



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 7 November 2018

Session 5



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Wednesday 7 November 2018

CONTENTS

TRANSPORT (SCOTLAND) BILL: STAGE 1	Col. 1
AGRICULTURE BILL	39

RURAL ECONOMY AND CONNECTIVITY COMMITTEE

28th Meeting 2018, 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)

*Jamie Greene (West Scotland) (Con)

*Richard Lyle (Uddingston and Bellshill) (SNP)

*John Mason (Glasgow Shettleston) (SNP)

*Mike Rumbles (North East Scotland) (LD)

*Colin Smyth (South Scotland) (Lab)

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

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Angus Carmichael (Scottish Road Works Commissioner)

Elizabeth Draper (Openreach)

Stuart Hay (Living Streets Scotland)

David Hunter (Mobility and Access Committee for Scotland)

John Lauder (Sustrans Scotland)

Mark McEwen (Scottish Water)

Alex Rae (Street Works UK)

Iain Smith (Inclusion Scotland)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 7 November 2018

[The Convener opened the meeting in private at 08:32]

10:10

Meeting continued in public.

Transport (Scotland) Bill: Stage 1

The Convener (Edward Mountain): Good morning and welcome to the 28th meeting in 2018 of the Rural Economy and Connectivity Committee. I ask everyone to make sure that their mobile phones are on silent. We have received apologies from John Finnie and Stewart Stevenson.

Agenda item 4 is the Transport (Scotland) Bill, and we will have two panels. Before I proceed, do members have any interests to declare? I see that no one has anything to declare.

This is our fifth evidence session on the bill. The first panel will look at the proposals on double and pavement parking. The committee will then take evidence on the proposals relating to road works.

I welcome Stuart Hay, the director of Living Streets Scotland; John Lauder, the national director of Sustrans Scotland; Iain Smith, the policy and public affairs officer for Inclusion Scotland; and David Hunter, a board member of the Mobility and Access Committee for Scotland.

I am sure that you are all well versed in how the committee works, but I point out that you do not need to push any of the buttons. I will call you and the gentleman on your left will make your microphone live. You do not need to do anything.

I try to give a warning to people by wagging my pen. The faster that it waggles, the closer you are to the end of your speaking time and I want you to wrap up relatively quickly. That will allow me to bring everyone in, which is very important.

The first question is from John Mason.

John Mason (Glasgow Shettleston) (SNP): We are starting on pavement parking, which I find to be an interesting subject.

Do you broadly agree with what is proposed in the bill? Will what is proposed actually happen? Last week, some of the committee was at Union Street, which is one of the main streets in

Glasgow, where we saw vehicles parked on double yellow lines. It is one thing to set something out in the law but it is another thing for it to happen.

Would the proposed ban on pavement parking happen if it were put into law? Primarily, do you agree that it should be put into law?

Stuart Hay (Living Streets Scotland): Yes, the proposed ban is very welcome and necessary. Councils need the powers because people tell us about how access impacts on their lives. I am sure that some of the other witnesses will talk about that. There are also issues about the damage that is done to pavements—they are not designed for vehicles. I think that the ban will work where it needs to work. Where the case is made by communities for it to be enforced, it will be enforced.

The biggest change will be behavioural, and I welcome the Government's commitment to a behaviour change publicity campaign. Enforcement is part of the issue, and we need to improve the enforcement of traffic law in many different areas of parking in our urban centres.

David Hunter (Mobility and Access Committee for Scotland): I endorse what Stuart Hay said—the ban is needed. As I am sure members are aware, for years—possibly decades—disability and pedestrian organisations have been calling for a ban. Pavement parking causes a real problem for disabled people, blind people and people in wheelchairs—anybody with a mobility difficulty is frequently disadvantaged by pavement parking.

The key test will be enforcement. Will a ban be enforceable? Enforcement will be strengthened by having the minimum possible number of exemptions from or exceptions to the ban, so that an attendant who sees a car on a pavement knows that they can ticket it.

Given that about a dozen local authorities still do not have decriminalised parking enforcement, we welcome the provisions on camera enforcement. In particular, however, we would like the exceptions for loading and waste collection to be removed.

10:15

Iain Smith (Inclusion Scotland): Inclusion Scotland welcomes the principles behind the bill, which has been a long time in coming. This morning, I happened to bump into Ross Finnie downstairs, who, many years ago, introduced the first member's bill on these issues. I am sure that he is as delighted as I am to see them finally in a Government bill and therefore having a chance of progressing.

We welcome the bill, which, as has been said, is very important for disabled people. It is about their rights and ability to get out of their house and go where they want to go safely on pavements. Many are trapped in their house because vehicles are parked on pavements, which means that they cannot get out in their wheelchair or if they have other mobility impairments. Vehicles that are parked on footpaths can be a danger to people with visual impairments. The bill is about people's rights to participate fully in society, so we welcome it. However, we are concerned that it does not include the provisions on banning parking adjacent to dropped kerbs that were in Sandra White's member's bill. We would like the committee to consider that.

John Mason: We will come on to that later. My colleagues will ask about it.

Iain Smith: You mentioned enforcement. That is crucial, and I am sure that we will discuss it further. If there is not effective enforcement, the provisions will not be worth the paper that they are written on. It will be up to local authorities to work with their local communities to ensure that the provisions, if enacted, are properly implemented and enforced.

The Convener: John Lauder will now get a chance to speak, as everyone else has said something.

John Lauder (Sustrans Scotland): In going last, there is always a danger of simply repeating everything that colleagues have said. I agree with everything that they have said. A ban will not be like turning on a switch. We will not instantly solve the problem of parking on pavements, because that has become a societal norm over the past few years. Over the past 10 years, car ownership has increased, but access to cars has not. More of us are in three-car or even four-car families. That is becoming more normal, and it means that there are more people looking for parking spaces. It will take time to change that norm, and it will not be changed simply by addressing the law, as Mr Mason said.

In Scotland, we have a very woolly approach to parking enforcement. The approach is not always clear, and it can vary from local authority to local authority. Changing our behaviours is also an element, and that takes time. We strongly support and welcome the fact that that element is in the bill. As people have said, it addresses a human issue and a human need to make it easy for people to get out of their house and move along the pavement unencumbered.

John Mason: I have a major road in my constituency that is reasonably wide and has reasonably wide pavements. The buses on it are a help to disabled people and others. In order to

keep the buses and the traffic moving so that there are two clear lanes for traffic, the council has painted white lines at the side, which strongly encourages cars to put two wheels on the pavement. That still leaves 1.5m for people to get past.

I think that that road works. There is plenty of room on it for two large vehicles to pass, and there is room for vehicles to park outside people's houses and for pedestrians—with or without wheelchairs—to get past between the cars and the hedges. If that system works, would we cause more problems by forcing cars fully on to the road? Would that not slow down buses and fire engines? Would we simply create more problems for ourselves?

Stuart Hay: The street that you are talking about is exactly the type of street that could be exempted under the legislation. We are comfortable with the provision to do that. Any consideration would be locally led, so people would look at the type of street, the provisions and the impacts on people with disabilities. That is key. Such a facility can be created by putting a line on the pavement provided that there is sufficient access for people to use the pavement. If there is justification for that, councils could do that under the legislation. The bill would make the procedures that have to be gone through a lot simpler. It includes a more efficient way of managing parking.

The Convener: Does anyone disagree with that?

David Hunter: I do not disagree with that. MACS has slightly reluctantly accepted that there is a case for local authorities to make decisions based on local circumstances in the kind of situation that has been described. Basically, if it works, pavement parking is not a problem and does not cause problems for disabled people or other people.

There is a case for decisions to be based on local circumstances, so we do not object to that provision as long as there is a proper equality impact assessment of the circumstances. What we are concerned about and object to is the blanket exemption for the loading of bin lorries in particular, which would apply everywhere—

John Mason: One of my colleagues will ask about loading—I want to focus specifically on cars. May I ask one more question on that topic, convener?

The Convener: I will bring in Jamie Greene and then come back to you.

Jamie Greene (West Scotland) (Con): This is a fascinating discussion. The good news is that there is cross-party support for the essence of what the bill is trying to achieve. However, people

have shared concerns with their local members. Among those concerns are that simply banning parking on pavements will not reduce the number of cars in households, and that we are not making additional parking spaces or facilities available. By “parking on pavements”, I do not mean full four-wheel parking; in many, or most, cases it is two-wheel parking that occurs on our pavements.

I have quite a simple question. Where will the cars go? Some elderly people and people with mobility issues like to be able to park outside their houses in order to save them from having to walk from many streets away, where there might be an exemption. My issue is displacement: could an unintended consequence of banning parking be that we create huge traffic issues in small communities?

Iain Smith: There is an important equalities issue. We should not be creating conflicts between vehicles and pedestrians or between disabled people and non-disabled people, in terms of road management. It is important that when we look at car parking, we do not just look at where cars may park, but at the whole access issue. We need to make sure that there are proper equality impact assessments of proposals.

The problem is that when the footpath is not wide—as in the case that Mr Mason referred to—vehicles being parked on it blocks pedestrian access. Why should pedestrians be treated less favourably than motorists?

The important thing is to get the balance right. Local authorities cannot just say, “Well, cars have to park there because there’s nowhere else to park”; it is their responsibility to deal with the shortage of parking space in communities. They need to work with communities on where cars can park safely and ensure that access issues for disabled people, mothers with pushchairs and elderly people with mobility problems are resolved.

Another issue is that parking on footpaths can damage footpaths, so even when there are no vehicles there, the footpath might be broken, which can cause trip hazards and so on for people with visual or mobility impairments, and can make it difficult for people in wheelchairs to pass. A number of equalities issues about parking on footpaths need to be taken into account.

Jamie Greene: No one is questioning the equalities aspect of access to pavements; that was not the intention of my question. My question is a simple one about where the cars will go. The vehicles will not disappear, but there is no provision in the bill to make facilities available. Anyone else who answers the question might like to contemplate that point.

The Convener: I will bring in Stuart Hay briefly, then come back to John Mason.

Stuart Hay: Living Streets Scotland has suggested in our evidence that local authorities should have a parking strategy. The problem has been building up over 40 years; we need to manage it and we need to be creative about how we do so. There are probably workplaces that have car parks that are empty in the evenings, right next to congested streets. Perhaps we could use such spaces.

We could look at new models of car ownership, including car clubs and that side of things. City centres in which there is real pressure are where car clubs can come into their own. Removal of parking would incentivise some people who probably do not use their car very often to switch to a car club. While people have a car, they will not join a car club. It is about changing our mobility profile.

John Mason: I have a final question. Iain Smith mentioned the need for balance, with which I totally agree. Would exempting streets, as councils would be able to do, strike the right balance? Would it cover the right streets? We got the impression that the City of Edinburgh Council would not exempt many streets. There would be a cost and hassle for councils, so would exemption strike the right balance?

Iain Smith: That would depend on the regulations and, under the provisions of the bill, the directions that the Scottish Government ministers would give. If the directions are very clear that a positive case has to be made for an exemption, rather than a case having to be made against an exemption, that would help.

It is key that there is proper engagement with the community, that there is proper consideration of the equalities impacts of exemptions and that access, particularly for disabled people and others who have difficulty when cars are parked on pavements, is properly taken into account before an exemption order is made. There should be an onus on people to make a positive case for why an exemption is needed in any case. Exemptions should be kept to a minimum.

Mike Rumbles (North East Scotland) (LD): I will focus on concern about a specific exemption—the proposed 20-minute pavement parking exemption for loading and unloading for businesses. At the moment, the law says that we cannot drive on pavements—it is as simple as that—but we know that it happens. The bill would give people a legal basis on which to do just that, because they would have to drive on to the pavement to park there. What are your thoughts on the 20-minute exemption? One of mine is that, if the bill gives a 20-minute exemption, that might become the norm rather than the exception.

David Hunter: I completely agree. There is a contradiction, which the bill would reinforce. It is illegal to drive on a pavement, but the bill would make it legal to park on it for 20 minutes. The principle that we would like to see is that pavement parking is not allowed, unless there are exceptional circumstances.

I endorse what others have said about creating a culture in which it is seen as being antisocial to park on a pavement. To allow people to park on a pavement for 20 minutes would run counter to that and undermine the creation of a culture in which parking on a pavement is not a decent thing to do because it causes pedestrians problems.

Because of that, we think that there should be no exemptions for loading on pavements whatsoever, because exemptions would create enforcement problems for parking attendants, who would ticket only vehicles that they knew had been there for some time, which would not be 20 minutes but probably a couple of hours by the time they went back and noted that the vehicle had been there before. Particularly in town centres, they would pass pavement-parked vehicles. As Mike Rumbles said, it is about loading. It would not just be delivery vehicles; people going into shops to collect goods could say that they were loading. We think that many tickets would be appealed against on the basis that people were loading.

The thing to do is to have throughout the country the clear and simple position that loading is not permitted on pavements, which is distinct from the question of exempting particular areas.

Mike Rumbles: Is there a compromise? David Hunter said that he does not agree about loading, but I always look for balance. In written evidence, Living Streets Scotland suggests that it might be acceptable if there were a gap of, say, 1.5m for disabled people and pedestrians who use our pavements. Is the solution a total ban on pavement parking and removal of the provision from the bill, as David suggests? How would Living Streets Scotland's suggestion be enforced?

Stuart Hay: The simplest way is to remove the provision, but if the committee felt that, on balance, it did not want to do that, there is another option.

There is an overarching provision about obstruction, which could be defined in guidance. Part of the problem with the current law is that "obstruction" is not very well defined. The police have powers in that respect, but they never use them. A way to get round the problem would be to say that people cannot obstruct pavements. It would be up to the driver to make a judgment about whether they would be obstructing the pavement. The enforcement person could make a simple measurement: if a wheelchair could not get

past, the driver would be breaking the law. That could work fairly easily.

An effective compromise would be to get the law right so that it says that obstruction is not allowed and to get the guidance right so that it defines "obstruction".

10:30

The Convener: I will ask about a real-life example. Every morning when I come into Parliament at about 7 o'clock, there is a lorry double parked that unloads everything on to the pavement as part of a transfer process. The lorry itself does not obstruct the pavement—the obstruction is caused by all the crates, cages and food coming in and waste coming out. If we disallow one thing, will it not just create a different problem that is not covered by the legislation?

John Lauder: On that and the point that was made by Mr Greene, I say that we have not thought about the design of our streets for many years. The redesigning of streets is very important. For example, it might be easier for a parking enforcement officer to police a loading bay, which would prevent double parking and commercial vehicles being forced on to the pavement.

Sustrans is involved in placemaking and construction and design, working with communities. We have a great example of that from Dumfries, where there was a long, narrow, Edwardian street on which there was a lot of pavement parking. We worked with the residents of the street in conjunction with Dumfries and Galloway Council's housing department. The residents came up with a brilliant solution to the parking issue. We have redesigned the street and built in loading bays, so it now works much better. That is because people applied a bit of thinking to how the street would function. A designated area for commercial vehicles to stop and unload is much better and easier to enforce than an exemption.

We need to spend time thinking about such things and about how we deliver in the urban realm. Internet shopping has grown; we have given that no thought at all. We could learn quite a bit from our northern European neighbours, who approach such things in a more planned way and do it better. That goes back to the point about having a parking strategy that Stuart Hay mentioned.

Mike Rumbles: I asked the bill team where the period of 20 minutes came from. Their response was that it had just appeared. There does not seem to be any scientific basis for it. If that provision is not removed at stage 2 or 3, how would you feel about reducing the 20-minute period and to what limit?

David Hunter: At the risk of repeating myself, I say that any limit—whether it is 10 or 20 minutes—will make it a difficult for parking attendants. They should be able to ticket any vehicle that is parked on the pavement. I do not entirely agree with Stuart Hay about the 1.5m obstruction. To go back to the first question on enforcement, we need to make the provision as simple as possible to enforce in practice, which would mean that pavement parking would not be permitted, other than in exceptional circumstances.

The Convener: We will have to move on.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Several witnesses have called on the bill to prohibit parking in front of dropped kerbs. As a constituency member, I have had calls for that in relation to motability vehicles and wheelchairs, as well as from cyclists. What are your views on that proposal and, perhaps more important, how could it work in practice?

The Convener: I excluded Iain Smith from the previous question—I apologise for that—but I will give him the first chance to answer this one.

Iain Smith: Thank you, convener.

Dropped kerbs are essential for people with wheelchairs or other mobility problems, because they enable those people to cross roads. Without them, those people are trapped. In preparing our evidence for the member's bill on the issue in the previous session of Parliament, we asked our members for examples, and we got back comments such as, "Cars parked across a dropped kerb meant that I had to go round the block to find somewhere to cross the road and I missed a doctor's appointment." The issue is that important—it prevents people from getting where they need to be. At the end of the day, it prevents people from getting out of their house, because if they do not have confidence that they can get to where they want to be, they will not go out, which causes social isolation and other problems. There may be buses that help disabled people, but if people cannot get to them because the dropped kerbs are blocked they are not much use.

There are huge issues about dropped kerbs that need to be addressed, so I do not understand why the Government has dropped the issue from the bill. There is talk about the Government bringing in measures through secondary legislation, but that does not make sense to me. There should be a blanket ban on parking at dropped kerbs, with the option for local authorities to make exemptions if they can make a strong case for that in particular circumstances. That is the way to do it. The matter is better dealt with through primary legislation in which it is clear that, along with parking on

pavements, parking at dropped kerbs is not acceptable.

The Convener: I see all the panel members nodding their heads, so I assume that you all agree.

Maureen Watt: Should double yellow lines be painted at dropped kerbs, or should the issue just be in the highway code or whatever, so that people know that they should not park in front of a dropped kerb?

Iain Smith: People are not allowed to park at bus stops, and that is just a general provision. The area has to be marked as a bus stop. It is fairly obvious that a dropped kerb is a dropped kerb. If the law says that you cannot park in front of a dropped kerb, you cannot park in front of a dropped kerb, and no further markings are needed to designate it.

Richard Lyle (Uddingston and Bellshill) (SNP): My question is mainly for Stuart Hay of Living Streets Scotland, but other panel members might want to come in. In written evidence, Living Streets Scotland asked for clarity on which pedestrian areas will be covered by the proposed prohibition. Why is the current definition not sufficiently robust and how could that be rectified?

Stuart Hay: We were involved in the previous member's bill on the issue, and there was a lot of debate about the definitions. The term "footway" is good and clear and is referred to in another act, but there are lots of different types of path. We think that the bill captures all the types, but there is a debate about that—certainly, I have had a debate with my colleague from Sustrans about whether it does. We posed the question because we want it to be clear for motorists and for enforcement purposes that every area where people walk or cycle is covered.

Richard Lyle: You made a point about enforcement. People should not park in bus lanes and loading bays, but we often see people parked in them, which is frustrating. I could mention a number of pedestrian areas where I have seen cars or even lorries coming down to deliver things. Possibly, none of us has driven a lorry, but people have to deliver stuff to shops, and some of them are located in pedestrian areas. What do we do about that? Does it come down to the point that my colleague John Mason made about enforcement? If we pass a law, does it have to be enforced or will people just accept and obey the law?

Stuart Hay: It is a bit of both. Pavement parking is becoming acceptable behaviour for some people—although not everybody—and that needs to change. People need to realise the impact that it has, but we also need the fallback of some sort of enforcement. Some councils are better geared

up to do that than others, because they have good regimes in place. Other councils will have to think creatively and may have to borrow capacity from neighbouring local authorities.

I think that what will happen is that there will be issues on specific streets and the community will have concerns, so there will be a blitz and then the problem will go away. There will not be inspections of every street all the time—it will just not happen that way. However, councils need to be able to send out a team where there are real problems. I hope that, in advance of that, people will be warned that the council will be out, so it might not come to the point of dishing out fines, but there will be a hard core of people who do not get the point that that behaviour is unacceptable, so they will need to be tackled via enforcement.

John Lauder: Buchanan Street in Glasgow is a good example of a street where there is a mix. Early in the morning, there are lots of delivery vehicles and trade vehicles but, for the rest of the day, it is a wonderful experience to be a pedestrian there. With good control, that can work well.

I thank Stuart Hay for reminding me of a topic that I am not clear about and that I would like the committee to think about. Increasingly in urban Scotland, we are considering segregated cycle lanes that are physically removed from the footway. That is usually done with a small angled dropped kerb, then a wide cycle lane and then a dropped kerb to a parking area. Stuart Hay and I are not clear whether, under the bill, parking on a cycle lane will be prohibited, so I wonder whether that could be checked, given that we are increasingly going for such cycle lanes. There is a good demonstration project on Victoria Road in Glasgow, which will link Queen's park to the merchant city. We have similar projects in five cities in Scotland. Those very much follow the Copenhagen style of allowing people to get around by not mixing cycling and pedestrians.

Colin Smyth (South Scotland) (Lab): You have probably just answered my question, which is on whether the bill goes far enough to protect cyclists. You said that it is not clear whether a ban on parking on cycle paths is proposed.

John Lauder: That is right. It is not entirely clear whether that is covered. It is a technicality, really, because I think that the spirit of the bill is that people should not do that, but the issue is whether technically they will be able to do so. A great example is that, when people parked on one of the very early cycle lanes in Edinburgh, the *Evening News* ran a big story about it for one day and that never happened again, because people just got used to the social norm and thought, "Right—that is what it is for. Fine. I get it now."

Double parking is a real issue for anyone who wants to get around on a bicycle, because it means that you have to pitch yourself out into oncoming traffic. That element needs to be tightened. One element that I am more sanguine about is to do with vehicles being parked for maintenance on a designated cycleway, such as a mixed-use path—it might be a former railway line that is used as a greenway. With some exemptions, I am sure that that could be managed. We manage the issue fairly well at the moment. That should be allowed only when it is a maintenance or service vehicle, rather than a member of the public parking.

The Convener: I have a point, before Colin Smyth asks his next question. There has been a suggestion that we should try to restrict loading and unloading to times when there are no pedestrians on the street, which would probably mean an early start for some people. That has been tried in some places. I hear lots of complaints from people who object to their bins being emptied at 6 o'clock in the morning, because they are trying to get an extra 10 minutes' sleep. Are you suggesting that lorries should be encouraged to deliver from 6 to 7.30 in the morning, before the main build-up of traffic?

John Lauder: Yes. There are good examples on the continent of large towns and small cities that function perfectly normally and that control when deliveries can and cannot take place. I do not see a reason why we cannot do that. I am not suggesting that that should be a blanket provision, but in some places it would work well. I go back to the example of Buchanan Street, which works particularly well.

Colin Smyth: I have a follow-up to John Lauder's comment about the project in Dumfries. I should declare an interest, as I was a local councillor and chair of the committee that was involved at the time. I am biased, but I think that it was a great project. It focused attention on the need to look again at the layout of streets and to better balance cars, pedestrians and cyclists. Will the bill provide an incentive to do that? Does anything need to be put into the bill to strengthen it so that we start to look again at that balance when it comes to public-realm improvements such as that project in Dumfries?

10:45

John Lauder: I think that the bill will focus attention on that. Mr Greene made the point about a high level of car ownership on a narrow street; that project is exactly the type of project that local authorities need to adopt and roll out. I understand anecdotally that City of Edinburgh Council has done an analysis of a particular area in that regard. I do not have an exact figure, but I

understand that the council reckoned that it would have to put in some intervention in a fairly small number of streets. The Dumfries project is a great example of the type of project that could and should be done, and I think that the bill will lead to that happening. It will lead those of us who own cars to think about how we park our cars and the impact that that has on those who do not have access to a car. I welcome the bill and I think that we will see a gradual change and more projects like the Queen Street one in future.

Jamie Greene: It has been a very interesting discussion, and two things have jumped out at me. Is the panel confident that the lumping together of pavement parking and double parking is the best way to approach issues, especially around, for example, deliveries and the dropping of goods at people's homes, where the tendency might be to double park rather than pavement park, which I think that we all agree is unacceptable? If we accept the suggestion of including dropped kerb parking with double parking and pavement parking, should they all be treated the same or should we treat them as separate occurrences, which can be dealt with differently? The bill as it stands does not do that.

David Hunter: From MACS's point of view, we are concerned about pavement parking. Double parking clearly causes a number of problems for cyclists, buses, cars and so on, but those are not the problems that affect disabled people. If a better pavement parking ban was achieved as a result of separating provisions for double parking from those for pavement parking, we could probably live with that. However, other panel members might not be so happy with that. We want a firm, clear line for everyone on pavement parking to create that culture and easy enforcement environment that has been a bit of a theme in the discussion so far.

The Convener: Iain Smith, do you want to come back in? You smiled wryly when David Hunter said that you might disagree.

Iain Smith: It is only a slight disagreement. Our focus is particularly on pavement parking and parking at dropped kerbs because those are the big issues that affect mobility and equality for disabled people. However, if vehicles are double parked, they cause additional problems for pedestrians' safety when people are trying to cross roads. That issue also impacts on disabled people who might get past one parked car but find another parked car in front of them that they cannot get round. There are therefore issues around double parking for disabled people as well.

Richard Lyle: On pavement parking, John Lauder said that he sat down with a council and also made decisions with residents. Should it be just the council that says that people cannot park

in a particular place, double park or park on the pavement, or should residents also be encouraged to approach the council in that regard? What sort of mechanism could be set up for doing that?

John Lauder: The project in Colin Smyth's constituency involved a street where there was a real problem with parking and rat-running cars. It was a difficult street to cross and a lot of elderly people who lived in the street felt quite intimidated and just preferred to stay in rather than go out. The problem was that either they could not get down off the pavement or they could not get across the road, which had a crossroads. It was one of those streets that every town has a few of and which are acknowledged as a real issue.

It was the council who raised that issue, but we worked with the residents as a kind of bridge between the residents and the local authority. We got to a point where we had a pragmatic design that everybody was happy with and could live with, which was then delivered. I do not think that that would need to happen in every street in Scotland, but I think that there will be some streets for which it is a great approach.

I would say that 90 per cent of the people on that street bought into the project and are now very happy with it. Indeed, the residents have formed a development association and are greening vacant and derelict land, among other things. The project brought people together and created a sense of neighbourliness, and it solved the issue.

The project was a really good one. It was not expensive, because it was not infrastructure led, with people saying, "Let's redesign things," and it was not a case of the council telling residents how things should be; it was very much about the residents saying, "We are part of this and we will work with you on the design." It took about a year of discussions before anything was built, and at the end of all that there was a solution that worked really well.

I hope that I have answered your question. As I said, that would not have to happen on every street, but on streets that are really narrow and tight for space because of parking difficulties, it is a great approach, which redistributes parking. That happened in the example that I mentioned: space was poorly designed and badly used, and we rearranged it so that it works effectively.

Iain Smith: One of the four outcomes in the accessible transport framework is:

"Disabled people are involved in the design, development and improvement of transport policies, services and infrastructure".

Inclusion Scotland would certainly argue that by involving disabled people in the design, we get

things right for disabled people and we therefore get things right for everyone.

That principle should extend to the community. If we work with the community as a whole in identifying problems such as bad parking and designing solutions and alternatives, we are more likely to get community buy-in and make it easier to enforce the approach, because the community itself will enforce it. It is important to involve the community so that there is a community-up approach, as opposed to a top-down approach.

Stuart Hay: I echo Iain Smith's point. I think that the design of the bill allows us to do that. We do not want local authorities to make blanket exemptions where they think that the issue is too difficult; it is for the community to come forward and say, "We've got a real problem on our street with the impact of the bill; can we exempt our street or redesign it?" It will then be for committees of the council to come up with a solution, whether that involves designing a line in the street or something more creative. The bill allows that to happen.

Jamie Greene: Is anything missing from the bill? I appreciate that there are provisions that panel members might want to tweak or change, but has the bill team overlooked anything substantive?

The Convener: We could end up with a huge shopping list in answer to that question. While members of the panel gather their thoughts, I encourage you to limit yourselves to making one or two points.

Stuart Hay: First, school zigzags are an issue. Councils need to make an order to make them legally enforceable; we think that they should be nationally enforceable. Secondly, local authorities should have some sort of parking strategy. It might be quite light touch, but local authorities should be required to think about the issues and come up with a strategy.

John Lauder: I made the point about the need to check whether the bill will apply to cycle lanes beside pavements. I will restrict my comments to that.

Iain Smith: I mentioned the accessible transport framework, which was co-designed by disabled people, disabled people's organisations, transport providers and transport authorities and was published by the Scottish Government in 2016. Its overarching aim is:

"All disabled people can travel with the same freedom, choice, dignity and opportunity as other citizens".

We think that it is a missed opportunity not to have made reference to that in the bill—we wish that it was there.

David Hunter: I totally agree with Iain Smith. I have a copy of the framework with me. MACS confined its comments to what is in the bill, rather than talk about what is not in the bill, but there is clearly a long-term issue about making travel and transport much more inclusive for disabled people. We have not got that right at the moment.

Gail Ross (Caithness, Sutherland and Ross) (SNP): Did the equality impact assessment cover everything? It says in the policy memorandum:

"The EQIA did not identify any group that would be adversely affected by the new legislation."

Does the panel agree?

The Convener: Who wants to go first? Iain Smith, you are not looking away. *[Laughter.]*

Iain Smith: Provided that the regulations, directions and guidance from ministers in relation to parking are sufficiently robust and ensure that disabled people are involved in the discussions and design in relation to all aspects of exemptions, I do not think that the bill will have an adverse impact on disabled people.

Some of the bill's other provisions could have a positive impact on disabled people. For example, if disabled people are involved in the discussions about bus services, local authorities might enforce disability awareness training for bus drivers better and ensure that people are properly consulted before routes are removed, because of the impact that that could have on disabled people's ability to get to the places that they need to get to.

The bill has positive potential, subject to the regulations and directions that Scottish ministers may give. The bill has the power to improve things significantly for disabled people, subject to how it is implemented.

David Hunter: MACS had quite a lot of discussion with officials about the equality impact assessment. We would like to think that we had a positive influence on it. There is nothing in the bill that would make any situation worse, except the legitimising of short-term pavement parking, which I mentioned earlier. The question is whether the bill goes far enough. That takes us back to the previous question and Iain Smith's comments.

The Convener: I have a final, general question. Over the years we have seen a huge shift in what is and what is not acceptable. For example, it is now completely socially unacceptable to drink and drive—that is a change. Similarly, most people would not even consider parking in a disabled parking spot as an option. Do you think that there should be something tacked on to the bill that tries to make it socially unacceptable to do things such as parking on dropped kerbs and failing to consider others when parking? Does social

acceptance have a role to play beyond legislation and enforcement?

David Hunter: Yes. We have all probably commented on creating that culture. Legislation is not the only thing. However, the changes in attitudes to drink driving and wearing a seatbelt were driven by legislation. We are looking not just for a law that is enforceable—although that is important—but to try to change attitudes. However, unless the law points in the right direction, it is really difficult to create that kind of culture.

Iain Smith: I agree with what has been said. Passing legislation is one thing, but implementing it is another. If the bill is to work, it will need effective enforcement as well as a change in culture and attitude. That will come from effective publicity campaigns and the Scottish Government involving the organisations that have brought the legislation to this point in developing those campaigns.

Stuart Hay: Local authorities need to see that it is something positive that will get communities to function more effectively. Parking is a problem and the bill would allow us to bring a lot of issues to a head, face up to them and come up with some solutions. They are not new issues. They occur when we create new controlled parking zones. People get used to those zones so they will get used to the new provisions, too.

John Lauder: My final point is about culture change. Culture change will also be required in transport departments in local authorities, particularly when we look at streets where parking is really tight and difficult. There has to be a culture change that says that such parking is an issue that needs to be tackled—we need the resource, training and planning to tackle it—and is not something that the department can forget about while folk muddle through. There is an approach that says, “It will all be fine,” and that will have to change.

We may well need to consider the impact on planning. That will be a gradual process. We need to think about how we plan our residential estates. Scotland has a great design policy called “Designing Streets”, but it is often not adhered to as well as it could be. If it were followed, residential areas in particular would be better designed around people, rather than vehicles. That is a big change that needs to happen in planning.

The Convener: On Friday, the committee was in Glasgow looking at some of the things that are being done there. There was a feeling that designing the street for modern-day use is critical, as is being able to create that flexibility in old streets—as John Lauder mentioned. The other

thing was that if we encourage people on to the buses, we can reduce the number of cars. The elephant in the room might be increasing the availability and reliability of buses, trains and other means of public transport to reduce car ownership.

We have covered most things this morning. Is there anything that the committee has missed?

Stuart Hay: We support the workplace parking levy as an option for councils. It is important that that topic is debated and that the committee takes further evidence on the merits of the workplace parking levy.

The Convener: You have just provoked Richard Lyle, who wants to say something about that.

Richard Lyle: You are proposing another tax on drivers. I know that Living Streets wants that levy to be introduced, but as far as I am concerned it is a no-no and I would not support it. I have had discussions with Living Streets about that.

The Convener: We finish the evidence session on Richard Lyle’s personal view—it is not necessarily the collective view of the committee.

I thank the witnesses for coming to give evidence this morning. We are very grateful for your written submissions.

11:01

Meeting suspended.

11:04

On resuming—

The Convener: I welcome the second panel of witnesses on the Transport (Scotland) Bill, from whom we will take evidence on the proposals relating to road works. I welcome Alex Rae, manager of Scotia Gas Networks, on behalf of Street Works UK; Elizabeth Draper, head of compliance and regulation for Street Works, Openreach; Angus Carmichael, Scottish road works commissioner; Mark McEwen, general manager of customer service, Scottish Water; and David Hunter, member of Mobility and Access Committee for Scotland, who was also here for the first panel.

We have a series of questions. For those of you who have not been here before or did not see the previous evidence session, when a question is posed, I will look at you and if everyone looks away, one of you will get tasked with responding to the question. If you want to ask a question or answer one, catch my eye and the microphone will automatically go live in front of you when it is your turn. As I reminded everyone previously, I follow a Deputy Presiding Officer’s practice in wagging my pen if you are getting towards the end of your

time, which is just to allow everyone a chance to get in. Please do not ignore that, as I am not sure what the sanction is when I cease to hold on to my pen.

The first question is from Peter Chapman.

Peter Chapman (North East Scotland) (Con): Thank you, convener, and good morning lady and gentlemen. You are the people who tend to dig holes in our streets on a fairly regular basis. I am sure that you are aware that the bill proposes a number of changes to the legislation governing the regulation of road works in Scotland and that you have all studied them. What practical impact do you think that the road works proposals in the bill will have on road users?

Alex Rae (Street Works UK): I will kick off with probably a bit of a broadbrush statement. As utilities, we are not in the business to do bad road works. The road works that we have to do are done for a reason and doing bad road works is simply not good for business; it is bad for our reputation and our business, and bad because of the costs involved. We are therefore in the game to do good road works.

As a whole, we have good working relationships in the road working community between the utilities and with the road works commissioner and the roads authorities. There is nothing in the bill that means drastic changes; there will be some subtle changes and pushes into trying to work more co-operatively and efficiently. I think that, on the whole, the bill will be fairly good for what we are trying to achieve.

The Convener: I will bring in the utilities' representatives first, then go to Angus Carmichael for a comment.

Mark McEwen (Scottish Water): From our perspective, the bill's provisions provide a framework to continue the journey of improving the high quality of road works, whether done by utilities or roads authorities. We welcome the establishment of and the clarity around the role of the Scottish road works commissioner; and we welcome the move to reinstatement quality plans. There is no particular provision that causes a concern in terms of the additional approach to regulation, noticing and penalties. Our perception overall is that that will generally just continue to drive up the quality of road works in Scotland, which we believe are currently of a relatively high standard compared with those in England and Wales. That is the journey that the bill will continue. It does not pose a particular threat to us but is an opportunity to continue to drive up the quality of our road works.

Elizabeth Draper (Openreach): I agree that the bill is an evolution. A few provisions in the bill will improve the current situation, but particularly the

quality plans, which will encourage more works to be done right the first time. It will prevent rework and having to go in and dig a road up twice or have traffic management. The quality plans will certainly be beneficial. The bill is a continuation of what is already there, but it is probably right to refine the edges as opposed to proposing something radically different. We are going in the right direction and it is about doing more of that.

The Convener: Angus, everyone is perfectly happy with the bill.

Angus Carmichael (Scottish Road Works Commissioner): Absolutely. I should say first that the situation in Scotland is significantly different from that south of the border. We are fortunate to have only one Scottish road works register, because I think that there are in England around 170 disparate registers, and Alex Rae does not know what Elizabeth Draper is doing, what Scottish Water is doing and so forth. Up here, everyone knows what everyone else is doing on the road.

The provisions of the bill will undoubtedly improve quality and safety. The question was mainly about the impact on the public. The bill will lead to a reduction in disruption. As more real-time information comes in, it should improve journey planning time for individuals as well as reducing disruption. Quality plans will mean getting things right first time rather than having to return to the site.

I feel like I am among friends at this end of the table; it is not as if we are fighting each other day and daily.

The Convener: David, I will bring you in, because everyone is convinced that everything is perfect. Does it all work for you guys?

David Hunter: Thank you for giving me the opportunity to dissent a little bit. The discussion that we just had highlighted the problem for disabled people of parked cars on pavements. We think that road works are a serious hazard and often an obstruction for disabled people. We do not quite agree with the rosy picture that has been painted so far.

The so-called red book—the guidance, which has been endorsed by Scottish ministers—is very good and we appreciate that most organisations doing road works, whether utility companies or councils, pay some attention to it. However, on the way here this morning I took a photograph of a road sign saying that there was a diversion because of road works. The sign left less than 1m of walking space, which would stop a wheelchair user from using the pavement.

You probably all see that kind of thing in your constituencies every day. Ramps are generally put

in when road works block off a pavement and there is a diversion on to the road; however, typically, there is not enough space for a wheelchair user to get to the bottom of the ramp, turn around and go along the route provided.

Application of the very good guidance that already exists is not good enough and we would like to see better inspection and enforcement. That was a theme of the previous discussion on pavement parking.

Peter Chapman: I need to dissent a wee bit, too. I recognise that you all want to reinstate all your road works to a high standard, but the reality is that very often that does not happen. We have all seen areas of the road that have been dug up and, within weeks or months, the repair has collapsed and there is a big hazard in the road for cyclists in particular—for everybody, really.

What is your view on the proposed inspection powers for the Scottish road works commissioner and their staff? Do you really think that that will drive a better standard of repair and make sure that repairs are high quality and will not need to be revisited a few weeks later? That seems to be the problem: the road collapses where the hole is dug and then you have a real issue. Can we be confident that the changes in the bill will drive a better standard of reinstatement?

The Convener: Angus, that question looks to be directed at you.

Angus Carmichael: I certainly did not mean to imply that road works in Scotland were perfect by any stretch of the imagination—they are not. I have a dashboard system that is produced quarterly, marking things as red, amber and green, and there is still plenty of red in it. I would say that we are better than our southern cousins. However, there remains room for improvement.

On safety, there is no evidence that roads authorities carrying out works are any better than utility companies. It is probably the case that utility companies are better regulated and generally perform slightly better than roads authorities doing that same work.

The provisions in the bill should improve the current situation in Scotland. It will be difficult to get it absolutely perfect; there is a lot of human nature involved, and a lot of different operatives, companies and contracts. However, it will certainly lead to an improvement in safety at road works sites, which is a big issue, and the quality of reinstatements. Those are the two main issues.

Peter Chapman: Do other folks on the panel think that the new inspection powers will put an increased demand on your teams to do the job better than it was done in the past?

11:15

Mark McEwen: To pick up on a couple of the bill's elements, the reinstatement quality plans will be a key part of the process of developing a consistently high standard in the quality of works that are carried out. That will sit alongside the existing inspection and monitoring programme that roads authorities apply, which has a role as well and demonstrates generally for many utilities quite high levels of standards, although there is still room for improvement. There are also the provisions that sit with the Scottish road works commissioner to take action where there are fundamental failures in quality performance.

All of those elements will create a framework with added impetus and focus that will provide greater powers for action to be taken where there is not the right action or recovery. I am therefore of the view that the framework being presented builds on what we have already and will continue to drive up the quality of reinstatements and the quality of works on roads.

Elizabeth Draper: There is the penalty side of things when works are inspected and there is a natural course to follow if it is found that the right thing has not been done. The bill has some enhancements of that process. However, one of the biggest wins from the changes proposed in the bill will be from formalising the need for a quality plan, which will have to be agreed at the utility level with first-tier suppliers and any subcontractors. That will formalise up-front self-checking and a culture of getting things right at the beginning, as opposed to failing down the line and getting a penalty. That is what feels very different about the bill: up front, it puts the focus in the right place. None of us wants to receive a penalty and Angus Carmichael probably does not want to give a penalty. The bill puts the emphasis at the front end by stating what needs to be done and in what order, and how we are going to check it.

A key process that we have implemented is self-coring so that we are not waiting for authorities or Angus Carmichael to go in and take a chunk of our reinstatement to see whether it is right; we are doing that ourselves so that we can proactively find and fix. We can see what needs to be done up front so that we can fix things for the future. The bill will make a key difference in that regard.

The Convener: That leads on to Jamie Greene's question.

Jamie Greene: Good morning, panel. I want to explore a couple of themes around some of the other provisions in the bill. The first one is the issue of qualifications for supervisors and operatives on site in relation to works being carried out and reinstatement. The bill seeks to strengthen the quality of staff on site, including

contractors and subcontractors, by ensuring that there are trained operatives whose names are given to roads authorities along with information about their qualifications and so on. Much of the criticism in representations made to politicians regarding road works is about specific issues around reinstatement or certain practices that are not so good. Will the bill mean that the general public will notice tangible differences in the processes of road works and their quality?

The Convener: I will go to Alex Rae because he did not get a chance to answer a previous question.

Alex Rae: Will the bill change significantly what we do? I do not think that it will. This is not a criticism of the bill, but my organisation already has qualified people on site. When somebody comes into any part of the business, they must have some basic safety and awareness training, and basic training in what they do. We do not put people out on the roads to do works unsafely.

As far as having competent, trained and qualified people on the job is concerned, we have that already. Perhaps the bill might generate a bit more awareness for the responsible, qualified person on site of their responsibility, of the importance of doing things right and of the fact that they will be measured against that. Perhaps the bill will heighten awareness in that respect, but that responsibility is already there. The bill will tighten up what is already in place and enhance people's awareness of their responsibility for their work, so in that respect the bill is a good thing.

However, as I said, it is not in anybody's interest to put untrained and unqualified people out there. In the interests of their safety and that of the public, and of doing the job well, we have to get that right. We are not in the game of putting unskilled and untrained people out there. People who are not fully trained always work with a competent and trained person.

Jamie Greene: That is a fair statement but, as others have mentioned, it is not always the reality. I will furnish you with a short example. I recently dealt with the case of a utility company—I will not name it—that was inserting telecommunications equipment into pavements and had dug up numerous streets. After a complaint by local residents about the ramped access to a road and the lack of a pavement, I attended the site to check it out for myself. When I got there, there were a large number of subcontractors on the site but no one from the prime contractor. It was difficult to engage with the staff and no one seemed to take any responsibility. There were lots of comments such as, "You'll need to speak to my supervisor." When I eventually spoke to the supervisor, he said that he was a subcontractor and that I had to speak to the utility company, and

he gave me the telephone number. No one on site could account for health and safety issues or the actions of anyone.

That is a real example, and I suspect that the same happens in other places. The reality is quite different from the perception.

Alex Rae: I agree that that is a bad example, and that that should not happen. There should be a person on site who has overall responsibility for the site.

Jamie Greene: Is the Scottish road works commissioner confident that the bill gives you adequate powers to enforce good practice and ensure that you are happy when you sign off reinstatement plans and so give more confidence to consumers?

Angus Carmichael: To roll back to your first question, which was on qualification, the sort of large organisations that are represented round the table here generally have pretty good systems in place. The company that I imagine that you are talking about is rolling out telecommunications programmes across Scotland, and there are issues with multiple subcontractors, which we are looking at. The qualifications element of the bill is being progressed in parallel with work that the UK training and accreditation group is doing on how it tests operatives. Currently, I could take a day-long or week-long course and, when it comes to the test, I could turn to the person next to me and say, "What's your answer?" In future, the tests will be computerised and there will be a much larger pool of questions. That will improve the standard of qualification, in parallel with what is proposed in the bill.

There should always be somebody on site with a card, but I have come across sites where people have not been qualified. Openreach has a lot of single operation vans out there, and every time that I have personally stopped them, the guys have a card and they know the situation. There are challenges with some of the other telecoms providers, but they are aware of their obligations and what they have to do to improve.

One thing that will improve is courtesy for those with a disability when they come across a site. If people are aware of what they are meant to do in the way of signs, lighting, guarding, walkways and pedestrian ways, they will be more sympathetic in catering for the needs of people with a disability.

Jamie Greene: What do you do with repeat offenders? Under the bill, reinstatement plans will have to be submitted to and approved by the commissioner. The parameters for approving a plan are that the applicant can demonstrate that it is competent to execute the works properly and has quality control procedures in place. However, that does not seem to take into account the

applicant's historical activity. If a company submits a plan that on paper seems to be good but you know that, in practice, it has been less than that in the past, can you take that into account or do you have to judge only on the merits of the plan that is delivered to you?

Angus Carmichael: Currently, when I come across systematic failure, I have powers to impose a commissioner penalty. As you know, the bill proposes compliance notices, which will be an amendment to that system of escalation. However, where I saw a company routinely fail, I would be looking to take action against that company.

The Convener: Can I just clarify something? Jamie Greene's point is quite interesting because it refers to the issue of a main contractor and all the subcontractors underneath, and is about trying to hold the sub-sub-subcontractor to account for a contract that is awarded to the main contractor. Do you feel that the bill deals with that? In just about every works contract now, a subcontractor is involved.

Angus Carmichael: The legislation puts the onus squarely on the shoulders of Mark McEwen, Elizabeth Draper and Alex Rae, who have to manage their tier 1, tier 2 and tier 3 contractors.

The Convener: Does that mean that if Scottish Water, for example, had a subcontractor, somebody from Scottish Water would be on site to deal with any issue? Or would that still be done remotely by a telephone call?

Mark McEwen: We would not necessarily have someone on site. In fact, in many cases, there will not be anyone from Scottish Water on site. To take the example of repairs to water pipes, I have a team of people who carry out repairs of burst pipes, but we also use supply-chain partners to support them. We use primarily one partner, who will not necessarily have a Scottish Water person on site. The partner will, however, be subject to exactly the same requirements in terms of the quality of works and the ticketing required of the individuals on site to demonstrate their qualifications. They will have systems for the quality and safety of the works that we will have reviewed and signed off.

We also have a process of field service advisers randomly visiting sites to check whether they are happy with, for example, the quality of the signing and lighting guarding quality reinstatements. That process happens in parallel with the partner's work, but there will not be a Scottish Water person on site where those works are carried out. In the operational world, we primarily use only one supply-chain partner for repairs and do not have tier upon tier of supply chain partners.

The Convener: But it seems to me that the most important issue, which is what the bill is

driving at, is to ensure that tier 1, tier 2 and tier 3 suppliers are aware of the implications of their contract. I note that all the panel members are nodding, so I assume that they all agree with that point.

Alex Rae: I agree entirely with what Mark McEwen said. As the principal contractor—I am talking about SGN here—we are responsible for the works on an SGN site. We are responsible, irrespective of who the contractor or subcontractor is, because it is our site. At the various roads authorities and utilities committee (Scotland) meetings and area RAUC(S) meetings that my team and I go to, we always say that if there is a problem and contractors cannot get through to anyone, they should come to me and my team and we will deal with it. We will take issues on board and will not try to shirk responsibility; it is our site and our responsibility, and it is up to us to fix any issues.

The example that was referred to is an example of something dreadful that should not happen and we need to take that on board. I do not think that anyone on the panel will say that such an issue is a subcontractor's problem. It is not; it sits firmly with us and it is up to us to manage and control our contractors.

The Convener: I know that Elizabeth Draper wants to come in—she might be able to respond to Peter Chapman's follow-up question.

Peter Chapman: One of the new things in the bill is the proposal that the utilities will need to state a start date and finish date for any works that they undertake. Do you have concerns about how you will do that in practice?

Elizabeth Draper: That refers to the start and finish of being onsite. Because of the very nature of the work, somebody somewhere will always know that it has happened. The current limitations of being able to state that something has been done are to do with connectivity and having the right information technology.

11:30

That provision will be subject to supplementary regulations, which will outline exactly how it will work and when it will come into effect. That is good because, from a technology perspective, we are not in that place yet. The Office of the Scottish Road Works Commissioner is working on an app that will facilitate that. There will still be limitations in some areas where there is no connectivity, but that is being addressed by time stamping when the operative sends the note, as opposed to when the note is received, which will help with connectivity. I do not see those issues as being insurmountable. The way that things are moving, we will be able to let the public know more quickly

where we are doing work. The only limitations are technology and connectivity. It is absolutely feasible, but the technology needs to come before regulations and before any subsequent penalties can legitimately be enforced.

Alex Rae: I will expand your question a little into the noticing process. On the whole, we are okay at noticing, although there is a lot of room for improvement. There are various areas of noticing. When we are working on a housing estate, I am a great believer in asking whether it actually matters how much notice we give. To a certain extent, it probably does not matter, because the only people whom the notice period affects are the people who live in that housing estate. Yes, it is important that we work with that bit of the community so that those people are aware of what we are going to do, when we are going to do it and what access we need to their property. However, for the rest of the road-working community, the noticing probably does not matter. What is more important is that we co-ordinate our works and that we all work together. That is part of what the register does and what the roads authorities and utilities committee (Scotland) process does. It is about working together.

Obviously, when it comes to traffic-sensitive roads, it is far more important that we give more notice. As I have always said to people in my organisation, if you are working on a traffic-sensitive road, your best friend in the world suddenly becomes the roads inspector or the traffic police, because they are the people with whom you need to work and to whom you need to say, "It is a difficult and busy road. How are we going to do it? What requirements do you have? What do we need to do about pedestrians or access for disabled people?" There is a whole raft of stuff that we have to deal with, and we need to take more time with it.

That is one part of the noticing. The other big part of it is in trying to give as much advance notice of our works as we can. Within SGN, we are currently working on some clever computer stuff that will automatically upload all our future works into the register, so that we can look two, three or four years ahead. That is not about saying that we will go into a particular street on 1 October 2019; it is about trying to say where we are going to work. It is about trying to co-ordinate our works with other utilities' road works and, probably more importantly, with the roads authorities themselves, so that they can look at it and say, "SGN reckons it will be working on that street by early 2021. We were going to resurface the road in 2020." That is the point at which SGN should be saying that there is a big conflict there and that we should switch those works around. We will do our works in 2020, as will Scottish Water, SP Energy Networks and Openreach, and in 2021, the road

works authorities will come and resurface the road. Then all the road works will be done. It is about that big thought. It looks great. It might sound like the old Carlsberg advert, but that is where we want to be. We definitely do not want to be doing our works the day after a road has been resurfaced.

The Convener: You will have to excuse my smiling. I do not recognise the fact that road works are done just after a road has been resurfaced. Angus Carmichael, do you want to comment on that?

Angus Carmichael: The current legislation says that works commencing this morning at 8 o'clock do not need to be in the register until 12 o'clock tomorrow, which is nonsense in this age of communication. Elizabeth Draper referred to an app that has been available since the summer. With the app, an operative can go out to the site at 8 o'clock in the morning and press a button on his phone that records the start of the works. When he goes off site, he presses another button that records the close of works. It is much more real time and live.

Not only does the app allow the roads inspector to get to a site while a job is actually live, even if it is only a two-hour job, it means that the works go on to our public-facing website. That is live information for anyone around this table who wants to do a bit of travel planning. The whole thing happens much more in real time.

John Mason: My question is on the area of safety and staffing. I understand that the bill will require roads authorities to meet the same requirements that you and other undertakers have to meet. I assume that most of you think that that will be a good thing, but you can tell me if you do not.

I understand that the two key safety requirements are that road works are fenced and lit. I smiled when I read about fencing. At 4 o'clock on a Friday, I see workers go off and there are nice delicate little fences beside the hole. They last for perhaps a couple of hours, until kids push them into the hole, on to the street or on to the temporary pedestrian way, blocking it for disabled people and everybody else, or they get blown over by the wind that night. The whole place is a mess for the weekend. Somebody comes along on Monday and starts working again.

It is all very well to put up fences, and I am sure that all the panel's organisations are doing that. Is there some way, however, that the situation that I described could be improved?

Mark McEwen: Before we speak about improvement, I should say that we do not generally use delicate barriers. Having lugged some of them around, I know that the barriers are

some weight. The barriers round excavations are quite robust, and the protocol is clear about the need for them to be weighed down by sandbags or something similar to reduce the risk of vandalism or high winds affecting them.

In areas where there is more risk of people trying to access excavations, we have started using a combination of traditional heavy-duty bright plastic barriers and Heras fencing, which you may be familiar with, which provides a double level of protection to prevent people accessing excavations. Although a barrier coming down can be inconvenient, the bigger issue is preventing people accessing excavations where there is a risk of injury, which is primarily what we are trying to prevent.

If there are any examples of barriers coming down, we are clear that people should report them immediately. We operate a 24/7 response that will ensure that people are out to address the problem as quickly as possible.

John Mason: The issue is that in poorer areas people are less likely to get involved and phone. In the richer areas, people will phone and complain, so in those areas holes get fences back round them. Holes in my area do not.

I take the point that there are different kinds of fencing. The Heras fencing goes over easily. Sandbags are a waste of time. If they are just hung on the bottom of the sign, they come off very easily. The sign still blows over. I like the plastic fences that have water or sand in them. They are much less easy to move, but they are not so high.

There is an issue. I will not go on about it but, clearly, some of the fencing does not work. Do other panel members have comments?

Alex Rae: I hear what you say, and I hope that we can disagree with it. The red book is clear in specifying the barriers that have to be used. They have to be of sufficient strength that they will withstand certain winds.

The red book is also clear that we should be inspecting sites on a 24-hour basis. When a site is left because work has stopped on a Friday, it should still be inspected on Saturday and Sunday. If people see a problem, they should please give us a phone. All our barricades have numbers on them and all our sites should have courtesy boards. Phone us up. We have a 24/7 operation and will have somebody out within one or two hours to fix it.

John Mason: Do courtesy boards say who to phone or who is doing the work?

Alex Rae: Yes.

John Mason: My experience of that is patchy, but I am not blaming Street Works UK for that.

Alex Rae: It is a mandatory requirement. We must have courtesy boards on all our sites. The board should clearly state the number to phone in the event of any issues, problems or questions. Certainly, in our case, that is a 24/7 operation.

The Convener: To help John Mason, could Angus Carmichael tell the committee whether the Scottish road works commissioner issues fines if the requirements are not met?

Angus Carmichael: There has not been a penalty issued on the basis of lack of fencing. I see that one of my predecessors is here today—perhaps it is remiss of all of us that we have not pursued that avenue. It is something that we are aware of. I have here the red book that we use, and that is the basis of the provisions in the bill.

David Hunter: Our main interest is while the road works are taking place, rather than the reinstatements—although there are issues there. As I said earlier, it is literally an everyday sight to see non-compliance with the red book. It is interesting to hear that there are penalties that have never been issued.

Going back to the bill, the section about fencing and lighting is rather unhelpful. It makes it sound like a very technical issue when, from our point of view, it is about accessibility and public use, particularly for pedestrians and disabled people. I cannot fault what the red book says, but it is unusual to find it being followed correctly in practice.

I do not know whether you are going to follow on with some questions about inspection, but that is a real problem. My understanding is that it is very rare for road works to be inspected onsite by local authorities. I think that they can charge only £36 for inspections, which I cannot believe covers their costs, so it disincentivises councils from inspecting. It is good and all very well for members of the public to report things—I sometimes report things directly to people onsite and they will often rectify them there and then—but we need a better regulatory enforcement regime, similar to what we discussed before for pavement parking.

The Convener: I notice that a whole heap of people want to come in. I am afraid that I will not get them all in, but I know what the next question is and that the people who put their fingers up will get a chance to answer it. Richard Lyle will ask the question.

Richard Lyle: We all agree that road works are important, and Alex Rae spoke about joined-up road works. I wish that they existed, because there is a road in my constituency that would win the BAFTA award for the most dug-up road. The gas company went in, then Scottish Water went in and then the digital company went in. They had a

board and they all had a number, but the works took months and months.

In its written evidence, Street Works UK opposed the proposal that the Scottish road works commissioner should be given the power to issue fixed-penalty notices. Why did you oppose that proposal? Is it because you think that you may face penalties?

Alex Rae: Fixed-penalty notices have to be proportionate. Is it about punishment or trying to correct behaviour? It should be about trying to correct behaviour and getting the road works correct.

I take your point about the street where gas, water and then telecoms went in. I was thinking that it sounded really good, because what I was hoping to hear next was that the road authority went in and resurfaced the road. That would be brilliant, because that is what we want to do.

Trying to do road works at the same time tends not to work particularly well, because we all have different methods of working and different priorities. Where it will work, we try it, but it tends not to. Instead, we try to de-conflict the work so that, exactly as you saw, we might go in, water might go in next and telecoms after that.

Richard Lyle: You were painting a lovely picture of all working together, but I do not think that you are. You are all working in your own wee silos. First you dig a hole, Mr Rae, then Mr McEwen does and then Ms Draper, and the holes could be in the same place. Could you not plan it so that you put in the gas, water and utilities at the same time?

The Convener: Would Elizabeth Draper like to come in on that, so that Alex Rae does not feel that it is all aimed at him?

Elizabeth Draper: Sure. For planned work, that sounds like a perfect thing that could happen.

Richard Lyle: It is common sense.

Elizabeth Draper: In Scotland, we have a register that we do not have in other parts of the UK, which enables that collaborative approach for planned work. Believe it or not, as a matter of course, Openreach looks at what other utilities are going where we plan to go and at whether we can co-ordinate.

Of course, we must remember that, for many of us, only a small proportion our work is planned. Much of the work that we do sits in the minor bucket and is work for which we give three days' notice. That work might be a customer connection or a blockage. We also do a lot of reactive work, in response to things such as faults or cable thefts. There is an opportunity to co-ordinate and the register can facilitate that. However, there will

always be an element of appearing not to have co-ordinated, given that there is a constant flow of reactive work in the industry, which is absolutely necessary to connect Scotland digitally, fix gas leaks and so on.

11:45

Richard Lyle: Are you in favour of penalties or not?

Elizabeth Draper: It depends on the penalty. I see a penalty as a last resort. The point that I wanted to make is this: it is not a bad thing that we have not had penalties—although I would say that. There is so much more that should happen before the penalty is incurred. We talked about quality plans, for example, and we should be brought in to discuss what we are doing to improve.

It is not fair to say that we do not get checked. At the beginning of the year, we agree a number of sample inspections, based on the volume of our work in the previous year, and we pay for those up front. That is our statutory undertaking. We fund the inspections and we expect them.

There are also ad hoc inspections and third-party inspections, which are reported by other people. We support inspections and we also do our own. Like the other bodies, we have a 24/7 service; if something is phoned in, we will fix it.

Penalties have a place in the system, but they are a last resort. If the Scottish road works commissioner or the roads authority has to give us a penalty, something has gone wrong. We should be collaborating and looking at making improvements and changing behaviours.

A penalty should be a last resort, particularly given the size of penalties proposed. We propose that there should be a tariff of charges.

Richard Lyle: So, Alex Rae and Elizabeth Draper are against penalties. What about Mark McEwen?

Mark McEwen: We are comfortable that the provision for penalties and the like has a place in the bill. As was mentioned earlier, they must be proportionate and appropriate, but we have no fundamental objection to including penalties—as a final resort—in the bill.

The Convener: I will bring in Angus Carmichael briefly, because it is critical that he has his say.

Angus Carmichael: Some people see fixed-penalty notices as a cost of doing business, but I see them as an avoidable cost: if the work is done properly in the first place, there will be no fixed penalties. What is proposed in the bill is a small extension to the areas that are covered, from four to six or seven.

Working together in the same trench can be very difficult. Openreach might go in at a shallow depth, while Alex Rae's company might want to go in at a depth of 2m or 3m. That is a very challenging situation.

I would like to make a little correction. I said that there would be no penalties regarding signage. However, one of my predecessors imposed a £50,000 penalty on Openreach for some of its working in Inverness and much of that was to do with the signing of sites.

Mike Rumbles: My question carries on from fixed-penalty notices and is really for Elizabeth Draper from Openreach. In your written evidence, you call for the creation of an independent adjudicator for fixed-penalty notices. Why do you think that would be necessary and how might it work in practice?

Elizabeth Draper: Through the roads authorities and utilities committee, we already have an independent appeal point for other charges. For example, if there is a disagreement as to why a charge has been levied, it goes through the RAUC process. There is a discrepancy with fixed-penalty notices in that under the current arrangements and in the bill, if someone does not agree with the situation, the case goes back to the issuing authority—in effect it goes back to the same person. The case might go to a slightly more senior person, but it is usually a technical issue and so the person would need a fairly detailed understanding of road works to be able to adjudicate. That means it ends up in the same pot.

We want to avoid as many debates as we can and things should be as black and white as possible, although we will always end up with some discussion. We want to ensure that there is a fair and just process. For every other charge, it would be adjudicated through the RAUC, which has a process that is well defined and has been around for a long time. At the moment, that would not happen for fixed-penalty notices—it would just go back to the same person or issuing authority. That seems to be at odds with a fair process. We are looking for something like the RAUC process for FPNs.

Mike Rumbles: What does Angus Carmichael have to say about that?

Angus Carmichael: There are parallels with parking tickets, which can be appealed against in the first instance to the issuing authority. It is very much the case that appeals against fixed-penalty notices would be to the issuing authority. I am relaxed about what happens after that and about changing the process, but the appeal in the first instance should continue to be to the issuing authority.

Mike Rumbles: I go back to Elizabeth Draper for my last question. Openreach has raised security concerns about the need to provide detailed information to the Scottish road works commissioner about Openreach infrastructure. Will you outline the reasons for those concerns and explain how they could be addressed?

Elizabeth Draper: We have concerns about providing our apparatus data in its totality for the whole of Scotland, which are mainly based on the fact that our network is critical national infrastructure, which we must keep safe. We have asked the Centre for the Protection of National Infrastructure and the UK national cyber security centre for advice on how the requirement to provide information would work with what they need us to do to keep our apparatus safe, and we await the output of that.

Any data that we hold must meet safety standards, such as being encrypted at rest and in transit and lots of other things. If we gave our data in its entirety to someone else, we would need them to have in place the same level of security as our systems have. We would prefer to continue to use our system—maps by email—which services 1.9 million requests a year for maps. It does the same job and anyone can access it, but it is our system.

If we had to provide our apparatus data, we would want obligations on the third party that held the data—the commissioner's office—to keep it safe and secure and we would want some recourse to be available if the third party did not keep the data safe and secure. The area is complex so, ideally, an accompanying code or further regulations would clearly detail what needed to happen to keep the data secure.

It is not the case that we have no will to share our maps; we already share them, but in a controlled manner in our system. Our concern is that we do not put critical national infrastructure in any danger or at any risk.

Angus Carmichael: We have a system called vault that has all the information from Scottish Water, Alex Rae's company, Vodafone, Virgin Media, CityFibre and all the others. Openreach has always resisted that. Vault is available only to those who have access to the road works register.

My personal view is that Openreach's decision is more commercial. The Department for Digital, Culture, Media and Sport requires it to share information on duct capacity. The DCMS says that some businesses would never voluntarily share information without legislation to force their hand, and the DCMS has identified that collaborative information sharing about ducts would be unlikely without Government intervention. To my mind, the

issue is more commercial than anything else, and Openreach is playing a game.

Mike Rumbles: Oh—controversy. It was all going so well.

The Convener: Yes—it was all going so well.

Elizabeth Draper: It is true that we had commercial concerns in the past but, if legislation requires us to share the information, those concerns go away. However, commercial concerns are not the primary driver—I have discussed that with Angus Carmichael before and I will get him to believe me at some point. The concern is risk based—our risk team and security team are concerned. We have a lot of detail, which we put in our submission, about what we need to feel comfortable. We have quantified the issue.

As it stands, if the obligation was created, our main concern would be about the risk. Without obligations on the third party to keep our data safe and secure, our issues would not be addressed and we would still be uncomfortable about handing over the data.

The Convener: We will park the issue there and move on to questions from the deputy convener.

Gail Ross: My questions are specifically for Angus Carmichael. Why is there a need to clarify the legal status of the Scottish road works commissioner?

Angus Carmichael: Both my predecessors had concerns about the issue in that, if anything had gone wrong, they might have needed to sell their house to settle their debts. The contract for the Scottish road works register, which approaches £1 million a year and is paid for by the community, is with me personally. If something goes wrong, how liable am I? I have certain assurances in place from the Scottish Government, and I am confident that I would get support from the Scottish Government, unless I had transgressed severely. However, both my predecessors had strong concerns about their exposure, should something have gone wrong—it is about clarifying that.

Gail Ross: Does that clarification need to be in the bill or can it be given elsewhere?

Angus Carmichael: I think that it should be in the bill.

Gail Ross: In your written submission, you highlighted the issue of permit and lane rental schemes.

Angus Carmichael: Yes. Fifty-seven per cent of English authorities use permit schemes; two authorities use lane rental schemes. Many years after Scotland, England is trying to introduce the street manager project, which is an English street works register. I do not think that that system will be as good as what we have. To make it work, the

Secretary of State for Transport has required all highway authorities in England to have permit schemes in place by March next year. That is totally unnecessary because it will place an extra financial burden on organisations that deliver utility services, stifle innovation and remove community working, such as that which exists in Scotland.

There has been a lot of research on noticing and permits in England. Statistics have been produced that show the improvements that will be made through the use of permits. In Scotland, under noticing, we perform better than England is projected to perform under its new system, and we feel that our noticing performance has room for further improvement and that that improvement is quite possible. We feel that requiring all authorities to use permits is unnecessary.

The Convener: One of the issues that does not seem to be addressed—I am sure that every MSP has a huge amount of correspondence or dialogue with constituents on the matter—is that, during road works, lanes are marked as closed and left closed over the weekend to protect the workforce, but the workers are nowhere near and no road works are going on. Would permit and lane rental schemes not reduce that problem? It causes people huge frustration, particularly on some of Scotland's trunk roads, and more work will be done on such roads. Sometimes, the roads are reduced in width and the speed limit is dropped when there is no evidence that that is required. That also undermines the restrictions that should be in place when the workforce is working on the road works, because people do not always believe that workers are there.

Angus Carmichael: Everyone is encouraged to be as open as possible about their timescales for works. Generally, that is the case, but there are certainly examples of what you have talked about. The examples that the Secretary of State for Transport down south cited when he was bringing in charges involved concrete waiting to cure or parts that are not available on Friday but might be available on Monday. There are often other reasons for sites being open but nobody being on them. Information sharing and signage are important. We need to explain that, for example, works are awaiting supplies or awaiting concrete curing, or something to make the reasons more obvious. Something could perhaps be added to my public-facing website. However, human nature being what it is, there will always be exceptions.

The Convener: I always give committee members a hard time if they mention constituencies, so I will say only that the A9 is a perfect example of that issue, park it there and give the floor to Maureen Watt, so that I do not incur the wrath of the committee.

12:00

Maureen Watt: Throughout the evidence session, David Hunter has highlighted some of the main issues that face disabled people around road works. I wanted to give him the opportunity to raise anything that he has not raised so far and to say whether his concerns are addressed in the bill. I would also like to ask the road works commissioner how many times issues relating to disabilities cross his desk and what tends to happen with them.

David Hunter: I have mentioned the common problems, and I saw a number of people around the room nodding, so they are not unfamiliar to you. Another issue is road works going on longer than they should do. It is quite common to see road works debris that has gone missing and been left on the pavement—sandbags, bits of barriers, signs or the frames of signs. That may come from subcontractors, from local councils or from the roads authorities, but there is a lot of road works debris littering the streets. There are a number of things that could be done. We have been talking about culture and professional standards, and I am not accusing any colleagues of a failure to commit to those standards, but I would like to see the bar raised higher in terms of being aware of those issues and dealing with them on a daily basis through quality plans. As I mentioned, I would like local authorities to be given more incentive to inspect road works while they are actually taking place.

Finally, I know that the commissioner has new powers in the bill to carry out inspections, but I think that I am right in saying that there are no provisions to enable the commissioner to recover his costs, so we are a little bit sceptical about them being widely used, as there is a disincentive for the commissioner to use those inspection powers when doing so would result in a net cost to the commissioner.

Angus Carmichael: On the cost element, other organisations, such as the Health and Safety Executive, do not charge for inspections. I hope that, following the completion of associated regulations, a financing regime will be established by the Scottish Government. Roads authorities currently recover their inspection costs. It is £36, and I noted that somebody mentioned that that may not be enough. That is based on roads authorities submitting returns to the working group. It is based exactly on the returns that came in from the 32 councils across Scotland as recently as last year. Alex Rae chaired the group. The group thought initially that that figure was too low and encouraged the roads authorities to reconsider their estimates, but it could not get the figure above the current £36.

Individual instances of issues relating to disabilities do not tend to come to my office. If they do, I refer them to the roads authorities responsible for that area to solve. If I became aware of activities that were causing systematic inconvenience to people with disabilities, I would absolutely get involved. Was there anything else you wanted me to respond to?

Maureen Watt: No, I think that that is okay.

The Convener: Those are all the questions. Thank you all for coming in and giving evidence this morning. It has been very helpful.

12:04

Meeting suspended.

12:14

On resuming—

Agriculture Bill

The Convener: Item 5 is on the UK Parliament's Agriculture Bill. I invite members to declare any interests. I will start by declaring an interest as a member of a family farming partnership.

Peter Chapman: Likewise, convener, my entry in the register of members' interests shows that I am involved in a family farming partnership.

The Convener: Item 5 relates to the committee's consideration of a legislative consent memorandum that has been lodged by Fergus Ewing, the Cabinet Secretary for the Rural Economy. The LCM covers the Agriculture Bill that is currently being considered in the UK Parliament. The UK Government and the Scottish Government have different views on how the bill will affect the devolved Administrations.

The UK Government does not consider that consent from the Scottish Parliament is necessary, as it is of the view that the bill does not legislate in areas of devolved competence. However, the Scottish Government believes that legislative consent is necessary. The Scottish Government indicates in the LCM that it does not intend to lodge a legislative consent motion on the bill at this time as it considers that the approach that is being taken in the bill is not consistent with devolved responsibilities.

The Scottish Government is seeking urgent discussions with the UK Government on how to strengthen and protect the Sewel convention. The Cabinet Secretary for the Rural Economy has also written to the UK Secretary of State for Environment, Food and Rural Affairs, proposing amendments to the bill. The LCM states that the Scottish Government will consider progress in those discussions in deciding its position on whether to seek legislative consent for the bill as its UK Parliament consideration proceeds

As the lead committee on the bill, we are required to reflect on the memorandum and consider whether we are content with its terms. We will then report our findings to Parliament. I invite members' comments.

Mike Rumbles: In the minister's evidence to us last week, on 31 October, he undertook to provide the legal advice—I was surprised when he said it, but we can check the *Official Report*—for his decision that there is no issue over the continuity of farm payments and that we do not need to rely on the UK Agriculture Bill.

In a letter that the committee has just received, the minister states:

"In my evidence session with the Committee on 31 October, I undertook to write to set out the position on the basis for continued farm support payments after 29 March 2019, as informed by legal advice."

However, if you check what the minister actually said to us, convener, you will see that it is different from what he states in the letter. Will you write back to the minister, asking him to fulfil the commitment that he gave us last week?

The Convener: The first thing that I will do is check the *Official Report* to ensure that I am entirely clear about what the cabinet secretary offered to provide to us. If what is offered in the letter falls short of that, I will write back to him and ask, on behalf of the committee, that he provide that information.

Jamie Greene: I will keep my comments fairly brief. There is an element of political disagreement, but the committee has a duty to look at the issue from a procedural and legislative point of view.

Given the oral evidence that was given by the cabinet secretary and his subsequent letter to us today, I am still unclear as to whether there is a substantive case that the Scottish Government has the legal ability to continue with common agricultural policy payments if it does not lodge a legislative consent motion on the UK Agriculture Bill.

In the letter that the cabinet secretary has provided, he refers to matters still being

"subject to the outcome of the Supreme Court case"

on the European Union (Legal Continuity) (Scotland) Bill, which means that there is still some subjectivity regarding the bill's legality. I am still not clear whether there is a legal basis for the continuity of farm payments. Even if there was legal continuity and the cabinet secretary's forthcoming legal advice is correct, my understanding is that that would allow the continuation of CAP payments only under the existing arrangements and agreements.

I believe that the committee posed questions around deviation from that and different forms of subsidy, which I do not think are covered under the European Union (Withdrawal) Act 2018 or any continuity bills that might or might not be valid in Scotland. I ask the Scottish Government to reflect on that feedback.

For that reason, I express disappointment that the Scottish Government has chosen not to lodge a legislative consent motion on the UK Agriculture Bill. However, that might be just my personal view as opposed to the collective view of committee members.

Richard Lyle: I note Jamie Greene's comments, but I do not agree with them. The cabinet secretary's letter sets out that the CAP payments will continue to be made after Brexit, and I am sure that the Scottish Government will do all that it can to ensure that that happens. It is up to the UK Government to come to the table to discuss the matter.

With regard to the recommendation in front of us, I suggest that we note the memorandum and await the outcome of the discussions between the UK and Scottish Governments. I do not see any problem with the continuation of CAP payments or with the cabinet secretary's letter. There might be a point about what the legal advice was, and I agree with the convener's suggestion that we should write to the cabinet secretary about that. However, I think that we should just note the contents of the memorandum and move on.

Maureen Watt: The committee will be well aware that Governments do not usually publish their legal advice. What is set out in the letter is perfectly straightforward. Various issues are being mixed up. We need to wait and see how the Agriculture Bill progresses at Westminster. I took it that the cabinet secretary was saying that, on the UK's exit from the EU, nothing will change regarding the payment of CAP payments. In the final paragraph of his letter, he says that the Scottish Government

"is continuing to explore all the necessary adjustments"

and to consult all relevant bodies on what should happen after exit day, but CAP payments will not be affected.

The Convener: I note that most of those comments were based on the letter, not the memorandum.

John Mason: For information, what the cabinet secretary said last week—if this is the relevant part—was:

"I hope that, once the legal advice is shared and members have looked at it, they will come to the same conclusion as I have done".—[*Official Report, Rural Economy and Connectivity Committee*, 31 October 2018; c 21.]

As I understand it, the clauses of the Agriculture Bill in relation to which there is an issue with legislative consent are clauses 22 to 24, 25 and 26, which deal with producer organisations, fair dealing obligations and the World Trade Organization agreement. Those are the areas of dispute between the two Governments. I do not think that we are able or need to form a view on that; I agree that we should just note the contents of the memorandum.

Peter Chapman: It is absolutely the case that there is a difference of opinion on whether we

have the ability to carry on making payments. That is not just my view—our members of Parliament at Westminster say that, and NFU Scotland has serious concerns about whether we will continue to have that ability. There is dubiety.

We definitely need legislation to come up with new and different ways of paying moneys for farming, but that is probably a debate for another day. I believe that there are significant concerns in the industry, which I share. We have not seen the legal advice, and the letter does not contain the legal advice, which is what we were promised. In my opinion, the worry and confusion remain.

As far as the LCM is concerned, I think that the only thing that we can do is note it, but that is not to put to one side the concerns that I and the industry have about whether we have the necessary legislation in place to enable us to continue making payments.

Mike Rumbles: The Parliament has lawyers, too. The cabinet secretary said that he was going to share the Government's legal advice with us, but I wonder whether the committee could contact the Parliament's legal advisers to ask for an opinion on whether what we have been told is correct.

The Convener: Colin, you have not said anything. Do you have anything to add before I try to summarise where we are at?

Colin Smyth: I agree with Mike Rumbles's last point. It is fundamental not just to our consideration of the memorandum that is before us but to the future work of the committee that we know the legal opinion on future payments.

The Convener: I will try to draw all those comments together. I think that there are two strands, one of which is the legal advice, which I would like to put to one side for the moment in order to concentrate on the legislative consent memorandum, which is what we have been asked to look at.

As a committee, we are probably in the position of being tied into noting the contents of the LCM. However, I think that it is entirely right and proper for us to ask the Government to keep us updated on all the things that it is doing in relation to the LCM. It would be helpful for the committee to know what amendments to the Agriculture Bill the Scottish Government has lodged and what discussions it has had with the UK Government on the operation of the Sewel convention. I think that that is how we should deal with the LCM. We should also ask to be kept in the loop, because that is fundamental to what we are trying to achieve.

As far as the legal advice is concerned, it was helpful of John Mason to quote the cabinet

secretary's evidence, but I will need to double-check exactly what he undertook to provide. I am fully aware that Governments do not usually offer to share legal advice, but the cabinet secretary appeared to make that offer. If he did indeed make that offer, it is right and proper that we get the legal advice and look at it.

I propose that that would be a sensible way of dealing with the issue that would reflect everyone's views. Is the committee prepared to agree that that is how we should proceed?

Mike Rumbles: If we do not get the legal advice after you have written to the cabinet secretary, we have another alternative, which is to write to the Parliament's legal team.

The Convener: I understand that there are alternative options, but let us hope that the cabinet secretary sticks to his word and provides the advice, if that is what he said he would do.

Is the committee satisfied with the course of action that I have suggested? Do members agree to note the LCM, to request regular updates on all the matters that I have identified and to write back to the cabinet secretary, asking him to provide the legal advice if that is what he said he would do last week?

Richard Lyle: If that is at all practicable.

Members *indicated agreement.*

Meeting closed at 12:27.

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