for inducing that lack of policy leadership, but the loser is the nation's economic development.

**Alasdair Northrop:** When I recently interviewed BT's chief executive, Ian Livingston—who is a Scot—he said on the subject of superfast broadband that he was waiting to hear whether the Scottish Government was going to give his company money to enable it to provide 100 per cent coverage. I know that times are hard but that money must be found. After all, the internet has taken over our lives, and it is essential that we have the best service, particularly in the rural areas that we have been talking about, where some amazing businesses have emerged. For example, I know of one business that has its offices in Bridge of Don and San Francisco. That is how the world is changing.

**Ms Alexander:** But what part of Government do you charge with that responsibility? In a number of areas, we have de facto moved towards the Welsh solution of ensuring that such responsibilities reside inside Government rather than with an arm's-length and more market-facing agency. I do not regard that to be a happy position and it is a dilemma that confronts us all in the period ahead.

**Alasdair Northrop:** I totally agree. When I was in Wales, I put together a benchmark feature on the Welsh economy and was told by the Confederation of British Industry that the way things had been done in Wales was just not working. It is essential to have an arm's-length agency.

**Bill Jamieson:** I agree.

**Christopher Harvie:** Almost exactly a month ago, I visited Voith in Heidenheim, where some of my students are working in managerial roles. Voith is the world's largest supplier of marine and hydroelectric turbines; for example, each of its turbines for the three gorges dam generates about

the same amount of current as Longannet power station, which gives you an idea about the scale of its operation. It is very keen to operate in Scotland, because Germany has no seawater that it can effectively use for power generation. As Dr Weilepp, who is in charge of the programme, made explicit to me, the Baltic is tideless and the Wattenmeer on the North Sea is mud most of the time, so Voith is looking to Scotland for linkages, sites and construction facilities. Such is the pressure that the more rapidly Scottish Enterprise, or what we want to keep of it, is converted to something like Statoil—let us call it Statewave or something—to act as an orienting and planning body for such companies, the better.

Let me tell you what Voith says. It comes from a statement, but I should point out that I got it when I went to talk to the people in question. Interestingly, the text is in German throughout, which might be a comment on George Mathewson's allegation that everyone in European finance and business speaks English all the time; in fact, when I asked about it, I was told—bluntly, but to the point—that the people at Voith speak English very little because technology no longer comes from the UK.

Voith is very impressed by the possibilities of using Scotland in a way that I had not thought of before: as a pump storage system. Its pump storage operation is now 90 per cent efficient—I had been led to believe that the figure was 57 per cent—which means that the possibility of using hydro or certain Scottish Water reservoirs as a huge battery for regular currents from wind and wave power has increased enormously.

I feel that I can ask this question because I will be leaving Parliament in six months, but has the time not come to rejig Scottish Enterprise and move it away from a regional structure towards a very purposive renewables-oriented structure with Statoil as an analogue for its organisation? What points can be made against such a move at this time?

**Ms Alexander:** Two thousand fast-growth companies, for a start.

**Bill Jamieson:** For me the Scottish low carbon investment conference has been a real eye-opener with regard to the potential and the sheer huge scale of these operations. On Monday, Andrew McLaughlin from the Royal Bank of Scotland gave an interesting speech in which he put on the table some mind-boggling figures about potential. It was all very interesting and I hope that it will give some power and momentum to the efforts of the Scottish Government, Scottish Enterprise, Scottish Development International and Scottish Chambers of Commerce to attract the Government's proposed new green investment bank to Scotland. I think that this country would be a very good location for it.

You are absolutely right about the potential in all this activity, Mr Harvie, but sometimes pennies are very slow to drop in people's consciousness. We in Scotland are only just waking up not just to the potential of renewables technology, but to the opportunity that the hardware itself presents to Scottish manufacturing. The one tiny bright spark that I see in the Government's gross domestic product figures is an uplift in manufacturing led by exports. One always wishes that, to help us along, the pound will fall a bit further but I would not write off the contribution that Scotland can make and its potential in this area.

**Alasdair Northrop:** As the low carbon investment conference has proved, things are accelerating. Scottish Enterprise's focus on renewables is unquestionable—after all, it has a team that looks after the issue—and I think that Scotland is well aware of the potential. It just has to happen; in fact, as we can see with our own eyes, it is already happening.

**Christopher Harvie:** But what about institutional structures, which seem to me to be of prime importance? For example, when we visited Aberdeen and talked to the people in oil and those who supply oil-maintenance industries—case-hardened capitalists, every one of them—what they all wanted was one central state organisation that they could go through instead of the current diffusion of authorities. Simplicity and approachability are what we need—and quickly—and it does not matter whether they come from the state or from some hybrid organisation.

13:00

**Alasdair Northrop:** The Government should certainly be thinking about structures. However, I have to say that, with all the focus on Scottish Enterprise and the Scottish Government, the single gateway seems to be there. We simply need to concentrate on the forthcoming big decisions such as where renewables will be concentrated.

**Bill Jamieson:** I agree.

**The Convener:** I have a couple of final brief questions to which brief answers would be helpful. Earlier, it was suggested that Scottish Enterprise's regional advisory boards seem in some areas to be fairly invisible. Has the loss of the local enterprise companies led to a loss of the business voice in the enterprise network?

**Alasdair Northrop:** It is difficult to judge, because it is not clear what is going on. We need clarity in that respect. In Aberdeen, businesses are very much involved with the local authority, Scottish Enterprise and so on, but we cannot say the same about the whole country. I hope that

after this inquiry people will realise that they need to show what is going on in various areas.

**The Convener:** We have focused on the restructuring of Scottish Enterprise and Highlands and Islands Enterprise but, as Wendy Alexander in particular has pointed out, budgets have been falling dramatically in real terms. Have the enterprise agencies sufficient resources to fulfil their responsibilities in delivering economic growth?

**Bill Jamieson:** You could say that they never have enough resources. I am not sure that the Government's overall budget priorities are right, but then I have been saying that for years. As I said earlier, the enterprise sector receives only a very small proportion of the budget, particularly in view of the challenges that we face. In many respects, though, it has done Scottish Enterprise no harm to live within a reduced budget.

**Alasdair Northrop:** It is pretty essential that Scottish Enterprise's budget is kept as high as possible—after all, it is doing many of the right things—but, being realistic, I think that it will be cut. I am not the one who will make the decisions about what should or should not be cut, but some real thought needs to be given to the issue.

**The Convener:** On that note, I thank Bill Jamieson and Alasdair Northrop for their very interesting evidence, which will no doubt provide food for thought for the rest of our inquiry. Next week we will take evidence from the Cabinet Secretary for Justice on the Protection of Workers (Scotland) Bill and will continue to take evidence, particularly in relation to business gateway, for our review of the enterprise agencies. I remind members that, after that, we have an informal meeting with the Financial Services Consumers Panel and that, on Thursday afternoon, we will meet informally with the Secretary of State for Business, Innovation and Skills.

I thank members for their attendance and close the meeting.

*Meeting closed at 13:03.*

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