



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# MEETING OF THE PARLIAMENT

Tuesday 29 October 2013

Session 4

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**Tuesday 29 October 2013**

**CONTENTS**

	<b>Col.</b>
<b>TIME FOR REFLECTION</b> .....	23661
<b>BUSINESS MOTION</b> .....	23663
<i>Motion moved—[Joe FitzPatrick]—and agreed to.</i>	
<b>GRANGEMOUTH PLANT</b> .....	23664
<i>Statement—[John Swinney].</i>	
The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney) .....	23664
<b>LANDFILL TAX (SCOTLAND) BILL: STAGE 1</b> .....	23677
<i>Motion moved—[John Swinney].</i>	
The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney) .....	23677
Kenneth Gibson (Cunninghame North) (SNP) .....	23683
Iain Gray (East Lothian) (Lab) .....	23688
Gavin Brown (Lothian) (Con) .....	23691
Jamie Hepburn (Cumbernauld and Kilsyth) (SNP) .....	23694
Malcolm Chisholm (Edinburgh Northern and Leith) (Lab) .....	23696
John Mason (Glasgow Shettleston) (SNP) .....	23698
Hanzala Malik (Glasgow) (Lab) .....	23701
Rob Gibson (Caithness, Sutherland and Ross) (SNP) .....	23702
Michael McMahon (Uddingston and Bellshill) (Lab) .....	23704
Mark McDonald (Aberdeen Donside) (SNP) .....	23706
Claudia Beamish (South Scotland) (Lab) .....	23708
Jean Urquhart (Highlands and Islands) (Ind) .....	23710
Stewart Stevenson (Banffshire and Buchan Coast) (SNP) .....	23713
Gavin Brown .....	23715
Jenny Marra (North East Scotland) (Lab) .....	23717
John Swinney .....	23719
<b>LANDFILL TAX (SCOTLAND) BILL: FINANCIAL RESOLUTION</b> .....	23724
<i>Motion moved—[John Swinney].</i>	
<b>VICTIMS AND WITNESSES (SCOTLAND) BILL: FINANCIAL RESOLUTION</b> .....	23725
<i>Motion moved—[John Swinney].</i>	
<b>DECISION TIME</b> .....	23726
<b>STRICT LIABILITY</b> .....	23727
<i>Motion debated—[Alison Johnstone].</i>	
Alison Johnstone (Lothian) (Green) .....	23727
Rob Gibson (Caithness, Sutherland and Ross) (SNP) .....	23730
Graeme Pearson (South Scotland) (Lab) .....	23731
Margaret Mitchell (Central Scotland) (Con) .....	23733
Kevin Stewart (Aberdeen Central) (SNP) .....	23734
Kezia Dugdale (Lothian) (Lab) .....	23736
Jim Eadie (Edinburgh Southern) (SNP) .....	23737
Claudia Beamish (South Scotland) (Lab) .....	23739
Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP) .....	23741
Patrick Harvie (Glasgow) (Green) .....	23742
John Lamont (Ettrick, Roxburgh and Berwickshire) (Con) .....	23744
Graeme Dey (Angus South) (SNP) .....	23745
Sarah Boyack (Lothian) (Lab) .....	23747
The Minister for Transport and Veterans (Keith Brown) .....	23749

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## Scottish Parliament

*Tuesday 29 October 2013*

[The Presiding Officer *opened the meeting at 14:00*]

### Time for Reflection

**The Presiding Officer (Tricia Marwick):** Good afternoon and welcome back. The first item of business this afternoon is time for reflection. Our time for reflection leader today is Ian Stewart, a leader within Destiny Church, Edinburgh, and a solicitor in Edinburgh, and former leader of Destiny Church, Inverness.

**Ian Stewart (Destiny Church, Edinburgh):** I am delighted to be here with you today and over the next four minutes I hope that I will be able to provide you with some evidence that will encourage you to see the importance of Christianity to yourselves and to the Scottish political debate.

I have come to the conclusion that the most helpful political thought that I can leave with you today is that of the significant likelihood of God's existence. I am sure that the main reason why many people in Scotland are so uninterested in what God has to say about politics is that they do not really believe that he exists. After all, who cares about the opinion of someone who is not there?

So why do I say that there is a significant likelihood of God existing? Well, if there is no God, then the only things that really exist are the material world plus energy subject to certain fixed laws such as gravity. From such principles we can clearly plot the fixed orbit and motion of the planets.

However, when we look at the heart of biology what do we see? We see a code. Why is this a problem? It is because a code is something that by definition cannot be derived solely from the properties of physical chemistry; if it did, it would break down into predictable patterns. You see, the fact that a particular sequence represents a particular set of instructions is not a question of matter or energy—it is software; what it conveys is the expression of a non-material thought process.

If matter and energy have never been observed to produce a code in the present, why should we conclude that they were able to produce one in the past? It is estimated that the human brain has between 100 and 500 trillion synapses; without an intelligent agent one cannot even obtain a single protein.

So when people say that believing in God is stupid and there is no real basis for Christianity to have a voice in the Scottish political sphere, may I respectfully suggest that the opposite is closer to the bone? We put the elements together, supply energy and out comes a biological organism. In the modern world, can we really put up with that as an explanation? In our short time together, I hope you will agree that we cannot. Thank you.

## Business Motion

14:03

**The Presiding Officer (Tricia Marwick):** The next item of business is consideration of business motion S4M-08089, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a revised business programme for today, Tuesday 29 October, and tomorrow, Wednesday 30 October.

*Motion moved,*

That the Parliament agrees to the following revisions to the programme of business—

(a) Tuesday 29 October 2013

after

2.00 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

insert

*followed by* Ministerial Statement: Update on Grangemouth

after

*followed by* Financial Resolution: Landfill Tax (Scotland) Bill

insert

*followed by* Financial Resolution: Victims and Witnesses (Scotland) Bill

(b) Wednesday 30 October 2013

delete

2.00 pm Parliamentary Bureau Motions

and insert

2.00 pm Member's Oath/Affirmation – Cara Hilton

*followed by* Parliamentary Bureau Motions—[Joe FitzPatrick].

*Motion agreed to.*

## Grangemouth Plant

**The Presiding Officer (Tricia Marwick):** The next item of business is a statement by John Swinney giving an update on Grangemouth. The Cabinet Secretary for Finance, Employment and Sustainable Growth will take questions at the end of his statement and there should therefore be no interventions or interruptions. I call John Swinney, who has 10 minutes.

14:04

**The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney):** The Grangemouth refinery and petrochemical plant comprise the largest industrial site in Scotland. The combined site employs 1,350 people and directly contributes around £500 million of gross value added—around 0.5 per cent of the total—to the Scottish economy. When the wider contribution of the plant is considered, such as the additional activities that are supported through the supply chain and the induced effects on the economy, it is estimated that the complex supports around £1 billion of GVA, 1 per cent of the Scottish total, and around 6,500 jobs.

The complex is also a critical component of the distribution and refinery capacity associated with production from the North Sea. It is central to the operation of the Forties pipeline system, which transports crude oil and gas liquids from offshore and onshore entry points with a nominal capacity in excess of 1 million barrels per day and carries around 40 per cent of the United Kingdom's oil production. The site is of strategic significance to the Scottish economy and, for that reason, securing its future has been a major priority for the Government for some time.

The First Minister, Fergus Ewing and I were engaged extensively on the issue throughout the recess period, and we have worked with a range of stakeholders. Our sole aim has been to broker an agreement that would ensure a secure economic future for the plant while simultaneously exploring all possible contingencies should that outcome have failed to materialise. Ministers have consistently engaged with the company that owns the site, Ineos, on many occasions in recent years in considering a variety of issues that have ranged across, among other subjects, ensuring continuity of fuel supply during previous industrial action, and in discussing future investment proposals.

On 13 September, ministers were advised that Unite the union intended to ballot for industrial action up to and including strike action in connection with two issues: the alleged victimisation by Ineos of a Unite official, Steven Deans; and the use of agency staff by Ineos. On

27 September, Unite members voted to support industrial action on both counts, and the union decided to implement an overtime ban and a work to rule to support its concerns.

The First Minister and I engaged directly on that issue, and we encouraged both sides to enter into meaningful dialogue to try to resolve those issues, recognising the significant impact that would arise if there was to be even the shortest period of industrial action. The Government took that approach directly by contacting Ineos and Unite personnel.

We proactively sought a solution, and we maintained active and regular discussion at ministerial and official level with the United Kingdom Government. I spoke to the Secretary of State for Energy and Climate Change on several occasions to co-ordinate our initiatives and responses. Our efforts were underpinned by the Scottish Government emergency Cabinet sub-committee, which met to help to focus the resources of the whole Government in managing the issue.

As we took forward that approach, Ineos set out the details of a survival plan that it believed had to be implemented to secure the future of the site. That plan involved changes to the terms and conditions of employees, the replacement of the pension scheme, reforms to collective bargaining arrangements, and other provisions.

On Friday 11 October, after talks in the plant did not make progress, Unite announced that it intended to take strike action for a 48-hour period, which would commence at 07:00 on 20 October. During that weekend, Scottish and UK Government ministers engaged with Ineos and Unite to encourage both sides to enter into substantive dialogue to resolve the issues, ideally through the Advisory, Conciliation and Arbitration Service. The First Minister, along with the secretary of state, Ed Davey, intervened directly to press the urgency of that move.

On Monday 14 October and Tuesday 15 October, those talks took place under the auspices of ACAS. Considerable progress was made and, at one stage, an agreement was judged to be possible, but the talks collapsed in the early hours of Wednesday 16 October. The consequence of that failure was that Ineos continued to take the plant out of operation, on the ground that, although Unite had unilaterally cancelled the industrial action, further action could commence at any time.

The following day, the First Minister and I met both Unite and Ineos to try to construct an agreement. We proposed that a two-part deal be taken forward in which Unite would withdraw its threat of strike action until the end of the year and Ineos would restart the plant that had been stood

down. We also judged that that represented a realistic way of making progress, by enabling the plant to start production and substantive discussions to be held on the issues at stake.

Much to our regret, after initial indications that that approach would be approved, it failed to hold at a meeting between the shop stewards and the company on 18 October. As a consequence, the wind-down of the plant continued, and the company continued to consult the workforce directly on the contents of the survival plan. Unite asked its members to reject the survival plan. On Monday 21 October, it became clear that about half of the workforce had accepted the plan and half of the workforce had rejected it. Ineos announced the closure of the petrochemical plant on 23 October, after a day of consideration.

Throughout the intervening period, ministers and officials were in frequent dialogue with both Unite and Ineos to try to avert industrial action but also to advance the necessary contingency arrangements to ensure continuity of fuel supply in Scotland. We acted because we estimated that, if the petrochemical plant at Grangemouth were to close permanently, there would have been a direct loss of around 800 jobs and £290 million of gross value added from the economy.

Closure would also have led to a legacy of environmental impacts that would have required remediation. We engaged the Scottish Environment Protection Agency in our work to ensure that, had such a situation arisen, we would have an early understanding of the costs that former owners would have to bear and, of equal importance, to support informed decisions about alternative activities on this important site.

In the immediate aftermath of the Ineos announcement on 23 October, the Scottish Government continued active discussions with both parties, and the First Minister spoke with the Unite secretary in Scotland, Pat Rafferty, and then with the chairman of Ineos Capital, Jim Ratcliffe, to advise him that the Unite position was likely to change.

On Thursday, I, along with the Secretary of State for Scotland, continued those discussions with both parties at the Grangemouth plant. It became clear that morning that Unite intended to accept the terms of the Ineos survival plan and to agree to commit to no industrial action during the period in which the investment plans were proceeding. That approach made it possible for the closure announcement to be reversed. The First Minister also met Len McCluskey, the general secretary of Unite, Pat Rafferty and BP—at the highest level—to assist in resolving matters.

Last Friday, Ineos announced that its earlier decision to close the petrochemical plant would be

reversed and the investment proposal that it had made would be implemented. That would provide a secure future for the plant and provide a positive outlook for the next 25 years. The decision, while involving significant changes to the terms and conditions of members of staff, was welcomed with relief given the stark and immediate impact that would have been felt from a closure announcement.

Indeed, by the time I met the owners of local businesses drawn together by Falkirk Council last Thursday along with the Secretary of State for Scotland, many recounted negative short-term impacts as a consequence of the closure of the plant for just a few days. Those included guest houses no longer filled with contractors, tool hire firms with little or no work and maintenance companies with no active plant to maintain. In just a few short days, the significant impact of a plant closure was felt very directly in the locality.

Over the past two weeks, the Scottish Government's priority has been to bring Ineos and Unite together to resolve the dispute and resume normal working. Our assessment of the situation did not give us total confidence that the issues at stake could be readily resolved. We therefore pursued other options, including seeking new ownership for the plant in the event of a closure announcement. We did so because we were not prepared to accept the closure of the petrochemical plant and believed that it was our role to actively work to ensure that a better outcome was achieved. We therefore contacted a number of interested parties, in partnership with Scottish Enterprise, and took discussions to an advanced level.

The Scottish Government has undertaken discussions with Ineos about supporting its investment plans for some time. I have confirmed to Ineos that, providing the already agreed employment conditions continue to be satisfied, regional selective assistance to a level of £9 million will be applied to support the investment plans. That is part of a package that includes loan guarantees provided by the UK Government.

That investment, along with investment from Ineos Capital, and a contribution from BP in connection with the adjustment to some commercial terms around the interaction with the Forties pipeline system and the security of utilities supply, will secure the plant's future.

The Scottish Government considers the Grangemouth complex to be a strategic asset for our country and has believed, without reservation, that the plant had and has a strong and prosperous future. Investment in the plant was, of course, required, but that should not be used to assert any underlying weakness in the plant's financial prospects.

The past two weeks have been a period of acute anxiety for the workforce at Grangemouth. Indeed, for more than 24 hours, hundreds of employees and their families would have faced deep uncertainty about their economic future. Throughout this period, the Scottish Government has acted to protect the interests and livelihoods of those individuals.

There are many deeply unsatisfactory matters relating to the conduct of industrial relations in this instance between the company and the union at Grangemouth. We hope that both the company and the union will now work together for the future of the plant. However, the Scottish Government's overriding priority has been to secure the future of the plant, and that is what we have worked to do.

**Iain Gray (East Lothian) (Lab):** I draw members' attention to my entry in the register of members' interests, which shows that I am a member of Unite the union.

I thank the cabinet secretary for early sight of his statement. To secure what we all hope is a bright future for the Grangemouth plant and refinery, from a point at which closure and the loss of thousands of jobs looked inevitable, was a great result. The Scottish ministers, not least the cabinet secretary, and their UK Government colleagues deserve much credit for working together, refusing to accept the closure and shepherding the negotiations to a positive outcome.

Above all, we must recognise the painful sacrifices that the workforce made, in reductions in terms and conditions, to save not just their jobs but many thousands of jobs in the supply chain and to secure the value of the plant to the Scottish economy and the local economy in the Falkirk area.

There is now an obligation on the company to deliver the survival plan. The Scottish and UK Governments are—not for the first time—providing significant investment in the plant, in the form of grants and loan guarantees. What assurances has the company given the Scottish and UK Governments? As the investment unfolds, what can be done to avoid the lack of transparency about this vital strategic operation's finances that dogged negotiations about its future?

**John Swinney:** I thank Iain Gray for his generous remarks, and I acknowledge, as I did in my statement, that staff at the Grangemouth petrochemical plant and refinery have accepted a diminution of their terms and conditions of employment, which has protected employment not only in the site but across the very extensive supply chain that is tied up with the Grangemouth plant's activities.



As I made clear in my statement, the decision to accept the survival plan was the material factor in changing the course of events.

I think that Mr Gray is familiar with the fact that regional selective assistance from the Scottish Government is provided only when there is particular eligibility in relation to employment guarantees and only when those guarantees are fulfilled. Elements of grant support that we have given to the Ineos plant in the past remain in force and, if the commitments that were made around those elements of regional selective assistance were not fulfilled, the Government would be able to reclaim the grant money involved. The same rules apply in relation to the current circumstances.

On Mr Gray's points in relation to UK Government loan guarantees, I cannot furnish him with a definitive answer. However, I know from our active discussions with the United Kingdom Government that an extensive process of due diligence is under way with HM Treasury as part of the exercise. The issues that we have considered in relation to regional selective assistance will be similar to those that the United Kingdom Government will consider in relation to the loan guarantees.

On the point about the company's finances, Ineos has an obligation, in terms of the legal framework, satisfactorily to set out and record all relevant financial information about the company's operations. I think that that would be enhanced by ever greater clarity around the financing of the plant. I made it clear in a number of media interviews during the recess that I thought that the description of the plant as "distressed" was entirely inappropriate. The plant certainly required investment, but it had and has a strong future. The Scottish Government will work to ensure that it attracts the necessary investment to guarantee such a future.

**Murdo Fraser (Mid Scotland and Fife) (Con):** I welcome the cabinet secretary's statement and I thank him for providing an advance copy of it. As he fairly said, the closure of the Grangemouth plant would have been catastrophic for those whose jobs depended on it and deeply damaging to the wider Scottish economy. I commend not only the cabinet secretary and his Scottish Government colleagues but the Secretary of State for Scotland and his colleagues in the UK Government for their prompt action in helping to keep the plant open. The Scottish people are clearly well served by their two Governments working closely together.

We cannot forget that it was the irresponsible actions of Unite the union that put this plant at risk. No one in the Scottish Labour Party has dared to criticise its union paymasters, but can the cabinet

secretary tell us how the Scottish Government will foster a more responsible approach to industrial relations in future?

Secondly, the Grangemouth petrochemical plant's future will depend on the importation of huge quantities of shale gas across the Atlantic from the United States. Does the cabinet secretary agree that the plant's future would be more secure with a domestic source of shale gas? How will the Scottish Government encourage the development of a shale gas industry in Scotland?

**John Swinney:** I thank Mr Fraser for his generous remarks. However, I say to him that, over the past few weeks, I, the First Minister and Mr Ewing have strenuously tried to resist the temptation that he has just entered into of apportioning blame in this issue. We have tried to bring people together to resolve these issues, not play games with people's lives or livelihoods.

The Scottish Government has focused on resolving what are clearly difficult industrial relations issues at the Grangemouth plant. I certainly hope that our actions in bringing the relevant parties together, securing agreement where we can—and coming very close to agreement, as I thought we had done a week past Thursday night—and at least kick-starting a process of substantive discussion will be representative of our style in and approach to resolving these issues.

I say to Mr Fraser that I can think of a number of other industrial situations around the country in which Unite the union is involved, in which good process, dialogue and co-operation between the trade union and management have resolved significant economic difficulties facing plants. Indeed, I can think of a number of very real examples in which the co-operation and commitment between management and unions, including Unite, have helped to resolve difficulties, and we welcome such an approach.

Mr Fraser is correct to suggest that Ineos's strategy is predicated on the importation of shale gas from the United States. Clearly, the company has confidence in that business proposition—it would not be investing £300 million in the Grangemouth plant if it did not believe that it presented a satisfactory and beneficial opportunity.

As for the domestic debate on shale gas, the Scottish Government has made it absolutely clear that all propositions for shale gas exploration or development will be considered within the legislative and planning framework that ministers have set out over time. That is our clearly expressed position on such questions.

**Angus MacDonald (Falkirk East) (SNP):** As the local member, I first of all place on record my

thanks and appreciation to the cabinet secretary, the First Minister and the energy minister for their major input in resolving the Grangemouth situation last week and averting what could have been an absolute disaster for the local economy.

It is clear that there was extensive engagement between the Scottish Government, Ineos and Unite. Will the cabinet secretary detail the number and extent of the contacts between the Scottish Government and all other parties?

**John Swinney:** I cannot give the member a specific number for the contacts that we made but, in my statement, I set out as fully as I could the contact that we had with the parties involved.

Over the past two weeks, there has been very intensive dialogue between ministers, Ineos and Unite, and we have also had extensive discussions with BP and discussions with the local authority, Forth Valley Chamber of Commerce, Forth Valley College and a variety of other interested parties in an attempt to resolve the issues.

As I said in my statement, we also held discussions with a range of other interested parties who were prepared to consider a change of ownership at the Grangemouth plant, in order to work towards our objective of ensuring continuity of employment for the individuals who are employed at the Grangemouth facility.

**Neil Findlay (Lothian) (Lab):** The situation at Grangemouth saw one wealthy, very powerful individual control one of the most important strategic industrial assets in the country. Does the cabinet secretary agree that the episode has put the debate about the common ownership of such assets firmly back on the political agenda and that we cannot allow actions such as those of Jim Ratcliffe to threaten our energy supply and distribution in the future?

**John Swinney:** There is an active debate about common ownership of the country's major strategic assets, and the Grangemouth refinery and petrochemical plant is one of those facilities. There is also an active debate about common ownership in the public interest of the Royal Mail, which the Government believes should remain in common ownership. I look forward to the support of Mr Findlay and his party for the position that the Scottish Government adopts in that respect.

Those issues will be considered and debated. We must ensure that, at all times, we are explicit about where Scotland's strategic interest lies and what the Scottish Government can do to protect that strategic interest. I assure Mr Findlay that, whenever circumstances arise in which the Scottish Government can act to protect Scotland's strategic interest, we will do that.

**Maureen Watt (Aberdeen South and North Kincardine) (SNP):** The cabinet secretary will be aware that there was also trouble at the Grangemouth plant in 2008. Five years on, we are here again. What steps can the Scottish Government take to ensure that commitments are followed through this time, that the Forties pipeline will take oil and gas from the North Sea for decades to come, and that the rest of the Grangemouth plant will have a strong future for decades, not just for another few years? Does he believe that having worker representation on the board might help that?

**John Swinney:** I reassure Maureen Watt that we are in a significantly different position from the situation in 2008. In 2008, there was a period of industrial disruption, and issues were not resolved or concluded at that time. The issues at stake regarding terms and conditions, particularly the sustainability of the Ineos pension scheme, have been resolved as a consequence of the recent industrial dispute. Nevertheless, I recognise—as I did in my response to Iain Gray—the fact that that will have been a difficult issue for members of staff at the plant to wrestle with.

Ineos has made it absolutely clear that, on the basis of the workforce's acceptance of the survival plan and the commitments that have been made by the Scottish Government, the UK Government and BP, there is a strong and vibrant future for the plant for at least the next 25 years. That will involve opportunities for the Forties pipeline into the bargain. We will be actively involved in discussions with the company to ensure that that transpires and that that future lies ahead for the Ineos plant.

Maureen Watt asked about worker representation on the board. Companies' attitudes and perspectives are enhanced by a breadth of participation in their boards, especially employee representation. That is an important issue to consider as we try to build the best possible climate for industrial relations in Scotland's economy.

**Willie Rennie (Mid Scotland and Fife) (LD):** I thank the cabinet secretary for the advance copy of his statement. He has documented the effective and welcome partnership working that has taken place with the Secretary of State for Energy and Climate Change, Ed Davey, and Alistair Carmichael. People will have found it reassuring that the two Governments were working together in a time of crisis. It is also reassuring to know that talks were under way with potential new buyers.

This morning, Joan McAlpine detailed the discussions that the First Minister had with Andrew Ovens from Greenergy in Uphall. She also talked about the way in which those talks were reported to Ineos. Can the finance secretary give the

Scottish Government's official account of those talks?

**The Presiding Officer:** I think that that is a matter for another statement, although the cabinet secretary might want to address some of those points.

**John Swinney:** Certainly. I am very happy to say to Willie Rennie first that he should not be surprised that the Scottish and UK Governments are able to work together. We work together on a host of issues. The debate would be enhanced if people such as Mr Rennie did not go around peddling the idea that we cannot work together most of the time. We frequently work co-operatively to resolve issues, so people should not be at all surprised that we have been able to do so on the Grangemouth situation.

In relation to alternative ownership, I say to Mr Rennie that the Government was involved in discussions with a number of parties. I will not go through all the details of all the discussions that we had with those parties. We had those discussions because we were not confident that the strategy that was being pursued to bring Ineos and Unite together would work. We had an alternative approach, which involved a number of discussions with a number of interested parties. The changed circumstances last Friday meant that that option did not require to be utilised, but I can assure Mr Rennie that the Government made every effort to ensure that the option was open, as part of our strategy to protect employment at Grangemouth.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** I commend the work of the cabinet secretary and, indeed, of the First Minister and the Minister for Energy, Enterprise and Tourism in helping to facilitate such a result.

Does the cabinet secretary believe that the Grangemouth experience can have some bearing on future industrial relations in Scotland?

**John Swinney:** I think that it can, in the sense that many lessons must be learned from the situation that we have just been through at Grangemouth. There is a contrast with the examples that I cited in response to Mr Fraser. I have been involved in a number of scenarios that have attracted none of the media coverage and none of the scrutiny that Grangemouth has attracted over the past fortnight because the management and the workforce have sat round the table, looked at the same information, wrestled with the same problems and worried about the same questions in an effort to resolve them among themselves. I have to say that I much prefer such situations, because they ensure that all the talent of a company can be deployed to resolve the challenges that it faces.

If there is one lesson that can be learned from the Grangemouth situation, it is that closer working between management and trade unions is the essential bedrock of successful industrial and economic relations in our country.

**The Presiding Officer:** Six members still wish to ask questions of the cabinet secretary. I am prepared to let the time run on to allow all six to be taken, but I would appreciate members' co-operation in keeping their questions short.

**Mark Griffin (Central Scotland) (Lab):** The cabinet secretary will know from his meeting with Falkirk Council that it has, as a precaution, set up a task force to help to deal with any local job losses. What support can the Scottish Government give to the task force?

**John Swinney:** At the meeting that I held with Falkirk Council and businesses on Thursday, I made it clear that the Scottish Government's support to the local business community would manifest itself principally through the work of the business gateway, which is available to provide assistance to companies that are in difficulty. Forth Valley Chamber of Commerce made it clear that it would make available resources and advice to companies that feel the effects of the run-down of the Grangemouth facility, which has had—as I recounted in my statement—material consequences for a number of companies.

As I made clear to the leader of the council, the Scottish Government will be happy to provide any input to the task force that the council requires. That is consistent with our desire to ensure that we create the best possible conditions for employment growth in the Falkirk area.

**Kevin Stewart (Aberdeen Central) (SNP):** Will the cabinet secretary consider what further support could be made available to diversify employment at Grangemouth in order to ensure that it benefits from low-carbon technology?

**John Swinney:** I am certainly happy to do that. There is a clear recognition that the Grangemouth site is heavily dependent on petrochemical and refining activity. There are complementary activities that could be developed on such an extensive site. Indeed, as part of the survival plan that Ineos is taking forward, a number of changes will be made to plant configuration and operation, so there will be opportunities to pursue the type of agenda to which Mr Stewart referred. The Government will certainly engage constructively in order to try to bring that about.

**Margaret Mitchell (Central Scotland) (Con):** I thank the cabinet secretary for advance sight of his statement. Having met Falkirk Council last Friday to discuss the situation at Grangemouth, I can confirm that there is a palpable sense of relief among all parties and in the town generally that an

agreement has been reached. In view of that, can the cabinet secretary indicate what economic benefits there will be from the new terminal in terms of construction jobs? Will building on the new site have any impact on existing hazard zones around the plant?

**John Swinney:** Ineos will have to undertake a process of active management of the site to deal with implications of, or crossover from, the construction activity for existing parts of the site. Obviously, the Scottish Environment Protection Agency has been active on our behalf in ensuring that any issues around site management in relation to environmental implications are properly and fairly considered and assessed. That responsibility will be taken forward on an on-going basis by SEPA, which acts on our behalf in that respect.

On the economic impact of the wider construction activity, I do not have detail that I can give Margaret Mitchell today. However, I said in response to the business gathering, when I was asked what the Scottish Government could do to assist in strengthening the local economy, that the best thing that we could do was work to resolve the dispute at Grangemouth to ensure that £300 million of private investment came into the Grangemouth area. We need to leverage private investment into the economy to support development opportunities. I am glad that we have created the foundations on which that can be undertaken.

**Dennis Robertson (Aberdeenshire West) (SNP):** The cabinet secretary mentioned environmental issues in his statement, and he partly answered the question on that in his response to Margaret Mitchell. The potential environmental situation at the site was considerable. What role did SEPA play over the past two weeks in examining the full implications of potential impacts on the environment from closure?

**John Swinney:** SEPA has on-going responsibility for ensuring that sites are properly managed, and that commitments that are required under the licences that are made available by SEPA for operations are properly and entirely fulfilled by companies. SEPA has undertaken that activity and role, as it always does. Further, ministers considered with SEPA what additional steps would have been required should the petrochemical plant have closed and what on-going and further implications would have had to be managed as a consequence. SEPA has assisted us greatly in providing advice.

**Drew Smith (Glasgow) (Lab):** Mr Swinney and Iain Gray mentioned the sacrifice of the workforce to secure the continued operation of the plant, and to secure not just existing jobs but the hope of jobs

for others in the future. The minister referred to £9 million in regional selective assistance and said that it would be paid provided that employment conditions that have already been agreed continue to be satisfied. Can he say a bit more about what that statement encompasses? Can he indicate whether the conditions attached to RSA in this case differ significantly from RSA that might have been provided in the past?

**John Swinney:** Let me just clarify part of what Mr Smith set out. If I did not express it clearly enough earlier, I will put it on the record again. The point that I made to Mr Gray is that previous examples of regional selective assistance have attached to them conditions that must continue to be fulfilled or the Government will claw back the RSA.

The decision-making process that we have gone through for the further round of regional selective assistance is dealing with conditions in connection with the particular grant award. Those conditions are consistent with the assessment that is made in comparable situations to ensure that the criteria on employment levels are assured. Those criteria must be assured for three years beyond the last payment that is made under any regional selective assistance award.

**Patrick Harvie (Glasgow) (Green):** Following his positive comments on the role of workforce representation on boards, will the cabinet secretary tell us what actions the Government can take to further that agenda, such as on conditionality on RSA and other grant schemes, so that we never again see a billionaire happily pocketing taxpayers' cash before laughing all the way to the comfort of his superyacht after playing such reckless games of brinkmanship with people's livelihoods?

**John Swinney:** Throughout the events of the past fortnight, I have been incredibly careful about the language that I have used in navigating my way through a difficult situation that has involved a conflict of the interests of management and trade unions. I simply say to Mr Harvie that a bit more of that approach might help to resolve some of the issues that we face.

I remind Mr Harvie that company regulation issues are reserved and that the Scottish Government has no discretion over them. We can apply conditions to regional selective assistance, as I have set out in my answers. We will continue to explore ways in which we can positively encourage a climate of effective industrial relations in Scotland, in order to realise the ambition that I have set out of creating the best possible work framework for employees.

## Landfill Tax (Scotland) Bill: Stage 1

**The Presiding Officer (Tricia Marwick):** The next item of business is a debate on motion S4M-08040, in the name of John Swinney, on the Landfill Tax (Scotland) Bill. I will give the cabinet secretary a couple of seconds to catch his breath.

I call John Swinney to speak to and move the motion. Mr Swinney, you have 14 minutes.

14:42

**The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney):** As members know, the Landfill Tax (Scotland) Bill is the second bill to establish devolved taxes under the limited powers in the Scotland Act 2012. It follows the successful conclusion of the Land and Buildings Transaction Tax (Scotland) Act 2013, which Parliament passed in June and which received royal assent at the end of July.

The bill sets out the provisions and rules for a Scottish landfill tax, which will replace the United Kingdom system of landfill tax in Scotland from April 2015. I am delighted that the bill has reached the milestone of the stage 1 debate.

I thank the Finance Committee's members for their work to prepare their stage 1 report, and I welcome their support for the bill's general principles. Yesterday, I responded to a number of the recommendations and issues that the committee raised as part of its scrutiny of the bill.

Both devolved taxes—the land and buildings transaction tax and the Scottish landfill tax—will be administered under powers that are set out in a third bill. That is the revenue Scotland and tax powers bill, which is scheduled to be introduced in Parliament before the end of this calendar year.

I explained in a statement to the chamber in June 2012 that we will establish revenue Scotland to assess and collect devolved taxes. Revenue Scotland will work with the Scottish Environment Protection Agency to administer the Scottish landfill tax. Revenue Scotland will serve the needs of the people of Scotland at a lower cost than would be possible if Her Majesty's Revenue and Customs administered the taxes, and we will deliver a better system that is more in line with Scotland's needs.

In my statement in June last year, I set out the approach that the Government is taking to taxation. The proposals are firmly founded on principles that Adam Smith set out in 1776 in "An Inquiry into the Nature and Causes of the Wealth of Nations". Our approach is based on four

maxims that he set out—that the burden should be proportionate to the ability to pay and that there should be certainty, convenience and efficiency of collection. Those principles provide the foundation for a system that will meet the needs of 21st century Scotland, along with the Government's core purpose of delivering sustainable economic growth for Scotland.

The Government intends to use its responsibility for taxation to ensure that no one is asked to pay more than they can legitimately afford. Landfill tax is quite different in nature from other types of tax such as the land and buildings transaction tax, and it acts as an encouragement to find other means of waste disposal. I have made clear to the Finance Committee my intention that the landfill tax rates will be set at an appropriate level that will be no lower than that for the rest of the UK.

Providing certainty about when and how much tax is due is an important guiding principle that underpins our approach. The consultation process for the landfill tax bill has been extremely helpful and productive, and we will continue to engage with taxpayers and professionals as our proposals develop in order to ensure that tax changes are properly discussed and communicated before they are introduced.

I have noted the desire of those within industry for as much certainty as possible with regard to the setting of tax rates. I have indicated to the Finance Committee that I am minded to make the proposed tax rates for the landfill tax known in the budget of 2014, a number of months before the introduction of the tax in April 2015.

One of the opportunities that we have with the devolution of these tax responsibilities is to create a simple and administratively efficient tax collection system. Revenue Scotland is working with the Scottish Environment Protection Agency on proposals to develop appropriate systems that are as straightforward and accessible as they can be in order to ensure that the approach to collecting Scottish landfill tax meets the needs of taxpayers and the tax authority.

It is essential that our tax system should be efficient, and it is clear that tax revenues must be devoted to paying for public services rather than being consumed in tax administration. The need for efficiency in the tax system is at the heart of our approach, and we will ensure that administration costs are kept to a minimum.

Turning to the bill itself, I want to place resource efficiency at the heart of our economy. The zero waste agenda in Scotland is thinking about moving resources from the margins to the mainstream, and our priorities for the future are supporting innovation and new ways of doing business as we move towards the creation of a circular economy.

The actions that we are already taking are helping businesses to save money and are creating jobs and delivering economic growth. Landfill tax is a cornerstone of our zero waste plan, as it encourages the prevention, reuse and recycling of materials and helps to keep valuable resources circulating in the Scottish economy.

Why is putting the value of resources at the heart of our economy so important? Very simply, it is because we live in a changing world that is placing new pressures on how we manage resources.

The world economy is changing, with new major economic powers emerging in places such as Brazil, India, Indonesia and Korea. The climate is changing: globally, we are set to release another 0.5 trillion tonnes of carbon emissions in the next few decades, and no part of our world will remain untouched by the impacts of climate change.

The population is changing, and the global population is due to increase to 10.5 billion by 2075. That population is becoming more affluent and increasingly urban—so much so that developing countries will need to build the equivalent of a city the size of Glasgow every five days from now to 2050.

All of that means that our demands for resources are changing. Globally, we are expected by 2030 to need 41 per cent more water, 80 per cent more steel and 33 per cent more energy. For some rare earth metals that are used in wind turbines, demand is expected to grow by up to 2,600 per cent. It is no longer acceptable to throw those valuable resources into the ground where their value is lost for ever. A Scottish landfill tax is essential in helping to drive those materials out of landfill and back into the economy.

Landfill tax can be viewed as the first and most successful of the green taxes, and it continues to change waste management practices. Alongside our zero waste plan and waste regulations, the tax will help us to deliver an economy in which materials are reprocessed and remanufactured, which will help in achieving our aim of sustainable economic growth.

The Scottish Government has carefully considered proposals for a landfill tax. Those proposals broadly reflect the existing UK landfill tax provisions, which are well understood by the waste industry and appear to work reasonably well.

The public consultation on our proposals ran from October last year to January 2013, and we asked consultees about two key changes to landfill tax. The first is a proposed enhancement to the tax credit arrangements under which the landfill communities fund operates.

The fund, which operates at a UK level, supports good causes in the vicinity of landfill sites in response to bids from relevant organisations. The Landfill Tax (Scotland) Bill allows us to create a communities fund, and the detail of the fund will be set out in regulations and guidance. However, I want to cover where my thinking has reached on it. I stress that ministers have not reached a conclusion about the details of the communities fund so I look forward to hearing the views that will be expressed by members today before formulating the Government's proposals.

I recognise that the landfill communities fund has been successful in managing to lever in match funding and help communities that are affected by landfill. I intend to set up a Scottish fund to replace the UK system. The Scottish fund will maintain its private funding status and will therefore be a useful and strong asset for securing match funding. That will mean that the Scottish fund will continue the good work of harnessing money for good-quality projects and helping the communities that are most affected by landfill, while, crucially, leveraging in resources from other sources to add to the resources that have been created by the tax credit arising from the landfill tax.

**John Mason (Glasgow Shettleston) (SNP):**

There has been some criticism that the cost of administering the UK system is quite high. Does the cabinet secretary think that administrative costs can be lower in Scotland?

**John Swinney:** I thank Mr Mason for his intervention, and I acknowledge and agree with the concerns that have been expressed about the UK communities fund's cumbersome management arrangement. I have therefore decided to set up a Scottish fund. An explicit requirement of that fund will be to significantly reduce the administrative costs that are involved in the process.

That is important for two reasons, the first of which relates to the legitimate issues that Mr Mason and others have raised. Secondly—and I will come on to speak about this in due course—the level of landfill tax proceeds will decline over time so it is vitally important that we ensure that we have a much more efficient and cost-effective management mechanism for the landfill communities fund, which will diminish in the years to come.

The UK fund gives taxpayers the opportunity to earn tax credits by making contributions to the fund. At present, they are capped at 6.8 per cent of total tax liabilities in a year. As I explained to the Finance Committee, we propose to increase by 10 per cent to 7.48 per cent an operator's tax liability that will be offset by contributions to a separate Scottish fund. That was widely welcomed by those who responded to the consultation.

We have also undertaken a further consultation with stakeholders about how the fund can be administered. As I said to Mr Mason, as we landfill less, less money will become available to the fund during the next decade. Increases in the credit cap will not offset the inevitable decline in the role that landfill has to play in future waste management practices.

I recognise that the current UK landfill communities fund gives priority to community and biodiversity projects on the principle that those who are most affected by landfill should benefit most from the fund.

I also recognise that landfill contributes a sizeable part of Scotland's greenhouse gas emissions and has climate change impacts. In 2011, landfill emitted 600,000 tonnes of CO<sub>2</sub> equivalent gases into the atmosphere. Furthermore, landfill encourages the production and transportation of new goods through the extraction and processing of virgin raw materials. That is an unsustainable and damaging production model. I am keen to hear members' views about the funding objectives of a Scottish landfill communities fund and how we can secure the best outcomes.

Current arrangements are predicated on the principle that a 10-mile radius is applied to existing or redundant landfill sites, and the fund is deployed on projects that are contained within that 10-mile radius. There has been much debate of that issue in the Finance Committee and within the consultation.

On the one hand, I understand that community groups in places that are most affected by landfill want the 10-mile radius rule to apply to a Scottish fund so that they benefit the most from it. I have also heard from environmental groups that have an interest in biodiversity projects that the reach of the fund could be extended and the rule should be lifted for biodiversity projects. I am keen to hear the views that will be expressed during today's debate about how we might proceed on that point. As the bill goes through Parliament, I will confirm the Government's thinking on the question.

The second main change that we propose for the fund is the taxation of the illegal disposal of waste. We have several reasons for making that proposal. First, illegal dumping is a problem that has significant environmental impacts. It is an environmental crime and it is rightly pursued and prosecuted as such. The additional penalty of a tax charge on illegal disposals should act as a powerful disincentive and help to prevent dumping.

Secondly, illegal dumping undermines legitimate waste operators, including landfill operators. Our

proposals will support and encourage the industry to operate responsibly.

Thirdly, by clamping down on tax evasion in this way there is an opportunity to gather additional revenue without increasing the tax burden. Again, this proposal has been welcomed.

I want to make two further points in the remaining time that is available to me. We propose that key elements of the landfill tax will be set out in secondary legislation—for example, tax rates, detailed arrangements for tax credits and the operation of the landfill communities fund, and the list of wastes that fall into the higher and lower tax bands.

Taking that approach will enable the Scottish Government to consult properly on lists of waste materials and on the operation and administration of the tax. It will also provide flexibility to vary rates and to make other changes without the need for primary legislation. The Delegated Powers and Law Reform Committee has commented on our proposals and is broadly content with them.

The second issue is to do with the overall effect of landfill tax on the Scottish budget. As the committee is aware, the impact on the budget of the devolved taxes depends on tax receipts offset by the amount of the block grant adjustment. As I mentioned earlier, I am minded to set the tax rate for the Scottish landfill tax at a level no lower than that for the rest of the UK to maintain stability and to provide certainty to companies operating in the sector. However, as our zero waste policies continue to take effect, we expect to see tonnages to landfill decline further and so tax receipts will also begin to fall. The Office for Budget Responsibility's forecasts do not yet reflect that expected decline.

One immediate challenge is to secure agreement to a block grant adjustment method that reflects the expected decline. That remains an unresolved issue with the UK Government, as the Scottish Parliament information centre briefing, which the Finance Committee has, makes clear.

I met the Chief Secretary to the Treasury recently before his appearance at the Finance Committee and he agrees that we need to find a resolution to the issue. Members will not be surprised to hear me say that I will continue to be closely involved in resolving the matter.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Does the cabinet secretary recognise that in Catalonia, for example, from 2004 to 2009 there was a reduction of approximately 20 per cent in their equivalent tax, which shows what can be done and what we might expect as we focus on reducing landfill?

**John Swinney:** The evidence speaks for itself on the effectiveness of the zero waste strategy in reducing the amount and the volume of waste that is going to landfill. It is literally an arithmetic calculation—which, of course, my dear friend Mr Stevenson would be adept at performing on behalf of us all—that that will be the pattern of revenues in the years to come, which will have to be reflected in the block grant adjustment mechanism.

I am confident that we will have the legal and administrative systems in place in good time to collect a fair and robust landfill tax in Scotland from April 2015. I have covered the approach that the Government is taking to the formation of the legislation and the issues that have been raised in the Finance Committee. I look forward to considering the points that are raised by members of Parliament today as a consequence of the debate and to engaging further to resolve the issues that I have indicated still require resolution.

It is with pleasure that I move,

That the Parliament agrees to the general principles of the Landfill Tax (Scotland) Bill.

**The Deputy Presiding Officer (John Scott):** Many thanks, cabinet secretary.

I call Kenneth Gibson to speak on behalf of the Finance Committee. Mr Gibson, you have 10 minutes or thereby.

14:58

**Kenneth Gibson (Cunninghame North) (SNP):** I am pleased to debate the Landfill Tax (Scotland) Bill and to highlight some key areas that the Finance Committee considered during its stage 1 scrutiny of the bill.

The Scotland Act 2012 devolved a range of taxation and borrowing measures—the ability to borrow money for capital projects and to set a Scottish rate of income tax to replace a 10p in the pound reduction in income tax for Scottish taxpayers across all tax bands, as well as powers to set taxes on land and buildings transactions and on disposals of waste to landfill.

Our report identifies issues and themes that emerged from the evidence that we considered. I will highlight some of those, starting with the tax framework.

The Scottish Government has said that landfill tax will not be set at lower rates than the UK equivalents, and Mr Swinney just confirmed that. Scottish rates will mirror UK rates in 2015-16, meaning £80 per tonne for active materials and £2.50 per tonne for inert materials. The rates are not specified in the bill, which allows the Government the flexibility to change the rates in future without the need for primary legislation.

The cabinet secretary mentioned certainty, but a number of witnesses raised concerns about the impact of uncertainty in relation to taxation rates on their financial planning. The submission from the Convention of Scottish Local Authorities said:

“It is essential that certainty exists and where it does not that the financial risk to local authorities is appropriately mitigated by Scottish Government.”

Similarly, the Scottish Environmental Services Association stated:

“We represent an industry that is looking to make investment decisions for alternative non-landfill infrastructure, the viability of which will depend on what landfill tax will be, so it would have been nice to have an indication of what that tax will be.”—[*Official Report, Finance Committee*, 12 June 2013; c 2776.]

We heard from the cabinet secretary that, although he had yet to make a final decision on the timing of his announcement of landfill tax rates, he was considering doing so around the same time as publication of the draft budget in September 2014. He has reaffirmed that again today. We have invited the Government to clarify why there is a need to wait until then. We would also welcome confirmation of the duration that the rates will apply for and whether there will be an escalator.

One issue linked to rate setting is waste tourism, whereby waste might be transported across the border—in either direction—in order to take advantage of more favourable rates. The RSPB Scotland submission explained:

“Altering rates may encourage the cross-border transfer of waste. Depending on how the rates were set, this would either lead to a loss of revenue from Scotland or an increase in the amount of landfill waste within Scotland.”

The committee recognises the potential for such impacts, should there be significant changes to the rates and structure of landfill tax. Therefore, we have invited the Government to outline what discussions it has had with the UK Environment Agency on the issue and to confirm whether it has commissioned any research or analysis.

As with the land and buildings transaction tax, the Government reserves the power to make future changes to landfill taxation rates via subordinate legislation. The bill provides that the first order to set tax rates will be subject to the affirmative procedure and any future orders will be subject to the “provisional affirmative procedure”, which would allow rate changes to come into force immediately.

The committee welcomes the fact that changes to taxation rates will be subject to a form of affirmative procedure and recognises that there may be times when it is necessary for changes to have immediate effect—for example, in response to dramatic changes in market conditions—but it is



not clear to us why the standard affirmative procedure should not be used to set future rates in normal circumstances. For that reason, we ask the Government for the rationale behind using the provisional affirmative procedure other than when speed is of the essence.

The bill also enables the Government to introduce additional rates of taxation for certain types of waste via secondary legislation. The evidence was generally in favour of that power. The committee recommends that the introduction of any additional rate be made subject to the affirmative procedure.

Similarly, while there will initially be an identical set of exemptions to those under the existing UK tax regime, the Government reserves the right to add certain categories of waste to, or to remove them from, the exemptions list. We heard suggestions that hazardous materials, such as asbestos, should be made exempt in order to encourage safe disposal and to reduce illegal dumping. The bill provides for any additions to the list of exemptions to be subject to the negative procedure, but, given the potential for waste tourism, the committee recommends that any adjustment to the list of exemptions be made subject to the affirmative procedure.

Evidence was heard about the dangers of illegal landfill sites, which Mr Swinney also touched on. Such sites not only damage the environment but are invariably controlled by tax-dodging criminals. Even when such illegal sites are discovered, the court fines are often less than the tax evaded. The fact that the financial risks of getting caught are outweighed by the benefits makes such activity profitable and attractive to the unscrupulous.

If criminals were required to pay landfill tax, the fines would be much higher. Renfrewshire Council noted in its submission that the proposals will

“ensure that the punishment is more expensive than the savings made from continuing to commit environmental crime.”

The committee therefore welcomes the taxing of unauthorised disposals to landfill.

Nevertheless, although respondents were supportive of the imposition of a tax on illegal landfill sites, some suggested that regulatory and enforcement bodies such as SEPA need additional resources to help identify such sites. The Scottish Environmental Services Association stated that the problem required

“strong leadership and resources sufficient to create a climate where the fear of being caught is high.”

We seek clarification as to whether the resources allocated to revenue Scotland for compliance activity include additional resources for SEPA to identify illegal sites. We also ask whether any

additional revenues collected as a result of the new power might be used to identify further illegal landfill sites.

Revenue Scotland—a body that will be formally created by the revenue Scotland and tax powers bill, which we expect to scrutinise next year—will administer the new landfill tax and work with SEPA in a similar way to that in which it will work with Registers of Scotland on the LBTT. Witnesses agreed that such an approach seems sensible. For example, RSPB Scotland stated that it supports the proposal,

“given the expertise and information that SEPA currently hold with regard to landfill in Scotland.”

However, we also heard concerns relating to a “potential skills gap” at SEPA. For example, the North Ayrshire Council submission stated that SEPA is

“an experienced environmental regulator rather than a tax assessor”.

The Chartered Institution of Wastes Management questioned whether SEPA has the expertise to undertake

“a tax-policing and revenue-raising role.”—[*Official Report, Finance Committee*, 12 June 2013; c 2780.]

SEPA acknowledged that staff require training and guidance to fulfil its new role and confirmed that funding is in place to provide that. SEPA is confident that any skills gap will disappear by April 2015. The Delegated Powers and Law Reform Committee noted that the bill allows the tax authority to delegate functions to SEPA. Although that committee agreed that the provision is “sensible”, it “strongly recommends” that publication of any delegation should be required. The Finance Committee supports that and welcomes the cabinet secretary’s commitment to “look very carefully” at the issue and to respond to questions in the Delegated Powers and Law Reform Committee’s report.

A clear division of responsibilities between revenue Scotland and SEPA is important. We welcome the confirmation that the position will be defined, and the committee will scrutinise that. Nevertheless, although we recognise that the tax will not be implemented until April 2015, the committee seeks further clarification about the respective roles of revenue Scotland and SEPA.

As with the LBTT, the committee will monitor and scrutinise the implementation and delivery of the Scottish landfill tax. We have invited revenue Scotland and SEPA to report on a six-monthly basis. We will receive the first progress report from revenue Scotland and Registers of Scotland on the implementation of the LBTT at tomorrow’s Finance Committee meeting.

The cabinet secretary spent some time on the landfill communities fund. At present, landfill operators can give up to 6.8 per cent of their UK tax liabilities to fund community or environmental projects near landfill sites. As the cabinet secretary said, the bill makes provision for the creation of a similar Scottish fund and for a 10 per cent increase in the credit cap.

We are pleased that the Government will introduce a new Scottish cap of 7.48 per cent. Concerns were raised about the regulation of the existing fund, with the Scottish Wildlife Trust suggesting that it is “expensive”, that it “duplicates information gathering” and that it is “over-regulated”. The Scottish landfill communities fund forum agreed that current regulatory requirements are

“extremely onerous and time consuming”.—[*Official Report, Finance Committee*, 12 June 2013; c 2796.]

The committee is therefore pleased that the Government will consider how to administer the fund more efficiently.

At present, to receive funding, a site should be no more than 10 miles from a landfill site. Some witnesses suggested that, as the number of active sites declines, that should be reconsidered, perhaps to consider disruption and pollution that are caused by the transportation of waste through communities en route to sites. Others pointed out that the fund is relatively small and that retention of the 10-mile criterion is important and indeed crucial.

The committee noted the arguments for and against and is conscious that local factors vary from place to place. Although 10 miles might seem a considerable distance in Glasgow, it might not in rural and sparsely populated areas. Considering those views, the committee endorsed the principle that those who are most affected by landfill sites should benefit the most.

For that reason, we welcome the bill team’s suggestion that we might need something “a little more sophisticated”, and I hope that it will attract the match funding that the cabinet secretary mentioned. We asked the Government to update us on progress on that and we look forward to considering proposals via secondary legislation in advance of the bill’s implementation. We recommend that such secondary legislation should be subject to the affirmative procedure.

Members will know that the OBR is responsible for forecasting Scottish tax receipts for the Scottish rate of income tax, the LBTT and the landfill tax. It provided three forecasts for Scottish receipts from landfill tax from 2011-12 to 2017-18, with the second and third much lower than the first. Although the OBR anticipates that landfill tax revenues will remain broadly level from 2015, the

Scottish Government expects significant decline, partly due to its environmental policies. It predicts that receipts will fall from £107 million in 2015-16 to about £40.5 million in 2025. As the block grant will be subject to a one-off reduction, the committee believes that it is important that any reduction in tax receipts does not penalise Scotland.

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

**Kenneth Gibson:** I am in my last minute but, if I am able to, I am happy to take an intervention.

**The Deputy Presiding Officer:** You may.

**Stewart Stevenson:** Is the member aware that, in Sweden, between 2000 and 2009 the tax take dropped to one fifth of the original figure because of success in the programmes to tackle waste and that, if Scotland’s ambitions are also realised, we will be in a similar position?

**Kenneth Gibson:** It appears that the Scottish Government’s policies are fairly conservative, as it envisages only a 60 per cent reduction. Clearly, from what the member says, it is important that we have effective negotiations with the UK Government and that forecasting is accurate so that Scotland does not lose out in the way that I indicated.

The committee recently published its report on implementing the Scotland Act 2012’s financial powers. Among other things, the report emphasised the importance of forecast methodology and data being published, transparent and open to scrutiny. We ask whether the proposed new independent forecasting body will be established in time to predict landfill tax receipts in advance of the 2015-16 draft budget and, if not, which forecasts would be used to inform the document.

The committee reflected carefully on the evidence and supports the general principles of the bill. I look forward to hearing from other members and the cabinet secretary when he winds up the debate.

15:10

**Iain Gray (East Lothian) (Lab):** I support the general principles of the Landfill Tax (Scotland) Bill. Those who consider it to be a rather dry and dull piece of revenue legislation, perhaps of more interest to accountants than to agitators, miss the point on several counts because it is, of course, the latest instalment in the greatest devolution of power to the Parliament since it was created in 1999.

As the cabinet secretary briefly mentioned, the bill comes before us as a direct result of the

Scotland Act 2012, which itself is the legacy of the Calman commission. That was an agitation worthy of the name: the Parliament audaciously seized power from the then minority Administration and simply bypassed the executive arm of the Scottish Government to deliver the commission and its wide-ranging recommendations and then successfully negotiate their implementation with the UK Government and the Westminster Parliament.

We should remember that that was not the first shift in power between the Parliaments. Indeed, that process has been a constant feature of devolution, with the most significant example prior to 2012 perhaps being the shifting of responsibility for rail infrastructure along with several hundreds of millions of pounds every year—I think that it was £300 million at the time.

**John Mason:** I agree with Iain Gray: we welcome the new powers. Does he agree that the rate at which powers have come to the Parliament has been disappointingly slow?

**Iain Gray:** Actually, I do not. Indeed, my next point rather contradicts Mr Mason's point. An examination of the years of devolution would show that powers have shifted almost daily. One example is responsibility for regulation of offshore wind as that industry developed and became more mature. The most recent example is the devolution of council tax benefit and crisis loans—parts of the benefits system—within the past year or so.

Devolution of powers has happened as and when the circumstances have demanded it. That flexibility is what Rhodri Morgan—for it was he—meant when he called devolution a process not an event. However, the Calman changes are qualitatively different, in that they begin substantially to address what the commission identified as the greatest weakness of the Scotland Act 1998: the fact that, by international comparisons, that act devolved a remarkable degree of legislative power to the Parliament but much less fiscal power than in other examples of devolution around the world. The changes in the Scotland Act 2012 are intended to redress that imbalance. That is a shift of principle, not just a shift of administrative convenience.

The commission identified landfill tax as ripe for devolution for two reasons. First, it is a tax based on place—specifically, where the landfill is sited—and, therefore, it is immobile and defined by geography. Secondly, it is a tax the purpose of which is fundamentally related to policy areas that were already within the purview of the Parliament, in the form of pursuing sustainability, reducing environmental damage, achieving greater efficiency in the management of waste and playing our part in addressing climate change—a global challenge, as the cabinet secretary observed in his

opening speech. The tax is a crucial lever in the drive to increase recycling and the reuse of our resources and to cut the emissions that damage the planet on which we live.

The bill may read like something less than epic verse, but it nonetheless exemplifies a powerful argument that we should exercise this power and that our devolution settlement is flexible enough to ensure that we do so.

That is of course an argument that the Scottish Government sometimes finds inconvenient for its ambitions and thus it resisted it to the last gasp. However, in the spirit of working on common ground, I will say that I am happy that it has embraced it and that we have reached this landmark today. I commend the Government's efforts to get the bill in place so that we are ready for April 2015, when the UK landfill tax will be switched off.

The bill leaves many questions begged. It is framework legislation, with little or no detail as to how ministers plan to deploy the new tax. Most obviously, beyond indicating, as he did again today, that the rates will be set at levels no lower than the UK rates at the time of transfer, the cabinet secretary has said only that September 2014 is the earliest that we will know what the opening rate for the tax will be. Both business and local government have sought an earlier indication and, given that this is a new tax—a change—that would seem to me not unreasonable and could help significantly by providing some reassurance. I understand that taxes can change at any time in the future, but perhaps given the circumstances the cabinet secretary might reconsider whether an earlier indication would be possible.

This is one of those curious taxes that if successful will deliver less and less income to Government. The Government's forecasts reflect that properly. However, we have seen figures today that show that only nine councils have met their recycling targets and that some recycled less last year than the year before, not more. We have to consider how the tax will work. The tax is our key lever to transform that situation, so it would be a little more convincing if ministers were a little less cautious and more imaginative in explaining now how they intend to use their new power to use the tax differently, and to set new and different rates, to do exactly that. After all, that would be no more than the cabinet secretary did in introducing the land and buildings transaction tax, when he took the opportunity to create a more progressive regime than the one that he inherited, which is something that we supported.

One very welcome change to the landfill tax is the power referred to by the cabinet secretary to tax as well as fine illegal landfill sites. Once again, there is a lot of detail still to hear about how that

will be enforced and what additional resources SEPA might have at its disposal to pursue that additional revenue. We look forward to hearing more about that during the passage of the bill.

There are many outstanding questions about the landfill community fund, too. I welcome the fact that the cabinet secretary today indicated an open-mindedness about how we might change and reform that aspect of landfill taxation. Certainly, the increase to 7.34 per cent of tax liability for the fund is welcome. For constituencies such as mine where landfill takes place, those credits can be a very important source of support for local communities. In East Lothian, they fund very diverse activities from the Hi His at Haddington Athletic Football Club to the probably higher-flying puffins of the Scottish Seabird Centre, which is fighting back against tree mallow on the islands of Craigleith and Fidra.

The 10-mile limit is just that—a limit. Kenny Gibson was right to say that, particularly in rural Scotland, 10 miles is not really a very great distance. It seems to me that we could relax the limit without losing altogether the principle that the communities affected are the ones that benefit. For example, we could extend eligibility to the whole of the local authority area where landfill takes place, which would take some account of transportation of the waste to the landfill site.

We are very pleased to see the bill move forward, although we have some concerns about the many questions that its drafting still begs. I accept that primary legislation can suffer from too much as well as too little detail. The Finance Committee made a point about that, too. The committee's resolution was the right one, which was to say that in its view changes in the orders regarding new rates, for example, should be subject to the affirmative procedure, which would ensure proper and appropriate scrutiny when they come forward. The Finance Committee made that point effectively during the passage of the Land and Buildings Transaction Tax (Scotland) Bill. Ministers accepted the point in that case and agreed with the argument, and they should do so in this case, as well.

As with much of our legislation, the dullness is in the detail, but in agreeing to the principles of the bill—I am sure that we shall do so—we should not lose sight of the fact that it is but the latest indication that our devolution settlement is a powerful, flexible and dynamic democratic model that is worth fighting to keep.

15:20

**Gavin Brown (Lothian) (Con):** Working on the bill in the Finance Committee has been pretty interesting and rewarding at times. At this stage,

the Scottish Government's overall direction of travel is right. It is broadly attempting to replicate the existing UK-wide landfill tax, but with some tweaks to improve areas in which that tax is not working quite as effectively as it might have done.

I want to focus on some areas that the committee has highlighted in which there are policy decisions to be made by the Government and the Parliament as a whole, and areas in which further information from the Government is required in order to allow Parliament and, indeed, the committee to make decisions about the best way to implement the bill and to look more widely at the secondary legislation that will follow what is a framework bill.

My first remarks relate to tax rates. With any tax, the tax rates gather a lot of comment. Views are put forward by practitioners on all sides, of course, but I wonder whether the Scottish Government can answer one question at this early stage, because the public statements leave open the possibility of confusion.

The Scottish Government bill team's official position in giving evidence was that tax rates would not be set lower than those that are in place for the UK landfill tax. I think that that is pretty close to what the cabinet secretary said. However, the bill's financial memorandum says that

"the Scottish tax rates will mirror UK rates in 2015-16".

Those two things may be exactly the same; equally, they may not be. Saying that the rates will be no lower could mean that they will be the same or higher, whereas the word "mirror" suggests that the rates will be identical. Can the cabinet secretary say at this early stage, either in his closing speech or fairly soon, whether the Government means that the rates will literally mirror the UK rates in 2015-16 or may well be higher? That is not 100 per cent clear to me at this stage.

**John Mason:** I wonder whether the member is making a bit more of that issue than should be the case. My reading of the matter at face value was that the rate would not be any lower, so that is a commitment, and that mirroring means that the rates will perhaps be not exactly the same, but will be very close. That gives me quite a lot of clarity about where we are going.

**Gavin Brown:** That may give Mr Mason comfort. I merely put it on the public record that it would be helpful if we got just a bit more clarity from the Scottish Government, if clarity is indeed available.

It would also be helpful to know something else from the Scottish Government. We have heard that the initial rates or initial information will be given in the autumn of 2014, in advance of the

setting of the 2015-16 budget. Does the cabinet secretary have a view at this stage on the period of time for which rates will be set? In its submission to the committee, COSLA said that it

“would suggest that five years in advance would be most appropriate.”

I think that North Ayrshire Council suggested three years. Does the Scottish Government intend to set rates for several years or for single-year periods? Its response to the committee, which came out either yesterday or today, suggested that the matter would be looked at specifically year on year. Will the Government tell us whether the rates will be set for several years or only for one year?

Waste tourism is a critical issue that quite rightly attracted comment throughout the committee's consideration of the bill. There are, of course, differences between Scotland and the rest of the UK that can lead to waste being taken from one part of the UK to another. We were told that the committee would be surprised at how small the differential in tax rates would have to be for it to be cost effective to move waste. It would be interesting to know—the committee has called for this information—what specific work the Scottish Government has done in that regard and whether it will publish that so that the committee and, indeed, Parliament, can have clarity on how many pounds per tonne the difference needs to be before it starts to make an impact where the rate is higher in one part of the United Kingdom than in another. That will make an impact on a range of matters—the rates that we set as a whole; the number of rates and whether those are ultimately changed; the materials included under each rate; and the exemptions applied to rates.

**Stewart Stevenson:** Is the member aware of article 11 of Council directive 1999/31/EC?

**Kenneth Gibson:** Who isnae?

**Stewart Stevenson:** I am sure that Gavin Brown will have read it intensely. Article 11 specifically addresses the issue of differences between regimes, not just in Europe but worldwide. In effect, article 11 suggests that it would be perfectly proper to legislate to prevent such movements from a regime with tighter environmental controls to one with less tight environmental controls. Would the member support the Scottish Parliament having the appropriate powers to do that?

**Gavin Brown:** The member is on fire today—he has told us about Catalonia and Sweden and now we are hearing about some old directives, too. In all seriousness, it would be helpful to have a 2013 analysis of what the Scottish Government believes the position to be, so that, as we finalise the legislation and the secondary legislation

underneath it, we get a clear picture on how waste tourism might be affected by differential rates.

Like other members, I welcome the move to allow unauthorised disposals to be taxed. That, of course, makes the operation less attractive, and it could have an impact on unauthorised sites. I think everybody—all stakeholders across the spectrum—would be against such sites. There is a serious question for the Government to answer—the answer has not quite come out in its response to the Finance Committee. Is the policy objective simply to give SEPA the power to go after and collect tax from unauthorised sites, rather than merely fine them, which is the current position? Is SEPA expected to visit the same number of sites that it currently visits, with additional revenue being gained as a result? Is the policy objective to intensify the regime and increase the number of sites that SEPA can visit and the amount of work that it can do at those sites, so that we collect additional tax not just from existing sites but potentially from many more? If it is the latter, it would be interesting to hear about the resources that are required to do that.

I will leave it there for now. Suffice it to say that we support the bill at stage 1.

15:28

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** In welcoming the debate, I congratulate the cabinet secretary on managing to finagle a mention of Adam Smith into his speech. As someone who studied Adam Smith's works as a student at the University of the Glasgow, I never imagined that I would hear his name mentioned in a debate on waste management in the Scottish Parliament. That is surely the ultimate triumph of the cabinet secretary's opening remarks.

When we debated the Land and Buildings Transaction Tax (Scotland) Bill, we spoke about the historic nature of the debate because it was the first time that we had discussed a new Scottish tax in this Parliament—we said that it was a new chapter in the story of devolution. We cannot quite describe the Landfill Tax (Scotland) Bill in the same historic terms—it has managed to be the runner-up in the posterity stakes—but, for the reasons that have been set out thus far, it is still important as part of the general sweep of the devolution of new taxation powers.

I will focus on a few points that arose during stage 1 consideration of the bill by the Finance Committee, of which I am a member. First, it makes a lot of sense to devolve the tax. We can align our approach with our climate change ambitions—the Scottish Parliament's ambitious climate change legislation has been well remarked on, and encouraging more recycling is surely part

of the effort in that regard. The core aim of the landfill tax is to transfer waste from landfill, so that it is recycled instead. It therefore makes sense for the Scottish Parliament to have control over landfill taxation.

I welcome the cabinet secretary's announcement during stage 1, which he reiterated today, that he will ensure that the act that we pass does not encourage waste tourism, by setting the rate of landfill tax at an appropriate level. If the tax is to be a mechanism to secure environmental improvement, transporting waste across jurisdictions would be counterproductive and would make no sense.

I also welcome the provision for a disincentive in relation to illegal dumping, which is and will remain a criminal offence whose perpetrators are subject to a fine. Under the current arrangements, there is no mechanism for levying tax in such circumstances and a fine might be less than the tax that should have been paid. The bill will ensure that anyone who dumps waste illegally will have to pay the tax as well as any fine that results from criminal proceedings. It seems strange that the UK Government has not taken that sensible step and it is good that the Scottish Government is doing so.

The landfill communities fund will continue to be important, which is also welcome. I think that all members are aware that many local organisations, including organisations in my area, have benefited from the fund, which is probably the most visible element of landfill tax in many localities. There is debate about how near to landfill activity an organisation must be before it can apply for funding, and Michael McMahon, who is a member of the Finance Committee, has been assiduous in pursuing the issue at stage 1, given the landfill activity that takes place in his constituency. A degree of flexibility is sensible, but it is right that areas that are affected by landfill should be the primary beneficiaries of the fund.

The cabinet secretary told the Finance Committee that although Scotland's share of the total UK landfill tax take since 1996-97 has been 9.2 per cent we have received only 7 per cent of the UK Government's landfill communities fund for projects in Scotland. There is therefore clearly an opportunity for organisations in Scotland to benefit from the devolution of the tax.

John Mason's point about the need for more cost-effective administration of the fund was sensible, and the cabinet secretary's response was the right one. That relates to the issue of an audit of fund holders, which was raised in evidence to the committee by the people who administer the fund. If the administration of the fund is more effective, there will surely be the potential for more funds to be released to

organisations. I look forward to hearing the Scottish Government's suggestions in that regard.

I do not have much time left, but I briefly mention the block grant adjustment for landfill tax, which will be crucial. The Chief Secretary to the Treasury told the committee that he wants the adjustment to be based on forecasts. I gently say that the OBR has been unable to provide a coherent and sensible forecast in relation to landfill taxation. I hope that the UK Government will agree to a fair mechanism and I look forward to seeing what emerges.

I look forward to considering the bill at stage 2.

15:34

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** The landfill tax has been a fairly successful environmental tax at a UK level, with a 30 per cent reduction in the amount of waste sent to landfill since 1997. That reduction has to a significant extent been driven by the tax escalator, which I hope will also become a feature of the Scottish landfill tax.

Unfortunately, however, we do not know anything about the escalator; indeed, we do not know very much at all about landfill tax rates, except that they will be no lower than those under the UK system. As the committee convener Kenny Gibson has reminded the chamber, that uncertainty was criticised at committee by a range of bodies, including COSLA and the Scottish Environmental Services Association, which argued that it made investment difficult. The cabinet secretary told the committee that rates do not drive investment, but I put it gently to him that rates are not entirely irrelevant in that respect. I hope that he will take on board the committee's recommendations with regard to his clarifying why he will not make an announcement before December and that he will say something before then on whether he will adopt an escalator and on the period for which he will announce tax rates.

That is not the only uncertainty on this issue; there is also uncertainty about the amount of landfill tax revenue that is currently raised in Scotland. We certainly cannot blame the cabinet secretary for that. There are no directly available data on the Scottish share of landfill tax and the figure of 9.2 per cent of UK revenues that has been bandied about in the committee and elsewhere is derived solely from SEPA-collected data on the quantity of waste sent to landfill in Scotland. The OBR uses that 9.2 per cent estimate for its own estimates on landfill tax revenues; in other words, it estimates UK landfill tax revenues and then takes 9.2 per cent of that for Scotland. However, as we have heard, there is a degree of concern particularly about the OBR's

initial projections for the next two or three years, which were not only wildly out but unbelievable. Although the OBR has now adjusted those figures, this is clearly an important issue for the block grant adjustment and I hope that the OBR will look seriously at the Scottish Government's projection of a reduction in revenues to £40 million by 2025, which seems credible—even conservative, as Kenny Gibson has suggested. We had better ensure that we do not take that remark out of context as a description of Scottish Government policy. In any case, I would support the Scottish Government in urging the smallest possible block grant reduction; after all, the whole point of the tax is to drive down revenues, which might seem paradoxical from a Treasury point of view but is entirely sensible from an environmental point of view.

Speaking from an environmental point of view, I think that our instinct would be to drive hard on this tax in order to reduce waste as quickly as possible. However, there are two constraints in that respect: first, we have to be mindful not to encourage illegal dumping; and, secondly, we must remember the issue of waste tourism. Those constraints have to be taken into account in considering whether to have different rates, bands or exceptions from the UK. For example, if we set a different rate that is too high, we might collect less revenue because people would start to take their waste to England. On having different bands, SEPA has recommended that incinerator bottom ash be at the top level. Although that seems like a good suggestion, it might result in people taking all their ash to England. Finally, on having different exceptions, although there is a lot of merit in setting no rate for asbestos—after all, we do not want to encourage illegal dumping—the problem is that, if we have no such rate, we might also get all of England's asbestos. Such matters have to be weighed up very carefully and I certainly support the committee's recommendation that, given their difficulty and complexity, any legislation to decide additional rates or the removal of exceptions be taken under the affirmative procedure.

One thing we know is that there will be a tax as well as a fine on illegal dumping. Like the committee, I strongly welcome such a move but I wonder whether the cabinet secretary will clarify what additional revenues will be available to SEPA if it has the enforcement function in that respect. In response to a question that I think I asked in committee, SEPA said that the £300,000 that it had would not cover any enforcement activity. Indeed, in general we need some clarification of the respective roles of SEPA and revenue Scotland on this matter. I am glad that they are working together, but they need to work out exactly where the demarcation lines are.

One means of mitigating the impact of landfill at a local level is the Scottish landfill communities fund, which the cabinet secretary described in some detail in his speech. I am pleased that the current system of providing landfill operators with tax credits in exchange for a percentage of tax liability will be followed and that the 6.8 per cent of liabilities under the current system will be boosted by 10 per cent by the Scottish Government. That is certainly welcome. However, evidence to the committee from the Scottish landfill communities fund forum and others suggested that many areas that could benefit from such support are put off by an overcomplicated application process. Therefore, if the fund is to be properly benefited from under the new regime, we should look to simplify the system. For example, SEPA said that the regulation is top heavy and could be streamlined. I welcome the fact that the cabinet secretary has listened to SEPA and has made an announcement about that today.

On the eligibility radius, there is some tension between looking for more creative ways to reduce environmental impacts throughout Scotland and compensating communities that are closer and, therefore, more directly adversely impacted by the consequences of landfill. I would err on the side of caution and suggest that, for the sake of environmental justice, any finite funding should be distributed among those communities. That is consistent with the committee's recommendation supporting the principle of those most affected benefiting the most.

15:41

**John Mason (Glasgow Shettleston) (SNP):** Yesterday, one of my staff told somebody that I was the only MSP who was interested in the landfill tax, but that was a bit unfair. The Finance Committee has been quite enthusiastic about it, as have Malcolm Chisholm—although he sometimes hides the fact—Gavin Brown and John Swinney. We should not underestimate the significance of the Parliament's gaining tax-raising powers, albeit that the vast majority of taxes are still controlled by Westminster. Whatever happens in 2014, 2015 and 2016, the Parliament is not satisfied with the powers that it has, will not be satisfied with the powers that it has been promised and will press for the people in Scotland to make more decisions for Scotland.

Although, in the scheme of things, this is a relatively small tax, it is an important one because it brings together environmental policy, revenue raising and support for local communities. As with any tax in Scotland, we need to be aware of what our neighbours, especially England, are doing. As Malcolm Chisholm pointed out, a higher landfill tax is good for the environment, but there is little point

in it if it only shifts waste across the border and we suffer a loss of revenue. The evidence at committee was that even small differences in rates could lead to waste tourism, which we need to guard against both on a cross-border basis and between the mainland and the islands within Scotland. The answer to the challenges that the islands face is to have different exemptions for them and perhaps slightly less strict standards in some cases, rather than to have different rates for different parts of the country. Therefore, the statement that the Scottish rate will mirror the UK rate and that the rate will be no lower than the UK rate in 2015 is pretty fair.

**Stewart Stevenson:** Is the member aware that article 2 of the EC landfill directive of 1999 specifically makes provision for communities that have

“no more than 500 inhabitants per municipality”

or that are more than 50km from an appropriate place where waste may be deposited? I wonder whether we are doing as much as we may be permitted under the directive.

**John Mason:** The member would have to ask people who are better placed than I am whether we are doing as much as we could. I still think that the direction that the bill takes, and the present situation whereby there are slightly different standards for islands and remote communities, is fair.

There have been calls for greater certainty about rates and so on, a lot of which is crying wolf. Neither in the UK nor in Scotland can there be complete certainty about the future. One of the key aims of both Governments is to reduce waste by reducing, reusing and recycling, but that is notoriously hard to predict. The tenements in my constituency recently received grey recycling bins for food but it takes some time for people to get used to recycling.

**Gavin Brown:** Will the member give way?

**John Mason:** Let me just finish the point. In some cases, I have seen the little waste receptacles being used as mini-buckets to store mops in, which is not what they were intended for. There is always a degree of resistance to such changes.

**Gavin Brown:** The member used the phrase “crying wolf”. I wonder whether he was on the committee when it signed up to statements such as

“The Committee notes the concerns of witnesses ... and invites the Government to clarify the reasons”

for delay, and

“The Committee ... asks the Government to provide greater clarity”

on rates. Did he think that people were crying wolf when he signed up to the committee’s report?

**John Mason:** I have been thinking about the report every day since we wrote it, as I am sure Mr Brown has.

The point is that of course we would all be happy to have more clarity, if that were possible, but there needs to be a bit of realism. On the landfill tax, as in other areas, we do not have facts about the future. We can make projections and estimates and we can have a vision, but we do not know all the facts about the future. We must be realistic about that.

On unauthorised disposals, it is welcome that, in future, tax and fines will have to be paid. SEPA has a key role to play in that regard. We see small and large-scale dumping throughout the country, which we all agree needs to be clamped down on. SEPA’s resources must be kept under review, as that is an area of major concern for all our constituents. I welcome the Government’s response, which says:

“Funding will take account of a range of factors, including compliance activity.”

The block grant adjustment is one of the trickiest areas when it comes to the introduction of the landfill tax. Logically, the revenue that is received should fall, but the OBR has predicted that cash income will stay level. The Scottish Government response that receipts could fall by 74 per cent between 2015-16 and 2024-25 is pretty dramatic, and I certainly hope that that can be achieved, but the block grant adjustment must take account of that.

All three block grant adjustments are the subject of negotiation between the Scottish and UK Governments. Although it would be my preference to have a distinct, transparent solution for each of the three taxes, I accept that the landfill tax is smaller, relatively, and that the Scottish Government may want to trade off a poorer settlement on one tax for a better settlement on another.

I think that the 10-mile radius is probably too narrow in a rural area, but it is almost certainly too wide in an urban area. The bill team’s statement that

“something a little more sophisticated”—[*Official Report, Finance Committee*, 5 June 2013; c 2743.]

was needed, which is referred to in paragraph 105 of the committee’s report, is very welcome.

The Landfill Tax (Scotland) Bill is the second of the proposed tax bills under the Scotland Act 2012. I very much welcome more control coming to Scotland. We must accept that we have limited room for manoeuvre on landfill tax, but we need to tackle the huge problem of waste that we face,



and I believe that the bill gives us the opportunity to do so.

15:47

**Hanzala Malik (Glasgow) (Lab):** I welcome the opportunity to speak about the landfill tax and its implications for Scotland's long-term future.

Taxation and waste are not issues that capture the public's imagination, but Tesco's recent publication of the amount of food that it wastes—as part of which it was revealed that more than two thirds of bagged salads are thrown away—has shocked many people. I use the example of Tesco, as a substantial part of such waste occurs in the processing of food. For waste to be reduced, processes will need to change. We must take steps to reduce that element of waste.

For many companies, the reduction of waste is a matter of medium-term planning. In addition, the financial investment that is required for waste companies to develop an alternative strategy will involve positive long-term decision making. That is why the uncertainty over exactly what the landfill tax rate will be beyond 2015 is an issue that we need to grapple with. When the cabinet secretary was questioned by the Finance Committee, he said that such decisions were independent of the landfill tax rate and were to do with whether the Scottish people throw away things that those companies can make profit from.

My understanding is that both things are important for companies to make long-term financial projections and plan investments such as alternatives to landfill. It is much easier for the Scottish Government to increase certainty by setting the landfill tax rates three years in advance; whether we need a crystal ball to estimate what Scots will chuck away is another issue.

On another note, the consultation responses show widespread support for the landfill communities fund—the LCF—which is funded by landfill tax. The fund allows managers of landfill sites to give money for environmental, community and built heritage projects within a 10-mile radius of landfill sites or operational depots. I believe that the 10-mile radius rule should be more flexible to enable a wider group of community organisations to access the funds and make good use of them. One or two colleagues have suggested that the radius should be extended particularly in rural areas, but I think that we would benefit from it being done right across Scotland.

The bill will allow us to develop a clear management structure, and there should be regular updates on the fund's administration to avoid the current duplication. The tax tariff on landfill should be flexible, which would allow

realistic taxation that would encourage industry to participate and invest, and allow alternative use of landfill sites so that we can have a better future for not only our industry but our citizens.

Last but not least, it is important that we recognise that the amount of waste in Scotland places an unnecessary burden on the nation's resources. It is therefore important that we continue to ensure that we play a serious role so that industry does not carry all the burden. The Government has a responsibility to share its views and aspirations with industry and to work hand in glove with it to ensure that we take full and proper advantage of reducing our waste; the current landfill sites; the taxation levels that will be in place; and the prediction that the landfill taxes will reduce in the future. That is a good sign, but it will affect the funding of community groups, so we will need to see how they can continue to be supported in the future.

15:53

**Rob Gibson (Caithness, Sutherland and Ross) (SNP):** From my point of view as convener of the Rural Affairs, Climate Change and Environment Committee, the bill will help Scotland to meet its world-leading climate change targets by aligning tax with environmental policy. I cannot put it any better than the Scottish Wildlife Trust did in its briefing when it said:

“while waste disposal by landfill is still carried out in Scotland, the Trust is in favour of having a tax fund which goes some way to compensate for the environmental “harm” which arises from landfill and which is used to fund biodiversity projects that help to restore ecosystems to health and amenity projects which improve access to wildlife for communities.”

That is a tall order for a small amount of money but, remarkably, major projects have taken place that have allowed those principles to be carried out.

The bill will help to ensure that we establish a tax system that supports the use of taxes and charges in environmental policy. Indeed, RSPB Scotland suggested that it

“is a good working example of a hypothecated or ‘ring-fenced’ tax - it has compensated for an environmentally damaging activity by funding projects which improve the environment for the benefit of biodiversity and the communities who live near landfill sites.”

That said, it is important that we look at how the tax will relate to the zero waste plan, which allows us to think about promoting high levels of recycling and about diverting materials and resources from landfill into more sustainable uses or treatment.

**Jenny Marra (North East Scotland) (Lab):** I agree with Rob Gibson that the landfill tax is an important part of helping Scotland to achieve its ambitions in the report on proposals and policies,

but does he agree that it is a small part of that project and that a lot more focus, direction and commitment are needed from the Scottish Government in a range of policies, including those on transport and housing, to get anywhere near the targets to which the Government has committed itself?

**Rob Gibson:** I disagree, because we are talking about specific projects—of which I will give examples—that allow private money to be applied in a fashion that produces a public good. The money that we are talking about does not come directly from the public purse.

I suggest that we think about how we align the tax with the zero waste plan, whose aim is to help people to reduce waste. In my constituency, communities are often 70 or 80 miles from a landfill site—the site might be in Perthshire and not in the Highland area. People must be encouraged to reduce and recycle but, if they must use landfill, huge journeys are required to dispose of material at a landfill site.

We must recognise the need to ask where material comes from when we decide where money from the landfill communities fund should be spent. I have examples from my constituency. Some years ago, I was at the opening of the Scottish Wildlife Trust's path improvement project at Ben Mor Coigach, which is near Achiltibuie. That small community produces very little material for landfill—I hope that any materials that are taken down from old houses are used for the foundations of new houses and never end up in landfill.

There are many such examples around the country that we could point out. Another SWT project was to improve the peat bog habitat at Commonhead moss. Many such sites are far from areas with landfill, so we must ask whether the eligibility radius of 10 miles should be reviewed for areas such as mine.

The RSPB has made the major point that it feels that there must be flexibility. I am glad that the cabinet secretary indicated that he would take that into account before the bill's final stages.

From my committee's point of view, we need to think about taking measures that are as practical and simple as possible to allow the transfer of moneys. We should take into account the geographical breadth of ecosystems to which projects apply. If that is done, we will need to think in the Highlands about a much larger area than we have talked about.

I would like us to apply the system. I am glad that we will reduce costs and therefore increase investment. I am aware that the income will reduce over the years, but we will have other powers to encourage people to make the best use of

materials that arise for landfill. I am happy to support the bill.

15:59

**Michael McMahon (Uddingston and Bellshill) (Lab):** As is evident from the 59 per cent decrease in the amount of waste that was sent to landfill between 2000 and 2010, the UK landfill tax has been effective in helping the environment and moving us towards a zero waste Scotland. I am confident that the Scottish landfill tax will do the same. I therefore welcome and support the overall Scottish landfill tax scheme.

However, concerns were raised during scrutiny of the bill about the fact that many aspects of the tax are to be dealt with through subordinate legislation. That has created a lack of clarity and of certainty—as some members have outlined—with regard to issues such as the rates of tax and the power to change the materials that are taxed. The bill is a framework that leaves the specifics to subordinate legislation, and the Scottish Parliament must ensure that future action on the Scottish landfill tax is open to debate and further scrutiny.

A specific area in which details will be set out in subordinate legislation is the landfill communities fund. I support continuation of that fund, which was created to benefit places that are blighted by close proximity to landfill sites. The fund works by providing benefits to such communities from the taxes that are raised from those sites.

In Scotland, the idea that communities should have access to environmental justice is spreading, which is welcome. That has led the Government to take a dual approach to environmental justice, by stating first that

“deprived communities, which may be ... vulnerable to the pressures of poor environmental conditions, should not bear a disproportionate burden of negative environmental impacts”—

which is absolutely right—and secondly by stating correctly that

“communities should have access to the information and to the means to participate in decisions which affect the quality of their local environment.”

I represent an area in which there are four landfill sites in close proximity to each other, and my community has been disproportionately burdened by the negative effects of those sites. However, in the past, the landfill communities fund has helped my community by funding local projects to mitigate the effects of living near the sites.

In that way, the landfill communities fund has helped to move Scotland towards fulfilling the principles of environmental justice. However, it has now been suggested that the scope of the fund

should be reviewed, which leaves me with some concerns. Organisations such as SEPA and COSLA have suggested that money from the fund could be used for funding wider environmental objectives that are not specific to any one location, instead of being used exclusively for communities that lie within a 10-mile radius of landfill sites.

I take on board the points that have been made by members such as Rob Gibson—for example, that for rural communities a 10-mile radius may be too restrictive because communities beyond that limit may be affected by a landfill site. However, we are talking about specific projects that may be Scotland-wide and have nothing to do with landfill at its location, so we must be concerned if that is to be the case. A change in the current scope of the landfill communities fund would be fundamentally unfair, and would violate the principles of environmental justice that those who are interested in the subject have sought to uphold.

It is widely known that communities that lie near landfill sites face much greater environmental injustice than those that do not. Those living near landfills have to deal not only with the emissions that pollute the air, water and soil, but with the burden of costs to address the local nuisances including odour, dust, litter, noise, vermin and visual intrusion that result from living in close proximity to a landfill.

Landfills not only affect the quality of life in a community, but present an actual cost as exemplified in house prices; in Scotland, homes that are in close proximity to landfill sites are valued at 40 per cent less than similar homes that are not. To change the current scope of the fund would leave communities with less money to mitigate the effects of landfills.

It is estimated that the landfill tax will generate £107 million in the first year of implementation, but it is also estimated that the fund will fall to £40.5 million in 2025. To open the fund to broader environmental objectives—coupled with the projection that landfill returns will dissipate—could in the long run leave the communities that are most affected by landfill with less funding.

Although the amount of waste that is dumped in landfills is projected to decrease as a result of the landfill tax, communities in the vicinity of landfills will continue to need funding. Landfill sites will, even if they are closed, continue to affect communities negatively for years to come, and those communities will need access to the funds long after the sites have closed. Communities that are dumping grounds for the rest of Scotland should receive all the benefits that result from taxation of landfills, and should be the only ones that have a say in how those funds are used. At the end of the day, that money is being raised at

the expense of communities that are near landfills, so it should be dedicated to those communities.

As was said earlier, it has been suggested that the bill, like other bills that have been introduced as a result of the Scotland Act 2012, would be dry and detailed. I have, however, found the context of the debates around those bills to be interesting, and I look forward to hearing how the cabinet secretary will, as we move forward to stage 2, address the points that have been raised this afternoon and in the committee's report.

16:05

**Mark McDonald (Aberdeen Donside) (SNP):**

Members have covered how we got to where we are with the landfill tax being devolved to the Scottish Parliament, which emphasises the fact that we in Scotland and in the Scottish Parliament are able to administer taxation and deal with the responsibilities that come with that.

I want to focus on some of the issues that have been highlighted during the debate, the first of which is the block grant adjustment. As I was not party to the committee evidence sessions, I have listened closely to what has been said in the debate about the notion that the block grant adjustment would be based on OBR projections, and I have some concerns because the OBR projections and forecasts on things like economic growth and oil revenues generally tend not to be recognised as being realistic.

In March 2012, the OBR estimated that in 2014-15, landfill tax income would be £145 million, in 2015-16 it would be £151 million, and in 2016-17 it would be £157 million. By December of the same year, the OBR had reduced the figures to £105 million, £107 million and £107 million respectively. By March 2013, just 12 months after the first figures were published, the OBR reduced them again to £104 million, £105 million and £105 million. Those are quite significant adjustments to be made in 12 months. If it turned out that the projections did not match up to reality and it transpired that the OBR had underestimated or overestimated the figures at any stage, that would have implications for the block grant adjustment and potential future clawback. It is therefore important to ensure that the sums add up, so I would welcome the cabinet secretary's views on how he sees the role of the OBR projections and whether there is a better way of looking at those in future years.

The bill is important not just because of its revenue implications but because it is a tax that is clearly linked to environmental sustainability. It is, essentially, designed as a deterrent to landfill and an encouragement to consider alternative means of waste disposal that will reduce the landfill tax

burden on public bodies and organisations. We should not be afraid to administer the landfill tax in that way, which is why I was interested in Gavin Brown's point about the rate at which the tax is to be levied. I caution against entering into any kind of taxation competition over the rate at which landfill tax is levied.

I also do not buy the argument about waste tourism. Rob Gibson summed up the point appropriately when he said that, even within Scotland, many authorities have significant distances to travel to dispose of waste to landfill, so the notion that local authorities or organisations will send trucks across the border to dispose of waste to landfill for a marginal saving on the tax, which would soon be gobbled up by the associated transportation costs, does not really bear scrutiny.

**Gavin Brown:** Will Mark McDonald give way on that point?

**Mark McDonald:** Mr Brown has that twinkle in his eye, so he clearly has a clever point to make. I will allow him to make it.

**Gavin Brown:** I have a direct quotation from the bill team:

"The committee would be surprised at how small the differential in tax rates would be for it to be cost effective to move waste."—[*Official Report, Finance Committee*, 5 June 2013; c 2728.]

That is what the bill team, along with the cabinet secretary, told the committee.

**Mark McDonald:** I do not think that that argument would stand up to scrutiny based on what Mr Gibson has said. If you were simply going from one part of the border to another part of the border, I do not think that that would be an economic way in which to dispose of waste. We will agree to disagree on that.

On the landfill communities fund, prior to being elected to Parliament in 2011, I served as the chair of an organisation called Aberdeen Greenspace Trust Ltd, which administered landfill community funding through grant aid and delivery of environmental projects.

I welcome the fact that, in his evidence to the Finance Committee on 19 June, the cabinet secretary stated that at present, Scotland gets less in terms of landfill tax receipts than would be expected—landfill tax receipts from Scotland make up 9.2 per cent of the total UK pot, but only 7 per cent of landfill communities fund spending has been contributed to projects in Scotland. The administering of a landfill communities fund in Scotland gives us the opportunity to address that imbalance.

It is interesting as well to consider, when we come to the establishment of a landfill

communities fund in Scotland, the need to ensure that although it will be done through subordinate legislation, organisations such as Aberdeen Greenspace in my constituency could feed in their thoughts on how the fund might operate and how it might operate differently from the way in which the current UK fund is administered through Entrust. I would welcome an opportunity to have that dialogue outside the debate.

On the 10-mile radius, I take on board Michael McMahon's point. My experience, through working with Aberdeen Greenspace, was slightly different, in that there were often opportunities to expand the work that was being done through the landfill communities fund to which the 10-mile radius proved to be a barrier. We have to accept and recognise that environmental sustainability does not always have to be geographically constrained. The broadening out of the ability to use the money for other projects would perhaps have a knock-on effect on landfill and so might indirectly benefit communities that find themselves adjacent to landfill. Some such communities are just on the border of my constituency as well, so I think that the 10-mile radius needs to be examined because there are opportunities that would be restricted if we were to retain it.

16:12

**Claudia Beamish (South Scotland) (Lab):** I am pleased to have the opportunity to speak in the debate on the Landfill Tax (Scotland) Bill. Not being a member of the Finance Committee, I want to take a step back to say something about zero waste and climate change to help set the context of the bill, building on the cabinet secretary's broader remarks, and how the bill fits in with other policies.

My starting point is, of course, where we want to get to—zero waste. In the interim, landfill sites must be excellently managed for the sake of the communities near them, and it is right that affected communities receive some benefit for the disruption and inconvenience that is caused. The Rural Affairs, Climate Change and Environment Committee spent a lot of time taking evidence on new zero waste regulations, which are now in force.

A wide range of Scottish society, from public bodies, local authorities, communities, households and individuals are now expected to contribute, with clear timescales and guidelines. A range of measures will come in incrementally over the next few years. For instance, there will be a ban on any metal, glass, paper, card or food that is collected separately for recycling going to incineration or landfill from January of the coming year. There is also a range of support through Zero Waste Scotland and others to match the policies,

including the resource efficient Scotland newspaper campaign to highlight changes for businesses.

Food waste is, in my view—as well as in the view of my colleague Hanzala Malik and others—a particular challenge, not just for businesses but for supermarkets, public bodies and, indeed, for us, too, in our families.

How we change is also a learning process for politicians and policymakers. The RACCE Committee heard from Professor Walter Stahel earlier this month about the circular economy, in which the responsibility of the manufacturers is no longer cradle to grave, but cradle to cradle. Zero Waste Scotland is—and I quote—actively encouraging and supporting investment in “innovative resource management technologies”.

All that must be seen in the context of the climate change targets, to which an altered waste culture can make a significant difference. The Institute for European Environmental Policy report, which was recently commissioned by Scottish non-governmental environment organisations, is reported as having concluded that

“on climate the Scottish government had relied heavily on policies which did not put pressure on voters to change their lifestyles. That weakness made it more likely that it would fail to hit the 2020 target.”

The robustness of the new climate change behaviours framework will be of fundamental importance in changing our culture.

However, although we have come a long way in changing cultural attitudes since 2002-03, when we had a deplorable recycling rate of under 6 per cent—the rate in Scotland is now 42 per cent—there is still a need to decrease landfill, and the landfill tax is an appropriate lever. I understand that the cabinet secretary has reassured the Finance Committee that the bill will be in keeping with the Scottish Government’s zero waste strategy and carbon emissions targets.

On the administration arrangements for the landfill communities fund, I hope that providing a local perspective from South Scotland region might make a useful contribution to how the tax is to be distributed under the new devolved arrangements. As a rural primary teacher and eco-schools co-ordinator, I was over several years involved in the Levenseat Trust acorn awards for local schools. The projects included a local food production research project for primary school children and a three-dimensional mural made out of recycled materials. The impact was practical and positive. The trust has asked me to highlight on its behalf a few points, which I also support.

Levenseat Trust’s administrators suggest that the new fund should still be distributed very much at local level and that local people should have

more say in its guidelines than they have had in the past. They also ask for the criteria to be reviewed, as

“restrictions make it difficult to apply for funding”

for school projects, for instance. They highlight that, due to the restrictions, it is, frankly, sometimes difficult to distribute funds. They ask that any residue of distributable funds, such as the trust has had, should not go back to the Scottish Government at changeover time, but should instead be distributed by appropriate local distributors. Finally, the trust requests that the administration of the funding should not become more challenging; the cabinet secretary has given an assurance that things will be simplified.

I also stress how valuable the landfill communities fund is in supporting biodiversity projects. During the debate I have—unusually—somewhat changed my view on the 10-mile radius. The Scottish Wildlife Trust has highlighted wide-ranging projects, including a peat bog habitat improvement project and a project for saving Scotland’s red squirrels—to cite just two of many—and Rob Gibson made an important point about the needs of wider remote rural areas. However, Malcolm Chisholm is right that the issue is about environmental justice, and Michael McMahon’s clear description of communities that are affected by landfill must be respected.

Some members may have followed BBC Radio 4’s excellent programme earlier this month “Costing the Earth”, which focused on an interesting development in Belgium, where old landfill sites are being “mined”—for want of a better word—for valuable materials that have been dumped in earlier decades. I raise that point to ask whether, given that there are 5,000 million tonnes of landfill buried in Europe spread across 0.5 million sites, the cabinet secretary has considered looking at that idea from a Scottish Government point of view.

The Scottish Government’s low-carbon behaviours framework highlights 10 key behaviour areas and the Government states:

“The most sustainable option is to prevent waste being produced in the first place”.

In my view, that is the most important behaviour. In the meantime, I welcome the principles of the bill.

16:18

**Jean Urquhart (Highlands and Islands) (Ind):**

I am delighted to have the opportunity to speak on the Landfill Tax (Scotland) Bill and I welcome its stage 1 completion. I thank fellow members of the Finance Committee for their commitment, interest and dedication in scrutinising the general

principles of this important bill. I also thank the Government for its feedback on the committee's report, which has made the Government's position clear on a number of the committee's concerns.

As a result of the bill, the Scottish ministers will become the tax authority for the purposes of the Scottish landfill tax. That is a great step forward. I have confidence in the ability of the Scottish ministers and their staff to take responsibility for the Scottish landfill tax as well as for other important taxes such as the Scottish rate of income tax. The bill enables ministers to make an order to designate another tax authority, and I welcome the move by the Cabinet Secretary for Finance, Employment and Sustainable Growth to set up a new body, revenue Scotland, as Scotland's tax authority for devolved taxation. Revenue Scotland already exists as an administrative function within the Government, and the Government has been consulting on provisions to establish it on a statutory footing.

The Government has indicated that it intends that the administration and collection of the Scottish landfill tax should be undertaken by the Scottish Environment Protection Agency on behalf of revenue Scotland. Landfill tax administration and collection would become a new function for SEPA, which already visits and inspects landfill sites as part of its environmental regulation duties. That would offer significant advantages for the Government. The existing knowledge and considerable expertise in SEPA will create opportunities for significant efficiencies and other operational benefits in relation to the administration and collection of the Scottish landfill tax. I therefore support the Scottish Government's intention to have SEPA in charge of the administration and collection of the tax.

Although I give full support to the general principles of the bill, I draw the Parliament's attention to two areas of concern. First, I believe that one further waste exemption could be considered. Part IIA of the Environmental Protection Act 1990 states:

"If no person has, after reasonable inquiry, been found who is by virtue of subsection (2) above an appropriate person to bear responsibility for the things which are to be done by way of remediation, the owner or occupier for the time being of the contaminated land in question is an appropriate person."

That means—I think—that individual property owners might end up footing the bill for contaminated land remediation through no fault of their own. There are live examples of individual householders who have been charged vast sums for the remediation of contaminated land.

In the Cabinet Secretary for Finance, Employment and Sustainable Growth's statement to Parliament on 7 June 2012, he described four

principles that underlie the Government's approach to taxation and he reiterated them today. They are certainty, convenience, efficiency and that the tax is proportionate to the ability to pay. It is that final principle that I believe is relevant here. My suggestion is that consideration should be given to including in the bill a measure to allow for the costs of contaminated land remediation to be waived if an individual property owner is found to be on contaminated land, has in no way caused the contamination but yet has been unfortunately designated the status of appropriate person because of the lack of someone being found who actually caused the contamination. By putting such a measure in place, the Scottish Government would ensure that its principle of taxation being proportionate to the ability to pay is adhered to.

The second concern relates to the committee's suggestion that there should be a lower rate of tax on island waste, for materials for which there are never likely to be viable recycling or recovery routes. Although the Government has made its position clear on that, I still believe that a review of the issue could be carried out. In Shetland, Enviroglass provides a local solution for Shetland's waste glass by recycling all the glass that is collected by the local authority through its bottle banks. That has been essential in minimising the financial and environmental costs that shipping glass to mainland UK for recycling would incur. However, not all island communities are fortunate enough to benefit from such a scheme and a review could help to find alternatives for the islands that lack the means to cheaply recycle waste materials.

A final aspect of the bill that I will speak about relates to the Scottish Government's zero waste agenda, which is an ambitious programme of change that aims to create an environment in which we make the most of resources and minimise Scotland's demand on primary resources. That is to be achieved by maximising the reuse, recycling and recovery of resources rather than treating them as waste. The Scottish landfill tax will play an important role in maintaining the economic stimulus that is required to harness those waste management opportunities and in directing the Scottish economy towards a prosperous future with secure access to resources. By doing so, Scotland could follow the great example of its Nordic neighbour Sweden and make productive use of waste that would otherwise build up at landfill sites.

We must ensure that environmental organisations continue to be supported by the landfill communities fund. The Scottish Wildlife Trust, for example, has received £3.6 million to date, which has helped it to develop and manage essential environmental and community projects.

The Landfill Tax (Scotland) Bill is a good and valuable piece of legislation. It does what it is supposed to do: it provides legislative provisions for a Scottish landfill tax to replace the UK landfill tax regime. It provides the Scottish Government with real power to take important decisions on a crucial area of taxation and makes use of the experience and expertise of the Scottish Environment Protection Agency. It is conducive to the Scottish Government's zero waste agenda as we look to greener energy alternatives. Therefore, I support the general principles of the bill.

16:25

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I will certainly not be the only member in the chamber who is grateful to the landfill tax for paying for some community facilities. In particular, within the boundaries of my previous constituency, the proceeds of the tax built a new hall at Longhaven. The boundaries have changed and a certain Mr Salmond now has that hall within his constituency; I no longer do.

It is also interesting to hear that we are talking about something like 600,000 tonnes of CO<sub>2</sub> being emitted. That is a substantial figure indeed.

There has been quite a lot of discussion about whether we might have waste tourism. I thought about that before coming to the chamber and looked at a paper that was produced in 2012 for the European Environment Agency by the European topic centre on sustainable consumption and production. It is a big paper—96 pages—and, in essence, considers how the landfill tax in all its multifarious forms works in the countries of the European economic area. There is a wide variation, but the one thing in the paper that is interesting is that there is little suggestion that small differences could promote big tourism, notwithstanding the fact that, as Gavin Brown reminded us, the committee was told that they might. Therefore, we must avoid coming to an early conclusion on that.

In the UK, landfill has gone down to less than half of what it was over the 12 years from 1998 and we expect it to go down further.

**Hanzala Malik:** Will Stewart Stevenson give way?

**Stewart Stevenson:** Briefly, please.

**Hanzala Malik:** My interventions are usually brief. Stewart Stevenson has talked a lot about the past, which is helpful, but I will take him to the future, in which landfill will be used less and less. I draw his attention to the landfill communities fund. Where will such funding for community groups come from as the proceeds of the landfill tax reduce?

**Stewart Stevenson:** That is a perfectly fair and good question. Arguing from the constitutional position that I do, I find it unfortunate that we are being given a tax that is declining—which we want to decline—without having the full range of taxation powers to do something about that within the overall tax system. I hope that even those who do not travel as far as I do constitutionally might support the idea that the Parliament should be responsible for all the taxes that are applied in Scotland, whatever the future constitutional arrangements might be. Therein lies some of the answer.

I will touch on a few disconnected things. I will go again to the European Council directive 1999/31/EC and, in particular, consider what we charge for landfill. Article 10 of that directive is about the requirement to ensure that landfill site operators charge enough to ensure that they are able to look after the site for 30 years after they have taken waste material. We have recent experience of difficulties in remediation in coal fields, where there have been business failures. I wonder whether, looking to the longer term, it might not be appropriate for Governments to take in that money from operators so that it is certainly around. There appears to be less and less opportunity to get insurance cover. I do not think that we should be looking at that now; it is for the future.

The bottom line is that this is, above all, about recycling. Recycling is not new. During the second world war there was a huge amount of recycling and the world into which I was born immediately after the war was recycling focused: paper, aluminium, jam jars and lots of other things were recycled. The focus on recycling that there was in the 1940s, 50s and perhaps early 60s vanished and I am delighted that we are getting back to it. I hope that we do more of it. In that world, we also used our resources more effectively and our eating habits were much better.

**Jenny Marra:** Will the member give way?

**Stewart Stevenson:** I am sorry, but I do not have time now.

One of the interesting things is that under rationing in the war infant mortality declined and life expectancy increased, even after taking account of war casualties.

I will talk briefly about a couple of wee things. I commend the use of provisional negative instruments so that ministers can act rapidly—immediately, in fact—but, nonetheless, the Parliament can review what is going on, which is good.

I have a genuine question about taxable disposals. We are going to tax disposals of taxable disposals that are made illegally, but if it is not a

taxable disposal, can we tax it? There are things disposed of that are not taxable disposals.

I have a tiny point about pet cemeteries, for which Jim Murphy legislated in 2005. The bill currently says that the disposal material has to be entirely of the remains of dead domestic pets. I hope that we might slacken that slightly to allow a container in which the dead domestic pet can be disposed of.

A week ago today Christiana Figueres, who is the executive secretary of the United Nations framework convention on climate change, was moved to tears when she came out to speak to the BBC after a Chatham House event that she attended. She said, in respect of climate change, that we are condemning future generations before they are even born. Landfill is part of an extremely important agenda. If I agree with anybody in the recent past, it is Christiana Figueres.

**The Deputy Presiding Officer (Elaine Smith):** We now turn to the winding-up speeches. I remind members that if they have participated in the debate they should be back in the chamber for the closing speeches.

16:33

**Gavin Brown:** I will begin my concluding remarks with an issue that has reared its head many times over the course of the debate: waste tourism. When Mark McDonald says that he does not buy waste tourism, he might be right. When Stewart Stevenson says that we should press the pause button because of the results of a 2012 paper, he might be right. When the Scottish Government bill team says that a tiny difference in landfill tax regimes makes a huge difference to the level of waste tourism, they might be right. However, the important point is that they cannot all be right. That is why the committee did not necessarily take a firm view on waste tourism but said that it noted the Government's scope to make fewer changes because of the implications of waste tourism and asked whether

"the Government had commissioned any research or conducted any analysis on the likely impact of any changes to the structure and rates of landfill tax in Scotland on waste moving between Scotland and England."

The important questions remain. What analysis has been conducted and what is the correct conclusion, given the competing claims made over the course of the debate?

**Stewart Stevenson:** I agree with Mr Brown, curiously enough. There is huge uncertainty and research in and of itself will probably not help us resolve it absolutely. We will have to play the ball where it lands.

**Gavin Brown:** Conducting research and looking at the matter in a bit of depth, specifically between Scotland and England, would at least give us a degree of comfort and a better guesstimate than we have. That is important, because our analysis of waste tourism impacts on how we might approach various aspects of the bill and the secondary legislation.

For example, there is the number of tax rates. Some people said in evidence that there ought to be three rates. They said that there ought to be a third rate specifically for stabilised materials. If waste tourism does not really exist, that is fine and that suggestion might be perfectly sensible, but if it does exist, that could have a detrimental impact. It has an impact on the materials that are applied under each rate. Some suggested that material that is close to inert but does not have a route for reuse or recycling ought to have a separate rate. Again, if waste tourism does not exist, that is a perfectly sensible suggestion that we might be able to put into practice fairly swiftly. That is why the matter is so important.

It is critical for the Scottish Government to interact as much as it can from now on with the UK Environment Agency. The committee asked about that, and the response was that there had not been any direct discussion with the UK Environment Agency thus far. I request that the Government take up that matter fairly swiftly so that we can at least get a reasonable guess at what is likely to happen, which will then flow into other decisions.

I am conscious that I did not respond to the cabinet secretary's initial challenge. He wanted to hear from all parties about the existing 10-mile radius rule for the landfill communities fund. I listened carefully throughout the committee's deliberations and I have listened carefully again today. I am hugely persuaded by Michael McMahon's passionate contribution about his constituency and the impact that the fund has had on his constituents. It is difficult to get around what he said, although John Mason made the fair point that 10 miles might be a little bit rigid in a rural area and a little bit too wide for an urban area. Perhaps there is an opportunity to change that slightly. However, the committee agreed on the principle that those who are most affected by landfill should be those who gain. I would be particularly nervous about widening the radius too much, particularly as we know that the size of the fund in question is almost guaranteed to drop year on year to the extent that, if the Scottish Government's projections are right, by 2025 it will probably be worth around 26 per cent of what it is currently worth. I would find it difficult to favour widening the scope while the fund drops quite dramatically.



I will return to unauthorised disposals. I think that I said at the start that we welcome that part of the bill. What is proposed represents a huge improvement on the current system and the Government ought to be congratulated on that, but I again request that the cabinet secretary returns to the question about the political objective behind it. If it is to get SEPA to do more and go to more unauthorised landfill sites, the Government probably needs to back that up with resources. The Chartered Institution of Wastes Management said to the committee that SEPA would require

“additional resources in order to bring such activities into the tax regime and to apply any criminal sanctions.”

There is a benefit in simply having the law there, because the likelihood is that we will get additional revenue and it will send out a bit of a message to the unauthorised landfill sites fraternity, but perhaps there is more to be gained by making it a policy objective that we will put greater effort into things and that SEPA will tackle proactively even more landfill sites than it currently does so that the criminal element is stopped and more revenue is brought into the Scottish consolidated fund, which allows us to fund our public services.

I am content to leave it there, Presiding Officer.

16:39

**Jenny Marra (North East Scotland) (Lab):** The landfill tax is a result of the Scotland Act 2012 and the financial responsibility conferred to the Parliament in one of the biggest transfers of power since the creation of the Parliament, as Iain Gray outlined earlier. It is also important from an environmental perspective, as my colleague Claudia Beamish outlined in her speech.

I read with interest the recent Institute of European Environmental Policy report commissioned by WWF Scotland, RSPB Scotland and the Scottish Wildlife Trust, which found that the Scottish Government has failed to match its ambitions on key environmental policies with the political will and resources to make them work in practice. Stuart Housden, the chief executive of RSPB Scotland, in commenting on the report, noted

“major difficulties or complete failures in delivery caused by poor decisions, mixed messages or the lack of or misdirection of resources.”

The landfill tax will be a key lever not only in meeting the Government’s zero waste strategy, as many members have mentioned, but in meeting the Government’s wider environmental ambitions.

It is clear from members’ speeches that, although the legislation is largely supported across the chamber, there is a need for much greater clarity on the practical details of the tax, including how it will operate in the medium to long term, and

what policies the Government has to underpin the tax that link it to its environmental targets.

The bill is little more than a framework providing for the landfill tax, how it will be collected and, broadly, what waste might be taxable. As the Finance Committee and many of its witnesses have stated, the lack of detail that we have on how the policy will work in practice is impairing a fuller analysis of the bill and its impact. Clarity is needed most notably on what future tax rates will look like. Although the financial memorandum assumes that tax rates will not be lower than current rates at the point of transfer, we must wait until 2014 to know that for sure. Why is that? The Finance Committee report says that that has caused concern among businesses, local authorities and even SEPA, which will be in charge of collecting the tax.

Iain Gray called for an early indication of what level taxes will be set at, how the Government will use the tax rate to reduce landfill, and how to have a more progressive regime to meet the environmental objectives that I have mentioned. Malcolm Chisholm, who sits on the Finance Committee, highlighted COSLA’s criticism of the fact that there was no early indication of the level of taxation to be set. Will the cabinet secretary adopt an escalator? Does he also accept the link—this is a critical issue that many members raised—between an early indication of the tax rate and potential investments to allow businesses to plan? I hope that he will respond to those questions in his closing remarks.

**John Mason:** Does not the member accept that the indications that have been given are strong enough for people to make investment decisions, and that people do not need to know the exact detail down to the penny?

**Jenny Marra:** No, I do not accept that. John Mason has deviated from the consensus across the chamber that an early indication is preferable. Committee members have highlighted that the evidence given to the committee by experts indicates a consensus that an early indication of the tax rate would be desirable.

Like Gavin Brown, I was very much persuaded and impressed by Michael McMahan, whose speech was the best of the afternoon. He raised the important issue of environmental justice for the communities close to landfill sites. There is an argument for more relaxation—but not too much—in local authority boundaries and a more flexible arrangement that is rooted in the communities, as Michael McMahan described. He made a powerful case on the impact on people living near landfill sites from the odour, the dust, the litter, the noise and the visual intrusion, as well as the impact on house prices, which can be reduced by up to 40 per cent. He also made the point that communities will need access to funds long after landfill sites

have closed. That relates to Stewart Stevenson's point about how we will fund such work, which might be a debate for the future.

**Jean Urquhart:** I hear the member's support for the communities that are nearest to landfill sites. Does she agree that we will recycle more if we send less waste to landfill and that recycling plants can generate the same noise, dust and disruption as is generated by landfill sites?

**Jenny Marra:** I absolutely accept that point. Michael McMahon's point about environmental justice is just as pertinent to communities such as Jean Urquhart describes as it is to communities that are near landfill sites.

Stewart Stevenson was absolutely right to welcome a return to 1950s recycling, but I draw his attention to figures that are reported in this morning's *The Scotsman*, according to which only nine out of our 32 local authorities are meeting their recycling targets. In my city, Dundee, which under a Labour administration was highlighted as a pioneer for recycling in Scotland, recycling has fallen drastically under an SNP administration. A general problem for local authorities is how to increase recycling from tenement properties. That is a cross-party problem that we need to address. I ask the cabinet secretary to address the stagnation or flat-lining of recycling in some local authorities.

This has been a good debate, in which members have raised important points. Labour will support the general principles of the bill at decision time.

**The Deputy Presiding Officer:** Thank you. I call on the cabinet secretary to wind up the debate. Cabinet secretary, you have until 4.49.

16:46

**John Swinney:** I have until 4.49? This will be a short speech then. I am sure that that will be warmly welcomed—

**The Deputy Presiding Officer:** Apologies. I should have said 4.59.

**John Swinney:** Thank you. Suddenly I am required to cover more ground.

This has been an interesting debate and I welcome members' general endorsement of the Government's approach to the bill and many of its key provisions. I want to address some of the issues that members have raised.

First, on the definition of tax rates and uncertainty in that regard, the Government has made it clear that, for all the new tax powers that we are acquiring, we must consider our approach in the context of our budget for any given financial year. Why do we say that? For the simple reason

that there will be a block grant adjustment and resources will be taken out of our settlement, which will have to be replaced by revenue that is generated by the tax. Therefore, this must be considered in the context of the overall budget process that the Government undertakes.

That is not a complicated argument; it is perfectly simple. The Government must take tax decisions that affect our ability to undertake public spending, and if we do not take them in an organised and coherent fashion that relates to the Parliament's spending provisions, I am not sure how we can undertake the process.

Members talked about uncertainty in relation to tax rates, but no one knows what the level of landfill tax will be in the United Kingdom in 2015. That will be set by the chancellor, not six months before the start of the financial year, when I will set rates, but about three weeks before the start of the financial year. The idea that uncertainty is gripping and unsettling everyone who is involved in the waste industry has been slightly overstated in the debate. I must ensure that I bring forward a public expenditure package that is supported by the ability to raise the money. That is done through a budget process, and that is how we should define the approach and specify the rates that will apply.

**Iain Gray:** The cabinet secretary makes a fair point in saying that there is no certainty about future tax rates, which will be set within the process of setting the budget. That is how things are, and that is right. However, the point here is that this is a new tax. There is a shift or a change from this being controlled by the Treasury to it being controlled by the Scottish Government. If the indication that the cabinet secretary has given is that, in 2015, he will set a rate that is pretty much the same as the UK rate that he inherits, why does he not just say that? That would put an end to that degree of uncertainty, at least.

**John Swinney:** Mr Gray takes us off course again. This is not a new tax. We have the landfill tax now. The only difference, and the one correct thing about what he just said, is that we will decide on it here in Scotland rather than the UK Treasury deciding on it. I do not think that all the other arguments are strong arguments given what I have said about the approach that we will take to setting the level of taxation.

The second point that I want to raise is on waste tourism, which was talked about quite a lot in the debate. Mr Brown asked what research the Government has undertaken on the matter. In 2012, we commissioned Zero Waste Scotland to produce the report "Scotland Landfill Tax Bill 2012: An Economic Assessment", which can be found on Zero Waste Scotland's website. That study showed that an increase in the top rate of tax of between zero and £15 would create little

movement but increases of more than £15 would see significant amounts of waste flowing to England. I hope that that gives members some sense of the variables that are involved in tax levels that might drive waste tourism.

**Gavin Brown:** I have read the Government's response to the committee's report and looked though the report to which the cabinet secretary referred. The difficulty with that report is that the three primary things that were modelled were to maintain the exact status quo, to have the status quo with the non-self-assessment model and to have no landfill tax whatsoever. Those three things seem not to distinguish terribly much between rates. I wonder whether something else could be published on that.

**John Swinney:** I will explore it again, but I have just said to the Parliament that the research that the Government commissioned said that the variability would essentially exist above £15. I am not sure what more information the Parliament would require on that. It is a pretty direct answer to the points that have been raised.

Thirdly, members asked about the OBR estimates on landfill tax. Mr Chisholm—fairly, I think—reflected my observation on the estimates, which I have found inexplicable. The OBR has revised down its estimates for 2016-17 by 33 per cent. Frankly, that estimate is a fat lot of use. I confirm to the Parliament my intention to establish a facility within Scotland to enable us to assess the predictions on the various taxes for which we will be responsible. I am looking carefully at what the Finance Committee considers on the question, and I will take decisions in that respect in advance of setting the tax rates in 2014.

A substantial amount of the debate concentrated on the landfill communities fund. There are three elements to that discussion. First, on the administration, the organisation and the supervisory burden, I have been clear to the Parliament that I think that the existing arrangements are too cumbersome. Whatever we put in place, which will be a Scottish model, will be a great deal more efficient and administratively straightforward.

Secondly, there was a call for there to be wider scrutiny of some of the arrangements that are put in place. I will certainly reflect on that in considering how we take forward the administrative arrangements.

However, the heart of the debate relates to whether the 10-mile radius should be applied or whether there should be a broader reach for proposals. I thought that Jenny Marra's speech was a bit muddled on the question. She said that she whole-heartedly agreed with Michael McMahon and then argued for flexibility, which

made it a little bit difficult to work out exactly where she was going on the point.

**Michael McMahon:** Perhaps I can clarify the matter. There are two distinct aspects to the issue, one of which is the distance. It is clear that, in some instances, the 10-mile radius can be too restrictive. The other aspect is the identified individual projects, which would be Scotland-wide and would take money from the local communities to areas of Scotland that are not impacted by landfill in any way. Jenny Marra and I agree that, although the 10-mile radius could be flexible, we must be very careful if we start to take money from local communities to spread it across the rest of Scotland.

**John Swinney:** I have a question for Mr McMahon. Why does he think that projects that take place in other parts of Scotland do not take place in communities? I do not understand what subtle distinction is being made. I would be happy to give way to Mr McMahon again if he could address how projects that happen in other parts of the country do not happen in communities.

**Michael McMahon:** The distinction is not subtle at all. The projects happen predominantly in the local communities and the 10-mile radius protects the impact on those local communities. If we take money out of those communities to put into Scotland-wide projects, that will reduce the amount of money that is available to the communities that are most affected.

**John Swinney:** With the greatest respect to Mr McMahon, who cares passionately about the issue, that did not sound like a clear distinction to me. I understand—[*Interruption.*]

**The Deputy Presiding Officer:** Order, please.

**John Swinney:** I understand the issues that are involved and I am keen to come to some agreement about how we can proceed. I will, therefore, open up discussions with Mr McMahon and we can perhaps explore those issues more directly to see how we can address them most effectively. The Government has consulted stakeholders extensively and we have received a range of views on the issues, on which we will reflect carefully.

The final area that I will address is illegal dumping. There has been a broad welcome in Parliament for the approach that the Government is taking and the extra provision that we are putting in place. I want to ensure that SEPA takes an effective approach to tackling the issue. Gavin Brown asked whether we will allocate more resources to SEPA to enable it to undertake that work, but SEPA has a commendable record of having improved and extended its performance without asking the Government for more resources. I applaud SEPA for the way in which it

has organised its priorities and its approach to delivering a very efficient and effective assessment mechanism at the local level. I do not think that we should automatically decide that more resources are required to enable organisations to fulfil these functions. Any resources that are generated by the landfill tax will go to the Scottish consolidated fund, from which we allocate resources to different public service priorities.

In closing, I reflect on the constitutional significance of the bill that we are wrestling with today. The bill gives the Parliament wider financial responsibilities, and that is welcome. Iain Gray argued that the Parliament is acquiring more powers as the years go by. I felt that Mr Gray was almost on the verge of expressing support for the Government's position and that he had come to the view that it was necessary for the Parliament to acquire the full range of financial powers. I did not find particularly compelling his argument that because, since 1999, we have acquired more powers over transport, the Scottish rate of income tax, the landfill tax and the land and buildings transaction tax we should stop acquiring powers. This Government is about acquiring powers to enable us to tackle the issues that matter to the people of our country. If Mr Gray is coming round to our view, we very much welcome him to the strong body of opinion that realises that we need the full range of powers to deal with the issues.

The point that Stewart Stevenson made is absolutely correct: everybody now agrees that the receipts from the landfill tax will decline over time. I have furnished Parliament with my view of the extent of that decline. The challenge for Parliament is to effectively exercise and utilise all our powers to ensure that, while that happens, we are able to sustain investment in public expenditure. For me, that is the simple explanation why we need the full range of financial powers rather than just the limited financial powers that we are acquiring under the bill, which I look forward to supporting at decision time.

## Landfill Tax (Scotland) Bill: Financial Resolution

16:59

### **The Deputy Presiding Officer (Elaine Smith):**

The next item of business is consideration of motion S4M-07167, in the name of John Swinney, on the financial resolution for the Landfill Tax (Scotland) Bill.

I call on the cabinet secretary to move the motion.

*Motion moved,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Landfill Tax (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.—[*John Swinney.*]

**The Deputy Presiding Officer:** The question on that motion will be put at decision time.

## Victims and Witnesses (Scotland) Bill: Financial Resolution

17:00

**The Deputy Presiding Officer (Elaine Smith):** The next item of business is consideration of motion S4M-08039, in the name of John Swinney, on the financial resolution for the Victims and Witnesses (Scotland) Bill.

I call on the cabinet secretary to move the motion.

*Motion moved,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Victims and Witnesses (Scotland) Bill, agrees to any charge or payment in relation to which Rule 9.12.4 of the Parliament's Standing Orders applies arising in consequence of the Act.—[*John Swinney.*]

**The Deputy Presiding Officer:** The question on that motion will be put at decision time.

## Decision Time

17:00

**The Deputy Presiding Officer (Elaine Smith):** There are three questions to be put as a result of today's business.

The first question is, that motion S4M-08040, in the name of John Swinney, on the Landfill Tax (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament agrees to the general principles of the Landfill Tax (Scotland) Bill.

**The Deputy Presiding Officer:** The next question is, that motion S4M-07167, in the name of John Swinney, on the financial resolution for the Landfill Tax (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Landfill Tax (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

**The Deputy Presiding Officer:** The final question is, that motion S4M-08039, in the name of John Swinney, on the financial resolution for the Victims and Witnesses (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Victims and Witnesses (Scotland) Bill, agrees to any charge or payment in relation to which Rule 9.12.4 of the Parliament's Standing Orders applies arising in consequence of the Act.

## Strict Liability

### **The Deputy Presiding Officer (John Scott):**

The final item of business is a members' business debate on motion S4M-07934, in the name of Alison Johnstone, on strict liability. The debate will be concluded without any question being put.

#### *Motion debated,*

That the Parliament believes that the number of fatalities and injuries to pedestrians and cyclists on Scotland's roads, including in the Lothian region, is unacceptably high; recognises that the Scottish Government has funded a number of national cycle safety initiatives; notes that versions of a strict liability rule exist in the civil law of many European countries; notes that a number of walking and cycling organisations support the introduction of such a law in Scotland; understands that a petition by Cycle Law Scotland on this topic has secured nearly 5,000 signatures; considers that a stricter liability rule could have positive benefits for the safety of more vulnerable road users as part of a package of measures, and would welcome further debate on this proposal.

17:02

**Alison Johnstone (Lothian) (Green):** I feel privileged to be able to raise the issue of strict liability in the chamber and to contribute to the debate on stricter liability for our roads. I thank the members who signed my motion to enable the debate to take place and those who are in the chamber this evening.

Road safety is an important issue, because we all understand the benefits—indeed, the necessity—of more people, young and old, walking and cycling whenever possible. Cycling and walking are not niche activities—they are for all—and those who understand the positive impacts that active travel can have on the health of our population and our economy do not want Scotland to miss out.

At 1 o'clock tomorrow, prompted by Stop Climate Chaos Scotland, hundreds of people will gather outside the Scottish Government offices at St Andrew's house to call on the Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney, to double investment in walking and cycling from the current level of 1 per cent of the transport budget. They will do so because, although the benefits of increasing the number of folk who walk and cycle are numerous, current levels of investment keep us from realising them. I will be at St Andrew's house tomorrow, because I believe that investment in such activities has many positive environmental, social and economic impacts. We have the cost benefit analyses to support that.

I also believe that the concept of stricter liability in Scottish civil law, which we are debating this evening, has the potential to improve the safety of

pedestrians and cyclists, and to get more people active. I am not alone: Spokes, CTC Scotland, Sustrans Scotland, pedal on Parliament, Scott and Jenny Hastings, the Andrew Cyclist Charitable Trust and Scottish Cycling, among many others, would like the law of liability on the road to be changed to mirror European legislation that places the onus of responsibility on the least vulnerable.

We know that people do not cycle because they do not feel safe: 88 per cent of respondents to the cycle action plan for Scotland said that they would like to cycle more often, but many are deterred by traffic speed, proximity and volume. Those are real fears, because 12 cyclists have died on our roads already this year, despite a background of declining casualty figures for other modes of transport. Last week, following the release of Transport Scotland figures, a national newspaper headline proclaimed that Scotland is the deadliest place to go for a walk. There is a real need to make our roads safer for vulnerable groups and to ensure that they feel safe, too, within a culture of mutual respect.

Stricter liability is not a magic remedy, but I believe that it is an important part of the jigsaw; infrastructure, cycle training and driver awareness raising are vitally important, too. Sharing road space with much larger vehicles is the norm for many pedestrians and cyclists, but stricter liability is an inexpensive change that we can make now to help make the transition to a cycle and walk-friendly nation; it is a tool to make behaviour change.

Cycle Law Scotland is mentioned in my motion and I thank it for the briefing that it provided for the debate. What it and the 5,000-plus people who have signed its petition propose for most situations is presumed liability in road accidents. That concept simply shifts the onus of proof from the vulnerable to the powerful so that, if a cyclist is injured in a collision with a motor vehicle, the motorist will be liable for the cyclist's injuries unless the motorist can prove that the injuries were caused or contributed to by fault on the part of the cyclist.

**Sandra White (Glasgow Kelvin) (SNP):** I have listened carefully to what the member has said and I have looked at the issue. She referred to liability and education, but I draw her attention to people in my constituency who produced a petition and have spoken to me regarding cyclists who go on to pavements and are a danger to pedestrians and cyclists, and who are not educated about using the road. I would like to see more emphasis put on those issues as well.

**Alison Johnstone:** I accept the member's points. The highway code must be adhered to by all road users. Cyclists are not immune from

ensuring that their behaviour is as good as it should be in that regard.

Stricter liability would not give cyclists immunity, because they would still have their obligation to ride in a safe and proper manner and in accordance with the rules of the highway code. If they did not follow the rules, it could easily be argued that they had contributed to their own injuries and therefore shared liability or, indeed, were wholly liable.

Stricter liability would not affect the important concept of being innocent until proven guilty, which is central to our criminal law but not civil law. In fact, stricter liability already exists in Scotland in consumer product regulations, dangerous animal laws and workplace regulations. Cycle Law Scotland's proposals would simplify and speed up the claims made when accidents happen and shift the burden of proof to the driver of the more powerful vehicle.

As a city councillor in Edinburgh, I was contacted by an elderly man who was involved in a collision with a cyclist on Bruntsfield links. If stricter liability existed in civil law in Scotland, the cyclist would be liable for the injuries caused, whereas we currently have a situation whereby both parties seek to prove that the other is at fault.

What happens elsewhere in the world? The situation here in Scotland is unusual. In Europe, only Malta, Ireland, Romania, Cyprus and the United Kingdom have no form of strict or presumed liability in road accidents involving vulnerable road users. Every other country does have that, which suggests that the proposed change is hardly a drastic or radical move.

**Maureen Watt (Aberdeen South and North Kincardine) (SNP):** I have not been called to speak in the debate, but I have done some background work on the issue. Can the member tell us which countries that have strict liability have better safety records for cyclists? It seems to me that there is no correlation between having a strict liability law and safer highways for cyclists.

**Alison Johnstone:** It is fair to say that the Government has produced some statistics, but the desk-based research from Transport Scotland was fairly limited in scope. It did not involve speaking to anyone in a nation that has strict liability or seeking a comprehensive overview of the system's impact for pedestrians and cyclists. Perhaps the minister could address that in his closing speech.

It is important to say that we will not change the world overnight with the stricter liability policy alone; it is part of a mix of measures and part of the safer roads culture jigsaw that we need to bring about for a walking and cycling nation in

which vulnerable road users and pedestrians are protected and people feel safer on the roads.

Changes to civil law to improve road safety must not be off the table at this early stage in the debate. I am interested to hear the minister's response to the speeches. I urge the Government to reconsider its opposition to the idea and to take an approach of openness, so that the idea can continue to be debated.

A step change in road safety will come from redesigning our roads and junctions so that they prioritise pedestrians and cyclists, from proper on-road cycle training and from a culture of mutual respect and tolerance on the shared space. Stricter liability would contribute to a better culture on our roads, in which vulnerable users are better protected.

17:10

**Rob Gibson (Caithness, Sutherland and Ross) (SNP):** I congratulate Alison Johnstone on bringing this important debate to the chamber.

I will preface my remarks on my own research by talking about issues that relate to the cycling action plan for Scotland, in which comparisons across countries are made. It might be described as a desktop survey, but it was hindered by differing circumstances, such as different legal approaches to liability, different laws on road speeds, different cycling cultures, different geographies and many other factors that we have been told about. The issue is not as clear cut as it might be. The correlation between accidents and liability is difficult to prove in any of the figures that I have seen.

I am pleased that Alison Johnstone suggests at the end of the motion that

"a stricter liability rule could have positive benefits for the safety of more vulnerable road users".

If stricter liability in Scots law is being discussed, I will be interested in what the minister says. Stricter liability needs to be investigated, because we do not know enough about it yet. The motion also says that stricter liability could be

"part of a package of measures".

As I suggested, other countries have had different rates of development and have different laws. In December 2009, when I and other members of the Transport, Infrastructure and Climate Change Committee attended the climate change conference in Copenhagen, Cathy Peattie and I met the political head of the Danish Cycling Federation and the head of transport at Copenhagen Kommune to discuss such matters.

It was interesting to hear what those people said about the development of cycling. They said that,

when more people cycle, there are fewer accidents proportionately—we would agree with that. They said that cycle lanes encourage people to cycle and are most effective when they are physically raised out of the way of other traffic rather than simply painted with lines on the road. They also said that electric bikes are used on hills there and they encouraged people to use them here.

Traffic experiments to make people aware of cycling were seen in Copenhagen as an important approach. Lines on the road to show people where they are supposed to go are used temporarily, to stimulate the debate and encourage people to see cycling in a different light.

The number of deaths and serious injuries among cyclists there has fallen significantly in recent years, but the crossing by cyclists of a line of traffic—in Denmark's case, that involves a left-hand turn; in our case, it is a right-hand turn—is very difficult even for people in Denmark to deal with. Making it possible to separate cyclists and other road users requires more investment than has been applied even in Copenhagen.

In Copenhagen, it is emphasised that, where possible, traffic planning to remove or mitigate conflicts between cyclists and road users is a good idea.

Copenhagen has a culture of innovation in relation to cycling, which I would like to see here. Initiatives include competitions to encourage bicycle sharing, adjusting traffic light cycles to allow cyclists a clear run on busy streets and redesigning local train stations to allow sunken bicycle parks.

Many such measures are part of the measures that we need to look at in the debate. I hope that we will hear from the minister on some of those points, which would strengthen the case for cycling more than the partial way in which stricter liability might strengthen it.

17:15

**Graeme Pearson (South Scotland) (Lab):** I commend Alison Johnstone for achieving a debate that examines the safety of pedestrians and cyclists on Scotland's roads.

The Government quite properly encourages a healthy lifestyle and is keen to encourage cycling and walking on our public byways. That is entirely right and reflects the approach of previous Administrations.

Statistics covering the past 10 years make for dire reading, as the minister will know. The statistics that I obtained show that 88 cyclists were killed in the 10 years to 2012 and 1,408 cyclists were seriously injured during the same period—

and those numbers could be multiplied many times to reach the number of those suffering slight injuries. We are dealing with a serious public safety issue.

I acknowledge that the Government currently spends around £60 million a year examining active travel and infrastructure, and I know that the minister recently announced an additional £20 million to be spent over the next two years. One hopes that that spend will focus primarily on road safety issues and the protection of cyclists and pedestrians. Any increase in funding is a matter for the minister and the Cabinet Secretary for Finance, Employment and Sustainable Growth under the current budgetary arrangements. It will be interesting to hear from the minister what he might achieve in that regard.

Although this has not been directly alluded to, I have discovered that strict liability seems to polarise public opinion. There are those who are very supportive of the concept; equally, a number of people are vehemently against the notion that strict liability should be introduced in Scotland. I understand both opinions.

Like Maureen Watt, I searched the material provided to find a link between the introduction of new legislation and a fall in the number of accidents and injuries; unfortunately, no such link is entirely obvious. I would be interested to hear whether the minister would undertake to achieve a better understanding of the implications for road safety of strict, or stricter, liability, so that a more informed approach could be taken and we could address whether improvements could be achieved.

The motion provides a good linchpin for discussions around safety. It would be useful for the minister to commit the Scottish Government to take matters forward by bringing together key stakeholders and any experts whom he can access with the intention of establishing consensus around future recommendations. That would allow us to achieve consensus in the chamber on whether legislation was necessary, desirable and effective and would create a means of providing safety for those people who seek to use our public highways for walking or cycling.

Importantly, there is no doubt that the minister and his Government are going some way to encourage the development of cycling across Scotland, about which they are very enthusiastic. However, they have a real responsibility to take on board the issues that the motion raises, with a view to pulling together a positive way of taking them forward and coming up with a better way for the future.

**The Deputy Presiding Officer:** Because of the number of members who wish to speak in the



debate, I am minded to accept a motion under rule 8.14.3 to extend the debate by up to 30 minutes.

*Motion moved,*

That, under Rule 8.14.3, the debate be extended by up to 30 minutes.—[*Alison Johnstone.*]

*Motion agreed to.*

17:20

**Margaret Mitchell (Central Scotland) (Con):** I begin by thanking Alison Johnstone for bringing the debate to the chamber. As the motion states, the number of fatalities and injuries to pedestrians and cyclists on our roads is unacceptable. According to statistics from Transport Scotland, 898 cyclists were injured on our roads in 2012, which represents a 9 per cent increase on the 2011 figure. There were also nine fatalities last year. Furthermore, although the same statistics revealed a welcome 5 per cent decrease in the number of pedestrian casualties in 2012, a shocking 54 pedestrians were killed and 1,950 injured. Given those worrying injuries and worse fatalities, it is clear that more must be done to improve road safety, particularly for the most vulnerable users. On that, there is no division of opinion in the chamber this evening.

The thorny question is around what should be done. Strict liability has been described as a road safety measure, but I do not accept that the introduction of strict liability will necessarily make roads safer or lead to fewer accidents. In fact, it could encourage irresponsible cyclists—despite the hierarchy of road users, cyclists are perfectly capable of causing a multiple pile-up—to be even more irresponsible, secure in the knowledge that the presumption of fault will lie with the driver.

**Alison Johnstone:** The member is talking about presumed liability, but cyclists are not immune from the requirement to behave responsibly and properly on the road. If a cyclist is found to be at fault when a case is discussed, they will be found to be at fault.

**Margaret Mitchell:** I understand the member's point, but I am talking about the irresponsible cyclist who has little regard for road users, and I rather feel that strict liability would send them the wrong message.

Strict liability places the onus on drivers to prove that they are not responsible or at fault, rather than there being an assumption that both parties are innocent of fault until fault is otherwise proven. That imposes an unacceptable and unjustifiable pressure on drivers who might not be able to prove that they are not responsible for an incident. There are therefore unintended and adverse consequences associated with the introduction of strict liability.

A presumption that drivers are liable if they are involved in an accident with a cyclist is not likely to encourage the mutual respect that should be present between road users. It might even make what is, in some cases, an antagonistic relationship worse. The introduction of strict liability will not change the behaviour of the irresponsible drivers on our roads or encourage safer driving among those who already have no thought for other road users and who cause accidents.

All road users should be held equally responsible for road safety and consequently equally potentially liable for an accident. That basic overriding principle should not be deviated from merely to bring Scotland and the UK into line with the rest of Europe, regardless of the assertions that the introduction of strict liability in Denmark and Holland has resulted in a decrease in the number of accidents.

To make roads safer, especially for cyclists and pedestrians who are more vulnerable, all road users must be encouraged to act responsibly. Rather than debate the introduction of strict liability, therefore, we should concentrate on other measures to achieve that objective, such as reducing the speed limit to 20mph in residential areas, increasing enforcement in relation to cyclists and drivers who break the law, delivering better road design with dedicated cycle lanes, and undertaking more education of and awareness raising for cyclists and drivers so that they have a better understanding and appreciation of each other's needs on the road.

There are responsible and considerate drivers and cyclists on the road. We need to tackle the irresponsible road users in an effort to change their unacceptable and dangerous behaviour rather than focus on the introduction of strict liability, with the adverse consequences that are associated with it.

17:25

**Kevin Stewart (Aberdeen Central) (SNP):** I apologise to members as I have to leave early to attend other parliamentary business at 5.30. Colleagues can be assured that I will look at all the speeches in the *Official Report*.

I congratulate Alison Johnstone on bringing the debate to Parliament. Her motion states that the Parliament

“would welcome further debate on this proposal.”

I too would like to see further debate on the issue.

Last night, I arrived in Edinburgh at about 9 o'clock and, as we all know, it gets a little bit dark then—it is that time of year. Tiredness got the better of me and I took a taxi from Waverley

station to the Canonmills area. On that short journey, I spotted two cyclists on the road without lights, and three pedestrians crossed the road in front of the cab in what I thought was a rather dangerous manner. I am not a driver but I am often a passenger, and such behaviour seems to be becoming the norm.

The other side of the coin, of course, is that I often see drivers acting dangerously in relation to pedestrians and cyclists. I truly believe that common courtesy and common sense need to be put into practice by all who use our highways and pavements. Whether they are pedestrians, cyclists or drivers, people should always be aware of others and treat them with respect.

The debate is around the civil law, yet every single constituent who contacted me today about the debate has brought up a criminal matter. In particular, people raised the tragic death of Audrey Fyfe and the related court case. Many of my constituents believe that the perpetrator got off far too lightly and that the sentence was far too lenient. I share my constituents' views: at the end of the day, if somebody killed two folk with a shotgun, they would be unlikely ever to get a shotgun licence again, so why would a driver who had killed somebody get a driving licence again?

The problem is that most of the difficulties lie with the criminal law and, unfortunately, the Parliament does not control all aspects of road traffic legislation.

**Patrick Harvie (Glasgow) (Green):** I hope that the member recognises that, in raising the issue, the objective is partly to contribute to a positive culture change on our roads as regards the relationship between drivers, cyclists and pedestrians. It does not need to impact on sentencing—if we can address that culture change, we may see fewer such cases in future.

**Kevin Stewart:** I thank Mr Harvie for that contribution. I hope that there can be a positive change and that we see from everyone the common sense and courtesy that I mentioned. However, a lot of the heat around the debate comes not from the civil law but from the criminal aspects of the issue. I have had mail from quite a few constituents in which the Fyfe case featured very highly indeed. I do not think that we can divorce the civil aspects from the criminal aspects. That is why I say that this Parliament should have all the powers over road traffic legislation.

I thank Alison Johnstone once again for bringing the matter to Parliament. In my opinion, this is the start of a debate about not only the civil aspects but the criminal aspects.

17:29

**Kezia Dugdale (Lothian) (Lab):** As others have done, I congratulate Alison Johnstone on securing the debate. At the outset, I acknowledge that I do not have the cycling credentials of Alison Johnstone or of my colleague Sarah Boyack. Back in 2007, when I was Sarah Boyack's election agent, it used to infuriate me that she insisted not only on cycling to each engagement, but on doing so without a helmet. She would try to convince me that she was actually safer without a helmet, but I was never convinced. My attitudes to cycling have changed over the years—I will come on to that in a second—but it is important to acknowledge Alison Johnstone's and Sarah Boyack's long-standing interest in cycling as a policy issue.

Margaret Mitchell and Rob Gibson mentioned Copenhagen. While I was exploring that fantastic city earlier this year, I found myself in the middle of a march, but could not work out what it was about because all the signs were in Danish. I followed the march round to the Christiansborg palace, by which point I had worked out—I thought—that the demonstration must have been the Danish equivalent of pedal on Parliament. However, after stopping some people on the march to ask what they were campaigning for, it turned out that all the teachers were locked out and were striking. It happened that they all had bicycles because that is how intrinsic cycling is to daily life in Denmark. That taught me that what we really need in Scotland is a cultural shift, so that cycling becomes something that the majority of people do. However, we are a long way from that point.

Frankly, it is people like me who need to be persuaded that cycling is a safe activity. After this year's pedal on Parliament, I purchased a bike and I now cycle fairly regularly, but I cycle only to two places. One of those is Portobello beach, which I can cycle to from my house entirely off road, thanks to the Restalrig railway path and all the public investment that has gone into off-road cycling paths in Edinburgh. The other is my gym, for which I need to cross only one main road, which I can do by pushing the bike over the street. There is no way I would cycle to work, because that would involve cycling up Easter Road in the morning at peak times; it is just too dangerous. Until I can be persuaded that cycling is safe, or we invest in the infrastructure such that cycling becomes obviously safe for everyone, I do not think that we will meet that challenge.

I pay tribute to all the cycling campaigners who regularly contact MSPs on various issues relating to the cycling agenda. Cycling is probably the single biggest issue in my inbox and is paralleled only by equal marriage in terms of the strength of feeling and regularity of contributions that I receive. People have written to me regularly about

active travel for a number of years, but many are now writing about strict liability. However, I get the sense that some people within the cycling community are not utterly convinced that strict liability is the answer; rather, they see a need to speak out about the sense of anger and frustration within the cycling community about the number of accidents and deaths. Too many people find themselves at risk when trying to cycle to their work because our roads just are not safe.

There has also been some legitimate criticism of the Government's plans around the nice way code campaign, on which I would like to hear Keith Brown's comments tonight. There is a sense that some of the things that the nice way code has been encouraging cyclists to do actually put them in greater danger. Unless we get a sense of community among cyclists, drivers and all other users of our highways system, we will not get to the critical point that is necessary to drive cultural change.

I conclude by saying that I am grateful to a couple of my constituents, who are avid cyclists, who have offered me free cycling lessons to try to improve my cycling confidence. I may well take them up on that offer, but I think that, first and foremost, we need to have a serious conversation about what safety on our roads means. I welcome the debate and, once again, I congratulate Alison Johnstone on bringing it to the chamber.

17:33

**Jim Eadie (Edinburgh Southern) (SNP):** This is an important debate, which I congratulate Alison Johnstone on bringing before Parliament this evening. As an early co-signatory to Ms Johnstone's motion, I am pleased to add my voice to those of colleagues of all parties who believe that now is the time to have a debate not just on cycling safety generally, but on the role that stricter liability could play. Stricter liability may be a matter concerning the civil law, but I stress that it is not an abstract or arcane subject, because it concerns the safety of our fellow citizens, a number of whom—let us not forget—have sadly lost their lives in recent years. As such, there can be no more important subject to come before us.

I acknowledge that there is no consensus on the issue at the moment and I recognise that the law could be changed only following extensive consultation, active engagement with all stakeholders and a full and frank debate about what any proposed change would mean in practice for cyclists, pedestrians and road users.

However, I believe that the basic proposition behind stricter liability is a fair and sound principle on which to proceed. It is the legal norm in many European countries including Denmark, France

and the Netherlands, all of which have a record on cycling that we in Scotland would wish to emulate.

The Scottish Government maintains that the "data does not supply robust evidence of a direct ... link between strict liability legislation"

and the statistics on those who are killed or seriously injured. Maureen Watt pointed that out in her brief intervention. However, the fact remains that as part of a series of measures, such as 20mph zones in residential areas and more awareness training—points that Margaret Mitchell made—strict liability legislation has helped to initiate a step change in the culture towards cycling and cyclists in the countries that have adopted it.

Part of the context for the debate is the Scottish Government's ambitious target to ensure that 10 per cent of all journeys are made by bicycle by 2020. That ambition is at the centre of the Government's "Cycling Action Plan for Scotland 2013" and is embedded in a range of Government policies. Spokes, the Lothians cycle campaign, put it rather well when it stated:

"We believe that the single most essential measure for achieving this goal"—

that is, the target of 10 per cent of journeys by bicycle—is to ensure

"that road conditions are, and feel, safe and welcoming for making everyday trips to work, shops, school and leisure by bike. In this way more cycle use should be encouraged, whilst at the same time reducing cycle casualty rates—and ideally absolute casualty numbers."

I know that the Minister for Transport and Veterans is actively engaged in the safety agenda. In March 2012, he said:

"Scotland's roads are perfectly safe when everyone uses them responsibly and with respect for each other."

That is precisely what the debate seeks to highlight and what I think stricter liability could contribute to.

We would do well to reflect on the experience of other European countries and to take on board the views of our constituents. A number of my constituents have contacted me in recent days to make the following points: that stricter liability in civil law is the proper approach for a mature socially conscious nation because it addresses the unacceptable impact of the current system on our most vulnerable road users; that stricter liability will help to promote the idea of Scotland as a cycle-friendly nation and will show that Scotland is leading the UK on cycle safety; that the UK is one of only five countries in Europe that do not operate a system of strict liability, as Alison Johnstone said; and that stricter liability helps to build a culture of greater respect among road users, as is seen on the continent.

The tenet of protecting the vulnerable by way of stricter liability is not new to Scots law and can be found in consumer protection regulations and regulations concerning control of dangerous animals. I therefore believe that it has an important contribution to make. We have an opportunity to extend and develop that long-standing principle and to serve and protect our cyclists and pedestrians better. Across Europe, stricter liability is an accepted state of affairs. Although, as Rob Gibson said, there is variation in how the regulations are applied in individual countries, reflecting the individual cultures of those countries, it is seen as a key element within a package of measures for encouraging safer road use for cyclists.

17:38

**Claudia Beamish (South Scotland) (Lab):** As the deputy convener of the cross-party group in the Scottish Parliament on cycling, and as one who attempts to cycle in Edinburgh—not as much as I should, but I try—I welcome this members' business debate, which has been brought to the Parliament by Alison Johnstone. One of the valuable things that a members' business debate does is get us asking questions in the lead-up to it. It focuses our minds as briefings come in, and it forces us to prioritise an issue among many others in our busy schedules. Over time, we have had an interest in the issue that we are discussing today. I hope that we will also learn from the debate, as I am doing. When a change of the law is mooted, as in this case, a members' business debate perhaps forces us and our parties to work towards a position on the issue. For all those reasons, I thank Alison Johnstone.

Before I come to the issue of presumed or strict liability, I want to make some remarks about active travel and cycling more broadly in the context of climate change targets, congestion and tourism. If we are to meet our climate change targets under the Climate Change (Scotland) Act 2009, we should do so in ways that benefit people on all incomes and in all parts of Scotland. As I am sure all members will agree, modal shift to public transport such as trains and to active travel is essential. Alison Johnstone's motion stresses that

"a stricter liability rule could have positive benefits for the safety of more vulnerable road users as part of a package of measures".

I recently met a constituent who cycles to work in Dumfries. Because of that, theirs is a one-car family. However, roads really need to be safer for cyclists—and, indeed, pedestrians—as vulnerable users, if we are seriously to implement the active travel plans that the Scottish Government has.

Rural links are also important. There are many parts of South Scotland where people could not

possibly cycle, even between towns and villages. That is an important issue and we are working on it on the old Wishaw road between two villages in my constituency.

Further, as a former primary school teacher, I am keenly aware of the opportunities for pupils to cycle to school. However, poor maintenance and difficulties with sections of road around schools make that pretty scary for pupils and mean that parents and families do not want to commit to it. Some people would not like to make short journeys to shops or evening classes just down the road on a bike, either.

In the cross-party group on cycling, Alison Johnstone, Jim Eadie and I have raised the possibility of an award for different models of infrastructure and segregated cycle lanes, which we have highlighted to the minister. That is important, but as one constituent highlighted to me in the lead-up to the debate, segregated cycle lanes are—of course—not possible on all roads.

In the lead-up to the debate, some people have also said to me that some cyclists are casual about maintaining equipment and have suggested MOTs for cyclists. Others—all motorists, with the exception of one—have said that they saw this or that pushy cyclist doing something casual or dangerous but, as I replied to them, there are, for sure, also many dangerous motorists on our roads.

Lighting is an issue. On leaving the last CPG on cycling and going back to my flat, I saw two cyclists without lights wearing dark clothing; it was lucky that I saw them.

Last summer, I was pleased to be asked by Cycle Law Scotland to give out cycle helmets at a primary school in Galashiels. Many a beaming child came up to receive their helmet, but I wondered for how long they would be wearing them.

There are many issues around cycling that need to be addressed, but none of them negates the necessity for us to have, at least, a real assessment of stricter liability.

Last week, I was on holiday in France. Before that, I had thought that stricter liability was okay for Copenhagen in Denmark or for Holland, but although France does not have massive infrastructure for cycling, there has been a stricter liability law there since 1986 and I understand that, since its introduction, fatalities and injuries have decreased greatly.

Cyclists have a right to be there—their right is equal to that of other road users. They are vulnerable. Responsible cyclists deserve the protection that stricter liability might provide. I hope that my party will consider that as a

possibility, although there is a lot more assessment to be done.

17:43

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** I, too, congratulate Alison Johnstone. Of course we say yes to there being too many fatalities and serious accidents, yes to Government initiatives and yes to improving safety for cyclists on and off our roads, but I say no to strict liability. Or is it strict liability? I will be pernickety. We are moving from strict liability to stricter liability to presumption of liability.

My understanding is that strict liability means that there is no defence. It is used in product liability—for instance, if somebody opens a can of beans and there is a bit of a mouse inside. It does not say that there is a bit of a mouse on the ingredients in the can of beans. That is strict liability. I think that Alison Johnstone is referring to a presumption of liability. If we are going to talk about the law, we should be specific. We have a muddle of terms being used.

I also say to Kevin Stewart, who has left, that the sentencing of someone in a criminal case is based on the degree of culpability, not the consequences of what they do. Somebody could run into a lamp post without due care and attention and kill nobody or do the same and kill somebody. The consequences are different but the culpability remains the same.

We are thinking of trying to shift the onus from the facts and circumstances of every case as to who or what is liable. We seem to be forgetting contributory negligence, which is often split 50:50 or 75:25. How will that be worked in?

Let us examine the principle. If we extend it to a collision between a cyclist and a pedestrian, the presumption of liability would be on the cyclist. Why not go further? Why not extend it to a collision between a Mini and a minibus, a minibus and a Megabus, or a panda car and a pantehnicon? What principle is in operation? This is a serious issue. Is it about the greater power of the vehicle?

**Alison Johnstone:** Just to be clear, we are not talking about different sizes of motorised vehicle; we are talking about protecting the most vulnerable road user. To be absolutely clear, we are talking about a pedestrian who is in a collision with a cyclist or a cyclist who is in a collision with a motorist, not one car in a collision with a smaller vehicle.

**Christine Grahame:** I am talking about a principle in law. The principle here is that, in a collision between a more powerful user of the road

and a less powerful user of the road, the presumption goes in favour of the less powerful. If that is the principle in operation, we should look at applying it elsewhere. Scots law operates on principle.

By the way, Cycle Law's briefing referred to UK law. Much of the law in Scotland on delict and negligence is Scots law, which is very different indeed.

Let us take a multiple collision. A car shunts into the back of another car, which shunts into a cyclist, who shunts into another cyclist, who shunts into a pedestrian. Where does the presumption land there? Where is the presumption of liability in that particular incident? Answers on a postcard.

Let us think about the other unintended consequences. I am just testing the principle. All motorists carry compulsory insurance. If we introduce a presumption that the cyclist is not liable and the presumption of liability falls on the user of the road—the motorist or the lorry driver—insurance premiums will rise because all these issues will be brought to the insurance companies to deal with. Will it therefore follow that all cyclists will require to have third-party insurance so that we can have a knock-for-knock negotiation, as happens at the moment?

All I am doing is raising the issues. Having been knocked off my bike by a motorist, I have no difficult whatsoever arguing about the lack of safety on the road, whether in urban areas or in rural areas, where one can turn a corner and find cyclists riding four abreast and one has to watch what one is doing. That is not the issue. The issue is about changing the law and the consequences of doing so to the law and to insurance.

17:47

**Patrick Harvie (Glasgow) (Green):** I add my congratulations to my colleague Alison Johnstone on securing the debate. I am very pleased to have heard so many positive comments from around the chamber, notwithstanding the previous speech, which it seemed to me was really expressing frustration at the fact that we have not come here with a single, specific, fully developed proposal but, rather, that we are opening a debate. Alison Johnstone's motion clearly seeks further debate on this general area.

Over the years, I have taken part in many debates on active travel—walking and cycling—and at times I have felt just a tiny wee bit of a fraud. Although I was a regular cyclist as a student in Manchester, when I cycled up Oxford Road and Wilmslow Road, which at the time was the busiest bus route in Europe—it felt pretty dangerous—in Glasgow I was frankly scared to cycle.

I did not want to cycle in Glasgow because I saw the state of the roads, with the potholes forcing cyclists in and out and in and out in busy roads; the lamentable state of cycling provision, such as the appallingly inadequate cycle lanes, some of which simply disappear in the middle of the road for no apparent reason; and the behaviour of some motorists. However, this summer I took the plunge and swapped my bus pass for a bike and I could not have been happier since. It is a hugely positive change in the way that I get about, and I will count it as an unhappy day if I find myself still reliant on the services of First Glasgow.

The scenes that I have experienced are mixed. I have seen cyclists occasionally shooting a red light or cycling somewhere they should not, including the pavement. To be honest, I understand that they sometimes do that because they would not feel safe otherwise; they do it to maximise their safety because of the state of the provision that has been made available to them, not to try to pose a threat to others or because they are being reckless with the safety of others.

Far more often than seeing a cyclist shooting a red light, cycling on a pavement or cycling at night without lights, I see motorists trying to get through lights before or just after they have changed—trying to take the last little opportunity to shoot through lights—cutting each other up, or cutting up cyclists. My personal favourite is motorists' failure to indicate. That is so common in Glasgow that, to be frank, one does not pay attention to the little blinking lights, because they will not say what the vehicle will do. There is no correlation between what people use their indicators for and which direction the vehicle will move in.

There is a real need to address the responsibility that people feel. The responsibility that somebody feels when they are moving a tonne or two of metal through the streets must be substantially greater than the responsibility that somebody feels when they are moving a couple of tens of kilos of metal through the streets. Moving a bicycle through the streets at a modest pace is still a significant thing to do and it bears a significant responsibility, but it is clear that the responsibility of somebody who is driving a couple of tonnes of metal through the streets at a much higher velocity must be greater.

Unlike Margaret Mitchell, I do not think that an approach to stricter liability of whatever formulation we end up debating would suddenly encourage cyclists to be much more irresponsible. The logic of that, because of the hierarchical nature of the issue, is that it would encourage lots of pedestrians to run all over the roads and cause accidents. I think that the approach would send a signal to people that cycling matters, that cyclists'

safety matters, and that every road user is responsible for their impact on other people.

The change would do one crucial thing, which is one of the most important things that we can do to make cycling safer in Scotland: it would get more cyclists out on the roads. It would normalise cycling and make it impossible for any driver to regard cyclists as an inconvenient and unnecessary intrusion into their private use of road space.

17:52

**John Lamont (Ettrick, Roxburgh and Berwickshire) (Con):** I, too, congratulate Alison Johnstone on securing the debate. I was very pleased to have been able to support her motion.

The debate is absolutely not about cyclists against motorists—for the record, I am both a cyclist and a motorist—but about how the law should protect vulnerable road users and how we can best encourage cycling.

Notwithstanding what we have already heard, Conservatives are actually very pro cycling. The UK Government is investing more in cycling than any previous British Government did, and London, led by Conservative mayor and cycle fanatic Boris Johnson, is very much leading the way in cycling investment in the United Kingdom. By 2015, London will spend more than four times per head on cycling what is spent in Scotland.

We have already heard about the clear benefits of cycling to both cyclists and non-cyclists alike, which I will not repeat. We know that Scots want to cycle. In 2010, the Scottish household survey found that 35 per cent of Scottish households have access to a bike, and the UK has one of the highest numbers of bike sales in Europe. The numbers of people who cycle to work and school are steadily rising, but we continue to have a woeful cycling rate compared with the rest of Europe. The European Union has an average of 7.4 per cent of journeys made by bicycle; in the UK, the figure is just over 1 per cent.

The main barrier to increasing cycle rates is a perception that the activity is dangerous, but that perception is not accurate. The risks of cycling are roughly comparable to those that are faced by pedestrians, and its health benefits vastly outweigh its risks. However, the perception certainly exists. Indeed, just last week, *The Herald* reported that 56 per cent of cyclists and non-cyclists who responded in a poll believed that the roads were unsafe for cycling. One way to change that perception would undoubtedly be to introduce a law of strict liability.

There are missed conceptions about the strict liability.

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

**John Lamont:** I think that I am about to deal with the member's point.

Strict liability would not result in motorists becoming automatically liable; nor would it result in drivers being sent to jail. It would apply only to civil cases and would establish only a presumption that could be disproved in court, which is why I prefer to use the term presumed liability. Importantly, that would apply equally to cyclists in an accident involving them and pedestrians as the more vulnerable road user.

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

**John Lamont:** Presumed liability exists in the vast majority of other European countries without adverse and unintended consequences and in countries with significantly higher cycling usage and better cycling safety than Scotland.

Presumed liability should be considered because there is a good argument that it is fair, it would make our roads safer and it would encourage cycling. It is fair because it acknowledges that there is a clear imbalance of road users, and those driving a vehicle that is capable of causing harm to others should exercise caution. In virtually every collision between a car and vulnerable road user, it will be the pedestrian or the cyclist who is injured. It is therefore reasonable to place a greater burden of proof on the motorist.

I fail to see how anyone who accepts that cyclists have an equal right to be on our roads cannot support the introduction of legal safeguards that address the imbalance. Indeed, careful and observant motorists following the highway code have nothing to fear from the introduction of presumed liability.

I agree with the motion that presumed liability is not a panacea for cycling safety; it can only be one part of a raft of measures. The best way to improve safety is to increase cyclist numbers, and we can do that through proper infrastructure investment, including in junction safety, full segregation and additional cycle parking spaces, as well as in schemes to encourage cycling to work, such as the bike to work scheme. More cyclists on our roads are good for cyclists and non-cyclists alike. That should be an aspiration of this Parliament.

17:57

**Graeme Dey (Angus South) (SNP):** I, like others, congratulate Alison Johnstone on securing the debate. I do not agree with what Cycle Law Scotland is calling for but, like other members, I

recognise the need to arrive at a safer co-existence between the various road users through a package of measures, which to be fair, is what the motion calls for.

Encouraging more people to feel able to get on their bike is important from health and climate change perspectives. However, in seeking that, we must examine in a balanced way the relationship between pedestrians, cyclists and vehicle users. Sadly, the petition to which the motion refers can hardly be described as balanced in its consideration of that relationship.

I am a car user whose very mixed experience of cyclists' conduct on our roads leaves me believing that, although we must consider how we arrive at a better, safer interaction between cyclists and vehicle users, what the petition calls for is wrong-headed.

Claudia Beamish mentioned rural links. The constituency that I represent has a number of paths and lanes placed at the disposal of cyclists that allow proficient and not-so-proficient cyclists to either pursue what is an interest for them, or to commute to and from work relatively safely. As Nigel Don, my North Angus colleague has highlighted previously in the Parliament, there remains scope to connect even better our counties, towns and villages to the benefit of cyclists. However, we still have many instances in which cyclists, vehicle users and pedestrians have common usage of routes and where problems arise.

My most striking and direct personal experience of cyclists has been here in Edinburgh, generally in close proximity to the Parliament, and that experience reaffirms my belief that what is being called for by Cycle Law Scotland ought to be rejected.

A bustling, major city such as Edinburgh must be incredibly intimidating for cyclists, as Kezia Dugdale highlighted. The conduct and attitude of some drivers towards cyclists leaves a great deal to be desired. However, let us be clear: those taking to the roads on bikes are also of very mixed ability and attitude, so to introduce a presumption of liability against motorists involved in incidents with cyclists is—against that backdrop, and unless other measures are taken—unjustifiable. Of course, we need to better protect vulnerable road users, be they on foot or on bike, but surely we must recognise that there are cases in which those vulnerable road users cause the very incidents that lead to their sustaining injuries, yet Cycle Law Scotland wants us to start from the premise that the driver is automatically deemed to be at fault and it is up to them to prove that they were not.

**Alison Johnstone:** Cycle Law Scotland is not talking about automatic liability; it is talking about presumed liability. There is no automatic assumption that the driver is at fault. The approach recognises the vulnerability of some road users. It is inherently dangerous for pedestrians and cyclists to share the road with motorised vehicles, which is why there should be a different approach.

**Graeme Dey:** I take the member's point, but the starting position is a presumption that the driver is in the wrong. I raised that very point with Cycle Law Scotland, which told me that it recognises that a cyclist might be negligent, but it would be up to the motorist to argue that point. I was told that in the case of young or elderly cyclists or pedestrians, the driver would need to establish a degree of recklessness on the part of the injured party. I am not quite sure how that sits in terms of natural justice.

If we are to accept that what the petition calls for is justified, we must believe that cyclists are rarely, if ever, at fault in traffic accidents, when the reality is that the behaviour of cyclists on our roads often leaves much to be desired, just as the behaviour of drivers does. In the course of the past few weeks, for example, on London Road, just a short distance from here, I have twice witnessed a cyclist jumping off the road and on to the pavement to get round a queue of traffic, before diving back on to the carriageway in front of moving vehicles.

Unlike Cycle Law Scotland, however, I do not deem it appropriate to tar one group of road users with the same brush. If we are to get more people cycling safely on our roads, we need to create a culture of respect among the people who use the roads, in which everyone is required to behave responsibly and everyone is held equally to account when they cause injury or damage through carelessness.

I agree with Alison Johnstone that a jigsaw of measures is required to get us to that point. We must take a balanced approach. Measures might include the introduction of a cycling proficiency examination that cyclists of all ages must pass before they take to the roads, and, as Christine Grahame said, a requirement for cyclists to carry third-party liability insurance to cover damage that they are found to be responsible for inflicting on vehicles and pedestrians.

There is a considered debate to be had on the issue. This afternoon's good debate has kicked that off and I look forward to its continuation.

18:01

**Sarah Boyack (Lothian) (Lab):** Sometimes when a member is called to speak at the end of a

debate they feel that everything that could have been said has been said. However, coming in at the end of a debate also enables us to reflect on what other members have said. I thank Alison Johnstone for bringing the debate to the Parliament. It has been a good debate, because it has illustrated the range of views that there is, even among members.

Let us reflect on why the debate has been brought. It has been brought because of the terrible toll of cycling injuries and deaths on our roads, which Graeme Pearson set out at the start of his speech. That is why the petition has been raised. People are looking for a better way to protect cyclists and pedestrians on our roads. That is the motivation and that is where we should start the debate.

Today should be the start of the discussion, not the end. Graeme Pearson suggested that the minister bring together stakeholders to discuss the matter. We talk about investment in our roads and pavements, about trying to get the number of cyclists up and about specific types of route, but we tend not to talk about the wider culture and legal environment in which we use our roads. From that perspective, the debate has been useful. It would be good if the minister could look at research from other countries and consider the impact of different legal environments and frameworks. I am not suggesting that the minister says yes or no today; I ask him to think about how we take the debate forward and consider the issue.

Strict liability is a contentious issue. I have raised it in discussions with people who instantly say yes or no to it. The people who reject the idea do so very stridently. We need to have a broader discussion before we say yes or no, which is why I am grateful to Alison Johnstone for structuring her motion in the way that she did and enabling us to have the debate. The cross-party group on cycling has a particular role in taking the matter forward, but the minister could lead a debate on the issue, in a cross-party way. We will not all agree on the last dot and comma, but we can at least take the debate forward.

For me, anecdotally, our streets feel more confrontational. We know that, statistically, more people are cycling. That is definitely a good thing and we are on the right trajectory. Jim Eadie talked about the Scottish Government's desire for more people to cycle as part of their daily business. However, there are major challenges. Although more and more people are cycling, the changes to our road infrastructure to facilitate that have simply not kept up. That is why the package of measures that Alison Johnstone mentions in her motion is important. We need to look at investment



in our streets and roads, but we also need to look at the culture. It has to be a package.

Sandra White mentioned the pavements issue. It would be useful if the minister was to commission some research on that because—again, anecdotally—I am convinced that more and more people are cycling on pavements and doing so in a way that is not safe. I have heard of pedestrians being injured. When people are in pedestrian mode, it is incredibly irritating for them if someone cycles past them on a narrow pavement. However, that behaviour speaks to the anxiety that led to the petition coming in front of us—the anxiety of cyclists who are worried about their safety on the roads. Patrick Harvie was right. Regular cyclists have good days, but also pretty unpleasant days, when they get into work having had two or three near misses. Even when cyclists are trying to be aware and to cycle in the right way, it is not a guarantee of safety.

It would be useful to have more research—not just on the generality, but research that teases out some of the issues that we have debated tonight. When I cycled to a hospital recently, I found that the route was just not there for cyclists and the environment was very unfriendly. As well as generally improving cycle access, we need to look at key institutions and ask how easy it would be for people to use their bikes to get there, either to work in them or to visit them.

I want to briefly mention the nice way code, which Kezia Dugdale mentioned.

**The Deputy Presiding Officer:** I would be grateful if you would draw to a close, please.

**Sarah Boyack:** It is important to consider how we view cyclists and to make sure that the advice is right. For example, the advice about not riding on the inside of vehicles cuts across a street layout that has cyclists, at a junction, on the left-hand side. It often ends up with cyclists having to overtake a long vehicle, potentially going into oncoming traffic, and then weave back. Nothing annoys bus or lorry drivers more than cyclists cutting back in.

**The Deputy Presiding Officer:** In fairness to others, I would be grateful if you would draw to a close, please.

**Sarah Boyack:** Let us look at the range of issues. It would be really useful if the minister would commit to commissioning more research and arranging more stakeholder involvement, as that would help to take tonight's debate forward.

18:07

**The Minister for Transport and Veterans (Keith Brown):** It has been interesting to hear the diverse views that exist in the Parliament on the

issue. I confirm—as some people doubt it, I am sure—that I take road safety issues very seriously and I agree that one death on Scotland's roads is one too many. We do all that we can, where there is an evidence base to suggest action, to implement measures to reduce road casualty figures in line with our road safety framework and the targets to reduce casualties.

I should first set out the Scottish Government's position on liability in relation to road traffic accidents. In 2010, the "Cycling Action Plan for Scotland" committed Transport Scotland to looking at incidents of killed or seriously injured—KSI—cyclists and to examining the implementation of liability laws in other countries to see whether there was any evidence to suggest that the intervention reduces cycle accidents and fatalities.

As was noted in the refreshed CAPS document that was published in June, we have not been able to establish a robust evidence base that links liability laws to cycling accident rates. The research, which has been circulated and is available via the Scottish Parliament information centre, looked at various countries across Europe and their cycle fatality rates between 1990 and 2010 and compared them with figures for the UK and Scotland.

Comparisons between countries are inevitably hindered, as has been suggested, by the different circumstances in the countries. Each country has a different legal approach to liability as well as different laws on road speeds, different cycling cultures and different geographies, and there are many other factors. As a result, other questions have to be addressed when the evidence is looked at. Between 1990 and 2010, Germany, where strict liability is in place, and Scotland, where it is not, had similar reductions in fatalities. Scotland's fatality rate reduced more than Italy's, despite that country having strict liability legislation in place.

Figures on our reported road casualties for 2012 were published last Wednesday and the headline figures, overall, are the lowest since records began. That is obviously better news than if they were higher. However, we know that we still have a long way to go and we take the approach that one death is too many. We also know that there are continuing concerns to address in respect of pedestrians, cyclists and motorcyclists, although pedestrians have not been mentioned in the debate as much as I expected. Collectively, we must continue to ensure that everyone plays their part to make the roads safer.

Cycle Law Scotland has been lobbying for a change in Scotland's civil laws regarding presumed liability for road traffic accidents. Indeed, its representatives have met Transport Scotland officials twice to discuss the issue, and the Government has not turned a deaf ear to the

representations that have been made. The argument for stricter or presumed liability is that it would raise drivers' awareness of vulnerable road users, thereby making drivers more careful. However, from a road safety point of view, there does not appear to be robust evidence to suggest that the number of road accidents would be reduced if the law were changed in such a way.

As has been said, first by Alison Johnstone, there is no magic bullet to improve cyclist safety. Rather than one intervention, a package of measures must be implemented, as the motion states. We are already delivering better infrastructure—although we know that we have much more to do—as well as the cycling training that Alison Johnstone mentioned and the road safety campaigns. The nice way code has attracted criticism from cycling groups, but it is difficult to change the culture. That does not happen overnight. We have seen, through other social marketing campaigns that have been pursued over time, that it takes time to do that. The code is a good step forward and is not one that the Government just dreamed up—it was drawn up with many cycling groups.

On that point, I have different information from Alison Johnstone. I understand that it is not the case that Sustrans supports the change to which she refers. In fact, a number of other organisations—for example, Living Streets Scotland and Paths for All—are against the change that has been mentioned. Perhaps that is worth investigating further.

John Lamont talked about spend per head of population, but he restricted his comments to the Conservative Party and what Boris Johnson is doing in London. Outside London, the spend per head of population in other parts of England is around £1.50 whereas in Scotland this year it is around £4.00 and will be around £6.00 next year—and that does not include the contributions from local authorities. The fact that we have recognised that there is much more to do is reflected in the increasing levels of investment that are being made.

We are delivering better infrastructure. Kezia Dugdale, who has left the chamber, mentioned Easter Road. One of the officials from Transport Scotland who is sitting at the back of the chamber regularly cycles up and down Easter Road and feels that it is a safe road to cycle. Such things are subjective and depend on people's experiences and perceptions of the environment around them, but other people feel that the road is safe in the circumstances. One of the main infrastructure initiatives that we are delivering, not far from Easter Road, is the Leith Walk initiative. We recently announced support for the City of

Edinburgh Council's initiative to have infrastructure put in there to improve active travel.

I have mentioned the cycling training that we are providing. We are specifically delivering on-road cycling training to improve people's confidence. In the past, training has been delivered in the playground but that is not a real environment for many parents, and as crucial as getting children to feel that it is safe to cycle is getting parents to feel that it is safe for them to cycle.

Claudia Beamish highlighted problems with the roads around schools. Car journeys to school are often short and quite environmentally damaging. However, it is true to say—I am not passing the buck—that 94 per cent of the roads in this country are controlled not by the Scottish Government but by local authorities. We have a responsibility to help them to improve their roads and there have been initiatives in the past such as safer routes to school. Nevertheless, local authorities and schools themselves have a role to play. Claudia Beamish made a good point about the state of the roads, which should be looked after and kept in good condition. Also, during the winter, we can tackle the perception that the roads might be unsafe because of ice or snow. We are looking at that on a cross-portfolio basis and I have met Paul Wheelhouse, Shona Robison and Alasdair Allan a number of times to discuss that very issue.

We are trying to address the three issues on which Alison Johnstone finished her speech: road safety, better infrastructure and campaigns on cycling training and road safety. We are also encouraging local authorities to implement lower speed limits, not least in Edinburgh. That work involves the three Es—engineering, education and enforcement. On engineering, we are steadily increasing investment in cycling infrastructure. Members may not think it, but we are spending more on that than any previous Government in Scotland. At the first-ever cycling summit on 24 September, I announced £20 million of match funding for local authority-led community links schemes over the next two years, which includes money for tackling problem junctions. On education, we have developed road user awareness campaigns to foster mutual respect, which is another issue that Alison Johnstone raised.

Preliminary results from the evaluation of Cycling Scotland's nice way code campaign suggest that it has been useful in shifting public perceptions in favour of giving cyclists more space and respect on the road, particularly at junctions, and in leading to an increase in the number of cyclists who say that they feel comfortable cycling on the roads. There has also been an increase in driver awareness of pedestrians. There will be an opportunity to discuss that further at the next

meeting of the cross-party group on cycling on 3 December.

We have tried to be as helpful as possible on Edinburgh's 20mph pilot project, which is being rolled out to all business and residential areas of the city. A 20mph limit has been introduced in other countries such as the Netherlands, where the number of cycling fatalities has reduced as a result. The Netherlands—which I visited to see what is done there on cycling—provides hard evidence of which we should take notice.

I was highly encouraged by the positive engagement that local authorities and other delivery bodies showed at the first national cycling summit that was held last month. For my part, I will continue to seek constructive discussion about what more we can all do to make cycling a more attractive and safe travel option in our communities. The motion makes a plea for us to debate the issue further, which has been echoed by a number of members. I welcome debate on protecting the most vulnerable road users, but we must proceed on the basis of robust data. If people think that the exercise that we said that we would undertake, which we have undertaken and the results of which we have published, is wrong, I would be more than willing to look at other evidence—proper, objective evidence—that suggests that another approach can be taken.

For that reason, although I am supportive of nearly all the statements that are made in the motion, I cannot support it in its current form, given the lack of robust evidence that stricter liability could have positive benefits for vulnerable road users. However, there will continue to be debate on the issue, in which we will continue to participate.

*Meeting closed at 18:16.*



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