



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 26 April 2017

Session 5



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Pàrlamaid na h-Alba

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RURAL ECONOMY AND CONNECTIVITY COMMITTEE
13th 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)

*John Finnie (Highlands and Islands) (Green)

*Rhoda Grant (Highlands and Islands) (Lab)

*Jamie Greene (West Scotland) (Con)

*Richard Lyle (Uddingston and Bellshill) (SNP)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*John Mason (Glasgow Shettleston) (SNP)

*Mike Rumbles (North East Scotland) (LD)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Anne Cairns (Scottish Government)

Clive Carter (Ofcom Scotland)

Gillian Martin (Aberdeenshire East) (SNP)

Glenn Preston (Ofcom Scotland)

Brendan Rooney (Scottish Government)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
Rural Economy and Connectivity
Committee

Wednesday 26 April 2017

[The Convener opened the meeting at 10:01]

Decision on Taking Business in
Private

The Convener (Edward Mountain): Welcome to the 13th meeting in 2017 of the Rural Economy and Connectivity Committee. I ask everyone to ensure that all mobile phones are switched to silent. No apologies have been received.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take item 6 in private in order to discuss the evidence that it will hear on the Seat Belts on School Transport (Scotland) Bill?

Members *indicated agreement.*

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

10:02

The Convener: Item 2 is consideration of the Seat Belts on School Transport (Scotland) Bill at stage 1. I welcome to the meeting Gillian Martin, who is the member in charge of the bill; and, from the Scottish Government, Brendan Rooney, road safety policy officer, and Annie Cairns, legal adviser.

We will go straight to questions, the first of which will be from the deputy convener, Gail Ross.

Gail Ross (Caithness, Sutherland and Ross) (SNP): Good morning, panel. My first question is for Gillian Martin. Why do you think that we need this bill, and why do you think that legislation will be more effective than non-statutory measures in improving school bus safety?

Gillian Martin (Aberdeenshire East) (SNP): As the committee will know, 18 local authorities have already taken these measures voluntarily in the contracts for their dedicated school transport and are ensuring that that transport has seat belts. I am convinced that those authorities have done the right thing, and I would like all local authorities to take the same measures.

I am a parent of children who go to school in Aberdeenshire, where the council is one of those that have taken the voluntary approach. Most of the parents to whom I have spoken on this matter assume that the same thing is happening across Scotland; of course, that is not the case. Indeed, half the local authorities do not have those measures in place. I want all parents to have the same peace of mind that I have when I send my children to school in knowing that seat belts are available on dedicated school transport.

In short, I am taking this forward as a member's bill because I feel that all local authorities should be doing this to give parents across Scotland peace of mind. I want to ensure that the provision and the peace of mind that I enjoy as a parent in Aberdeenshire are available across the whole of Scotland.

Gail Ross: Can you summarise the consultation that was carried out? How did you address any concerns that were raised?

Gillian Martin: A working group has been in place since 2014, when it was first mooted that powers to put in place such measures might be devolved to the Scottish Parliament. Last year, a public consultation was carried out from March to June. There has been broad support from all quarters for the measures in the bill, but I will pick

up on one particular issue that came out of the working group, which included representatives from local authorities, the bus industry and parent groups. The issue was that bus companies may have to adapt their fleet, retrofit or perhaps provide newer models of buses. We therefore made adjustments to the thrust of the bill around the lead-in time for councils to have in place a requirement on seat belts in their contracts with bus companies. You will notice that the implementation date for primary school buses is earlier than that for secondary schools. One thing that came out of the consultation was that more of the buses that are used for secondary schools currently do not have seat belts on them, so more of a lead-in time is required to allow companies that bid for the contracts to comply.

The Convener: You will be asked further questions on that point about dates.

Gail Ross: As a follow-up, what has the feedback been from bus companies and local authorities? Do they feel that their concerns have been addressed?

Gillian Martin: Yes, very much so. In fact, the Confederation of Passenger Transport, which appeared before the committee a couple of weeks ago, has been hugely helpful and supportive and is fully behind the bill. It has been a great source of advice to me and to the working group in general.

John Finnie (Highlands and Islands) (Green): Some of the respondents to the consultation questioned the safety benefits of the measure, given the low level of incidents and injuries. Are you confident that your proposals are appropriate and proportionate?

Gillian Martin: Yes, I am, and I will tell you why. You are correct that there has been a low level of injuries involving children on buses—I think that, in the past five years, there have been around 42. However, we should bear in mind that half of the local authorities already have seat belts in place. It is possible that the fact that half of dedicated school buses have seat belts has kept the figure quite low. Seat belts are proven to reduce injuries when there is a collision of any type.

It is a relatively low amount of injuries, but a bill should not necessarily be reactive; I would like it to be proactive. I think that 42 injuries is 42 too many, and I would not like to be introducing a bill because we have had a terrible accident on a school bus that had no seat belts, which meant that the injuries were more severe. The bill is a preventative measure. To go back to my earlier answer, it will give peace of mind to many parents as they put their children on school buses. It is an appropriate measure and one that we should take.

John Finnie: At least one council is considering putting in place an upper age limit for buses and coaches, having already put one in place for minibuses. Did you consider that in the course of progressing the bill?

Gillian Martin: We did not want to dictate to local authorities what they should do, other than that they should have seat belts on school buses. There needs to be flexibility in how they do that. I know that the council that you mentioned—I think that it is North Ayrshire Council—has stipulated that it wants only buses that are under a certain age to be used. I applaud that measure, but it might not be suitable for other local authorities. Similarly, other local authorities might have looked at measures such as bus monitors or having closed-circuit television on buses. Councils should be allowed the flexibility to decide what measures they want to put in place in their contracts that may improve safety on buses. We do not want to dictate what those should be. As a member for the Highlands and Islands, you will appreciate that some areas are very different from others and that local authorities should have the flexibility to decide how they want to make the journey to school safer.

John Finnie: Thank you.

Rhoda Grant (Highlands and Islands) (Lab): The bill is about fitting seat belts in buses, but there is nothing in the bill that enforces the wearing of the seat belts. What measures need to be in place to make sure that young people wear their seat belts?

Gillian Martin: I want to mention a couple of things around that. The bill is in keeping with the powers that are devolved to the Scottish Parliament. You are absolutely correct that, in a contract between a local authority and a bus company, there will be a stipulation that a bus that is to be used for dedicated school transport should have seat belts fitted. The powers around road safety in general and the wearing of seat belts in particular are still reserved to Westminster. There is a European Union directive concerning the wearing of seat belts on buses by three to 14-year-olds, but that has not yet been implemented by the United Kingdom Government. The Scottish Government has been discussing it with the UK Government—I know that the committee has had sight of Humza Yousaf's recent correspondence with the UK Government about the situation—but there do not seem to be any imminent plans to implement that directive.

As it stands, the bill cannot be about the wearing of seat belts. However, the Scottish Government will provide guidance to local authorities on how they can ensure, as far as is possible, that young people wear their seat belts on the buses that local authorities run. There are

two precedents. The devolved Assembly in Wales has already put in place the requirement for seat belts in school buses, and we can look at the guidance that was provided to local authorities in Wales. Also, there are the 18 local authorities in Scotland that have already voluntarily insisted on having seat belts on their school buses, and the guidance that they have given to their schools and pupils—there are some educational programmes around that.

We can look at best practice from Wales and from the local authorities that already have seat belts, and the Scottish Government will provide guidance to local authorities on a range of measures that they could choose to put in place to ensure the wearing of seat belts. However, guidance is what it will be—it will not be statutory. It cannot be in the bill because we do not have the power to do that in the Scottish Parliament.

Rhoda Grant: I have two questions that follow on from that. When someone sends their children to school, the school takes over the parental responsibility for the children. The committee wrote to the minister about where that kicked in, and the response came back that that would have to be tried in court, for example if a parent wanted to sue a council that had not insisted that their child wore a seat belt and the child was injured in an accident. It seems inadequate to me that parents would have to take the matter to court. Could the bill have a direction to councils that they would need to take steps to ensure that young people wear seat belts through the Scottish Government's powers to direct councils, rather than under the road safety legislation?

Gillian Martin: There is an absolute duty of care for local authorities to ensure the safety of children when they are in their schools, and when they are on the route to school. There is a duty of care covering an awful lot of safety aspects of a child's experience at school—not just the wearing of seat belts. That duty of care comes through the Education (Scotland) Act 1980 and through the Schools (Safety and Supervision of Pupils) (Scotland) Regulations 1990. We think that there is already enough in those regulations for them to extend to the wearing of seat belts.

Remember that there is a stipulation in the contract that buses should have seat belts. There are two things. There is guidance on the wearing of the seat belts and an educational programme to be undertaken in schools that are not already doing it. There are also duty-of-care expectations on local authorities to address issues where a child might do anything unsafe while they are at school, and the same expectations would apply to this.

10:15

It is not appropriate to be so heavy handed as to have a ministerial intervention because there are procedures already in place. Councils have committees of elected representatives who scrutinise what goes on in our schools. We feel that that is enough. I come back to the fact that the 18 local authorities that already have the scheme have not had any situations where there needed to be any kind of intervention.

Rhoda Grant: I assume that there has been no intervention because accidents involving school buses are relatively rare—that does not mean that there is 100 per cent compliance by pupils on those buses.

Gillian Martin: It comes down to the reserved and devolved powers. There is no law that says that three to 14-year-olds have to wear the seat belts. However, in the local authorities that have already voluntarily stipulated that the buses must have seat belts, we have found that there is absolute buy-in from school pupils, parents, teachers and schools.

I point to the example of Aberdeenshire Council—I know it the best because it looks after my children—where the programme has been very successful, with buy-in from many different parties. Children learn the behaviour in primary school and when they get on to a school bus they put a belt on automatically. That early education and getting into the habit of doing it means that they continue to do so when they go to secondary school.

There has been very good compliance across the 18 local authorities that have already introduced the measure—there have been no problems at all.

Rhoda Grant: Have studies been completed to see what the compliance is, or is that evidence anecdotal?

Gillian Martin: Local authorities and the Convention of Scottish Local Authorities have been involved in the working group. I know that some local authorities have also made submissions to the committee. All the evidence coming from the working group has led us to the conclusion that there has been very strong buy-in in the councils that have taken it up voluntarily.

The Convener: That leads us on neatly to questions from Fulton MacGregor.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Thank you for attending the committee today, Ms Martin. You have talked quite a lot about the local authorities that have already taken up these measures on a voluntary basis, but can you expand on that? Are you able to say more about how it is working in those authorities, particularly in Aberdeenshire Council and North

Lanarkshire Council in my constituency, in comparison with those councils that are not doing it?

Gillian Martin: I cannot talk about every local authority and what it is doing, but—if you forgive me—I can talk about what was done in Aberdeenshire to get schoolchildren to wear the seat belts when the council made the decision to introduce them. There was a programme of education: the local authority gave guidance to the schools and the schools had a programme to educate school pupils about what was expected of them when they were on school transport.

I can pick up on two schools that I know well for family reasons. Two of the academies in Aberdeenshire involved the house captains, year heads and senior pupils in taking on the responsibility for helping to implement the programme among the younger children, who might forget that they had to wear the seat belt. There was a sense of peer management as well as teacher involvement. That was very effective because it allowed the house captains to exercise a bit of responsibility and to keep an eye on the younger children and remind them to put their seat belts on. Other local authorities have taken other measures, but that approach worked very well in Aberdeenshire.

I know that the committee had someone from the Scottish Youth Parliament talking about how seat belts are uncool and that we must ensure that there is consultation with young people as we go forward. I believe that that is key.

I was recently at a primary school in Penicuik, launching the bill, and it was apparent that the kids had complete buy-in. They were looking after each other, making sure that they each put their seat belts on. When I was talking to them about the importance of wearing a seat belt, they were trotting out all the health and safety information that I could ever need. They could be sitting before the committee telling you why it is important to wear a seat belt. That education and peer mentoring works very well. It works better than some other measures, which are more about having adults on the bus ensuring that kids wear their seat belts.

Fulton MacGregor: You have already covered a lot of ground about what local authorities can do and some of the ideas that have been expressed. You have already spoken about bus monitors. Could you expand a wee bit on how that might work in different local authority areas, and on the idea of a parent-pupil charter, which links in to what you have just been saying? I appreciate that you have touched on these subjects already.

Gillian Martin: Thank you for reminding me about the parent-pupil charter, which is something

that Aberdeenshire Council has also done. A lot of schools have a parent-pupil charter on a lot of behavioural issues in general. Having one on the wearing of seat belts is a way to promote it. That also gets parent buy-in.

On monitors, I guess that it comes down to the fact that the member's bill is about having seat belts on school buses. We do not want to dictate to local authorities how they monitor or implement the wearing of seat belts. As you appreciate, the areas of Scotland are very different. Pupils in the Highlands and Islands, for example, might have an extremely long school bus journey. Having a monitor on from half past 5 or 6 o'clock in the morning or whatever means a very long journey for them to get to the furthest away point to start picking up all the children on the way to the school. That might not be appropriate for them. Other local authorities, on the other hand, might think that having a bus monitor is appropriate for their situation.

I do not think that it is a good idea to dictate across the board what local authorities should do. They should make decisions based on their situation, I imagine in consultation with pupils, parents and teachers, who will have their own ideas on how things can best be done.

The Convener: That might be the perfect lead on to Peter Chapman's question.

Peter Chapman (North East Scotland) (Con): It is great to have seat belts fitted, but the issue is getting kids to wear them. We have heard evidence from witnesses that shows—unlike your evidence, Ms Martin—that, although seat belts may be fitted, they are not regularly worn. Who might be liable if a pupil under the age of 14 chose not to wear a seat belt and they were subsequently injured in an accident?

Gillian Martin: I might defer to Anne Cairns on some of the legal points. It is not against the law not to wear seat belts on buses. It is not a legal obligation to do so—such laws do not exist as regards three to 14-year-olds wearing them.

There are certain stipulations, however. For example, a three to 14-year-old cannot be at the same level as the bus driver and not wear a seat belt. They must sit behind the driver. You will also have heard evidence from the Confederation of Passenger Transport about its feelings on the wearing of seat belts and how that is managed by bus drivers. However, there will not be any liability on the bus driver.

Anne Cairns may be able to explain the legal detail around that.

The Convener: Before you come in, Anne, could I ask you to clarify something? There is a difference between the requirement for an under-

14-year-old and the requirement for an over-14-year-old. Perhaps you could highlight that in your answer.

Anne Cairns (Scottish Government): Sure. Over-14-year-olds should wear seat belts if they are fitted. It depends on the vehicle but, generally speaking, in a large bus or coach where seat belts are fitted, an over-14-year-old should wear theirs. There is no requirement for three to 14-year-olds in large buses and coaches to wear seat belts.

To answer the question about liability, broadly speaking, as Ms Martin touched on earlier, the Education (Scotland) Act 1980 provides that, when organising school transport, local authorities must have regard for the safety of children. Ms Martin also mentioned the Schools (Safety and Supervision of Pupils) (Scotland) Regulations 1990. They have a broader application than just to school transport, but, generally speaking, they require that local authorities have regard for the safety of children.

Beyond that, all schools, including independent, grant-aided and local authority schools, are subject to a common-law duty of care. Whether a school or a local authority would be liable would depend very much on the individual circumstances of the case and the accident—for example, on whether dangerous driving was involved. I can point members to the broad legal framework, but the specifics would depend on the individual circumstances.

Peter Chapman: We know that there is concern about kids who are aged under 12 having to use adult seat belts. We are told that, sometimes, that is not appropriate. How are we going to square that circle? We might have no idea what kinds of seat belts will be fitted on buses, yet we will have kids aged from five upwards travelling on them. The buses might have in place seat belts that are not appropriate for a child of that age.

Gillian Martin: I am sure that the committee will have heard the CPT's answers on that. The issue is about primary school-age children, and most primary schools use minibuses. If minibuses have been contracted in by a local authority that is used to transporting primary-age kids, they will have adjustments on seat belts that are appropriate for the ages of the children who will wear them. Brendan Rooney might have some other information on that.

Brendan Rooney (Scottish Government): The working group has been looking at such issues since 2014, so we have had a lot of dialogue on them with councils who have implemented such measures. There are 18 councils that have done so.

For smaller children, measures such as booster seats and adjustable straps are used. There is a

range of mechanisms on the market that will fit smaller children. In practice, a local authority will tell a bus operator what provision it needs, as it signs the contract. If the provision is for smaller children, it will say that the measures need to be appropriate for them, just as it would for children with additional support needs who might be in wheelchairs or have mobility issues and need specialist provision. That already happens in practice. Councils tell companies what they need on buses, so it is not a case of arbitrarily putting the same seat belt on every bus. The bill does not say what particular belt should go in, but flexibility exists and has been used to good effect by councils who already do that.

Peter Chapman: You are saying that, in many cases, if booster seats are required, they are already on the bus.

Brendan Rooney: They are. Booster seats are one option. Also available are adjustable straps that go up and down, which can be adjusted to the height of the child. Councils are well used to putting in place provision for children of different sizes and with different needs.

Gillian Martin: It comes down to what I have talked about a couple of times previously—flexibility and not dictating to local authorities the stipulations that should be put in place. We say that dedicated school transport should have seat belts on it; that is the narrowness of the bill.

During the consultation period and in the working group, we were conscious of the fact that local councils were coming in. COSLA is involved and wants to be able to give councils the flexibility to make their own stipulations around matters such as the types of seat belt, whether transport has CCTV or monitors and how they implement the rules. Some councils might want to stipulate in their contracts for minibuses the types of measure that they want operators to take. There is nothing preventing their doing so. The bill is solely about having seat belts on dedicated school transport—that is the narrowness of it.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I suspect that Anne Cairns might have to answer this question. Do the current construction and use regulations specify the type of seat belt that is required? I ask that because most buses on which I find myself travelling are fitted with lap belts rather than diagonal ones. I wonder what the legal position might be on what is required. For younger children, the difficulty is mainly with the diagonal belt rather than with the lap belt.

10:30

Gillian Martin: One of the first questions was about some of the things that came out in the

consultation and through the working group. It was decided early on that we would not—we could not—stipulate what types of seat belt should be available, for many reasons. You have alluded to one reason for that. Anne, would you like to give some detail on that?

The Convener: Can you keep the technicalities as brief as possible?

Gillian Martin: I would be happy to.

The Convener: We understand the point about the lap belt and the three-point linkage.

Anne Cairns: If you would like specific details, we can write to you in relation to that particular question.

The answer to the question is in the construction and use regulations for road vehicles. The regulations are technical and detailed, and they set out a table of various vehicles including cars and all the different buses and coaches. There are specific rules within the regulations about the kinds of seat belt that can be fitted.

The Convener: If you are happy to send us information on the technicalities in a letter, that would be helpful.

Gillian Martin: The type of belt that should be fitted is also still a reserved issue.

The Convener: Thank you, Gillian. It would be useful if the committee could have a note on that as soon as possible, because we will draft our report shortly.

Richard Lyle (Uddingston and Bellshill) (SNP): Ms Martin, have you discussed how the Scottish Government intends to promote seat belt use among pupils prior to the enactment of your bill?

Gillian Martin: There are two parts to that. First, there is how I am personally going to promote the wearing of seat belts, as I am the member in charge of the bill. Secondly, there is what the Scottish Government will do prior to implementation.

In introducing my member's bill, I am trying to get as much press and buy-in as possible. You must remember that the idea has been in the ether since about 2014, so there has already been quite a lot of publicity around it. If my bill is successful, we will have until 2018 to get people used to the idea that the legislation will be in place.

We do not want too much publicity about the bill too early, because people would be fed up with it by the time that it came to implementation. There will be guidance from the Scottish Government, and the working group will be in existence throughout the entire process as well.

Richard Lyle: You have partly answered my next question. The committee has been told that pupils need a greater awareness of the safety benefits of wearing a seat belt and should be involved in the development of education programmes and guidance. Do you consider that to be important?

Gillian Martin: I think that it is highly important. One of the reasons why I wanted to introduce the bill was to increase awareness among young people of the importance of wearing a seat belt. If young people are not involved in the process of education about that, the buy-in will not happen. I have alluded to the children in Penicuik and Aberdeenshire. For them, it is almost second nature to wear a seat belt when they go on a school bus, because those schools and local authorities have involved young people in the whole process.

Richard Lyle: In my local area, North Lanarkshire, most buses that are used for secondary schools are double-decker buses, and some of them are quite old. Some councils have found that removing double-decker buses has improved behaviour on buses. Will you stipulate in the bill the types of bus that are to be used for dedicated school transport? You have said that you do not want to tell councils what to do, but will you put in a condition to remove double-decker buses?

Gillian Martin: No, we will not. As you have just said, we want to give local authorities the flexibility to decide what school transport is right for them. We are simply stipulating that all buses that are dedicated school transport should have seat belts on them, whether they are double-deckers or otherwise.

Richard Lyle: Thank you.

Mike Rumbles (North East Scotland) (LD): My question might be better directed at Brendan Rooney, from the Scottish Government. We keep hearing that 18 councils are making seat belt provision a requirement in their contracts, on a voluntary basis, but a witness from Strathclyde Partnership for Transport told us last month that far more councils are doing that. To date, how many of the 32 councils do it on a voluntary basis, through their contracts?

Brendan Rooney: The figures that are before the committee were arrived at through local government, in an exercise in collaboration with the Association of Transport Co-ordinating Officers. A representative of ATCO appeared before you, along with SPT, at the meeting that you are talking about.

Eighteen local authorities are doing it on all contracts and a further six do it on some contracts—for example, for primary school

provision, for additional support needs provision or on certain routes. We conducted the exercise in late 2016 and early 2017 and got the returns from local government—you will appreciate that we are at the mercy of the information that we receive from local government. Those are the latest figures.

SPT contracts for a number of local authorities. It is in a transition phase of moving from nought to contracting, so I am not sure whether there is a slightly shifting picture in that regard.

Mike Rumbles: That brings me to the nub of the question. By the time the bill gets through the Parliament—if there are councils that are not doing what we want them to do, the bill should get through the Parliament—will all the councils be doing it anyway?

Brendan Rooney: For a number of years, the powers have been devolved via a section 30 order. The transition has been taking place since 2014, when ministers made a public announcement that measures would be taken forward at some point in the future, and the Government has been working with local government to move forward on that basis. It might well be that councils will be doing it—I suppose that it is a good thing that they are getting ready to meet the new legislative requirement. However, it is not the case that a new approach will come in in 2018; a transition period has been going on for a number of years.

Mike Rumbles: Do you expect councils to have completed the work by the time the bill finishes going through the Parliament?

Brendan Rooney: I cannot say, as it is hypothetical. A number of councils are moving towards that.

Gillian Martin: Brendan Rooney is absolutely right in saying that none of this is coming out of the blue for the bus industry or for local authorities. The possibility of doing what we are doing was mooted in 2014, when the powers were in place, and it has been prudent of some local authorities to start to implement the approach. Will it all be done by the time the bill is passed? It is difficult to say, but I think that it is highly unlikely.

The Convener: It is partly supposition. One would hope that the bill will be overtaken by events, but it is a catch-all.

Jamie Greene (West Scotland) (Con): It has been fascinating to hear evidence on the issue over the past few weeks. I am not a parent, so I do not send kids off to school on a bus in the morning, but, if I did, I would want people to ensure that they got to school and home again safely. I commend Gillian Martin for what she is trying to achieve.

I have questions to do with enforcement. There are two parts to enforcement. If the bill is passed and the deadline for implementation has been reached, what measures will the Scottish Government take to ensure that councils comply with the legislation? How will the situation be monitored to ensure that contracts comply in the future? What will happen if bus companies do not comply with the terms of the contracts? Will there be any recourse to the Scottish Government in financial or other terms?

The other side of enforcement is about enforcing the wearing of seat belts, which I appreciate is perhaps outside the remit of the bill and the powers of this Parliament. The bill does not contain enforcement provisions of great note. How might it be enforced?

Gillian Martin: On the issue of non-compliance, in the case of a contract between a local authority and a bus company that says that the buses must have seat belts, it will all depend on how the local authority monitors the situation. For example, some authorities will carry out inspections. The point is that, in all such contracts, local authorities will have procedures in place to ensure that their stipulations are being adhered to, and these contracts will be no different. If a bus company were picking up schoolchildren in dedicated school transport that had no seat belts, that would be a breach of contract and the council would be able to take action, as it would with any such breach. Of course, a council itself is scrutinised by its councillors and, if it is found to be deliberately not contracting buses with seat belts, it will be answerable for that to its own committees.

I suppose that those are two layers of dealing with non-compliance. There is, of course, a third layer: if a council is found to be breaking any law—as this would be—that kind of non-compliance issue can be taken to the Scottish Public Services Ombudsman. I can bring in Anne Cairns to give you more detail on that.

I suspect that you may have further questions about the wearing of seat belts. As you have said, that is a reserved matter and we have no power over it, although I would suggest that it comes down to educating children on the importance of wearing seat belts. It is always better to get buy-in and to ensure that people do these things from habit rather than from fear of breaking the law. The voluntary approach has been largely successful; indeed, it has been very successful in Wales. The Welsh have the power to seek legal recourse on issues of non-compliance with regard to councils ensuring that buses have seat belts, but, although that power has been in place for a number of years, it has not been used once. I hope that the situation will be no different in Scotland.

If you want any more legal detail, I can ask Anne Cairns to respond.

Jamie Greene: You mentioned the three layers of recourse, the third of which was the ombudsman. Would the Scottish Government itself have any recourse through, say, being able to withhold funding from any council that was found to be non-compliant or that was not applying the law?

Gillian Martin: I ask Anne Cairns to give you more detail on that.

Anne Cairns: Are you asking whether the local authority's funding would be affected?

Jamie Greene: I am asking whether that might be one way of seeking recourse. There might well be others.

Anne Cairns: I do not think that that sort of thing could be done.

The Convener: As a follow-up, the deputy convener would like to ask a question about the practicalities of seat belts.

Gail Ross: Does the bill contain any proposals on the servicing of seat belts to ensure that they work at all times?

Gillian Martin: Anything to do with the safety of a bus—or, indeed, transport in general—comes under—*[Interruption.]* I am trying to remember the abbreviation. Is it DVL or something?

Brendan Rooney: As with cars or, indeed, any vehicle, buses have annual roadworthiness checks, and the UK-wide legal framework in that respect is overseen by the Driver and Vehicle Standards Agency. The bill will not affect that, because the powers are reserved, but any vehicle on a road is regulated by those roadworthiness checks. That means that buses in operation will have to be checked annually, and internal features such as seat belts will be looked at as part of what you might call a bus MOT.

Gail Ross: Thanks.

The Convener: I believe that the next question is mine. From a lot of the evidence that we have heard, it seems that parents actually believe that children wear seat belts on school buses, and some have been surprised that the bill has had to be introduced. What has surprised me—and, indeed, some parents—is that, although the bill seeks to regulate buses that take children to and from school, it does not do the same for those that take children on trips in the course of the day. Why have those buses been excluded? That seems like a serious omission, and people do not seem to understand it.

10:45

Gillian Martin: I know that that issue has been raised with the committee. I guess that that shows the power of committees, and I want to thank the committee for highlighting an issue that I should say we have looked at.

Given that the provision of seat belts on buses that are used for school trips featured in the committee's evidence taking, we are looking into whether we can draft an amendment around that. There are already strict regulations around school trips; health and safety assessments have to be carried out for the trips, which include the issue of seat belts on the buses that are used.

The bill does not cover that, because we wanted it to cover contracts between local authorities and the bus operators that provide buses for transport to and from school. The difference with school trips is that they are organised by individual schools. We are reaching out to the Association of Headteachers and Deputies in Scotland, teachers unions and schools to gauge whether they would like school trips to be included in the bill, because that would affect the workload of individual schools. We are also engaging with Education Scotland on that. The issue might be added into the inspection process so that when the inspectors look at health and safety in schools, they ask whether there are seat belts on the buses used for school trips.

I thank the committee for raising the issue. We are looking into it and we are engaging with a lot of interested parties on it. We will feed back to the committee what we hear from them. We might draft an amendment to cover school trips.

The Convener: Another anomaly is that bus services that are used to transport not only children but fare-paying passengers who are not going to school seem to be exempt, too. I cannot speak for the committee, but it seems to me that that is another serious omission that parents would expect the bill to cover. Will you address that?

Gillian Martin: It relates to the flexibility of local authorities and what they deem the most appropriate transport arrangements for them, given their locality. A lot of urban local authorities will use service buses and will have an arrangement with the companies that run them that schoolchildren can access them to go to school.

For a number of reasons, we do not want to tell local authorities that they cannot use service buses and that they must have dedicated school transport. The first reason is congestion. In urban areas there are a lot of buses already on the roads. Adding dedicated school transport into the

mix would increase congestion and have an environmental impact.

There is nothing to stop local authorities going down the dedicated school transport route, but we do not want to tell them that they cannot use service buses, because that arrangement might suit them.

Brendan Rooney: The definition of “dedicated school transport service” in the bill was arrived at after consultation with those who are involved in delivery on the ground. It is about the general national picture and what is workable and straightforward for councils to interpret. There are nuanced arrangements, particularly in more remote areas where there might be an adult or two getting on a school bus. Stakeholders’ strong view was that the definition should be workable and easy to interpret. It was framed to cover vehicles that are used for the sole purpose of taking children to and from school, which is the working definition that a lot of people in councils and the bus industry are used to. Some nuanced arrangements can be tricky, but the bill has been framed to capture the general picture across the country.

Gillian Martin: Including the other buses would have a large financial implication.

The Convener: Having heard what you have said, I accept the position on shared transport, but as a parent—albeit that my children are now beyond school age—I would find it surprising if children were asked to go on a bus without seat belts as part of a school trip. I ask you to look at that again, as you suggested that you would.

Gillian Martin: Some local authorities might take that decision.

Jamie Greene: On the technicalities of what has been said, I appreciate that the purpose of the bill is to manage the relationship between local authorities and the bus providers that they contract with—that makes sense—and that school trips during the day normally involve separate individual contracts between a school and a bus operator. The two are very separate contractual arrangements.

The feedback from our evidence sessions was that, when children are picked up from school, the parents’ expectation is that the duty of care is with the school, not with the local authority until they reach the school gates and with the school then taking over. There is a lack of understanding of where the duty of care ends and starts. The feedback was that parents want their kids to leave the house safely and arrive safely, regardless of whether they are commuting to the school or going off on a separate trip. Also, trips tend to be staffed and monitored; parents or teachers are more likely

to be on the bus during a trip, and less likely to be there on a commute.

Is there any explanation on the duty of care issue? I am not sure where it starts and stops.

Gillian Martin: You are right about the lack of understanding of where the duty of care lies. The local authority takes that very seriously. We have mentioned that the Schools (Safety and Supervision of Pupils) (Scotland) Regulations 1990 are very stringent and put a duty of care on the local authority that contracts the dedicated school transport to get children to and from school. That adds an extra layer of safety to the provision.

There is a difference between that provision and school trips, which are organised by the schools. As you rightly point out, teachers, and some parents, tend to be on the buses for school trips.

I appreciate what you say about service buses. In consultation with working group partners, it came out that local authorities would find it quite restrictive not to use service buses, particularly in the financial climate. I return to the congestion issue; we do not want to add more buses to urban streets.

Peter Chapman: You mentioned that the proposal is for the bill to come into effect for primary school kids from the beginning of school year 2018 and for secondary school kids from 2021. How did you arrive at those dates? Are you satisfied that they are the most reasonably practical dates to kick this off?

Gillian Martin: The dates were arrived at in consultation between the working group and COSLA, local authorities and bus companies. Richard Lyle alluded to one of the reasons why there is a difference between the two dates. In our assessment of the scale of the task of providing seat belts on buses, possibly by retrofitting, there is more of a task for secondary school buses; for example, more double deckers are used for secondary schools. Primary schools tend to use more minibuses, which already have seat belts.

At the start of the session, I mentioned the time that will be needed for bus companies and local authorities to get up to speed, so that the task is not onerous. That is why there are two implementation dates.

Peter Chapman: The lead-in period seems fairly long—2021 is four years away. However, if that is the general consensus, I accept it.

Gillian Martin: It is a case of making implementation workable. Nothing says that it cannot be incremental; it will not all happen on those dates—they are just the dates by which the provision has to be made, without putting too much unreasonable pressure on local authorities and bus companies to comply.

The Convener: That leads neatly to the issue that John Mason will raise.

John Mason (Glasgow Shettleston) (SNP): If you have looked at any of the previous evidence, you will have seen that I have been asking about the money side. The bill is somewhat unusual: most committees that I have been on previously have argued that not nearly enough money has been proposed for such bills by the Government, or by the member who has introduced the bill, and that there should be more. With this bill, it is the other way round, in a sense, because £8.9 million seems quite a high figure, given that we are told that only 110 buses are operating currently without seat belts and that, from what we have heard, that number appears to be falling. Dividing the £8.9 million by 110 gives a figure of £81,000 per bus. Perhaps you can give us a few comments on the financial side.

Gillian Martin: Your approach does not surprise me, because you are an accountant by trade. I will give you the headlines on the figure, but Brendan Rooney will provide more detail on how it was worked out.

We cannot simply divide £8.9 million by 110 to get a figure for each bus, because the money is expected to be spread over a 14-year period. In addition, since 2014, a lot of local authorities have voluntarily installed seat belts in buses, so the money will go to them as well and not just to the councils that have not done that voluntarily but will do it from now on. The 14-year period covers a two-contract cycle of contracts being negotiated with local authorities and arrangements being made between them and bus companies.

Brendan Rooney: As Ms Martin said, the Government accepts that the figure should cover a period beginning in 2014, when the intention to legislate on the matter was announced. The money therefore covers not just the 110 buses that are currently without seat belts, but the period that predates the legislation. The amount of money involved annually will start at about £200,000 and will rise to about £800,000, over a number of local authorities.

There is an established mechanism by which the Scottish Government and local government work out how a new statutory obligation will fall on local government. That process was used to arrive at the current figure. Independent consultants looked at the issue back in 2013 and priced it up, and the current figure is within the window that was expected from that forecast. However, it is fair to say that there are no individual breakdowns of binary units. The analysis has not been done on a cost-per-bus basis, given that there are different levels of competition in different areas and that there might be more or fewer bus operators; in

some areas it might cost more and in other areas it might cost less.

In essence, the figures that have been arrived at were worked out in consultation with local government and were based on forecasts by those who contract delivery.

John Mason: I am not surprised that local government would like more money and I accept that the member and the Government have been very generous to local government on the financing. However, the majority of local authorities—18—have already introduced seat belts and I presume that that was done at minimal cost. I also presume that, just as buses' emission targets are improving, the standard of seats is improving and seat belts are being put in as standard now, unlike previously. If 18 local authorities have done that for nothing, why should we give them any money and why should we give any money to the other 14 authorities?

The Convener: John Finnie has previously asked a question on that, so I will bring him in before the witnesses answer John Mason's question.

John Finnie: My question, which was along the lines of John Mason's, was about whether we are rewarding failure to act. Further, who is actually getting the money? The local authorities are contracting with bus operators that are likely to be private concerns. I appreciate that the money will be spread over 14 years, but who will be the recipients?

Gillian Martin: I might bring in Brendan Rooney again to talk about the process. John Finnie asked whether we are rewarding failure, but we are doing the opposite of that. That is why we are giving money to the local authorities that have voluntarily introduced seat belts since 2014, which was not done at zero cost to them.

Negotiations will take place between local authorities, COSLA and the Government on who gets what money and why. I cannot comment on that as those negotiations have not happened yet and I will not be involved in them. However, it is important to say that both COSLA and the Scottish Government have agreed that £8.9 million is the right figure and they are satisfied that it is appropriate.

11:00

The Convener: May I push you a bit? John Finnie asked who will get the money, and I am not sure that I heard an answer to that question. Perhaps Brendan Rooney can clarify that.

Brendan Rooney: Given the way in which local government is financed, it will be part of the block grant. The money will go to local government

because the increased contract costs will fall on local government.

The Convener: The money will go both to those areas that have complied with the legislation and those that have not complied with it.

Brendan Rooney: Exactly. It will be distributed across all local authorities. A certain amount will go to those that have already complied with the legislation and to those that have not.

John Finnie: Is there an expectation that any bus operator that, thus far, has not seen fit to install seat belts will get public money to install them? If so, why?

Gillian Martin: Schools in some local authority areas might be served by a bus company that has only one or two buses but which has provided the service for a long time, and the company might be required to bid a higher rate in order to comply with the legislation. That may be the case particularly in areas where there is not a lot of competition, availability or choice of bus companies. I hope that that answers your question slightly.

John Finnie: It does—slightly. However, I cannot envisage that there will be any impetus for bus companies to install seat belts if there is the prospect of their getting public money with which to do that.

Gillian Martin: Perhaps Brendan Rooney can help me out. The reason that I cannot answer your question fully is that there will be negotiations involving the local authorities, which will assess the companies that bid for the contracts and the increase in the bids that may be predicted. Local authorities will have those negotiations as part of the settlement.

Brendan Rooney: When a council puts any stipulation in a contract—such as that there must be seat belts or closed-circuit television, or that the vehicles must be of a certain age or standard—that affects the price of the contract. At the moment, public money is going from councils to the bus industry because of changing stipulations in contracts. Because a new statutory obligation is being placed on councils, the Government is using the established mechanism of costing what central Government funding will be required to make up the shortfall.

The Convener: John Finnie is still looking perplexed. Mike Rumbles has a follow-on question that will perhaps clarify the matter.

Mike Rumbles: I am genuinely puzzled by this. I cannot understand why £9 million of public money will be given to private contractors to upgrade their buses with seat belts when it will be a legal requirement that they do so in order to meet the terms of the contract. When a council

puts a contract out to tender, the individual companies have to meet the requirements of the contract. It is up to them to meet those requirements—it cannot possibly be up to the Scottish Government to give local authorities £9 million to give to the individual bidders for the contracts.

Gillian Martin: Perhaps I can help out. Whenever there are changes to any legislation, a business impact assessment is carried out. It is only right and proper that that is done in this case, given that we are putting in place a stipulation that could affect some businesses. We have to take that into account when we undertake our cost analysis.

As Brendan Rooney mentioned, an independent cost analysis was undertaken in 2013, and we did not leave it at that—we undertook another cost analysis last year. Those analyses largely came up with the same figure. COSLA has agreed the cost analysis and the Scottish Government has agreed that it is fair and that, over the 14-year period, it is essential that that money is put aside in case there are increased costs for businesses. That is particularly important for areas where there is not a lot of competition for bus services.

If we had not done the cost analysis, we would be in a situation where there might be local authorities without the funds to be able to comply and to still provide dedicated school transport.

Mike Rumbles: That is why I do not understand—

The Convener: I do not think that John Finnie or Mike Rumbles have had the answers that they were looking for. Mike, as we are running short of time, could you put your and John's points and allow them to be answered?

Mike Rumbles: It is a fundamental point. I do not understand, because most local authorities have done it already. The contracts are out, bids have been made and the contracts have been given. Why are we giving millions of pounds of public money to the local authorities for something that has already happened?

The Convener: Do you want to add to that, John?

John Finnie: I am very keen to see the maximum protection for all bus passengers, but I am also keen for public money to be properly expended.

I am trying to imagine that Richard Lyle and I are an individual bus operator in a rural area. We would say, "We're not getting seat belts installed because they're going to pay for them anyway." That is regardless of whether a bus operator is a single operator and whether there are challenges for school transport. I represent an area where

there are significant challenges. I do not get that part of it.

Gillian Martin: Perhaps I did not answer as clearly as I could have done your earlier point about rewarding failure. We do not think that it should just be the local authorities that have not implemented the provision that get the funding to do it. There are local authorities that have done it voluntarily and have had increased costs as a result. The money will be spread across the local authorities that have already implemented the measure to make up for the increased costs that they have had to bear since 2014 as a result of their voluntary action. The money will not just go to the local authorities that have not done it.

The Convener: I am not sure that anyone has received the answer that we need on that, but we will move to the final question before we get too embroiled in whether Finnie and Lyle Transport is the right way forward.

John Finnie: It is a workers' co-operative, of course. [*Laughter.*]

John Mason: My understanding is that, if the local authorities do not have to pay any more for a contract, they will be able to keep the money, which sounds like a good thing. However, my question is about whether there is enough money. What about the cost of publicity, guidance, information packs and so on? Is that included in the costs in the financial memorandum?

Gillian Martin: No, it is not. Those costs will be borne by the Scottish Government. Brendan Rooney will be involved with providing the guidance, so perhaps he can give us some more detail. The guidance costs will be met from the safety budget and Road Safety Scotland—part of Transport Scotland—has a budget available for school safety in general. The seat belts guidance will be part of that.

John Mason: So it will just be taken from existing budgets and there will not be any extra costs as a result of the legislation.

Brendan Rooney: That is correct. It will be absorbed within road safety campaign education and awareness-raising budgets that are already in place in the Government.

John Mason: That is fine. Thank you.

The Convener: That concludes this morning's session and our evidence on the bill at stage 1. I thank the panel for coming. Gillian, thank you for your time—I know that you have pushed the bill very hard. Anne and Brendan, we have seen you before so I thank you for coming back again.

11:08

Meeting suspended.

11:13

On resuming—

Ofcom

The Convener: We come to item 3 on our agenda. The Scottish Parliament has a formal consultative role in setting strategic priorities for Ofcom—members will recall that in September 2016 the committee considered a memorandum of understanding that covered that. I am pleased to welcome Glenn Preston, who is the director of Ofcom in Scotland, and Clive Carter, who is Ofcom's director of strategy.

Glenn Preston would like to make an opening statement before we move to questions. I ask you to keep it as brief as possible, because we have lots of questions.

Glenn Preston (Ofcom Scotland): Thank you. I will be very brief: I will outline some of the key points from the annual plan and cover some areas that I expect the committee will want to discuss.

As the convener said, I am joined by Ofcom's director of strategy, Clive Carter. He is quite literally the man with the plan: he was responsible for its publication at the end of March, and for the preceding consultation that we went through at the tail end of last year and the first two or three months of this year. We had an excellent event at our Edinburgh office, with well over 50 attendees from a range of sectors that are either involved with, or are impacted by, the communications sector. That was important in informing the eventual annual plan.

11:15

I will focus on two or three points in the plan. Our overarching goals—to promote competition and ensure that markets work effectively for customers by securing standards, improving quality and protecting consumers from harm—are the context in which the annual plan is written. It is worth highlighting specific areas that might well come up in further discussion. The first is changes in the market that we regulate. The plan recognises the increasingly central nature of communications to United Kingdom consumers and businesses, the fast-moving and innovative nature of the sector, and concerns about availability and connection quality. I will come back to that point in the Scottish context. The plan highlights convergence and the increasing use of internet-delivered over-the-top services for media in particular, and it touches on changes in regulation with the passage of the UK Digital Economy Bill, which as we speak is going kind of ping-pong through the Houses of Parliament. Among other things, the bill contains provisions

relating to Ofcom priorities on switching, and deals with issues such as automatic compensation.

There are in the plan a couple of specific goals that are worth drawing to the committee's attention. One is about Ofcom implementing conclusions from our digital communications review, including monitoring the implementation and effectiveness of BT's voluntary notification to strengthen Openreach's independence, which I know has been of interest to the committee in the past. The plan also covers integration of our new BBC responsibilities and the awarding of more mobile spectrum in order to meet the growing demand for mobile services and capacity.

The plan also focuses on our delivery across the UK. We are committed to delivering for citizen consumers across all the nations, including Scotland. It is worth saying that we expect in the next two to three weeks to advertise for the Ofcom board member for Scotland, which is a feature of the MOU that the convener mentioned. We are giving effect to the MOU through our engagement with this committee and with the Culture, Tourism, Europe and External Relations Committee in informal and formal settings, as well as through regular engagement with the Scottish Government and public bodies including the Scottish Futures Trust.

I will quickly go back to the challenges that are faced on connectivity. The plan says explicitly that we recognise the challenge of providing fixed broadband, mobile and postal services that meet the needs of consumers in rural and remote areas in Scotland. We accept that although there have been improvements in mobile and broadband connectivity in recent years, lack of competition and absence of disruptive market forces in those places can mean that the usual regulatory levers are not always effective at delivering good outcomes. We are clear about that in the plan. Last week, I was fortunate to spend a couple of days in Orkney and Shetland discussing those issues in digital forums that were organised by Alistair Carmichael MP and which were attended by MSPs Liam McArthur and Tavish Scott. Hearing directly from local authorities, community councils, businesses and residents about their lived experience has been hugely helpful to us in drawing up the plan and implementing it. It helps us to understand how to use regulatory powers to be as responsive as we can to citizen consumers in such places.

I will close. We look forward to discussion with the committee.

The Convener: Thank you. The first question is from our deputy convener, Gail Ross.

Gail Ross: Good morning, panel, and thank you for coming. I am glad that you touched on the rural

aspect of the annual plan. We have some very remote and rural areas in Scotland, and a number of members here, including me, represent regions and constituencies that include such areas. You touched on this slightly, but can you go into more detail on what aspects of the annual plan will be of most importance in improving broadband and mobile access all over Scotland—especially rural Scotland?

The Convener: Just before witnesses do that, I point out that it will be easier if you try to catch my eye to see who wants to lead off, and then I will bring you in. Who would like to go on that question?

Clive Carter (Ofcom Scotland): There are a number of elements. As you know, Ofcom's strategy covers the entire UK, but there is increasing realisation that a single strategy will not deliver to consumers in all circumstances and locations.

It is somewhat trite to say it, but competition brings benefits. We have a set of activities that will bring benefits to rural consumers around competition and enabling new investments by new third parties in order to bring more broadband and better services to constituents and individuals in rural locations. Specifically, we have activities around duct and pole access, which we hope will lower the costs for community broadband services to roll out fibre to local communities, for example. Such initiatives help people to build networks.

However, commercial competitive dynamics will not work in all circumstances. As a result, we have focused on two major areas in our annual plan. The first is the role that we can play in a universal service obligation for broadband. To be clear, I note that, at present, that is a decision for the UK Government, but we have provided advice to it on the potential costs of approaches to delivering universal broadband across the UK, including in the nations. Once decisions are taken, we will have a role in implementing them—in designing a fund and, potentially, in setting the specifications for the service.

We are also focusing increasingly on what we can do in mobile areas and how far various policy options within mobile can address local concerns. That includes some far-reaching and fundamental considerations, including new coverage obligations on future spectrum awards, where we are looking to trade off, potentially, the value of the spectrum against an enhanced coverage obligation, thus extending that reach further. We are looking at how we might develop such coverage obligations—not just blunt instruments that look at geographic coverage, but targeted interventions that ask where people need, and will benefit from, mobile services, and how we take account of that. Increasingly, that will include

things such as railway and road transport as well as isolated and hard-to-reach communities.

That is the macro picture, but we also have a set of micro initiatives. Using mobile repeaters, we can take services from Vodafone and so on and rebroadcast them for communities. At present, they are not allowed, but we are looking to allow those services where they will not create interference for other users, so that where communities are in a black hole—in a dip or behind a hill; places where there is a reason why mobile network operators cannot get there, at present—communities or individuals who are so minded can be empowered to take action themselves.

I would not say that any one of those individual solutions will work for everyone—there will always be hard to reach areas—so our final element is engagement with the UK Government and the devolved Administrations, including the Scottish Government, about the best way to target public procurement, intervention and money in order to extend the reach of services. For the UK Government, that has been in the broadband delivery UK programme, and for the Scottish Government, it has been in the reaching 100 per cent—R100—programme. We are supporting a set of activities. We are not the decision maker in the programmes because the matter is public policy, but we have the expertise and ability to help policy makers to make decisions for the benefit of consumers.

Gail Ross: I am interested in the point about a universal service obligation. Obviously, that is something that we would welcome. Are you allowed to tell us how much you have estimated it will cost?

Clive Carter: I am. We gave the Government advice at UK level and nations level. To give a sense of the quantum for the UK, we costed up three options—10 megabits per second; 10Mbps with an enhanced upstream of 1Mbps, which is a sort of better current generation broadband; and a superfast option of 30Mbps downstream and 6Mbps upstream. In terms of broad numbers—cost modelling always involves putting a finger in the air and making an educated guess, despite the amount of detail that we go into—we are talking about a figure for the whole UK of between just over £1 billion and £2 billion for the superfast option. Within Scotland, which has a subset of the homes that cannot get 10Mbps today, we are talking about cost in the order of £100 million-ish to £250 million-ish. That would address in Scotland 8 per cent of homes that cannot get 10Mbps today, rising to 17 per cent of homes that cannot get superfast broadband.

The word of caution on those estimates is that they reflect the position today. The BDUK

programme continues to be rolled out, which will extend coverage further, and the Scottish Government's R100 programme has not been taken into account because we do not yet know how it will intersect with the universal service obligation. Nevertheless, we wanted to give policy makers a sense of the total at-risk number and how much the work might cost. I think it is always helpful to be conservative in such costings and to make sure that people understand what they mean.

I also think that it is important to convert the figures into a price per customer. If we take the total UK figures—I think it would be similar within each of the nations—the simplest intervention would add £11 per customer per year to the bill, and the superfast service would add £20 per customer per year, if the costs were passed on entirely. They may not be passed on entirely—the industry may absorb some of the costs through reductions in profits. However, in taking a cautious approach, it is worth understanding what that could mean for energy bills—especially when we are thinking about the most vulnerable consumers, who have the lowest incomes.

Glenn Preston: I have a supplementary point to make on that. Clive Carter mentioned the intersection between the UK universal service obligation and the Scottish Government's R100 programme. We have had a more formal role in providing technical advice to the UK Government on its USO. We do not have the same formal role in relation to the Scottish Government's R100 programme, but we are committed to working with it. We know that the Scottish Government is due, in quarter 2 of 2017—so, probably in the next couple of months—to produce its consultation on the intervention areas for R100 and the range of technical options that might be necessary to reach its public policy goal. We have said that we are very happy to engage to provide technical input, as we have done for the UK Government.

Gail Ross: You touched on mobile signal. In many part of my constituency and in other remote and rural areas, mobile signal is patchy or non-existent. Are there any plans for a universal service obligation for mobile signal?

Clive Carter: That is more challenging for a range of reasons. The simplest reason—which the strategy team in which I work does not like to be constrained by—is that the European framework, from which our powers and the Government's powers to set a universal service obligation extend, does not cover mobile, although it covers broadband: under the current European framework, there is no ability to have a formal universal service obligation in mobile. Of course, it is possible to design something that looks like a universal service obligation and to take action and

implement it nationally. It is fair to ask whether there is an equivalent measure that could be supported by a pot of money. We are not quite there yet, because there is more that could be done around other policy options.

We are actively exploring coverage obligations in the forthcoming auctions for the 2.3 GHz and 3.4 GHz spectrums and thinking about whether those obligations can be designed in a way that would extend coverage—although that would, potentially, be at the expense of auction receipts. We took that approach in the last 4G auction, in which O2 picked up a licence that includes a coverage obligation of 98 per cent indoor coverage of households, and in which it paid less for that spectrum block. It is interesting that, as a result, the other operators are now matching that coverage, because of the competitive dynamics of their not wanting to have a network that is perceived as being worse than O2's.

We are looking at doing the same in the 2.3 GHz and 3.4 GHz spectrum auctions, but more important is that we have a 700 MHz auction coming up in 2018 or 2019, with the spectrum being available for use in 2020. That spectrum is very well placed for coverage; it reaches quite far so you can get quite a big bang for your coverage buck in terms of the number of masts built.

It would be worth exploring that, before we went any further; however, it is necessary to go further. We estimate that about 10 per cent of the UK geographic landmass has no mobile signal whatsoever. I do not believe that it will be economic for anyone to deploy a network in those areas, even with an obligation on their licence, because it will be very expensive for very little revenue. That is the point on which we need to engage with the devolved Administrations and the UK Government, and ask what intersection of public procurement and activities could help to extend coverage. That might be partly about enhancing what commercial operators can do by reducing cost and increasing mast heights. There is also a set of practical activities that could be done—for example, more network and site sharing.

At the moment, Ofcom is doing work on the electronics communications code about how easy it is for operators to access land and buildings to site masts. That goes through to much more direct public procurement that looks at building new sites and masts. My one word of caution is that there was a mobile infrastructure programme that looked to do that, which really struggled. That was not because of want of money but because of the practical difficulties of finding places to put masts to extend coverage.

The Convener: Can I just clarify what you said, Glenn? Was it £100 million in Scotland for the last 5 per cent?

Glenn Preston: We had a range and the numbers both had “-ish” at the end of them. We said £100 million-ish to £250 million-ish, I think.

The Convener: It slightly concerns me that Highlands and Islands Enterprise talked about £300 million to £400 million-ish for doing the Highlands. That seems to be at odds with what you say. Will you clarify that so that I can understand it?

11:30

Clive Carter: I do not know the basis for the HIE estimates. We published a document in December in which we considered the lowest-cost technical options of upgrading broadband infrastructure to deliver either 10Mbps downstream and 1Mbps upstream or superfast—30Mbps—and those figures are the broad range of costs that we got. The lowest cost was for upgrading the existing copper infrastructure using, for example, technologies such as long-reach VDSL—very-high-bit-rate digital subscriber line. That cost included some fibre to premises, but fibre to premises was kept as a last resort because it is the most expensive technical option to build. In the report, we include the balance and mix of technologies and how they change as we increase the requirement from 10Mbps to 30Mbps.

The Convener: Stewart Stevenson and Richard Lyle want to come in. We are on question 1 and we have a lengthy set of questions, which reflects the importance of the subject, so I will take their questions together.

Stewart Stevenson: My question is simple. We are talking about costs. When we achieve universal service, will benefits be derived from our having no longer to support alternative ways of reaching some people to do certain things?

Richard Lyle: My heart really bleeds for poor phone operators that are making a fortune from users. They should spend the money to provide the service for the last 5 per cent. Will the witnesses tell me how much the United Kingdom Government has made from auctioning the services over the past five or 10 years?

The Convener: The answer to that will not be simple, but I ask the witnesses to keep the answers to those questions as brief as possible. Perhaps you should deal first with Stewart Stevenson's question, then Richard Lyle's.

Clive Carter: There most certainly will be benefits. The challenge is not only about universal availability; it is also about universal adoption. Our getting the benefits of being able to close down

the local post office or to deliver television services over internet protocol—IP—we will require 100 per cent adoption. The first part of achieving that is making the service available. However, we should not underestimate the difficulty of moving older consumers in particular on to broadband.

Fixed broadband adoption is now around 80 per cent and is slowly increasing. We have done research that suggests that about 15 per cent of the UK population, typically older people, are, in effect, digital refuseniks. They have a digital television because they have to have one if they want to watch television, and they may have a mobile phone, but not necessarily. Beyond that, they have no interest in anything else digital. Getting those people on to broadband will be a fundamental part of being able to unlock some of the benefits for public services and commercial services that would not otherwise be achievable.

Stewart Stevenson: That is fine.

Clive Carter: On Richard Lyle's question, I would have to check the value of the recent auction receipts. From memory, I suspect—

Richard Lyle: It is billions of pounds.

The Convener: The point has been made. A letter detailing that amount to the committee would be helpful because we are probably asking you for figures that you do not have.

Richard Lyle: I would also like to know how much profit companies have made from poor users such as people in the Highlands who are not getting a service.

Glenn Preston: It is perhaps worth saying on the auctions point that Ofcom is not obliged to maximise the return to the Exchequer. However, the practice at the moment is that the receipts—for which we will provide the figures—go directly to the Exchequer. Under the Digital Economy Bill, there are changes afoot to how that works; for example, we will retain Ofcom running costs, which are part funded by the money that comes through auctions, rather than that money also going directly to the Exchequer. If it is helpful, we can set that all out in writing to the committee.

The Convener: Thank you.

John Mason: My question concerns Openreach, which was mentioned in Glenn Preston's opening statement. As I understand it, there will be what is being called a legal separation. I am interested in the generality and then I will ask a specific question.

The announcement mentions Openreach having its own board—which sounds good—

“with a majority of independent members”.

It goes on to say:

“This Board will set Openreach's medium term and annual operating plans and determine which technologies are deployed, within a strategic and financial framework defined by BT.”

That suggests to me that the whole budget and how much Openreach has to produce by way of profit is all being dictated by BT.

At paragraph A2.10, your annual plan discusses “how we will monitor compliance with the new arrangements and ultimately assess whether they deliver positive outcomes for consumers and businesses.”

That suggests to me that the jury is out as to whether the new arrangement with Openreach will really produce the goods. Specifically, will the changes to Openreach make it easier to reach the final 5 per cent in relation to broadband in Scotland? What about the idea of Openreach opening up its ducts, poles or whatever in Scotland to competition? What other issues specific to Scotland should we be aware of?

Clive Carter: On your two specific points, the situation of the final 5 per cent is supported and helped by Openreach, but I do not think that the legal separation of Openreach will change the fundamental economics or the fact that it is not commercially profitable for any party—save for some local communities that are able to do things at a particularly cheap cost and at particularly high take-up levels pre-signing—to build infrastructure to reach the final 5 per cent in any part of the UK, including Scotland. That is the fundamental economic problem—that money will never be recouped.

To a degree, Openreach and other telcos are already cross-subsidising from the lower-cost, denser urban areas in the UK to the more rural areas, but they can do that only so far before they run into challenges within their own commercial operations. The change in Openreach will not change the fundamental economics, so you are left with a public policy question, which is how to pay for an extension in order to increase economic and social inclusion for areas that would otherwise be unserved.

However, the separation of Openreach creates an entity that is more open to listening to the needs of its wholesale customers—that is, BT retail, Sky and TalkTalk, which are listening in turn to their customers and asking what people want. It is about proving the case for superfast broadband and, potentially, fibre to the premises. It is about having a company that is prepared to take that on in conjunction with, and ideally in partnership with, downstream customers.

There are some spillover benefits from what happens in a commercial area, and we saw that with BT's first superfast broadband roll-out. It initially thought that it could do superfast

broadband commercially for about 40 per cent of the UK, but that anything more than that was uneconomic and practically difficult. However, as BT does these things, it learns how to do them better and cheaper. We then reach a point where BT is commercially able to deploy to about 65 or 70 per cent of the UK before BDUK funding and funding from the devolved Administrations has to be injected to extend that further.

I think that that sort of benefit will be enhanced by the separation of Openreach—that spillover of being able to test things, trial things and roll them out. Specifically, the real challenge with the final 5 per cent is whether it is ever possible to make the money back commercially from those locations in order to justify the investment.

John Mason: I have a totally urban constituency, and a string of businesses that do not have broadband have been approaching me. It is not just a rural issue. Would the change to the rules with Openreach make it easier for other companies to use the ducts or the poles in Glasgow?

Clive Carter: Yes—absolutely.

John Mason: Will that lead to more broadband for businesses in Glasgow?

Clive Carter: I do not know specifically about Glasgow, but across the UK we have observed that business parks, or particular locations where businesses are focused, have not been the beneficiaries of investment. Telcos have gone to where consumers live, and the BDUK programme was designed to target areas where consumers live.

You are absolutely right, in that duct and dark fibre, which is another intervention that we have made around BT, will help to extend the reach of broadband services to unserved areas, as long as there are companies that are prepared to deliver to them. The way in which the Openreach model will work is that companies that are thinking about targeting business services—there is a long tail of relatively small companies involved in that area—will have more of an open ear from Openreach about doing business and investing in those places.

The Convener: Did I mishear you, or did you say “dark fibre”?

Clive Carter: Yes.

The Convener: Could you explain that to me? I do not understand it.

Clive Carter: It is not quite related to the question that was put, which was about how to get connectivity to a location where there is no connectivity whatsoever and where duct and pole access might work. We also have an intervention

called dark fibre, where companies will be able to lease unused fibre from BT in order to provide services. That will increase the competitive intensity in delivering services, particularly to businesses. That stuff is good for higher-end businesses, but not necessarily for small and medium-sized enterprises.

The Convener: Thank you. John Mason will ask a very brief follow-up question before we move on.

John Mason: I go back to my more general question. I take it that Ofcom will be keeping an eye on Openreach and the competition to see whether there is more openness to, say, a business park in my constituency.

Clive Carter: Yes—and more competition, more investment and a more open and engaging approach by Openreach, as well as better quality and the taking of quality concerns more seriously. There is a set of behaviours that we want to see from the newly reformed Openreach and a majority independent board, and we will be monitoring that.

You asked whether that is being done. As a regulator, we are never done with an incumbent until there is enough competition that we do not have to worry. I am not sure how long that will take—if, indeed, we ever get there—so we will always be monitoring to see whether the performance is there. If it is not, separation options are not the only tool that we have. Indeed, in this year’s annual plan, we have a big focus on raising Openreach’s quality of service and its repair and fault repair times by setting targets—not by giving incentives, but by setting targets, at pain of fines if they are not met—to raise those standards. We are trying to bring to bear a mix of remedies and tools on Openreach.

The Convener: You obviously understand your subject extremely well, and you are giving us very detailed answers, but I am worried about getting through all our questions. It is very helpful and I do not want to detract from what you are saying, but could you focus on answering the specific question rather than giving us all the background?

Fulton MacGregor: As you say, convener, the witnesses have given some very detailed answers, which have covered much of the line of questioning that I intended to pursue. However, I want to get on record how much of Scotland has already achieved the proposed USO that is set out in the Digital Economy Bill, and how quickly the UK Government will implement that bill. I know that that has been touched on already.

Glenn Preston: I will take the first part of the question and Clive Carter can pitch in on the second part.

On how much has been achieved, we do an annual assessment and publish a Scotland-specific report called “Connected Nations”, which we shared with the committee at the tail end of 2016. It highlights where we are on both broadband roll-out and mobile coverage in Scotland. I would have to double-check, but I think that we were well above 80 per cent in terms of broadband roll-out, so we are starting to look at that last 10 or 15 per cent—in some cases, the percentage is lower.

Clive Carter: I think that there is 83 per cent superfast availability in Scotland. For 10Mbps, there is now 93 per cent availability for premises, so 7 per cent of Scottish households are not connected to a line that can do 10Mbps.

I had hoped that that we would hear from Government relatively soon, but then the election was announced, so we are still waiting. I am afraid that I cannot give you a better timeline.

Fulton MacGregor: Do you think that it will now be after the general election?

Clive Carter: Yes.

Fulton MacGregor: I would like to make a point about that last 10 or 15 per cent, following on from what John Mason said. I also represent a mainly urban constituency, and there are areas within it where there is no connectivity, so I back up what he said about its not being a rural issue.

The Convener: That is a statement rather than a question, but I am happy to leave it hanging there.

11:45

John Finnie: Good morning. What are Ofcom’s views on the potential implications of Brexit for regulation, standards and the future of digital communication?

Glenn Preston: Your question deserves a long answer, but I promise that I will try to be brief.

Our chief executive has gone on record about the UK’s exit from the European Union, and I will share that information with the committee to ensure that members have a detailed summary of where we are in that respect. I will, however, just highlight a couple of points.

As the regulator, we remain politically neutral. Obviously, we are independent of the Government and the companies, and we have not taken a view on means or merits. However, we have pointed out that all the industries that we regulate have a combined yearly revenue of about £57 billion. They contribute 3 per cent of the UK’s gross domestic product and are, collectively, second only to financial services in size. They are also all inextricably European businesses. For example,

BT provides services to every EU country and is 12 per cent owned by Deutsche Telekom; O2 is owned by Spain’s Telefonica; and although the Vodafone group is headquartered here, it generates half its revenue of about £20 billion from the EU. In postal services, Royal Mail operates a £2 billion European business across 41 countries. That should start to give you a sense of the European nature of the business.

We have also said quite clearly that this goes well beyond the enormous questions of scale and economic worth. In 2003, when Ofcom was established, a reliable internet or mobile phone connection was a nice to have. However, as has been said, such services are now deemed to be essential. As a result, we believe that people deserve to get strong protection from bad service, high prices, outages and so on, and many of those safeguards stem from the European legal frameworks that provide the basis for regulation in our sectors.

We see challenges and opportunities in leaving the EU. We will have to give fundamental consideration to whether those frameworks continue to serve the interests of people across the UK and decide whether those laws should be replicated or replaced.

Shall I leave it there, convener, given your point about brevity?

The Convener: Yes, and I will let John Finnie come back with a very brief follow-up.

John Finnie: It will be very helpful to get that information from you. As you have outlined, those whom you seek to regulate are multinational corporations. How would you characterise your relationship with them? After all, connectivity issues create a very high level of animation among constituents, who get very frustrated by what are seen as obscene profits without there being any delivery. I accept that that is called capitalism, but Clive Carter said that the usual regulatory levers do not help to deliver things, and sticks were mentioned. I actually quite like sticks where multinational corporations are concerned. Can you comment on Ofcom’s relationship in that respect?

Glenn Preston: I can offer a quick reflection from a Scotland point of view. Clive Carter might wish to supplement that with some broader points.

It is important that I point out that the sector in Scotland does not consist just of large multinationals; a wide number of different types of body, public and private or commercial, are engaged in it. Shetland Islands Council, for example, has its own network, called Shetland Telecom. You are looking at different ends of the spectrum.

I would characterise our relationship as a positive one. We are absolutely an independent regulator. We have not been afraid to intervene; we tend to apply a non-intervention principle where we can, but we have intervened over the past nine to 12 months. For example, we fined Vodafone £4.6 million, I think, for service failings; we fined EE about £2.7 million; and, in the past couple of weeks, we fined BT about £42 million in relation to issues that we had seen in its business-to-business services. We are able to wield those regulatory powers if we need to, but we are absolutely engaged in a constructive dialogue with companies that operate in Scotland. We regularly talk to BT here, and we will increasingly look to talk to Openreach as it becomes a separate company to ensure that it, too, is properly reflecting the situation in Scotland.

Clive Carter might have a bit more to say about that.

The Convener: I will let him respond very briefly.

Clive Carter: I will be very brief, convener. We have a sometimes interesting relationship with those companies, because our incentives are in some ways aligned. They do not want to be seen as not meeting consumer needs; they want to invest; and they want to have a positive relationship with politicians, policy makers and everyone else. However, they also want to appease their shareholders, and that creates a tension that at times can bring us into conflict. We are happy with the situation: we are happy to have a positive working relationship with companies such as BT in exploring the USO; simultaneously, we are happy to fine it £42 million if it oversteps the mark.

The increasing globalisation of communications businesses means that we must bear in mind how attractive investing in the UK looks to companies. I do not mean that in terms of total returns; I am referring to whether, as a country, we are seen to be even handed and consistent in our policy and regulation. There is a danger if a country is seen not to be even handed and consistent and is deemed to be slightly risky. Liberty Media Corporation, an international company that is run by John Malone, is a great example. He chooses where he puts his capital. At the moment, we benefit from that, because, I think, we are deemed to be an attractive market whose consistency means that it is seen to be safe. Companies do not mind that we regulate them or that we ask things of them through public policy. What they mind is slightly capricious or random behaviour.

It is important that, where we can, we maintain that positive relationship, to keep the money flowing in.

Rhoda Grant: You are obviously aware of the Scottish Government's refreshed digital strategy. Do you have any broad comments on it? More specifically, will it deliver on the pledge to have superfast broadband in all corners of Scotland by 2021? Notwithstanding what you have said, will the strategy lead to improved mobile coverage?

Glenn Preston: We are aware of the strategy, which was published in March. It covers the Scottish Government's plans not only for broadband but for mobile. We will engage with the Scottish Government and the Scottish Futures Trust, which has done a lot of work to inform the digital strategy on exactly those issues.

You asked whether the strategy will deliver. That is a question to which we do not yet know the answer, partly because we do not have all the details. We have mentioned that, for example, in R100, we expect to see a consultation on the intervention areas where the Scottish Government wants to focus and the range of technologies that might be necessary to deliver that public policy outcome.

At the moment, I cannot give you a definitive yes or no on that, but we are up for a conversation and for sharing Ofcom expertise across our technology or competition groups to make sure that we can support the public policy aim and desire to have superfast broadband by 2021 as well as improved mobile coverage.

The Convener: Rhoda, do you want to follow up that question before I bring in Clive Carter?

Rhoda Grant: Yes. Regulation is an issue. The Scottish Government is talking about working with you and the UK Government to make the regulation more fit for our geography. What can you do to help with that?

It is a bugbear of mine that there is no mapping of fibre, especially publicly funded fibre. We are laying fibre upon fibre, especially where the taxpayer has paid for it. Fibre is not being utilised properly. What can we do to bring in mapping and to force BT to use fibre laid by other companies, not just its own, which is what it tends to use all the time?

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

Clive Carter: Yes. We are interested in tailoring the regulatory approach to suit the circumstances in economic and geographic markets, and whatever else. I am a slightly cautious person and I counsel caution because, at the moment, in provision across urban and rural areas, the market effectively averages prices. It serves lower-cost and higher-cost areas with broadly the same prices so that we mostly have national prices, with few exceptions.

The more that we target and focus an attitude, behaviour and regulatory regime on one type of area or geographic location, the more the model starts to be undermined. That is risky, because it means that, in the more urban areas where costs are lower, a company might initially take the opportunity to lower prices—in fact, competition might drive it to do that, as an entrant will come in, it will lower the costs and the other companies will respond—whereas, in the more rural areas, the response might be to raise prices. It is not about gouging money out of customers; it is about saying that that is the cost of serving them.

I do not have a view on the R100 programme. As has been said, we have not seen the detail.

In our USO cost modelling—I emphasise that it is only modelling—the highest figure that we came up with for serving a single postcode location was north of £100,000. That could be the cost for a single premises. The variation of costs that we have today is blended across the UK. Indeed, that is what the USO, as constituted, does for voice telephony.

The more you focus, the more bespoke and fit for purpose you can make things. However, that can have unintended consequences, which is what need to work on with the Scottish Government and the other devolved Administrations. We need to ask where there is the opportunity to do something a bit different in each location and circumstance and where there is a benefit in spreading and pooling costs for the benefit of all.

Rhoda Grant: I have another question, on mapping fibre and making it publicly available. Communities could be finding their own solutions if they knew where the fibre was. In loads of circumstances, organisations such as electricity suppliers will have paid for fibre and there will be spare fibre there. Projects such as the Shetland wide area network and pathfinder north rolled out fibre that is probably not being used any more. There is an endless list of examples of where the public purse has paid for fibre that is lying in the ground and we are laying more fibre on top of it.

Clive Carter: We support the publication of information and try to collect bulk information. However, there is an inherent tension in the fact that companies have a commercial advantage if they know where the fibre is and whether they can access it.

You are right in saying that we need to do more work to understand the nature of our digital infrastructure. The Scottish Futures Trust is undertaking work on a digital map for Scotland in order to understand exactly that. There is a role for such bodies in doing that. Ofcom should play a role, but it would not be quite the same as our

formal regulatory role. We need to look at that in partnership with others.

Richard Lyle: Clive Carter has answered part of this question. The Scottish Government has stated that it will

“Develop, test and make decisions based on robust models of investment drawing on the very latest international data on the economic and social value of digital connectivity”.

Will Ofcom have a role in supplying the data that the Scottish Government requires for that task?

Glenn Preston: The short answer to that question is that, in our memorandum of understanding with this Parliament, the UK Government and the Scottish Government, there is an explicit section on data sharing that states that we will proactively share data with the Scottish Government.

Richard Lyle: The convener will love your short answer. How can Ofcom help with the Scottish Government’s plan to ensure that all Scotland’s cities have internationally competitive connectivity? I refer to John Mason’s comment that some areas of Glasgow do not have such connectivity.

Clive Carter: That is a common problem that has come up a few times. We are at risk of always saying that it is a rural problem.

Within the not-spots of 10Mbps, 1 or 2 per cent of premises in urban areas cannot get even decent standard-generation broadband services. The best and most direct means that we have to deal with that is continued focus on competition and investment. Where it is taking place, Virgin’s investment is very positive and geographically focused. The move to higher-speed mobile broadband services—4G—is well placed, because it provides a competitive sweat at the lower end. It is not necessarily as good as superfast broadband, but, if someone wants just basic broadband, 4G can be a pretty good service. Having that competitive intensity and making things such as BT’s ducts and poles available for others to build on when there is no activity by BT places greater pressure on BT to invest.

The other honest answer is that, as policy makers, we, the Scottish Government and the UK Government need to place pressure on companies by asking why they are not investing, when they will invest and what they should do. Raising expectations of companies and shining a light on how much they are investing is something that Sharon White is keen to do. That is another way of trying to move things along.

In the last instance, we would be looking for public intervention. The challenge is that public intervention in most urban areas is harder when you take into account state-aid rules and all the

other complexities around it. That is not to say that it should not or will not happen; it is just that, up until now, it has been more tricky.

12:00

Jamie Greene: Good afternoon, gentlemen. It is a shame that we have such a limited time in which to ask questions. I am coming in at the end, so I have been piling up questions. Perhaps you would appreciate it if I wrote to you after the meeting to seek Ofcom's views on a wide range of matters.

What strikes me in all this is my lack of understanding of Ofcom's role, both nationally and in Scotland, in the various schemes that are taking place. A number of strategies and policies seem to be trying to achieve the same aims at the same time. In Scotland, there is currently a 95 per cent digital Scotland superfast broadband commitment, which will extend to 100 per cent via the second tranche of interventions in contracts. At the same time, there is a UK-wide policy to deliver a USO through BDUK in a separate tranche of public intervention contracts and financing.

Does Ofcom have a view on that or a role to play in trying to bring those two elements together? Since I became a member of this Parliament, a year ago, I have been struck by the fact that there are two entirely separate conversations happening, the majority of them with the same technical providers who will deliver the results.

Are we spending public money—it is public money regardless of where in the UK it is being spent—in the right way, appropriately and effectively, to get the result that everybody wants? I admire any policy, regardless of the Government that it comes from, that seeks to achieve the end result that we want. However, I am struck by the complexity, given the concurrent strategies that are running in parallel.

The same is true of the mobile network: there is a separate Scottish memorandum of understanding with operators while conversations are taking place UK wide. I am in the dark somewhat with regard to the role that Ofcom in Scotland and Ofcom at a UK level will play with the two Governments in trying to ensure that the two strategies converge.

The Convener: Perhaps Clive Carter would like to start on that. It was quite a long question with a lot of detail in it.

Jamie Greene: I had been saving it up.

The Convener: Mr Greene, if you would like to speak to the clerks about some of the questions that you have stored up, I am happy for those questions to be submitted in writing to Clive Carter and Glenn Preston on the committee's behalf if

they are relevant to the committee's work. If the questions relate more to constituency issues, they would better come from you alone. Because of the short timescale today, I very much hope that the witnesses will be prepared to answer any questions later. I see that they are both nodding.

I ask Clive Carter to start by giving a short answer to Jamie Greene's long question.

Clive Carter: I will give the shortest answer that I possibly can: formally, no, but informally, yes. Formally, we do not own public policy, which is right and proper. We are a regulator, and it is right and proper that elected bodies make decisions on public policy on the use of public funds. Informally, however, it is our responsibility to work with those parties to join the dots and to provide technical expertise, advice and the benefit of our experience in all those areas. We offer those things openly and welcome that responsibility as long as people understand that ultimate responsibility for the BDUK programme and the R100 programme rests with the individual bodies.

I fully agree that there is a challenge in tying up all the different elements into a holistic public policy strategy, given that everyone—including each of the devolved Administrations—has their own aspirations, desires and timelines. We will support that work, but there is no formal role for us in co-ordinating it.

Jamie Greene: You say that, but our briefing paper says that, in the area of improving coverage, Ofcom will implement the UK Government's broadband universal service obligation. What does that mean? You are not contracting with BT. What are you implementing?

Clive Carter: We write the legal requirements and define who is going to be the universal service provider. In effect, we run the process of selecting and attaching a legal obligation to a company, but we do so only under the UK Government's direction with regard to what it wants the policy to achieve. We are very much about implementation. There is no contract in the USO; there is a legal obligation. We write that obligation but we do not own the policy behind it.

Glenn Preston: We recognise the complexity that Jamie Greene describes. In early February, Fergus Ewing came to see the Ofcom team that is based in Scotland and asked us whether, bearing in mind the fact that we do not have a formal role, we would be willing to facilitate a session specifically on mobile coverage with the mobile network operators and other interested commercial or public bodies. We said that we would be happy to do that, and we suggested that there would be merit in both Governments being represented at such a session for exactly the reasons that you have articulated. Such an event

is still to happen. I think that it will happen, but it will take place after the UK general election. There is a reasonable case to be made for a similar conversation on broadband taking place, if not at the same time then separately.

Jamie Greene: Would that discussion include 5G?

Glenn Preston: We would expect it to cover the range of issues.

Jamie Greene: Thank you.

Stewart Stevenson: The roll-out of terrestrial digital TV started in the north of Scotland, and the last area where it was implemented was the south-east of England. The reason for that was technical and to do with having a clean area, with no adjacent users of frequency. Does that lead us to conclude that there can be technical advantages in considering a similar approach to 5G, particularly the use of the 700MHz band, given that there will be interference issues in the south-east from adjacent countries and given that 700MHz, of all the available frequencies, will be the most suitable for rural areas where you are trying to achieve a big reach? I think that we all share an eagerness that, with 5G, we go not from the big bits out but from the thin bits in.

Clive Carter: I am conscious of the time and I will try to keep my answer brief, but I want to unpack that. I think that what you have said about 700MHz is absolutely correct; my point is that there is an important distinction to be made between 4G and 5G. A lot is being made of 5G. The 5G that you are talking about, which in effect will use the 700MHz band, will be very similar to 4G today. The bandwidth will be slightly better and there will be slightly more capacity, but it will not be the fundamental change that the 5G evangelists are thinking about. They are thinking about a different strategy of small cells in a very high-frequency spectrum, which does not reach very far and therefore does not have the same interference problems.

I am always careful to say that to people. I am sure that 700MHz for mobile broadband could have a phased release and will be easier to co-ordinate in areas that do not have close geographic neighbours. What the 700Mhz band will add is some coverage—although it is similar to 800MHz, which is already being deployed—and some capacity, but it will not add anywhere near as much capacity as the very high-frequency spectrum that a lot of industry is getting very excited about.

It is important always to keep those two points separate, because the small-cells, very high-frequency stuff is, first, some time away; secondly, it is very urban focused—in other words, it is likely to go where lots of people are; and thirdly, it does

not have the same propagation characteristics. The 700MHz band would have some benefit in Scotland; it would not be the same as that with, say, the 26 to 28GHz spectrum, but it has the potential that I have outlined.

Glenn Preston: As Stewart Stevenson might be aware, we are running a pilot on 700MHz in the Borders to test exactly those sorts of questions.

Stewart Stevenson: I have another point, which is about economics. On all the Gs up to now, call hopping can be achieved only between stations from the same operator; it is not possible to hop from one operator to another during the call. Are you minded to influence the development of standards to allow call hopping to take place during calls across networks, with all the technical issues that there are in that regard? Of course, that would mean having much less need for a multiplicity of network operators serving very sparse areas. In other words, will you take every initiative—I picked only one—to ensure that sparse areas get real first-mover advantage for the first time from 5G, even if in reality it is the 4.5G that comes from 700MHz?

The Convener: I do not know who will answer that, but I ask that the answer be very short.

Clive Carter: I will give a short answer. We are absolutely thinking about the right competitive framework for mobile going forward and about where there is a case for more network sharing, including the use of a single national operator or a single localised operator with roaming obligations. Such things are part of a live piece of policy work that we are doing to try to understand how they could fit and how they could help people in areas that are, as you said, uneconomic for anything more than one mobile network.

The Convener: Our final question will come from Richard Lyle—as long as it is a quick one.

Richard Lyle: It will be, convener. Does the panel know how much the auction of 5G will raise for the UK Government?

Clive Carter: We do not know.

The Convener: I thank both our witnesses for giving us very detailed answers to our questions. The very fact that we have spent a considerable time talking about the issue—and that we have not had enough time for the discussion—shows its importance to people across Scotland.

I have refrained from asking a question, but I will make a statement on behalf of those in Scotland who have very poor or restricted broadband and who do not know what 4G or even 3G is like. Urgency here is absolutely critical. The committee—and indeed all of Parliament—urges the panel to make sure that we achieve what has been promised to Scotland, because we will all be

held to account in 2021 if we do not provide what every party has stood on delivering across Scotland.

I thank Glenn Preston and Clive Carter very much. There are some questions that we will submit to you. I suspend the meeting briefly to allow our witnesses to leave.

12:10

Meeting suspended.

12:12

On resuming—

Petition

A90/A937 (Safety Improvements) (PE1236)

The Convener: Item 4 is further consideration of petition PE1236, in the name of Jill Fotheringham, on safety improvements on the A90 and A937—in other words, the Laurencekirk petition.

Previous consideration of the petition is detailed in the papers, and I ask the committee to note that, in further evidence given on 8 March 2017, Keith Brown confirmed that Transport Scotland is currently taking forward the options assessment for the proposed new junction. There is quite a lot of evidence to suggest that the Government is moving forward on that in a positive way. Do committee members have anything to say before I make a suggestion regarding the petition?

John Mason: On the whole, I do not think that it is good to keep petitions open unnecessarily, once we are absolutely certain that an acceptable answer has been given. The difference with this one is that a previous petition on the same subject had been closed and then nothing actually happened. I suggest that we do not close the present petition until we are convinced that the work is going ahead. From what I can see, though, it looks as though it will do so.

Mike Rumbles: Since 2004—a period of 13 years—there has been a campaign by local people, led by Jill Fotheringham. It is a good example of local people refusing to take no for an answer from various ministers and Governments over the period, especially on an issue that is about saving lives.

I want to place on record that I was a constituency member of the Scottish Parliament at the time and that I have worked with Jill Fotheringham over the years. It is also worth putting on public record that the issue is not a party-political one. I worked with two MSPs, in particular: the late Alex Johnstone, whose work on the petition with Jill I want to record; and Nigel Don, who is no longer an MSP.

The petition is the epitome of a really good local one in which, by refusing to take no for an answer, the petitioners have got the right answer. Like John Mason—and like most members—I will be happy to close the petition when we get to the appropriate point and are absolutely certain that the work will go ahead. This is an unusual case, in that one petition went forward but was closed, and the petitioner took up the issue again.

The Convener: It is absolutely right to record the hard work and effort that has been put in by all, including the petitioner.

John Finnie: A considerable number of petitions come to another committee that I am on and it is always a challenge to close them. I think that there is a measure of good faith with regard to this petition. We have had assurances; I know that there are still frustrations about the timeframe, but given the regular updates that we get from the appropriate cabinet secretary, I think that we could close the petition. I do not doubt for one second that the members around the table will ask questions on the matter and if any challenges were to arise, the matter could be revisited in detail.

The Convener: I agree with John Finnie. I believe that we have had pretty clear assurances from the cabinet secretary that work is going to go ahead, although the timings are less prompt than some might have hoped. However, I think that it is right to suggest that the committee close the petition at this stage and take it in good faith that the Government will stick to its promise regarding what it will undertake. I therefore propose that we close the petition and thank the petitioner for all her work in achieving a result with regard to what the Government has promised to undertake. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

Little Loch Broom Scallops Several Fishery Order 2017 (SSI 2017/77)

12:16

The Convener: Item 5 is consideration of a negative Scottish statutory instrument, as detailed in the agenda. The question is whether we wish to report any issues on the order to the Parliament. Members should note that no motions to annul the order have been lodged and that there have been no representations to the committee on it. Do members have any comments on the order?

Stewart Stevenson: I merely observe that the order replaces an expiring exclusive right that a previous person has had for the past 15 years. If we compare this order to the previous one, we will see what appear to be tiny differences at the margins in the description of the physical area that is covered, but it is essentially the same area and I see no reason why it should not continue to be covered by an order.

The Convener: Thank you for that. As there are no other comments, does the committee agree that it does not wish to make any recommendations in relation to the order?

Members *indicated agreement.*

The Convener: Thank you. The committee will now go into private for item 6.

12:17

Meeting continued in private until 12:32.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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