



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

FINANCE COMMITTEE

Tuesday 23 February 2010

Session 3

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CONTENTS

	Col.
PUBLIC SERVICES REFORM (SCOTLAND) BILL: STAGE 2	1919
FORTH CROSSING BILL: FINANCIAL MEMORANDUM	1933
DECISION ON TAKING BUSINESS IN PRIVATE	1961

FINANCE COMMITTEE
5th Meeting 2010, Session 3

CONVENER

*Andrew Welsh (Angus) (SNP)

DEPUTY CONVENER

Tom McCabe (Hamilton South) (Lab)

COMMITTEE MEMBERS

*Derek Brownlee (South of Scotland) (Con)
*Malcolm Chisholm (Edinburgh North and Leith) (Lab)
*Linda Fabiani (Central Scotland) (SNP)
*Joe FitzPatrick (Dundee West) (SNP)
*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)
*David Whitton (Strathkelvin and Bearsden) (Lab)

COMMITTEE SUBSTITUTES

Gavin Brown (Lothians) (Con)
Lewis Macdonald (Aberdeen Central) (Lab)
Stewart Maxwell (West of Scotland) (SNP)
Liam McArthur (Orkney) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Shona Robison (Minister for Public Health and Sport)

THE FOLLOWING GAVE EVIDENCE:

David Dow (Scottish Government Finance Directorate)
Sharon Fairweather (Transport Scotland)
Sharon Fitzgerald (Transport Scotland)
Mike Glover (Transport Scotland)
John Howison (Transport Scotland)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Committee Room 2

Scottish Parliament

Finance Committee

Tuesday 23 February 2010

[The Convener *opened the meeting at 14:02*]

Public Services Reform (Scotland) Bill: Stage 2

The Convener (Andrew Welsh): Good afternoon and welcome to the fifth meeting of the Finance Committee in 2010, in the third session of the Scottish Parliament. I have received apologies from Tom McCabe. I ask members and the public to turn off mobile phones and pagers, please—they interfere with the recording system.

Agenda item 1 is consideration of the Public Services Reform (Scotland) Bill at stage 2. I welcome to the committee Shona Robison MSP, Minister for Public Health and Sport, and her officials. I intend to move straight to amendments, as we did last week.

After section 91

The Convener: Amendment 201, in the name of the minister, is grouped with amendment 202.

Shona Robison (Minister for Public Health and Sport): Amendments 201 and 202 relate to the Mental Welfare Commission for Scotland, in particular its functions and governance. With your forbearance, convener, before I turn to amendment 201, it might be helpful if I set out the background to the inclusion in the bill of the new topic introduced by these amendments.

The Convener: Please do.

Shona Robison: Following the Crerar recommendations, the Mental Welfare Commission for Scotland was included in the Government's November 2008 announcement on proposals for the reform of scrutiny. However, last February, following representations from mental health stakeholders, I committed the Government to taking a step back from moving the commission's functions into the new health body or the new social care body through the bill when it was introduced. That was to allow time for a review and consultation around the future structure and functions of the commission and its place in the scrutiny and improvement process.

Discussion then followed with the commission, representatives of other mental health and learning disability stakeholders and the Law Society of Scotland. That led to a public consultation in August. More than 50 responses were received from a range of statutory bodies,

service users, professional bodies, academics and individuals. There was overwhelming support for the proposition that the commission should remain a separate, independent body with a primary focus on the protection of rights for those with mental disorder. That protective function was regarded as being different from the improvement and scrutiny roles that are proposed for the new health and social care bodies.

Amendments 201 and 202 seek to achieve ministers' intentions in response to that consultation. We consulted the commission informally in preparing the amendments, and it is satisfied with the direction of travel that they indicate.

Amendments 201 and 202 can be seen to have three broad aims: to give the commission a specific focus as a body whose role and functions are about protection of the welfare of the individual; to ensure joined-up working with the other scrutiny bodies; and to update the commission's structure by splitting the existing dual governance and visiting role of the board of commissioners.

Amendment 201 provides for a range of amendments to part 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003, which deals with the commission's functions. I am clear that, in line with the undertaking that I gave last year, no reduction in patient safeguards will arise from those amendments. The commission's protective functions will be kept intact and will be adjusted only to reflect better how the organisation works in practice, and to reflect the new role of the commission visitors.

The main purpose of the amendments to part 2 of the 2003 act is to give the desired clarity on the commission's focus as a protective body. A new provision in section 4 of the 2003 act will make it clear that in discharging its functions, the commission has an overarching protective duty—the commission was keen to have that restated in the legislation.

The amendment to section 5 of the 2003 act will make it clear that the commission's current general duty to promote best practice relates not to service improvement, but to the application of the principles of the act on the ground—in other words, to the promotion of legal and ethical care. It makes it clear that the commission will issue best practice guidance on legal and ethical care of patients, while it will be for healthcare improvement Scotland or social care and social work improvement Scotland to issue guidance on service improvement, and to co-operate with the commission in so doing.

The insertion in the 2003 act of a new section 9A duty on the commission to give advice, which

reflects current commission practice, together with the related amendment to section 10 of the act, will have the effect of placing the commission's advisory role in the act.

The amendment to section 13 of the 2003 act is designed to change the focus of the current provision on commission visits to make it clear that the primary purpose of such visits is to check on the welfare of individuals, through meeting patients and hearing any concerns that they have, and is not about service inspection. The commission had raised that point with us. We have now considered it and would like to adjust the relevant provision. Ministers' stated aim of ensuring joined-up working between the commission and the other new scrutiny bodies is given effect by the insertion in the 2003 act of the new section 8A duty on the commission to raise service concerns with those bodies or with other relevant persons.

The remainder of the amendments that we seek to make to part 2 of the 2003 act under amendment 201, and all those that we seek to make to schedule 1 to the 2003 act under amendment 202, relate to updating and improving the commission's governance structure.

The impetus for changing the commission's structure by splitting the current arrangements, whereby the board has governance as well as visiting and inspection functions, came from the April 2007 KPMG report on the commission, which assessed issues such as the organisation's structure, corporate governance and accountability systems. One of the main recommendations was that the commission's governance structure should be updated to bring to an end the current unwieldy arrangements, whereby the commissioners have the dual role of responsibility for the organisation's governance and its visiting and inspection functions. In its response of August 2007, the commission agreed with that recommendation and noted that the Government would require to introduce primary legislation to give effect to it, which is what we are now doing.

The legislative changes on governance also aim to provide greater transparency on how the commission delivers its visiting and inspection functions in practice. New section 4A of the 2003 act, for which amendment 201 provides, makes it clear that the new class of commission visitors are to exercise the functions conferred on them by that act on behalf of the commission. The remainder of the amendments to part 2 of the 2003 act will have the effect of conferring directly on the commission visitors the commission's visiting and inspection functions. The commission will, of course, retain overall control of the strategic direction and of visiting and inspection policy, but operational functions will be devolved to the visitors.

The amendments to schedule 1 to the 2003 act that amendment 202 makes provide for the appointment by the commission of the commission visitors, who cannot now be commission members; instead, it is made clear that they will be drawn from among its complement of staff, together with others who have been brought in for their additional skill and expertise to carry out the commission's visiting and inspection functions. Criteria to which the commission must have regard are laid down for the appointment of commission visitors. The amendments to schedule 1 also make new provision for a reduced board, appointed by Scottish ministers, to provide governance of the commission.

Finally—the convener will be glad to hear—provision is made for transitional arrangements, so that the appointments of existing commissioners who currently have a dual governance and visiting and inspection role will come to an end. The existing chief officer will simply transfer to the renamed post of chief executive of the commission.

I move amendment 201.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): It is regrettable that such major amendments have been lodged at stage 2, as that means that they have not been subject to the rigorous scrutiny that the Scottish Parliament always gives to legislation at stage 1. As everyone knows, that is the great strength of the Parliament's legislative process. The Government may have thought that the amendments were not controversial. Until I looked at them in detail, I assumed that they were not. However, my examination of the amendments and the large number of e-mails that I have received in the past few days suggest to me that the amendments are more problematic than I and, perhaps, the Government had anticipated.

All members of the committee have received a detailed submission from the relevant sub-committee of the Law Society of Scotland. That is important evidence, but I have also received e-mails from clinical academics, an eminent expert on mental health law, user groups and carers who have had experience of the Mental Welfare Commission. We must give serious attention to the issues that such a variety of people have raised.

The biggest concern relates to subsection (4) of the new section that amendment 201 would insert in the bill, which would abolish the commission's function

“to monitor operation of Act and promote best practice”

and replace it with a more general duty to monitor the principles of the 2003 act. In one e-mail, which was signed by a group of people, it was put to me:

“If these duties are removed from the Commission who then will have the responsibility of monitoring the operation of the Act as a whole? It is the responsibility of the Commission in these areas which contribute to regard for the Act internationally.”

Those points were made by eminent academics.

I received a practical example from a carer, who wrote to tell me about how her son—I do not think that he will be identifiable—was detained in hospital, subject to special restrictions under the 2003 act. She pointed out:

“Within 48 hours, our family member had been visited in hospital by a senior member of the MWC, they had explained that the interpretation of the relevant sections of the Act and Regulations by the Consultant and Hospital Managers was flawed, the Restrictions were withdrawn, and an apology was received.”

It seems to her and to me that that would not be possible under the revised functions that are proposed for the commission under the proposed new provisions. I have serious concerns about that issue.

Several other concerns have been raised. Proposed new section 9A of the 2003 act, which amendment 201 would insert, places a specific duty on the commission to give advice, but the suggestion that such advice should or could be charged for is worrying and, probably, inappropriate. If service users and carers were concerned that they might be charged, that could inhibit them from seeking advice.

Concerns have been expressed about the proposed power of the Scottish Government under amendment 202 to appoint and remove commissioners without being required to consult the Mental Welfare Commission. People have made the point that, currently, the appointments are Crown appointments. In practice, that may not make much difference, but we should consider the external perception of the commission. I think that the approach that has been taken has contributed to the sense that the body has been completely independent and will not be influenced by the Scottish Government, particularly ministers. That should be considered in conjunction with other proposed changes, such as the proposal that the Government should be able to attend meetings of the commission. There are concerns that the commission's independence is being diminished in particular ways.

14:15

I hear what the minister says about the number of commissioners. People will have different views about that, but one concern is that there will be much less of a range of expertise if there is a relatively small number of commissioners. At the moment, there are, for example, representatives of users and carers on the commission, but under

paragraphs 2(B)(2)(a) and 2(B)(2)(b) of the schedule proposed in amendment 202, there would be no requirement for users or carers to be members of the commission. If we read the provisions carefully, we find that they could be members of the commission, but there would certainly be no requirement for that. Furthermore, there is no requirement for any commissioner post to be reserved for a psychiatrist or social worker. There are concerns about the commission's composition, and particularly about users and carers possibly not having a place on the board.

As a result of the range of concerns that have been expressed to me and other committee members, it appears that there are serious questions to be asked about the amendments. If the proposals had been presented at stage 1, the Finance Committee or the Health and Sport Committee could have heard evidence on them, and the Government would obviously have had more of an opportunity to come back on points that had been made. Recommendations could have been made in the stage 1 report, which would no doubt have guided us at this point. However, that did not happen, and I have serious concerns about our simply rubber-stamping the amendments. My preferred option would be for the Government not to press them, but to take on board my concerns and concerns that others will perhaps express and lodge amended amendments at stage 3.

Jeremy Purvis (Tweeddale, Etrick and Lauderdale) (LD): I fully share many of Malcolm Chisholm's sentiments, especially his regret that the proposals were not brought forward in a way that would have allowed a public debate on them. We are talking about substantive changes to a body that is extremely important for our constituents. I have received representations from people who have seen the amendments.

There may well be a case for reforming the Mental Welfare Commission—there has been an on-going debate about that—but it is incumbent on the Government to ensure that that reform is done openly and transparently. The two fundamentals that should be considered are the real and perceived independence of the commission's operations in terms of its relationship with Government, and the actual operation of the commission. As Malcolm Chisholm said, there are aspects to do with the monitoring duty. If I understood the minister correctly, monitoring the quality of provision will not be up to the commission; it will be up to other organisations, which may not have the same level of expertise and knowledge of the legislation that the commission has.

The second issue on which there was no clarity from the minister was why the commission should

have the power to charge for advice that is provided.

The third issue is ministerial influence. If ministers have a representative at commission meetings, an issue of transparency could arise. Amendment 202 proposes that

“Members of the Scottish Executive and persons authorised by the Scottish Ministers may attend and take part in meetings of the Commission or any of its committees, but are not entitled to vote at such meetings.”

However, their taking part will have a direct influence on the proceedings of those meetings of the commission or its committees. That is a significant issue.

The final aspect is the proposed delegation to the commission’s chief executive of

“the Commission’s functions relating to the discharge of patients”

and the fact that the chief executive would exercise those functions without necessarily having recourse to any of the commissioners. I have had cases in which the power that the commission used in relation to discharge was a significant issue. The proposal for a chief executive who is appointed by ministers simply to consult a commission visitor who is similarly appointed by ministers creates concerns about the independence of the commission.

We have debated appointments to commissions in many other areas, and the view in other examples has been that appointment by the Crown on nomination by ministers is an appropriate way in which to provide some independence. The proposal to allow ministers to decide that they consider a commissioner to be unfit to discharge their functions gives ministers too much leeway, in my view.

Derek Brownlee (South of Scotland) (Con): I agree with some of what Malcolm Chisholm and Jeremy Purvis said. We have all had representations on the subject in recent days. Regardless of how we got to this stage—I appreciate that there has been a consultation—what makes me most uncomfortable is that some profound issues are involved. Those issues are partly to do with principle but also to do with how the legislation would be interpreted in practice.

I am sure that the minister has seen the correspondence about the amendments from the Law Society of Scotland. I do not necessarily endorse all its views. For example, I have no problem with the provision that allows ministers to approve the location of the commission. I do not think that that constitutes interference with the commission’s independence. The committee has said that it is perfectly appropriate for ministers to retain that power in relation to commissioners and

ombudsmen in general. However, some of what the Law Society says, and some of what is said by many of the correspondents from whom committee members have received communications recently, is about how the amendments would be interpreted in practice.

If we were in a position to see not only the amendments but the draft guidance, we might have a broader view of the effect that the amendments would have in practice. The quandary that I am in today is whether it is better to agree to these amendments and lodge further amendments at stage 3, or to take Malcolm Chisholm’s proposed route, which is not to agree to the amendments today and to allow amendments to come back at stage 3. If the minister is not aware of all the concerns that have been expressed, I am sure that we will be happy to pass on some of the correspondence to her. I am sure that some of them can be resolved. My concern is that, if we wait until stage 3, we will not see amendments until late in the day and we might not see the draft guidance.

I presume that we are all trying to reach the same outcome, which is the creation of a respected, independent commission that is capable of carrying out its functions effectively. I appreciate that there has been a consultation, but given that genuine concerns have been expressed by people who have experience in the field, what process does the minister regard as appropriate between now and stage 3? How can we engage with stakeholders and use the consultation process, as far as possible, to take on board the concerns that have been raised and get more consensus on the provisions and more clarity about what they will mean in practice? That is what we all want.

Shona Robison: It was clear from the point when we took a step back from including the Mental Welfare Commission’s functions in either of the new bodies that any changes would be around the governance of the commission. We had detailed discussions with the commission about what changes it wanted.

The amendments have not just been dreamt up by us; they were drafted very much in consultation with the commission. For some time, the Mental Welfare Commission has felt—indeed, it has begun to move in the direction that we are suggesting—that there is an issue with the governance arrangements, in that the commissioners have a governance role that involves their looking strategically at the commission’s work, but they also deal with the operational work on the ground, which we propose should be done by the new commission visitors. Given that the commission is keen to move

forward on that, it would be unfortunate if we were not to move forward with the proposed changes.

On the issues that have been raised, I have seen some of the correspondence that has been mentioned, but I think that some of it is based on a misunderstanding of what the amendments propose. However, before coming on to the one or two issues that perhaps require to be looked at further—I will deal with those last—let me briefly respond to the specific issues that have been raised.

Amendments 201 and 202 touch on the protective functions of the commission under part 2 of the 2003 act only to the extent that they introduce the new arrangements for commission visitors. Otherwise, the main amendments are to schedule 1 to that act, which provides arrangements for the setting up of the commission. Nothing within amendments 201 or 202 will in any way change the protective functions of the commission. In fact, subsection (2) of the new section that amendment 201 would insert in the bill restates the commission's protective role. That is what the Mental Welfare Commission wanted, and we agreed that it would be useful. The proposed subsection provides:

"In so discharging its functions, the Commission shall act in a manner which seeks to protect the welfare of persons who have a mental disorder."

I cannot see how that could be any clearer.

On the commission's role in practice as guardian of the principles of the 2003 act and on the question that was asked by, I think, Jeremy Purvis about best practice guidance, there is a clear difference between the role of the Mental Welfare Commission and the scrutiny role that HIS and SCSWIS are being established to provide. At the moment, the Scottish Commission for the Regulation of Care already carries out—often, but not always, in collaboration with the Mental Welfare Commission—scrutiny of mental welfare services. I foresee that HIS and SCSWIS will continue to operate in that same way, but they will now have a duty to operate in conjunction with the Mental Welfare Commission. All of that provides us with pretty good safeguards about how the measures will operate in practice.

Malcolm Chisholm raised the issue of charging. Proposed new section 9A of the 2003 act will simply allow, but not require, the Mental Welfare Commission to charge for any advice given. It is not expected that individual service users will be charged. The proposed provision leaves it to the discretion of the commission to make a charge if it thinks that that is appropriate. Similar provision already exist for HIS and SCSWIS, so there is nothing untoward with that proposal. Proposed new section 9A simply gives the commission the power to charge where that is appropriate.

Jeremy Purvis and Malcolm Chisholm also raised questions about the process surrounding the appointment and removal of commissioners. Quite honestly, the proposed provisions will bring the Mental Welfare Commission into line with the standard set of provisions for governance that exists for every other public body. The number of commissioners is set at a level that is proportionate to the size of the body. The commission will be able to appoint up to 10 commission visitors, who will do the actual work on the ground. On the governance arrangements, we believe that the proposed number of commissioners is adequate.

Board members are currently appointed by the Queen on the recommendation of Scottish ministers. Amendment 202 will simply take that bit out of the process. That will make no difference at all to the independence of the body. At present, the Scottish ministers recommend commission members and the Queen rubber-stamps their recommendation. In effect, the amendment will just cut out that bit of the process.

In fact, in some ways, there will be greater constraints on the Scottish ministers in appointing board members with the introduction of the new criteria to which ministers will have to have regard under proposed new paragraph 2B of schedule 1 to the 2003 act, which refers to

"the desirability of including ... persons who have experience of"

delivering or receiving mental health services. Amendment 202 tightens up the appointments process.

It is standard practice that Government officials should be able to attend board meetings. Those meetings should be open to scrutiny because public money pays for the bodies concerned. Of course, any matters that concerned individual patients could be taken in private. I simply do not see why the board of the Mental Welfare Commission should be treated any differently from the board of any other publicly funded body.

14:30

I concede that there is an issue—perhaps this relates to what Derek Brownlee said—with the question that the National Schizophrenia Fellowship and, I think, the Law Society of Scotland raised about the inclusion of users and carers in commission appointments. The commission will appoint commission visitors, so there is nothing to prevent it from ensuring that users and carers are among them.

However, on reflection, I concede that there is an issue with user and carer representation among the commissioners, who make up the governance structure of the commission itself.

There is a clear requirement for user focus, to which we always have regard, but there is no requirement for a user or a carer to be appointed as a commissioner. I am happy to reflect on that before stage 3. That was one of the key concerns in some of the correspondence to the committee and I would be content to consider introducing provisions on the issue at stage 3 if members felt that that would strengthen the governance arrangements for the commission.

The Convener: We must now come to a decision. The question is, that amendment 201 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Welsh, Andrew (Angus) (SNP)

Against

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Whitton, David (Strathkelvin and Bearsden) (Lab)

Abstentions

Brownlee, Derek (South of Scotland) (Con)

The Convener: The result of the division is: For 3, Against 3, Abstentions 1. I use my casting vote for the amendment.

Amendment 201 agreed to.

After schedule 12

Amendment 202 moved—[Shona Robison].

The Convener: The question is, that amendment 202 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fabiani, Linda (Central Scotland) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Welsh, Andrew (Angus) (SNP)

Against

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Whitton, David (Strathkelvin and Bearsden) (Lab)

Abstentions

Brownlee, Derek (South of Scotland) (Con)

The Convener: The result of the division is: For 3, Against 3, Abstentions 1. Again, I use my casting vote in favour of the amendment.

Amendment 202 agreed to.

Section 92 agreed to.

Schedule 13 agreed to.

Sections 93 and 94 agreed to.

Schedule 14—Scrutiny functions: persons etc subject to duty of co-operation

The Convener: Amendment 203, in the name of the minister, is grouped with amendments 204, 206 and 208.

Shona Robison: Amendment 203 adds Her Majesty's chief inspector of prisons for Scotland and Her Majesty's chief inspector of prosecution in Scotland to schedule 14. That brings those bodies within the scope of the duty to co-operate in section 94, as the committee recommended in its stage 1 report.

In its report, the committee also recommended that Her Majesty's chief inspector of prosecution be added to the list of bodies in section 95 that ministers can request to participate in a joint inspection under the section. Amendment 204 makes that addition.

Amendments 206 and 208 insert provisions in relation to making regulations about the conduct of inspections to bring section 97 into line with the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006, which the joint inspection provisions in the bill will replace.

I move amendment 203.

Amendment 203 agreed to.

Schedule 14, as amended, agreed to.

Section 95—Joint inspections

Amendment 204 moved—[Shona Robison]—and agreed to.

The Convener: Amendment 205, in the name of the minister, is grouped with amendment 207.

Shona Robison: These amendments are technical amendments to insert provisions for handling confidential information relating to children and adults at risk. The provisions are similar to provisions in the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006, which have worked well, and to provisions that have already been agreed to for inspections by SCSWIS and HIS in section 45 and section 90, in parts 4 and 5 of the bill respectively.

I move amendment 205.

Malcolm Chisholm: I accept what the minister has said about the amendments, but they raise the whole issue of access to confidential information. Amendment 205 merely provides a definition, but

amendment 207 will place a requirement on people carrying out a joint inspection with regard to confidential information, which is a specific in the bill. In general, the issue is dealt with in two other ways in the bill: in section 95 there is a reference to a code of practice that will be issued, and in section 97 there is a whole list of issues that we are told will be dealt with by regulations. In section 97(2)(c), there is a reference to "health records".

There has been a great deal of concern about the issue. Shona Robison's colleague Ian McKee and I raised the issue in the stage 1 debate. No one is proposing an amendment to the bill in that regard, but there will be a vigorous debate when the regulations are issued. I thought it right to raise the issue at this time, particularly because I would like clarification on the situation with adult medical records. As far as I understand it, the current situation is that there is provision that pertains to children's records in the 2006 act, which the bill will repeal. I assume that, as a result of the new legislation, access to adult health records will be on the same basis as access to children's health records. What puzzles me is the information about the current situation that I received in recent answers. I was told in a written answer two weeks ago that

"The rules regarding legal authority to access medical records without explicit consent apply equally to children and adults";—[*Official Report, Written Answers*, 11 February 2010; S3O-9461]

yet it appears that there is legislation from 2006 about children's records and not about adults' records. If the minister could shed light on that, it would certainly be interesting.

However, it is more important to put down a marker that this is a controversial issue and that the British Medical Association in particular would like the regulations to say that records should be anonymised if consent is not given. It would be useful at this stage to get an indication of the minister's view of that suggestion. I suppose that an amendment could still be lodged at stage 3 if there is not some reassurance about what the regulations and the code of practice will contain.

Shona Robison: I will write to Malcolm Chisholm about some of the detail of that—the matter that he has raised is very detailed. I reiterate that, as he indicated, all these matters will be fully dealt with in regulations. Of course, there will be an opportunity for the regulations to be fully debated and scrutinised by the Parliament. I am not sure that I can add much to that at this stage but, in the meantime, I will write to Malcolm Chisholm with as much information as I can provide. I reiterate that these matters will be dealt with in regulations.

Amendment 205 agreed to.

Section 95, as amended, agreed to.

Section 96 agreed to.

Section 97—Regulations relating to joint inspections

Amendments 206 to 208 moved—[Shona Robison]—and agreed to.

Section 97, as amended, agreed to.

Section 98 agreed to.

The Convener: That ends day 4 of stage 2 consideration of the bill. The target for the next day's consideration will be the end of the bill. I remind members that the deadline for lodging amendments is 12 noon on Thursday 25 February.

14:41

Meeting suspended.

14:44

On resuming—

Forth Crossing Bill: Financial Memorandum

The Convener: Item 2 is evidence on the financial memorandum to the Forth Crossing Bill. The committee agreed to adopt level 2 scrutiny for the bill, which means that we agreed to seek written evidence from financially affected organisations and to take oral evidence from Scottish Government officials. The written evidence has been circulated.

I welcome David Dow, finance team leader for transport at the Scottish Government, and, from Transport Scotland, Sharon Fairweather, finance director; Sharon Fitzgerald, commission, procurement and contract adviser; Mike Glover, commission project manager; and John Howison, interim project director for the Forth replacement crossing. Do any of our witnesses wish to make an opening statement?

14:45

John Howison (Transport Scotland): I will provide some background on the project. The need to consider a replacement crossing arose from the findings back in 2004 on the condition of the Forth road bridge's cables. In December 2007, the Cabinet Secretary for Finance and Sustainable Growth announced in Parliament the conclusion of quite an extensive study, which was that a replacement cable-stayed bridge should be built west of Queensferry. At that time, the price was between £3.4 billion and £4.2 billion.

Moving the story along, a rather more encouraging prognosis for the Forth road bridge indicated that, despite its serious shortcomings, it could have a role in the emerging solution for a resilient crossing. Value management identified the managed crossing scheme, which was brought to Parliament in December 2008 and had a reduced cost of £1.7 billion to £2.3 billion. We considered a wide range of funding options and promoting entities, which culminated in the consideration of four options that would be promoted by Scottish ministers. Of those, the conventional design and build procurement was identified as providing good value for money and being deliverable within the prevailing financial circumstances.

Our procurement strategy for the project is founded on the creation of a contract delivering effective responsibility and transfer of risk, which will be procured under effective competition. As a result of an extensive marketing process, an informal pre-qualification and an assessment of

bidders, we have now engaged in a 12-month bidding process with two consortia comprising leading European and international contractors, each of which is supported by a raft of world-class consultants. Scottish ministers have confirmed their intention to fund the project from the Scottish budget.

David Dow (Scottish Government Finance Directorate): Just to give the committee a financial context for the matter in hand, we say in the policy memorandum that our present estimate of the total Scottish Government capital budget for the period of the crossing's construction is that it will be in the range of £2.6 billion to £2.9 billion a year. Although that estimate takes account of the Chancellor of the Exchequer's pre-budget statement of December 2009, the figure will not be confirmed until after the completion of the next United Kingdom spending review, which we assume will start soon after the UK general election and conclude in autumn 2010.

In paragraph 143 of the policy memorandum, we suggest that annual expenditure on the Forth crossing will peak at £500 million. However, subsequent work on the phasing of the project suggests that it may be possible to smooth the costs over the years of construction to something of the order of £200 million in the first year, £350 million in the four following years and £100 million in the final year. On that basis, there would be four years in which the expenditure on the crossing would peak at some 13 per cent of the Scottish Government's capital budget.

Given the expected reductions in the capital budget, ministers are planning to determine capital spending on the basis of priorities across the whole Scottish Government, which would mean no more automatic rolling forward of departmental or portfolio capital budgets. Ministers are clear that the Forth crossing will be one of their highest priorities when it comes to the capital side of the next spending review.

The Convener: I am wary of financial predictions that suggest things. Obviously, we are all concerned about estimates that fail to be delivered, and projections for things that end up costing far more than planned. I want to ask you about two specific issues. First, what are the key risks for over or underspend, and how does the risk allowance provide for them? Secondly, how accurate have Transport Scotland's estimates of optimism bias been in past projects?

John Howison: The estimating that we have undertaken for the scheme has been undertaken by people who are accustomed to working on this size of project and who are familiar with the scale of the difficulties in front of them. The estimates have been broken down into what we expect the cost to be, based on our price data levels at 2006

prices. The process then rolls those forward to today's prices using indices of movements in materials, labour and plant, which reflect what has happened over the intervening years. The estimates are then moved forward to outturn costs, when the pound notes are actually spent. The process is relatively simple and logical.

You asked about the risks and the accuracy of the estimates. They are one and the same thing. At this stage, we are fairly confident about the underpinning cost levels of the project, but the big issue will be the value that the two bidders put on the works when they submit their tenders in December. Thereafter, the form of contract that we are using has a good record for cost control. Having used that type of contract before, we would expect any overrun of the outturn price over and above the tender price to be limited to about 4 per cent of the tender value. The one exception is that, because of the duration of this contract, we will be taking risk for the fluctuation in prices of materials as we go along. We will be very much in the hands of inflation during the period following the award of the contract. Mike Glover might want to say more about that.

Mike Glover (Transport Scotland): I want to say two things. First, our estimates are audited independently. I emphasise that we arrive at the cost by what I would call a resource-based estimate. In other words, we calculate exactly the manpower, plant and materials that are required, and we build the estimate up from the ground, so we are relatively confident with that. We carry out rigorous risk analyses, in which we list the risks to the project and consider the cost range of those risks.

The other thing that I would like to focus on is the certainty of scope of work. One of the things that go wrong with projects that go off the rails is a lack of clarity on the scope of the project—in other words, scope growth. We have put a lot of effort into the definition of the scope, and have been very precise about what the project contains. I would always caution any client against allowing the scope to grow a little bit here or there, because therein lie the seeds of overrun. I hope that that helps.

The Convener: I can understand the complexities involved, but what does history tell us about how accurate past estimates of optimism bias have been in such projects?

John Howison: Optimism bias is about reflecting the risks that we do not really know about at the moment. The known risks are covered in the risk analysis. The optimism bias covers things that may or may not happen. The two big issues at the moment are, first, the view that the contractors will have on how much they need to allow for the risk in constructing the

project; and, secondly, the inflation that will occur after the tender has been received and the contract awarded. As I said before, our experience of contracts that we have awarded on the basis of all-inclusive prices that take inflation into account—they tend to be shorter-duration contracts—is that we have limited the overrun to 3 to 4 per cent. We are therefore fairly confident about the scope at that stage. The big imponderable will be the value that contractors put on the tenders compared to the allowance that we put on underlying costs.

Derek Brownlee: I will start with an area that Mr Dow touched on in his remarks about the phasing of the costs. Although the overall total is very important to us, given the scale of the project the proportion of spend in any one year is significant both for this project and, more important, for other projects. Mr Dow talked about a pattern of spending and I do not think that it would be unfair to characterise what he said about smoothing the spending as aspirational. If my calculations are correct, that was for an outturn of £1.7 billion. If the total cost of the replacement crossing were to grow towards the upper end of the forecast, would the phasing be the same? In other words, would the £200 million and the £350 million simply be uprated by the same factor or would the costs bunch differently within the years?

David Dow: That is primarily an engineering question. My understanding is that a project of this nature has an optimum duration, so it would probably bump up the costs within the same timeframe rather than stretching the timeframe.

John Howison: Perhaps I can help here. The project comprises three contracts: the principal contract for the bridge and crossing; and two smaller contracts, for the new junction on the M9, and for an intelligent transport system north of the crossing in Fife. The bulk of the costs will be absorbed in the principal contract.

In turn, the principal contract has three parts that need to be considered. The first is the construction of the bridge. We are presuming a five-and-a-half-year contract period for that, which is driven by the length of time that it will take to put in the foundations, build the towers and put the deck in place. That will have a certain progression, so there is a degree of confidence in the expenditure rate.

There are also road works to the north and south of the Forth. The road works to the north are fairly complex and need to be done so that they are finished at the same time as the bridge is built because of the way in which they weave into the junction at Ferrytoll. We expect those to take about three and a half years. The lump of money for that will be spent at the back end of the five-and-a-half-year period.

The other section is the road works to the south of the Forth, on what is in effect a greenfield site. When everything else is done, the bridge will have to connect to the road network. However, that section of road can be built at any time during the five-and-a-half year period, and it might take two to two and a half years. The positioning of that chunk of work will give us the opportunity to move prices around. Left to its own devices, a contractor would need to think about whether such a chunk of work should be put off to the very last because it does not need to be done until then, or whether it should be brought forward so that there is a continuous workload of road works; various strategies can be deployed. We are engaging with the contractors on that with the aim of creating as smooth a cash flow as we can, but with the underlying advice that we are looking for the most efficient and economical construction process that we can get.

To answer the question, we are still discussing the issue with contractors but there are certain clear elements that drive the whole process.

15:00

Derek Brownlee: That is very helpful. The policy memorandum mentions the decision to select the conventional procurement method as opposed to any of the other variants that were selected. From memory, I think that the global costs under conventional procurement relative to public-private partnership were there or thereabouts the same.

When we had a debate on the funding of the bridge last January, the cabinet secretary majored on the budgetary impact of using PPP, because of the application of the international financial reporting standards. I think that I am correct in picking up from paragraphs 125 and 126 of the policy memorandum that, because of the move to Eurostat guidance for PPP, there would not now be that budgetary problem in using PPP. We therefore come back to the fundamental decision about the merits of private finance in respect of the certainty of contract, people being willing to bid and, of course, the overall cost to the taxpayer. Can you confirm that that assessment is right in respect of the budgetary impact? Am I right to say that, under current guidance, the figure of £2 billion would not be brought on to the balance sheet in 2016 or whenever the bridge is completed?

David Dow: There is one answer for Scottish budgets and one answer for Treasury budgets. For Scottish budgets, the new international financial reporting standards apply but, for Treasury purposes, we in effect go back to the old regime.

Derek Brownlee: It is a novel concept to have two sets of books to move things back on balance sheet, but anyway—

The Convener: I wonder whether Mr Dow could clarify that a bit further. Some colleagues are desperate for more information about the issue.

Linda Fabiani (Central Scotland) (SNP): Yes. Why is that the case?

David Dow: The UK Government and the Scottish Government have both agreed to go to an international code of practice for accounting, which gives you the answer of bringing something such as this on to the balance sheet. However, there is also a European set of rules for national accounting purposes and statistical purposes; it operates on a different basis and that is the basis on which the Treasury has to see financial business. That provides the opportunity to take something off balance sheet; it is a different set of rules. For the Treasury rules, it is by risk and for the Scottish Government rules—the international rules—it is by control. I am not sure whether that explanation helps.

The Convener: You have inspired a sub-question.

Linda Fabiani: Is that an option? Are you saying that it is an option for the UK Treasury but not for the Scottish Government?

David Dow: No. The rules are the same for both; both tiers of Government have the same choices.

The Convener: Thank you for that information. If it is possible for you to supplement it in writing, that would be helpful. We appreciate the tutorial.

Derek Brownlee: It might be helpful if you amplify that point in writing.

One thing that strikes me about the financial memorandum is that the percentage optimism bias is higher for the bridge than for the network connections. I have never been involved in procuring a bridge before, so I have no particular expertise in the area but, intuitively, that seems to be understandable, because you would assume that the bridge is probably more difficult to construct than the network connections. However, in the case of the risk allowance, the opposite seems to be true: the percentage risk allowance for the likely cost of the network connections seems to be higher than for the bridge. What drives that in respect of your assumptions? At first glance, from a layman's perspective, one would not expect that.

John Howison: The first point that we need to make is that optimism bias and risk are reviewed regularly as the process goes forward. Essentially, both start at a relatively high level, and as you

know more and more about the project they come down.

The issue with a bridge is that it is a more defined structure. You know where you are going, you know the foundations that you are looking at, you know what a tower looks like and you know what a deck looks like. Road works always contain an underlying degree of uncertainty, because you are putting the road into the natural ground conditions. There is a greater proportion of underground works with road works than with a bridge, which, once the foundations are laid, is out of the ground. That is why the risk relating to the road works is greater.

Mike Glover: In quantum, there is more risk money against the bridge. As members are aware, the bridge accounts for about 70 per cent of the total cost. As John Howison said, a bridge is quite a discrete entity and constructing one is almost like production engineering, in the sense that the project can be broken down and specific risks can be identified. On land, unforeseen ground conditions dominate, especially on the east coast. The geology across the Forth is very variable. One of the biggest elements of variability is the area's industrial heritage. It is not readily acknowledged that certain areas were large areas of industry. That is especially true of the area around St Margaret's marsh, underneath which there are many old railway sidings. A greater risk attaches to foundation works there, because it is not a greenfield site by any stretch of the imagination.

Derek Brownlee: Paragraph 269 of the financial memorandum states:

"The governance structure and the project's disciplined approach resonate with the recommendations of Audit Scotland, as they relate to its recent review of major capital projects in Scotland, and the conclusions and recommendations of the Holyrood Inquiry."

This may be an example of officialese confusing me, but does the statement that

"The governance structure and ... approach resonate with the recommendations"

mean that they are fully compliant with the recommendations or just that they are somewhat in tune with them?

John Howison: The recommendations are recommendations. We have looked at the underlying problems that were identified and the recommendations that were made in the Holyrood inquiry, in particular. We have worked out whether we are likely to get into the same situation with the Forth crossing contract and, if there is a risk of that happening, how we will deal with it. We have addressed the recommendations one at a time and have an answer to them. We can provide you with that answer after the meeting, if you wish.

The Convener: Has the likelihood of significant changes being made to the design before or during construction been estimated? I was part of a painful process in relation to this building.

John Howison: No. We do not believe that any design changes will be required at this stage. As I explained, we went through an elaborate process of identifying the best option for the location of the crossing and determining whether it should be a bridge or a tunnel and, if a bridge, what sort of bridge it should be. The Cabinet Secretary for Finance and Sustainable Growth recommended that it should be a cable-stayed bridge at Queensferry. In the following year, we looked at how the Forth road bridge could contribute to the overall solution and value managed our proposals to match that. A great deal of thought has been given to what the new crossing should include. The resilience that we would expect of a crossing that is due to last 120 years has been built into that. We are not expecting any significant changes to be made.

The Convener: I would not wish them on you.

Jeremy Purvis: I will start by looking at the funding method. Previously, you were asked why alternative options, such as use of the non-profit-distributing model, were ruled out. Table 1 on page 36 of the policy memorandum summarises the procurement options. Can you clarify for the committee the reasons for not using an NPD/PPP approach?

John Howison: You will recall that, when the work was being finalised, we ran into a rather unfortunate period in our financial history, when the funding that tended to support NPD and PPP projects on the best terms disappeared. In particular, bond funding disappeared following the removal of the underlying monoline insurance industry, and banks were starting to run into problems. For the Forth crossing project, we would have expected to borrow for PPP or NPD purposes at fine rates and to have a lead provider that would bring in a consortium to provide the finance, but that approach became extremely difficult.

Jeremy Purvis: So the model was not excluded for accounting reasons; the reason was the condition of the market.

John Howison: The primary reason at that stage was the condition of the market and the certainty of the design and build approach.

Jeremy Purvis: Does that reason still stand?

John Howison: Yes.

Jeremy Purvis: I am surprised to see that, in 2008—when some of the work was being done—PPP deals totalling £408 million were signed in Scotland and Transport Scotland said that using

an NPD model for the Borders railway and the Aberdeen western peripheral route was the best way forward. Is that consistent?

John Howison: One issue is the size of the finance that must be amalgamated. A deal was done at that time for the M80 project. The timeline will confirm that finalising the finance for that took much longer than was normal for such deals by Transport Scotland, even though that project's value is significantly lower than that of the Forth crossing. At the same time, the Highways Agency ran into difficulties in trying to close its PPP for the M25 contract. That route was not considered to provide the certainty that we need for the Forth crossing contract, given that we wish to complete the crossing before the risk of compromise on the existing bridge starts to materialise.

Jeremy Purvis: The bill parcels the different works in different ways, but the project was considered only as one whole project for the parcelling of works and was considered only for one direct or NPD procurement. Is it correct that it was impossible to divide the contracts for the bridge works and the approach road works? That has been done with other projects around the world.

John Howison: We must be careful about effective interfaces in civil engineering projects—one tries to avoid interfaces between contracts. I took the view that a fairly major contract in the overall project to deliver the bridge and the approach roads was likely. We considered hiving off elements and we have hived off the Fife ITS and the junction 1A works to provide a more balanced response throughout the industry.

The difficulty of separating the southern bridge works, for example, is that the site for constructing the southern approach viaduct to the main crossing—which has to be integral with the main crossing—is required for those bridge works and the southern approach roads. The approach road contractor's works could end up cutting off access that is required for the bridge works.

Would it have been impossible to operate in another way? No. Would it have been wise to operate in another way? Certainly not.

15:15

Jeremy Purvis: So you are saying that it was not possible for there to be separate contracts for the north and south network connections.

John Howison: Yes. Our conclusion was that it would have been very unwise to approach it in that way.

Jeremy Purvis: That is not the same as it not being possible.

John Howison: It would have been very unwise to separate them.

Jeremy Purvis: What independent report indicated that? Was it simply your judgment?

John Howison: It was a judgment by me and our consultants, which took account of bilateral discussions that we had with a number of major international constructors.

Jeremy Purvis: Did Transport Scotland recommend the method of funding to ministers or did ministers decide on that?

John Howison: Transport Scotland made a recommendation and ministers accepted that recommendation.

Jeremy Purvis: Was the same basis used for making the recommendation as was used for the Borders railway, which is a PPP project?

John Howison: I cannot answer that; I am responsible only for the Forth replacement crossing.

Sharon Fairweather (Transport Scotland): Every project is different and has to be looked at in the context of its own unique circumstances. Different recommendations were made to ministers around the Borders railway. To return to John Howison's point, the capital requirements for the Borders railway are significantly smaller than the capital requirements for the Forth road crossing, which means that issues of the availability of funding through the financial markets are very different.

The Convener: I remind members that we are here to discuss the Forth bridge project and not any other projects in which Transport Scotland is involved. It is unfair to bring in other projects. Please stick to the Forth bridge situation.

Jeremy Purvis: Is the value for money assessment guidance used consistently across projects?

Sharon Fairweather: Yes.

Jeremy Purvis: It has been consistent.

Sharon Fairweather: Yes.

Jeremy Purvis: The conclusion that you reached on the funding mechanism for other schemes was that they could go forward because they were less expensive than the Forth crossing. Is that correct?

The Convener: We are getting dragged into the same problem.

Jeremy Purvis: The value for money assessment from Transport Scotland says that option B—NPD/PPP—is better value for money. I am exploring why it was excluded from this project

when it was not excluded from other projects. If we are determining the robustness of the finances, that is relevant. It is up to you, convener.

The Convener: Joe Fitzpatrick?

Joe FitzPatrick (Dundee West) (SNP): Most of the questions that I wanted to ask have been asked. When the bill is discussed by the public, it is the headline figures that are looked at. Sometimes, the headline figures for this project look to be considerably higher than those for other projects, such as Stonecutters bridge in Hong Kong. Why do they have different figures? We see how much a bridge cost in Hong Kong, compared with what this bridge will potentially cost.

Mike Glover: That is a wonderful question to answer. I must ask for the committee's patience.

Jeremy Purvis: On a point of order, convener. I hope that we are not talking about bridges for which Transport Scotland does not have responsibility.

The Convener: I hope not. It is a wonderful question.

Mike Glover: This is something that I get quite angry about, because there are all sorts of opportunities for the situation to be miscast. I welcome the opportunity to explain what the differences are between major bridges across the world. Accounting practices of countries come into it. For example, there is no taxation whatsoever on Stonecutters bridge, and no financial charges are applied to its costs. You will find that, despite what you might think, every country has its unique way of accounting for things.

The other characteristic is that it is not an open book situation. In many countries, all you will ever see, if you are lucky, is the tender price, not the outturn price. That comes into the next item: the contract strategy. As John Howison has explained, we are adopting an approach that gives price certainty post-tender. Other bridges have been constructed on very much more of a cost-plus or target basis, by which I mean that the tender price bears no resemblance to the outturn cost. I am afraid that you cannot make people tell you what the outturn costs are; they just will not do it. With very large projects there is always a problem with finding out what the end cost is. I think that that is what you are suffering from with many of these situations.

I turn from the financial infrastructure to the physical issues of building a bridge. Many of the people who talk about bridges in the discussions that I read in the press do not understand the anatomy of bridges. For example, our bridge is a bridge. It virtually goes from bank to bank, and on any world standing it is a big bridge. Many bridges that are cited in the press, such as the second

Severn bridge or the Øresund crossing, have a small bridge in the middle, but our bridge is two spans of 650m with back spans that are almost 2km long. The Øresund bridge, by comparison, is less than half of that. What makes Øresund is all the approach viaducts that come to it.

Calculating the cost of the project divided by the length of the bridge does not give you the right picture, because Øresund is overwhelmingly a very cheap viaduct with an expensive bridge—we are not in that position. We designed the Øresund bridge, which I sometimes describe to friends—disingenuously—as a bridge over a puddle. Not only is the sea shallow but the foundations were predictable because of the consistent geology. The foundations solution for Øresund was simply to float out caissons and sink them to the sea bed. That is not the case with the Forth bridge. The Forth has variable geology and deep water—it shelves away quickly. One can become beguiled by the mudflats on either side of the Forth, but two deep channels run between them. In comparing the Forth with Øresund, the first thing that one has to do is to factor out the viaducts and look at the cost of the bridge component. When one does that, one finds that the Forth bridge compares very comfortably.

I am sorry if I am going on too long, but I hope that this is helpful.

There are also the physical constraints of the location. We are building at 58° north, which is quite a hostile environment, so we have built that into our cost calculations. As I have said, we produced a bottom-up estimate, in which we made allowances for downtime because of weather and so on. Although Hong Kong, for example, is subjected to typhoons, its climate is benign and predictable for most of the time, so there you do not get the extra zeros.

Last but not least is the functionality of the bridge. Our bridge has been designed effectively for three-lane running, yet when I hear reports they always say that our bridge has only two lanes in each direction. We designed the bridge with three lanes in each direction because we want to use the additional lanes for buses. Comparing our bridge with bridges that have three lanes in each direction and saying that our bridge has only two lanes in each direction totally misrepresents the design and functionality of the bridge that we have embarked upon.

In summary, you have to consider the accounting practices in each country that you are looking at. You have to consider the honesty of the costs that you are looking at. As the committee can see, ours are very transparent. You also have to look at the geology of the area, the depth of water and the functionality. If you take those factors into account in a qualitative way, you will

find that this bridge is no more expensive than any of the other European bridges.

I should also say that we designed Stonecutters bridge. The labour cost environment in China is totally different, and Hong Kong is now dominated by China.

All sorts of subsidies go into certain materials in the economy—I am referring to no one particular country—all of which distort the profile. I can assure you that, on the basis of the analysis that we have done, this bridge is not a very expensive bridge; it ranks right alongside its peer group.

The Convener: It is clear that you enjoy the work that you do, but we will finish off there, because other folk have questions.

David Whitton (Strathkelvin and Bearsden) (Lab): You will have seen the submissions that we have received, one of which was from the Scottish Futures Trust. What discussions, if any, did you have with the SFT on the funding package for the bridge?

John Howison: Current directors of the SFT were involved in the analysis that we did when they worked for a previous organisation, but the SFT's contribution has been far more targeted on helping us with governance and examination of the process than on the funding aspects of the project.

David Whitton: So the SFT was not called on to offer its expensive expertise on whether building the bridge as a straightforward capital procurement project or as a public-private partnership was the right way to go. That was purely Transport Scotland's decision.

John Howison: My recollection is that, at that stage, the SFT was not staffed up to provide such advice.

David Whitton: Right. You say that the SFT is involved in governance and process. What role does it have in the process that you are going through of considering the two short-listed tenders?

John Howison: It looked at the process that we adopted to bring the tenderers on board and at the process that we were to embark on for the procurement exercise before we invited the tenders. It provided us with advice on that, some aspects of which we were directed to fulfil before we took the step of inviting the tenders. The adoption of other parts of that advice was an ongoing process. The SFT revisited us to assess our approach to taking up its recommendations.

David Whitton: But given that the SFT exists and that we are told that it has experts in public procurement and all the rest of it who are assisting the Government to get best value for money, has

the SFT never been asked to offer a view on whether the Government's approach is still the right way to fund the bridge?

John Howison: The decision on funding the bridge was taken in December 2008. From that point onwards, we have been making progress in finalising the design and the procurement processes. At that stage, we set in train a route, which we have followed.

David Whitton: What role will the SFT have in the final stage? Its submission says:

"A further review will be undertaken by SFT in early 2011 prior to the appointment of a preferred bidder."

What will its role be then?

John Howison: Its role will be to look at the process that we have been through and at our assessment of the tenders, to satisfy itself that that has been done properly and adequately, and to endorse—or not—the move towards awarding a contract.

David Whitton: It would be a bit strange if, following a year-long process to find a preferred bidder, you did not think that you had done it properly, would it not?

John Howison: It will not be a matter of whether we think that we have done it properly; the SFT will provide an independent view on whether it has been done properly, which will serve to advise ministers and the Cabinet before they sanction the award of such a significant contract.

David Whitton: Mr Dow mentioned the ability to "smooth" the path of capital spend. Can you give us more explanation of how you think you will be able to do that? If I picked you up correctly, instead of there being a £500 million peak, the cost will be £200 million or £350 million in each of four years. Is that right?

15:30

David Dow: Yes.

David Whitton: The peak will be a cost of £400 million. What has got you thinking that you can do that?

David Dow: John Howison has largely covered that ground. We can discuss that with the bidders during the coming stage and suggest to them that that would be our preferred option. We do not want to force them to stick to a £350 million ceiling if that will give bad value for money, but we want to see whether they can arrange the sequence of their work on site without blowing that ceiling.

David Whitton: I do not want to interrupt you, but Mr Glover has explained the geology, geography, the weather conditions and all the rest

of it. It might be—who knows?—that we have three years of good weather with not bad winters and good summers, which would allow work to progress quickly. In that case, you would be spending as you went along. Would you say to the contractors, “Carry on, boys—but you’re only going to get £350 million this year”? Is that the process that you are going through to keep the money at the level that you describe?

David Dow: The matter is negotiable with the contractors. There is absolutely no doubt that, once the contract has been awarded, it will be essential to monitor progress monthly. It is unlikely that we would want, or be able, to tell a contractor to down tools because they were reaching the ceiling.

David Whitton: I hope not.

David Dow: Indeed. It is a matter of budgetary management and anticipating a case in which the project is ahead of schedule. We had that with the M74—I am sorry, that is another contract. It is not unheard of for a project to be ahead of schedule and, under the Scottish Government’s budgeting rules, we would have to accept that work was being done. Whether or not the money was being paid for or accrued, it would be a budget hit, so we would have to be aware of that as a pressure from the project and ensure that something else happened somewhere else within the Scottish Government that allowed us to cover those costs without breaching the budget limits.

David Whitton: I understand that such matters are examined weekly by the director of finance in another place at another time, and that the Cabinet Secretary for Finance and Sustainable Growth looks at them monthly. We are interested—at least, my side is—in the amount of slippage in a number of capital projects and how that slippage could be used elsewhere. However, that is another debate, which we will not go into today. What discussions have you had with the Treasury and our European friends about the possibility of grants and other finances?

John Howison: I will start on the European front. The route is part of the trans-European transport network—TEN-T—and is, therefore, eligible for grants for construction purposes, which are broken down into grants for preparatory works and those for the actual construction works. Obviously, we are at the preparatory works stage. We submitted applications for grant in 2008-09 and in 2009-10. In both cases, although there was recognition of the merits of the case that we put forward, it was not selected as a project that Europe wished to fund.

It must be said that Europe’s funding for the project is somewhat less than one would imagine that it should be. It would probably take too big a

chunk out of European finances to fund a project as large as this.

David Whitton: Is Mr Dow going to enlighten me on the discussions with the Treasury?

David Dow: I am indeed. The Cabinet Secretary for Finance and Sustainable Growth wrote to the Chief Secretary to the Treasury on 27 November 2008. The proposal at that stage was that the Treasury should allow the Scottish budget to be reprofiled to bring money forward to the period 2012-13 to 2015-16, which will be the key construction period, with a corresponding reduction in the following years through to 2031. The reply from the Treasury stated that it was not possible for it to allow any advance of budget cover in the way that had been suggested. In correspondence and at a meeting in March 2009, the Treasury made some other suggestions as to how the Scottish Government could find the budget cover for the project. I can list the suggestions if you want, but the conclusion is that there is no “get out of jail free” card.

David Whitton: Fife Council’s submission to us states:

“The Financial Memorandum does not make any allowance for the delivery of a Public Transport Strategy.”

Why is that?

John Howison: The bill is for a specific piece of infrastructure. We are talking to Fife Council, the City of Edinburgh Council, West Lothian Council and the south east of Scotland transport partnership about a public transport policy. Indeed, a number of the public transport elements that were announced following the strategic transport projects review will form part of the project. They all have their own routes to securing consents and to procuring land and they do not need to rely on the bill to do that. The bill simply covers the bridge, its approach roads and essential infrastructure, such as the modifications that we will have to make to the park-and-ride site at Ferrytoll. The bill does not cover remote park-and-ride sites, which can be developed independently.

David Whitton: I am probably going to illustrate my ignorance of public transport strategy, but as I understand it, you propose to widen the hard shoulder, as it were, so that it can take buses. It was not part of the original thinking to say that, if public transport cannot use the existing bridge, it will use the new bridge.

John Howison: May I explain that? The original concept was that the existing bridge might no longer be there, so we proposed a bridge with functionality that included dual two-lane carriageways, hard shoulders, pedestrian and cycle tracks and dedicated provision for public transport. By 2008, however, the prognosis for the

existing bridge was much better. The work that we did to examine that with the Forth Estuary Transport Authority gave us confidence that the bridge could be used not only for buses but for trams—should that be justifiable in the future—and for pedestrians and cyclists. As far as we could foresee, that position was secure for the future, which meant that the functionality of the new bridge could be reduced.

I am sure that you will appreciate that the last thing anyone wants is to arrive at the Ferrytoll park-and-ride site on a windy winter morning to find that the buses are not running just as the car that you came in has driven off back to Dalgety Bay or somewhere. We accept that use of the Forth road bridge for public transport for most of the time will be a helpful contribution, and that there should be flexibility. We therefore considered the hard shoulder on the new bridge and said that, during periods of high winds, it could be used by buses, which would be diverted on to it. During such periods, the lane will act as a bus lane and not as a hard shoulder. That can be accommodated by virtue of the intelligent transport system, which will provide priority for buses onto the bridge and off it at the other end.

We also took the view—notwithstanding our confidence in the existing bridge—that because the bridge is to last 120 years, we could not rule out the possibility that something might happen to it in the future. In considering the width of the hard shoulder, we therefore decided to take into account not only its use by buses, but the possibility of the existing bridge not being able to take trams. The new bridge has therefore been designed with sufficient width in its hard shoulders to allow it to take tram-based light rapid transit, should that be justifiable on financial grounds. However, it would not, of course, be able to take light rapid transit and buses and act as a hard shoulder all at the same time—those are options that we can do within the cross-section. That is the key to the cross-section that we have chosen for the new bridge, which will have the flexibility to adapt to different traffic uses in the future.

Malcolm Chisholm: Two of the questions that I was going to ask have been answered by the previous two witnesses, but I still have a couple of questions. Table 2 of the financial memorandum provides an illustrated spend profile that covers the years 2007-08 to post-2016. The estimate for post-2016 is £196 million. The obvious question is to ask what that will pay for, if the bridge is completed by 2016 as planned.

John Howison: Sharon Fitzgerald will talk about retention money, which was the basis on which that sum was put forward.

Sharon Fitzgerald (Transport Scotland): In the design-and-build contract, there is a five-year

defects maintenance period. In effect, a retention will operate so that the contractor is not paid the full amount of the construction price until the works have gone through that five-year maintenance period. Funds will be released as the maintenance period progresses, which is what the £196 million figure to which Mr Chisholm referred shows.

Malcolm Chisholm: That deals with the question.

Mike Glover's long answer to Joe FitzPatrick's question was very helpful—I was going to ask something similar. There are many technical questions, many of which have been asked, but from the public's point of view—as we saw on the front page of one of the Sunday newspapers—the issue is the cost of the bridge. Mike Glover dealt with most of that, but the headline point was the cost per kilometre of lane. Is that, as it were, superficially true from your point of view but explained by all the factors that you have put forward?

Mike Glover: Yes—that is a very superficial way of looking at the situation. It makes headlines, but misses out many issues. John Howison explained the bridge's functionality, so it is wrong to report matters in the way that you have described.

Malcolm Chisholm: Obviously, John Howison dealt with the hard-shoulder issue, and I think that most people accept the logic of that. However, the implication was that if there is no hard shoulder, but just a two-lane bridge, the cost would be reduced significantly.

Mike Glover: If there is no hard shoulder, we will have failed to provide the future proofing that is needed. For example, the hard shoulder on the Severn bridge is only 2m wide, so it cannot be used for anything else. We set out to create a hard shoulder that could be used short term for public transport if there was a problem with the FRB. The hard shoulder will provide in the longer term other functionality that will inevitably be required. The life of the bridge will be 120 years, because we are designing it for maintenance and replaceability. It will not suffer from the sorts of problems that the FRB has suffered from because first, the new bridge will be a cable-stayed bridge, which means that each of the cables can be replaced in time, and secondly, the construction of the steel box is a box rather than a series of truss members. There are all sorts of reasons why the bridge that we are proposing should give you a great deal of confidence in the future proofing.

15:45

Malcolm Chisholm: People are worried about the overall cost, given the squeeze on capital budgets that is coming, and some people have

been critical of the bridge because of that. A new entrant among the critics was in Friday's *Scotsman*: Bill Jamieson, its executive editor, suggested that we could delay the bridge for a little while and see whether we really need it.

Mike Glover: The focus is always on the suspension cables—the main cables—of the bridge. One thing that is not reported widely enough—Barry Colford would be able to speak with more certainty on this—is that the catalogue of issues with the existing bridge is very, very long, with the cables being just one of them. There are expansion joints at 60ft intervals across the bridge as you go across—the bump, bump, bump—that are reaching a state at which there has to be some major works on them. That is evident if you stand on the bridge and see a 40-tonne truck go across it. The other issues are related to the anchorages. There is a long catalogue of issues with the existing bridge. It is wrong to consider that it is simply a case of replacing some cables.

The true story—the better picture—is that to bring that bridge back even to the level of functionality that it had when it was constructed, we would have what is estimated to be between eight and 10 years of delays. Our studies have reinforced FETA's studies about the delay and disruption to the crossing of making those repairs. I want to reinforce that the issue is not just the cables.

Malcolm Chisholm: If the dehumidification of the cables proved to be successful, would that not change the scenario somewhat?

John Howison: It is worth noting that the cables are already compromised—they have already lost their strength. The most that dehumidification can do—we sincerely hope that it will work and we are expecting it to work—is to prevent further deterioration of the strength of the cables. In that situation, we would be able to apply public transport to the bridge, without having to replace the cables.

Sorry—I have lost my train of thought.

The Convener: That is allowed. We do it ourselves.

John Howison: It is old age.

Corrosion is a related issue. Corrosion leaves pitting in the wires and makes them susceptible to microfractures and so on. We may be able to stabilise the humidity regime and stop further corrosion, but we do not know whether that will stop the cables from continuing to deteriorate.

The main issue is that 86 per cent of the strength of the bridge is required to keep the bridge up, and only 14 per cent is directed towards carrying the traffic on it. We have already lost 8 per cent of that strength. By the time

dehumidification works, we might have lost 10 per cent. That leaves the bridge in a good position in that if we take the loading of the traffic off it and put the light public transport loading on to it, we will have balanced it and regained the same factor of safety that it had to start with.

There is not only an issue about strength: there are also operational issues. The existing bridge is two lanes only, without hard shoulders. There are a significant number of breakdowns, and the more we use the bridge the more we experience the difficulties that breakdowns cause on it. With the weight that the bridge now carries, the road surfacing lasts for less and less time—I think that there are seven or eight years between resurfacing—which has a disruptive effect. Even incidents such as people climbing the catenary wires tend to result in the bridge being closed. Operationally, considering the importance of the traffic across the Forth, it is not a reliable bridge.

Malcolm Chisholm: At £2 billion, the overall cost is of concern to people, but I suppose you have almost the opposite reaction to the basic cost of £543 million. Is that kind of discrepancy between the basic cost and the final cost quite common in similar projects?

Mike Glover: Yes. I fully appreciate the problem, but the great advantage in this discussion is the transparency about how we get from one figure to the other. It can be seen how each of the component parts builds up, but I am afraid that the public are not aware of that. There is a big difference between bridge costs and project costs. That is the issue. However, it is difficult to get that concept across in open discussions.

Jeremy Purvis: I want to go back to the method of funding. Was a market-testing exercise carried out before the recommendations that excluded a non-profit-distributing option were put forward to ministers?

John Howison: There was market testing in relation to the construction companies that would front up a consortium, but not in relation to the financial markets.

Jeremy Purvis: So, there was no market testing of the financing options. Is that correct?

John Howison: No. The promoters of most transport public-private partnerships tend to be contractors who construct. Therefore, work was undertaken on whether a PPP approach was appropriate, having regard to the balance of maintenance activities and construction works, but there was no direct market testing of the availability of finance while the exercise was being undertaken.

Jeremy Purvis: Why not?

John Howison: We thought that we had got a full enough understanding of the contractors' issues, and of the balance between long-term maintenance and the construction process. Members will have gathered from the reporting of the exercise that it was done at a time when the financial markets were still operating effectively, although we quickly ran into a deterioration in the financial markets. Any financial testing would simply have supported our recommendation that PPP looked like good value for money at the time. In the end, the decision was taken against the background of a different and quickly changing situation.

Jeremy Purvis: I am asking about the matter because of an answer that Sharon Fairweather gave. The same value-for-money assessment guidance was used for other schemes in Scotland. People were told to use the same approach, but a market-testing exercise on the method of financing for one project concluded that the NPD approach was the right way forward. That conclusion was reached at the same time as you were doing work on the project that we are discussing. I do not know why there are differences.

John Howison: I am sorry; it is obvious that I have not made myself clear. There was market testing that reflected on the procurement method. That was done only in the construction market, which would have fronted up a PPP process; it was not done in the financial market, which would have provided the cash. The reason for that was the presumption that, at the time when the exercise was undertaken, there would not have been a distinct problem with providing the cash.

Jeremy Purvis: I am asking such questions because all that we have is a presumption by Transport Scotland about the project. However, it has been said that NPD clearly offered better value for money in another project in which Transport Scotland is involved at the same time as that project.

Sharon Fairweather: The value for money and the deliverability or timing of projects are two different things—

Jeremy Purvis: I am sorry for interrupting, but none of the answers so far has been about deliverability. Paragraph 129 of the policy memorandum states:

“the recent dislocation of the finance market has made the delivery of funding problematical with fewer financial product options and less appetite for the consolidation of senior debt by a lead provider.”

I am simply quoting the Government's evidence, which states that an alternative funding model was excluded because of a presumption about the state of the financial markets at the time. However, in the same financial climate—in which there was,

presumably, the same smaller appetite and the same uncertainty—Transport Scotland put forward an alternative funding model for another project of up to £300 million. That is relevant because—as I will come on to—the funding model will have an impact on other parts of the capital budget.

John Howison: Let me try to explain again. We went through a comprehensive exercise to compare various financing forms using the same type of analysis as had been employed elsewhere. That exercise reached a conclusion and reported to ministers around October 2008. That market testing involved looking at construction industry firms as the promoters of a PPP-type exercise, but it presumed, without actually talking to specific banks, that the market would be able to deliver funds for such a scheme. The report concluded that PPP and conventional funding could be expected to provide more or less the same good value for money if we used some of the more innovative options that we considered and which could pull the project off balance sheet. At the time when ministers took the decision, the full deterioration in the financial markets had become clear. At that stage, we were involved in looking at other PPP schemes in parallel and we were aware of the difficulties in providing financing.

Jeremy Purvis: I might ask questions at another time about the choice that was made for that other scheme.

Appendix D, “Securing value for money from procurement”, details the method for paying the contractor, which Ms Fitzgerald touched on in her response to questions from Malcolm Chisholm. I seek clarity on what we were told about the phasing of budgets. First, have ministers in effect set a cap of £350 million for annual expenditure on the project?

Sharon Fitzgerald: As David Dow mentioned earlier, we are currently conducting a competitive dialogue with two tenderers. We are discussing with them their technical solution programmes and how their proposals would sit with the budget figures that have been mentioned. Currently, we expect that there will be a mechanism within the contract that will set annual caps, but the level of those caps will be set over the process of the dialogue. The caps will be set in cognisance of the proposals from each of the tenderers.

Jeremy Purvis: Will there be any payment in advance for any works?

Sharon Fitzgerald: That is an option within the contract that we are procuring. Again, we are exploring with each participant whether value for money might be gained through providing an advance payment. If an advance payment is made, it will be underwritten by an on-demand bond so that any money that is paid is not at risk.

Jeremy Purvis: Have advance payments of such a scale been made on previous projects in Scotland?

Sharon Fitzgerald: That has not been done on this scale, but it is not uncommon for there to be advance payment for certain types of project. For example, up-front payment for manufacturing, mobilisation and design of long-lead items has been made, when it has been needed.

16:00

Jeremy Purvis: Paragraph 295 in the financial memorandum states:

“Our approach provides for a lump sum design and build contract”.

That is not technically true. Once the principal contract has been concluded, the taxpayer will pay for it.

Sharon Fitzgerald: I am sorry, but I do not understand your point.

John Howison: It is not a single lump sum, but it is a fixed amount of money.

Jeremy Purvis: Mr Dow described the context in which the estimates for the overall capital budget have been made. I understand the caveats that he placed on those estimates. Is the cap £350 million or £300 million?

David Dow: It is £350 million.

Jeremy Purvis: You said that the figure represents 13 per cent of the Scottish capital budget. Is it correct that the calculation includes capital grants to local authorities and capital for the health service?

David Dow: Yes.

Jeremy Purvis: So when you said that it was a case of prioritisation, you were including all the capital grants to local authorities. The Government points out to us regularly that local authority and health capital expenditure accounts for the majority by far of capital expenditure in Scotland. What percentage of non-health and non-local government capital expenditure does the Forth crossing project represent?

David Dow: I do not have that percentage to hand. You were correct to say that the figure that I quoted includes the elements to which you referred.

The Convener: You may provide us with a written response, instead of answering the question off the cuff.

It has been quite a long session. Linda Fabiani will ask the last question.

Linda Fabiani: I hope that that is not encouragement to be quick.

I will begin with a couple of brief financial questions, to ensure that I understand matters correctly. I have listened with interest to what has been said about the financial markets and the changing economic climate as preparation for this long project has proceeded. What is the witnesses' feeling about the integrity of the construction inflation element that has been included in the terms of the contract? Can anyone be confident about it?

John Howison: I missed your question.

Linda Fabiani: It was about the construction inflation element that you have had to include in your estimates for the tender costs.

John Howison: We looked at data sets of 10-year rolling inflation over an eight-year period and averaged out the figures to arrive at a mean. We also looked at the high and low borders around that figure. The inflation bracket that we have—from high to low—is based on what has happened in 10-year rolling periods over the past eight years. Mike Glover will answer the question at greater length.

Mike Glover: I will provide some background to our approach to the matter. The construction industry has a series of indices for commodities and activities—for example, labour costs or the price of fabricated steel. We analysed the historical record for about 20 of the different commodities that make up the project, looking at trends over the past 18 years. We coupled that analysis with an examination of what we think the industry and the world economy—we are dealing with an international project—will do over the period during which the crossing is constructed. That involved some crystal-ball gazing, but we have built up a picture of what economic activity will be over the next eight years. That has given us a view of what we think median construction inflation will be in each of the commodities.

Interestingly, some of them—construction plant, for example—have been remarkably flat and there is no reason to believe that they should be otherwise. Others are much more volatile. We have made a projection for each of the different commodity areas, then we have summed them, taking account of their contribution to the project. That then gives us this trend, which we have also had independently reviewed to see whether our median is correct. John Howison explained to you how we then looked at the extremes of the trend, which means looking at historical trends.

Linda Fabiani: I guess that it is one of the elements of a long capital project that you would have concerns about anyway. It just struck me that

it is quite difficult to have any certainty in the current economic climate.

I would like to go back to something that Sharon Fitzgerald talked about. She explained to Malcolm Chisholm about retention and said that it would be in place for five years. Am I right in thinking that in the normal scheme of things any major design defects are not covered other than by indemnity insurance?

Sharon Fitzgerald: Other defects would be covered under the Prescription and Limitation (Scotland) Act 1984. The defects maintenance period is really about having access to the contractor on site to deal with any snagging items or defects that arise. Insurance could be used not just outside of the five-year period but for issues beyond that. The Transport Scotland team is considering the insurance package for the bridge in detail.

Linda Fabiani: So that would cover major design defects in the longer term.

Sharon Fitzgerald: Yes.

Linda Fabiani: That brings me to a serious point. I know that the package is a design and build package and that different elements of the tenders will be weighted—I hope that it will not just be the cheapest option that wins. How much weighting will be given to the design element—for the bridge and its approaches and the cohesiveness of the design across the three contracts that will be let as part of the project?

John Howison: First, it is worth saying that because we need to go through a bill process for approval, the design will be fairly prescriptive at the end of the day and the differences between one bit and another are unlikely to be substantial. Secondly, the pre-qualification process considered the standing and the capabilities of the contractors and their principal suppliers, including their designers. We are talking about designers who are among the top dozen or so in the world, so we are confident that the standards that they will bring to the project will be very high. We also have a specification that we require the contractor to deliver. Those things—pre-qualification surveillance and the design process—can be put together.

The finished product will be very much driven by the lump sum price. However, we have looked at how we should judge the contract and we recognise that there are, shall we say, non-cash costs that need to be taken into account. We focused on four of those: the carbon content of the product, because it can be delivered in different ways with different levels of carbon consumption; the social responsibility element, including employment and training, because we expect a project of this size to leave a training legacy; the

contractor's approach to risk; and the contractor's approach to management of the process. We have regard to the marking of those elements in the quality assessments, bearing in mind that each point of quality that is added is a surrogate for a pound of money. I hope that that answers your question.

Linda Fabiani: That certainly answers my question and is probably the answer that I expected. This is a major capital project in Scotland. Plenty of evidence everywhere supports beauty in design as well as functionality—I see Mike Glover nodding; as an engineer, he is obviously interested in design. It would be a shame to compromise on beauty in design, its effect on wellbeing and its associated benefits for the surrounding areas.

John Howison: Absolutely.

Linda Fabiani: My plea is that the project should not just be engineer driven—sorry, Mr Glover.

John Howison: That is why the design is very prescriptive. It has been presented to Architecture and Design Scotland, which has also considered the landscaping setting. That is in the bill and in the environmental statement.

The Convener: The issue is how to deliver it at best cost.

Linda Fabiani: Convener, Mr Glover is desperate to say something.

Mike Glover: My career has been spent designing signature structures—I did St Pancras station, for example, and I want the bridge to live up to that. As John Howison emphasised, in the employer's requirements to contractors we have been as prescriptive as it is wise and sensible to be. We have described the geometry that we expect in the towers and the profile of the deck, for example. For the contractor, the exercise is in achieving the most effective way of dealing with the logistics of a large bridge—how it will be built and bought. We have protected the design intent—the essence and the iconic nature—as much as anybody sensibly can.

The Convener: We can see the vision clearly. Does Linda Fabiani wish to ask another question or can we finish? I ask for a short question.

Linda Fabiani: I have just one question, which I do not really expect anybody to answer—it is about a long-abiding passion. I am probably back to addressing Mr Howison. Academic studies over the years and many other written pieces have covered the fact that throughout Europe and the world costs are often underestimated in major public capital projects, because everybody knows that a project must be finished once it is started. I know that putting outturn costs in the public

domain is always difficult, but you guys know them—let us not pretend that you do not. How much notice has been taken of the history of capital projects in the UK and in Scotland—the procurement method for the Parliament building is a prime example—and how confident are you that the outturn will match the estimates?

John Howison: We are dealing with the unknown unknowns, although the Treasury has given considerable guidance on the outturn of various projects.

The optimism bias caters for the situation. I ask Mike Glover to say something about how the optimism bias has been considered and altered as we have gone through the various stages of the process.

Mike Glover: The team that is dealing with the project has wide experience in delivering projects to cost and to programme—for example, I was the technical director of the Channel tunnel rail link for 12 years. One learns about proactivity—being ahead of, rather than behind, developments. That is the essence of how big projects are delivered on time and under budget. As I said, it is important to control the scope of the work. If a bright idea is added to the project late in the day, that is a warning sign and something to be careful of.

I return to the issue that John Howison passed to me—optimism bias. It is a sensible and wise approach and mixes qualitative and quantitative elements. One considers and works through the certainty that one has about some of the decisions that one has made, which gives a measure of the uncertainty that one has. The optimism bias that we have at the moment represents the stage of the project that we are at.

16:15

The Convener: We have rightly got to the heart of the matter. I will allow two very quick questions to finish off.

Jeremy Purvis: I have a quick question to clarify something that Mr Dow mentioned before about the impact of the expenditure on other parts of the capital budget. Will only the priorities for capital projects within the transport budget be examined or will capital projects in local government and health also not be protected from a consideration of the priorities?

David Dow: For the spending review, it would be necessary to examine projects in the round and across the Scottish Government—everything within the wider budget that you identified.

David Whitton: You have estimated costs of £10 million for compensation but, since the memorandum was published, you have received

89 objections. Are there likely to be any cost implications from those?

John Howison: The bulk of the money that we put aside for compensation covers situations in which we intend to buy land. About 45 per cent of the objections that we have received relate to the effect of what we shall call a South Queensferry bypass—the fact that the road works to the south run past the residential areas. People there would be entitled to submit claims—we call them part 1 claims—for injurious affection. We have examined the design of the works and put in mitigation measures to reduce the noise as much as possible. From our experience of building that type of road, I do not expect substantial sums to arise in relation to part 1 claims.

David Whitton: There is a difference between not expecting them and getting them. The £10 million is what you know at the moment. Can I take it from your answer that you expect that you might have to spend some more money on compensation but not a lot more?

John Howison: The amount that is put in is an estimate. What it actually costs at the end of the day will be a measure of what it actually costs at the end of the day. That will be based on prices of housing and land at the time and the extent of actual disturbance at the time, which will be measured by use of the road once it is opened.

The Convener: Compensation will be dealt with by the lead committee. No doubt it will pursue that important issue in detail.

Do the witnesses have any final comments to make?

John Howison: No.

The Convener: If you wish to clarify any matters in writing to the committee, please do so. The matter is important, and the committee wishes you wisdom and success in your work. Thank you for appearing today.

**Decision on Taking Business in
Private**

16:19

Meeting continued in private until 16:28.

16:19

The Convener: Item 3 is a decision on whether to consider our draft report on the financial memorandum to the Forth Crossing Bill in private at future meetings. I propose that we do so. Is that agreed?

Members *indicated agreement.*

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