



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Rural Economy and Connectivity Committee

**Wednesday 28 June 2017**

**Session 5**



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**RURAL ECONOMY AND CONNECTIVITY COMMITTEE**

**22<sup>nd</sup> 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:**

Keith Brown (Cabinet Secretary for Economy, Jobs and Fair Work)  
David Climie (Transport Scotland)  
Fergus Ewing (Cabinet Secretary for Rural Economy and Connectivity)  
Alasdair Graham (Transport Scotland)  
Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP) (Committee Substitute)  
Gillian Martin (Aberdeenshire East) (SNP)  
Lawrence Shackman (Transport Scotland)  
Eddie Turnbull (Scottish Government)  
Annabel Turpie (Scottish Government)  
Andrew Watson (Scottish Government)  
Humza Yousaf (Minister for Transport and the Islands)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Rural Economy and Connectivity Committee

Wednesday 28 June 2017

*[The Convener opened the meeting at 09:00]*

### Forth Replacement Crossing and Major Transport Infrastructure Projects (Update)

**The Convener (Edward Mountain):** Good morning everyone and welcome to the 22nd meeting in 2017 of the Rural Economy and Connectivity Committee. I remind everyone to ensure that mobile phones are in silent mode. We have received apologies from Fulton MacGregor; Christine Grahame will attend as his substitute. Mike Rumbles will attend the meeting later on.

The first item is an update on the Forth replacement crossing and other major transport infrastructure projects. As the committee knows, the cabinet secretary wrote to notify us that the Forth replacement crossing will open to traffic on 30 August.

I welcome Keith Brown, the Cabinet Secretary for Economy, Jobs and Fair Work, and from Transport Scotland: Alasdair Graham, head of planning and design; David Climie, project director of the Forth replacement crossing team; and Lawrence Shackman, project manager of the Forth replacement crossing team. I also welcome Michael Martin, who is the project director of the Forth crossing bridge constructors.

Would you like to make a brief opening statement, cabinet secretary?

**The Cabinet Secretary for Economy, Jobs and Fair Work (Keith Brown):** Thank you, convener. I am grateful for the opportunity to come along and provide the committee with further information on the progress of the Queensferry crossing and the other projects—the Aberdeen western peripheral route, A9 dualling, A96 dualling and the M8, M73 and M74 improvement projects. My update will be brief: I will then welcome any questions for me, David, Michael, Alasdair and Lawrence.

On 20 June, I was pleased to advise the committee that the Queensferry crossing will open to traffic on Wednesday 30 August. That followed confirmation from the FCBC that it would be in a position to open the crossing to traffic for the first time on 30 August, due to the excellent progress that has been made over previous weeks.

I am pleased to update members on the significant progress that has continued on the north approach roads and on the Queensferry crossing itself since my appearance at the committee on 31 May. I will start with the crossing. The installation of wind barriers is close to completion along the full length of the structure. The Alimak hoists—or “Ally McCoists” as they have been called—have been removed from the tower top to deck level on the south and north towers. Those were the lifts at each tower that were used by workers throughout the construction of the crossing. Preparations are currently under way to remove the hoist on the centre tower.

On the north side, the final construction works and paving of the Ferrytoll junction and slip roads are progressing to completion as planned. Final surfacing of the junction took place on the weekend of 3 and 4 June and finishing works are currently in progress.

Between now and the opening of the crossing, our focus will be on completing the waterproofing, final road surfacing and all activities on the towers and cables above road level.

On 20 June, I was also delighted to be able to announce the opportunity for the public to take part in the Queensferry crossing experience—a once-in-a-lifetime opportunity for 50,000 people to cross the Queensferry crossing on foot before it becomes part of the motorway network. Members will agree that the project has really captured the public imagination, and there has been a fantastic demand to take part in the Queensferry crossing experience. The evidence of that demand is the more than 195,000 entries that we have received since the ballot opened on 20 June. However, the ballot will not close until 12 noon on 5 July, so there is still plenty of time for those who wish to apply. Everyone entering has a chance of being one of the 50,000 people to walk over the new bridge. I encourage people to submit an entry so that they, too, might share in the experience. It is clear to me and to those who are involved in the crossing’s construction that the people of Scotland have taken the bridge to their hearts. There is a great deal of anticipation and excitement about the opening celebrations, as can be seen in the excellent public reaction to the Queensferry crossing experience. We will not be able to accommodate everyone, but I am sure that it will be a hugely enjoyable event for all involved.

On the other major projects, following the opening of the M74 Raith underpass in February, the new and improved M8, M73 and M74 progressively opened during spring and were fully opened to traffic on 1 June 2017. As is normal with such projects, final landscaping, finishing and snagging works will be ongoing until the autumn, although that should not affect peak traffic flows.

Since those new roads fully opened more than three weeks ago, the contractor has been focusing its resources on the installation of motorway gantries and signage, and those works are being undertaken overnight in order to avoid impact on road users. There has already been substantial progress. Almost immediately after opening, the benefits of the £500 million project became apparent. The significant new road capacity has already started to deliver economic benefits right across Scotland, due to the strategic nature of that part of the motorway network.

On the AWPR and the Balmedie to Tippetty project, extensive activity has been taking place across the sites over recent months. The Stonehaven southbound slip road opened in April 2017, bringing early benefits to the people of Stonehaven by taking long-distance traffic away from the town. Earthwork operations have also recommenced, which has allowed the contractor to continue with the Balmedie to Tippetty section so that it will be completed at the same time as the remainder of the project.

A significant milestone on the project was reached when the 1,000th beam was lifted into place at the new Goval junction on 21 June. We still need another 183 beams, and it is anticipated that they will be in place by the autumn. Elsewhere, road surfacing and foundation works are continuing apace. The new major bridge over the River Dee is taking shape, with work on the deck progressing well.

Transport Scotland officials and I are continuing to work together with the contractor, Aberdeen Roads Limited, to deliver the benefits of the project to the people of the north-east at the earliest possible opportunity.

It has also been a busy period on the A9 dualling programme. With the Kincaig to Dalraddy section currently under construction and the Luncarty to Pass of Birnam project now in procurement, a significant amount of construction work is under way and being planned. On the Kincaig to Dalraddy project, traffic was switched on to the newly upgraded carriageway last weekend to allow the final phase of works to be undertaken, including the removal of remaining temporary works and the completion of site-wide finishing and landscaping works. That section is on target to be fully open to traffic during summer 2017, as planned.

Following a successful industry day on 10 April, procurement has commenced on the next section of the A9 dualling programme, with the publication of the contract notice for the Luncarty to Pass of Birnam section of the dualling. Six prequalification submissions have been received, and the bidding process is expected to commence in July 2017. Advanced works are scheduled to start on site

later this year, with the main construction contract expected in spring 2018. Design work on the remaining nine schemes of the A9 dualling programme is progressing well, with more than 90 per cent of the programme having now reached preferred route status.

Design work is well under way on the A96 dualling programme, too. Last November we published draft orders on the 31km Inverness to Nairn section, which includes the Nairn bypass. Last week we presented to local communities at a series of exhibitions the options that are under consideration for the 46km section between Hardmuir and Fochabers. More than 1,800 members of the public attended the exhibitions, and the vital feedback that the engineers received will inform further design and assessment work as we look forward to identifying a preferred route option for that section next year. We also expect to start route options assessment work on the section between east of Huntly and Aberdeen later this summer, following the procurement of design consultants.

The fruits of the Government's commitment to infrastructure investment are now becoming plain for all to see, with projects such as the M8 bundle reaching completion. The scale of our ambition to deliver sustainable economic growth for Scotland can be seen right across the portfolio of projects, from the Queensferry crossing to the A9 and A96 dualling programmes. In delivering those projects, we have supported jobs and enabled businesses to grow right across the country. The A9 and A96 dualling programmes will further augment that successful approach.

I thank the committee for the opportunity to update you on the projects, and I am happy to try and answer any questions that the committee may have.

**The Convener:** Thank you, cabinet secretary, for your not-so-short opening statement. I ask Rhoda Grant to lead off with the first question.

**Rhoda Grant (Highlands and Islands) (Lab):** Are you confident that the Forth replacement crossing will open on 30 August?

**Keith Brown:** Yes, I am confident of that. I have had substantial discussions with the contractors and the people in Transport Scotland who are overseeing the project. Others can, of course, speak about this, too. I have been assured that there is a high degree of confidence that we can open on that date.

**Rhoda Grant:** Is confidence 100 per cent?

**Keith Brown:** I do not think that anything in life is 100 per cent, but we would not have announced it if we were not confident of being able to open on that date.

**Rhoda Grant:** Are there contingency plans in place for what happens if the crossing does not open?

**Keith Brown:** It is perhaps best for others to talk about that, but we always have contingency plans, especially for a project such as this.

**David Climie (Transport Scotland):** Yes—we have detailed contingency plans. Michael Martin and I walk across the bridge. I walk across it at least once a week, and I think that Michael does so at least twice a week, and we are both very encouraged by what we have seen of the progress over the past few weeks.

Now that we have announced 30 August as the date, that acts as a great focus: the entire workforce knows that that is the target date, and we are all committed to meeting it. Obviously, we have contingency plans, should something completely unexpected occur, but we are confident that we can achieve opening on 30 August.

**Rhoda Grant:** That date is nine months later than what was originally planned for the opening. Nine months is quite a long time in a contract of this size. We have heard about weather and the like. Are there other aspects that have led to the delay?

**Keith Brown:** I do not think that the opening will be nine months late. We had an original date of at the end of last year, and then we had the contract completion date, which is June, so we are 10 weeks behind the contract completion date. We can look pretty close to home to find major projects that have gone well past that. We have also seen the aircraft carriers coming out of Rosyth that have been delayed by substantially longer and are at least twice, and by some accounts three times, over budget. The project will be finished 10 weeks after its contract completion date.

Rhoda Grant is right to say that we had an earlier target, but we had pressure because of the existing crossing being undermined by dampness in the cables. That issue is now not as it was when we first gave the date.

As I am sure the committee will know, the main reason for not being able to open the crossing when we wanted to has been the weather. Over the past few months, in particular, high winds have prevented us from taking down cranes. Weather conditions are the main reason.

**John Mason (Glasgow Shettleston) (SNP):** You mentioned the Queensferry crossing experience, which is the weekend when 50,000 people will cross the bridge on foot. That sounds quite exciting. As I understand it, the bridge is going to be open on the Wednesday, Thursday

and Friday, then closed again on Saturday and Sunday. It seems to be a bit odd to open it and then close it again. What is the thinking behind that?

**Keith Brown:** I will ask those who have arranged the event to comment. The thinking is that we had told the committee and the public that we had a window within which we anticipated having the bridge open to traffic, which was between mid-July and the end of August. It is vital that we do that, not least because of the time that we have had to open the bridge, as I said in response to the previous question, but also for logistical reasons.

The weekend is being set aside for that once-in-a-lifetime experience, so we can accommodate both things—the opening to traffic in the window that we previously stated, and what will probably be the only chance for people to walk across the bridge. There are other elements in the official opening programme, which I am not able to disclose to the committee at this stage because we have still to go through some security issues before confirming them. That might make it more obvious why the schedule of events is constructed as it is, but it is mainly for logistical purposes, and to ensure that we open to traffic on 30 August, as we said we would.

**David Climie:** The other key point is that that process also gives us the opportunity to trial the emergency links and crossovers that we have at either end of the bridge. If we open the bridge for two days and then close it, we have to use those emergency links, therefore we and the operating company can both see how the links work in practice. If, in the future, we have to transfer traffic back on to the Forth road bridge should there be some sort of major incident on the Queensferry crossing, we will have tested the links when it is not a critical time.

**John Mason:** That is fair enough. If you cannot tell us, you cannot tell us, but is the official opening likely to be that weekend, or will it be later?

**Keith Brown:** I am not able to confirm that just now, but as soon as I can—it should be shortly—I will let the committee know exactly what the arrangements are.

**The Convener:** David Climie gave a clever answer on testing the systems. I assume that there will be a cost for moving the barriers, getting traffic on, putting the barriers back and getting the traffic back on to the bridge for both opening and closing the bridge. Who will bear that cost?

**David Climie:** That cost is covered by the project budget. It is something that we always anticipated would have to be done. A full testing programme has to be carried out—not just on the

emergency crossovers, but on the entire intelligent transport system and the structural health monitoring system. All that is fully included in the budget that we have for all the operations.

**The Convener:** I accept that it is covered within the budget. What is the cost of it?

**David Climie:** I cannot give you the specific cost detail; I do not have the breakdown of that.

**The Convener:** It is just an interesting question. There will be a cost, and I think that the committee would benefit from hearing it. Can you let us know that in due course?

**David Climie:** Yes.

09:15

**Keith Brown:** There will be other costs as well, and that will not be the biggest cost. I will be happy to provide a full account of the costs—perhaps when we know the detail of all the opening celebrations. I will just say that none of that cost will impact on the £245 million savings that we have already made on the project.

**The Convener:** I hear that, and I will welcome a breakdown of the costs.

**John Mason:** My final question is to ask you to explain the handover of the bridge works. When will Amey assume responsibility for the management, and what on-going role will FCBC have for five years?

**David Climie:** I am happy to explain that. As you correctly say, there will be a handover, which we call “section A completion”. That is when the bridge is formally handed over to the Forth bridges operating company.

There is not a line in the sand: we will not suddenly hand over a set of keys and the crossing becomes the FBOC's to operate. There will be a phased handover of between three and six months. It will happen gradually, as the remaining snagging and other work is completed. As you correctly said, FCBC is subject to a five-year defects liability period, so if issues arise on the bridge that are down to the original construction, it will be up to FCBC to come back and fix them. Amey will be responsible for operating the bridge at that time, so FCBC's access to the work will have to be co-ordinated through Amey during the five-year defects liability period.

After the transition phase of between three and six months the bridge will be fully operated by Amey, supported by FCBC when necessary.

**Richard Lyle (Uddingston and Bellshill) (SNP):** Good morning, cabinet secretary. You have already spoken about putting up new

gantries and signage and doing other projects that I know well.

How and when do you intend to publish changes to the road layouts prior to the opening of the crossing? Will there not be confusion because you will open it, shut it, then open it again? What signage or policing systems will be in place to ensure that people know where to drive?

**Keith Brown:** You will have the definitive answer from David Climie in a second, but I travel that road all the time: I travelled it last night. If you travel it now, you can see how, on both sides, you come to a point where you must go either one way or the other. I do not want to minimise or oversimplify the matter, but it is just a question of having barriers in place that direct vehicles one way or the other.

As the convener has pointed out, there will be a cost, but I do not think that the layout is going to be too complex for road users if it is done in the correct way. For example, if you are coming from the south side, you can see where the road currently goes off and you will be directed to go that way. Subsequently that will shift back. David can give a more technical answer.

**David Climie:** The whole concept is that it should be as easy as possible. The phased approach that we are using to open the bridge will assist in that. Pedestrians and cyclists will always use the Forth road bridge—they will do exactly what they do at the moment. The only thing that will change is the road traffic.

All road traffic will initially switch to the Queensferry crossing—as I explained in some detail when I was before the committee a month ago—because we still have to complete the last slip roads at the north end of the Forth road bridge to allow it to operate as a public transport link. For an initial period, everything that currently uses the Forth road bridge, other than pedestrians and cyclists, will use the Queensferry crossing.

We will then have a countdown to the Queensferry crossing becoming a motorway and the Forth road bridge opening as a public transport link only. When that happens, the only traffic that will be diverted off the Queensferry crossing will be buses and taxis. The large majority of traffic will continue to use the Queensferry crossing.

We have prepared a detailed users' guide that will lay all that out in a lot of detail, with diagrams, pictures and so on. It will be issued four weeks in advance of the opening of the Queensferry crossing. We will publicise it on our website and distribute it to local communities.

**Richard Lyle:** You have given us an idea of the contingencies that are in place to deal with any

collisions or driver confusion during the after-opening period.

One thing confuses me. We will have two bridges and all the cars will go on the Queensferry crossing. Buses and taxis can go on the Forth bridge. What happens if a driver makes a mistake, goes the wrong way or goes into the wrong lane and along the wrong bridge? Will they be charged? Let us face it: nothing is 100 per cent foolproof and there will be cases in which people, perhaps in darkness, get confused and go down the wrong lane. What are we doing to ensure that there are no collisions and there is no driver confusion?

**Keith Brown:** David Climie will get the facts right but you might remember that, at our last appearance at the committee meeting, we said that there was nothing to prevent public transport from using the Queensferry crossing. It is entitled to do so under current regulations, so there is no comeback on buses and taxis doing so but they will be guided to the Forth road bridge and it will be to their benefit to use it because it will be an easier access through to Edinburgh and back out again. That is not an issue but I think that common sense will dictate that buses and taxis will want to use it.

Perhaps David Climie can answer about cars going on to the Forth road bridge.

**David Climie:** The main road will be clearly signed as the Queensferry crossing. There will be automatic number plate recognition cameras on the slip roads going on to the Forth road bridge so, if someone goes there, their number plate will be taken and it will be followed up on. I am sure that, certainly in the early stages, there will be a lead-in period with some allowance for a genuine mistake. There is enforcement that can be put in place, but I am sure that it will be monitored sensibly.

**Richard Lyle:** To clarify, if people make a genuine mistake you will let them off but, if you believe that they are doing it deliberately—as people do—will there be a fine for people going on the wrong bridge?

**Lawrence Shackman (Transport Scotland):** The section of the Forth road bridge that is the public transport corridor will be signed as such at the start of the bridge. There will be prohibitory signs so it will be clearly stated that someone will be doing something wrong if they drive over it. It is exactly the same principle as if someone was going the wrong way down a one-way street: they would be breaking the law, with the obvious consequences. There is also closed-circuit television coverage on both crossings, so any vehicle that goes on the wrong bridge will be spotted on CCTV as well as on the automatic

number plate recognition systems. It is for the police to enforce that.

**Keith Brown:** There will be all sorts of benefits to car users from going on to the new crossing because it will have a faster speed limit. Therefore, it is in drivers' self-interest to follow the rules.

**The Convener:** At the cabinet secretary's most recent appearance at the committee, David Climie said that the cabinet secretary had correctly stated that, because the contract was live, discussions were going on about liquidated damages and that we were not yet at the point of passing the contractual date. Two days after that, we read in the newspapers that it was costing the contractor £100 million a day for every day that they went over the contractual date. I am absolutely sure that not everything I read in the papers is true. Are you in a position to clarify whether there are any liquidated damages—damages in relation to the late completion of the contract?

**Keith Brown:** There is absolutely no question that it is £100 million. That would have put about £3 billion on the project.

**The Convener:** I understand that, but the papers have been flashing figures around and I wondered whether you or David Climie could clarify.

**David Climie:** Certainly. On liquidated damages and the numbers that have been bandied around by the papers, I think that the £100 million that you mentioned was linked to an announcement by Galliford Try about its overall results. It was taking about a £100 million loss attached to some projects and I think that 80 per cent of the loss was identified as relating to two construction projects. There were suggestions that there were two in Scotland and one of them could well be the Queensferry crossing. I think that that is where the £100 million figure came from. It certainly bears no relation to liquidated damages or anything like that.

We still have a commercial contract going on. We are coming towards the end of it and commercial discussions are taking place. I cannot comment in detail about how they are progressing but those discussions are in line to complete shortly after the contract is completed, which is a positive aspect of the contract.

**The Convener:** So you are not yet in a position to tell us about any damages or penalties. Can you tell us whether any extensions have been granted to the contractor, which you were reluctant to do at the previous meeting?

**David Climie:** That is part of the overall commercial discussions that are taking place. There is a lot of to-ing and fro-ing on that. Part of

that revolves around extensions of time. They are allowed to be applied for under the contract and that is part of the discussions that are taking place.

**The Convener:** So you are not in a position to answer either of those questions.

**David Climie:** It would be inappropriate for me to do so when commercial discussions are continuing on exactly those subjects at the moment.

**The Convener:** Those questions will obviously hang over to another meeting of the committee that you will no doubt attend.

**John Finnie (Highlands and Islands) (Green):** Cabinet secretary, I will ask about public transport and, in particular, the promotion of the use of cross-Forth bus services following the opening of the Forth replacement crossing. I presume that, if there is any such promotion, it will have to be in advance of the opening. Perhaps you could roll that into how the public transport strategies will be rolled out.

**Keith Brown:** Lawrence Shackman will come back on the detail of that but it is important to say that the coverage the committee gets for its questions—the question was asked at my previous appearance before the committee—helps us to raise the profile of the issue.

On active travel, I underline the point that there will be no absolutely change to the access that pedestrians and cyclists currently have apart from the fact that, for one weekend only, they will get the chance to walk over the new crossing. There was some confusion about that when I last appeared at the committee. Beyond that, the existing bridge becomes a public transport corridor, which means that it will be open to taxis and buses. That should allow for much greater ease of crossing because of the absence of general traffic. We have a public transport strategy, with which we have previously furnished the committee, for how we intend to promote that further.

**Lawrence Shackman:** The previous meeting of our public transport working group was in April and we gave the group a full, thorough analysis of the connecting roads, the two bridges and how they will operate for bus traffic. We also had a bus training day earlier in the year for all the bus operating companies, at which we took them through the whole project—all the nuances of how the buses can operate and the project's various features. The Ferrytoll park-and-ride site is now completely open and feedback from the bus operating companies about that is positive.

To touch on active travel, we are preparing a leaflet about cycling and walking over the Forth

road bridge and in the surrounding area, which will accompany the user guide.

At the public transport working group, the feedback from the bus companies was that they are keen to see how the bridge will operate, and they plan to consider their marketing strategies after the bridge is open so that they can get a better feel for how it will operate and how they can promote some of their routes, as well as considering new routing.

**John Finnie:** Will there be a forum at which that will continue to be discussed after the opening?

**Lawrence Shackman:** Yes. The next public transport working group meeting is scheduled for October, so that meeting will look back at how the initial operation of the bridge is going and consider whether there are any issues. We hope that there will not be. It will also consider the original strategy. We have an undertaking to review all the potential projects that were thought of five or six years ago as part of the strategy to determine whether they should go forward. We have already incorporated some of them into the project and we will consider the benefits that they bring in the months and years ahead. That meeting will be important for looking back at what we have done, looking forward at where some of the interventions could go and closing them down if at all possible. We will reconvene that group whenever necessary in future to ensure that we revisit the public transport aspects of the project, consider whether we can improve them and ensure that they operate effectively.

10:00

**John Finnie:** You would acknowledge that, as things stand, it is the bus companies that determine routes, to an extent. What role is there for Government in the promotion of increased use of public transport, given that the bridge will be the dedicated route for public transport?

**Keith Brown:** A very active role. We mentioned the improvements to the Ferrytoll park and ride, which have been part of the project. We have also invested substantially in the Halbeath park and ride, and we are working with Fife Council on possibilities for a Rosyth park and choose, planning permission for which was granted back in 2013, and which would increase capacity for people who want to stop their car journey and go on to public transport in advance of crossing the Forth.

We have also invested heavily in the active travel route on the south side of the Forth. By investing money, and through the activities that my colleague Humza Yousaf undertakes, we are keen to promote a move to active travel or public transport wherever possible.

**John Finnie:** Thank you.

**Jamie Greene (West Scotland) (Con):** I have two brief questions, before we move on to the next line of questioning. First, can someone confirm which bridge the emergency services—ambulances, fire engines and so on—will use? Secondly, are there any plans to change the name of the crossing?

**Keith Brown:** I will answer the second question, because it is easier. No. There are no plans to change the name—if you are referring to the new Queensferry crossing.

**Jamie Greene:** Yes; “Forth replacement crossing” is not a name that rolls off the tongue.

**Keith Brown:** That is the Queensferry crossing, and there will be the Queensferry crossing experience. You might not remember—it might have been before your time in the Parliament—that we had a big, open competition to choose a name. We received about 7,000 suggestions. My favourite, “Kevin”, did not make it to the shortlist. [*Laughter.*] The name “Queensferry crossing” was chosen.

**Jamie Greene:** Not Bridgey McBridgface, then. [*Laughter.*]

**Keith Brown:** That was another one.

**The Convener:** Perhaps we can have an answer to the more important question about the emergency services.

**Lawrence Shackman:** The emergency services can use either bridge. It would be crazy not to let them do that. That is a given.

**Jamie Greene:** Thank you.

**The Convener:** We will head further north. I bring in Stewart Stevenson.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Will the cabinet secretary provide an update on the AWPR, which is of great interest to my constituents, my colleague Gillian Martin, who will be before us shortly, and others? As part of that update, will you comment on reports that a farmer says that he has been somewhat inconvenienced by what is going on? How are we managing the interaction with communities who are adjacent to the works? One might think that some disruption is inevitable, but communities will want to hear how we are dealing with the potential for that.

**Keith Brown:** I am happy to provide an update. I think that similar questions were asked at the last meeting of the committee that considered such subjects. I have given an update on aspects of the project that have opened, and the timescale for other parts of the project opening.

On relationships with farmers, the contractor, Aberdeen Roads Limited, has provided reassurance that it has endeavoured to carry out as much as possible of the works during the day. However, sometimes it has had to carry out works at night.

Matters such as access to farms and night-time working are dealt with in conjunction with local authorities. When a road such as the one that we are talking about is built, it is a contract requirement that access to land for farmers must be maintained, as I am sure you know. That must be done through a permanent or temporary arrangement. Nevertheless, there are sometimes occasions when access is not possible, but the contractor will always endeavour to ensure that such occasions are kept to the absolute minimum.

As you said, there have been isolated issues. I will not name individual farmers, but I can confirm that the contractor has confirmed that it will maintain temporary access to fields until new access tracks have been completed. ARL has also agreed that a minimum of 14 days’ notice will be given should a change to such arrangements be necessary. It is regrettable that that might have to happen, but it is impossible for us to complete a project of this scale without some disruption—we must just try to minimise the disruption.

**Stewart Stevenson:** The bottom line is that the contractor is required to give notice of interactions with businesses or particular farmers who are adjacent to the works.

**Keith Brown:** And over and above that, the contractor has agreed to give 14 days’ notice, should a change to the arrangements be necessary.

**Stewart Stevenson:** The other question on the AWPR is whether we are on track.

**Keith Brown:** As with the Queensferry crossing, I rely on the advice that is given to me by officials, who are in relatively constant dialogue with the contractors. They also go out on site to see the progress that has been made. The advice is that we can complete the project along the lines that we have previously set out.

We had the delay of the Balmedie to Tipperty section. I should say that all the times that we have were set by the contractor not by us. They were part of the bidding process. We did not seek, for example, the early completion of the Balmedie to Tipperty section, which has not happened, although other aspects of the contract have been completed and people are currently benefiting from those. The overall contract is set to be completed over the course of the winter of 2017-18 and we hold that that can be achieved.

**The Convener:** You explained that there was a particularly wet period last year, which contributed to the delay. As we have had a particularly dry winter and I think probably a pretty dry spring, have we caught up, are we ahead, or are we just back on target?

**Keith Brown:** The delay of the Balmedie to Tippetty section was because we could not conduct those earthmoving activities over the course of the winter. You cannot really catch up from that. We said that it was not going to happen over the winter. You are right to say that we have had better conditions since then and good progress has been made.

However, I do not think that the project is at the stage where we can give a running commentary—to use somebody else's phrase—on exactly where we are with different parts of the project. What we are talking about is the overall completion date. Where we have been able to, we have opened some parts early, but we are sticking to the overall completion date, which is of course over the winter of 2017-18. Good progress has been made on the project.

**Peter Chapman (North East Scotland) (Con):** Stewart Stevenson said that there has been some disruption. I can put it much more strongly than that; there has been huge disruption for the farms that this road is going through.

We welcome this road and everyone wants to see it finished. When this project started, there was a huge amount of good will from the farmers whose farms the road goes through but, unfortunately, that good will has been lost to a large extent and I can understand why. I have mentioned this issue on many occasions—the fencing along the whole line of the road is of a very poor standard. The fencing is breaking down within just a few months of stock being in the fields. There are problems with the fencing.

I am not going to name names but one property has had no water supply for seven months because of this road—that is unacceptable. On another occasion, stones and general rubbish were dumped in a field and covered with a thin layer of soil. That is completely unacceptable behaviour. The problem when such things happen is getting them sorted out, as it takes for ever. The relationship between the farmers concerned and the contractor is now very bad. If things were sorted out, we could go forward, but even though the farmers complain and complain, it is just a nightmare to get anything done.

The biggest problem is that the initial good will that was there has disappeared and that will result in huge problems with all the other roads because the agents will—

**The Convener:** Can we have a question?

**Peter Chapman:** The question is coming. The agents are now sick and tired of the whole thing and that will impact on the A96 work and the A9 work, because the good will that was there has disappeared and that bad feeling will transfer on to all the other road works that are going ahead in the north-east. I would just like a comment on that, because that is a very sad state of affairs.

**The Convener:** Cabinet secretary, I will give you a chance to marshal your thoughts. Peter—would you like to make a declaration just so that everyone knows that you have farming interests?

**Peter Chapman:** Certainly—sorry about that. I declare that I am a farmer in the north-east, but the road does not directly impact on my business at all.

**Keith Brown:** I think that Mr Chapman has raised these issues at previous committee meetings. It is not in my interest for people to get frustrated by their interaction with either the contractors or the managing agents. People have to give the contractors a chance to remedy any issues but the things that you have described should not be happening. If the individuals involved do not feel satisfied that there has been a proper response, I have said before that they should please come to me about it. I am happy to step in. Whenever anybody has written to me, I have had a discussion with Transport Scotland, which I am happy to do. That is a genuine offer. I say that people should give it a chance first of all. Contractors should not be putting topsoil over rubble, and nobody should be cut off from their water supply for seven months. If Transport Scotland does not deal with an issue, people should come to me and I will try to help with it.

**The Convener:** Thank you for that offer. Jamie Greene will move our questioning on to another road project.

**Jamie Greene:** I will not labour my point, as the cabinet secretary's opening statement provided a good update on the A9 and A96 dualling projects. They are quite long-term projects, ending in 2025 and 2030, with substantial pieces of road to be dualled. Cabinet secretary, will you give us a general overview on whether you foresee any major delays or problems on those, or are we on track to keep to the rough deadlines that we have? Given that, for example, around 10 per cent of the A9 will be ready by this summer, if we use a simple maths equation, does that mean that the rest of it will be done by 2025?

**Keith Brown:** We do not anticipate any change to the date. I appreciate the point that is being made about the construction that is being seen. Of the 11 phases, the one that I referred to in my opening statement will be completed by the end of the summer.

What is true to say, and it is very important, is that we have made very good progress on the advance work that has to be done before we can get to the stage of construction. That can include public inquiries and all sorts of planning processes. We are currently very involved with what is called a co-creative process with a group on one of the routes in Perthshire.

When I gave my opening statement, members heard about a lot of progress that has been made in getting projects to the point of construction. That is not always the longest part of the process, as we have seen on the AWPR over many years. We anticipate being able to finish the A9 project in 2025.

Jamie Greene did not ask about budget but, because people have always asked for a global figure, we have said that it will be around £3 billion. I do not suggest that there is any reason to change that, but it has always been the case that, if we are talking about a completion date 14 or 15 years ahead and 11 phases, our estimate will be a ballpark figure. I also acknowledge that in the figure that is being applied to the A96. However, we have no reason to change our current estimate, on either budget or timescale.

**Jamie Greene:** That leads on perfectly to my next question. How does that work? You have a long-term ambition that will cross over not just a number of budget years but a number of parliamentary sessions. How do you put a figure on the cost when you are requesting money from the Scottish budget each year, to ensure that you meet the relevant pro rata part of the overall budget? It is not always clear how that works in long-term projects.

**Keith Brown:** With the A9, as each phase gets to the stage where it is a construction contract that has to be let, how we accommodate that in the budget becomes much more definitive for us. It will go through the normal budget process. For example, let us say that we had three phases going through in one year. We would have to accommodate that in the budget, but we would have given a commitment that was already in the capital programme and was what we might call baked into our figures in future. There are 11 discrete contracts, because the work is being done in phases. There was a lot of demand when we announced that we would be the first Government to dual the A9. People wanted to know roughly what it would cost. To answer that, we said that our best guess—which it had to be at that stage, for the reasons that Jamie Greene outlined—was around £3 billion. Since we announced it in, I think, 2011-12, nothing has happened to change that estimate, but it will become much more refined as we get closer to 2025.

**Rhoda Grant:** I have a brief supplementary question. In your opening statement, you said that the Kincaig to Dalraddy part of the A9 would be completed this summer. I think that I then heard you say,

“the end of the summer.”

Can you be more specific, given that we are in the summer?

**Keith Brown:** Are we? [*Laughter.*] You are right to say that we said that it would be in the course of the summer. There is nothing to suggest that it will be delayed from the time we said. We tend to refer to seasons rather than months these days. If I said that it would be the end of the summer and that turns out not to be correct, I will come back and confirm that to the committee, but there is no anticipated delay to what we originally said on that.

**Rhoda Grant:** Okay—so it could be finished next week, given that that is in the summer? [*Laughter.*]

**Keith Brown:** If the sun should appear. I do not feel that I want to say any more about that.

**Alasdair Graham (Transport Scotland):** No—I do not think so. We should bear in mind that the traffic was switched on to one of the sections of the newly constructed dual carriageway in order that the final phase of works could be undertaken, including the removal of temporary works. That will go on, and we are on target to open in the summer.

09:45

**The Convener:** If it is an Indian summer, it will open in September.

**Rhoda Grant:** That is my worry.

**The Convener:** One of the consequences of the Kincaig to Dalraddy works is that people have used the local roads such as the old A9 as a rat run to avoid the 40mph average speed cameras and there have been accidents on it. Have you learned from that? When the next section is done, will you ensure that the speeds on adjacent roads are monitored carefully to ensure that they are not being so used and that it is not likely to cause accidents?

**Keith Brown:** We have to take each case on its merits. If we were to apply restrictions to surrounding roads, some of which have a different speed limit in the first place from the existing A9—and, eventually, the dual carriageway, where the limit will be 70mph—we would get substantial public reaction. A lot of it has not been about rat runs. At various points, we have had to direct traffic through those routes because of the road works that are taking place. However, we try to

take into account the impact on neighbouring communities and neighbouring roads and will continue to do that.

**The Convener:** To be absolutely clear, if we continue from Aviemore on the old A9 to Kingussie, we miss out the 40mph average speed cameras. I am not suggesting that the speed restrictions on those roads should be changed; I am saying that the police should be more aware because there has been an uplift of accidents on those roads. Will you pick that point up on other parts of the A9 where that might happen?

**Keith Brown:** We will certainly take that on board. Before we apply such restrictions, we consult the police and surrounding communities.

**Alasdair Graham:** We review all our projects at the end and consider the lessons learned, any of which could be taken forward to the next schemes. We will do that for the project that you mentioned, convener, and any lessons to be learned will be taken into account during the next stages in consultation with the police, as the cabinet secretary said.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** Good morning, cabinet secretary. I have driven up and down the A9 many times, as you can imagine, and there are some sections of it that look almost impossible to dual. Do you have an overview of which sections will be most difficult?

**Keith Brown:** Yes. You will know the road well. There are geological challenges, environmental challenges and challenges with existing infrastructure—at various points, the railway comes close to the road—so there are some pressure points.

The co-creative process that I mentioned relates to the Dunkeld area and is taking place because of the interaction of many different aspects: going on and coming off the road and the impact on local roads, as the convener mentioned, once the project is completed. Further north, the challenges tend to be more about geology and landscaping but, in some areas, they are about how local communities will access the road. At Kindallachan, for example, the issue is the railway coming right next to the road and how the local communities can access the road safely. It can be expensive to provide that access at some points. A grade-separated junction can cost between £20 million and £30 million sometimes, so we always have to take into account the cost to the public purse.

The A9 is a challenging road and, if people have travelled it for many years, as I have—not as frequently as you will have done—they will be well aware of the challenges. However, none of the challenges has been insurmountable. We are pretty much there with nine of the 11 phases and there is still some work to do on the other two.

**Gail Ross:** Good.

**Richard Lyle:** I turn to the M8, M73 and M74 improvements, the majority of which are in my constituency. On the point that you made to Peter Chapman on the A9, cabinet secretary, you have given me excellent help each time I have contacted you about the M8, M73 and M74. You have put up with me and helped me. I thank you and I thank Humza Yousaf for the work that he did. I also make a special mention of the Scottish Roads Partnership's Ian Balmer, who has been excellent, and Transport Scotland, which has worked with me of the past couple of years. I have had some of the problems that Peter Chapman said that he had but you solved them, cabinet secretary, and I suggest to Mr Chapman that he take up your offer.

All major roads that are associated with the M8, M73 and M74 motorway improvement project are now open, as you said. Can you provide an update on how the scheme is working and on what work is being done to complete the landscaping, the signage, the footbridges and the removal of traffic cones on the A725? I am not complaining about those in particular.

**Keith Brown:** Thank you for your comments. It is in our interest to help with such things. As Peter Chapman has mentioned, there is real pressure on some areas, such as signage and the diversions that we have had to put in place—some of those have to be changed very quickly. I am sure that Alasdair Graham can answer on the A725 issue.

I want to pick up on the point that you mentioned in relation to the Scottish Roads Partnership. It is not much discussed at the committee, but the work that has been put in by the people concerned has been tremendous. Even you, who have had major challenges with that road, will recognise that the level of activity that goes on there has sometimes been quite frenetic.

We will allow traffic on to a new road when we know that we still have snagging and landscaping to do. Where the M73 joins the M74, we have a new road being tied to an older road and some of the existing road surface is not up to scratch, not least because of the works vehicles traffic. For that reason, we have brought forward some planned maintenance of that road. It is not part of the project, but I want to give you a complete picture. There is still work going on around the approach routes, cone removal, maintenance and landscaping.

Before I let Alasdair Graham respond, I will quickly switch back to the Queensferry crossing. We are all hoping that this will be the last time that Michael Martin has to appear before the committee—we do not know whether that will be

the case because there may be further reasons for him to come back. However, I would like to acknowledge publicly the huge personal effort that Michael, and all those who work on the project with him, have put into it. I have seen that up close over a long period and I am well aware of the toll it takes on those who are so heavily involved—if I may use the word “toll” in relation to a bridge. There is a lot of pressure on the people involved and I would like to publicly thank Michael and his colleagues for all the work that they have done.

**Alasdair Graham:** Over the last three weeks since the opening of the A725, the contractor has continued work focusing on the installation of the gantries and other signage works. Those works have been undertaken overnight to avoid any disruption to the peak traffic. Substantial progress has already been made. The final landscaping, finishing and snagging works will go on until the autumn. However, that should not affect the peak traffic flow.

**Richard Lyle:** The cabinet secretary has once again offered to take me on a drive around that area. The signage for Bellshill and Coatbridge as you come off the M8 from Glasgow on to the old A8 needs to be improved—the gantries are looking good, but there needs to be better signage. On some parts of the road, there are no clear signs to remind people of the speed limit.

**The Convener:** That was a statement not a question, so we seem to have come to the end our questions. I thank the cabinet secretary and his team for coming to appear before the committee. Like everyone else, I am looking forward to the opening of the Queensferry crossing—it will be an exciting and long-awaited event.

I am not sure whether Michael Martin will be excused from further meetings, because once the crossing is open, the committee may want to seek a further session with you, cabinet secretary, the project team and Amey, to look back and to look at the future management of the project. However, I hope that we will not have another meeting between now and 30 August—indeed, we cannot do that because the Parliament will be in recess. I hope that it will all be good news from now on.

09:53

*Meeting suspended.*

09:59

*On resuming—*

## **Common Agricultural Policy Payments**

**The Convener:** Item 2 is an update on common agricultural policy payments. I welcome Fergus Ewing, the Cabinet Secretary for Rural Economy and Connectivity. I also welcome the Scottish Government officials Annabel Turpie, the chief operating officer for rural payments; Eddie Turnbull, the head of agriculture and rural communities information systems; and Andrew Watson, the deputy director for agricultural policy implementation. We have a fairly busy agenda, with a stage 2 consideration to come, so this part of the meeting will finish by 11 am. I therefore ask all members and the cabinet secretary to keep questions and answers as concise as possible.

Cabinet secretary, would you like to make a brief opening statement of up to three minutes?

**The Cabinet Secretary for Rural Economy and Connectivity (Fergus Ewing):** Good morning, everybody. Annabel Turpie is the chief operating officer for rural payments. She leads on making sure that CAP payments are being made and she leads our network of area offices. Eddie Turnbull is the head of information services and is responsible for the provision of information technology services to the directorate. Andrew Watson, who was appointed in March as the head of agricultural policy implementation, is responsible for CAP scheme management and the rural payments and inspections division’s status as a paying agency under the CAP regulations.

I welcome the opportunity to give a further update to last month’s update on CAP payments, and I hope that members have found the weekly updates that we provide to the committee officials useful. Today, we begin making payments worth £6.7 million to farmers and crofters under the Scottish upland sheep support scheme, or SUSSS. That pillar 1 scheme is of particular importance to hill farmers and crofters and is targeted at sheep production on the poorest-quality land. Payments will begin arriving in bank accounts this week and will be made to around 1,050 eligible producers by 30 June.

We also expect the vast majority of farmers and crofters to receive all their basic and greening payments by that date. However, I appreciate that members will wish to question me and my officials more closely on that. I therefore thought that it would be helpful to set out for members the exact details of all the payments that farmers and crofters have received under the 2015 and 2016 schemes, to reassure anyone who is labouring under a misapprehension that farmers have not

received any money this year. Of the 2015 CAP pillar 1 payments, 99.9 per cent—worth £342.9 million—were made by the extended deadline of 15 October last year. That means that over 18,000 businesses were paid by that date. Since then, we have been working through the tail, and we now have only 25 claims outstanding.

On the 2015 less favoured areas support scheme payments, 85 per cent have been made, with approximately 1,700 claims, worth £3.5 million, remaining to be paid. It is worth remembering that 11,056 LFASS recipients effectively received up to 90 per cent of their entitlement through the loans that were provided in March 2016, worth £54 million.

On 2016 pillar 1 payments, it is worth bearing in mind that over 13,000 farmers and crofters effectively received 80 per cent of their entitlement through the national loans scheme, which meant that £275 million was paid out even earlier than might have been expected, through payments in November last year. Since then, payments have been made on the balance that is due to farmers and crofters. As at close of business last night, we have made basic payment scheme and greening payments to over 84 per cent—15,115—of those who are currently estimated to be eligible, and eligibility is key here. Of those businesses, 319 have received 90 per cent payment, with the remainder—that is, 14,796—receiving full payment. We have made or initiated payments—they take six days to clear in some cases—valued at £311 million. That represents around 82 per cent of the total payments that we expect to make.

Even at this stage, it is not possible to guarantee with 100 per cent precision what level of payments will be made by the end of this week because of the complex interactions between IT functionality, the validation of claims, which must be done in line with regulations, and the processing of payments by our offices across Scotland. However, the latest figures show that good progress is being made daily. We have the process and capacity to make tens of millions of pounds of payments each day. To put that in perspective, as at Friday 16 June we had made only 58 per cent of payments, but by last Friday the figure had risen to 76 per cent. On a daily basis, the percentage reach can increase quite significantly. The equivalent figure at the same point last year was 65 per cent.

We are seeking to minimise any financial penalties that may flow to the Scottish Government. For that reason, we have written to the commission to ask whether a repeat of last year's penalty waiver would be possible. That application is under consideration and has not yet been finally determined. That forms part of the

prudent, risk-based approach that we are committed to taking to cover all contingencies.

In conclusion, our key focus and motivation is to ensure that the vast majority of farmers and crofters receive their payments before the deadline. RPID staff in offices in Edinburgh and across Scotland are working very hard, and we are seeing good performance from the IT system as part of that action. That is what our stakeholders are entitled to expect, and we will spare no effort in the coming days. I thank the committee for the opportunity to make that factual opening statement.

**The Convener:** Thank you, cabinet secretary. Before we go on to questions, of which there are quite a lot, I will go round the table and ask whether any member wishes to declare an interest.

**Stewart Stevenson:** I have a registered agricultural holding of under 2 hectares; I receive no financial benefit from same.

**The Convener:** I am part of a farming partnership, as is shown in my entry in the register of interests.

**Peter Chapman:** Likewise, I am part of a farming partnership, as is shown in my entry in the register.

**The Convener:** The first question is from Stewart Stevenson.

**Stewart Stevenson:** We are kicking off with a series of questions from various members on the technical assurance review and the Government's response. My question, however, relates to something that the review appears not to address, but to which the cabinet secretary has made quite a few public references. There is one area in which we have not published everything, and I accept that we properly should not do so.

There are some matters that the publishing of information on might enable evil forces to attack the computer system's security, structure and so on. I simply wonder to what extent the minister has been able, via his officials or otherwise, to interact with the contractor to make sure that those matters, on which we are not publishing details, are nonetheless being pursued to ensure that we have the most robust system possible that can reasonably defend us against the cyberattacks we have seen in the national health service and across the United Kingdom, and indeed across Europe in the past couple of days.

**Fergus Ewing:** We have taken the Fujitsu report very seriously. We have, in a private briefing session, shared the report with members of this committee and with the Public Audit and Post-legislative Scrutiny Committee in an attempt to be helpful.

We have also published and made public the key findings of the report, but we have not published the full report, for two reasons. First, information contained in the report relates to the private contract and to future negotiations on that contract, and there is information that is of particular commercial confidentiality. Secondly, I have been advised by the chief officer regarding information and the disclosure of information in the Scottish Government that there are potential threats to cybersecurity in so publishing. It would be foolhardy for any minister to publish a document having been advised by the top person in Government that to do so would risk a cyberattack.

I heard on the news this morning—alongside the news of my impending grilling, as we are now enjoying—about a serious cyberattack throughout the world. These concerns are not fanciful, therefore; we must take them very seriously indeed.

I do not want to abuse the committee's time, following the convener's admonition—if more technical information is required, Mr Turnbull, who is on top of the matter, will be happy to provide it. However, I stress that I want to be as co-operative as possible. If I could publish the whole report without threat, I would do that, and I have brought forward the key findings earlier, I think, than might have been done by a Government 10 or 15 years ago. I have tried to be as open and transparent as it has been possible for me to be.

Perhaps Mr Turnbull could—

**The Convener:** I will bring Stewart Stevenson back in first.

**Stewart Stevenson:** Just to be clear, I am not seeking technical information, because I accept the reasons why there are constraints. I simply want to be sure that those with technical responsibilities and the minister are pursuing the technical issues with our supplier to ensure that the issues that have been identified—

**Fergus Ewing:** Yes, we are.

**Stewart Stevenson:** That is the bottom line, cabinet secretary.

**Fergus Ewing:** I can answer that, because just yesterday I met—for, I think, the sixth time—Steve Thorn, who is the UK president of our main contractor, CGI. At that meeting, I sought various undertakings from him, which I can go on to describe, but I also discussed with him the Fujitsu report, and I can confirm to the committee that the supplier accepts the overall findings of the report. There are some points of detail that have been questioned, and they will be worked through between the Scottish Government and Fujitsu.

Steve Thorn has provided a confirmation, in which he says:

“I am pleased ... that my team have worked successfully and in close collaboration with your Officials in the input into a key report of the CAP Futures Programme.

It is positive that the overall conclusion of the report is that the architecture is fundamentally sound and the IT platform should be retained.”

That is very important, because it provides some reassurance to those people out there, particularly farmers and crofters, who think that the whole thing is useless and should be scrapped. That is not the case. It is fundamentally sound and it is working. It is not yet working to the strict time limits, and we have therefore had that acceptance from our contractor of the findings of the report.

I do not know whether Mr Turnbull has further comments to add.

**The Convener:** As Stewart Stevenson is not looking for technical information, I would like to bring in Mike Rumbles. There may be a chance for Eddie Turnbull to come in on technical issues.

**Mike Rumbles (North East Scotland) (LD):** The response that you have published is, as you say, a selective publication, but the issues are clearly not all about computer security and commercial confidentiality. You have made the decision not to publish critical comments that the report has made. When you were before the committee previously, this comment from the report was put to you:

“many quality assurance and governance practices have been knowingly sacrificed.”

Why has that major criticism of the Scottish Government not been published?

**Fergus Ewing:** I am not sure about the particular phrase, but—

**Mike Rumbles:** It is in the report.

**Fergus Ewing:** I entirely accept that the Fujitsu report says that remedial action is required, and that criticisms are made. I do not think that I have ever denied that.

The whole purpose of commissioning the report was to get an expert, third-party contractor view on whether the IT system was fit for purpose, because there were genuine questions from farmers and crofters about whether it works or whether we should scrap the whole thing—that was the fundamental purpose—and what remedial action we needed to take. I entirely accept there are technical aspects in which there are defects.

The use of the word “sacrificed” seems a bit strange to me. I do not quite recognise that, but we recognise that there are specific technical issues that need to be remediated—of course

there are, because if there were not, the system would be operating perfectly.

Mr Turnbull can perhaps answer the question with a bit more precision, if that would help, convener.

**Eddie Turnbull (Scottish Government):** Let me say from the start that we have not suppressed anything in the key findings of the report, which I agree, as read verbatim, are critical of a number of areas in the past that have led us to the point where we have a system that needs remedial action. There is no doubt about that. I hope that the committee will see that the key findings that have been published explain the situation we find ourselves in.

I suggest that the most beneficial thing for this committee would be to see the improvement actions that we are taking against those key findings, and to be assured that we are acting on them and we have a plan of action going forward that will ensure that farmers get paid on time into the future.

My view of this was exactly as the cabinet secretary said. We wanted to make everything open and take a warts-and-all look at the architecture that has been developed to this point in time, to understand the processes that are not working to an industry standard and correct them. I believe that we have been doing that since the review, which took place in January and February, although some improvements had been made before the review. I understand the public interest in this, but it must be about how we are improving rather than the state of the system as it was reviewed at a particular point in time.

10:15

**The Convener:** Not every member of the committee took advantage of Eddie Turnbull's briefing on the Fujitsu report, but members might have seen the "ARE Futures Fujitsu Technical Assurance Review". To use an analogy—I hope it is appropriate—if you were going along a road beside a ditch and there was a problem, the Fujitsu review identifies how deep the ditch is, but from reading the Government's response, you get no indication of how deep or big the ditch is that we have to cross. That is what we are trying to identify. Cabinet secretary, could you be clearer about when you think more of the technical assurance review as produced by Fujitsu can be made available to the public?

**Fergus Ewing:** Absolutely. I have sought to be as transparent as possible with the committee. I have appeared before this committee on numerous occasions and we provide weekly reports with all the figures. We have been transparent, which is what I want to be. As we

make progress, I will look again at whether we can release more of the information. I do not want to withhold any of it. We have provided what we can for the moment, for the genuine and serious reasons I have given. I could not have acted in any other way in accordance with my responsibilities. It would have been foolhardy to disregard evidence of a potential cyberattack when the world is facing a plethora of these attacks in the public and private sector. It would have been the height of irresponsibility for me to do so. That this is happening throughout the world is why it is on the front pages of the newspapers today and one of the lead news items.

The report contains a lot of detail about the nature of the systems that are used. If we supply all that information, we will facilitate the hacker. It is not very complicated.

Having said all that, some of the criticisms made in the report have already been and are being tackled. For example, in the previous four releases of IT, the progress we have made has been made with far fewer defects and issues because of the excellent work my officials and the team led by Lindsay McGranaghan for CGI have been doing.

I have visited 10 RPID offices myself and I plan to visit another five in August. I made an offer to the convener and committee members to visit an RPID office to understand some of the practicalities involved. I gather that you decided not to take that offer up but I would be happy to make it again because speaking to the people in the RPID office, particularly the leadership, would help you to understand some of the processes better—I mean no disrespect.

I am keen for Annabel Turpie or Eddie Turnbull to explain some of the progress that we have made in answering some of the Fujitsu issues.

**The Convener:** Cabinet secretary, I am sorry—the questions are stacking up and that was quite a long answer. I will let Mike Rumbles come in, then we have Rhoda Grant and Peter Chapman. Mike, could you be brief please?

**Mike Rumbles:** I am pursuing the point because it has nothing to do with cyberattacks or anything like that; it is about being open and transparent. The major point is that many quality assurance and governance practices were knowingly sacrificed. That is a major criticism that people need to be aware of, but the minister does not even seem to recognise that it was in the report. If you and your team do not recognise an independent report on the situation and do not publish it, how can we be satisfied that you are addressing the issues?

**Fergus Ewing:** You can be satisfied that we are doing so because we have the full report and we have gone through it with a fine toothed-comb—

we have examined it thoroughly. As the convener mentioned, we offered all members of this committee and all members of the Public Audit and Post-legislative Scrutiny Committee a briefing on the full report, so members have had access to it, albeit that I appreciate that that access has been provided on the basis of confidentiality.

I would like Mr Turnbull to have the chance to explain the good work that he has been doing on the matter.

**Eddie Turnbull:** I can offer what I offered earlier. To measure improvement, we must have a baseline. As Mr Rumbles has suggested, the baseline is that things were suboptimal. In working on an improvement plan, we must look at where we were and where we want to get to and monitor progress towards that, which is part of the work that we are doing. That requires us to discuss the issue with our supplier so that we agree what the baseline is and how we will make progress against it. I am sure that members appreciate that.

I would be content to come back to the committee to take you through our plans to give you some confidence that we are acting on the detail in the report, if that would be helpful, but I can demonstrate that there has been improvement—

**The Convener:** Very briefly.

**Eddie Turnbull:** I will do so very briefly. We have had a number of releases of software since the turn of the year. The release that was planned to be in place at the beginning of January was not implemented until towards the end of February. That is one of the reasons why we are challenged in making payments. Since then, we have applied better process and better governance, and subsequent releases have been delivered on time. That is an important fact. The number of defects that we carry forward into the live environment—which is not uncommon in a system—has been decreasing. Even in the live environment, we have cleared those within a couple of weeks.

If the committee would find it useful, I can provide those figures in detail.

**The Convener:** The committee will consider that.

**Rhoda Grant:** I am not confident that the system will ever work, but I understand that you are. I will ask a very simple question: when will it be fit for purpose?

**Eddie Turnbull:** The answer to that question is that it is working just now.

**Rhoda Grant:** But it is not fit for purpose.

**Eddie Turnbull:** You asked me when it will be working. It is working just now.

**Rhoda Grant:** No—I asked when it will be fit for purpose.

**Eddie Turnbull:** It is fit for purpose. At this moment in time, it is processing the claims that it requires to process.

The key point that I would make about the Fujitsu report is that it was about sustainability and whether the system would meet future needs; it asked whether we would be able to roll over from one application year to the next with the minimum of testing. The answer to that is that the system would not achieve that—we are having to put more effort into that than would be ideal. However, the remediation action that we are taking will mean that, as we move forward to subsequent years, we will have a platform that will be sustainable and which should be capable of bringing on whatever new schemes or policies we decide to implement.

**Rhoda Grant:** But the computer system is not doing its job now, because the cabinet secretary has had to go back to the European Commission to ask for a payments extension. If the system was fit for purpose, he would not have done that. Are you saying that, year on year, we will go back to the EC to ask for extensions?

**Fergus Ewing:** I will answer that. We have made an application to the European Commission as a prudent, precautionary measure, in the event that it is required. That application is in the course of being determined, and we hope to hear the outcome shortly.

I stress that, first, the single application form payments went much more smoothly this year than they did last year and, secondly, we have paid 99.9 per cent of last year's payments.

**The Convener:** Cabinet secretary, I am sorry but I am going to have to stop you there. I make this comment as a general comment to everyone round the table. We have until 11 o'clock. I ask people not to repeat questions or answers. I am afraid that I will have to leave that question there if I am to have any hope of getting through the rest of the agenda in the time left.

We move on to the second question. I remind people once more to try to answer the question quickly. If they do not, it may seem rude but I will butt in to allow every member to ask their questions.

**John Mason:** The committee has seen only a summary of the recommendations from the report on the 2015-16 European agricultural accounts audit. Will the full recommendations of the report be released?

**Fergus Ewing:** Andrew Watson deals with audit matters.

**Andrew Watson (Scottish Government):** We have provided an update to the Public Audit and Post-legislative Scrutiny Committee on the key findings of the audit. If that has not been made available to the committee, I will look into that following this discussion. In addition, the Audit Scotland report from May this year on CAP IT sets out some of the issues. A degree of information about the audit is in the public domain and available to the committee.

**John Mason:** Why is it only the key points and not the full report?

**Andrew Watson:** We set out the key findings because that is the easiest way to digest the substance of the report. If it would be helpful for us to provide more information, we can look at that.

**John Mason:** I am quite happy about a report being given to the committee confidentially, which we can then question in confidence—that happens frequently at the Finance and Constitution Committee and I do not have a problem with it—but if we do not even see the report, it makes it more difficult to ask questions.

Audit Scotland mentioned potential penalties of £60 million, and there has been some disagreement about that. Will you comment on that figure, cabinet secretary? Is it just a nightmare scenario or is it realistic?

**Fergus Ewing:** We feel that the figure of £60 million is speculative. The Auditor General herself said that it was not her best estimate; it was a possible figure. We do not believe that there will be penalties of £60 million. As I recall, last year the Auditor General estimated that the costs would be in the range of £40 million to £125 million. I have previously said that our indicative figure at the moment—it is not an estimate, because these matters are not assessed until much later in the audit process—is around £5 million, not £40 million to £125 million.

We have made those points to the Auditor General. We feel that the predictions that were made in 2015 were inflated and that the update report this year also has an inflated figure. However, we are working extremely hard to mitigate those penalties, and doing everything that we can so to do.

**John Mason:** The £5 million that you mentioned was for 2016.

**Fergus Ewing:** It was for 2015.

**John Mason:** And that is now a definite figure.

**Fergus Ewing:** No.

**John Mason:** It is still not finalised.

**Fergus Ewing:** The process is very long and cumbersome. I do not think that we have time to go into it, although I am happy—

**John Mason:** No—it is fine. Do you have any idea when we will get a final figure, even for 2015?

**Andrew Watson:** We would expect the EC to finalise that figure in the late summer or early autumn.

**The Convener:** Jamie, do you want come in on that?

**Jamie Greene:** My question is on the issue of potential penalties and is, I guess, in the spirit of today's transparency theme. On 21 June, the Scottish Government wrote to the European Commission seeking an extension to the payment deadline. I ask a simple question of the cabinet secretary. Was the First Minister aware of your intention to send that letter last Wednesday, prior to your sending it?

**Fergus Ewing:** Yes. It was reported to the Cabinet that we were contemplating sending a letter. I am sorry—I probably should not have said that it was discussed in the Cabinet. It was raised as a possibility—as something that we may do. It was not decided until the date of the letter that we would make a formal application because, as I understand it—Mr Watson can provide more detail, because I appreciate that this is a perfectly legitimate area of concern—the protocol is that there is an initial engagement and discussion about these matters, which initiated at the end of May. That led to the formal application on 21 June. As with all such things, there is quite a lot of work that leads up to and paves the way and prepares properly for the submission of a formal application.

10:30

**Jamie Greene:** So it was discussed in the Cabinet last week, prior to letting—

**Fergus Ewing:** I cannot remember which Cabinet meeting it was. Bear in mind that we are not all in attendance at all Cabinet meetings. The First Minister was away for one meeting, certainly—she was in Aberdeen, as I recall—so she may not have been privy to the discussion.

**Jamie Greene:** Whether she was at that Cabinet meeting or not, was she aware that you were going to send the letter to request an extension?

**Fergus Ewing:** It was something that was in contemplation—it was being considered. The final decision about making the formal application obviously was not taken until we made the application, because we did not wish to make an application unless we believed that it was a prudent and necessary step.

**Jamie Greene:** I am sorry to press, but who made the decision to send the application? It is—

**The Convener:** I think that you have got as much from the cabinet secretary as he can give you.

**Jamie Greene:** It is a very unclear answer.

**The Convener:** It may well be an unclear answer, but I am going to move on to the next question.

**Gail Ross:** I know that, tomorrow, the Public Audit and Post-legislative Scrutiny Committee will look at the Audit Scotland report that has just been published, so I will be very brief—unfortunately, I will not be there to ask questions. Appendix 3 of the 2017 report touches on the recommendations that were made in the 2016 report. One of the four recommendations has been completed, and three are work in progress. When do you expect to have completed all those actions?

**Fergus Ewing:** They are all in hand and a great deal of progress will be made by the end of the financial year. It is important to remember that some of the recommendations call not for specific actions but for continuous improvement and things such as the transmission of skills. Substantial progress has been made, and we accept all the recommendations in the report. We are pleased that it recognises that some progress has been made, although we point out that there are other areas in relation to which the report has not recognised the progress that has been made.

**Gail Ross:** Thank you. I was going to ask whether you accept all the recommendations but you have answered that. Do you agree with the statement that

“it is likely that the rural payments system will not be functioning as anticipated until SAF 2018 at the earliest”?

**Fergus Ewing:** As Mr Turnbull said, the system is working; otherwise, plainly, we could not have paid 99.9 per cent of the payments. It is pretty obvious that it is working, but it is not working on time. It is really important to understand that. To answer to the question, we already have an operational system that is delivering benefits, but we have more work to do to put payments on the timescales that we want to see and to deliver the remaining functionality. I expect to see very significant progress over both this year and next as our programme of continuous improvement continues.

**The Convener:** Just to clarify the matter, does the 99.5 per cent refer to the 2015 payments, rather than the 2016 payments?

**Fergus Ewing:** That is right, but it was actually 99.9 per cent.

**The Convener:** Sorry. Fine. I accept your correction and the clarification that it was last year's payments.

**Fergus Ewing:** It was 2015—that is right.

**Rhoda Grant:** I have a quick follow-up to Jamie Greene's question. The cabinet secretary said that the application to the EC was made on 21 June. That was the day on which we debated CAP in the chamber and no mention was made of it, and it was the day before the First Minister did not answer questions about it. I am assuming that in the chamber last Wednesday you knew when the application had been made, and that the First Minister knew that on Thursday when she was answering questions. Neither of you told the Parliament about it. How can we believe that you are being open and transparent if that is the case?

**The Convener:** Before the cabinet secretary answers that, I make the point that, unless I have got my facts wrong, the debate actually took place on the Tuesday.

**Rhoda Grant:** It was on Wednesday—the 21st.

**The Convener:** It was Wednesday. Sorry—I stand corrected. The debate was on the Wednesday and the letter was sent on the Wednesday.

**Fergus Ewing:** The debate was held and I provided a speech in response to the Conservative motion and dealt with the matters that were before us. I also wanted to speak to the amendment that I lodged. The Government and the First Minister have made it absolutely clear, and I am making it clear now, that the letter was taken forward as a prudent measure and the right thing to do.

**Rhoda Grant:** So why hide it? There were two opportunities to let the Parliament know.

**Fergus Ewing:** There was no question of hiding anything. I made a five or six-minute speech in which I dealt with the motion that was in front of me.

**Richard Lyle:** We have got into a who-why-what-where argument, but you made a comment earlier that intrigued me. You said that you offered the committee the opportunity to go into any office to see how the systems are working. I think that there is an office near me in Hamilton. Am I correct?

**Annabel Turpie (Scottish Government):** Yes.

**Richard Lyle:** I know of no invitation. Rather than ask, “Did the First Minister know this?”, I want to ask you, convener, about when we got an invitation from the cabinet secretary to go and see those offices. If we got that offer, why were we not told?

**The Convener:** Truthfully, I am trying to find out. I will speak to the clerks and come back to you.

**Richard Lyle:** Jamie Greene is getting quite upset about the First Minister, but I am getting quite upset that we have not been told that we can go to those offices. I want to see how the system is working. If the committee is not going to go, I would be more than happy to go to Hamilton with Annabel Turpie or anyone else. It is only five minutes down the road.

**Mike Rumbles:** Is this serious?

**The Convener:** Allow me to clarify. The cabinet secretary made the offer when he came to a meeting, and I believe that it was followed up afterwards. It is up to committee members to discuss whether they want to do that. I will move on to the next question, which is from Peter Chapman.

**Peter Chapman:** Before we move on, we need to bottom out the question of the debate. In the debate on Wednesday 21 June, I specifically asked the cabinet secretary whether he was going to make the payments on time and whether he was going to ask for an extension. I specifically made that request in my speech before the cabinet secretary spoke. It is absolutely not correct to say that he answered all the questions. There was also an opportunity the following day at the Highland show, when the cabinet secretary spoke to the assembled industry at the Quality Meat Scotland breakfast and could have said exactly what was going on, but that did not happen. In the spirit of openness, I am afraid to say that that certainly did not happen. I just wanted to make that point.

Will 95.25 per cent of pillar 1 payments be made in two days' time, by the end of June?

**Fergus Ewing:** I try to be as transparent as possible. Here I am for the umpteenth time. We provide weekly reports. I was delivering a speech in what was, as I recall, quite a rumbustious debate, and I wanted to speak to the amendment in my name, to get across some of the positives about agriculture in Scotland. That is what I did. I sought to answer as many points as possible but, with respect, the speeches were fairly short and it was a short debate. There is a procedure for providing information to Parliament, which I have regard to and implement scrupulously, but that procedure is not to provide information in an ad hoc speech in an Opposition business debate; it is to write to the committee convener to inform him or her of what is happening, and I do that with great regularity and will continue to do so.

Members have not said so, but I hope that they will agree that making the application was the prudent thing to do. It is something that should be

done only if it is felt that there is a reasonable possibility that the flexibility sought will be necessary. In other words, one should not make an application unless it is necessary. Because, in our opinion, we were fairly close to achieving the 90 per cent target—we may fall a few percentage points short—we did not wish to proceed with an application unless it was necessary. It only really became clear that it might be necessary fairly recently. That is it.

I will double-check whether I can do this, but I would be happy to share with the committee the terms of the letter to the Commission, if that would be of assistance. I want to be as open as I possibly can be. If the criticism is that, in a speech in a political debate, I did not mention things about a letter that was sent out on the same day, we are moving into somewhat fanciful territory.

**The Convener:** Cabinet secretary, both you and Peter Chapman have had a chance to bat that around. I would like to drag you back to the question that he asked you, which I believe was whether you will have made 95.25 per cent of pillar 1 payments in two days' time.

**Fergus Ewing:** Obviously, we have given that particular thought, and we have made substantial progress. Our central forecast is that we will make around 90 per cent of payments by that time. In other words, we will fall short by a few percentage points.

We are making a large number of payments each day to achieve that. It is very important that the farmers and crofters who are listening to the meeting, or who see the reportage of it, know that I expect the remaining payments to be made fairly shortly after 30 June. In other words, they will not be made within the deadline but fairly shortly thereafter. We expect virtually all eligible pillar 1 payments to be made by the end of August.

The deadline of 30 June is very important for the European Union and for penalty determination, but what farmers want to know is when they will receive the balance of their money. Let us remember—because it seems not to be reported frequently—that most farmers and crofters have received most of their money with respect to the basic payment and the LFASS loan scheme. I think that that pragmatic step needs to be stressed, as it is a very important measure for those farmers and crofters, and that is our primary concern.

**The Convener:** I remind everyone again to please answer the specific question as directly as possible. I understand the points that you want to make—I understand that everyone wants to make points—but I urge you to please answer specific questions.

**Peter Chapman:** Given that you have said that you will miss the 95 per cent payment deadline, cabinet secretary, how big do you think the EU penalties for that will be?

**Fergus Ewing:** It is impossible to be precise about what the penalties might be, but we are confident that they will be far less than the £60 million that the Auditor General has opined. As soon as we have further information on that, we will of course share it with the committee.

**Peter Chapman:** The £60 million is for non-compliance, not missing payments. That would be a different figure.

**Fergus Ewing:** No, it is for penalties and disallowance.

**Jamie Greene:** The cabinet secretary has explained pillar 1 payments and the projections for them. When will 2016 pillar 2 payments be made?

**Fergus Ewing:** We have a schedule for that. I looked at it earlier this morning, and Annabel Turpie has it in front of her. We have a large volume of statistics in front of us, so as she finds the relevant document, let me say that pillar 2 payments are not subject to the same time schedule as pillar 1 payments, for which the payment window is December to June. Pillar 2 payments do not have that deadline, as I am sure the member is aware. Generally speaking, the aim is for pillar 2 payments to be made in the autumn. In the interests of saving time, I am happy to provide that schedule in writing very quickly, if that would assist.

**The Convener:** Annabel Turpie seems to have found it.

**Annabel Turpie:** In our current payment schedule for pillar 2, we are looking at LFASS payments being made in summer 2017—I believe that we have told the committee these dates before. Payments for rural priorities are to be made in 2017; for the agri-environment climate scheme and the forestry grant scheme in autumn 2017; for the beef efficiency scheme in autumn 2017; and for land manager options in autumn 2017.

I point out that we are working with our suppliers to make sure that those can be delivered. We will of course update the committee, and the Public Audit and Post-legislative Scrutiny Committee, if there is any slippage.

**The Convener:** Cabinet secretary, “summer” and “autumn” are constantly mentioned. It is very difficult to get a handle on the dates, so when you write to the committee, would it be possible to give months rather than those generic periods?

**Fergus Ewing:** Yes, we will do that.

**The Convener:** Thank you.

10:45

**Jamie Greene:** I reinforce the point that farms are businesses and that quarterly deadlines are quite vague, so more specificity would be helpful. Are there any farmers or crofters who are—or have been—eligible but have received no 2015 or 2016 LFASS payments and no loans? Have any farmers who are eligible for money received nothing?

**Fergus Ewing:** We are checking this out, but based on the preliminary information I am not aware that there are any cases of such non-payment. Is that Andrew Watson’s understanding of the situation?

**Andrew Watson:** We are confident that all eligible customers for the 2016 LFASS loan scheme that started in March have been either offered a loan or given the opportunity to provide more information to enable them to receive a loan, so the cabinet secretary is correct.

**Jamie Greene:** So anyone who was eligible for a loan has been offered one and anyone who has wanted one has accepted one.

**Andrew Watson:** Yes. Those are opt-in schemes, so it is up to the farmer or crofter to indicate that they wish to take up the offer of a loan.

**Jamie Greene:** Okay. Thank you.

**The Convener:** Rhoda Grant has the next question.

**Rhoda Grant:** When will the 2015 payments be made in full?

**Annabel Turpie:** Across pillar 1 and pillar 2?

For BPS, greening and young farmers, we are looking at early summer 2017 for the 25 claimants who are still to be paid. I appreciate the convener’s point about specifying the month, so I will confirm that, but I would say that early summer is July. Eight claimants are still to be paid for voluntary coupled support, which is the beef and sheep schemes, and that money will also be paid in early summer. For LFASS, we still have to pay 1,700 claimants and we are again looking to pay the majority of them—I am pleased to say that we have fixed all known defects in the system—and we are also looking to do that in July. For rural priorities, we are now down to what I would call the tail. Those are very complex cases where we are quite often looking for more information. There may be disputes over the information between different applicants, or legal issues may be in play. We still have to pay 30 claimants for rural priorities and we have 50 claimants to pay for land management options. We are going through them steadily.

**Rhoda Grant:** How much money is still outstanding that has not been paid either as a loan or as a substantive payment?

**Annabel Turpie:** Net of loans, there is just over €162,000 for BPS. For sheep and beef, the figure that I have is that we have £500,000 to pay—I want to confirm the figure, so I will give you the information in writing.

**Rhoda Grant:** It would be useful to get all those figures in writing.

**Annabel Turpie:** Yes, of course.

For LFASS, net of loans the figure is £3.5 million; for rural priorities it is £90,000; and for land management options it is £400,000.

**Gail Ross:** You have told us before that the 2015 and 2016 payments cannot be made at the same time. How are the 2015 payments currently being handled? Are they holding up the 2016 payments or are they being done manually?

**Annabel Turpie:** The payments for BPS, VCS and LFASS will go through the system. Because of how we manage our debts we cannot run them through the system at the same time. To be clear, that is because of a policy decision that officials have taken around debt management rather than because of the system. What will happen is that in July debts will come off for BPS 2016 and we will then load the 2015 payments on, because we have fixed the known defects. The payments for rural priorities and LMO are manual payments, so they will carry on.

**Richard Lyle:** I have a brief question. You might want to write to the committee to answer this question, or you can even tell me when I come to visit you.

I have a lot of figures in front of me. The figures indicate that for pillar 1 schemes, 30 payments are still outstanding under the basic payments, greening and young farmers schemes. How many people were in those schemes? For the beef and sheep schemes, 36 payments are still outstanding; for the rural priorities scheme, 42 payments are still outstanding; and, for the land managers option scheme, 50 payments are still outstanding. I know how many payments are still outstanding, but I would love to know the original figures. You might want to write to us with that information.

**Annabel Turpie:** I will write to you to confirm this, but I believe that the figure for BPS was 18,321. The figure for sheep and rural priorities is 99 per cent. I will write to you with the numbers, but that shows you the scale. We are dealing with a very small tail—with the exception of LFASS.

**Richard Lyle:** The first figure was 18,000, and there are only 30 payments left to make. Is that right?

**Annabel Turpie:** It is 25 actually.

**Richard Lyle:** So, only 25 of the 18,000 are left to be paid.

**Annabel Turpie:** That is what we would consider a normal tail. I know that the people who have not been paid will not be happy with that description, but those cases are the genuinely complicated ones where there might be disagreements over land, for example—two people might have claimed the same land. We are looking for information.

**Rhoda Grant:** I think that you said in your answer to Gail Ross that you were running the 2016 payments and then you were going to reload the 2015 payments. Did I hear you right?

**Annabel Turpie:** That is to do with debt management. We have to load the debts on for each scheme year.

**Rhoda Grant:** I am not sure that I totally understand that.

**Annabel Turpie:** I can write to the committee to clarify it.

**The Convener:** I think that we have got the point that you cannot run the two things at the same time. Eddie Turnbull told us that at a previous meeting.

**Eddie Turnbull:** That is by design, rather than because of any issue with the system.

**Fergus Ewing:** I repeat my offer: if members want to visit Saughton house or one of the offices to discuss these issues, they can do so. I followed up the verbal offer that I made at the committee previously, convener. I understand that you rejected my initial offer in writing, but I am happy to renew it today.

**Richard Lyle:** I would be happy to take up your offer.

**The Convener:** Richard—thank you. I invite Mike Rumbles to ask the next question.

**Mike Rumbles:** I want to focus on the knock-on effects of the focus on the CAP IT project on other issues, such as the beef efficiency scheme. Does the Scottish Government's focus on the CAP IT and payment issues mean that other schemes such as the beef efficiency scheme are being neglected, which has led to hundreds of farmers withdrawing from them? Will there be an underspend in the beef efficiency scheme budget as a result of such drop-outs?

**The Convener:** A brief answer to that would be appreciated.

**Fergus Ewing:** We responded to concerns that farmers and NFU Scotland raised by making amendments to the scheme. The take-up has

been high in terms of the number of cattle but lower in terms of the overall proportion of farmers involved. Farmers have made individual choices. This is just my view, with which others might disagree, but I do not think that the fact that take-up was lower than we had hoped—it is still substantial—is a causal result of any difficulties with the CAP IT payment. It is because farmers were not persuaded that the responsibilities and compliance duties under the BES were worth taking, given the financial compensation, although there are differing views on that. I have spoken to some farmers who think the scheme is very good and others who are very critical of it.

**Mike Rumbles:** You are reported as saying that 330 farmers have withdrawn from the scheme. Why is that?

**Fergus Ewing:** I do not think that that is to do with IT. That is the point that I am making. I am happy to come back and deal with that on another day, or in writing, but I just do not think that it is to do with the topic in hand today. I might be wrong and, if so, I would certainly want to correct the record, convener, but although it is a matter of speculation as to why precisely those individual farmers chose not to stay in the scheme, I do not think that it was a result of CAP IT issues.

**The Convener:** I think it would be fairer to let Mike Rumbles finish his question. He had not quite finished it before you answered, cabinet secretary.

**Mike Rumbles:** I am not suggesting that those farmers have withdrawn from the scheme because of the CAP IT project—that is a red herring. What I am trying to get at is why 330 farmers have left the Government's beef efficiency scheme. Is it because it is too complicated? You must have a view as to why those 330 farmers have left the scheme. I would like to know what it is.

**Fergus Ewing:** There were certain issues with the scheme, which we dealt with. It is important that I make this clear, because we had particular dealings with the NFU. There was an issue with the timing for issuing tissue sampling tags, particularly in relation to spring-born calves, which are often sold in the early autumn sales.

There were also health and safety issues in relation to tissue sampling bulls—not a task for the unwary, one might think. We reached agreement with the industry to resolve those issues, first, by issuing an early selection for those producers of spring-born calves who recorded all their calving details on the system by 9 June. Three hundred and nine producers took advantage of that, and a sampling selection is currently under way. Secondly, we reached agreement on allowing vets to do blood sampling instead of tissue sampling.

These matters are highly technical, and with respect, I did not come here primarily with the

thought that I would be addressing them. However, I respect the question itself, and, accepting that it is a perfectly reasonable one to ask, I undertake to reply in writing to Mr Rumbles with any further information that we can provide in response.

**The Convener:** Thank you, cabinet secretary, and I am sure that you will direct that response to the committee, too, so that we all get the benefit of it.

The next question is from Peter Chapman.

**Peter Chapman:** You might not be ready for this question, either, cabinet secretary, but it relates to the fact that LFASS is not supposed to continue after 2017 and that we are supposed to move on to a support scheme for areas facing natural constraint. The NFUS does not think that the Scottish Government is up to speed on this or that it will be able to move on to the new system. As a result, we will have a parachute system of 80 per cent of LFASS payments as we go forward into 2018. Is that a result of the focus being on the CAP IT system? Is that system taking up everybody's time to such an extent that new schemes are not being taken forward in the way they should be?

**Fergus Ewing:** No, it is not. The decision to go for the LFASS 80 per cent parachute option was taken substantially on policy grounds, and I think that it has been welcomed as giving clarity.

Secondly, I am aware that the Commission is looking at requests from the European Parliament to permit 100 per cent of that year's payment to be made. There is therefore the possibility of the parachute option being deferred by a year, and I hope that that takes place.

Thirdly, we want to continue to make LFASS payments. As I am sure those who know hill farmers are very well aware, they are very valuable, but I am unable to give assurance on the LFASS budget for 2019, because despite repeated requests the UK Government has still not guaranteed the funding of LFASS in 2019. I raised the issue in my initial brief meeting with Mr Gove last week.

**The Convener:** The penultimate question is from John Finnie.

**John Finnie:** Good morning, cabinet secretary. We could spend all day on the subject of Brexit, but I suspect that we have only two minutes.

I want to ask about the Scottish Government's handling of the existing arrangements. Some of us would like a future scheme to have more of a concentration on environmental priorities. Are you able to talk about any future arrangements, and are you confident that the mechanisms to support them, however they might come about, are in

place? I appreciate that there is a lot of uncertainty about this.

**Fergus Ewing:** The Scottish Government strongly believes that in many cases the environmental schemes serve valuable purposes, and we therefore want to continue them. When I met Mr Gove last week, I expressed concern about the lack of clarity about the continuation of funding post Brexit. Until we have clarity about the budget, it is a bit difficult to start making arrangements about its allocation. As a brief response, though, I would say that we recognise that environmental schemes should be in place, and that issue will very much be taken forward by me working closely with Roseanna Cunningham.

**The Convener:** I see that Christine Grahame would like to ask a question. Given that she has not asked any yet, I will give her the penultimate one.

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** It is just a quick question, convener. I am pretty ignorant about IT systems, but given that this one has had to be tweaked—that might not be a big enough word—to make the payments work, will it now be able to operate whatever arrangements are in place? I realise that you are looking at this with regard to payments coming from Europe, but once we are out of Europe and the payments start to come from, say, the UK, will the system be able to adapt so that we do not have to go back to payments to farmers being delayed?

**Fergus Ewing:** That is an extremely good question. Plainly, the system was devised in the expectation that the UK would remain in the European Union and therefore devised to meet the compliance requirements for the reformed common agricultural policy. Were a totally different system of financial support to be put in place, the current IT system would obviously need to be adapted considerably to cope with that—and it is by no means clear that it could.

The key thing about the current system is that it records each land holding digitally. That is of great value, given the move from paper to digital records for all farm holdings—of which there are, I think, 54,000 covering 5.5 million hectares. I hope that the answer is in the affirmative, because it would be an extraordinary waste of money if one of the consequences of Brexit was the requirement to purchase new IT systems. That would, I think, create further real concern on top of existing concerns.

11:00

**The Convener:** The last question, which I am going to ask, requires just a yes or no answer, so we should keep within our timescales. Will we

need a loans scheme for payments for this current year—in other words, for 2017? Yes or no?

**Fergus Ewing:** I have actually prepared an answer to what is a very important question, convener, and given its importance, please let me answer it in this way. I am in no way dodging the question.

First, we aim to complete the functionality of the CAP IT system to ensure that loans are not required, but a judgment will be made shortly as to whether a further loans scheme is necessary. If so, there shall be a loans scheme for the basic payments, as there was last year.

The question whether a scheme is necessary will be determined following the outcome of the further discussions with CGI, which I met yesterday and pressed for assurances on effective delivery of the IT systems on time to enable timeous payment. We will provide clarity on this issue as soon as possible but in either event—and this is the key point—we will ensure that farmers continue to receive the substantial majority of the payments to which they are entitled within the payment window, either through full payment in the normal course or through a loans payment scheme. I expect to announce our decision on this matter later this year, probably in September.

**The Convener:** Thank you, cabinet secretary. I am sure that those who have been listening will make up their own minds as to whether that was a yes or no.

The committee would really appreciate being kept up to date on the response from the European Commission on the request for an extension to the deadline for payments, and it would also appreciate an indication, as soon as they are known, of fines that might emerge from the failure to meet payment deadlines. We also request that the cabinet secretary come back to the committee in the autumn to provide an update on the issues that we have discussed today.

I thank the cabinet secretary, Andrew Watson, Annabel Turpie and Eddie Turnbull for coming to the meeting, and I will have a brief suspension to allow the witnesses to leave.

11:02

*Meeting suspended.*

11:07

*On resuming—*

## Subordinate Legislation

### Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017 (SSI 2017/177)

**The Convener:** Item 3 is consideration of a negative instrument, as detailed on the agenda. Members should note that no motions to annul have been received and there have been no representations to the committee on the instrument. As members have no comments, is the committee agreed that it does not wish to make any recommendations in relation to the instrument?

**Members** *indicated agreement.*

## Seat Belts on School Transport (Scotland) Bill: Stage 2

11:08

**The Convener:** Item 4 is stage 2 consideration of the Seat Belts on School Transport (Scotland) Bill. We will start the formal procedure now.

*Section 1 agreed to.*

### Section 2—Meaning of “dedicated school transport service”

**The Convener:** Amendment 1, in the name of Gillian Martin, is grouped with amendments 2 to 4.

**Gillian Martin (Aberdeenshire East) (SNP):** The committee’s stage 1 report recommended that

“no distinction should be made between travel on dedicated home to school transport and that on a school excursion”

and stated that the committee would welcome an amendment to the bill to the effect that the duty to ensure the fitting of seat belts be extended into such provision.

As the committee knows, I consider the safety of children on school transport to be an area of the utmost priority. As I intimated at stage 1, I share the committee’s sentiments that extending the scope of the legislation to cover school trips aligns with the ethos of what we are all trying to accomplish with the bill. Amendment 1 and the other amendments in the group achieve that aim.

I think that the committee is aware that in practice, vehicles that are used for school trips are almost universally supplied with seat belts already. That is because robust national risk assessment guidance advocating that already exists. Feedback from stakeholders is that that is rigidly adhered to by those who book such transport—they are often teachers, who belong to a closely regulated profession. However, we have listened to the views of the committee, parliamentarians and other stakeholders who feel that creating a legal duty for seat belts on home-to-school transport means that equivalent practices for school trips should be put on a statutory footing.

Amendment 1 replaces the previous definition of a “dedicated school transport service” in section 2 and adds the new element of transport that is used for school trips or excursions, which is defined in subsection (3) of the proposed new section as a “school trip transport service”, to the existing coverage for home-to-school transport. Again, the vehicles are those that are provided for the sole purpose of carrying school pupils. As with home-to-school transport, public bus services would not be captured as they are outwith the Parliament’s legislative competence.

There are different kinds of school trips, so the new definition of “school trip transport service” captures journeys that begin and end at the school on the same day, such as trips to a local swimming pool, as well as trips that take place over a number of days or weeks, such as skiing trips overseas.

The intention is that the commencement dates for school trip provision would be the same as those for home-to-school provision, which are 2018 for primary schools and 2021 for secondary schools.

The bill, as amended, will incorporate existing statutory definitions of “school education” from the Education (Scotland) Act 1980, as amended by the Children and Young People (Scotland) Act 2014, which can include early learning and childcare provision. Therefore, the legal duty, as amended, will extend to nursery classes in schools, whether they are provided by local authorities or by independent or grant-aided schools. However, we anticipate little or no change in practice in that regard. The general use of minibuses, which already have to be fitted with seat belts under existing United Kingdom regulations, and the common approach of using specialised restraints for very young children mean that that should not require great transition on the ground.

Amendments 2 and 3, which are consequential to amendment 1, reflect the new definition of a “dedicated school transport service”. The effect of the amendments is to delete the terms “primary education” and “secondary education” from section 3(2), as they will no longer appear in the bill, and to replace them with the term “school education”, which has the meaning that is given in section 135 of the Education (Scotland) Act 1980.

Amendment 4, which is consequential to amendment 1, amends the long title to reflect the expansion of the bill’s coverage.

I move amendment 1.

**John Mason:** I cannot speak for the whole committee, but I think that many of us are enthusiastic about the amendments, as we spent quite a lot of time in previous meetings discussing the question of school trips. We felt that, logically, they should be included so I am glad that Gillian Martin has been able to find a wording that fits.

I witnessed something on 8 June when I was visiting a school on polling day. The school choir was heading off to sing at a church and the pupils were going in a double-decker bus, which I found interesting. I suspect that it did not have seat belts—although I did not check—and that showed me that there is a need to include school trips along with other travel.

My main question, which perhaps Gillian Martin can answer in her summing up, unless she would like to intervene, is about the phrase

“to or from a place where the pupils receive education or training”

in subsection (3) of the proposed new section that would be inserted by amendment 1. Would that include the likes of trips to Alton Towers or to church, if pupils were going to take part in a service? Those events in themselves do not appear to be “education or training”.

**Mike Rumbles:** This is a major change to the bill and I congratulate Gillian Martin on lodging the amendments. They make the bill much more effective and I will support them.

**Jamie Greene:** My only comment, which can be addressed in summing up or via an intervention, is about the inclusion of what happens between drop-off at and collection from school. There was general consensus about that being equally important when it comes to safety on buses. However, one of my concerns throughout has been around any legal requirements that that may put on schools that contract with bus operators or private coach companies.

11:15

In other words, if an excursion takes place for whatever reason, whether it is an educational or training visit, or indeed a social visit, will any changes to include such excursions in the bill place additional legal requirements on schools—public or independent schools and so on? That point has not quite been addressed. There may be a legal issue that needs to be discussed in more detail.

I would not like the inclusion of the provision to create unintended consequences for schools that have direct contracts or take out ad hoc or one-off contracts with bus hire companies, because that was never really the intention of the bill; it was more about local authorities ensuring the safe transport of children on buses.

**Stewart Stevenson:** As John Mason said, the member has included the definition of a “school trip transport service” in subsection (3) of the proposed new section. Would the member be minded to extend that definition at stage 3 beyond “education or training” to include participating in a sports event on behalf of the school?

The world has changed a bit since I went to school, but my reason for saying that is that I went to what was probably the biggest school in Scotland and, on a peak Saturday, we had 42 separate sports teams. About half of those teams would be travelling to participate in sports competitions with other schools and about half of

them would be receiving teams from other schools. We had 15 rugby fifteens, 12 football elevens, 12 hockey elevens and three cross-country teams. There are fewer teams today, but that will still be an issue. Having addressed the issue of school trip transport, I wonder whether the provision should be extended to include such events, which are of a similar character.

**The Convener:** The deputy convener and Christine Grahame both wish to comment. I ask you both to be brief.

**Gail Ross:** I will be very brief, convener, thank you. In her summing up, I ask Gillian Martin to address the financial memorandum and whether amendment 1 makes any changes to it.

**Christine Grahame:** I would caution against adding a list to the definition of a “school trip transport service” for “education or training” to include sports purposes, for example. I ask the member to consider putting something in proposed subsection (3) that would have some flexibility—for example, “to receive education or training or for usual purposes connected with school activities”—rather than including a list in principal legislation.

**The Convener:** Would the minister like to say anything at this stage?

**The Minister for Transport and the Islands (Humza Yousaf):** Thank you for the opportunity to give the Scottish Government’s response to amendments 1 to 4. We welcome the work that the committee has done on this issue and the work that Gillian Martin has done. I congratulate Gillian Martin on getting congratulations from Mike Rumbles. It took six or seven committee appearances for me to get such praise from him and she has done it in just a couple of appearances.

We very much welcome the committee’s contention that the bill should be extended to cover school trips. That aligns with the Scottish Government’s overall aim to keep children safe while travelling in vehicles to and from school. Given the different nature of the provision from that which is used for home-to-school transport, some investigative and preparatory work was needed ahead of stage 2 to scope what such extension would mean on the ground. I welcome the detail that Ms Martin gave in her opening remarks and the reflections, wise advice and commentary that have been given by members.

The Scottish Government very much stands ready and willing to help with implementation following the passing of the bill. The committee will be aware that we intend to work very closely with Ms Martin, young people themselves and a range of stakeholders on the creation of guidance to accompany the commencement of the act.

We have heard that national risk assessment guidance already advocates vehicles with seat belts being used for school excursions. However, we will consider any alterations or additions that are needed as a result of the new element of provision that the bill would cover.

Again, I welcome the committee’s call for the proposals in amendment 1 and Ms Martin and the bill team’s work in bringing it before Parliament. The Scottish Government strongly supports all the amendments in the group.

**Gillian Martin:** I thank all members for the constructive comments that they have made throughout the process and for the useful contributions that they have made to the debate on these amendments. I will address the points that members made in reverse order, because that is the order in which I wrote them down.

Gail Ross asked about the financial memorandum. If this group of amendments is agreed to, a new financial memorandum will have to be looked into between stage 2 and stage 3, because the scope of the bill will be wider than it was when the bill was introduced. I hope that that answers her question.

I turn to the points that Jamie Greene made. After the committee suggested amending the bill in this way, which I was keen to do, we reached out to the Association of Headteachers and Deputies in Scotland and the teaching unions to get their feedback on just how onerous the change would be for schools. We heard that it was absolutely the right thing to do, so I really do not have any concerns in that regard. We heard overwhelming evidence that schools were already doing this, so they did not envisage much change to their practices. However, whenever we make amendments to a bill, it is important that we reach out again to stakeholders, from whom, in this case, we got full support.

**Jamie Greene:** I thank Gillian Martin for letting me intervene briefly. I accept that the majority of schools are already doing this—I think that we expected that to be the case. My question is more a technical one. If we include in the bill excursions that are made during the school day, will that place an additional legal requirement on schools that have individual contracts with bus operators, outwith local authority contracts? Will any finance that is being made available to local authorities to meet the requirements be made available to individual schools that face an additional financial burden in meeting the requirements of the bill?

**Gillian Martin:** I refer you back to my answer to Gail Ross. There will be a new financial memorandum, which will take into account all the issues that you address. We will be able to look at that at stage 3.

I want to pick up on the comments that Stewart Stevenson, John Mason and Christine Grahame made about types of trips. The bill covers all trips. Under curriculum for excellence, there is a broad definition of education. Schools make decisions about the type of trips that they see as being good for their pupils, and the definition of educational lies with schools. Perhaps we would not all agree that going to Alton Towers is educational—I have my own thoughts on that—or that going to sports events is educational, but all such trips will be covered as school trips. If the school sees fit to have a school trip, that comes under education. I agree with the point that Christine Grahame made about that: it would be problematic to start drawing up a list of what is covered. The umbrella definition covers all school trips. I hope that that answers members' questions.

There are many nuances around how school transport is delivered across the country, so we need to allow flexibility—in many ways, that is the characteristic that will make this bill succeed. I welcome the acknowledgement in the committee's stage 1 report that flexibility is key and should be retained for many elements of school transport provision.

I invite the committee to agree to amendments 1 to 4, and I press amendment 1.

*Amendment 1 agreed to.*

*Section 2, as amended, agreed to.*

### **Section 3—Meaning of other key terms**

*Amendments 2 and 3 moved—[Gillian Martin]—and agreed to.*

*Section 3, as amended, agreed to.*

### **Section 4—Annual compliance statement**

**The Convener:** Amendment 5, in the name of Rhoda Grant, is grouped with amendment 6.

**Rhoda Grant:** When we took evidence, the issue arose that it is the responsibility of the driver of a car to ensure that their passengers, including children, are wearing seat belts. However, it is clear that that responsibility could not be borne by a bus driver—that would simply be dangerous.

Further, road traffic legislation is reserved, so the bill cannot legislate on the wearing of seat belts, which is why the bill covers only the fitting of seat belts. There are also concerns about the duty of care and where that falls with regard to the wearing of seat belts. The Scottish Government responded to those concerns by saying that it would be for courts to decide where the duty of care falls. Therefore, the bill is not clear about who needs to promote the wearing of seat belts. It is

simply not right that that should need to be tested in court after an accident.

My amendments 5 and 6 would ensure that the Scottish Government must issue guidance on what authorities' expectations should be with regard to the wearing of seat belts. It might be that the Scottish Government could recommend that there should be monitors to ensure that seat belts are worn, but it could ask authorities to engage in an education programme with young people to promote wearing of seat belts. The Scottish Youth Parliament thinks that that is a good idea, because it feels that young people should be proactively involved in wearing seat belts rather than being forced to wear them by a third party.

Amendments 5 and 6 would ensure that the Scottish Government must issue guidance on how to promote use of seat belts and on how to monitor their use. That would mean that, when the act has come into force, it would be evaluated to determine whether it is having the intended impact. If it is not, we can look at the legislation again and prevail on the UK Government to act on reserved legislation.

I move amendment 5.

**Stewart Stevenson:** Rhoda Grant suggested that local authorities might engage monitors. Amendments 5 and 6 both use the phrase "to monitor the wearing of seatbelts".

I think that there is a bit of ambiguity regarding the distinction between engaging monitors and monitoring the wearing of seat belts. Would that involve statistical monitoring? I think that the phrasing is ambiguous, as it is constructed.

Rhoda Grant has said that the intention of her amendments 5 and 6 is to ensure that we get the best possible practical outcomes, and that local authorities keep an eye on those outcomes. I can absolutely sign up to that, and I suspect that others can, too. However, I am just not entirely certain that the construction of the amendments fully and unambiguously addresses that need, and I wonder whether that goal can be achieved in a different way, rather than simply by putting something in the bill. I would be particularly interested to hear what the member in charge of the bill and, perhaps, the minister have to say on that.

**Jamie Greene:** Amendment 6 would insert into the bill the following subsection:

"(2) Before issuing such guidance, the Scottish Ministers must consult—

(a) each school authority,

(b) such other persons as they consider appropriate."

I have a slight concern about that. Is the intention that every school or local authority must be

consulted before guidance can be issued? That would place a burden on the Government. Further, I find phrase

“such others persons as they consider appropriate”

to be very vague. I am a little bit uncertain about those two points.

11:30

**Humza Yousaf:** First of all, I thank Rhoda Grant for lodging amendments 5 and 6. It is clear that she shares our commitment to making safety on school transport a top priority, and our view that we have a collective responsibility to do all that we can to keep our young people safe.

The Scottish Government shares the sentiment that I think the member is trying to express in amendments 5 and 6. As we have committed to creating non-statutory guidance, and education and awareness-raising materials to accompany the commencement of the legal duty, we have no issue with the principle of school authorities looking at Scottish ministers’ guidance. However, we know that school authorities take child safety very seriously and pay great heed to good practice in that respect, so it is questionable whether statutory guidance would be necessary.

Additionally, there are, as Stewart Stevenson and Jamie Greene have picked up, specific issues with amendments 5 and 6 as drafted that might cause difficulty. Committee members should be aware that because amendments 5 and 6 relate to the wearing of seat belts, which is—as Rhoda Grant mentioned—a reserved matter, legislative competence restrictions might need to be examined more fully and further legal consideration needed before we would be comfortable with supporting such changes to the bill.

On the detail of amendments 5 and 6, I agree with Stewart Stevenson’s point about the use of the term “monitor”. Added to that, its use in amendment 5 has the potential to cause difficulties with interpretation. It is very close to the widely used and accepted term “bus monitor”, which stakeholders in dedicated school transport are familiar with. Therefore, there is a risk of the amendment being interpreted as creating a legal duty to have bus monitors on every journey, which is an issue on which, in its stage 1 report, the committee said that flexibility should be retained.

Subsection (2)(a) of the proposed new section that would be inserted by amendment 6 would create a duty on Scottish ministers to consult “each school authority” in the creation of guidance. I would add to what Jamie Greene has said by pointing out that the Scottish Government has already had in-depth discussions with local

government and the grant-aided and independent school sector in creating the measures, and that discussion will continue in the production of guidance and during implementation. However, there are about 100 independent schools in Scotland, many of which are not represented by the Scottish Council of Independent Schools, and it might prove to be not feasible or workable to compel Scottish ministers categorically to consult every school authority in the country. As I have said, we will continue our dialogue with that sector, but we need to proceed carefully.

I am prepared to commit to looking again at statutory guidance and to working with Rhoda Grant on that before stage 3. If we conclude that it is possible to set out in primary legislation a guidance duty that falls within legislative competence, we will work with Rhoda Grant to address the detail of the wording in order to produce an amendment that will achieve that. However, we might well conclude that putting statutory guidance in place instead of issuing non-statutory guidance would create too much risk. If we conclude that such an amendment would be difficult for legislative competence reasons, we will of course let Rhoda Grant know of our conclusions before stage 3.

With those reassurances, I invite Ms Grant not to press her amendments 5 and 6 at this stage. I assure her that we will seek to work with her on these matters with a view to lodging an amendment at stage 3 that meets our mutual aspirations.

**Gillian Martin:** I thank Rhoda Grant for lodging amendments 5 and 6. Ensuring that people actually wear fitted seat belts has been a crucial concern not just for the committee but for us all as we have moved forward with the bill, and I welcome the useful ideas that Ms Grant has set out in relation to future guidance.

However, I agree with the minister’s comments about specific terms in amendments 5 and 6. In particular, I reiterate the point that he made about the use of “monitor” in amendment 5. From discussions with stakeholders, it is clear that, in relation to school transport, the term is commonly understood to mean a person who acts as a supervisor on a bus. I appreciate that that is not what Rhoda Grant means, but any such interpretation could be at odds with the committee’s conclusion in its stage 1 report about there being flexibility. We know that school authorities can and do use bus monitors, but they also have the freedom to choose other methods.

I simply repeat the minister’s reassurance about our willingness to work with Rhoda Grant on the issue ahead of stage 3, and I, too, ask her not to press amendment 5.

**Rhoda Grant:** I should make it clear that if I had been referring to bus monitors I would have said so in amendments 5 and 6. I suppose that instead of using the word “monitor”, we could say “assess” the wearing of seat belts, which is what is meant.

In addition, amendment 5 does not say that people should employ bus monitors. It would be up to the Government and local authorities to decide how best to encourage the wearing of seat belts. Amendment 5 is clear in that regard.

Jamie Greene and the minister talked about consultation with a “school authority”—school authorities are the local authorities in charge of education, plus the independent schools. I accept that the consultation would be quite wide, but one assumes that the Scottish Government has a mailing list and that it emails school authorities when it makes changes, so I do not think that the approach would be onerous.

However, I have listened to people’s concerns. I want consensus about the proposed approach, and I do not think that members are at all at odds on it. I will not press amendment 5; I hope to work with the Government and the member in charge of the bill to produce amendments in a form with which everyone will be happy, and which will achieve the aim that I am trying to achieve.

*Amendment 5, by agreement, withdrawn.*

*Section 4 agreed to.*

#### After section 4

*Amendment 6 not moved.*

#### Section 5—Commencement

**The Convener:** Amendment 7, in the name of Peter Chapman, is in a group on its own.

**Peter Chapman:** Amendment 7 is a simple amendment, in my opinion. It is fair to say that members of the committee agree that it is right to support the aims of the bill. School transport is safer if seat belts are fitted and worn. I think that it is important that the measures be brought in as soon as possible. Therefore, rather than bring them in for primary school children in 2018 and for secondary school children in 2021—which seems to be a long time to wait—I propose that the measures be implemented for primary and secondary school children before the end of 2018. That would still leave the Government flexibility to implement the bill at any point in 2018 and the discretion to commence the act at different points for primary and secondary pupils, as long as the new approach was brought in before 31 December 2018. I just think that 2021 is a long time away. If we agree that it is a good thing to have seat belts on school transport, as we all do, why not bring in the measure quicker?

I move amendment 7.

**Richard Lyle:** I do not accept amendment 7. Over a number of years when I was a councillor, my council tried to bring in seat belts on school transport. I can see where Peter Chapman is coming from, but the Scottish Government had extensive stakeholder engagement during the process, and the feedback was that the transition in relation to secondary school provision will be greater, perhaps because more double-deckers are used.

A longer timescale should prevent the need to break contracts. We must remember that people have entered into contracts, and breaking them could cost more and have a significant financial impact on school authorities—in particular, councils. The Scottish Government has been consistent with its dates, so I say with the greatest respect to Mr Chapman that amendment 7 is not required. I will vote against amendment 7.

**Rhoda Grant:** I have a question for clarification, which is probably for the member in charge or the minister. The committee heard in evidence that a lot of local authorities have already implemented the approach for which the bill provides and that authorities that have not done so are in the process of doing so.

Will Peter Chapman’s amendment 7 cause any of the unintended consequences that Richard Lyle talked about, or do you expect that the proposed legislation, or the intentions of the proposed legislation, would be in place by that date? Are you aware of cases in which that would cause a problem and in which local authorities would not be able to comply?

**The Convener:** I am sure that the member in charge of the bill will address that.

**Mike Rumbles:** I support amendment 7. The evidence that was presented to the committee was quite clear that local authorities are already pursuing the measure, regardless of legislation. We originally questioned whether we needed the bill, because local authorities were moving so quickly to adopt the practice. However, it is a good thing that the bill has been introduced because it encourages local authorities to ensure that it happens. In my bones, I think that sending a message out that we want to delay implementation until 2021 is wrong. Peter Chapman’s amendment is a sensible suggestion. As I understand it—correct me if I am wrong—2018 is the deadline for primary schools that is already in the bill.

**Peter Chapman:** Yes.

**Mike Rumbles:** We should move forward on that basis. It does not provide any excuses for local authorities to be slack in finishing the work to

achieve the 100 per cent coverage that we require.

**Jamie Greene:** The 2018 date was the original deadline for primary schools; I feel that it would not present any problems for secondary schools to meet the same deadline. We should be ambitious with the target, so I will support amendment 7.

**The Convener:** Minister—would you like to say anything at this stage?

**Humza Yousaf:** Yes, convener. I will let Gillian Martin speak about the commencement of the legislative measures that she has brought before Parliament, but it might be helpful to outline the approach that the Scottish Government took in reaching out and bringing stakeholders with us as the devolution process for the powers was undertaken.

A wide range of stakeholders and agencies are involved in school transport—from parents, teachers and pupils, to local government and the bus industry. Early on, we took the view that a partnership approach to shaping the bill's proposals would be key, which is why we set up the not-so-imaginatively-titled seat belts and dedicated school transport working group.

My predecessor Keith Brown announced the plans for legislation in 2014 and ministers were clear about the implementation dates of 2018 for primary schools and 2021 for secondary schools. Those were committed to and that is what our partners have been working towards, so I take some exception to the word “delay” that Mike Rumbles used. Implementation is not delayed; there is a timetable that was agreed at that time. Accelerating those dates could lead, as Richard Lyle and others have suggested, to contracts having to be broken, which could lead to significant practical difficulties for councils and, as Rhoda Grant suggested, to unintended consequences.

**Rhoda Grant:** Will the minister take an intervention on that point?

**Humza Yousaf:** Yes.

**Rhoda Grant:** You said “could”, but my question was “will it lead to unintended consequences”. Do you know of cases in which the change would cause a problem?

**Humza Yousaf:** I do not have that information to hand, but I am more than happy to hand over either to Gillian Martin or one of the officials if they have that information, or to provide the information in the future. I do not know whether there are local authorities that would have to break their contracts; I am simply suggesting that that could be an issue. However, I respect Rhoda Grant's desire to get a bit more information and certainty on that point.

**Mike Rumbles:** Will the minister take another intervention?

**Humza Yousaf:** Of course.

**Mike Rumbles:** I talked about a delay of four years, but I take the point that you have been working towards that date, so it is not a delay, as such. I agree that it is an important bill and I congratulate Gillian Martin on introducing it. My point is that if it is such an important bill—which it is—why wait until 2021 to have it implemented? It is an important bill and Gillian Martin has done a lot of work on it, and we, as a Parliament, should make sure that we advance the date from 2021 to 2018. I accept that that is not a delay; I am talking about advancement of child safety on our buses.

11:45

**Humza Yousaf:** Sure—and I will mention that very point towards the end of my remarks, to try to give some assurance—

**Richard Lyle:** Would the minister take a brief intervention?

**Humza Yousaf:** Yes, of course.

**Richard Lyle:** Councils have different contracts and some might be coming up for renewal in the next couple of months. The intention is to set an implementation date of 2021, but am I correct to say that that does not prevent councils from bringing in the measures more quickly, knowing that the law will come into force?

**Humza Yousaf:** Yes, that is my understanding.

I have a feeling that there is another intervention coming, and I am happy to accept it.

**John Finnie:** If the suggestion is that amendment 7 could have contractual implications, I would have thought that you would have information on that to hand. Clearly, the work of a law-making establishment such as this one cannot be shaped around the potential implications that proposals may or may not have. We make decisions in good faith and shape the law. I am no expert in contract law, but I presume that contracts will reflect that. That in itself should not hinder the work of this establishment.

**Humza Yousaf:** I thank the member for that contribution. My point is that contractual difficulties could arise, and we will try to get some more certainty for the committee on that, as has been requested.

My other point is that a lot of work has been done on the date, so it was not arbitrarily plucked out of the air. My predecessor's predecessor, Keith Brown, brought together a working group involving the industry, local authorities and others to work through the practical issues. Ms Martin will

touch on the fact that, for high schools, there are of course more school buses, which is one reason—although not the only one—why there is to be a later commencement date for those.

I want to give some reassurances and commitments on the issue, because we all share the ambition. First, it is worth remembering that the committee's stage 1 report described the commencement date as "reasonable and practicable", and that is what I am talking about—I am talking about what we are able to do practically. It is important that we do not forget what the stage 1 report said. It is hard for me to understand what has changed between the stage 1 report and stage 2. However, I completely understand the motivation behind Mr Chapman's proposals. As I said, we all have a shared ambition on the issue.

To that end, I am more than happy to give a commitment that I will engage further with local authorities to ascertain whether the practical issues that led to the two-phase approach to commencement dates are still as stark as they were previously. If local authorities can give me more detail and certainty on commencement dates, I see no reason why we cannot work through bringing those dates forward. With that commitment to re-engage with local authorities in mind, I invite Mr Chapman not to press amendment 7. In advance of stage 3, I will let him know what we get back from local government. If he is satisfied, we can move together on the issue and, if not, he of course has the opportunity to bring it back at stage 3.

**Gillian Martin:** As the transport minister has just said, the implementation dates were decided on for a number of good and practical reasons and in consultation with stakeholders. With any new legislative measures, an element of having to adapt to and absorb the changes that are being implemented is to be expected. In preparation for the powers being devolved, the Scottish Government did the right thing by listening to the views of those whom the measures will affect and coming to a general consensus on some of the specifics.

To answer Rhoda Grant's point, which is legitimate, local government has told us that some councils have already signed contracts up to 2021 based on the 2021 commencement date for secondary school transport. Richard Lyle is absolutely correct that we do not want to force councils into a situation where they have to break contracts—

**John Finnie:** Will the member give way?

**Gillian Martin:** Sure.

**John Finnie:** Do you know whether contracts would be broken?

**Gillian Martin:** Councils told us that they have agreed contracts up to 2021. I assume that some of those contracts are with bus companies that do not have seat belts fitted, so that probably would be the case. However, given what the minister said, we are willing to ask councils about that specifically and to re-engage with our stakeholders to see whether the position has changed.

**Mike Rumbles:** I am not a lawyer but, as I understand it, contracts cannot be broken if the law has changed. For a contract to be legal, it must comply with the law. It is as simple as that.

**Gillian Martin:** The bus companies are some of the stakeholders that we have engaged with. We have to recognise that some of the strong voices supporting the bill are the bus contractors, who have been working towards the 2021 date. Given that some businesses might have plans in place to bid for the contracts in 2021, it would be unfair of us to move the goalposts in that regard. However, if we find out that there is not a problem—

**Stewart Stevenson:** Will the member take an intervention?

**Christine Grahame:** Will the member take an intervention?

**The Convener:** Two members asked to intervene. Gillian, you can choose who you want to take first.

**Gillian Martin:** I think that Stewart Stevenson had his hand up first. I will take his intervention first, then Christine Grahame's.

**Christine Grahame:** I will not bear a grudge.

**Gillian Martin:** I might regret that decision in the chamber.

**Stewart Stevenson:** Can Gillian Martin tell us whether contract law is part of the responsibility of the Scottish Parliament? Is there a risk that we could be seen to be affecting contracts that have been made in good faith in a legislative area for which we are not responsible?

**Richard Lyle:** Is there a lawyer in the house?

**Gillian Martin:** There is, but I am not sure that she is allowed to speak.

**The Convener:** We have to be careful, because officials cannot speak during the debate. It is up to the member in charge to answer questions.

**Gillian Martin:** I will try to read Anne Cairns's writing. The bill, when it is in force, would supersede contracts, so the contract would have to be looked at again. I refer you to my comment that some of our key stakeholders in this process have been the bus operators. We have had consultations with people around the table in our

working group and the date that has been talked about is 2021.

**The Convener:** I do not want to force you to take interventions, Gillian, but Christine Grahame offered to intervene. I do not know whether she still wants to do so or whether you want to take her intervention.

**Christine Grahame:** I am not a contract lawyer—I am not a practising solicitor. I am quite sympathetic to what Peter Chapman said, but I do not think that I am in a position to take a view on it until I have received clarification that what is proposed would not be practicable, because you do not have information from all the local authorities. It is up to Mr Chapman whether he proceeds with his amendment, but my understanding is that the member in charge of the bill has given an undertaking to the committee to come back prior to stage 3 with up-to-date information about whether the date suggested is practicable, given all the contract stuff, for secondary school transport. Is that what the member is undertaking to do?

**Gillian Martin:** I ask Peter Chapman to withdraw amendment 7. All stakeholders have been working towards the 2021 date. If we agree to amendment 7 without consulting them, that would not be a good place to be.

**Jamie Greene:** Why is there a one-year delay between primary and secondary? It is very unclear.

**Gillian Martin:** It is not a delay.

**Jamie Greene:** Why is there a differential? Why is there a one-year difference?

**Gillian Martin:** There is a staged implementation; 2018 is the implementation date for primaries and 2021 is the implementation date for secondaries. As has been pointed out, a lot of local authorities are already working towards that and many have already done so. There are a lot more buses and different types of buses for secondary schools, whereas the majority of primary schools use minibuses. That is certainly true in my constituency. The type of coach involved in transport for secondary schools might include double deckers, as Richard Lyle pointed out, which are not generally used for primary school transport. That is why there is a three-year staged approach.

To answer Christine Grahame's point, I note that we have made an offer to look at that, but we would not want to make a recommendation on it until we have spoken to stakeholders about whether it is possible and to what degree contracts might have to be broken. I therefore invite Mr Chapman not to press amendment 7.

**The Convener:** I call Peter Chapman to wind up and to press or withdraw amendment 7.

**Peter Chapman:** I listened with great intent to what has been said. In our discussions on the bill, we learned that over 50 per cent of local authorities have already put the measure in place. That is where I start from. The second point is that I cannot see why it is more difficult for secondary schools than it is for primary schools to put the measure in place. If it is okay for it to be in place for primary schools in 2018, I remain to be convinced as to why that would be more difficult for secondary schools.

I heard what Richard Lyle had to say about the breaking of contracts. That is possibly the case, but the point that we are talking about—the end of 2018—is still 18 months down the road. I would argue that there is time to do this and put it in place. I welcome the support that I got from Jamie Greene and Mike Rumbles.

As we have seen, there is a division in the committee. I am minded to press amendment 7.

**The Convener:** The question is, that amendment 7 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Greene, Jamie (West Scotland) (Con)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Rumbles, Mike (North East Scotland) (LD)

#### Against

Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Lyle, Richard (Uddingston and Bellshill) (SNP)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

**The Convener:** The result of the division is: For 6, Against 5, Abstentions 0.

*Amendment 7 agreed to.*

*Section 5, as amended, agreed to.*

*Section 6 agreed to.*

#### Long title

*Amendment 4 moved—[Gillian Martin]—and agreed to.*

*Long title, as amended, agreed to.*

**The Convener:** That ends stage 2 consideration of the bill and concludes our meeting. Thank you. I ask committee members to wait behind briefly.

*Meeting closed at 11:58.*

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