



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 29 March 2017

Session 5



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RURAL ECONOMY AND CONNECTIVITY COMMITTEE
11th Meeting 2017, Session 5

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

COMMITTEE MEMBERS

*Peter Chapman (North East Scotland) (Con)
*Mairi Evans (Angus North and Mearns) (SNP)
*John Finnie (Highlands and Islands) (Green)
*Rhoda Grant (Highlands and Islands) (Lab)
*Jamie Greene (West Scotland) (Con)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*John Mason (Glasgow Shettleston) (SNP)
*Mike Rumbles (North East Scotland) (LD)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Bill Brash (Scottish Government)
Keith Brown (The Cabinet Secretary for Economy, Jobs and Fair Work)
David Climie (Transport Scotland)
Sally Cox (Forth Crossing Bridge Constructors)
Fergus Ewing (Cabinet Secretary for Rural Economy and Connectivity)
Alan Hutton (Strathclyde Partnership for Transport)
George Mair (Confederation of Passenger Transport)
Michael Martin (Forth Crossing Bridge Constructors)
Gary McGowan (Association of Transport Co-ordinating Officers)
Elizabeth Morrison (Scottish Government)
John Nicholls (Scottish Government)
Bill Reeve (Scottish Government)
Tom Robertson (Scottish Government)
Alex Scott (Strathclyde Partnership for Transport)
Yvette Sheppard (Scottish Government)
Jim Watson (Scottish Government)
Paul White (Confederation of Passenger Transport)
Humza Yousaf (Minister for Transport and the Islands)

CLERK TO THE COMMITTEE

Steve Farrell (Clerk)

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 29 March 2017

[The Convener opened the meeting at 09:00]

Subordinate Legislation

Shellfish (Restrictions on Taking by Unlicensed Fishing Boats) (Scotland) Order 2017 (SSI 2017/57)

The Convener (Edward Mountain): Good morning and welcome to the 11th meeting in 2017 of the Rural Economy and Connectivity Committee. Mobile phones should be on silent. We have no apologies.

Agenda item 1 is consideration of a negative instrument, as detailed on the agenda. The committee will take evidence from the Cabinet Secretary for the Rural Economy and Connectivity. This item has been tabled because a motion to annul the instrument has been lodged.

I welcome the cabinet secretary, Fergus Ewing. He brings with him Jim Watson, the inshore fisheries team leader for Marine Scotland sea fisheries policy, and Tom Robertson, head of surveillance and enforcement for Marine Scotland compliance, both from the Scottish Government. Cabinet secretary, I invite you to make a short opening statement.

The Cabinet Secretary for Rural Economy and Connectivity (Fergus Ewing): Thank you, convener, and good morning, everyone. I am grateful to have the opportunity today to explain why the measures that are contained in the statutory instrument are important to reduce the incidence of illegal commercial unlicensed fishing.

You should all have a copy of my letter to the convener of 20 March, which responded in detail to a number of points, so I will keep my remarks brief.

First, it is important to separate genuine hobby fishermen from illegal unlicensed commercial fishing. It is the latter that we are concerned with. I want to make it crystal clear at the outset that I fully support the right of hobby fishermen to enjoy their hobby. However, I want to have the tools in place to be able to tackle those unlicensed illegal commercial fishermen who hide behind the guise of hobby fishermen.

I accept that the enforcement of fisheries rules is challenging. That is not surprising given that the

activity takes place at sea and given the length of our coastline. However—let me be clear about this—the introduction of catch limits for unlicensed fishermen would significantly improve Marine Scotland fisheries officers' ability to tackle this issue. At the moment, fisheries officers basically have to catch fishermen in the act of selling their catch for gain, which is an extremely difficult task. I am very pleased that Tom Robertson is here today, because he has a wealth of experience that members might well wish to trawl later.

Since being appointed cabinet secretary, I have listened carefully to the views of fishermen on a variety of topics and I know that those in the fishing industry—who, let us not forget, make their living from the sea—feel passionately about the issue. Indeed, both national fishing federations—the Scottish Creel Fishermen's Federation and the Scottish Fishermen's Federation, with a combined membership of more than 1,000 vessel owners—fully support the introduction of catch limits, as do our two mainland inshore fisheries groups and our statutory environmental advisers, Scottish Natural Heritage.

The fishing industry recognises that a problem exists and that something needs to be done to address it. Some inshore stocks are under pressure, and we certainly cannot have licensed fishermen taking steps and introducing new conservation measures while leaving the back door open to unlicensed fishing activity.

It is understandable that people will resist new restrictions being placed on their activities. In this case, I am aware of one individual. In any case, although one single fisherman may have little impact on either stocks or the market, the collective impact can be considerable and must be managed if we want to secure a sustainable and profitable fishing industry.

In introducing limits on what unlicensed fishermen can take from the sea, I considered what arrangements are in place elsewhere. It is interesting to note that Scotland is unique among our neighbours in that we currently have no catch limits. For example, Northern Ireland, the Republic of Ireland, Wales, the Isle of Man and many parts of the English coast where shellfish fishing is significant, including the waters that adjoin ours in Cumbria, have all introduced catch limits for unlicensed fishermen to help manage the fisheries. Therefore, in effect these measures are in place elsewhere.

Many of those areas go much further than our proposals, with most requiring permits to be obtained and some also requiring reporting of catches. Catch limits will provide clarity for all as to what unlicensed fishermen may take, and will support targeting of unlicensed commercial

fishermen while allowing genuine hobby fishermen to continue fishing. No one wants to stop that.

To close, I want to quote from the west coast regional inshore fisheries group chair, Alastair McNeill, who said:

“To annul the proposed Order would be a retrograde step that is outwith current thinking in regards to inshore fisheries conservation and management aims and objectives.”

That is a view that is also supported by leading fishing representatives such as Duncan MacInnes of the Western Isles Fishermen’s Association. It is clear to me that many in the fishing industry will feel badly let down by Parliament should the measure be overturned today. Thank you for the opportunity to put those points.

The Convener: The first question is from Mike Rumbles.

Mike Rumbles (North East Scotland) (LD): I am particularly pleased that Tom Robertson is here, because I have a number of questions that go to the nub of the issue. My first is about enforcement compliance. Since commercial fishing without a licence is already illegal, I would like to know how many convictions there have been in the past year for that illegal activity.

Tom Robertson (Scottish Government): One.

Mike Rumbles: How many prosecutions have there been?

Tom Robertson: One.

Mike Rumbles: The same one?

Tom Robertson: Yes.

Mike Rumbles: How many arrests have there been? Are we talking about just one incident?

Tom Robertson: No, there have been many incidents but only one that we have taken all the way to prosecution.

Mike Rumbles: So there has been only one prosecution.

Tom Robertson: That is correct.

Mike Rumbles: My next question is for the minister. There are only two options in the impact assessment of the order that the committee was given. One of the options is to do nothing and the other is to make the order, but there are other options that could be taken rather than going forward with the order, such as beefing up the enforcement process. Why is there no option that mentions increasing enforcement, especially as there has been only one prosecution and conviction, as we have just heard?

Fergus Ewing: It would be good if Tom Robertson could explain why there have been so

few prosecutions, but my understanding is that it is simply because it is extremely difficult to get evidence. Evidence needs to be obtained to establish beyond reasonable doubt the sale of lobster. Unless you actually witness the sale taking place, how can you do that? I used to be a lawyer in the criminal courts, and I know that proof needs to be established beyond reasonable doubt, which is extremely difficult to do. That is why there are so few prosecutions. I am aware of the one prosecution, and it would be helpful if Tom Robertson could explain what happened—it is quite amusing apart from anything else, but it is also revelatory and shows that the order is absolutely necessary.

Mr Rumbles makes a fair point about other options, and it is absolutely right that members should challenge and probe Government on such orders, particularly when the rights of an individual are at stake. That is a cause close to Mr Rumbles’s heart, and I want to win hearts and minds today, not score political points. It is absolutely correct that options need to be considered, but options were considered. There were two detailed consultations on the issue. I could go into what exactly was proposed in the consultations, but the upshot of the exercise was an overwhelming response from the industry and others—with SNH supporting the industry in this case, which does not always happen—that this is the practical way. It is also the approach that is taken in other jurisdictions. When you think about it, it is much easier to detect somebody who is fishing than somebody who is selling a lobster or, more likely, 100 lobster, worth about £3,000, in a car park beside a hotel or restaurant.

I can tell Mr Rumbles that we did look at other options, and his inquiry is perfectly correct and legitimate, but I am satisfied that the order commands support from the majority of the people who are engaged in fishing and from the wider public. Nobody wants to prevent fishermen from taking one for the pot, but the catch limits that are specified in the statutory instrument would allow one lobster, 10 nephrops, five crabs and six scallops. That is quite enough for a pleasant meal for most families.

I will ask Tom Robertson to comment further.

The Convener: Just before Tom Robertson comes in, may I clarify something? The consultation to which you referred is the consultation that received 22 responses, none of which came from hobby fishermen. Is that correct?

Fergus Ewing: We ran two consultations, in 2015 and 2016, and everyone with an interest was invited and encouraged to respond—there were two public consultations, not one. A proposal to set catch limits for those who fish from unlicensed boats was consulted on in summer 2016, and you

are correct to say that 22 responses were received. Marine Scotland publicised the consultation by circulating it widely among a variety of stakeholders, including everyone who responded to the wider consultation on possible measures in 2015. There were posters in local fishery offices and harbours, and the inshore fisheries management and conservation group, the inshore fisheries groups, the fishermen's federations and local fishery offices were all notified. The 2015 consultation was extended by five weeks and ran for four months, which is a long period for a Scottish Government consultation. There were 54 responses, which was good for a consultation of that type.

Marine Scotland also contacted, among others, the Scottish Sea Anglers Conservation Network, as the best-placed organisation to reach those who might be engaging in the type of fishing that we are talking about. I was not directly involved in the work, but my officials might be able to add something to help to answer your question.

Jim Watson (Scottish Government): To answer the convener's direct question, we think that some hobby fishermen responded, but of course they responded as individuals and they did not say whether they were a hobby fisherman or a member of the public.

The Convener: Therefore, we cannot be sure at this stage that we have engaged with hobby fishermen.

I will bring Tom Robertson in to answer the question about enforcement, but I must ask you to keep your answer brief.

Tom Robertson: I will try to explain it as briefly as I can. We can board a vessel at sea, but if someone turns round and says to us, "I'm keeping these for myself," there is no offence. He could have 100 lobsters at that point, and we do not believe him, but we cannot do anything about it. If we get him at the point of landing, and he says that he is putting the lobsters in his freezer, I have to accept that that is what he is doing. We can get him when he goes to a car park, but the chances are that, if we appear, he will say, "I've just landed them on behalf of someone else." It is very difficult to follow the whole chain through.

The one prosecution that we got was when two gentlemen were caught in a car park in Fife with 147 lobsters. One was asked, "What are you doing with them?" "I'm selling them." "And you, what are you doing?" "I'm buying them." "Oh—we can do something here." I am not trying to make light of the situation but, as things stand, that is the level of proof that we need.

The Convener: We might come back to that. I will bring in Mike Rumbles; please keep your questions focused.

Mike Rumbles: This is a question for Tom Robertson. The minister said, in his letter to the committee:

"A Registration of Buyers and Sellers (RBS) Scheme has been fully operational in Scotland since 2005 and requires all buyers and sellers of first sale fish to be registered."

How well is that enforced?

Tom Robertson: It is enforced very well. We carry out audits on every buyer. We use a traffic-light system: red is the massive shellfish or pelagic buyer, who is audited every year. Others are audited every second year, and others are audited every three years. We have never found evidence of purchase from an unlicensed seller.

Mike Rumbles: So that is not a problem—that is what you are saying to us.

Tom Robertson: No, it is not that it is not a problem; it is just that buyers do not openly buy from unlicensed vessels. The unlicensed vessels sell under the guise of another vessel, or the sale is just not put through the books. The produce might go to Billingsgate fish market and be disposed of in a cash sale. There is anecdotal evidence that that happens, and we are looking at the issue with our English colleagues.

Mike Rumbles: It is easier to enforce on land than it is at sea, as you said earlier.

Tom Robertson: It is. Indeed, the only place to enforce is at the point of sale, with regard to commercial fishermen, but it is difficult to get the level of proof that is required for a full prosecution.

Mike Rumbles: That is helpful; it is a point that I will make later.

The Convener: Before we move to a question from Stewart Stevenson, I have a series of very short questions that will require a maximum of a sentence to answer. They are questions that I cannot find the answer to, but I am sure that the cabinet secretary will have answered them as part of the consultation. How many hobby fishermen are there in Scotland?

09:15

Fergus Ewing: I am not sure that it is possible to answer that question, because there is no requirement for hobby fishermen to identify themselves in a register. I mean, how many football supporters are there in Scotland, convener?

The Convener: It is just a logical sequence. I actually see—

Fergus Ewing: All right, but there is a limit. I do not think that the Government wants to spend a lot of money trying to assess information for no particular purpose. We advertised through posters

and so on to reach out to people. If anyone can suggest whom we should have consulted in addition to those whom we have mentioned, I would be most grateful. However, we made every practical effort to reach out to all of those with an interest. I strongly suspect that all those on whom Tom Robertson wants to focus will be extremely well aware of what we have been doing for some time.

The Convener: Sorry, but I was trying to keep the questions focused. I assume that, as we do not know how many hobby fishermen there are, we do not know how many creels each of them has and we cannot quantify the catch that they are making. Is that right, Mr Robertson?

Tom Robertson: No, I would not say so. There are many hobby fishermen—literally hundreds—who go out from small ports right round the Scottish coast and who have two, three or four creels that are put out singly to catch a lobster here or a crab there or whatever. There are also others we know of who are working 100 or 150 creels.

The Convener: I am sure that you can see that I am trying to quantify the size of the problem so that I understand it. When you were drawing up the instrument, did you estimate how big the problem is? How many lobsters are being caught and sold illegally in Scotland?

Tom Robertson: I could not quantify that.

The Convener: So we do not know the size of the problem.

Fergus Ewing: With respect, when one is framing—

The Convener: Sorry, cabinet secretary, but I am trying to get quick answers if possible.

Fergus Ewing: Well, I am trying to indicate that some of these questions are not ones on which we can sensibly provide information. After all, we do not frame the nature of criminal offences by reference to how many criminals there might be; we do so because something is wrong.

The Convener: I have one more question, just so that I understand. How many of each species are landed legally in Scotland? Do you have an estimate of the total amount of lobsters and scallops landed in Scotland?

Fergus Ewing: There is no requirement to report catching limits so, again, that is not, I think, capable of being measured, but maybe Tom Robertson can comment from his practical experience. I know that we have the commercial figures.

The Convener: I am after the commercial figures.

Fergus Ewing: I think that the total is £83 million, so this is a hugely important livelihood for lots of people we are trying to protect. I ask Tom Robertson to go over the figures.

The Convener: I am after the numbers of each species; I am not after financial figures.

Tom Robertson: There was 1,035 tonnes of lobster landed in Scotland along with 12,300 tonnes of nephrops and 3,446 tonnes of scallops.

The Convener: Thank you.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I want to pursue the issue of health. I judge from what is before me that the order has primarily been brought forward on conservation grounds, which is perfectly reasonable. However, in the cabinet secretary's letter to the committee, at the bottom of the third page, he says:

“Safety of the public and fishermen is also paramount.”

I have one or two questions on that. Ten or more years ago, there was significant parliamentary activity relating to domoic acid levels in scallops. Of course, if human beings eat shellfish that carry high levels of domoic acid—as they will do from time to time, seasonally—that can result in amnesic shellfish poisoning. My concern as much as anything is whether the order will adequately aid us in preventing people from suffering ill health as a result of eating shellfish, lobsters, crabs and so on that bypass the recording system but nonetheless reach people's tables, with no audit trail of where the fish have come from. Is protecting the health of people in Scotland part of why the cabinet secretary is interested in pursuing the issue?

Fergus Ewing: That is, of course, one of the factors in the rationale that underlies the measures and our strong belief that it is in the public interest that the order should be supported today.

As Stewart Stevenson clearly set out, toxins are a problem in some areas, and testing of shellfish areas is carried out to ascertain whether toxins exist. Mr Stevenson has been around for as long as I have, so he will remember that, as members of the Rural Development Committee in the first session of Parliament, we engaged hugely with the issue, which was very serious at that point. A lot of tests for toxins that posed a high risk to public health proved negative.

The problem that we are addressing now is the possibility that shellfish may be sourced from areas that are affected by toxins, especially if they are harvested from waters that have not been tested for toxins and classified as safe. Plainly, licensed activity by commercial fishermen has to, and generally will, involve scrupulous observation of the rules, but we have no control over, nor any

ability to deal with, the activities of those who are, in the guise of hobby fishermen, carrying out commercial activity. The risk that they are harvesting from waters where they should not be, and that consumption of those shellfish would therefore lead to pretty unpleasant illness, is a factor that led us to introduce the measures.

I hope that I have described the situation correctly.

Jim Watson: Yes.

Stewart Stevenson: I have a supplementary on the subject. Does the occurrence of toxins vary at different points in the calendar in different parts of Scotland? Does that mean that the situation is not predictable in a way that would enable you to deal with it in other ways to protect public health?

Fergus Ewing: I have not made a study of toxins—I do not know whether Jim Watson has. Do you know about that, Jim?

Jim Watson: It is difficult to predict when and where toxins will occur. As the cabinet secretary said, there have in the past been some serious incidents over a considerable period of time.

The Convener: John Finnie is next. I am afraid that I got the order wrong—it is John Finnie, followed by Rhoda Grant and then Richard Lyle.

John Finnie (Highlands and Islands) (Green): Good morning.

Cabinet secretary, you said that stocks are under pressure. In your letter, which provided the committee with a lot of detail, you mention “1,400 static gear ... vessels”, and I am interested in the impact on those who legitimately pursue this activity as a livelihood. You state that

“fishermen have expressed increasing concern about the health of ... fisheries”,

and you refer to

“Assessments by Marine Scotland Science”.

To what extent is the order also a conservation measure?

Fergus Ewing: It is a conservation measure in the sense that those who are carrying out activity in the guise of hobby fishermen are in some cases bringing in 140 lobster, as Tom Robertson said, which could have a very serious impact on stocks and jeopardise legitimate conservation measures.

On the one hand, the measures are obviously designed to protect the interests of commercial fishermen. We have heard that the value of the industry is £83 million, so its importance to Scotland is not inconsiderable, and many people’s livelihoods depend on it. However, the measures are also necessary for conservation. We can influence the activity of fishermen who are going

about this as their business, but, by its very nature, it is impossible to influence the activity of those who catch hundreds of lobster, crabs or other shellfish illegally, because they try to avoid detection.

I do not know whether there is anything to add on the conservation aspect.

Tom Robertson: With regard to conservation, we run RIB—rigid-inflatable boat—patrols all round the Scottish coast, especially during the summer months, when the numbers of hobby fishermen are at their highest. We find that hobby fishermen do not care for size limits and will keep everything. If we come across such a situation, we ensure that the stuff is returned to the sea. Unfortunately, the commercial fishermen who are not licensed and try to avoid us take everything, and that has an effect on conservation.

John Finnie: Cabinet secretary, there is a further reference to fishermen in your letter, which talks about experience elsewhere in the British isles, particularly the success of the North Eastern Inshore Fisheries and Conservation Authority’s operation. It says that that success

“was in part due to policing by fishermen themselves”.

Given the challenges of enforcement, do you see a formal or informal enforcement role for fishermen if the order comes into force?

Fergus Ewing: They are citizens who would be able to draw to the marine enforcement department’s attention what they believe to be illicit activity. They can be the eyes and ears to report incidents, of course.

I should have said that Marine Scotland science assessments indicate that crab and lobster stocks in some areas are being fished close to or above recommended levels, and fishermen have expressed concerns about the health of scallop, brown and velvet crab and lobster fisheries. I apologise that I did not give that factual information.

Fishermen play a part in the enforcement process. Tom Robertson may be better placed than I am to give more information on that.

Tom Robertson: I will be brief. In the past 15 months, 94 pieces of information and intelligence have been supplied to us. If the measure is approved, I would be very surprised if that number did not double or quadruple, purely as a result of fishermen being out doing their own business and seeing things that they do not think are right. I think that fishermen will very much police what is happening themselves.

Peter Chapman (North East Scotland) (Con): Good morning, gentlemen. I am interested in another possible way to address the problem. The

register of buyers and sellers seems to work reasonably well for the guys who are licensed. Earlier on, Mr Robertson said that you know about guys who regularly go out with 100 creels but are not registered. Surely you could say to them, "You're obviously going out and doing this in a professional way, so you should be registered." You have outlined reasons why they would not want to be registered, but surely you could put pressure on those guys to work legally.

Tom Robertson: When we come across guys who we know are working a lot of creels, we pay a lot of attention to them, but we cannot sit on top of them the whole time. Whatever they keep, they keep in keep creels at sea. If we find out where the creels are, we go and lift them up, measure what is there and return anything that is undersize to the sea. However, we cannot follow people all the time. As soon as we pay attention to the commercial guys we are trying to target—there are maybe four or five of them, and I suggest that they were or still are involved in the oil industry, so they are not there all the time; they do this in their time off—we find that one day there might be one person, and three days later there will be somebody else, because people work a vessel between them and their time ashore changes.

As things stand, it is very hard. If we caught somebody with 10 lobsters today, he could just turn round and say, "Yeah, that's one every day for the past 10 days. I've kept them in a keep creel." However, if the measures came in and we targeted him and caught him two days later and he still had 10 lobsters, he could not say that he had kept them for the past 10 days, as we would know that he had already got rid of that 10.

Peter Chapman: Yes. Okay.

Tom Robertson: It is very difficult to prove sales. Even with the help of the registered buyers, it is very difficult to prove that people are selling for profit.

Rhoda Grant (Highlands and Islands) (Lab): Even with the order in place, if someone landed 10 lobsters, they could say, "I've caught one a day and kept them in a keep creel. Now I'm taking them home to eat." There would be nothing to stop them doing that.

Tom Robertson: Absolutely. There would be nothing at all to stop them doing that, but we would be given the power to target that individual and get him again two days later, and he would lose them.

The order will not stop one-off offences, but it will give us a way of targeting. We could draw a line in the sand on, say, the Tuesday, when the person had 10 lobsters that he took home. If we got him on the Thursday and he had another 10 lobsters, we could say, "Where did you get them?"

Why have you got those 10 lobsters?" We could then start to put pressure on him.

09:30

Rhoda Grant: But you would still have to prove when he caught them. He could say that he had been fishing all summer, that he had a keep creel that had 100 lobsters in it and that he was taking them home at 10 a day or whatever.

Tom Robertson: Absolutely, but I would like to think that my officers would ask the person relevant questions, such as, "Have you got any more?" and "Where do you keep them?", so that we get to a position where we can draw a line in the sand.

Rhoda Grant: My concern is not about whether something needs to be done—I believe that something needs to be done. My concern is that the limits in the order mean that there would be no more catching one for the pot. If you took one lobster home to a family of four, you would have a fight on your hands. The order would not allow someone to hobby fish because you could not catch the scallops, nephrops, brown crab, velvet crab and lobster all in one go to take home a meal, so to speak. In a way you are outlawing hobby fishing altogether.

Have you thought about other ways of dealing with the problem, such as marking creels? If someone put down a fleet of a hundred creels, you would know that they were at it and could take those creels, whereas if someone put out a fleet of five creels, you would know that they were a hobby fisherman. If creels are marked, you can identify whose they are. Is that not a better way of keeping tabs on things, rather than introducing limits that do not make much sense, even for someone who is hobby fishing? Velvet crabs are seldom eaten here—they are sent abroad, and that is why they are commercially fished—so to include them is almost nonsensical. However, to limit people to one lobster seems unreasonable because they may be hoping to catch enough for a meal, and one lobster will not feed many people.

I do not disagree that something needs to be done, but there needs to be a more sensible solution than fixing the numbers.

Tom Robertson: We spoke at length about the idea of limits before we introduced them—the same limits are already in place around the country. My officers and I are never going to try and catch Old Willie who takes three lobsters once a week so that he and Jessie can have them for their tea. I am not interested in that. We are trying to draw a line in the sand so that we can target individuals who are commercially fishing.

Rhoda Grant: Old Willie is not going to want to break the law, and if he sees that the order limits him to one lobster, that will prevent him from doing what he wants, whereas a limit of three lobsters would make perfect sense. The amounts seem draconian—they are very low and outlaw pretty much all hobby fishing. I do not think that we want to do that. We want to protect stocks, and we want to protect the fishing industry, in which it is difficult to make a living. The order does not seem to get the balance right.

Jim Watson: The limits were proposed following two years of discussions with stakeholders. The proposed limits—one lobster, half a dozen crabs and so on—are consistent with what is in place in many other parts of the United Kingdom and Ireland. As the cabinet secretary said in his opening remarks, we are out of kilter with what is happening elsewhere in Ireland and the rest of the UK.

Richard Lyle (Uddingston and Bellshill) (SNP): There are many things that need to be considered and we need to take a commonsense approach. At the end of the day, we have a free for all, which means that your officers need to hide up the back end of the hill with their binoculars so that they can follow a man from his boat to the road and then to where he meets Joe Bloggs in a car park where some readies are exchanged, and, like the secret service, even take photographs—if there is only one officer and no witness—so that what is happening can be proved. Is it correct to say that we are going from the sublime to the ridiculous?

Tom Robertson: Well, to a certain extent.

Richard Lyle: Am I right to assume that your officers have a bit of common sense?

Tom Robertson: Absolutely.

Richard Lyle: So if old Jimmy has collected three lobsters or whatever, he will not get done, because your officers will know that he does not intend to sell them.

Tom Robertson: Absolutely.

Richard Lyle: Do you agree that the order would allow your officers to deal with people who are ripping off the system and depriving true fishermen of their livelihoods?

Tom Robertson: I agree 100 per cent.

Richard Lyle: Thank you very much.

The Convener: Unless there are any more questions, I propose to move on to agenda item 2, which is formal consideration of motion S5M-04500, in the name of Mike Rumbles. The cabinet secretary will be given a chance to participate in the debate on the motion, which is why I did not

ask him to make any closing remarks under item 1.

Mike Rumbles will speak to and move the motion, after which members of the committee will get a chance to participate in the debate, as will the cabinet secretary. The cabinet secretary's officials cannot take part in the debate.

Mike Rumbles: I think that this process is about Parliament and one of its committees doing its work in a non-partisan way. No attempt is being made to make a political point. I might criticise what is proposed, but I am not criticising the cabinet secretary. I think that the proposed approach has come through the system because it is the easiest one to take.

I was first elected to the Parliament in 1999. I have now spent 13 years in the Parliament, and I was on the predecessor committee to this committee in the Parliament's first two sessions. I have crossed swords many times—and agreed on many things—with Fergus Ewing over that period, but I have never previously been moved to seek to annul a statutory instrument. Why am I doing so for the first time?

When I looked at the final business and regulatory impact assessment that was provided with the order, I was quite shocked by it. Even before it arrived, constituents—hobby fishermen—had raised the issue with me. They were concerned about the fact that their activities were to become illegal. The cabinet secretary said at the outset that that was not his intention, but I am concerned about the unintended consequences of the order.

I will explain what I mean. The "Purpose and intended effect" section of the BRIA starts by saying, "There is anecdotal evidence". We are changing the law in such a way that a certain activity will be criminalised, and we cannot do that on the basis of anecdotal evidence. In the same paragraph, the BRIA says:

"it is believed there are particular hotspots around the coast".

Again, that is supposition. Further down, it says:

"The biggest impact of the measure will be on illegal unlicensed commercial fishing activity."

I do not agree with that; I think that the biggest impact will be on hobby fishermen.

The BRIA goes on to say:

"The consultation was brought to the attention of licensed commercial fishermen"—

of course it would be—

"and their representatives and there was broad support for restrictions".

Of course there would be broad support for the restrictions among commercial fishermen.

Only two options are presented in the BRIA. Option 1 is to do nothing. We obviously need to do something. Option 2 is the order. The “Options” section repeats that

“There is anecdotal evidence that some unlicensed fishermen will disregard regulations on landing sizes and food safety”.

I believe that the whole issue is about whether we are properly enforcing the law as it stands. We know that a problem exists, but I do not think that the solution to the problem of a lack of enforcement of the law as it stands is the creation of another law that will not be enforced and which will criminalise hobby fisherman.

I thought that Rhoda Grant made a very important point in her questioning earlier when she said, “Okay, Tom Robertson and his team will not go after Mr and Mrs MacSwackle who go out and bring a couple of lobsters in, but Mr and Mrs MacSwackle do not want to break the law.” Are we bringing the law into disrepute if we say, “This law is not really going to apply to you”? Our job is to look at what the Government brings forward and ask whether the law matches the problem or would have unintended consequences.

I have had meetings with commercial fishermen about the issue. I have had meetings with others as well, including some of the people at the table. The commercial fishermen have said to me that there is another, simple way to proceed—it was referred to earlier. That other way is simply to deal with the matter by defining a commercial fisherman and a hobby fisherman. Anyone who takes out five creels is obviously not going to sell what they catch on a commercial basis. That approach was put to me by the commercial fishermen, and it would be a simple thing to do. We could simply define a hobby fisherman as someone who takes out five or six creels or fewer. It would then be easy for Tom Robertson and his team to tackle the issue.

I come back to the fundamental point that there has been one prosecution using the law as it stands. I do not believe for one moment that the order will make a hoot of difference out there in tackling the problem. It will not make any difference: all that it will do is drag hobby fishermen into an illegal activity. That is the problem that I have. If it were not for that problem, I would be very happy with the order. However, I think that the order demonstrates the law of unintended consequences in a big way.

Commercial fishermen have told me that a lot of them started out as hobby fishermen. They have told the Government that they do not want hobby fishermen brought into the situation. The cabinet

secretary started off his evidence to the committee today by saying that that is not his intention, but that is exactly what will happen, if we approve the order.

I will reserve my other comments for the end of the debate.

I move,

That the Rural Economy and Committee recommends that the Shellfish (Restrictions on Taking by Unlicensed Fishing Boats) (Scotland) Order 2017 (SSI 2017/57) be annulled.

The Convener: Thank you. Members are queueing up to enter the debate. Cabinet secretary, if you want to enter, try to catch my eye and I will try to bring you in at the appropriate moment.

Fergus Ewing: I am sorry, but I will first ask about a point of process. It is a long time since I have been in this scenario, but am I not due to come in only at the end, after listening to all members? I have not checked the standing orders, but is that not the process?

The Convener: You are right that you get to say something at the end, but if you think that you have something to say that would add to the debate, I am, according to the clerks, entitled to ask you to come in.

John Mason (Glasgow Shettleston) (SNP): On a point of order. In the debate, surely members can intervene just as they would in a normal debate.

The Convener: Yes—the cabinet secretary can intervene if he wants to.

Fergus Ewing: In that case, I will intervene with one point of information. It has been put to me by Mr Robertson that it is impossible to count creels once they are in the water. If that is the case—one can see the logic of that—the alternative mode of creating a criminal offence, which Mr Rumbles has suggested, would not be practicable.

Mike Rumbles: Can I intervene?

The Convener: I would like to go round some other people.

Stewart Stevenson: Let me deal with a few points. On the suggestion that the hobby fishermen might be eliminated from their hobby by the order, we only need to look at what is happening in Northern Ireland or the north of England. Hobby fishermen are still operating—in the north of England, under more rigorous enforcement than is proposed for Scotland.

Let us say that five creels—we could debate any number—should be the cut-off point for a hobby fisherman. A quick estimate—to put a cap on it—is that even with just five creels a person could

generate a five-figure income each year, if they filled every creel every day. I am not saying that that is likely, but it is perfectly possible and proper, in general terms, to make money out of hobbies. I used to make money out of my hobby of dinghy sailing; I made a profit every year from the prize money that I won.

09:45

Central to my concerns about the suggestion to reject the order is the matter of health. I am not prepared to reject the order and take the risk that people will be affected by a very serious condition. The seriousness is in the name of the condition: amnesic shellfish poisoning. Levels of domoic acid over 20mg per something—I cannot remember what the “something” is—can seriously damage the intellectual capabilities of people who have eaten affected shellfish. That is particularly a risk with scallops because they are mobile shellfish and much more difficult to test. We cannot test them by sample as we can test other tethered types of shellfish. The same is broadly true for the whole area that we are discussing. I am not prepared to have on my conscience serious and possibly permanent ill health—although it is created only from time to time and will not affect hundreds of thousands of people. That is one of the reasons why the order is important.

I will pick up one or two other points that have arisen in the debate. It is worth reminding ourselves what the world looked like before a Labour and Liberal Democrat Administration introduced the buyers and sellers registration scheme, which was one of the good things that that Administration did. The situation was that declared landings, in particular of nephrops, at Scotland’s ports were less than one quarter of what was being processed in the factories because there was no control over catching and processing. The registration measure almost single-handedly created an industry that is now perfectly open to scrutiny, and which behaves responsibly and has eliminated the problem. The order that we are debating is of considerably more limited scope and effect, but has a clear parallel with that measure.

The Convener: I know that you are developing an argument and I do not mean to steal your thunder, but nearly everyone at the table has indicated that they want to speak, so I ask you to keep your comments as concise as possible.

Stewart Stevenson: I am trying to keep my comments under three minutes, convener.

The Convener: I note that you are close to that limit already.

Stewart Stevenson: Yes—I am also aware of that.

The other point that I will address relates to anecdote. Fair enough—we can describe Tom Robertson’s staff dealing with two men in a car park in Fife as an anecdote, but it also resulted in a prosecution. The bottom line is that although that was an anecdote, it is not just anecdotal evidence. I worked as a water bailiff for the Tay District Salmon Fisheries Board in 1968 and I made one arrest—this will amuse members—for sniggering, which is an offence under the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951. Members can go and look up what “sniggering” means.

The bottom line is health. Purely on the ground of health, and even if nothing else stands scrutiny, I am not prepared to vote the order down.

John Finnie: I am still holding on to sniggering. [*Laughter.*]

Mike Rumbles is entirely right that the process has been helpful. The letter from the cabinet secretary was informative and the exchanges have been informative. However, I take a different tack from Mike Rumbles: one prosecution is the reason why we have to proceed with the order. I will not reiterate the important points that Stewart Stevenson made about health. We need to strike a balance. We have heard evidence that supports the order. Notwithstanding that, were the order to be approved, there would still be enforcement challenges due to the extent of our coastline.

What drives me, therefore, to support the order is conservation—not just of stocks but, as a consequence of those, of the livelihoods of people. If the Scottish Creel Fishermen’s Federation is supportive of the proposal, I am, too. I have heard sufficient from Mr Robertson to know that he and his staff will have powers of discretion that they will exercise, which is the most important thing. I will leave the matter there.

Jamie Greene (West Scotland) (Con): I just want to bring some balance to the debate. In principle, I have absolutely no problem with the concept of trying to regulate what is very clear to the officials—albeit that it has not necessarily produced numbers of prosecutions—which is that bad practice is very obviously occurring all around the coast. It particularly affects my region, which is West Scotland. There are people out in reasonable-sized boats catching fairly large quantities of some species. A black market exists: we would be failing in our duty were we to pretend otherwise, so it is right that we do something to address that.

However, as Rhoda Grant and Mike Rumbles have pointed out, it is also right to protect hobbyists. There are people who catch and distribute fish locally, among friends and family—possibly either for no charge or for a small charge.

Those people do not represent the problem that we are trying to tackle, which is people who operate as de facto commercial fishermen who are evading the regulatory environment to which proper commercial fishermen have to adhere. It is right that we try to tackle that.

It is very welcome to hear that there is some discretion in the enforcement proposals. My only problem with that—to come back to the number that Rhoda Grant pointed out—is that, on paper, people will be breaking the law if they are caught with two lobsters. In practice, on the day, the enforcement agency will take a view and will be able to read the situation, I guess, because that is what it will be used to doing. Often, it will know who the stakeholders are. I have full confidence in the ability of Tom Robertson and his team to do that.

The problem is that the law is black and white: on paper, hobbyists will be breaking the law. I do not want to put them in the position whereby they will break the law by catching two or three lobsters, as we would do by implementing the proposal. However, I want fully to support Tom Robertson and the cabinet secretary in trying to put a stop to the black-market industry. That is why I am struggling with the issue—I do not know whether there is a better way to do that. I want to support Tom Robertson's proposed measures, but I do not want to sign off legislation that will, on paper, make it illegal to catch two or three lobsters. That is my only concern with the proposal. If someone could address that, I would be very happy to support what it is trying to achieve.

Richard Lyle: I take the point that Jamie Greene has made. However, at the end of the day, we have laws, some of which we do not like but must adhere to. We need a law. At the moment, it looks as though we could drive a coach and horses through the rules: people can go out and make loads of money and officers cannot do anything about it.

Earlier, Tom Robertson made an interesting comment—to which he cannot respond now, because we are debating the motion—about his officer basically having to nod people away because they gave him a plausible excuse. To enforce the law, we need proof; we have been told that we need to see a transaction taking place. I have seen a film in which the authorities tried to trail people, photograph them and ensure that they had the necessary proof, because a lawyer could have stood up in court and destroyed their case. We have had only one prosecution in which there was proof, because the person stupidly confirmed that they were selling fish and people were buying them.

I do not have a problem with the situation. As far as I am concerned, there will be common sense; there will be officers who will say, "Well, Jimmy. You've got three—you should only really take one. Make sure that tomorrow you only take one", or whatever. I do not see a problem with that; it is much ado about nothing. Some of the questions that have been asked today have really stretched the point.

Rhoda Grant: Jamie Greene has covered many of the points that I wanted to cover, so for the sake of time, I will not repeat them. My point is that the law-abiding hobby fishermen will be stopped in their tracks by the order because they will seek not to break the law; if the law states that the daily take limit is one lobster, that is what they will abide by and they will not take more.

Stewart Stevenson asked about the health issue. The order will not stop anyone from fishing for scallops at any point. When scallop fisheries are closed, that is advertised locally. I hope that the hobby fishermen will pick up on that because the order will not save them from picking up scallops with toxins in them. They would be poisoned, maybe on a smaller scale—although that would not make any difference, so that argument does not hold much water.

From looking at the numbers, it seems that the order will be passed, so I urge the cabinet secretary to come back with more realistic figures so that we do not criminalise hobby fishermen who abide by the law. Although I support what the order is trying to do, it is a very blunt instrument at the moment and will stop people from pursuing a hobby, which I do not want. Perhaps the cabinet secretary could come back with revised figures if the order is passed, or perhaps he could seek to withdraw the motion on the order and come back with revised figures that would make the order workable for everybody.

Peter Chapman: I will be brief. I, too, have an issue with the order. I accept that there is a problem: I am not sure how big it is, and would dearly love to have a better idea of that, although I understand that activity that is below the radar is difficult to quantify. I just wonder how big the issue is, but I accept that there may be no answer to that.

I agree with much of what Jamie Greene said, which Rhoda Grant backed up. It will be very difficult for officers to use discretion. If the law says that the daily take limit is one lobster, that is the law. I wonder how many officers will use their discretion—or whether they should use their discretion.

Jamie Greene: That is the point—this is about enforceability. Does there have to be a number? I am not sure. Should the number be one, two or

three? We could argue all day about the number and what constitutes commercial fishing, as opposed to hobby fishing. I do not think that a limit is the way to do it. How can we legislate for something that involves a discretionary decision being made at the time? Is there another way of wording the order such that it would say that the decision should be at the discretion of the enforcement officer, or involve reasonable numbers? What is or is not a reasonable catch? By saying that a reasonable catch is one, two or three, a line is immediately drawn, and people will be either on the right side of the line or on the wrong side of it. That is what I am unhappy with. That is not to say that I do not want to address the problem.

Peter Chapman: That is exactly my position. How can officers sensibly use their discretion if the law says that the limit is one lobster and a fisherman comes ashore with three? In theory, he should be prosecuted because he has broken the law. My problem with the order is that it is a numbers game. Officers should be able to use their discretion, so that is what makes it difficult for me to support the order.

Gail Ross (Caithness, Sutherland and Ross) (SNP): I have two quick questions for the cabinet secretary. If the order is passed today, how will you inform hobby fishermen about the new regulations and the new limits? Also, your letter said that the matter will be kept “under review”. What will that involve?

The Convener: Cabinet secretary, would you like to answer those questions at the end, in your summing up?

Fergus Ewing: Yes.

The Convener: Would any other member of the committee like to contribute? I would like to make a contribution, but am happy to give way to anyone else.

10:00

Taking my convener’s hat off and speaking as a member of the committee, I draw attention to the fact that I have more than 30 years’ experience of wild fisheries management, which is detailed in my entry in the register of interests. Wild fisheries management is all about preserving for the future—making sure that stocks are available for future management and appropriate exploitation. My experience has taught me several things.

I would like to cover some of the points that have been brought up during the debate. I do not believe that engaging with 22 people covers the wide range of feelings that are out there, and what I have heard this morning has concerned me. We do not know how many hobby fishermen there are

in Scotland. I checked with the Scottish Parliament information centre and I was told that the number is unquantifiable.

Richard Lyle: Will you take an intervention?

The Convener: I will not at the moment: I will after I have developed my argument.

We do not know how many hobby fishermen there are in Scotland, and we do not know how many lobsters, scallops, crabs and other shellfish those fishermen catch, so we cannot quantify the problem. We know that there is a problem, and I support the cabinet secretary’s attempt to solve it. However, I question the evidence that we heard from Mr Robertson this morning about enforcement. My experience of enforcement is that we invariably know who are the bad apples in the creel—if you will excuse that—and therefore we should concentrate on people who are setting 150 creels, which gives a good indication that they are not hobby fishermen.

I understand that the creels cannot be counted when they are in the water, but they can be counted when they are being set. In my opinion, everyone knows who is doing what in fisheries management, and that information is built up over a period of time. For example, in salmon fisheries management we knew that there was at one stage a problem from a certain part of the country, and those people were watched and their movements followed as they moved into fisheries, so that we could identify where they were doing things wrong.

If Richard Lyle wants to come in, now may be the moment, before I carry on.

Richard Lyle: We have had two consultations taking months and months. At the end of the day, it is not for the Government to force people to reply to a consultation—that is for those people to decide. How does it help to ask how many hobby fishermen there are, and then to go on about fish? How many fish are in the sea? How many fish are in the world? Nobody knows that. Some of the questions that are being asked are really stretching things.

The Convener: I thank Richard Lyle for his comment, but I do not believe that that is right, which is why I asked the questions. It is a fact that in wild fisheries management, specifically of salmon, an order was placed before the Parliament that banned the sale of rod-caught salmon. That was a way of dealing with the problem of people who were exploiting wild salmon catches and selling them for gain, and it seemed to work.

My problem is that the proposals put forward by the cabinet secretary in the order are not enforceable. I agree with Jamie Greene and Peter Chapman that it is not up to Mr Robertson and his

crew to interpret the law—their job is to enforce the law. We cannot ask them to say that some catches are acceptable because they know that the fisherman is somebody who is just catching three or four lobsters for the family. Also, I have not yet understood how they will counter the people with keep creels, who keep the lobsters over the weekend or for a couple of weeks so that they can have a sensible landing for their family and friends when they have a party for which they need more than one lobster. It comes down to whether you believe that you are a one-lobster person or a two-lobster person when it comes to sitting down at the table. I will declare that I am a no-lobster person because I am allergic to shellfish.

I believe that there is another way of doing this—a way that is good for conservation and that will achieve the aims of the cabinet secretary in trying to protect the fisheries; it also provides a way to promote lobster fisheries across Scotland. That is to make it the law that all lobsters that are caught—or any of the other fish—must be tagged by the boat that has the licence to land them, so that there is way of making sure that those lobsters can be identified. In that way, there could not be illegal landings because the lobsters would be identifiable and Mr Robertson could go out with his crew and say, “That lobster came from that boat.” That would be good for the lobster industry, because there would be an identifiable catch from an identifiable boat in an identifiable area.

I am afraid that I do not support the proposal, as I do not believe that it would achieve the aims that the cabinet secretary has set out. That is my argument—I hope that I have kept it roughly to three minutes.

Before I ask Mr Rumbles to sum up, I ask whether the cabinet secretary would like to comment on what he has heard during the debate.

Fergus Ewing: Thank you, convener. First, it is correct that we have parliamentary scrutiny of this sort and I welcome it—Mr Rumbles knows that I mean that sincerely. It has allowed us to have an interesting discussion and debate, which is a good thing. Secondly, I am grateful to my officials. We have seen an illustration of the thoroughness and professionalism of officials, which has been exemplary.

Gail Ross asked me several specific questions. It is right that we take reasonable steps to notify all interested parties of the measure if it becomes the law. We will do that by press release, by advertising in local fisheries offices and by all other practical means. Ignorantia lex non excusat, of course; it is up to the individual to know what the law is—it is not up to the state to have a daily promulgation or news bulletin about the hundreds of offences that there are. However, I expect that it

will be fairly obvious to those at whom we are aiming the legislation that the law—if the order is not voted against today—is in place. I suspect that those whom we wish to target will be very well aware of it.

This has been a very good debate, and I will address some of the other issues that have been raised.

Mr Stevenson expressed it extremely well when he said that the measure should be passed on public health grounds alone. With help from my officials, I have evinced that there is a serious problem regarding toxins. Mr Stevenson has gone into that issue. We have control over the activities of licensed fishermen and vessels but we have no control whatever over those who are engaged in criminal activity, and the risk of shellfish poisoning is very serious. The risk of imperilling the whole shellfish industry in Scotland through a serious incident or public health scare is very serious indeed. I convened a shellfish summit last year, and I can tell you that the retailers involved take the matter extremely seriously—in fact, public health is probably the most important issue that we must be seen to tackle if we are to get our shellfish on the shelves of the major retailers. I am in the privileged position of having heard buyers—I will not name them, but I am thinking of two or three who attended my shellfish summit—say that public health is absolutely imperative. If we do not pass the measure today—if any member votes against it—I would, for that reason alone, question whether that is the right thing to do

Mr Finnie set out the conservation case succinctly and well. I indicated that there are pressures on some stocks in some areas and that fishermen report their concerns. We all realise that, if fishing is to be sustainable, there must be appropriate management. That is not the sole tool in the box—there are many, as the committee will know—but it will become an important tool in allowing us to tackle effectively the problem that exists.

Mr Chapman asked how we can measure the extent of the illegal activity that is going on. It is difficult for any Government to measure criminal activity, because, by definition, criminals want to avoid detection, so that is not an easy question to answer—I am sure that members will accept that.

Mr Robertson has informed me that his officers say that, during the summer months, in the north-east alone, 50 to 60 vessels can be observed while his officers are on patrol. The vast majority will be hobby fishermen, but only three or four vessels conducting criminal activity could make a substantial difference. For that reason, the daily catch limit is one lobster, a point that has been raised.

I understand the arguments put by Mr Greene, Mr Chapman, Mr Rumbles and the convener. Looked at from a commercial point of view, however, and I will come on to this in more detail in a moment, what numbers are we talking about? If somebody fishes one lobster a day, that is five lobsters a week. I am informed that each lobster is about 2 kilos, at £20 per kilo. That totals about £10,000 per year, just for one lobster per day. We are talking about a lot of money here and a lot of potential impact on the legitimate activity of those who earn their livelihood from this.

The measure is one that those who earn their livelihood from fishing have been calling for for years. The fishermen want us to do this and I hope that members will bear that in mind. I will give some evidence of that. Alistair Sinclair of the Scottish Creel Fishermen's Federation, representing over 500 creel vessels, says:

"We have no doubt that implementation will go some way to eradicating the problem of unlicensed fishermen who fish for profit."

"For many years licensed fishermen, whether full or part time, have made representations to Marine Scotland in respect of those who would abuse the notion of taking 'one for the pot' from our coastal waters."

"The current free for all that exists has created a black market in respect of the sale of fresh seafood."

"We would urge that you implement the proposed restrictions due to come into force on 17 April 2017."

These views are echoed by Alastair McNeill, the chair of the west coast regional inshore fisheries group. He refers to:

"great concern among licenced commercial inshore fishermen that considerable numbers of people flaunt the rules by fishing under the banner of 'hobby' fishermen yet are selling catches either directly or indirectly into the market."

Bertie Armstrong of the SFF, representing 500-plus member vessels, says:

"The limits as proposed seem reasonable and given that they are aligned to existing practices in N. Ireland would seem fair and sensible."

Stewart Stevenson: Given that there are jurisdictions in Northern Ireland and the north of England that have similar or even more restrictive levels of catches, is there any evidence of which you are aware that the number of hobby fishermen is being adversely affected by the regimes in Northern Ireland and the north of England?

Fergus Ewing: I could not give authoritative evidence about that. The view that we have heard clearly here is that, for the reasons that we have heard from Mr Robertson, the measures introducing clearly defined catch limits will substantially assist enforcement activity against the illegal fisheries that are carrying on at the moment.

Mr Robertson's exposition of that was crystal clear. Criminal law needs to be clear. If you say that something is a crime, it must be very clearly defined. The catch limits are very clearly defined. The order will allow enforcement officers for the first time to tackle a problem that all of our fishermen, through their representative bodies, say it is essential that we address. If members vote against the order, they will be voting against the views of fishermen who are better placed to know about those matters than me or anybody else.

That said, Mr Greene and Ms Grant made a point about whether the catch restrictions are too low, and I want to address that specifically. I do not know whether this will help Mr Greene; if he is happy to, he could come in after I have dealt with this part of the argument.

The catch limits were based on discussions with stakeholders and responses to the consultation. Only three of the 22 responses were opposed to the introduction of any restrictions. There were 22 responses to the second consultation, and 54 to the first one, in 2015, which is larger than the response to many fisheries consultations.

10:15

The main point, perhaps, is that many of the 22 responses were from bodies such as the Scottish Creel Fishermen's Federation and the Scottish Fishermen's Federation that represent hundreds and hundreds of members. Although some responses were from individuals, the consultees included organisations that in effect represent thousands of people throughout the country who earn their livelihood in this way. To say that there were only 22 responses does not take account of the whole picture.

Moreover, the request for responses was issued to a large number of other individuals and organisations that, for various reasons, have chosen not to respond. Any consultation process carried out by the Government will, by definition, be limited in scope, but I am convinced that we have reached those who we need to reach.

I acknowledge the genuine nature of Mr Greene's and Ms Grant's points and do not in any way impugn them. However, the catch limits are comparable with those already in place in Ireland and elsewhere in the UK, and I am not aware of any upsurge of protest from hobby fishermen there about the limits and their operation. We are doing what has already been done elsewhere.

The sale value of a lobster, or six crabs, or 10 langoustine, or six scallops is £40 to £50. These are high-value fisheries products. On a weekly basis, we are talking about a lot of money.

Finally, the catch limits will apply only to fishing from an unlicensed vessel for the named species; they will not apply to fishing from the shore or to species such as mackerel or cod. The species that we are dealing with are those that are under great pressure and of greatest value to inshore commercial fishermen.

I have tried to answer some of Mr Greene's points.

Jamie Greene: I appreciate that. I will not speak on behalf of other members, but there is very little in your argument to disagree with. There are public health benefits, the benefits to fishing communities and commercial fishermen, and the environmental benefits. I do not have a problem with any of that. As I said, my issue is simply with the catch limits—with one lobster being legal and two being illegal. One means that you are a hobby fisherman and two means, by presumption, that you must be acting commercially and illegally. That is the only problem that I have and it is the only reason why I would be minded not to support the order. I certainly do not have a problem with the public health issue, and I think that everyone round the table wants to support the fishing industry. To be honest, cabinet secretary, the numbers are the only reason why I have been struggling with the order.

Fergus Ewing: I understand that; Ms Grant perhaps expressed similar views. I strongly disagree. These measures are in force elsewhere and do not appear to impair hobby fishing. In any event, the approach that is taken by the enforcement division is a practical one. Mr Robertson has indicated clearly that his target here is those who are plainly operating on a commercial basis. As I understand it, the approach would be governed by discretion. I think that Mr Finnie made that point. Given his experience in the police, he will be aware that there is an element of discretion in how those involved in enforcement of the law go about their business and that that is governed by common sense and fairness. Anyone listening to Mr Robertson would agree that that is how matters will be dealt with. I hope that members will be satisfied that that answers a legitimate point that they have raised.

Peter Chapman: You said that the criminal law is an exact science but you went on to say that officers can use their discretion. The two things do not hang together. It is either an exact science or you can use discretion. I am not sure that we can square that circle.

Fergus Ewing: Perhaps because I have spent most of my life as a practising solicitor, I can do precisely that, for the simple reason that I did not say that law is an exact science. I said that the framing of any criminal offence requires to be carried out in such a way that the activity that is

criminalised is precisely defined. That is entirely different from the separate question of the approach that is taken in applying enforcement practice in relation to those laws.

Richard Lyle: Would the cabinet secretary take an intervention on that point?

Fergus Ewing: Of course.

The Convener: Sorry; Richard Lyle can go on, but I will just say that—

Richard Lyle: On a point of order, convener.

The Convener: Okay.

Richard Lyle: Two members have asked the cabinet secretary to take an intervention. I would like to ask him about a point that he has just made.

The Convener: Yes, and you are absolutely going to. I am trying to say to everyone that, although there is no official time limit for the debate—

Steve Farrell (Clerk): There are 90 minutes for the debate.

The Convener: We have 90 minutes, but we are not there yet. I am just asking people to keep their questions and answers as brief as possible. I appreciate that Richard Lyle wants to ask questions. Please understand that I will bring you in, Richard—I just wanted to draw members' attention to the time.

Richard Lyle: I have lost the thread now.

Cabinet secretary, you were previously a lawyer. Is it correct that police officers may stop somebody and give them a caution but not charge them? In this case, is it correct that Tom Robertson's team could stop someone and perhaps say, "Jimmy, you've got three but you should only be taking one—we'll caution you, but we won't charge you, and you should remember this the next time that you are out doing your hobby fishing"?

Fergus Ewing: That is a reasonable summary of the sort of approach that our enforcement officers take. It is a very important point and, with respect, I genuinely feel that it goes to the heart of the objections that some members have. I understand why members might have such objections—they have expressed them perfectly clearly and legitimately.

Members have heard directly from the head of enforcement that he will proceed with discretion and common sense. That is correct—a degree of latitude and discretion in these matters is necessary. For our law enforcers, whether they are Marine Scotland enforcement officers, police officers or people operating in other capacities in

enforcing the criminal law, an element of common sense is, of course, necessary. It is perfectly obvious that the activities with which there is a real issue are serious commercial activities, and are entirely different from hobby fishing. We, as lawmakers, are obliged to place our trust in the law enforcers and recognise that, although there may be theoretical objections—which have been perfectly well stated—we need, in practice, to give people such as Tom Robertson and his colleagues a bit of discretion in how they go about their business.

Rhoda Grant: Can I come in on that point?

Fergus Ewing: If you want to.

Rhoda Grant: I want to emphasise a point that I made previously. The issue is not about discretion on the part of Tom Robertson and other officers. It is about a person deciding not to break the law. Most people are law-abiding, and their hobby activity will be stopped by the order, because they will seek not to break the law in the first place. It is not a matter of asking officers to use discretion. People will actually desist from hobby fishing because they are in danger of breaking the law.

Fergus Ewing: I respectfully disagree with that. I do not recognise such a scenario as realistic, although I absolutely respect the member's right to subscribe to that or any other view if she wishes to do so. We are talking about daily catch limits—the limits are not annual, weekly or monthly, but daily. Hobby fishermen are quite entitled to pursue their hobby on several days throughout the year, as they undoubtedly will, and to bring in a fairly handsome catch of a variety of different shellfish, which would, for most families, provide the basis for a particularly pleasant meal.

Taking your admonition to be relatively brief, convener, I will draw my remarks to a close by saying that I think that it would be a big shame if the Parliament rejected the order. There would be a lot of understandable concern and possibly anger among those whose legitimate activities we need to protect.

The idea that we should tag lobsters would seem to me to involve an entirely new bureaucracy. It would be completely unnecessary and criminals could easily get hold of tags and do it themselves. It would of course be widely open to abuse, and there would have to be a new policed system of tagging lobsters—goodness knows how much that would cost. I am surprised that the idea has been proposed, but there we are—everyone is entitled to their view.

The Convener: Cabinet secretary, will you take an intervention?

Fergus Ewing: Yes, of course.

The Convener: My suggestion was based on a suggestion that was mooted about the tagging of wild salmon, which was supported by the Scottish Government. A Floy tag to go on a wild salmon costs less than 50p and putting a number on it costs even less than that. Putting a tag on a lobster is no different from putting a rubber band round its claws, so I think that your comment was slightly disingenuous. My proposal was not to increase bureaucracy. Would you care to say why you think that it would increase bureaucracy and why it would not be a cheap way of ensuring that we know where lobsters come from?

Fergus Ewing: I was just expressing my view. As I said, I respect other people's views and I was offering mine. I am not here to talk about wild salmon issues, although I appreciate that the convener is well aware of those issues because of his interests in those matters.

However, as you have suggested introducing an entirely new system of tagging every lobster that is caught in Scotland, it is reasonable for me to argue that that would involve devising tags, getting somebody to manufacture them, purchasing them and finding a method of administering the system that would ensure that criminals did not get hold of the tags. I do not know how one would do that, because criminals are quite deft and agile at getting round the law. I am just offering my comments. Whether or not they are disingenuous, I do not really care, but I will certainly not be bringing in a new scheme that I think would be incredibly bureaucratic, impossible to enforce and of no benefit whatsoever.

To get back to my final remarks, rarely have I had the opportunity to speak to a statutory instrument that has so many good reasons to support it, on the grounds of public health, conservation, economy and protecting people's livelihoods. On each of those grounds individually, it would in my view be sensible to support the measure but, taken as a whole, they make the case for the order absolutely compelling. I therefore have great pleasure in urging members to support the order and to reject the motion to annul that Mr Rumbles has reasonably brought forward.

The Convener: Thank you, cabinet secretary. I will invite Mike Rumbles to respond to the debate in a moment. Before he does so, I ask him to confirm that he intends to press the motion.

Mike Rumbles: I confirm that I wish to press it.

The Convener: Thank you. Would you like to briefly close the debate?

Mike Rumbles: I would like to address some of the points that members and the cabinet secretary have made.

The cabinet secretary said earlier that he was advised that five creels would be difficult to see at sea. Of course they would, but that is not what we are proposing; we are proposing an alternative proposition. By definition, five creels can be easily seen on boats leaving the harbour.

Stewart Stevenson made a point about health, but the issue is not about health. That was answered by Rhoda Grant, so I need say no more on that.

John Finnie said that there has been only one prosecution. That is because the people involved coughed up. They obviously did not realise that they were breaking the law. I thought that there was an element of humour in that.

John Finnie: Will the member take an intervention?

Mike Rumbles: I will if I have time, but I want to go through a number of points.

The Convener: It is at your discretion.

Mike Rumbles: I will come back to John Finnie if I get through all that I want to say. I want to address a number of points that members have raised.

Enforcement is clearly not effective. We have had one prosecution because officers came across two guys selling lobsters. We have heard no evidence of prosecutions, charges or anything. We do not have effective enforcement of the current law.

Jamie Greene said that the black market exists—of course it does; I agree with him. He said that the issue is how we tackle it. That is the whole point of the debate about this order.

10:30

Jamie Greene: May I intervene, convener?

The Convener: It is up to Mike.

Mike Rumbles: I will come back to Jamie Greene; I am trying to be as helpful as I can be.

Richard Lyle said that we need a law. Yes we do, but we need the most effective laws. He said that all this is much ado about nothing, but I assure him that a lot of hobby fishermen disagree with him.

Rhoda Grant made a telling point, with which the minister did not agree. The problem is that what she said was common sense, and common sense is not common. We have talked about people who break the law, but there are many, many law-abiding people, and if the law says that they can catch only one lobster, that is what the law says. That is what the order says. It will criminalise activity, and many law-abiding people

will stop doing what they do, which is not what we want.

Peter Chapman argued that it is difficult for officers to use their discretion. He is absolutely right. The law is the law. That is the problem.

John Finnie: Will you take an intervention?

Mike Rumbles: I will take interventions at the end of my remarks, if I may.

Edward Mountain, our convener, spoke in a personal capacity, because he has 30 years' experience of wild fisheries management—I must know very little about the subject compared with what Edward knows. He said that he did not think that it was good enough to engage with 22 respondents. Of course, only 10 respondents supported the order in full. He said that we cannot quantify the problem and that we need to concentrate on those who are breaking the law. I could not agree more. We are not enforcing the current law. There is another way. Edward gave his view on tagging. I do not know anything about tagging, but it is an option that could be explored.

The minister said that it is right for this parliamentary committee to act in the way that we are acting. I am pleased that I lodged the motion to annul, because we are doing what committees are supposed to do: considering whether orders that are made are fit for purpose and offer the most effective way of changing the law. An order such as the one that we are considering changes the law, and if a bad order is made, only the eleven members of this committee stand in its way.

Gail Ross asked how fishermen can know that there is a consultation. I have talked to fishermen, and they did not know that there was a consultation. Hobby fishermen, by definition, are not necessarily part of an organisation. That is why only 22 people responded to the consultation, of whom only 10 supported the order.

The minister said that no one should vote against the order, on the health ground alone. I am afraid that I do not accept that. First, let me make clear that we are not voting against the order. A vote for the motion to annul is not a vote against the order. There is a lot of misunderstanding about what we are doing today—I see Richard Lyle shaking his head, but it is true. What would happen if we rejected the order today is that the order would be referred to our colleagues in the Parliament, so that it could be considered in more detail. There is a problem with the terminology. A vote for a motion to annul an order does not annul the order; it means that the committee says, "This stops now," and the order is then referred to the Parliamentary Bureau and put on the programme for a debate in the Parliament, when we can all examine the issues in detail and get the benefit of

wider input from across the country. That is an important point to make.

We are told that commercial inshore fishermen want the order. I do not question that. Of course they do. If I were a commercial fisherman, I would want it. However, that is not our job.

The minister said that criminal law needs to be clear. I could not agree more. That is absolutely true. However, the crimes in the current criminal law have not been tested in the courts. The minister then said—and if I may be slightly contentious here, I have to say that this was interesting, coming from him—that the rest of the UK does what he is proposing. England, Wales and Northern Ireland all do it.

We have a super system of scrutiny in the Scottish Parliament. I think that this is the best system of scrutiny that any of our Parliaments has. Here in Scotland, we hold the minister to account and we do our duty to do the right thing. We are not a rubber stamp, as can so often be the case elsewhere.

If anyone wants to intervene, I am happy to give way. I am conscious that I stopped people commenting.

John Finnie: From past experience, I can give an example of how discretion can be exercised, and its purpose. For instance, it is against the law to drive above certain speeds in certain situations. Many people would commend the approach that Police Scotland takes of stopping a driver who is just exceeding the limit, giving them a warning and providing some educational advice as to why it is important to stick to the limits. That is the sort of approach that could apply here. Similarly, the police service will target areas where they know that conduct of that nature takes place constantly. That is how discretion is applied, and that is how I envisage it being applied by Mr Robertson's office.

Mike Rumbles: It is an interesting point.

John Finnie: It is a fact.

Mike Rumbles: No, it is an interesting point, but it is a false analogy. I want to respond to John Finnie.

John Finnie: I am listening.

The Convener: You must let Mike Rumbles make his point, Mr Finnie.

Mike Rumbles: My point is that John Finnie is making a false analogy. If somebody is stopped by the police for speeding in a car—let us say that they are doing 67mph in a 60mph zone—it is because they are breaking the law; there is no question about that. If the policeman gives the driver an admonition and says, "Don't do it again," and the driver then does it again—bang—he is prosecuted; that is why people do not do it. If you

say that people can take only one lobster but they say, "Oops, I've taken two," and are told not to do it again, if they take two lobsters the next time they will be criminals and the law will be enforced, as the speeding law is enforced, so the analogy does not apply.

I am aware that I stopped Jamie Greene coming in.

Jamie Greene: Enforceability and discretion are the crux of the matter. I do not want to do nothing. That is my problem with the order. I think that we should do something. We should empower the agencies to tackle what is a very serious problem, and I want to do my best to support that effort and the communities affected.

However, I have a problem with the black and white rule that one lobster is fine but two are not. I appreciate that there will be a huge amount of discretion available to individual policing officers, and I trust their judgment, because they know the issue inside out. It is a difficult position, as the minister has said, and I am inclined to go with Mike Rumbles's proposed annulment, but I feel that by doing so I would be doing nothing, which would be to do an injustice to the cause of tackling the issue that we are trying to tackle.

Mike Rumbles: I agree 100 per cent with what Jamie Greene has said. I do not want us to do nothing. I absolutely do not want that, but I want us to avoid doing the wrong thing. It comes down to the question of whether the order will solve the problem. I see Stewart Stevenson nodding his head, but I disagree with him. It is fair enough for him to disagree; he can make his own judgment, and that is the whole point of the scrutiny. We have a law at the moment that says that it is against the law to fish commercially in an unregistered vessel, and we have not really seen a lot of enforcement. There has been one incident involving people on a quay who, stupidly, admitted to the offence. That is the point that was made. The law is not being enforced. The answer to that lack of enforcement has been to produce another law that will have the unintended consequence—

Richard Lyle: Will Mike Rumbles take an intervention?

The Convener: I would like to bring the discussion to a conclusion, but you can take an intervention if you want to, Mike. It is up to you.

Mike Rumbles: Of course.

Richard Lyle: The officer told us in his evidence that they cannot do anything out at sea, because they have to see the stuff being sold before they can do somebody. People have to be trailed. I just do not get Mike Rumbles's point.

Mike Rumbles: The commercial fisherman have said to me, "This is not the way forward."

They have told me at meetings that the most effective way of dealing with the problem is actually very simple. It is a simple matter of definition. What is a commercial fisherman? If you define a commercial fisherman as being one who takes more than five or six lobster pots out of harbour, you could easily enforce the law. What we are doing here, however, is creating a new law that will have unintended consequences. That is why I moved a motion to annul the order.

Whatever way the vote goes, we are doing our job as a committee. That is really important. I am pleased that partisan issues have not come out in the discussion—in fact, I do not think that there are any in this regard. Most statutory instruments that come before us are given a cursory glance, because most of them are technical in nature and are not particularly controversial. However, that is not true in this case. The order could affect thousands of people across Scotland, and I lodged the motion to annul because of my concerns about that. That is the great benefit of the system that we have in the Scottish Parliament.

If members support the motion to annul, that will simply say to the minister that the committee has problems with the order and that it would like the Government to allow the whole Parliament to consider it. That is all that we are asking the Government to do. We are not asking the minister to withdraw or revoke the order. If members vote for the motion, we will simply be asking the bureau to programme a discussion about the order in the chamber, so that it can be properly examined. Please do not just rubber-stamp the order.

The Convener: As the motion has not been withdrawn, we will move straight to the vote.

The question is, that motion S5M-04500, in the name of Mike Rumbles, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Grant, Rhoda (Highlands and Islands) (Lab)
Mountain, Edward (Highlands and Islands) (Con)
Rumbles, Mike (North East Scotland) (LD)

Against

Chapman, Peter (North East Scotland) (Con)
Evans, Mairi (Angus North and Mearns) (SNP)
Greene, Jamie (West Scotland) (Con)
Finnie, John (Highlands and Islands) (Green)
Lyle, Richard (Uddingston and Bellshill) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 3, Against 8, Abstentions 0.

Motion disagreed to.

The Convener: The committee will report to the Parliament accordingly.

I suspend the meeting to allow the cabinet secretary to leave. I thank him for the evidence that he has given to the committee.

10:43

Meeting suspended.

10:46

On resuming—

Forth Replacement Crossing

The Convener: Item 3 is an update on the Forth replacement crossing. During topical questions yesterday, Mr Brown confirmed that the opening of the Forth replacement crossing is likely to be delayed. The cabinet secretary contacted me yesterday to ask whether the committee would be prepared to hear further details on the matter in light of that confirmation.

I welcome Keith Brown, the Cabinet Secretary for Economy, Jobs and Fair Work. I also welcome back David Climie—despite the fact that when we last met I said that I hoped that I would not see him again until we were looking at a wash up of the project—Sally Cox, chair of Forth Crossing Bridge Constructors and Michael Martin, the project director.

Cabinet secretary, would you like to give a brief opening statement?

The Cabinet Secretary for Economy, Jobs and Fair Work (Keith Brown): I will be as brief as I can, convener. I thank you for the opportunity to come to the committee at short notice.

On 8 March, I provided the committee with a brief update, which was followed by a more detailed progress report from Transport Scotland. At that time we advised the committee that the contractor, FCBC, was targeting a May completion date. Notwithstanding the regular assurances about completion received from FCBC, I challenged FCBC to provide a guarantee on the opening-to-traffic date, which the committee asked about when I appeared before it on 8 March.

As a result of the challenge, and as described in detail by David Climie in his evidence to the committee, FCBC carried out a further programme review based on the progress made and the impact of weather. As part of that challenge, Transport Scotland and I stressed to FCBC the continued focus on maintaining health and safety as a top priority—I know that it is at the forefront of everything that it does. In order for the review to be as robust as possible, FCBC brought in planners and experts from around the world. The review took full account of the likely weather impacts going forward and the implications of complex interrelated operations being carried out simultaneously.

Transport Scotland and I received the results of the review from FCBC on Monday 27 March. Since then, Transport Scotland has considered FCBC's plans carefully and has discussed the matter with the FCBC board, led by Sally Cox, who is here today. I received Transport Scotland's

assessment last night and I will now share it with the committee.

Only nine weeks remain before the end of May and the review concluded that, even with the best weather—and we can see that the weather today is not the best—a May opening-to-traffic date is not now safely achievable. At this stage in the project, a day lost to weather cannot be recovered and that has a direct impact on any follow-on activities.

Since the start of 2017, there have been fewer clear weather windows than expected, particularly because of the wind. That has delayed weather-dependent activities, causing them to bunch together at the end of the programme to a much greater degree than was anticipated last May.

The effect is very visible in the removal of the tower cranes. The cranes can be dismantled only in wind speeds of less than 25mph. While crane removal is under way, it is not possible to safely work within a 50m radius of the crane itself, so that site activity alone has the effect of sterilising the deck beneath and preventing any work to the adjacent stay cables. It also has an impact on all deck-level activity, such as waterproofing and surfacing.

As anyone who crosses the Forth can attest, although recent good weather has helped, it has not yet been possible to bring down the cranes. In fact, I believe that on Monday this week, which to all of us was a glorious day, the wind speed was again too high to carry out operations at that height.

FCBC also acknowledges that, given the uniqueness of the project, the onerous conditions that have been experienced in working at height over the Forth have created more challenges than it had anticipated. At this stage in the project, all remaining activities are vulnerable to weather conditions. That vulnerability differs depending on the activity. Whereas tower crane removal and work on cable stays is sensitive to wind, waterproofing of the deck is sensitive to rain, and surfacing is sensitive to rain and very low temperatures.

FCBC's May 2016 programme acknowledged that complexity. However, at that time, in order to maximise deck availability, the activities were sequential and largely independent of each other. Due to slippage during recent months, the activities are now interdependent and often simultaneous. Consequently, they are reliant on complex planning and favourable weather conditions. When the weather conditions are unsuitable for one activity, that has a compounding effect on the subsequent activity and the concurrent activities, many of which are critical.

Taking all that into account, FCBC is now advising that the opening-to-traffic date is more likely to be between mid-July and the end of August. To put that in context, it is around a four to 10-week delay on a six-year construction programme. The precise opening date will depend on the amount of weather down time that occurs during the coming weeks, with the latest date being based on weather similar to that which we have seen in February and March continuing to occur.

That would mean up to 75 per cent down time on the critical path activities that are particularly sensitive to wind speeds of 25mph or more, such as tower crane and tower falsework removal, and finishing works on the towers and stay cables. Although that level of down time is not anticipated at this time of year, past experience has shown that it is possible, so it should be taken into account. With so much simultaneous activity already under way, there are no opportunities to mitigate the effects of weather delays at this point in the construction programme.

FCBC has assured me that it is fully supporting Michael Martin, the project director, in providing the resource that is required to complete the project at the earliest possible date. That is clearly demonstrated by the fact that the site has never been busier, as a result of an additional 200 people being employed to help complete the bridge. More than 1,500 people are now working on the site, with operations continuing on a 24-hour basis, seven days per week, whenever the weather permits. Plant equipment and workers are being kept on standby, at considerable cost to the contractor, so that no weather window is missed.

It is very important to stress that the costs that are associated with the overrun will be fully covered by the contractor and so will not result in any increase to the overall cost to the taxpayer, which stands at £1.35 billion, as before. The £250 million of savings that have been released since the construction started are secure.

The potential overrun on the contractual completion date of between four and 10 weeks is a huge disappointment to me and to everybody who is involved with the project, but it should be kept in perspective in terms of infrastructure projects of this size and complexity. The Queensferry crossing will be completed in six years from the date that construction started and within 10 years of being first committed to by the Scottish Government in December 2007, at a considerable saving to the taxpayer.

Although we have not met our original ambitious targets for opening, which was to open six months ahead of the contractual completion date of mid-June, it should be noted that the project remains an outstanding achievement for everyone

involved, and it will provide the people of Scotland with a resilient structure that is fit for the 21st century. It is already a world record breaker. It is being built in weather that saw two heavy goods vehicles being blown over on its sister structure in the past two months alone. It is also significantly under budget.

The crossing has a design life of 120 years. I hope that committee members will be able to exercise a degree of perspective when they hear of a four to 10-week overrun into the summer period, on a six-year project that already had a year of contingency factored into its planning.

The bridge is a project that Scotland can be proud of. As we complete it, we will not compromise the extraordinary quality of the construction or the safety of the workforce. The important thing at this stage is that none of us push the contractor to compromise the safety of the workers who we trust to work in all weathers to deliver this high quality and iconic structure for us.

As I have said before, I want to ensure that members remain fully apprised of progress on the project and all other major transport projects, so I commit to providing a further update to the committee at the end of May. Of course, the committee can ask for updates at any time, but I will provide an update at the end of May on the progress that has been made during the next two months and an update on the opening-to-traffic date.

The bridge is substantially complete. It will stand for a century or more. It is frustrating that it will not be finished earlier, but my overriding priority is to have the bridge finished safely and to the highest standards of construction. It is already a stunning bridge. It has developed significantly since the committee last visited the site, which I think was last autumn. The committee might want to see the progress that has been made since then, and I am happy to ensure that that happens.

The Convener: Thank you, cabinet secretary. I am sure that the committee will want to consider what it sees as appropriate intervals between reports from you on the bridge. We will discuss that later.

Can you confirm that it was on Monday 27 March that you first got an inkling that the bridge would not be open within the timescale that we were given on 8 March?

Keith Brown: That is when I got the report from the contractor and met Sally Cox and others who are involved with the bridge.

The Convener: So, the simple answer is yes—that is when you got the first indication.

Keith Brown: Yes. That is when I got the written report.

The Convener: A lot of people in Scotland will believe that we have had one of the mildest and best winters that we have had for a long time—perhaps an open winter would be a better description of it. Can you give some idea, from a planning point of view, of how this winter's weather conditions have been different from those of the past 10 years? Was it easier or less easy to work this winter than in previous winters? I am talking not only about wind but also snow, rain and the other types of weather that we have had less of this year.

Keith Brown: I want to emphasise the wind factor. That is what has caused the problem. This year, we have had far fewer intervals. We have to see a 48-hour clear period coming for taking the cranes down from their current height, and we have not had those weather windows. Yesterday, in answer to the topical question in the chamber, I mentioned that it took 65 days to remove the one crane that has been taken down as opposed to the 15 days that it was supposed to take. That was because we have not had those windows with 48-hours notice. The weather forecast did not anticipate the fog today and it did not anticipate some of the wind that we had yesterday, which I believe stopped work on the towers. The consistency of the wind that we have had over that period has affected the crane removal in particular. It might be best if others come in on this issue, too, convener.

The Convener: David Climie, do you want to come in on that? Some people will be concerned that they still do not understand why, after such an open winter, there are further delays.

David Climie (Transport Scotland): I understand that. You will remember that, when I came here last time, I amused the committee a little by reading out the weather forecast. That was not done with the intention of being amusing. I read out the forecast to convey the fact that we have to plan the works carefully and that we do so on a day-to-day basis, and that we have to rely on the weather forecasting information that we get in order to plan the works properly.

You are right that it has not been a particularly bad winter for snow and that it has not been a particularly wet winter. That has certainly helped with regard to the road works, which have progressed exceptionally well. It is also the case that we have not had a particularly large number of storms—I think that only three or four named storms have come through. However, the milder weather that we have had has meant that there has been a steady wind, which is a significant problem for certain activities. We have highlighted the tower-crane removal as one of those. It is the most visible one, which everyone can see. What cannot be seen is the other work that is going on

around the towers, such as completing the installation of the stay cables and putting the tension rings and the guide deviators at the top. That work is carried out using rope access and man baskets. FCBC has significantly increased the resource that it has in that area to try to deal with the issue, because the fact that the wind blows faster than 25mph impacts on its ability to work in that area.

The issue concerns a combination of the activities that we have been trying to undertake, the time of year at which we have been trying to do them and the weather that we have had at the time when we have been trying to do those activities. It is not that we have had an awful winter or that we have had particularly severe weather; it is that we have had steady winds over a long period of time and that has not created the weather windows that we need in order to undertake those activities.

11:00

Sally Cox (Forth Crossing Bridge Constructors): When we first looked at the project, our plans assumed 20 per cent downtime due to weather. When we reviewed it in May last year, we added time to our estimate based on the weather that we had experienced since starting the project. In January and February this year, we had 40 per cent greater weather downtime in January, and more than 175 per cent greater downtime than what we set out in our latest programme. It is those effects that are causing the issues.

The Convener: I am sure that members will want to build on that.

Stewart Stevenson: In a week when Queensland had a cyclone of 163mph, perhaps if we are worrying about 25mph winds we are relatively lucky. I want to explore further the issue of taking the cranes down. Is there a difference between the weather requirement to take the jib down—I think that Mr Climie pointed out in previous evidence that the jib had to be aligned with the wind direction—and to take the tower down? Once the jib is down, are the constraints less severe?

David Climie: The simple answer is no. The last time that I appeared before the committee, I gave quite a long description of the whole process. Once the jib is below the top of the tower, it cannot rotate any more, so it creates far greater loads on the mast.

Stewart Stevenson: Is the deconstruction taking place at the bottom of the tower, with the whole thing being taken down while the jib remains in place and is the last thing to be removed, more or less?

David Climie: More or less. You take jib sections out at the top and the crane jacks itself down, but the jib stays in place until you are down fairly close to the deck.

Stewart Stevenson: Is it the case that, while that jib is there, which it is for most of the time that the crane is being taken down, there is a risk of strong wind gusts making the jib interfere with the tower and, in extremis, perhaps causing damage? I would imagine that that would damage the crane.

David Climie: It is not a question of the risk of damage to the tower, because the jib is locked in position as it is coming down and cannot rotate. Because the jib is locked, the crane itself could well be damaged if the winds are severe, and you are correct to say that, in extreme conditions, the crane could collapse.

Stewart Stevenson: My other point, which I think can be dealt with fairly briefly, is on the accuracy of forecasts. We are told that we need the 48-hour window, so we must clearly have some confidence that that window will exist, if we start a particular process that depends on it. How often has the forecast in respect of wind deviated from the outcome? I speak as the former minister who, on a 0.4° error in the forecast, found eight times as much snow falling as had been forecast in 2010. That incident is well documented and well understood.

David Climie: The forecasts that we get are pretty accurate on the day that we get them. They change considerably in the five days looking ahead. At the beginning of this week, the forecast suggested that wind was coming in on Wednesday. As it is, there is no wind, but we have fog. We cannot work today, not because of wind but because we cannot see to do the work on the crane. The forecast can change quite significantly. FCBC makes a considerable effort to get as accurate a weather forecast as it can, but the very nature of the weather in winter is that it is, to a degree, unpredictable, particularly with regard to the tracking and location of weather systems. A slight change in the weather system track can make an enormous difference to the wind that you get.

Mike Rumbles: When the committee visited the bridge at the end of October, it was obvious to me that there would be great difficulty in meeting the target at the end of May. I have to say that David Climie has very loyal members of staff because, every time that I asked them what they thought about that, they said, "Of course; that's the programme." However, they rolled their eyes as they said that, so I thought, "Well, there we are. Even they don't believe it's going to be ready by the end of May." I do not think that it is surprising that the end-of-May target is not going to be reached.

The minister has said again in his presentation to us today that the project is significantly under budget. The two things that he has been saying over the past year are that it is on time and under budget. How can it be significantly under budget if there is a fixed budget contract?

Keith Brown: We have had this discussion before. It may be an uncomfortable fact for Mr Rumbles, but the project is nearly £0.25 billion below the budget that was set. Even that tender, when it came in, was substantially below the tender range that we set out for the project, which was from about £1.7 billion to £2.3 billion.

The current expected cost is £1.35 billion, which is a substantial reduction. Mike Rumbles quite rightly asked about the effect of inflation and forecast inflation, and I accept the point—inflation is a very big part of it. That would not be true in other projects, because the Government would not take on the risk of inflation—that would be done by other means and would rest with the contractor. We took the risk this time and we have had a big benefit from that, but very tight project management has added to those savings. We are about £200 million below budget.

Mike Rumbles: Do not misunderstand me, cabinet secretary; I think that the Government has done the right thing. You have a fixed term and a fixed budget, which means that an overrun does not fall on the taxpayer—it falls on the companies that have the contract. I am actually congratulating you, but the pudding does not need to be over-egged all the time. We should just stick with the facts.

The Convener: We will move on to the next question now.

Rhoda Grant: In answer to the convener's question, you said that written information about the delay came through on 27 March. Was there any verbal indication of a delay before that?

Keith Brown: The convener mentioned the fact that, at my previous meeting with the committee, I used the word "hope" a couple of times. Obviously, Transport Scotland talks regularly with the contractor as it works on the project and, as with other projects, the process is fairly straightforward. We asked the contractor to tell us what the programme is for the completion date, which the contractor produced on Monday, and at that point it was analysed by some specialist people employed by Transport Scotland for that purpose.

Only after that programme has been analysed and interrogated, which in this case was done in a very short space of time, do we agree to it. We do not just agree if a contractor comes forward to say that a project will be 10 months late. We do not just accept that and neither do we publish it at that

time; we interrogate the programme and come to an agreed position with the contractor. That is the process that we have followed and it is the right way to do it. The contractor gives us in writing a programme of works that takes the project through to the completion date. That programme is properly analysed and we respond to that.

Rhoda Grant: So there was an earlier verbal indication that there might be a delay.

Keith Brown: No. Discussions were going on all the time between Transport Scotland and the contractor. David Climie from Transport Scotland is on site all the time and he sees the issues—he will have seen the issue with the cranes. Of course, the question was whether the project could be finished by May, but the only way to answer that was to have the contractor's programme properly analysed and brought back to us, which is what happened on Monday.

Rhoda Grant: Okay. On another issue, in your opening statement, you spoke of mid-July to the end of August as a possible completion date. Can you be more specific about whether it will overrun the end of August?

Keith Brown: When I came to the Parliament last year, I was asked to guarantee the date of May this year and I did not do that, because I could not—weather is the master in this equation. There is a very high degree of certainty in the dates that have been provided to us of mid-July to August, but it is not absolute. We have just heard about the weather in March and April of last year and in January and February of this year. If the weather that we have been experiencing continues, of course it will have an impact on the programme, but the range of dates from mid-July to the end of August are the likely ones for when completion will fall. I have not given a specific date because of the variability of the weather. Rather than giving a specific date, we are taking the contractor's confidence about when the bridge will be completed, which has been interrogated by Transport Scotland.

The Convener: Can I push you a bit on that, cabinet secretary? I am assuming that you have no wish to once again come before the committee or, indeed, the Parliament to say that there will be a further delay. A wise man would say that delivery of the project and opening of the bridge to transport by the end of August was a 100 per cent possibility. I cannot believe that that is not the case. What possibility is there of completion in mid-July? Is that a 10 per cent possibility, or a 2 per cent possibility? Without criticising anyone for delays, people will know what the probability is that completion will fall at various points in the timescale.

Keith Brown: I also think that people will understand about the variability of the weather. I take the point from earlier on about people having experienced a generally mild winter. However, the towers have a completely different weather system—I do not know whether the committee went up the towers but I think that you will know that from being on the deck. For example, people check the wind speed on the website, but that is measured from the deck of the Forth road bridge, not from a tower. It is a completely different environment that high up, and that is where we are working to get the cranes down. That is the reason that I am not being definitive, although I would like to be definitive.

Perhaps David Climie can answer in relation to the relative confidence in the dates. I have said right through this process that weather is the master in this project. That remains the case, even though those dates are being provided.

David Climie: I would not add any more to that by adding percentage allowances to it. We have identified a range, we have reviewed that range, we believe that it is a realistic range, and I would not want to put any more than that onto it.

The Convener: Are you saying that there is not a 100 per cent guarantee that the project will be complete even by the end of August?

Keith Brown: I have never given and cannot give a 100 per cent guarantee.

The Convener: That is fine—it is just so people understand. Managing expectations is as important as the rest of it.

Richard Lyle: At the end of the day, I realise that wind speed and weather variations affect things. I have two questions. One of them—which I might have answered myself—is why can we not take the crane down with Super Puma helicopters? Is it not true that they can take enough weight to take a crane away? Yes or no?

David Climie: Yes is the answer. I have worked on a previous bridge project where the cranes were taken down by helicopters.

Richard Lyle: Could we not use a helicopter to take down these cranes?

David Climie: It would create several difficulties. First, helicopters can operate only in certain weather conditions. Secondly, helicopters create an enormous downdraft; they actually create the winds that we are trying to avoid, so that is a significant difficulty.

It is something that we looked at while we were looking at many different options as alternatives to the one that is currently being undertaken. It was looked at, and it is not considered viable.

Richard Lyle: I thought that that would be the case, but also that I might as well ask about it.

Cabinet secretary, this is a third iconic bridge on the Forth. Basically, everyone wants it open. Would it not be better just to say, "The bridge will be open when it's open"?

Keith Brown: It is a fact that the bridge will be open when it is open.

We had a fatality on the bridge last year—Mr John Cousins, on 28 April. Earlier, I said that the bunching effect of the cranes not being taken down puts lots of pressure on activities on the deck of the bridge, as lots of simultaneous activities are going on there. There are 1,500 people working all over the project now, and we have to have safety very much in mind.

The date range that we have given, of between mid-July and August, is what we believe to be likely. Whatever the actual date is, it will be subject to weather and safety. As I have said to the committee before, Michael Martin interviews every person who is starting work on the bridge, and the first question he asks them is, "What is the most important thing?" They all say, "Finishing the bridge" or whatever, and he says, "No, it's safety". Considerations around safety, as much as the weather, will drive how we complete the bridge.

The Convener: The next person to ask a question is John Finnie. I ask members to ask just one question, please, because of timing.

John Finnie: Cabinet secretary, I think that you have said a couple of times that weather is the master. I am with Mr Lyle on this—you should take your time, and the bridge will be open when it is open, because safety is paramount.

I will ask about the wider implications of the delay, because this project is part of a bigger network of significant road works on either side of the bridge and, indeed, further afield—in the past, I have asked about public transport in that regard. Are there any implications for the existing structure and for the road network outwith the bridge?

Keith Brown: That subject is more into my remit and Humza Yousaf's remit. The difficulty that we had last year with the existing Forth road bridge has been resolved, and it has had a full health check since then. Apart from two drivers who went across the bridge when they should not have done, that bridge is operating extremely well. There is no threat to it, and it will continue to operate during the time that we are waiting for the new bridge to be completed.

The delay is obviously frustrating because the Forth road bridge is to be a public transport corridor, and we want to see it being used for that. There will be advantages in terms of bus timings and so on, and we want to see those advantages

as quickly as possible. However, there are no implications for the existing bridge.

There is the question of the tie-in of the new road networks coming through, which are substantially complete. Anybody who has travelled that route will have seen how complete they are—especially on the south side. A tie-in has to be done at the appropriate time. However, as far as I am aware, there are no implications for the existing bridge, which will continue to service all the traffic that is currently there.

11:15

Jamie Greene: I reiterate some of the comments that have been made. That both the quality of the work and the safety of the workers are of paramount importance is a thought that we all share. Given that there is still a huge amount of uncertainty around the July date—we could have high winds continuing throughout spring and summer—would it not be more sensible or realistic, from a planning point of view and given that the opening will be a massive event, simply to release a worst-case date to the public rather than continual false deadlines? That is a genuine question. Would it not be better to give a worst-case target opening date rather than the hope-for-the-best dates that we seem to be working to?

Keith Brown: I rely very much on the advice that is provided by the contractors, as interrogated by Transport Scotland, and the dates that I have given are what they believe to be the likely ranges. I suppose that the worst-case date that they are giving us just now is the end of August. Of course, it is possible that we could have extremely different weather that could push that date back, but that is not the advice that we have been given. Jamie Greene is right in saying that I do not want to keep coming back to the committee with another date, but that is what I am being told by the contractors.

Jamie Greene's other point was about the quality of what is being done. I think that it is a great project. Committee members will have seen that with their own eyes when they visited the site. The danger arises when somebody tries to short-cut something or do it to a lower standard, which can happen if they are pushed and put under pressure. We have been keen not to do that, not just to ensure safety but to make sure that the bridge is completed in the correct way. I am told that we can ensure both of those things within a window between mid-July and the end of August.

John Mason: I have a short question. I am struggling to understand some of the timescales. As I understand it, 21 days ago—three weeks ago—on 8 March, things seemed to be okay. We are now looking at a four to 10-week delay;

therefore, on 8 March there was already a problem. Why did the committee not hear about that?

Keith Brown: David Climie might want to come back on the points that he raised at the previous committee meeting. We faced the prospect of taking down one of the cranes, which we thought would take 15 days. The crucial part was getting it down to deck level, which is where the contractors need wind speeds to be lower, and that could be done in 15 days. At that stage, plans were put in place to take down the other two tower cranes concurrently rather than one at a time. At the time, it was felt that that would be possible if the contractors had the 48-hour windows that were mentioned previously. That is where the contractors were 30 days ago. Perhaps David Climie can say something further.

David Climie: Mr Mason asked a similar question when I was here on 8 March. At that time, I focused specifically on the tower cranes coming down and the waterproofing as the two key activities. The north tower crane took 65 days to come down. It needs 12 to 15 working days to bring it down.

John Mason: What dates were the first and last of those 65 days?

David Climie: The first day was 21 January and the last was 27 March. The 65 days were counted from the first piece being ready to be removed until the last piece being removed down at the water level. The number of calendar days that the removal took was four times the number of working days that were required. That having happened, even though the contractors were running in parallel the removals of the other two tower cranes—the centre and south cranes—that previously were to be run one after the other, they had to plan for the possibility of the same duration occurring again. It might not have done, but they had to take into account that that had happened; it was not theoretical. It had happened, so we had to take into account that it could happen again.

The Convener: When the first crane was taken down, were the other cranes no longer required? Could they not all have been taken down at the same time? I would have thought that that would be a reasonable question.

David Climie: No, because the contractors were still carrying out work at the time. As well as the above-deck work, there is the tower falsework underneath the deck. On the north tower, the falsework had already been removed in January and February. The first stages of removing the falsework used the tower crane, so the north tower crane was always going to be the first one to be ready to be removed although, originally, it was thought that it would be the south tower crane,

followed by the centre tower crane. It has been possible to make reasonable progress on the trestles, so the two remaining tower crane removals can be run in parallel.

The Convener: Thank you. Our final question comes from Gail Ross.

Gail Ross: We are all agreed that safety and quality are the main focus. I thank the panel for coming to update us.

In answer to the cabinet secretary's question: no, we did not get to go up the tower, but it was not for the lack of trying. If there should be another invitation for us to do so when the wind speeds are lower, we would quite like to do that.

Cabinet secretary, in your opening statement you mentioned the hiring of an extra 200 workers. Have they now been taken on until the end of the project, and is there scope to take on any more, should they be needed?

Keith Brown: It is only fair to let the contractors answer that question, as they are responsible for the project and the decision is theirs. I commend the contractors for the effort that they have put into the project at substantial cost to themselves. Perhaps they can answer that question.

On Gail Ross's point about the tower, I am sure that FCBC and Transport Scotland can make that happen for those who are able and willing. I am very surprised to hear that our colleague Murdo Fraser actually did go up the tower, given the way that he blanched when I invited him to do so in the first place. It is a stunning experience to look down on the other two bridges. We will make sure that that happens for those committee members who want to do it.

Perhaps FCBC will answer the point about employees.

Michael Martin (Forth Crossing Bridge Constructors): I review resources every day, and the planning for the project is now very dynamic, bearing in mind the conditions that we have been facing. Planning is the daily task for my operational team. The executive team and I review the planning of the project three times a week. We use the best data that we have on the weather, taking account of it and doing what the weather allows us to do. That might not be what we had planned several days earlier, but we have to take a dynamic approach to it.

I will apply whatever resources I can—be they human resources or plant and equipment—to maximise the opportunities that we have, but I always treat safety as the number 1 priority. We need to build the bridge safely and build it right the first time. The project will be finished as soon as it can be finished. I cannot bring on to the site people who do not have the skills to do the tasks

that are required to be done, which is also a judgment that I have to make.

The Convener: I thank all our witnesses for coming to the meeting. As I said in my opening remarks, I previously made the mistake of saying that I hoped that I would not be seeing you again. This time, I suspect that I might. Cabinet secretary, could the committee get back to you after the meeting to say when we would like to programme an update on the bridge, so that we can be kept apprised of how things develop?

Keith Brown: Of course.

The Convener: I suspend the meeting briefly to reconfigure the panel.

11:22

Meeting suspended.

11:25

On resuming—

Transport (Update)

The Convener: Item 4 is evidence from the Minister for Transport and the Islands. I welcome Humza Yousaf to the meeting. Alongside him are officials from Transport Scotland. Bill Reeve is the director of rail; John Nicholls is the director of aviation, maritime freight and canals; Alasdair Graham is the head of planning and design; and Tom Davy is the head of bus and local transport policy.

We are quite pushed for time and there are quite a lot of questions. Minister, I hope that you will not mind if we excuse you from making opening remarks and move directly to questions. I also ask for your forbearance in allowing us to write to you after the meeting if we have been unable to get through all the questions that members want to ask.

The Minister for Transport and the Islands (Humza Yousaf): I am happy to forgo making opening remarks and to go straight to questions. Of course, we will answer in writing any questions that we do not get through at the meeting.

The Convener: Thank you very much, minister.

Rhoda Grant: Minister, will you give us an update on the ferry services procurement policy review? Will you say whether, after the review, the Government is minded to award contracts directly to public sector ferry operators?

Humza Yousaf: I thank Rhoda Grant and David Stewart for their engagement on the issue and for the helpful guidance and information that they have been providing.

We still aim to conclude the policy review by September, hence the request for a nine-month extension to the contract for the Gourock to Dunoon service. The terms of reference for the review are available. I have been involved directly, as have a number of MSPs, some of whom are here. The unions—primarily the National Union of Rail, Maritime and Transport Workers—have also been involved, as have the operators. You will remember that, on the back of the European Commission's response, the review is looking at the structures of Caledonian Maritime Assets Ltd and CalMac Ferries. On top of that, we will look into the state aid rules—it is essential that I put that on the table.

In answer to the second part of your question, if the rules can be satisfied, the Government will be minded to make a direct award—with the very important caveat that it must be what the communities want, as I said in my statement to the

Parliament on the matter. We would have to be aware of the communities' wishes. Some communities might, for some reason, want us to go through a competitive tendering process—I am not saying that there are such communities, but we should take account of that. We would not necessarily base our judgment entirely on that, but we should certainly take account of what ferry user groups, MSPs and councils want.

Rhoda Grant: If communities were minded to take on services themselves and run them as community co-ops and the like, would such an approach be considered as well as direct tendering to the public sector?

Humza Yousaf: I am open to exploring such an approach. The internal ferry services in Shetland and Orkney are run by the councils, as you know. If councils want to take on services, or if co-operatives offer an alternative model, I will not have a closed mind on that.

However, that is not what the policy review is looking at. The policy review is a response to what the Commission said about the Teckal exemption being able to apply to the maritime cabotage regulation if certain conditions are met. We are trying to figure out whether those conditions can be met along with state aid rules. The answer to that question is not simple, and establishing it will be complex and will take time. Anything that arises above and beyond that can be considered after the policy review has been concluded.

11:30

The Convener: John, do you want to come in on that subject?

John Finnie: Minister, the issue of the internal ferries in the northern isles, which you mentioned, is one on which I await a response. You will be aware of the concern that exists. In the absence of a written reply to my letter, is there anything that you can say?

Humza Yousaf: I thank the member for his patience. I know that he has written to me and is awaiting a response. That is partly because I am in continuing discussions with Steven Heddle, the leader of Orkney Islands Council, and Gary Robinson, the leader of Shetland Islands Council. The dialogue with Transport Scotland has been constructive.

As the member will understand, our manifesto and our First Minister committed to reducing ferry fares between the islands and the mainland. That is an immediate priority for us, and we plan to push ahead with it as soon as possible. The members who represent the constituencies in question—Liam McArthur and Tavish Scott—have

rightly been holding us to account on that manifesto promise.

The discussions about the internal ferry services are important to those who live on the islands, and I want to explore whether any additional funding is available. Mr Finnie knows that there is no money down the back of the proverbial couch, as we are in a time of financial constraint, but I am trying to find a way of assisting the northern isles councils. At the moment, there is no such funding, but I am in continuing dialogue on the issue.

Peter Chapman: This is a direct question: how will you secure the future of private sector ferry service providers if the Clyde and Hebrides and northern isles services are awarded directly to a public sector operator?

Humza Yousaf: My officials will correct my understanding if it is wrong, and they might wish to supplement what I have to say.

Let us take the example of Pentland Ferries, which operates across the Pentland Firth. Our directly awarding services that we currently franchise would not prevent a private contractor from taking on another route on a commercial basis if that is what it wished to do. Am I right about that?

John Nicholls (Scottish Government): That is correct.

Humza Yousaf: Perhaps the member has a secondary concern. It would be correct to say that, if we were to directly award services to an in-house provider, that would have an impact on private companies that, in the future, wanted to bid for the Clyde and Hebrides routes, a northern island service or the Gourock to Dunoon route. If we went down that path, they would not be able to do that.

I reiterate that we should not prejudge the outcome of the review, as it is far from settled. There are a number of obstacles and hurdles, and there are conversations still to be had.

Peter Chapman: The current contract for the northern isles ferry service expires in April 2018. Given that the review is due to report this autumn, what contingency plans does the Scottish Government have in place to ensure continued provision of the service after April?

Humza Yousaf: One of the first things that we did was start a conversation with Serco, which runs the NorthLink service. Stuart Garrett, who is the man in charge of NorthLink Ferries, has been very constructive and helpful in his engagement. That engagement continues, with a view to the northern isles contract, as it currently stands—for the reasons that the member rightly highlights—being extended. I will be happy to update the

committee on those constructive conversations once we get to a final position.

It is not the case that if Serco were not to agree to an extension—I am not for one minute suggesting that Serco is planning to do this—the vessels would follow. As the member knows, the vessels in question are leased, so it would not be the case that there would not be a service; the service would continue. We are already thinking about what a plan B or a contingency plan would look like, but I reiterate that the conversations with Serco, which currently provides the service, have been extremely positive. Serco is very engaged in the process, and is acting constructively and in a very helpful manner.

Jamie Greene: Since the last statement was made on the moratorium on the Gourrock to Dunoon procurement process, I have had a huge amount of representation from a number of stakeholders in the region who will be affected by that, including the user groups on both sides of the river and many of the parties who were involved in the process. As you can imagine, they are in a difficult position because they are looking to make substantial long-term investments in some of the vessels that might be available if they were to participate in those projects, and the delay—which is what it is—is causing a huge amount of uncertainty and concern among those stakeholders.

When might you look to take advice on the Teckal state aid issue? It seems that, no matter what, you have an underlying preference for direct, publicly owned contracts to be given where possible and where you are allowed to do so. That might be seen as overlooking some of the benefits of tender processes or some of the benefits that other operators might be able to bring to those services and the communities on both sides.

Humza Yousaf: I will try to address a couple of those points. I have not received the same level of representation as the member has, and I do not think that I have received any representations from the member on the issue. However, if he wants to forward the representations to me, I will be happy to respond to those stakeholders individually.

The wider point is a reasonable one to make; it was also made to me by Jamie Greene's colleague, Liam Kerr, during a round-table discussion. We cannot overlook the fact that a competitive process can have some benefits. It can drive efficiencies, for example, so there is an argument to be made. If we go down the route of a direct award, we must be certain that we put in place measures, targets and everything else that will help us to drive similar efficiencies so that the passengers or commuters benefit from an affordable and efficient ferry service.

I go back to what I said to Mr Chapman, which is that that does not mean that there is no space for private operators to operate. We put out to tender the Gourrock to Dunoon ferry service that goes from town centre to town centre. As the member knows, Western Ferries operates a different route, and there is nothing to prevent Western Ferries from continuing with that, whatever decision we make. Will that decision have an impact on the business? Undoubtedly, because there is a competitive element there.

I take the member's point and if he wants me to add more detail for the people from whom he has had representations, I am happy to do that.

Jamie Greene: I will move on to a more positive note, which is on the Arran ferry. It will be no surprise to the minister that that is of interest to me.

The Scottish transport appraisal guidance report has been published and it seems to point overwhelmingly to the retention of Ardrossan as the home port of that service. Will the minister outline the timetable for the next steps and the processes on how he might come to a decision to put the matter to bed?

Humza Yousaf: As a point of clarification, the process has not gone through an official STAG process, but through an appraisal.

The member is absolutely right. The independent consultants engaged with the stakeholders and looked at a variety of important factors that the member will know about—connectivity, affordability and the socioeconomic impact or the cost to the economy and the taxpayer. The consultants looked at all those factors and consulted those on Arran and in south and north Ayrshire. I also had some personal engagement through going to Arran, meeting representatives of the Arran economic group and stakeholders in South Ayrshire Council and Associated British Ports, North Ayrshire Council and Peel Ports, and getting a presentation.

As the member rightly said, the report certainly weighed in favour of retaining Ardrossan as the port of choice. The legal advice that we were given was that the appropriate next step was to publish that in an open and transparent manner, as we said we would, then to allow the stakeholders two weeks to come back to us with any final submissions.

I will then take some time to analyse those final submissions. However, understanding the point about uncertainty that was made earlier in relation to the Gourrock to Dunoon ferry service, I will look to make a final decision fairly promptly once those final submissions come in.

Jamie Greene: Stakeholders will have two weeks from the publication of the report in which to make submissions. There will then be a period of review by the minister and a decision. The unknown factor is that review period. Are we talking about weeks, months or days?

Humza Yousaf: It certainly will not be months. It will be a limited period of time. I do not want to give an exact period because, if the submissions that come in are 1,000 pages long, it will take longer to address them than it will if they are a few pages long. It certainly will not be months and months—I do not think that it will even be weeks and weeks. I hope that that is a helpful steer.

The Convener: Let us move on to railways.

Stewart Stevenson: We take a close interest in the timekeeping of trains, and we have seen a significant improvement in the public performance measure and moving annual average figures that ScotRail is delivering. Indeed, five minutes ago I looked at the current figure, which is 94 per cent. That is the kind of number that we are talking about. What are the inhibitors to that figure's continuing to rise to meet the contractual level that is required, and what steps is ScotRail taking to keep the improvement that we have seen in recent months on track to deliver the contractual value?

Humza Yousaf: I thank the member for that question, and I will try to be succinct in my answer.

You are right to acknowledge that there has been a continual improvement since the improvement plan was instructed. That was never going to be easy, because, as you know, the moving annual average depends on what the PPM is compared with the previous year's PPM. This time last year, the PPM was fairly high, so even to match that, let alone surpass it, was always going to be a difficult task. I thank the thousands of people who are involved in the railway for their dedication in helping us to get to that point.

We are still not where I want us to be. I want ScotRail to increase its PPM and its moving annual average figures to meet its contractual targets as we go into the next year of the railway contract, and—to answer your question directly—there are a few inhibiting factors. You have just had a session with my colleague Keith Brown, who said that the weather is the master in the equation, and that can be true also on the railways.

Our discussions with Network Rail are on-going. You will know that 54 per cent of delays were attributed to Network Rail, and I do not feel that we yet have enough control over Network Rail or that it is accountable enough. That is not a constitutional point. When we discuss the devolution of further powers, we can get mired in whichever side of the debate people are on, but I hope to have a constructive conversation with all

parties on the issue. It is getting to the point at which it is, frankly, frustrating the living heck out of me. I want to do a lot more but I do not feel that we have adequate levers over Network Rail, which is an inhibiting factor.

That said, I am positive about the improvement plan. Despite the fact that ScotRail is, technically, above the threshold for needing an improvement plan, I want to keep the improvement plan in place because it is pushing performance in the right direction and focusing minds. Alex Hynes from Northern will join us in June, and I hope that he will continue in that vein.

John Mason: Are you satisfied that there will be a smooth handover from Phil Verster to Alex Hynes, who will take charge of the ScotRail Alliance? Who appointed him? Who pays his salary? Who is his line manager? Who employs him?

Humza Yousaf: I will do my best to answer those questions, although I might refer some of them to Bill Reeve.

It should be said that Phil Verster has moved on—that was publicised—and Dominic Booth, who is the managing director of Abellio in the UK, has taken over the position. He holds a very senior position in Abellio—it has put its top person in the UK in ScotRail for the interim period until Alex Hynes can join. Alex Hynes was already part of Northern Rail—Arriva Northern—and contractual discussions took place, but he could not be secured before June, which is why Dominic Booth is in the position. Dominic has always been very accessible and engaging, and I have great confidence in his ability to continue the improvement in performance.

11:45

To answer some of the other questions, I think that I am right in saying that Alex Hynes is an employee of Network Rail, as was Phil Verster. Network Rail will pay his salary because of its level, and that will have to be signed off by the secretary of state at the Department for Transport. I refer to Bill Reeve to check what I have said.

Bill Reeve (Scottish Government): That is correct.

John Mason: I am a fan of the idea of the ScotRail Alliance and having it all joined up. However, can we be sure that there will never be a conflict of interest for somebody who is running ScotRail, but is employed by Network Rail?

Humza Yousaf: I can understand where you are coming from. The logic of the alliance is one that many people would find it difficult to disagree with. The secretary of state at the Department for Transport wants to roll out more alliances between

the track and train operators, and that seems perfectly logical to me, but only if the individual in charge of the alliance has the full powers for both the track and the train under his or her discretion.

Instead of there being a conflict of interest, what I think is frustrating is that the alliance can at times seem optically flawed, as it was described to me by one individual. I get frustrated when delays happen as a result of signal or track faults, such as points failures, and then the individual who is in charge of the alliance says that they do not have full control over the necessary levers when it comes to Network Rail.

The ScotRail Alliance is a work in progress. I think that the idea is absolutely right, but we need to have a very honest conversation about the powers and levers that that individual has when they are appointed to head up that alliance.

John Mason: Okay. Thank you.

Mike Rumbles: My question is about the free week of travel and the service quality incentive regime or SQUIRE fund. Minister, when you last came before the committee you said:

“Contractually speaking, it is up to the Scottish ministers how the money should be spent but, generally speaking, and as we have always done, we decide that in consultation and in discussion with ScotRail.”—[*Official Report, Rural Economy and Connectivity Committee*, 1 February 2017; c 20.]

I pointed out to you that, prior to that, Phil Verster had said

“The contractual position is that the decision about where to invest it sits with Abellio ScotRail”,—[*Official Report, Rural Economy and Connectivity Committee*, 18 January 2017; c 27.]

to which you responded:

“I do not imagine that Phil Verster has a photographic memory of the contract in his head. I am more than happy to provide the member with the wording of the contract.”—[*Official Report, Rural Economy and Connectivity Committee*, 1 February 2017; c 20-21.]

You did that—you sent the franchise agreement to us. In it, paragraph 10.9 clearly states that

“The Franchisee”—

that is, Abellio ScotRail—

“shall propose for agreement by the Authority no less than once every Franchise Year how the Investment Fund should be spent.”

My first question is whether you agree that Phil Verster was correct in saying that the decision was for Abellio ScotRail, as the franchisee, and also that he had not agreed that the SQUIRE fund should be used for the free travel.

Humza Yousaf: I feel that we are flogging a dead horse. We are having this conversation over and over again. We are almost heading down a

rabbit hole and it is getting a bit pedantic, but I will, of course, try to provide some clarification.

The Convener: I think that it would be helpful to have an answer.

Humza Yousaf: I gave that to the committee in my letter of 13 March. I cannot speak for what Phil Verster said, but the franchisee and the authority—which is the Scottish ministers, or Transport Scotland on my behalf—enter into discussions on a number of occasions about where and how SQUIRE money should best be spent.

Mike Rumbles will remember that the issue came about partly because of a question from Kezia Dugdale at First Minister’s question time, in which she requested the First Minister to look into the proposal of a fare freeze. That was found not to be a viable option because of the accumulated costs. Therefore, in collaborative discussions, Transport Scotland and ScotRail came to a proposition about how to use the SQUIRE fund for the free week proposal that has now been well detailed. That falls entirely within the scope of the contract and entirely within the scope of how the SQUIRE fund can be used.

Mike Rumbles: You have given evidence to the committee to the effect that you decide on the spending of that money.

Humza Yousaf: No—

Mike Rumbles: You did, and I just read out what you said from the *Official Report*.

Humza Yousaf: Yes, but there is not a contradiction—

Mike Rumbles: Let me ask the question, please.

Phil Verster took the opposite view. More strongly than that, he said that he had not agreed to the spending of that money. You have just said that there were collaborative discussions between Transport Scotland and ScotRail, but that does not chime with the evidence that Phil Verster presented to this committee. My question is, where exactly did the proposal originate? Was it with the minister or Abellio ScotRail?

Humza Yousaf: It was done through collaboration. With regard to what Phil Verster said, you could call Phil Verster back to the committee, if that is what you want to do. However, I see no contradiction between what Phil Verster said and what we have said. What you have read out from the contract states that it is for the franchisee, through a collaborative process, to make a proposal, but that the ultimate decision about how that SQUIRE money is spent rests with Scottish ministers. That is what you have read out.

Mike Rumbles: It does not say that in the contract—

Humza Yousaf: It does, and we have provided clarification in relation to that.

Mike Rumbles: Could you point out which paragraph says that?

Humza Yousaf: I would be happy to write again to the member.

Mike Rumbles: I have the contract here.

Humza Yousaf: Again, the spending of the fund lies at the discretion of the authority. As long as it is being used for qualitative aspects of the franchise services, we are well within the contract to do that.

We work in a collaborative way. The member is suggesting that either the franchisee makes an instruction or the decision is solely for the authority, but that is not the case. Decisions are made through a collaborative process. SQUIRE funding has always been dealt with in that vein. I am confident not only that we met the requirements of the contract, but that we acted within the remit around SQUIRE funding.

Mike Rumbles: Convener, as the evidence that we have got is contradictory, I would like Phil Verster to be recalled to the committee. The contract is very clear that the initiative for the spending of the money must come from Abellio ScotRail. The minister is saying that there was a collaborative decision, but Phil Verster has told us that he did not agree to the decision. We do not really know who controls the fund, and I think that it is important with regard to how the fund is spent in the future that we know who is in charge of it. I request that the committee recall Phil Verster so that he can confirm his evidence.

The Convener: Perhaps the minister can help me to understand this. I am looking at the sections that were quoted. My understanding is that, at least once a year, the franchisee will propose a suggestion on how to use the SQUIRE fund, that it is up to the authority not to unreasonably withhold its consent to the proposal, and that, if the authority withholds its consent, it can come up with an idea of its own. Can you help me to understand the process? When the proposal came from you to use the fund in the way that you suggested, had the franchisee come up with any ideas about what to use the fund for, and, if so, why were those ideas not considered to be as good as your one?

Humza Yousaf: I am sorry, but I do not think that I follow you entirely.

As I mentioned, the background to this was a proposal that was made at First Minister's questions. We asked our Transport Scotland officials to work with ScotRail to see whether there

was merit in the proposal and whether it could be delivered. They came back to say that there would be a cumulative cost of X million pounds, which was too high and would have taken investment away from the railway. We asked them to work collaboratively with ScotRail to see what other proposals could come forward. Those proposals then came to me, as minister, and I have the discretion to say whether any proposal is a sensible use of SQUIRE funding. The proposal was then discussed with the Cabinet Secretary for Finance and the Constitution, who then made a statement to Parliament on the back of the decision that was made.

I do not know that I can provide you with any more clarity than that, other than to say that the process was handled in a very collaborative manner in terms of our spend on SQUIRE.

The Convener: I am obviously misunderstanding the sections of the contract because my concern is that, although there is a clear procedure for how to use the SQUIRE fund, it does not appear to have been followed. It would help me understand that the procedure had been followed if the franchisee had come up with an idea but the authority rejected it and put forward its own idea for discussion on the basis that it was better than the franchisee's. However, no idea came from the franchisee; it came only from the authority, which is contrary to the sections to which Mike Rumbles referred.

Humza Yousaf: As I keep saying, it is done collaboratively. When we decided that we were not able to proceed with the proposal for a fare freeze because of the cumulative cost, the instruction was to work collaboratively with Abellio to find what else could be done to benefit passengers because of their patience during a fairly disruptive year. The proposal for a free week was made and I was content with it, as were our colleagues in Abellio.

Rhoda Grant: Is it possible to get the costings that ScotRail fed back to ministers before you devised the free week scheme? What percentage of travellers have received their free week and what percentage are outstanding? How many will eventually get a free week's travel whether or not they are season-ticket holders and when can they expect it to happen?

Humza Yousaf: We can get the detail on what we think the cumulative cost of a fare freeze would have been, if that is what the member is looking for. Our free week policy is backed by £3 million. Nobody has claimed it because, as the press release stated this month, the claiming period will be in May and potentially into June. That will be for people who hold an annual or monthly season ticket. Thereafter, further discounts for people who

travel perhaps on a more leisurely basis will be explored.

Rhoda Grant: You talk about people who travel on a more leisurely basis. However, some people just cannot afford to buy a season ticket although they use the trains. Will they get a free week's travel?

Humza Yousaf: I do not think that it will be a free week's travel, but further discounts will be considered. We have backed the scheme up with £3 million-worth of investment, which is £1 million more than the Opposition asked for. Annual and monthly season-ticket holders will be able to claim the free week's travel later this year and further discounts will be introduced not only for people who travel daily but for leisure travellers—those who do not travel daily or regularly.

Bill Reeve: Weekly season-ticket holders who register for a smart card will also get a free return journey across ScotRail as part of the offer. The offer is designed first to address regular travellers, including weekly season-ticket holders as well as monthly and annual season-ticket holders. We have estimates for the likely uptake of it and, to the extent that the money is not used on that, it will be used for other passengers as well.

Rhoda Grant: It seems to me unfair that people who cannot afford to pay for a monthly ticket are not going to get a free week's travel. Some people can afford to buy a weekly ticket, but they will only get one day. It seems that, the better off somebody is, the better the deal they will get, whereas if somebody is struggling to make ends meet, they will not get much back.

Bill Reeve: That is the reason why there will be further proposals that will address other travellers who do not have season tickets.

Rhoda Grant: When can we expect to see those proposals?

Humza Yousaf: In part, that will depend on the uptake by people claiming the free week later this year. You can expect to see more detail on that later in the year, but it will be well into the summer or autumn.

Stewart Stevenson: Can you give a brief update on the Edinburgh to Glasgow improvement programme? I note that the evening blockades to Linlithgow end this week; speaking personally, I very much welcome that. Are we still on track with the rest of the project? Perhaps you could also take an opportunity to put on the record where we currently stand with the redevelopment of Glasgow Queen Street station, if there is something useful to say.

12:00

Humza Yousaf: To take the second part of the question first, I can inform the committee that in the next 48 hours I should be able to approve and move the order under the Transport and Works (Scotland) Act 2007, which should help to move things along with Glasgow Queen Street station.

When I was last at the committee, I mentioned that some of the aesthetic work around the station is at risk of slippage. That remains the case. However, I also mentioned that we are committed to and focused on retaining the delivery milestones for electric services. EGIP remains on schedule to deliver the first electric Edinburgh to Glasgow train service in July. The introduction of the first—new, longer, faster and greener—class 385 train remains on schedule for autumn, with the full fleet becoming operational on the Edinburgh to Glasgow route during December. We are focused on those milestone achievements. Improved journey times and trains that are faster, longer and greener are part of the service that we want to provide. The aesthetic work at Queen Street station, though, is at risk of slippage; that has not changed.

The Convener: The committee was sent a paper from Network Rail on the TAWS order. When do you think that that will be issued?

Humza Yousaf: In the next 48 hours.

The Convener: So the knock-on effect will be a delay of—

Humza Yousaf: It is not possible at this stage to say exactly how long the delay will last. Although we have tried to have a collaborative process with respect to the TAWS order, thereby engaging with those who object—we know the objectors fairly well—once the TAWS order is made, there is still nothing to prevent them from holding up the TAWS process, and indeed the further process, with legal wrangling. We hope that that will not be the case, because we have engaged substantially before making the order. However, at this stage it is not possible to say.

I will endeavour to keep the committee absolutely updated on when I think that the redevelopment of Queen Street station will take place. I can just reiterate that, at the moment, the slippage is focused on the aesthetics. If that began to affect operational capacity, we would again endeavour to keep the committee updated.

The Convener: We are running short of time, and there are several questions left. I am minded to take one more, after special pleading from Richard Lyle. If he would like to ask that one, I am happy, and we will submit the rest in writing.

Richard Lyle: Thank you, convener—maybe I get too uptight.

The 1985 act deregulated buses. Some people thought that it was a great idea; some, like me, think that it was wrong. Media reports are indicating that a transport bill is forthcoming. Will that bill be innovative and all-encompassing, will it include local authorities and make it possible for them to run buses that sit in their depots to outlying areas, in order that people can travel on a bus? That is being brief.

Humza Yousaf: The transport bill, as we envisage it, will have three elements. All this is, of course, subject to consultation. The bus element will look at a number of factors, one of which will be local franchising. The member will probably be aware of the UK Bus Services Bill, which is going through the UK Parliament and is at the moment with the House of Lords. That bill also looks at local franchising, which local authorities have been asking us about and calling for. We are open minded about exploring franchising. Of course, the checks and balances in the franchise are very important, and we will engage with the local authorities as I have been engaging with the bus operators both through the CPT and bilaterally. It is important to give them reassurances.

From my discussions with local authorities, there seems to be some legal dubiety around whether local authorities could start up their own municipal bus companies. We hope, through the bill, to remove that legal uncertainty. We will also look at partnership working, smart ticketing and open data in the bus element of the transport bill. The bill will go through the normal legislative process, which will include full consultation.

The Convener: Thank you, minister. Due to the shortness of time, several questions have had to be missed out. The deputy convener and John Finnie had questions, both of which I propose to submit to you in writing. We have had a brief drive through some of the issues. Do you want to make a very brief closing statement, or are you happy to leave it at that and answer any further questions in writing?

Humza Yousaf: I am happy to write to the committee if any further clarification is needed.

The Convener: Thank you, minister.

I suspend the meeting briefly to reconfigure the panel.

12:06

Meeting suspended.

12:08

On resuming—

Subordinate Legislation

Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017 [Draft]

Transport and Works (Scotland) Act 2007 (Environmental Impact Assessment) Regulations 2017 [Draft]

The Convener: The next item is consideration of subordinate legislation. The committee will consider two instruments that are subject to affirmative procedure, as listed on the agenda. The Delegated Powers and Law Reform Committee considered the instruments yesterday and determined that it did not need to draw Parliament's attention to the instruments on any grounds that are within its remit.

The Minister for Transport and the Islands is joined by, from the Scottish Government, Yvette Sheppard from the environment and sustainability branch of Transport Scotland; Elizabeth Morrison from the Transport and Works (Scotland) Act 2007 unit; Anne Cairns, who is a legal adviser; and Bill Brash, who is the environmental impact assessment transposition manager.

The instruments have been laid under the affirmative procedure, which means that Parliament must approve them before their provisions can come into force. Following evidence, the committee will be invited, under the next agenda item, to consider the two motions on the instruments. I ask the minister whether he would like to make a brief opening statement.

Humza Yousaf: Convener, despite my best attempts to escape during the suspension, I thank you for pulling me back to address the regulations, which will update existing acts to take account of the requirements in the updated environmental impact assessment directive that came into force in 2014. The amendments form part of European law and must be incorporated into the domestic legislation of member states by 16 May 2017. The environmental impact assessment directive requires an assessment of the effects of certain projects on the environment before a development consent can be granted. The amended directive introduces a range of new and extended requirements and clarifies issues in a number of areas.

A joint project with a number of other Scottish environmental impact assessment regimes has been undertaken to transpose the directive into Scottish legislation. The other regimes that are

affected are planning, energy, marine, agriculture and forestry. SSIs that are subject to negative procedure will be laid on those.

The aim of transposing the directive into Scottish legislation is minimisation of the additional regulatory burden to developers, competent authorities and statutory consultees, while ensuring protection of the environment. Scottish ministers consulted on the proposals and the approach to transposition of the amended directive in autumn 2016, and a report analysing the responses that were received was published in January 2017.

The key changes that are required by the amended directive relate to extension of the scope of issues that are to be considered, clarification on consideration and reporting of the environmental impact assessment information in decision making, and the introduction of penalty provisions.

The Roads (Scotland) Act 1984 is used by the Scottish ministers in relation to management of the strategic road network, and includes provisions relating to the promotion of construction and improvement works. The act currently contains requirements that ensure that environmental impact assessments are carried out for the development of road projects in accordance with the directive. The draft regulations will update the 1984 act to incorporate the requirements of the amended directive.

The Transport and Works (Scotland) Act 2007—TAWs—process is an order-making process that avoids the need for private bills for transport-related developments including railways, tramways and other modes of guided transport. As the committee will be aware, applications for TAWs orders are made to the Scottish ministers. The changes that are required to the transport and works legislation have been split between two Scottish statutory instruments: the draft Transport and Works (Scotland) Act 2007 (Environmental Impact Assessment) Regulations 2017, which are the subject of today's discussion; and the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Amendment Rules 2017, which are subject to negative procedure and were laid before Parliament on 15 March 2017. The draft regulations and the new rules together incorporate the requirements of the amended directive into the Scottish transport and works regime. Implementation of the draft regulations will ensure that statutory processes continue to remain compliant with the requirements of the environmental impact assessment directive.

I commend the draft regulations to the committee, and am happy to answer any questions.

John Finnie: We are told that the objective of the regulations is to integrate environmental considerations into the preparation of trunk road development projects, with a view to reducing their environmental impact. Clearly, that is something that will be judged over time.

I welcome much of what is in the regulations, but I have a question about the draft Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017. I note that paragraph 10 of the proposed new schedule 1A talks about

“A non-technical summary of the information provided under points 1 to 9.”

If that summary is indeed non-technical, I will welcome that. However, my question—which you might like to answer in writing—is about paragraph 8, which talks about

“A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment”

and says that that description

“should explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.”

How long is the operational phase?

Humza Yousaf: First, I salute John Finnie's dedication in going through the order in such detail—which is, of course, absolutely the correct thing to do for the purpose of scrutiny. I refer him to my colleagues; perhaps even they will wish to respond to his question in writing.

12:15

Yvette Sheppard (Scottish Government): When we prepare the environmental impact assessment for road schemes we consider two phases: the construction phase and the operational phase. We take into account, as far as we can, the normal operational conditions. We do not put a timescale on that, but we assess anything that relates specifically to operation. For instance, we consider the likely air-quality impacts during operation, which are considered pertinent. However, we do not consider impacts in a timescale.

Humza Yousaf: I add that, given that the projects that we are taking forward are long term, the entire purpose is to ensure that the environmental impacts are monitored over the long term. I hope that that gives John Finnie a degree of comfort, although I understand that he might want a bit more detail about what the phrase “operational phase” might mean.

John Finnie: If, for argument's sake, a road was to go through an area that was designated in

the development plan for housing, would that be considered? Clearly, air quality would be of greater significance if that were the case.

Yvette Sheppard: Yes. We will look at any other committed development, as part of the process. The directive requires that, in addition to considering the impact of the scheme under consideration, we must also carry out a cumulative impact assessment, which includes looking at the effects of that scheme and any effect of the scheme in combination with other committed developments in the area. Local plans and any other plans that are committed for an area will be taken into account and their impact assessed and presented in the environmental statement that accompanies the decision-making process.

Humza Yousaf: It is probably worth saying that much of that is already being done as a matter of good practice. The legislation will simply transpose the regulation into domestic law. As John Finnie knows, when we develop road or other infrastructure projects, those impacts are already taken into account.

John Finnie: “Well done, European law”, is all that I would say.

Stewart Stevenson: I have a question about proposed new section 20E(2) of the Roads (Scotland) Act 1984, entitled, “Competent authority—avoidance of conflict of interest”, which requires Scottish ministers to

“implement within their organisation of administrative competencies an appropriate separation between conflicting functions when performing their duties”.

Has it been necessary to make any changes to that organisation of competencies, or is it, as it stands, sufficiently divided to maintain appropriate avoidance of conflicts of interests?

Humza Yousaf: I will refer you to colleagues who have been close to the matter. There are in transport a number of issues in which there have to be what are colloquially called Chinese walls. There has to be some separation even within a single organisation such as Transport Scotland. We already operate in that way. In fact, the TAWS order for Glasgow Queen Street station, which the committee discussed, was a perfect example of that. CalMac bidding for a public contract would be another example in which such a conflict of interests is already managed internally within the organisation. I am happy for officials to add to what I have said with specific regard to the section that Stewart Stevenson cited.

Yvette Sheppard: We do not anticipate having to make any alternative arrangements. As it stands, the part of Transport Scotland that develops road projects does not offer advice directly to the minister in terms of his decision-

making capacity. We simply provide information; another part of the organisation offers advice.

Stewart Stevenson: Thank you.

Richard Lyle: I have several questions. Proposed substitute section 20A, which is entitled “Prohibition on certain road construction projects without an environmental impact assessment” refers to new roads. What about an existing road that is being upgraded? Proposed new section 20C of the 1984 act states:

“In order to ensure the completeness and quality of the EIA report ... the Scottish Ministers must ensure that the EIA report is prepared by competent experts”.

What if the experts do not take into account areas that they should have taken into account?

Proposed new section 20G of the 1984 act refers to monitoring procedures where the Scottish ministers have decided to proceed with a project. How soon could we double-check what has been reported on a development, when there is a dispute with people who live next to it, and get it upgraded, revised or looked at?

Humza Yousaf: Let me try to answer. I suspect that I know the patch of road to which the member is referring, but I do not want to cast any aspersions.

The Convener: It was a general question.

Richard Lyle: It was about all roads in Scotland.

Humza Yousaf: For road and infrastructure projects that we are already taking forward, even if they include the upgrade of existing infrastructure, such as the dualling of the A9 and A96, and the work on the M8, M73 and M74, we expect and understand that the contractor and the developer will go through an environmental impact assessment. As I said, much of what we are discussing is already good practice, so we would expect that to happen .

There is the potential to revisit projects after their completion—three months, one year, five years and, I think, 10 years afterwards. If, to pick an example from thin air again, there has been a noise impact that was not predicted or is above the predicted level, mitigation measures can be put forward. Whether that is the case for environmental and air-quality impacts I am not sure, and I look to my officials to add to that.

Yvette Sheppard: Under the terms of the strategic transport projects review process, all road schemes are assessed at completion, after one year and after five years, to make sure that all the environmental commitments have been delivered as required. That is in effect an administrative tool that Transport Scotland uses to

make sure that any scheme is delivering the benefits that it was presumed to have.

Richard Lyle: Thank you.

Peter Chapman: I have a more general question. The minister said in his opening statement that there will be new extended requirements as a result of the legislation. Has there been any assessment of the extra cost and timing implications that may result from that?

Humza Yousaf: Yes, very much so. There was discussion, collaboration and engagement to try to understand how, despite transposing the regulations into legislation, we can minimise the burden that may be perceived by businesses and developers, to which I think the member is alluding. If the environmental impact assessment is done earlier in the process, that should save money in the longer term, because if a project is already halfway through development before an impact assessment takes place, and that means that the contractor has to demolish or rebuild parts of the infrastructure, that could add cost and delay to a project.

In relation to wider implications, I will ask my officials to come in on some of the work that we have been doing to try to mitigate that perceived burden on developers and businesses.

Elizabeth Morrison (Scottish Government): A business and regulatory impact assessment was undertaken for the wider project to update seven or eight of the Scottish EIA regimes. A consultation exercise was undertaken as well. My colleague Bill Brash can probably discuss that in a bit more detail, but a lot of organisations responded to that, including consultants, developers and statutory consultees. We obviously get different responses to a consultation.

There was a mixture of responses about the cost burden. People felt that there would be costs through familiarisation with the new regulations. Many of the costs will be administrative. Adding monitoring measures will incur an additional cost to developers, but we all feel that it will be a positive environmental step to monitor projects after they have been built. That is also in line with current legislation on strategic environmental assessments. Perhaps Bill Brash can add something about costs.

Bill Brash (Scottish Government): One thing that the European Union wanted from the transposition is a reduction in the number of EIA reports. The EU has stressed in the directive that when a development is assessed, it is necessary to consider whether it will have a significant impact on the environment. Annexe II A of the directive lists what should be taken account of in screening. That is the first time that that has happened. Now, developers will know exactly what they should

consider and the competent authority will, if required, be able to assess against the list of things to be screened.

The EU seems to think that that will result in mitigation being more up front and, therefore, that full EIA reports will not need to be carried out in many cases. That will be a big saving for business, but the environment will still be protected because developers will know exactly what they are looking for.

The Convener: Thank you very much. Those were all our questions, so we move on to item 6 on the agenda, which is formal consideration of the motions.

Motions moved,

That the Rural Economy and Connectivity Committee recommends that The Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017 [draft] be approved.

That the Rural Economy and Connectivity Committee recommends that The Transport and Works (Scotland) Act 2007 (Environmental Impact Assessment) Regulations 2017 [draft] be approved.—[*Humza Yousaf*]

Motions agreed to.

The Convener: That concludes consideration of both affirmative instruments. We will report the outcome of our consideration to Parliament. I thank the minister and his officials for their evidence. I notice that Anne Cairns did not give evidence, so I thank her for attending.

I suspend the meeting briefly to allow the minister to leave and the next witnesses to be seated.

12:28

Meeting suspended.

12:30

On resuming—

Seat Belts on School Transport (Scotland) Bill: Stage 1

The Convener: Item 7 is evidence on the Seat Belts on School Transport (Scotland) Bill. I welcome George Mair, director, and Paul White, communications manager, from the Confederation of Passenger Transport. I also welcome Alex Scott, bus services manager, and Alan Hutton, team leader for schools, from Strathclyde partnership for transport, and Gary McGowan, who I am told—I hope that I get this right—is the chairman of education transport at the Association of Transport Co-ordinating Officers. Have I got that right?

Gary McGowan (Association of Transport Co-ordinating Officers): That is correct.

The Convener: I apologise to you all for the slight overrun on the timings that you were given at the outset. I am afraid that we have had quite a lot of business to deal with this morning.

I ask members to keep their questions as tight as possible. I also ask witnesses to keep their answers as tight to the questions as possible, please. If there are any questions that we struggle to get through, we might ask for your opinion at a later date.

Stewart Stevenson will kick off the questions.

Stewart Stevenson: I will compress what I am going to ask, although there might be more than one issue in it.

Do you support what is proposed? Are there any other non-statutory ways in which we could proceed with the policy? Do you think that we have constructed a bill that is capable of implementation? Perhaps you can answer in turn from right to left, starting with George Mair.

George Mair (Confederation of Passenger Transport): Sorry—I thought that you meant my right.

Stewart Stevenson: I beg your pardon. I meant my right, but it does not matter.

The Convener: Maybe I can help, as the convener. Let us hear from George Mair first.

George Mair: We have supported the work throughout the process, from conception to where we are now. We have been part of the working group that was set up to deal with it, which involves local authorities and various others. There was a point when I wondered whether it was necessary to go down a statutory path to deliver the policy, but as we have gone on, I have

concluded that it was probably wise to do that rather than try to get a collective agreement across 32 different local authorities. There were different views on different things. We have supported the work, and we will continue to support it and to play an active part in the process.

Alex Scott (Strathclyde Partnership for Transport): Like the CPT, SPT has been engaged in the work of the working group since the outset, and I echo George Mair's comments. Anything that improves safety on public transport—particularly school transport, because of the client group—is to be welcomed.

In its own way, legislation raises the profile of the issue. At the outset of the meetings, I flagged up to the civil servants who were handling the bill the importance of messaging, which is perhaps the most important aspect of the process. Children—particularly secondary school children—are a tough audience to convince to wear seat belts, and that will be a continuing challenge. Everyone has a part to play in that, and we have involved parents in the working group.

We support the bill as a key component of overall safety.

Gary McGowan: I echo the statements that have been made by George Mair and Alex Scott. ATCO has been involved from the start of the discussions and we support the measures, which will improve safety on school transport.

As Alex Scott said, however, the difficulty will be in getting the message out there. We would like to see educational measures or the dissemination of information to schools and children, including those at secondary school, to try to get them to wear seat belts. Getting children to wear seat belts is probably the biggest issue for the councils that have implemented the policy.

The Convener: The next question is mine. Do you think that the requirement for seat belts to be fitted to all dedicated school transport is the best way to improve the safety of school transport? If not, what would you like to see happen? I went to a primary school on Monday, where I was told that one of the best ways to improve safety was for teachers and parents to tell the children to wear the seat belts, rather than to just have them fitted. Is there anything else that you think ought to be done, or is fitting seat belts the most important thing?

Gary McGowan: I agree that we need to have some educational development, which should cover schools, parents, teachers and parents associations, to enforce and to establish or re-establish the wearing of seat belts on school transport.

Alex Scott: It is important. It is a constantly changing situation, because the audience—if you like—is constantly changing. Kids start school and leave school. Continuing that messaging will have to be seen as a long-term project.

Culturally, if we can encourage the primary school children to get into the habit of wearing seat belts, perhaps that will seep through as they progress to secondary school and they will be less loth—because of peer pressure or whatever other reason—to wear seat belts.

There needs to be a suite of options to encourage kids to do that and to get the message out there. There are examples in our area of operators taking buses to primary schools and encouraging kids by giving them hands-on experience of fitting the seat belts themselves. That is part of the bigger, wider message that we all have a part to play in getting across.

Paul White (Confederation of Passenger Transport): If we look at how other transport modes, such as cycling, have done things, this might be a good opportunity. Cycle safety classes address safety but also allow familiarisation with the mode, which encourages further use. Familiarising primary school age children with public transport will have effects that go beyond the use of seat belts and beyond secondary school. It will encourage more use of sustainable and active transport as they move on to being fare payers in adult life. There is a real opportunity.

Gail Ross: So the issue is more about encouragement and education than it is about enforcement. Who would be responsible for ensuring that the seat belts on the bus were used? Would that be anyone's responsibility, or would we just hope that they would be?

George Mair: There are a couple of things to mention. First, the minute a seat belt is available on a coach, it is a legal requirement for children of 14 and above to wear it. If they do not wear it, it is an offence, and it is an offence that they can be fined for. If they are between three and 13, it is a different situation. That is currently being looked at by the Department for Transport. We hope that that will be resolved. Work has been done on the issue; I think that officials indicated that when they appeared before the committee a couple of weeks back.

However, in the age band of 14 and upwards, it is a legal requirement to wear a seat belt if it is available. If someone is caught not wearing a seat belt, it is classed as a criminal offence.

Gail Ross: So the legal responsibility falls on the individual who is not wearing the seat belt and not on, for example, the bus driver or a monitor.

George Mair: Duties are placed on the driver, and there are four options that an operator can use. The driver can make an announcement at the start of the journey or as soon as possible after that. On Citylink services and some other inter-urban coaches, the drivers make an announcement at each stop, so that people who get on are aware of the legal requirement.

The points that Alex Scott and others have made about a partnership approach show that it is a key issue for the industry. Draft guidance documents are being drawn up as part of the current work. Those need to set out clearly the key responsibilities that are placed on drivers, operators of vehicles, schools, parents and everybody who is involved in the process.

Gail Ross: Given that wearing a seat belt is a legal requirement and there is an onus on everybody who is on the bus, including the driver, if there is an accident and someone is hurt, is the driver somehow culpable?

George Mair: At the start of a journey, the driver will indicate that seat belts are available and that it is a legal requirement for people to wear them if they are aged 14 or above, but he cannot monitor the situation while he is driving the vehicle. If he were to do so, that would perhaps put the folk on the coach in greater danger than would not wearing the seat belts, so we have to be sensible about it.

We encourage kids to wear seat belts through the different methods that everybody has mentioned: working with schools and with kids themselves to get across the message that, in the event of the vehicle being involved in a collision, wearing a seat belt will reduce the risk of them being injured. Everybody has a duty to try to get that message across to the kids. The way to do that is to say that their parents would not put them in a car without getting them to put a seat belt on. They will then do it themselves and get into the habit of doing it. The approach should be a collective one that sets out the responsibilities of each individual.

Some of those responsibilities are already in place through the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006, which set out some clear and specific responsibilities on individuals, drivers and operators of vehicles. There is some legislation there. For children who are a bit younger—those aged three to 13—the position is a bit vague, but we hope that the DFT will come up with some additional clarification on that in the weeks and months ahead.

The Convener: I think that Mairi Evans wants to push a wee bit more on that.

Mairi Evans (Angus North and Mearns) (SNP): I do. I also want to follow on from Gail

Ross's last question and to clarify something. If there was an accident and a child had not been wearing a seat belt, would that be the individual's own fault? Are they the one who is considered to be at fault rather than the driver?

George Mair: I am not a solicitor, so I cannot answer that question from a legal point of view, but the legislation sets out in quite clear terms that, if a person is aged 14 or above, they have a legal responsibility to wear a seat belt where one is available.

Mairi Evans: Okay.

The Convener: I understand that there is a legal responsibility. Does that make the parents culpable if somebody of that age is not wearing a seat belt or can the person be held culpable themselves?

George Mair: Again, I am not—

The Convener: I just wanted to know whether you knew the answer.

I am sorry—Mairi Evans has some more questions.

Mairi Evans: I want to talk a bit more about the rules governing the use of seat belts by pupils travelling on school transport. There are lots of different restrictions depending on whether they are travelling on a coach, a small minibus or a large minibus. Do you think that those rules need to be simplified? If so, do you have any suggestions to make in that regard?

The Convener: George, before you answer that, I am keen to bring in other members of the panel—although you are giving very authoritative answers, for which we are grateful. Would anyone else like to come in before George answers?

Gary McGowan: The law is slightly different for minibuses, taxis and so on anyway. There is an existing legal requirement for passengers to wear seat belts in those smaller vehicles, so I suppose that your question is about larger vehicles that do not currently have seat belts. Large vehicles such as coaches are required to have seat belts and people are supposed to wear them anyway if they are travelling on them, so it is only the vehicles that do not currently have seat belts that would be brought into the legislation.

Mairi Evans: Would anyone else like to answer?

The Convener: George, would you like to come in, as I cut you off earlier?

George Mair: I have lost my line of thought; it might come back to me.

Mairi Evans: I have another question. You talked earlier about the work that needs to be

done to educate children into wearing seat belts, but are there any specific actions that you think the Scottish Government should be taking to promote the use of seat belts by children at whatever age? Do you have any specific recommendations?

12:45

Alex Scott: The bill is moving through the Scottish Parliament. If and when it is passed into law, there will be a real opportunity to have a publicity campaign to raise awareness. If the Scottish Government were to work with parent groups and bus operators, that would assist greatly. Parents are invested in ensuring that their children are safe, as we all are. As George Mair said, there is a legal responsibility on those over 14 to wear seat belts anyway, but it is clear that more work needs to be done on the younger ones.

There is no silver bullet or magic answer to this. There will have to be a lot of serious partnership working between all the stakeholders—the schools, the local authorities, the Scottish Government and anyone else who can bring anything to this matter.

Mairi Evans: I have a final question. Do you have any concerns about the enforcement of the duty on school authorities to operate school transport services using vehicles that are fitted with seat belts? Could that have implications for bus operators and their staff?

The Convener: George, that is probably your domain.

George Mair: If you look at the situation—this picks up on some of the previous discussion about coaches taking kids to school—you will probably find that the vast majority of coaches that are used for that type of work have seat belts. Having been the managing director of a bus company, I know that some of the schools were very pedantic about the safety features that they wanted to see in coaches that transport kids. In the majority of cases these days, a coach will turn up at a school to take kids to activities, and in many cases it will be the same coach that transported them to school in the morning.

The important thing for operators and staff is that we try to operate one set of guidance. Let us not have two sets of guidance—one that is linked to the legislation and a separate one for the dedicated school bus. For the benefit of the staff, it will be far better to have one guidance document that everybody can work to. That is a more sensible approach. That has been my plea throughout the process: let us not duplicate things. If there is already guidance, it should be refreshed and made suitable to cover both eventualities so that, if kids travel on a school bus in the morning,

we have the procedures to be followed and they have to wear their seat belts, and the same applies if the same bus or coach comes back to take them to the swimming baths.

The Convener: I think that Alex Scott wants to come in, and then a point that you made there, George, will lead me neatly on to the next question.

Alex Scott: I echo what George Mair said. In the SPT area, we are responsible for transporting approximately 37,000 kids every day to and from school. Most of our local authorities had already started the move towards fitting seat belts before the bill process began, so it is not as if there is a huge mountain to climb, at least from the point of view of the bus operators. However, as George Mair said, clear and uniform guidance would be helpful.

At one of the meetings of the working group, I made the point that, whereas dedicated home-to-school transport would be covered by the requirement for seat belts to be fitted, the same child who arrives at school in a dedicated bus might then be taken to the swimming baths or another educational establishment for vocational training, and there would be no requirement for seat belts to be fitted for that. My concern is that that dilutes the message about the importance of wearing seat belts.

The Convener: That is exactly the point that Rhoda Grant picked up on. I think that she wants to come in on that.

Rhoda Grant: Yes. The bill only covers travel to school. It does not cover school excursions and the like. Does that throw up anomalies or can that be dealt with in guidance? If it can be dealt with in guidance, can the aim of the whole bill be dealt with in guidance? Does it cause a problem to have two different systems?

George Mair: Yes, I think that it causes a problem. To go back to my previous comment, I guess—and it is a guess; I have no statistics to back it up—that a fairly high percentage of the vehicles that are used to take kids to swimming or other activities already have seat belts. The issue is the need for one set of procedures.

Coaches have been required to have seat belts since 2001, which is 16 years ago. I believe that the number of coaches that are older than that, and might therefore not have seat belts, is quite low. As time passes, it is likely that the coach fleet in Scotland will move towards being fully fitted with seat belts. The legislation would therefore say that, if a seat belt is available, people should use it. It is important that the guidance flows through those two scenarios. If coaches without seat belts are still being used, that is confusing for kids.

The Convener: Does anyone else want to come in on that?

Alan Hutton (Strathclyde Partnership for Transport): To pick up on that point, there is a potential problem in having two different types of trip. We organise trips on behalf of some of our councils to swimming baths, and there are consortium and vocational journeys as well as home-to-school trips. It depends on councils' individual needs. If individual councils are aware that seat belts are required on home-to-school trips, they might decide to introduce that requirement for journeys during the day, which might reduce the potential for conflict.

I suppose there might be a difficulty when individual councils do not control the provision. Such schools might not have been given the same type of guidance—which George Mair mentioned—to say that they need to ensure that there are seat belts in their vehicles, and that, as vehicles are brought in, schools should ensure that they are fitted with seat belts.

Perhaps the message needs to be extended to cover other transport requirements during the day. As I said, councils may actually begin to introduce such a requirement. Even though many of the current contracts do not specify the provision of seat belts, the operators are providing them. They have been moving forward as certain councils' contracts have changed, so in other councils' contracts they are providing seat belts over and above the statutory requirement.

Rhoda Grant: You said that there are occasions on which transport is not the responsibility of the school. I would have thought that any transport from school to school activities would always be the school's responsibility.

Alan Hutton: I am sorry; I was referring to a school that is not within the local authority. In other words, who arranges that contract? Is it the school or the local authority, or is it a private school? That relates to who draws up and controls the contract, and the need to ensure that they build in guidance so that it is part of the process.

Rhoda Grant: I want to ask about the lead-in time. The date of implementation is 2018 for primary schools and 2021 for secondary schools. Does that give operators enough time to make the changes that are required and to ensure that all buses have seat belts? Are any contracts already in place that run beyond that term?

George Mair: We have been keeping the industry up to date from the outset of the project in 2014. Among the 18 authorities that are already there, a third are in the SPT area. Keeping authorities that have multiple contracts informed allows them time to work through the process and renew the contracts. The operators who tender for

work in the areas in which the scenario is new will deal with the requirements through the tender price and such like. We have been warning people for two or three years already that the change is coming, and we have told them when it is likely to come into effect.

The Convener: Before we move on to a question from another member, which I think leads on from something that George Mair said, may I clarify something, so that I fully understand it? Is everyone on this panel saying that they would prefer to have the same laws for transport from home to school and transport from school to activity? That appears to be what you all said, and it is important that the committee logs that. Can I take that as an affirmative?

Gary McGowan: Yes.

Richard Lyle: We have 32 councils, of which 18 ensure that seat belts are fitted. That leaves 14, of which six might be doing that. Why are some authorities doing it already? I was a councillor in North Lanarkshire Council for 36 years—very boring—and we brought up the issue several times. We have been talking about having seat belts on school transport for seven, eight or nine years, and we still have not done it, although we are steadily moving towards it. Why have some councils done it while others have not?

Alex Scott: Alan Hutton will correct me if I am wrong but, as of this year, all our authorities will specify seat belts—I see that Alan is nodding. It has been a gradual process over the years. We organise transport for 11 local authorities in our area and, over the years, authorities have variously decided to specify seat belts. We advertise the tender specifications based on what the authorities instruct us to do, but I cannot speak for the councils themselves.

George Mair: I admire Richard Lyle's tenacity, because 36 years as a local councillor is a long time, with many challenges. You have obviously risen to a greater level—

The Convener: Steady on, George.

Richard Lyle: Greater heights. [*Laughter.*] Maybe the council wanted rid of me. I do not know.

George Mair: Richard Lyle asked why some authorities specify seat belts and some do not. There could be a number of factors. I suspect that the additional cost might have been enough to make local authorities think that specifying seat belts would be challenging. In the early days, there were significant issues when councils said, "Yes, we want to do it but we are uncertain about the type of seat belt to use" and got into legal debates about the implications of using the wrong type. It might have looked a bit too difficult.

I have not heard anyone among those who are doing it now being negative about the approach. They might say that they went through some pain to get there, but it is working reasonably well. Over the next few years, we will see the rest of the local authorities pick up the approach and run with it.

Richard Lyle: You referred to coaches, but in the SPT area double-deckers are used—that is what I mostly see serving schools. Is that maybe why there has been resistance? Some of the double-deckers are not six years old; they are a wee bit closer to being 14, 15 or 16 years old.

George Mair: There are technical issues with fitting seat belts on certain types of double-deck bus, particularly in the upper saloon. Some of them have been got round and the required standards have been met; other local authorities have moved from double-decks to high-capacity 70-seat coaches. There are a variety of options at operators' disposal.

At the end of the day, the council will set the spec, and if the operator wants to tender for the contract, he will have to come up with a solution. If that means investing some money in changing the seating or fitting seat belts, that will undoubtedly be reflected in the price that he puts in his tender. I am not sure about the double-decks. Alan Hutton might be able to answer that one, but in the six SPT areas where it has been done, the operators will have met the tender specification. If you do not meet the spec, you do not get the work.

13:00

The Convener: Before we move on to our last question, I am happy to let Alex Scott and Gary McGowan come in briefly, if they have something to add to that.

Alex Scott: I cannot really add anything to that. There should not be an issue if the operator meets the specification and the seat belts are Department for Transport approved.

Gary McGowan: As the chaps have said, a reason for the delay has been the perceived cost of fitting seat belts to certain vehicles. The councils that relied heavily on having a large quantity of double-deckers to move volumes of children might have been concerned about moving away from those vehicles.

In addition, as George Mair said, since 2001, the law has been that all coaches must have seat belts. Therefore, the availability of seat belts in the fleets has been greater. Changes in transport are often incremental and fairly slow moving, so the fitting of seat belts has probably happened over time. On one hand, there was a bit of resistance from the councils to move on; on the other hand,

there are operators with newer fleets or fleets that have seat belts.

The Convener: John Mason has a final question.

John Mason: The financial memorandum tells us that the estimated cost of implementing the bill's proposals is £8.9 million. That is quite a high figure. We are also told that there are only 110 buses in operation that do not have seat belts and that the vast majority of those are in Strathclyde. If I heard the evidence correctly, all the Strathclyde authorities are committed to phasing out those buses. Why do we need to spend any money? Do we need the bill at all? If the bill is necessary, is the £8.9 million an overly generous amount?

The Convener: Would Alex Scott like to answer that? John Mason's argument is that £8.9 million is to be spent on just over 100 buses. Is that correct?

John Mason: Yes, and the vast majority of those buses will not, I think, be operating after the summer.

Alex Scott: That is correct. I am not entirely certain where that figure came from, although I presume that it was produced by Transport Scotland officials. As I have said, bus operators have been aware—probably for some time—that this was the general direction of travel on the seat belts question and, over the years, they have gradually been refreshing their fleets. This year, all our local authorities will specify that seat belts are a requirement.

During the information-gathering exercise, we were asked by civil servants whether we had seen considerably increased tender costs. The cost will vary from area to area, but in the SPT area there are a large number of operators, so the competition is fairly healthy, and there was no noticeable uphill struggle in that regard.

The Convener: George, do you want to justify the figure?

George Mair: I thought the figure to be fairly ambitious, but I note that the allocation period is up to 2031. I have heard that some local authorities have made the change and that it did not turn out to be as costly as they had expected it to be. Other than that comment, I do not want to justify the figure, thank you.

John Mason: That is helpful. We will probably reflect on that point when we question the member or the minister on the bill.

Mike Rumbles: We are talking about a lot of taxpayers' money. What has come out in this morning's evidence is that—unlike what we were led to believe, as the convener mentioned—a lot of local authorities do not have this programme to come. Is it possible to get an update on which

local authorities are—if I can call it this—lagging behind? Is the bill necessary if the councils are signed up to the measure anyway?

Alex Scott: I do not really know, so I would not want to pronounce on that. All our local authorities are acting to comply in advance of legislation—

Mike Rumbles: Are all 32 local authorities in the same position?

Alex Scott: I can only provide information on the 11 local authorities that we deal with.

Mike Rumbles: Are they on track?

Alex Scott: Yes.

Mike Rumbles: It would be helpful if we could find that information.

The Convener: Yes, we will look at that issue. We will try to include information on that point in the briefing for the next evidence session.

Stewart Stevenson: The bill does not apply simply to local authorities. I take it that your evidence has not covered private schools.

Alex Scott: No.

George Mair: One of the officers indicated in their response that the vast majority of private schools are using coaches with seat belts.

Stewart Stevenson: Sure. I am just making the observation that another sector is involved.

The Convener: It is an interesting point on which we might want to seek clarification.

I thank the panellists for coming to give evidence. I apologise again for keeping them waiting.

That concludes today's business. After the recess, we will continue to take evidence on the Seat Belts on School Transport (Scotland) Bill, and we will get an update from the Minister for UK Negotiations on Scotland's Place in Europe, Mike Russell.

Before I close the meeting, on behalf of the committee, I thank Mairi Evans for her work on the committee and wish her well in her move to her new committee. I also thank members for the work that they have put in this morning.

Meeting closed at 13:06.

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