OFFICIAL REPORT
AITHISG OIFIGEIL

# Economy, Energy and Fair Work Committee

**Tuesday 2 October 2018**

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

## Tuesday 2 October 2018

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## ECONOMY, ENERGY AND FAIR WORK COMMITTEE
**27th Meeting 2018, Session 5**

**CONVENER**

*Gordon Lindhurst (Lothian) (Con)

**DEPUTY CONVENER**

*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

*Jackie Baillie (Dumbarton) (Lab)
*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Angela Constance (Almond Valley) (SNP)
*Jamie Halcro Johnston (Highlands and Islands) (Con)
*Dean Lockhart (Mid Scotland and Fife) (Con)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Andy Wightman (Lothian) (Green)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Neil Barnes (Office of Gas and Electricity Markets)
Graham Fisher (Scottish Government)
Oonagh Gil (Scottish Government)
Jamie Hepburn (Minister for Business, Fair Work and Skills)
Ragne Low (University of Strathclyde)
Derek Mackay (Cabinet Secretary for Finance, Economy and Fair Work)
Kate Morrison (Citizens Advice Scotland)
Alex Reid (Accountant in Bankruptcy)

**CLERK TO THE COMMITTEE**

Alison Walker

**LOCATION**

The David Livingstone Room (CR6)

# Scottish Parliament

## Economy, Energy and Fair Work Committee

*Tuesday 2 October 2018*

*[The Convener opened the meeting at 09:31]*

## Decision on Taking Business in Private

**The Convener (Gordon Lindhurst):** Good morning and welcome to the 27th meeting in 2018 of the Economy, Energy and Fair Work Committee. I ask everyone present, including the people in the gallery, to turn off any electrical devices that might interfere with proceedings.

Agenda item 1 is to make a decision on whether to take in private items 5, 6, 7 and 8. Do members agree to do so?

**Members** *indicated agreement.*

## Pre-budget Scrutiny 2019-20

09:31

**The Convener:** We turn to pre-budget scrutiny. We have with us Derek Mackay, the Cabinet Secretary for Finance, Economy and Fair Work, and Jamie Hepburn, the Minister for Business, Fair Work and Skills. I welcome both of you. We also have with us, from the Scottish Government, Oonagh Gil, deputy director for enterprise and cities; Gavin Gray, deputy director for employability; and Gregor Boyd, a senior statistician.

We move straight to questions from committee members.

**Angela Constance (Almond Valley) (SNP):** Good morning. The committee has heard evidence from the Scottish Council for Voluntary Organisations that strongly criticises the employability funds across the piece. It has claimed that "there is no coherence" to the funds, in the context of the £600 million that is spent on employability in Scotland at local government level, Scottish Government level and via the Department for Work and Pensions and Jobcentre Plus branches. I am keen to hear whether Jamie Hepburn in particular has an opinion on that claim.

**The Minister for Business, Fair Work and Skills (Jamie Hepburn):** I saw the remarks from John Downie of the SCVO. I would not go so far as to say that there is "no coherence", because that has certain implications. In my view, each element of the landscape across the board is doing good work and is supporting those whom it seeks to support.

Nonetheless, I concede that Mr Downie has a point in that our system could be more coherent, and in that respect I reflect on the evidence that was provided by Naomi Eisenstadt, who is the First Minister's independent adviser on poverty. She talked about a "cluttered landscape"—that is a loaded term, but I am using her terminology—with regard to the variety of employability programmes in Scotland.

Again, I emphasise that each element is doing important work. However, I believe that we can create a more coherent system, and the fair start Scotland service, which I have set in train under the new statutory duty to provide an employment programme, offers an opportunity for us to reflect on how we will do that. That is also why I published "No One Left Behind—Next Steps for the Integration and Alignment of Employability Support in Scotland", which sets out our next steps to ensure greater alignment and integration of the various employment programmes and—just as important—better alignment between those programmes and other statutory services.

We know that for a person who is quite far removed from the labour market, there is not just a single facet to their life experience; they might also have issues with housing, or have health considerations or have caring responsibilities. We also need to ensure that the various statutory services are pulling in the same direction. Through that work, we are determined to ensure that we have a more coherent system.

Our current efforts around traction include the £2.5 million funds for integration and alignment, which is funding 13 projects across 18 local authority areas and is designed to test how we can better integrate services. I have also made contact with the Convention of Scottish Local Authorities, which is the main player in investment in employability programmes, so that we can begin serious dialogue about how we can develop a better integrated system. Of course, the DWP has a role to play, so I was pleased to see the commitment from the Secretary of State for Work and Pensions that the DWP will take part in these efforts.

**Angela Constance:** You have described how fair start Scotland will become more aligned with the devolved services, but given that three spheres of government are involved, how do you propose to achieve the ambition for more coherence and a less cluttered landscape across the piece? Could you say a little more about your relationships with local government and with the UK Government?

**Jamie Hepburn:** We are at the beginning of the process. I have taken the opportunity to begin it that Scotland has allowed us, and I will not second-guess where we will end up. We have set out our determination to ensure that we have a more aligned system, but before we engage with COSLA, the local authorities, the DWP, the third sector and the private providers, it would be wrong for me to sit here and presuppose what the outcome of that rounded discussion might be. What I can say is that I am determined that we get a better system as a result of that dialogue.

**Angela Constance:** Okay. So, what is your proposition to your partners, in particular those in the third sector who might be feeling a little sidelined?

**Jamie Hepburn:** The third sector should not feel sidelined. It is a core part of delivery across the board; it is an essential delivery partner and significant player in fair start Scotland, and is a key partner in other provision. We provide £6.1 million for the community jobs Scotland programme, which is delivered by the Scottish Council for Voluntary Organisations. This year, we are providing Inspiring Scotland with £2.5 million for its 14:19 fund. We are working with the Prince’s Trust and other partners to support young people with experience of the care system better in their journey to employment. I certainly do not think it can be said that the third sector is not an important part of the landscape.

I re-emphasise that I do not want to presuppose what the system will look like after our dialogue, but we must ensure that we reduce duplication and improve our understanding. A big challenge is the fact that we do not know what is happening in each area. As a starting point, we should at least understand what is happening on the ground, area by area, and ensure that each system has a better interface with the others, so that a young person—or a not-so-young person—can start at one element of the provision, move through the process and ultimately, we hope, enter the world of employment.

**Angela Constance:** Mr Hepburn has touched on my final question. When will we have an up-to-date map of provision across Scotland?

**Jamie Hepburn:** What we, as an Administration, can provide directly is all publicly available: we have laid it out. With respect to the entirety of provision across all providers, all that I can commit to is “as soon as possible”. I know that that is not a wholly satisfactory answer, but I have to concede at the outset that I cannot sit here and tell you what each local authority is providing, which underlines the necessity of beginning the process. I want to progress the process as quickly as possible. We can map service provision area by area better as part of the process.

**Angela Constance:** Okay. Thank you.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** Let us continue with the employment support services. How does the budget for fair start Scotland compare with the previous budget for the United Kingdom work programme and work choice in Scotland?

**Jamie Hepburn:** That has been the challenge. Although we have had devolution of responsibility and we are discharging that responsibility, with that has come a roughly 80 per cent cut in funding. We estimate that in the last year of DWP provision, the DWP was expending somewhere in the region of £54 million on the work programme and work choice in Scotland. As the DWP has moved to the successor programme—the working health programme—it has drastically reduced investment across the UK as a whole. The effect of that has been reduced funding to Scotland. In the first year in which we had responsibility, we had roughly £10 million from the UK Government. The Scottish Government considered that that would not support enough people, which is why we took the decision to leverage in up to £20 million in addition each year over the lifetime of the contract of fair start Scotland.

**Gordon MacDonald:** What influence has that reduced budget had on the design of the fair start programme?

**Jamie Hepburn:** Clearly, it has had an impact. I would not want anyone to get the sense that the programme is not ambitious; we have set an ambition to support at least 38,000 people through the programme over the three-year referral period and five-year operating period of the providers to whom we have awarded contracts. That is a significant amount.

We have had to frame our thinking within the expenditure that is available. That is an obvious necessity. However, our wider philosophy in design of the service is based on practical experience of the previous programmes. For example, we decided to make the programme voluntary, because Parliament has heard significant concerns about the efficacy—or lack of it—of sanctioning in supporting people into employment. We have seen a variety of academic and third-sector campaigning organisation assessments that show that people who are sanctioned might get into employment, but it will only be for a short period before they end up back in the benefits system. That speaks to me of the necessity of operating a system that does not compel people to take part.

We have also taken the view that we need a person-centred system, and that supported employment should be a key part of our provision, which is the first time across our islands that that has happened in an employment programme on this scale. We are also operating individual placement support in order to support people with poor mental health or who face mental health challenges. We have also ensured that our providers have signed up to the fair work agenda.

Our approach is informed by practical experience and the things that we think are important.

**Gordon MacDonald:** How confident are you that there is sufficient budget to provide the services that long-term unemployed people need to get back into the labour market? How confident are you that you can hit the targets on the number of people you want to support?

**Jamie Hepburn:** I want to hit the targets: that is our ambition. The information that we publish will determine whether there is a successful trajectory. Those official statistics will be available in November for the first two quarters and will be available quarterly thereafter.

The additional investment that we have leveraged in is sufficient. We are taking the correct approach and I believe that our programme will be a success.

**Jamie Halcro Johnston (Highlands and Islands) (Con):** Like the new fair start Scotland, the interim schemes were voluntary and there was a high drop-off rate—40 per cent of people on the work first programme did not even start it. How many people completed that programme?

09:45

**Jamie Hepburn:** We had a target of supporting up to 4,800 people through the programme and in the end, 5,500 people were referred to the programme. The final figures on those who maintained their places on the programme and had job outcomes is not yet available. That information will be available in November.

It is the first time that we have operated such a programme. Clearly, as in any programme, there will be mixed levels of success. My view is that, overall, the programme was a success in terms of the number of people who were referred to it.

In relation to the qualitative assessment, the feedback that I got when I went out and spoke to a wide range of people who were participating in the programme was that the programme was well designed and the experience was far better than they had previously in the DWP-administered programmes.

I believe that our approach was successful. Clearly, we have sought to learn from that experience. One of the particular challenges—I will be candid—in relation to starts and work able Scotland was that we had not factored in the infrequency with which the DWP saw that particular client cohort. That is not a criticism of the DWP: it is probably quite correct that the DWP is not requiring that cohort to attend Jobcentre Plus as regularly as others, but we had not factored that in. That was part of the learning process and is why we have tweaked the provision in fair start Scotland.

**Jamie Halcro Johnston:** You talk about the learning process. The Scottish Council for Development and Industry, which is supportive of the voluntary nature of the scheme, said that

"there needs to be more investigation of that slip-off whereby only 60 per cent of the people who volunteered actually started the programme."—[*Official Report, Economy, Energy and Fair Work Committee*, 18 September 2018; c 5.]

You have talked about the DWP, but are there any other lessons that have been learned from that programme that are being applied to fair start Scotland?

**Jamie Hepburn:** Ultimately, the lesson that we learned was that our fundamental approach—the voluntary approach—was the correct one. There will be people who disengage from the programme. Can that be wholly attributed to it being voluntary in nature? I very much doubt it. Will its being voluntary be a reason for some people to disengage? Probably. However, overall, I still think that it is the correct approach. The evidence base on whether long-term employment prospects are secured for people through compelling them to take part in programmes leads me to conclude that that is not an effective approach.

The voluntary approach also means that we know with greater certainty that those who are taking part actually want to be there; they are there because they view the programme as an opportunity rather than because of a threat that they could lose the support that they rely on if they do not take part.

The fundamental lesson that I learned was that the voluntary approach is the right approach. As I said, the other learning point was about ensuring that we have a wider cohort of people who can be supported through fair start Scotland.

**Jamie Halcro Johnston:** To go back to the issues that Gordon MacDonald raised, the budget for fair start Scotland is £36 million over three years—

**Jamie Hepburn:** It is £96 million.

**Jamie Halcro Johnston:** I am sorry, it is £96 million, with £30.4 million in the first year.

You are planning to help 38,000 people over the period of the programme, but obviously payment happens at specific stages. If every one of those 38,000 people were to complete all three stages, would that payment still sit within that £96 million budget?

**Jamie Hepburn:** I make the point that we are planning to help at least 38,000 people. I hope that we exceed that number.

We cannot say what the final expenditure will be because it is driven by participation and progression through the model that we put in place. It could be slightly less than £96 million. If we have a host of people taking part—considerably more than we planned for—it could cost more. We will need to factor that in at the time.

**Jamie Halcro Johnston:** Have you factored in that people will drop out, as they did with the previous programmes? Have you factored in to your calculations people who might only reach the second stage or the first stage?

**Jamie Hepburn:** Of course we have made a calculation involving a projection of starts at each stage of the three-year referral programme and the five-year operating period for providers to support people. There is a projection of how many people will start and how many people will reach each stage. We have made that calculation.

I am not in a position to provide every single detail, but if the committee would like, we can provide more information in writing.

**Jamie Halcro Johnston:** It would be useful to see how that sits in the budget if you have the projections, because the cost will be set out, and the projection on starts—

**Jamie Hepburn:** That was always factored in to the budget that we have provided.

**Jamie Halcro Johnston:** Do you hope to more or less meet that budget, or are you factoring in that it may be slightly under or slightly over?

**Jamie Hepburn:** We want it to be as close to £96 million as possible, and I am sure that the cabinet secretary would emphasise that, too.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** It is intended that Jobcentre Plus will continue to be the main referral agency for fair start Scotland. How will the Government ensure that the correct people are referred to the programme and that people are sufficiently informed about it?

**Jamie Hepburn:** Ultimately, we are working on a partnership basis with Jobcentre Plus when it comes to referral. That is a new relationship that we have to build. Operationally, agreements are in place—the technical name is a joint operational framework—between Scottish Government officials and DWP officials at various levels to ensure that, if issues arise, they can meet to try to resolve them. There is also the joint ministerial working group on welfare—Ms Constance will know about that, as she has attended its meetings. We have often had to resolve issues there, sometimes in a slightly different fashion from how they might be resolved between officials, but we have managed to resolve them. Operationally, the working is good. Where issues are identified, they can be taken forward between officials in the particular forums that I have referred to and if something needs to be resolved, it can be resolved.

Another conduit is that if Jobcentre Plus work coaches identify an issue on the ground, they can escalate it through their management, who can bring it to the table on their side. If the providers to which we have given contracts identify issues, they can raise them with Government officials, who can then bring them to the table.

Because Jobcentre Plus is in most direct contact with those who stand to benefit from our programme, of necessity it will remain the main conduit for referral. However, we are actively trying to explore other referral mechanisms, and we have the opportunity to do that. For example, just last week, I launched something called the navigator toolkit. Police Scotland's violence reduction unit has individuals, known as navigators, who are based in accident and emergency units. They identify people who have come in as a result of violence and criminal behaviour and seek to engage with them to provide wider support; and we are trying to ensure that employability support is an element of that. The toolkit that I launched is in essence a publication for the navigators to look through that sets out various sources of support so that they can refer people on. One thing that has come out of joint working and productive discussion is about trying to ensure that navigators can refer people directly to fair start Scotland. We will not just rely on Jobcentre Plus—we will try to expand that.

**Colin Beattie:** Are you satisfied that Jobcentre Plus has a sufficiently robust system for ensuring that the correct people are being referred?

**Jamie Hepburn:** The committee will understand the Scottish Government's concerns about the manner in which the Department for Work and Pensions administers the social security system—for example, we have concerns about sanctions, which I have referred to. However, I have had the opportunity to go to Stirling, Inverness and Lerwick jobcentres, and I have been very impressed by the enthusiasm with which jobcentre work coaches have embraced fair start Scotland. They like the system that we have put in place and they are taking the opportunity to refer people and talk them through the process.

The work coaches are working with the providers that we have put in place to ensure that the process of referring their client group to fair start Scotland is as seamless as possible. Clearly, it will not be uniform; referral rates will be higher at some jobcentres and lower at others. One of the benefits of the approach that we have taken is that we can drill right down into that information and work with Jobcentre Plus in Scotland and the DWP to ensure that we get as many referrals as possible across all jobcentres in Scotland.

**Colin Beattie:** Should the definition of a successful outcome be widened so it is not just a sustained job?

**Jamie Hepburn:** Through the no one left behind agenda that I set out earlier in response to Angela Constance, we can begin to look at where in the system we might be able to take a different approach, but the approach is right for fair start Scotland. If we are leveraging in £96 million of investment for an employment programme, I want to see as many as possible of the people engaged in that programme—ideally everyone, but I recognise the reality that it will not be everyone—ending up in employment and sustaining that employment. That would be a good outcome.

To go back to my earlier point about having greater coherence in the system, there is a role for other parts of the system to have different outcomes, which might be people not necessarily ending up in employment but being closer to employment by, for example, transitioning to something such as fair start Scotland. We have the opportunity to do that through the work that we will take forward through the no one left behind agenda, as I laid out, and I am keen to discuss that with COSLA, the DWP and all the other partners that I have mentioned.

**John Mason (Glasgow Shettleston) (SNP):** We have heard slightly different evidence from different witnesses on the subject of—I do not like the phrase—parking and creaming, which means programme providers parking the people who find it more difficult to get into a job and getting the people who are easier to get into jobs into them, so that the providers get results and money more easily. What is your feeling on that?

**Jamie Hepburn:** That was a concern expressed during the process of considering how we would design our service. Incidentally, I do not think that that is what any of our providers want to do; they want to support those who engage with the programme into employment and they want to reach out to ensure that as many people as possible engage with the programme. It is in their interests to do so.

One of the ways that we responded to that concern was to ensure that there is an up-front fee. When a person engages with the programme, the provider gets 30 per cent of the overall value of the fee that they are entitled to for someone who participates. That will reduce concerns about parking and creaming—like Mr Mason, I have a distaste for that terminology but it is the terminology that has been used.

We also have a tiered approach in terms of the intensity of the support that might be required for each individual. It is not as if every person who walks through the proverbial door—or the literal door, in some cases—to engage with fair start Scotland will be treated in the same way. The model is person centred and, within that model, we have provided funding to explicitly recognise that some people might require more support to get into employment. Access to such support is within the full funding that we have provided. For example, there is the individual placement support model that I referred to earlier for those who might be suffering poor mental health.

All of that is in place to mitigate the concerns.

**John Mason:** The Employment Related Services Association said that you are targeting the furthest away from the labour market—those who are not easy to get into a job. Do you agree with that statement?

**Jamie Hepburn:** I go back to the point that I made earlier. Some people who engage with the service will transition to employment more seamlessly than others. We want those people to engage with our service but, ultimately, the people who stand to benefit most from our service are those who are furthest from the labour market. Those are the people we want to reach out to.

I saw Ms McHugh's evidence. I am sure that if I have picked this up wrongly she will inform the committee, but I think that she was making the point that the effort that we put into designing our programme was exactly to that end. That is the direction of travel that we want for the programme that we have put in place.

10:00

**Jackie Baillie (Dumbarton) (Lab):** I wonder if I could rattle through some questions with the minister. I will start by asking specifically about the employability fund. I understand that fair start contracts are for three years but that the employability fund is for one year. Why is that? Will you change that to bring certainty and stability to the training providers?

**Jamie Hepburn:** Obviously, our training providers are integral to the success of any of our training programmes. As I am sure Ms Baillie, or any other member of the committee, would expect me to say, our expectation, which I am sure she shares, is that our programmes are designed around the needs of the participants. Ultimately, that is what is most important.

On the particular point that Ms Baillie makes, there is a fundamental difference. As I have made clear in my answers to previous questions, especially Mr Mason's a few moments ago, the reason why fair start Scotland contracts apply for a longer period of time is because many of the people who participate in that programme will require a much longer period of support—longer than a year. The employability fund is designed in a very different way: it is designed to support people over a shorter, sharper period, rather than many years. By its nature, it is a different type of system.

I have just set out how we have begun the journey to examine a more effective system, but I would not propose at this stage to radically alter elements of the system that we have in place now. Of course, all of that is part of the dialogue that we will have, and if it is felt to be an issue of significant concern, it is incumbent on us at least to listen to that. We might not draw the same conclusion, but of course we will always be willing to listen to any concerns that are raised.

**Jackie Baillie:** The budget for the employability fund has gone from almost £34 million in 2015-16 to £19 million in 2017-18, which is a drop of £15 million or a 44 per cent cut. Can you explain that?

**Jamie Hepburn:** The employability fund was put in place at a time when the labour market was very different from how it is now. When the employability fund was first instigated, youth unemployment levels were running significantly in excess of where they are today. Thankfully, we have travelled further and investment in specific programmes largely reflects where we are now.

On Jackie Baillie's point about trying to offer as much assurance and stability to training providers as we can, there has been stability for the openly procured element of the employability fund over each of the past three years in terms of both funding and the number of places.

**Jackie Baillie:** I wonder if you could comment on the overall budget. A report by consultants in 2013-14 said that the total spend across all employability programmes was about £660 million. In evidence, both the Scottish Trades Union Congress and the SCVO thought that the figure was quite a bit below that. Do you have a global figure for what you spend on the employability fund across the board?

**Jamie Hepburn:** We can set out what we spend. The £660 million figure came from analysis by Cambridge Policy Consultants, which we put in place, if I recall correctly, to analyse and understand the level of expenditure. The lion's share—the vast majority—was through local authorities. I cannot candidly sit here and say what the definitive figure is right now, but it will form part of the discussion that we have with COSLA and other partners. I cannot tell you what the figure is right now.

**Jackie Baillie:** Would you repeat the exercise to ensure that we get a better figure?

**Jamie Hepburn:** I would certainly consider doing so. I suppose that we would need to engage with COSLA first. I am not one to initiate work by consultants without necessity. If we can get the information more readily by direct engagement with COSLA, then we will get the information. If COSLA comes back to us and says that such a piece of work might be helpful, we will of course consider it.

**Andy Wightman (Lothian) (Green):** My question is on the enterprise agencies. We have heard claims about the jobs that have been created through the intervention of Highlands and Islands Enterprise and Scottish Enterprise. We have also had an economic analysis from Scottish Enterprise suggesting that every pound that it spends generates between £6 and £9 of gross value added. Does the Scottish Government recognise those figures and does it carry out any independent scrutiny of them?

**The Cabinet Secretary for Finance, Economy and Fair Work (Derek Mackay):** This is the first time that I have appeared before the committee as the Cabinet Secretary for Finance, Economy and Fair Work and I welcome the opportunity. As it is my first appearance, I want to say that I found the letter from the committee on its report into the performance of Scotland's economy very helpful, and I have responded to it. There will be many opportunities for us to work together in the future and my response covers the consensual approach to the economy that I hope we can take.

Committee members can judge for themselves whether my appointment or the publication of the committee's report contributed to the turn in economic indicators over the course of the summer, which largely have been welcome. Of course, it could be that neither of us is responsible for any of that but, in any event, I appreciate the focus on the economy.

On Mr Wightman's question, we expect validation by the enterprise agencies of their reports on the economic benefits and the jobs that they create and the economic return on investment. As it happens, a few years back, Audit Scotland carried out an analysis of such work. We do not audit every comment that the enterprise agencies make, but there is an expectation that the claims that they make around the economic outputs that they add are accurate and can be proven. There is challenge between the civil service and enterprise agencies—between the board, the chief executive and ministers—and there is further focus on that as we address the direction of the enterprise agencies every year.

There will be opportunities to prove things. For example, following the high-profile announcement about Barclays going to Glasgow, we will want to see the jobs—2,500 were mentioned—delivered. The figure will be proven by how many people Barclays ultimately employs.

We do not have extra bureaucracy on top of the accountability of the enterprise agencies, but there are a range of checks and balances that assure us that how we are investing in the enterprise agencies is achieving the economic outputs that they claim.

**Andy Wightman:** You mentioned an Audit Scotland report from a few years ago. Was that a generic report?

**Derek Mackay:** I will ask my official, Oonagh Gil, to cover the content of that report.

**Oonagh Gil (Scottish Government):** Yes, three or four years ago Audit Scotland undertook a review of the enterprise agencies.

**Andy Wightman:** When Scottish Enterprise attracts Barclays to invest in Glasgow, it is high profile and there are job numbers that can be scrutinised quite closely. However, every year the agencies make evaluations of the number of jobs that they have supported and that would not exist without their intervention. One option might be to invite Audit Scotland to scrutinise one year's budget and drill down into those claims to see what they are based on. An economist based in Inverness, Tony Mackay, has suggested that HIE's figures are very exaggerated.

**Derek Mackay:** To be clear about our ministerial responsibilities, Scottish Enterprise reports to me and Highlands and Islands Enterprise reports to Fergus Ewing. However, as a general point, I would expect the numbers to be robust.

One thing that I have learned about economists is that they forecast the future and can even revisit the past, but they rarely agree on forecasts. I have no reason to believe that the results that the enterprise agencies present to us are in any way inaccurate. If the committee wants to explore that further, I will certainly consider it, but I would not want an extra layer of bureaucracy on top of the actions that we are trying to deliver collectively to grow our economy. If the committee has concerns, I am happy to look at any examples of cases in which it feels that the presentation of the outputs has not been validated. However, through our checks and balances, our challenges and the range of work that we do, we believe that the numbers that we get are credible.

When big announcements are made, the proof of the pudding is in the eating. If a commitment was made to create a certain number of jobs, let us look back at how many jobs were created. With conditional financial support, drawdown levels—the point at which a company can draw down the support that has been committed—are often based on meeting conditions on, for example, job numbers or economic return.

**Andy Wightman:** Okay, thank you.

**John Mason:** Last week, I asked Scottish Enterprise and HIE about their performance targets. They had both met absolutely all of them, which struck me as slightly surprising because in other sectors, such as health and education, we meet some targets and miss others. It made me, and perhaps others, wonder whether the targets are too easy and how they are being set. I also asked whether the strategic board would have a role in the specific targets. Both agencies answered, broadly, that they did not think that it would because it would be involved at a much higher level. Have you any comment on that? Have the performance targets been a bit too easy in the past? Could the strategic board be a vehicle for clamping down on them?

**Derek Mackay:** Mr Mason asks a good question. I would not say that the performance targets have been too easy, but on the other hand I expect us to be able to do more. There are opportunities there and, as the committee requested, we are recalibrating our economic strategy, so we hope that with the range of actions that we implement we will get even more value from our investment.

On the performance targets, we set out ministers' expectation in our strategic direction and the enterprise agencies produce a report, but fundamentally we want to get maximum value. Where I think the strategic board will be helpful is not in adding a new list of targets but in having a more consistent framework for judging the enterprise agencies' performance. With the south of Scotland enterprise agency emerging alongside Highlands and Islands Enterprise and Scottish Enterprise, we can use the strategic board to address how to judge their performance. The board will bring together the Scottish funding council, Skills Development Scotland and the enterprise agencies themselves for a more consistent framework for analysing performance. Rather than putting another layer of performance targets on top, it will bring more consistency to how we challenge and rate the enterprise agencies and compare them with one another, while recognising regional and local differences.

Let us bear it in mind that the strategic board was meant to have a more cohesive and aligned approach to skills and enterprise, not a more divided or more fractious approach or one with more layers of bureaucracy. In bringing everything together, we have the opportunity to have a more challenging performance monitoring framework without adding any extra layers of bureaucracy. That speaks to the point about having indicators that might suit any individual enterprise agency but that work for us all.

**John Mason:** I think that I would be more comfortable if the agencies met nine out of 10 of their targets—

**Derek Mackay:** Rather than 10 out of 10?

**John Mason:** Yes, because I would feel that they were doing pretty well—90 per cent is a pretty good result—but their failing to meet one would show that the targets were challenging. My fear is that their 100 per cent record shows that the targets are not challenging enough. Do you agree with that at all?

10:15

**Derek Mackay:** I would not want to direct the enterprise agencies to start failing on their objectives to make Mr Mason more comfortable. The point that I was trying to make is that the performance statistics are challenging and the ministerial direction is clear, but there are wider objectives. We know that we want to do better on the performance of Scotland's economy and we know that the enterprise agencies must contribute to that. We have a range of financial tools that we can use. We know the big challenges around research and development, innovation, future technology, product development and all of that. We all need to push the agencies—I accept that point—but we can do that in a range of ways. There must be some satisfaction in the fact that performance targets and milestones have been met.

However, I accept the point that we should ensure that the targets are challenging enough to maximise the opportunities for the Scottish economy. The strategic board is helping us to do that. One of the key outcomes of the strategic board so far is to bring greater alignment across the public sector—the enterprise agencies and the skills council—so that it works more cohesively together. That will also mean challenge between the agencies, which will bring benefits.

Equally, we know that we want to grow Scotland's economy and so we will have to push the enterprise agencies to do that. If that means sharpening up some of the performance targets, so be it. However, I want to get on with the job, rather than relying on extra bureaucracy.

**Jackie Baillie:** Last week, we heard about a £30 million underspend in financial transaction money from Scottish Enterprise, £10 million of which related to SE's contribution to the Scottish-European growth co-investment fund. The cabinet secretary may recall the promise to provide £200 million in equity investment that was made in a previous programme for government.

None of the £40 million was spent in the first year—2017-18—and we have heard that there is just one project worth £1 million in 2018-19. Given that there is £80 million allocated for 2018-19, how much do you think will actually be spent?

**Derek Mackay:** I want to put the entire Scottish growth scheme into context. It is an umbrella for a range of financial packages that we have debated previously. I have not had the opportunity to discuss that fully with the committee before.

On the announcement in the 2016 programme for government on delivery or implementation starting in the financial year 2017-18, then continuing over a three-year period, we envisaged using a range of financial tools to support and stimulate private sector growth. We envisaged more use of guarantees. Guarantees have been used by the Government, but not on the scale that we had anticipated. There was not necessarily the demand for them in the private sector. Grants are popular. If enterprise agencies offer people a choice in the hierarchy of financial products—if they say, “Would you like grant support, loans, equity or guarantees?”—people will opt not for guarantees but for the other products.

It appears that equity has been more successful and guarantees less so. We worked with the British Business Bank, which does some work in the area. It did not find a huge appetite for such products. We have been exploring bespoke solutions to ensure that we can commit and deliver on the commitment to provide the £500 million of extra support that was announced. We have to look at it as a package, and I believe that the three-year commitment will be fulfilled. However, that means that we must respond to what the private sector wants and what products it chooses to take up.

Many of the European co-investment programmes and other funds take some time to develop. The private sector works up its proposition—it might work with other co-investors to see whether there is investor interest. Some of those programmes may take time. It might not happen in one financial year, but over the three-year period, I believe that we will fulfil the commitment to provide £500 million of support. We will adapt the products that are more popular and deliver economic growth. Although some of the schemes have not had the uptake that we would have wanted, we have provided close to £100 million overall. I can check the most recent figure for all the funds in the Scottish growth scheme to see how we can deliver on the projection for the three-year period.

However, Jackie Baillie is right that some products have been more successful than others, and when other co-investors are required, they take some time to be developed. I wanted to give the committee that answer in the round.

**Jackie Baillie:** I want to take you back to the specific matter that I asked about, which is that £80 million has been set aside for what is probably the biggest chunk of the growth fund’s money, but so far just £1 million has been allocated to one company. Given that we are halfway through the financial year and the fund has only another year to run, are you telling the committee that it will be fully spent, or will you change it? If so, how?

**Derek Mackay:** I suppose that what I am saying is that we will respond to demand. There will be some projects under consideration, but I want to make sure that the £500 million that we committed to is delivered across all our products. If any individual element is underused, for whatever reason, I would not want any money to be lost to Scotland.

We will use the resources at our disposal, but certain strands might be less popular. I have pointed out that we envisaged quite a lot of guarantees being used. Guarantees are a contingent liability that might never have crystallised into a financial cost to the Government. Recognising that the use of guarantees was less popular, we have used other financial tools to ensure that that support is given to the private sector no matter what. At this stage, I do not know, but I am trying to be helpful to Jackie Baillie, which I know she appreciates—

**Jackie Baillie:** Always.

**Derek Mackay:** If we do not deliver on the £80 million, for whatever reason, I will look to ensure that we can still deliver on the overall commitment to provide £500 million of support through whatever financial products are working for the private sector.

**Jackie Baillie:** I would like to be equally helpful to the cabinet secretary. What financial products, other than the Scottish-European growth co-investment fund, are part of the growth scheme? How are they performing?

**Derek Mackay:** Equity from the small and medium-sized enterprise holding fund has been used quite successfully. I can get Jackie Baillie the specifics on where we are now, recognising that as each month passes, more companies will benefit, but what I can say is that some £97.3 million in equity investment has been allocated to 79 companies. I can share more overall information with the committee.

**Jackie Baillie:** That would be helpful.

**Derek Mackay:** I again make the point that if a fund has not been used, it is important to look at what other products are in more demand and to ensure that their use is maximised so that we can deliver the headline commitment set out by the First Minister.

**Jackie Baillie:** Speaking of maximising budgets and meeting headline commitments, education is the Government’s top priority, yet an underspend of £115 million last year in education and skills was reported just last week. As the new Cabinet Secretary for Finance, Economy and Fair Work, I am sure that you agree that any reduction in investment in educational performance and skills, for whatever reason, will have a direct impact on the economy.

**Derek Mackay:** I do not have all the information in front of me, but some of the budget lines will be demand led. For example, the education maintenance allowance is demand led, so if the budget is underspent, that is because people have not applied for it rather than for any other reason. However, I agree that, having invested in such a massive increase in spending on enterprise and skills, we want to ensure that that resource is spent on encouraging and stimulating the economy. We have made a substantial commitment to enterprise and education, and of course we want that money to be spent.

To go back to Jackie Baillie's specific question about the budget, the enterprise agencies have received a substantial increase in the 2018-19 budget. A lot of that relates to financial transactions that we have been able to use for equity investment, but there has been a substantial increase from £35 million to £68.5 million. I just want to put the underspend figure in context.

**Jackie Baillie:** I do not think that I asked that question.

**Derek Mackay:** You asked about financial transactions and underspend.

**Jackie Baillie:** I will give some context, too. Financial transaction money, as we know, is loan funding and equity funding, but SE's core grant has reduced by something like 27 per cent over the past five, six or seven years, which is unfortunate given the importance of growing the economy. I just thought that I would put that on the record, to be helpful to the cabinet secretary.

**Derek Mackay:** To put the figure on the record, we are talking about an increase in the budget of 24.68 per cent. It is true that financial transactions were part of that, but the provision of loans and equity is part of the core function of Scottish Enterprise when it comes to growing the economy, so that increase was welcomed.

**Jackie Baillie:** I think I have made my point, convener.

**The Convener:** I think you both have.

**Dean Lockhart (Mid Scotland and Fife) (Con):** Good morning. First, I would like to follow up on the Scottish growth scheme. The Scottish Enterprise website shows that the investment decisions on the Scottish-European co-investment programme are made by the private fund manager, not by the Scottish Government or Scottish Enterprise, so how can the Scottish Government ensure that the money is invested in a way that is consistent with its economic policy of inclusive growth?

**Derek Mackay:** It is absolutely the case that the policy is to grow the economy. Not only will we use Scottish Government resource to do that; we are happy to consider using investment pots elsewhere. It seems reasonable to look at European funds to do that, too.

Of course we would expect our inclusive growth policies to be followed, but we have provided additional support and resource to take any applicant from Scotland through the system. Of course we want more positive results here, but we are in the hands of those who develop propositions and those who make co-investment decisions when it comes to the support that Scottish Enterprise provides to companies.

I come back to the point that, even if we are not successful in the scheme, we want to be, so I will seek to ensure that we still provide £500 million of extra support to the private sector over the three-year period.

**Dean Lockhart:** Looking at the numbers, the £500 million target was set out two years ago, and it was to be met over a three-year target period. Roughly speaking, do you know how much in total has been spent or invested under the Scottish growth scheme, as of now? Do you have a number?

**Derek Mackay:** That is a fair question. As I understand it, roughly £100 million has been invested, but I have committed to write to the committee, because that number changes from week to week and month to month. I am happy to get that figure to the committee.

I recognise that we are not necessarily talking about a linear approach—there might be some big investments and some propositions that are big success stories—but I am confident that, overall, based on the trajectory that I have seen so far, we will achieve the £500 million figure over the three-year period in the timescales that I mentioned in response to an earlier question.

**Dean Lockhart:** Thank you for that. We are two years in and roughly £100 million has been invested. Obviously, that leaves a balance of £400 million. Under the original target, that leaves £400 million to be spent in the following 12 months, given the original three-year target. You are shaking your head. I assume that the original three-year target will not be met. If the three-year target will not be met, what is the new timeframe for the £400 million to be spent?

I have another question. Will the following budget allocate and provide for that additional £400 million?

**Derek Mackay:** I think that the timescale that I gave to Jackie Baillie is the accurate one. The headline commitment was made in the programme for government in 2016. The schemes were to begin in 2017-18 and were to run over the financial years 2017-18, 2018-19 and 2019-20. I recognise that some of the schemes were not in place until after the financial year 2017-18 began, but that is the timescale that I am working to.

Some of the investment propositions will take some time to work through the system, and a substantial number of them may come along at one point. However, that is the timescale that I am working to, and the information that I have is that we should be able to deliver the £500 million of extra support over that period.

Dean Lockhart understands the private sector. If certain elements are not as popular or are not working so well, we must recalibrate the elements that are working, and that is what we have been trying to do to ensure that we give support where it is required.

We started by considering the use of guarantees. As I say, they have been used in part for some substantial investments. That would only ever crystallise as a cost to Government if there was a call on that resource as a contingent liability. Guarantees have not been as popular, which is why we have focused on the other elements. We worked with the banks to test the appetite for that product.

That leads us towards the Scottish national investment bank, in relation to which we are considering our current financial tools and what new financial tools we will have in future, including the building Scotland fund, which is the precursor to the capitalisation of the bank, so that we can see what additionality we can provide to stimulate and support the private sector. That will show the momentum that exists around Government support for stimulating the economy generally.

10:30

**Dean Lockhart:** I have a final question. I am pleased that the cabinet secretary had time to read the committee's report on the performance of Scotland's economy. He will have read the conclusion that all seven of the national performance targets relating to the economy were not met—in other words, the Scottish Government failed to meet those targets. This year's programme for government contained a new economic action plan, which I believe is to be announced at the end of this month. Will that set out new economic targets under the Scottish Government's economic policy?

**Derek Mackay:** No. I do not envisage it setting out new targets. The committee's contribution—in particular, its analysis of the economic performance that we have been experiencing—was very helpful. Of course there have been major issues in the Scottish and UK economies: we have had the oil and gas downturn and, before that, the financial crash. We know about the issues around productivity, too. The question is how we address them.

For some time, many members of the committee had been asking us to revisit our economic strategy, and that is what we have done. Aside from revisiting the strategy, however, the important thing is what actions can be taken to provide stability, to stimulate the economy and to ensure its sustainability. As we consider the actions in the programme for government and some of the key pillars of our economic strategy, what more can we do to grow the economy?

Of course we want to meet the indicators that we have set out in the national performance framework, the process for which I led within Government. The Government's very purpose goes wider and includes promoting wellbeing and inclusive and sustainable economic growth. That was sought throughout our consultation. There was a cross-party approach, as well as a great deal of engagement on the performance targets, the outcomes and the indicators. We know that we must accelerate growth in our economy and deliver greater fairness, and we need to undertake a range of actions to deliver on that.

I was being slightly light-hearted when I made reference to the economic indicators, but it is worth making the point that, over the period of devolution, we have made progress on productivity. Exports are up. There has been a sharp increase in exports, but we know that we have more to do. There is more to do on internationalisation and innovation, which is why we are investing in innovation hubs. We are supporting greater collaborative working between our universities and the private sector, for instance. We are investing in the national investment bank and in the national manufacturing institute for Scotland. Scottish Enterprise is recalibrating our efforts around business support. Those actions will feature in the economic action plan, and some of them have been announced in the programme for government.

Our objective is to do more on exports, to deliver the inclusive growth agenda and to scale up. On engagement with businesses, it is to respond to what businesses have been asking for. It is true that one aspect of that is to have a competitive tax environment, but the number 1 issue that has been raised with me over the course of the past few months is skills, which relates to the number of people and productivity. That is all the more reason to work together—on the strategic board, at the Scottish Further and Higher Education Funding Council, at Skills Development Scotland and through the enterprise agencies—and to feed in what the needs of business and industry are.

I have outlined a range of actions, some of which featured in the committee's report. As a member of the growth commission, I have engaged with business to determine what actions are required to help grow our economy so that we can meet those performance targets, mindful of the fact that there are events outwith our control that affect our country's economic performance. I have touched on some of the previous ones and, frankly, the most immediate one that faces us at the moment is the uncertainty of Brexit.

**Dean Lockhart:** Thank you very much, cabinet secretary.

**Derek Mackay:** I thought that the member might want me to pause at that point. [*Laughter*.]

**Dean Lockhart:** No—that is fine.

I turn to one of the other recommendations in the committee's report, as I know that we are running out of time. In the context of evidence-based policy, the committee encouraged the Scottish Government to consider reinstating targets. As the Audit Scotland report on the enterprise agencies pointed out,

"If you can't measure it, you can't manage it."

Therefore, we would encourage you, in the new economic action plan, to consider having some specific targets, as opposed to having a very generic approach to the economy.

**Derek Mackay:** Convener, I will—

**The Convener:** I am sorry to interrupt, but the member referred to "we". Were you referring to the committee?

**Dean Lockhart:** It was a committee recommendation.

**The Convener:** In that case, perhaps I might intervene and ask both Derek Mackay and Dean Lockhart to pause; I think that they have both made their points.

We are nearly out of time, but may I deal briefly with two points? Cabinet secretary, the Scottish Government's programme for government mentioned attaching increased conditionality to some future business support. With reference to the inclusive growth agenda, will the emphasis be on the fair work criteria or on growth potential? How will the balance between the two be addressed?

**Derek Mackay:** That is a fair question. Conditionality has been debated for some time. We announced in the programme for government that we would look at conditionality in relation to the regional selective assistance grants from Scottish Enterprise. Specifically, we undertook to

"introduce fair work criteria, including paying the Living Wage, excluding exploitative zero-hours contracts and being transparent on gender-equal pay to business support grants through Regional Selective Assistance".

That is the territory that we are looking at.

We have said that the fair work criteria will be in place for the grants from 2019-20 onwards, but I invite the committee, in partnership with me, to think further about the matter. I know that Andy Wightman has an interest in it because he has raised it with me in another committee, and Jackie Baillie has certainly raised it in the chamber. Conditionality might not stop at RSA; where else should we consider it, along with the principles that we hold and the other levers that we have? The criteria I described are what we announced in the programme for government and what we wish to take forward with our enterprise agencies.

**The Convener:** How important are growth potential and actual results, in terms of job security and so forth?

**Derek Mackay:** In the past, the debate has been about the trade-off. It is good to get jobs and economic growth, but what we are saying is that we want to deliver inclusive growth. The fair work agenda is really important, so we want the jobs to be compliant with those principles. That is a progression from where we were before. Of course economic growth is important—the point I was going to finish on with Mr Lockhart was that the committee will welcome the fact that we are now outperforming the UK on gross domestic product statistics and growth—but we want it to be fair and inclusive, which is what our conditionality will try to achieve.

**The Convener:** I will resist the temptation to bring Mr Lockhart back in to comment on that point.

I ask you to focus on a specific further question. I hope that you will not think that I am an economist wishing to revisit the past, but I do not think that the matter has been tied up yet. You will be aware of the committee's data inquiry report; I think that you responded to it in a previous guise. There are a number of outstanding issues relating to pre-release access on which the committee is still waiting to hear from the Scottish Government.

My question is really very simple: will you respond by doing what the majority of the committee wanted? I am not sure that we even have a response that properly speaks to the minority view. In this new spirit of consensus, are you hoping to bring the Scottish Government approach to the issue, in the interests of transparency, public trust and openness, into line with what is applied in the rest of the United Kingdom?

**Derek Mackay:** Well, in the interests of consensus, I think that I have given a very comprehensive report in response to your economic performance considerations.

I understand that I wrote back in response to your previous letter. On that specific matter, the straightforward answer is no, I do not propose to change the Government's position. I am happy to debate that with you; I understand that you might want to explore the issue here and now, or I can put in writing why I do not propose to change the Government's position.

I think that the Government is transparent and accountable. No accusations have been made or reasons given to revisit our handling of statistics; the professional community has not asked us to, and there are no concerns from the statisticians. I understand that there is a majority view and a minority view, but I have heard no evidence whatever to lead me to conclude that we should not have a well-informed, accurate understanding of statistics when they are being released.

When the previous order was made, I looked back at the history of the issue. At the time there were no party politics and no division among committee members about the legislation that we currently rely on—none. I have heard no evidence to suggest that the Government should change our position; nor are the statisticians requesting a change—they are happy with the current arrangements. I can go through a range of other arguments about market sensitivity and so on. No, convener, I see no reason to change our current position on the system.

**The Convener:** Well, I was hoping that you might suggest meeting us halfway or indicate openness to doing so on the basis of some of the evidence that was given to the committee, which was unanimous. I think that things have moved on since the previous order was issued. Is there any point in our engaging further with you on the issue?

**Derek Mackay:** I will certainly remain open-minded. My call to you is to let me see any evidence that the statistics have been misused in any way that I should have knowledge of. As I understand it, there are benefits to a clear understanding of statistics being reported in an informed way. If the committee has another view, I need to see that evidence.

**The Convener:** The issue may be one not of misuse of statistics, but rather of openness and public trust. Perhaps the committee can discuss the matter further and come back to you, but I think that that is probably as far as we can take this discussion today.

**Derek Mackay:** You asked for a clear answer, convener.

**The Convener:** As I say, the committee can discuss that and we will see what we make of it.

Thank you very much for coming in today. I will suspend the meeting to allow a change of witnesses.

10:41

*Meeting suspended.*

10:45

*On resuming—*

## Publicly Owned Energy Company

**The Convener:** Welcome back. We now move on to our discussion of the proposed publicly owned energy company.

Unfortunately, one of our witnesses, Catherine Waddams of the University of East Anglia and the UK Energy Research Centre, cannot be with us today because her travel arrangements have not worked out. However, let me welcome the witnesses who are here: Ragne Low, principal knowledge exchange fellow at the University of Strathclyde centre for energy policy; Neil Barnes, Ofgem deputy director for consumers and markets; and Kate Morrison, energy policy manager for Citizens Advice Scotland. Welcome, all three of you; thank you for coming in today.

I turn to John Mason for our first questions.

**John Mason:** Let me start by asking about the role of a potential public energy company. I have read some interesting quotes from Professor Waddams's submission, including that

"there is a danger that conflicting and/or poorly defined objectives result in poor achievement of any of them."

What should the strategic priorities be for such a company—for example, tackling fuel poverty, supporting renewable generation or supporting community energy schemes? Does there need to be a narrow focus, or can we have a wider focus?

**The Convener:** Who would like to start?

**Ragne Low (University of Strathclyde):** I will give it a crack. Way back when the proposal was initially made, 18 months ago or more, the intention was that the company would support the strategic objectives around energy generation and decarbonisation. As I have set out to the committee before, the focus has changed; it is now much more about consumers and tackling fuel poverty. That is a laudable aim but, as Catherine Waddams has suggested, that goal will need to be quite tightly defined and we may need to take a step back from some of the other things that are still at play, such as local energy, decarbonisation and strategic oversight.

A lot is going on already on fuel poverty, so if the company is going to focus on it exclusively, it will need to be very well aligned with the actions proposed under the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill, with the requirements for local authorities to develop local heat and energy efficiency strategies, and with the actions already being undertaken on fuel poverty by many Government partners. Alignment with those will need to be at the heart of how the company evolves.

There are other objectives that the company could address, but I agree with Catherine Waddams that it needs a narrower focus now that we have reached the point of putting forward concrete proposals for how it will look.

**John Mason:** Thank you. Mr Barnes, would you like to comment?

**Neil Barnes (Office of Gas and Electricity Markets):** Ofgem is the regulator of the gas and electricity markets in Great Britain. We support many of the aims that the Scottish Government has set out for the publicly owned energy company, many of which match our own duties, such as trying to drive down customer bills and support vulnerable consumers. You will have seen our recent proposals to introduce a price cap, which will particularly help to reduce the bills of consumers who have not engaged, many of whom may well be vulnerable or in fuel poverty. There is a good match with those aims.

Ultimately, we are looking for a well-functioning retail market in which competition can benefit all consumers, innovation and new technologies can come to market and consumers who do not engage, particularly the vulnerable, can also benefit.

A wide range of energy suppliers—60 or so in Scotland alone—is already active in the retail energy market. There seem to be a lot of opportunities for new entry into the market to deliver different objectives, and scope for innovation based on new technology and on new data that is becoming available with the advent of smart metering, for example. There are new markets and new ways of transacting, so we very much welcome new entries, new business models, and products and services that can provide better value to consumers. We share a lot of the Scottish Government's objectives in that endeavour, but I do not have a specific view on whether those objectives are the right ones for that sort of venture.

**John Mason:** You said that you want to have a well-functioning market, which I am sure that most of us agree with. Is the market functioning well at the moment? One of the problems seems to be that vulnerable people and poorer people, in particular, are not switching supplier, which is a key factor. If people are not changing supplier at the moment, would the creation of another supplier make them change?

**Neil Barnes:** The market is not functioning as well as it should at the moment, as evidenced by the fact that the Government has decided to introduce price regulation. We made our proposals on that recently, with a view to introducing a price cap, which would stand to benefit consumers to the tune of £1 billion, from 1 January next year.

There is a recognition that the market is not working well, and we are enacting a lot of initiatives in an attempt to improve competition in the market. Even when the price cap has been introduced across the market, significant savings will still be available to consumers who engage in the market and switch. The price cap will at least ensure that consumers who do not engage do not get ripped off but pay a reasonable price for their energy.

**John Mason:** Ms Morrison, do you have any thoughts about how narrow or wide the focus should be?

**Kate Morrison (Citizens Advice Scotland):** Yes. We strongly support the objectives in the most recent version of the energy strategy. More than a quarter of Scots were in fuel poverty in 2016, so we welcome the focus on tackling that issue. Since 2016, we know that there have been significant price rises, particularly in the electricity market. We want a specific emphasis on tackling and alleviating fuel poverty through cheaper energy bills.

**John Mason:** Should the sort of organisation that we are talking about tackle that issue in a more strategic way by helping people to understand better what is going on, or should it be a player itself?

**Kate Morrison:** That is a difficult question. There is a huge lack of awareness. We did a recent survey in Scotland that showed that up to 10 per cent of some suppliers' customers do not even know that they can switch. There needs to be a huge amount of awareness raising to identify and reach the fuel poor and the vulnerable. Our view is that, if such a company contributes to reaching the fuel poor, it will be a good thing, but whether the creation of that company will be the single solution to those issues is another question.

**John Mason:** Assuming that the company were to sell electricity or gas or both, what kind of level of customers would it need to have in order to break even and be viable? Presumably, if there were too few customers, the company would not work. Can any of you comment on that?

**Neil Barnes:** I am not sure whether there is a magic number. We know, from the many companies that have entered the market, particularly in recent years, that there is a range of different business models. Some companies are not looking to grow particularly big and are aiming for niche bits of the market, whereas some are looking to achieve economies of scale relatively quickly. If companies have very small customer numbers, it can be quite difficult for them to compete effectively, particularly in terms of accessing the wholesale market on a cost-effective basis. Beyond that, the required level of customers very much depends on the company's business model, on how cost efficient its operations are and on other such factors.

**Ragne Low:** To reinforce the point about scale, there are costs associated with tipping over certain thresholds. You would imagine that an energy company supported by the Scottish Government would wish to take on many of those costs, such as the warm homes discount, which is targeted at supporting fuel-poor households. Those costs might well be assumed to be part of a smaller company, irrespective of thresholds.

**John Mason:** Thank you. My colleagues will explore some of that further.

**Colin Beattie:** Should the company be involved directly in energy supply? Is that its correct role?

**Ragne Low:** I can kick off on that. My understanding is that the minister has written to the committee and others to suggest a white-label arrangement. Perhaps we can discuss what that is in more detail, but it is the preferred option in the development of a proper business case. I suppose that it is a hybrid somewhere in between directly supplying and not directly supplying, and it offers a number of advantages for de-risking the venture.

As Kate Morrison suggested, if addressing fuel poverty is the objective, there are multiple ways of providing low-cost energy if the margins in the market allow it. Running a supply company is one of those ways. It can be a part of the solution if it is designed well and designed for success.

**Colin Beattie:** Am I correct that there is a 5 per cent profit margin on supplying power? I think that I read that in the newspapers.

**Neil Barnes:** We require the large suppliers to publish annual accounts for their gas and electricity activities. In recent years, the average profit margin on gas and electricity retail has been around 5 per cent; interestingly, that is made up of probably 8 or 9 per cent on the gas side and almost nothing on the electricity side. However, that is for the six large companies; given the rate of new entry and switching in recent years, smaller companies now account for more than a quarter of the market. That is very positive, but their profit margins do not have the same visibility. Anecdotally, they are very thin, as you would expect with companies that have just entered the market and are looking to get up to speed. Whether 5 per cent is an attractive margin is an interesting question.

**Colin Beattie:** You said earlier that there are 60 suppliers in Scotland, which seems an awful lot. Where would the company fit in among the 60 suppliers that are competing at the moment?

Presumably some of the smaller suppliers are seeking to establish themselves in various niches in the market, and now there is a proposal to have another company come in and try to establish its own niche.

**Neil Barnes:** At the moment, part of the energy market is very competitive—consumers are engaged and willing to shop around, and there are a lot of options and relatively low prices available for them—but there is another part of it in which consumers do not engage and are paying considerably higher prices. There is a potential role for a supplier that can reach the parts of the market that are not so well served or targeted by existing players, engage those consumers and make considerable savings to their bills. That is one factor.

Another observation is that the market is going through a rapid change. A lot of the existing players are very focused on what we might think of as traditional supply—selling kilowatt hours of gas and electricity to customers—but we expect significant innovation as a result of the opportunities afforded by new sources of data from smart metering, new technologies such as energy storage or electric vehicles, and new ways of trading such as local energy or peer-to-peer trading. It remains to be seen whether that innovation will come from existing players or from those who are not yet in the market, but we welcome new entry if it brings better or innovative ways of supplying energy.

11:00

**Colin Beattie:** Do you think that the Scottish Government's phased approach with local authorities is the best way to launch this company?

**Ragne Low:** It makes sense to do it in a phased way for a number of reasons, not least the state of the market. The amount of flux and change in the market means that it would be difficult to do anything else in terms of financial accountability and risk. For me, though, the phased approach still has to have a sense of the end point that we are heading towards. We talked about the range of objectives that may be being served simultaneously, and it is not clear to me yet whether the end point is still trying to address a large number of objectives simultaneously in a way that an energy agency, for example, might be better equipped to do than a supply company.

What happens after the white-label arrangement is an open question that needs to be considered. It may be that the white-label model is the supply-side entity and that other things do not necessarily sit under that arrangement. For example, investment in renewables might be addressed through a different mechanism, but it would be useful to at least start to set out what all that looks like.

**Kate Morrison:** The two organisations that operate such a model already are Bristol Energy and Robin Hood Energy, and the jury is out as to whether it is really a sustainable model. Bristol City Council said that it would spend £33 million on the venture, and Bristol Energy has already spent £27 million of that and is not yet profitable. I read that Sadiq Khan, through his energy for Londoners programme, commissioned Cornwall Energy to do a scoping study to determine whether it was better to have a white-label arrangement or to set up a complete supply company. The study double-weighted quick delivery, which meant that the white-label option was the one that was chosen, but in fact setting up a supply company would have delivered better on revenue retention, more control over tariffs, tackling fuel poverty, generating economic benefits such as jobs, getting higher customer numbers and supporting renewables in the area. With the white-label model, the devil would be in the detail. How it would be done is the most important thing, but it rang a little alarm bell for me that that option should be chosen when there is evidence to suggest that it may not initially get the best benefits.

**Colin Beattie:** Do you see a role for the national investment bank?

**Kate Morrison:** I do not have a specific comment on that.

**Ragne Low:** In the energy sector generally, there is investment in the generation side and in low-carbon technology projects, as well as in local energy systems that match supply and demand through projects that are not just about putting new bits of kit in, but how that links into the public energy company is a bit of an open question.

**Andy Wightman:** I want to explore the community and local energy sector, where there has been quite a bit of success but where there also remain huge challenges, mainly in terms of investment—the Scottish national investment bank may have a role to play in that—but also in relation to fuel poverty, which is high in rural areas, especially in off-gas-grid areas. In terms of resilience, we have seen the island of Eigg build its own generation capacity, but only 80 people live there, and repurposing it in 10 years or so will be quite a task for 80 consumers. Is there a role for a public energy company, in alliance with investment vehicles such as the Scottish national investment bank providing grants, loans, equity guarantees and so on, in building resilience in areas where energy supply and generation are most challenging, in terms of both price and resilience?

**Neil Barnes:** We see a lot of interest in local energy schemes, and not just in Scotland but more widely. A lot of thinking and investment are going into such schemes. Eigg is a slightly different model from what we see generally. There are ways in which the current market arrangements do not facilitate some innovative new business models and ideas. Ofgem is looking actively at how we could adapt the rules to enable a greater range of business models, whether local energy or other types of trading. That certainly seems like the direction of travel for bits of the market, but it remains to be seen whether that will make sense everywhere.

It will be interesting to see how some of the current experiments work out and how well they engage the consumers in an area. There are some positive signs. More broadly, we need to consider how well such schemes can deliver cost savings for areas by drawing on local generation and so on.

**Andy Wightman:** The market does not work at all in that respect. Thirty years ago, we had a state-owned energy enterprise, but it was privatised and is now owned by big multinationals, with the focus being on generation, distribution and supply.

As you said, we have new innovative models—for example, we have been looking at district heating. Some of the models are in their early stages, but we have had demonstrations of how they could apply not just in this country but in other countries. Reform of the energy market along conventional lines, with price controls and so on, will not make much impact on the need for resilience, which exists not just in rural areas but in parts of urban Scotland, so innovation needs to be supported. Perhaps that suggests that there should be an energy agency rather than an energy company.

**Ragne Low:** Yes, it does—or it suggests that there should be a range of policy levers, some of which are not within the purview of the Scottish Parliament.

We need to think beyond the white-label arrangement that has been proposed. Under the current arrangement, and in devising the white-label model, one way in which support—as Andy Wightman is suggesting—might be possible is through power purchase agreements. Those agreements look the way that they look because of the drivers in the current market. There might be a role for a publicly owned energy company in pursuing longer-term power purchase agreements that have a more social objective. However, I am not an expert in that area and do not know what such an arrangement would look like in practice, given the current rules of the game.

**Kate Morrison:** There are groups of consumers—for example, people who rely on electric heat—who pay, on average, three times as much to heat their homes as they would if they had gas. It is questionable whether a supply company could offer enough of a saving to make it worth while for those groups of consumers to switch. However, if such people could be put on to different systems, such as district heating, that might provide a better solution. The outcomes for consumers might be better if we think beyond cheaper tariffs to the other options that might be better in a home.

**The Convener:** How will adding yet another energy company or another aspect to the market affect the Scottish Government's policy approaches? Is that likely to assist in delivery of the Scottish Government's policy objectives, or is it likely to overcomplicate matters?

**Ragne Low:** The proposal, as I understand it, is that local authorities will be invited into an umbrella white-label arrangement, and that the Scottish Government would, in effect, procure a supply package on behalf of local authorities that they could then choose to take up. If that proposal aligns with what local authorities want, and with the Government's wider energy policies and its current activities with energy services companies, that is all to the good.

I suspect that we will end up with a patchwork, in which some local authorities will engage in that and others will not, because they do not feel that it aligns well with their objectives and current activities. It would be good if the proposal could be designed in a way that would support as many local authorities as possible in their endeavours to reduce fuel poverty and increase energy resilience locally.

However, as it is framed at the moment, the area in which the proposal can help is in engaging with the idea of local energy systems. To me, that does not seem to cut across anything else that the Scottish Government is trying to do. However, although it seems to be a sensible approach, it addresses only one part of the objectives that we have been talking about.

**Kate Morrison:** I add that the risk with the policy is that its application might be patchy, so that not everyone benefits. If the objective is to reach fuel-poor customers, I point out that we have recently done research in which we spoke to people about fuel poverty, and they said—unsurprisingly—that they want and need instant financial support with their bills. In Ireland, there is a model in which people get a winter fuel allowance if they are on specific long-term benefits.

The question is whether there are other ways of consistently reaching the fuel poor and lowering their bills that would mean that everybody could be accessed, instead of just those who sign on. My concern is that although the approach might be useful in advancing the policy objectives, there is a question about whether it will reach everybody who needs to benefit from the objectives.

**Neil Barnes:** We talk to a lot of innovators who are potential entrants to the market and who have different ideas and business models that they want to bring to it. In an awful lot of cases, they do not start out with the intention of becoming licensed energy suppliers: they are not really interested in that because it comes with a lot of obligations attached. However, they find that, given the current structure of the market, they end up by needing either to seek supply licences themselves—in particular, to gain access to industry systems and data—or to partner with existing players in the market in order to do so. That suggests that, in the current market model, there can be benefits to being licensed suppliers that enable them to do certain things, such as accessing the wholesale market and its customers.

As I mentioned previously, we are looking at ways in which we can update market arrangements to recognise how the market is likely to evolve, and to make it either less burdensome to become a licensed supplier or easier to provide the individual services without having to go through the hoop of being such a supplier.

**Gordon MacDonald:** Earlier, we touched on the fact that the retail energy margins are very tight, at about 5 per cent. Also, most electricity and gas is sold through the wholesale market, which depends predominantly on supply and demand and does not necessarily reflect the cost of production. Do we know what the margins for generators are?

**Neil Barnes:** We get the six largest supply companies to publish their generation outturns. Of course, some of them are less involved in generation than they used to be. Previously, they were virtually all involved in that. The margins differ significantly. One player that is very involved in the nuclear side makes the vast majority of the profits in that area. The six largest suppliers no longer represent the entire generation market, so it is less clear what—

**Gordon MacDonald:** Would it be fair to say that the margin is substantially higher than 5 per cent?

**Neil Barnes:** As far as return on investment is concerned, yes—but one would expect that in a capital-intensive sector such as generation, compared with the retail sector. Again, whether a 5 per cent margin on retail activities is tight is an interesting question. I suspect that some retail markets would consider it a very healthy return. It all depends on perspective.

**Gordon MacDonald:** If the proposed publicly owned energy company wants to make a difference, should it get involved in generation, where the margins are larger and therefore there is more scope to support people who are struggling to pay fuel bills?

**Neil Barnes:** I do not have a view on whether it is worth its while to get into that bit of the market.

**Gordon MacDonald:** Anybody else? Is it a good idea for the publicly owned company to get involved in generation?

**Kate Morrison:** It seems to be logical that that would have greater benefits, but obviously it would mean higher investment risk, so it is a question of how that would play out.

**Gordon MacDonald:** What do you think the potential risks are?

**Kate Morrison:** The risks would depend on the technology that the company decided to invest in. I will not pretend to be any kind of economist, but I know that a lot of suppliers have been failing in the market of late. It is not necessarily an easy market to be in; there are a lot of high risks.

11:15

**Gordon MacDonald:** There are a lot of small-scale electricity suppliers, as Andy Wightman said. Harlaw Hydro Ltd in my constituency has been on the go for a couple of years, for example. Is there a need for a publicly owned energy company to engage with the small-scale producers and generators through power purchase agreements, and to give them a market in order to focus on people who are fuel poor?

**Ragne Low:** Yes—potentially there is such a need. That may not be deliverable through the white-label model, at least initially, but there is definitely scope for that kind of support and, as we have discussed, for investment from the national investment bank, for example.

**Gordon MacDonald:** We touched on Bristol Energy earlier, and I believe that Robin Hood Energy has just turned a profit for the first time since it was established. Can we learn lessons from either supplier that would help us to set up the new publicly owned energy company?

**Kate Morrison:** The only thing that I would add is that we rank suppliers in a quarterly league table based not on costs but on factors including complaints numbers and how easy the suppliers are to get through to on the phone. I think that Bristol Energy did pretty well: it was sixth out of 32 according to our parameters. Robin Hood Energy may be a wee bit cheaper, but it was 29th. I hope that the publicly owned energy company will focus on good customer service and everything that goes with it, particularly if it is trying to attract vulnerable consumers and people who are in fuel poverty. We do not want people to move and see their standard of service drop.

**Neil Barnes:** I am not saying that there are lessons to be learned, but it is interesting to note the different approaches that those suppliers have taken—for example, in engaging consumers. Bristol Energy has physical shops that people can go into. There is quite a lot of consumer research that suggests that consumers need that kind of hand-holding to give them the confidence to engage effectively in the market and to make decisions. Bristol Energy has clearly used that, whereas most suppliers offer no physical presence, but communicate over the telephone or online.

I think that Robin Hood Energy initially focused on prepayment customers as part of its social objective. I guess that that shows that such suppliers run by city councils can target different segments of the market in different ways and have tried different things.

**Ragne Low:** Another example is Our Power here in Scotland, which has an explicit policy of addressing people in social housing who are being moved from one contract to another, and of intervening at that point to give them a better deal.

**The Convener:** Thank you. We will have a supplementary question from Jamie Halcro Johnston, and then move on to Dean Lockhart.

**Jamie Halcro Johnston:** You mentioned that there are 60 suppliers. How many are not-for-profit organisations?

**Neil Barnes:** I thought that you might ask that. We do not formally log whether suppliers are not for profit. There are different interpretations of what that might include—we have heard examples. However, I would say that not-for-profit suppliers are almost certainly a significant minority.

"Not for profit" does not necessarily mean cheaper. Not-for-profit suppliers are not aiming for a profit margin, but that is a different matter from whether they are cost effective. Of the not-for-profit suppliers, some might be at the cheaper end and some might be at the higher end.

**Jamie Halcro Johnston:** Yes, I appreciate that they may be trying to provide an additional customer service.

What is the difference between the average fuel costs, whether electricity or gas, and the lowest available costs? Is there a fairly consistent gap between the two?

**Neil Barnes:** Over recent years, the difference between the most expensive and the cheapest on the market for an average consumer—the one who consumes an average level of gas and electricity—has remained around £300 a year. In circumstances where people consume more, obviously that figure could be higher. Ofgem is planning to introduce a price cap from 1 January, which will provide savings for consumers on the poorest-value tariffs of around £75 a year on average, resulting in total savings of around £1 billion, but that will still leave scope for those consumers who want to shop around and engage in a competitive market to save significant amounts.

**Jamie Halcro Johnston:** Would that not suggest that perhaps the focus should be on encouraging those who are not engaged to shop around for prices and helping them to get on to the lowest tariffs? The price cap will play a role, but is the effort not best spent on ensuring that everybody who needs to be is on the lowest tariff available?

**Neil Barnes:** Absolutely, and in recent years we have been putting a lot of effort into better understanding what is stopping consumers from engaging effectively in the market. We have done a lot of research and a lot of trials of different ways of engaging consumers, some of which have been positive.

One that we published recently was a hassle-free collective switch. We asked one of the big suppliers if we could use about 50,000 of its customers who had not switched for around three years—a reasonable proxy for the people who may not be making a conscious decision to be on a poor-value tariff—and we used a price comparison service to run an auction and get suppliers to bid a low price for those customers. A quarter of those customers ended up switching, against an average baseline of around 3 or 4 per cent who would have switched otherwise.

That is just one example of where there is significant potential to engage more consumers, and an important lesson from that was about the extent to which consumers valued being able to use the telephone and actually talk to someone, rather than being expected to deal with a company online when making those sorts of decisions. We recognise that it is necessary, but perhaps not sufficient, to continue providing engagement, because there are always likely to be some consumers who, for whatever reason, do not or cannot engage in the market. The price cap is a temporary solution for improving their outcomes. In the longer term, we are committed to exploring ways of changing the arrangements in the market to try and improve competition, enable better innovation and, we hope, deliver better outcomes without some of the downsides that could come with setting prices.

**Kate Morrison:** Quite a lot is going on at a local, grass-roots level. We have 60 citizens advice bureaux in Scotland and we run a project called energy best deal, which gives people one-to-one sessions to make sure that they are on the right tariffs and have accessed all the correct support. Last year, we had 38,000 energy issues come through the network in Scotland, and we managed to save clients £1.6 million through financial gains, which just shows you how many people could be saving money. It is a real shame that people are not on the cheapest tariff available to them.

**Jamie Halcro Johnston:** Should the Scottish Government's focus, in the first instance, be on looking at the reductions that are available already and trying to get people on to those cheaper tariffs?

**Kate Morrison:** I do not think that there is a single answer. The Government is focusing on that. It supports the energy best deal project, the big energy saving network and various other projects that attempt to do that, and those projects have success, but you can never reach everybody with a single thing.

There is a role for the supply company, and perhaps that could be tied into local awareness initiatives. If there is a local tariff that is really good for people in an area who are on pre-payment meters, the energy best deal project can ensure that that is clearly advertised to people in that area, and that can tie in with other things that are going on.

**Dean Lockhart:** In order to achieve a meaningful impact on the market and make a difference to consumers, presumably the energy company will require scale in terms of being able to influence the market and influence price, which in turn will require significant investment, both in set-up costs and in annual running costs, and I assume that we are looking at tens of millions of pounds. From a policy perspective, is that the best use of money to address fuel poverty? The company might not reach all those in need. Is there a better way to use public sector money to address fuel poverty?

**Ragne Low:** The white-label arrangement that is currently on the table avoids the large set-up costs that you have described. That is a sensible first step. There is the question whether, ultimately, there will be something that looks more like a standard supply company. We need to understand what will happen in phases 2 and 3. If a white-label arrangement can be designed to match what local communities need it would seem to be a sensible approach.

**Kate Morrison:** It is a difficult question. There is a lot going on in the area. The powers over the warm homes discount and the energy company obligation are potentially moving to Scotland, so there are pots of money that could be used to target support for the fuel poor. There is also a lot going on with the fuel poverty strategy.

I do not want to make a new policy position for my organisation on the hoof, but I like the Irish model of having a winter fuel allowance that ensures that people who are in fuel poverty or on certain benefits definitely get a certain amount of money over the winter to ensure that they can heat their home.

**Dean Lockhart:** I have a question on a slightly different topic. We have heard mention of other companies in the rest of the UK addressing fuel poverty and hoping to reduce pricing for consumers. Can you point to other examples in the rest of the world where state-owned companies have been successful and from which we could potentially learn some lessons?

**Ragne Low:** The UK or Great Britain energy market is quite different from most other energy sectors. There are no directly comparable examples.

Much play is made of the ways in which Danish and German municipally owned companies have succeeded in delivering local investment, local jobs and good prices for consumers. However, those companies exist in a different market. Many of them, despite being publicly owned, compete in a more or less liberalised market, and many of them are involved not just in the supply of electricity to households, but in generating and supplying heat and in district heating.

We have not touched on heat in that way. Heating the home, rather than the need to have the lights on, is the chief reason that someone would be in fuel poverty. There are lessons to be learned around how not just the state, but not-for-profit companies might be involved in provision of heat.

**Neil Barnes:** It is fair to say that energy markets tend to be set up quite differently in different jurisdictions. We do not necessarily have a view on which ones deliver best against some of the aims, but there are clear differences. For example, in some of the Scandinavian markets, objectives around vulnerability and fuel poverty are dealt with outside the market, through the social security system.

One of the defining features of the British market is the volume of obligations that we put on energy suppliers to be delivered through the market, such as loft insulation, the warm homes discount and so on. That is one route and those companies have existing relationships with their customers. However, it has the potential to make it a harder market to enter, because a company coming in needs to be able to perform a wide range of activities. That could put off a company that is looking to do something quite specific and clever.

As Ragne Low said, in many European countries there is greater public ownership, based around municipalities and other bodies. That can raise other issues around competition, which has perhaps developed less well in some of those countries. There are pros and cons. Not all of the things that energy suppliers are currently expected to do have to be done by them; there are potentially different ways to do that.

**Dean Lockhart:** That is very helpful.

11:30

**Angela Constance:** I want to explore the governance arrangements for a publicly owned energy company. Does the panel have views about where the principal accountability should lie? Should such a company principally be accountable to Parliament, Government or both? Is the committee structure of this Parliament adequate and suitable for scrutinising and holding to account such a complex organisation, and is there any basis for the accountability arrangements to be set out in legislation? What do you see as the arguments for and against that?

**Kate Morrison:** We do not have a specific view on whether legislation is required. We work closely with Scottish Water, which uses a model that we think works. It is publicly owned and effectively accountable to ministers in that its high-level objectives are set every six years through the principles of charging and the ministerial objectives. There is a whole governance structure that goes around that, with the different organisations such as the Water Industry Commission for Scotland and the Scottish Environment Protection Agency, which ensures that certain elements of those priorities are delivered on. That seems to us to be an exemplary model for a publicly owned company.

**Neil Barnes:** I do not have a view on what suitable governance arrangements would be. If a publicly owned energy company sought a licence as a supplier, as the regulator we would be the body that considered that and granted it. We would want to be clear about the entity that we were granting a licence to, so that we could hold it accountable and regulate it. We would treat a publicly owned energy company in the same way as any other company that we regulate, and we would monitor and enforce compliance in the same way, in order to protect consumers.

In terms of governance, such a company might well be instructed to look at some of the existing local authority or city council-owned models. Those are on a smaller scale than a Scottish Government-run company would be, but that would show how those companies have addressed issues and potential concerns around state aid and the way in which such companies are funded.

**Ragne Low:** I agree with both of those points. Learning the lessons of existing models of governance—those of Robin Hood Energy and Bristol Energy, for example, which took a slightly different approach—would be good. I do not have a well-enough informed view on legislation. Another example that we might point to is Statoil, the Norwegian energy company; when it was established it was required to report to Parliament. Without assuming that Parliament would be the ultimate body to which the company would be accountable, the company should perhaps be required to report to Parliament on its business objectives and how they are being met, in order to provide transparency and accountability.

**Angela Constance:** We have heard about some local examples, such as the Robin Hood Energy company south of the border, and the arrangements for some of the larger national companies on the continent, and we have heard that there might be some learnings from Scottish Water. I am thinking about not only accountability but service user involvement, promoting and protecting the rights of consumers and ensuring that the voices of those most affected by fuel poverty are heard and that their lived experience is integral to the working of a publicly owned energy company. Are there any other examples that we could learn from in terms of proper, meaningful and participative user engagement?

**Ragne Low:** There are models of citizens panels and deliberative participatory processes being used to support the design of services in, for example, health and social services—although that is not my area of expertise—and those could be drawn on. There are multiple ways in which service users and/or citizens, depending on how we want to characterise them, are involved in supporting decision making. Participatory budgeting is an example of a process that directly involves the recipients of public services in the design of those services. There are multiple models that we could draw on.

**Kate Morrison:** As a consumer representative, we would hope that, as the company is being formed, our expertise and research would be drawn on to understand what consumers want and need from such a company. Our work plan for this year includes a plan to speak to consumers about that.

**Angela Constance:** My next question is perhaps more for Ms Morrison, because I suspect that, in her role in Citizens Advice Scotland and from research, she will be more familiar than other members of the panel are with Social Security Scotland and how it has been set up. Rather innovatively, it taps into the service user experience. I am keen to canvass opinion on a range of bodies in Scotland and across the UK and the continent that we could learn from.

**Kate Morrison:** That is a question for my colleagues, but I could provide their feedback on what they think the learnings could be from Social Security Scotland.

**The Convener:** I thank our witnesses for coming.

I suspend the meeting briefly to allow a changeover to our next panel.

11:36

*Meeting suspended.*

11:38

*On resuming—*

# European Union (Withdrawal) Act 2018

## Insolvency (Amendment etc) (EU Exit) Regulations 2018

**The Convener:** Welcome back. We have with us Graham Fisher, head of branch in the constitutional and civil law division of the Scottish Government's legal directorate; David Farr, policy manager on corporate insolvency with the Accountant in Bankruptcy; and Alex Reid, head of policy development with the Accountant in Bankruptcy.

Other members may wish to ask about the regulations, but I want to clarify one thing first. We are looking at the question of leaving the European Union and the technicalities that that will involve with regard to not only insolvency regulation but other areas. There is a protocol for obtaining the Scottish Parliament's approval when UK ministers exercise powers over areas that are within the Scottish Parliament's legislative competence. Correct me if you have a different understanding, but my understanding of the protocol is that, if we accede to what is before us today but the Scottish Government is not happy with what is eventually produced at UK level, the Scottish Government can bring the issue to the committee and the Parliament and a Scottish statutory instrument can be introduced and agreed to by the Parliament. On other occasions, there might be a slight alteration from what the Scottish Government had understood was to happen, but the Government might not consider that to be material, in which case it would be content. A third possibility is that the Scottish Government might be entirely content, and in that case the instrument would simply be laid before the Scottish Parliament.

My concern is that the committee would not then be in a position to scrutinise or review what UK ministers were proposing in relation to devolved powers or competences, should it choose to do so. From the protocol, it appears that the only time that the matter would come back to the committee or, potentially, the Parliament to review would be when the Scottish Government was not happy with what UK ministers had proposed whereas, if the Government is happy, in effect, scrutiny simply will not be possible, except—obviously—that which the Scottish Government has done.

Have I understood that correctly, or is there another way of looking at the situation?

**Graham Fisher (Scottish Government):** Yes, I believe that you have understood the protocol correctly. It would certainly be open to the Government to write to the committee with a copy of the regulations as laid, if that would assist.

**The Convener:** Could that be done on the basis that the committee could then take action with regard to the regulations or raise issues with them?

**Graham Fisher:** It would of course be open to the committee to raise any issue that it believed to be of concern. Given the process, and the overall process and timings for the Brexit legislation across the UK, that would be difficult, but it would of course be for the Parliament to decide what view to take on the final position that was reached at Westminster. The protocol works on the basis that, if the committee is content with the proposal that the matter be dealt with by United Kingdom statutory instrument, the Westminster Parliament will look at it.

**The Convener:** If, for example, there were a procedure whereby the Scottish Government put the draft SI to the committee for comment, and if the committee made specific comment on provisions that it thought should be drafted differently and that were not being dealt with elsewhere, would it then be open to the Scottish Parliament to not agree to the instrument?

**Graham Fisher:** Under the protocol, there is no formal role in terms of disagreeing to an instrument that is considered at Westminster. In that sense, it is ultimately for the UK Government to decide what cognisance to take of any views that the Scottish Parliament expresses. However, the committee could certainly be provided with a copy of the instrument that is taken forward at Westminster, if that would help the committee with its consideration.

**The Convener:** I may or may not come back to that.

**Andy Wightman:** This is a complicated area of policy and legislation, and there is an issue on which I seek clarification. Is the proposition that the UK should legislate in this area designed to address the prospects of there being a deal as well as the prospects of no deal?

**Alex Reid (Accountant in Bankruptcy):** At this time, the plans that have been made are based on the contingency of a no-deal Brexit and the deficiencies that would arise from it. They are the most appropriate way to deal with the issues that span competence and that would be complex or difficult to deal with using another route. The piece of work that is before us basically deals with the contingency of a no-deal Brexit. The approach would need to evolve to reflect any deal covering cross-border insolvency proceedings, if one is reached with the EU.

**Andy Wightman:** If there were a deal, the instrument that is developed would not have any effect. Is that the case?

11:45

**Alex Reid:** The instrument would certainly need to evolve in relation to the terms of a deal, because the instrument deals specifically with what would need to happen in relation to the deficiencies in legislation on the basis that there is no deal and that, under the EU regulation as it stands, there is not a reciprocal arrangement across EU states. There would need to be development to correspond to the nature of the deal that is reached.

**Andy Wightman:** From a policy perspective, is it your preference that a deal should include an agreement that basically retains the status quo on cross-border co-operation?

**Alex Reid:** It is safe to say that we share the view of the UK and Scottish Governments that there are advantages to the existing reciprocal cross-border arrangements on insolvency. From a policy perspective, it would be desirable for those arrangements to continue post-Brexit.

**Andy Wightman:** As far as you are aware, could the negotiations on continuing those arrangements along existing lines lead to a positive outcome? Is agreement contingent on other aspects of a deal, such as trade and services?

**Alex Reid:** The draft withdrawal agreement anticipates that, for example, the cross-border co-operation and recognition that exist in insolvency proceedings will continue after Brexit. However, that is subject to on-going negotiations. At this moment in time, we do not have any certainty on the continued reciprocal arrangements that might be agreed. We are working on a contingency arrangement that would enable there to be continuity in domestic law in the event of a no-deal Brexit under which the reciprocal arrangements no longer exist.

**Graham Fisher:** The draft withdrawal agreement—which is available—has provision for the transition and implementation periods. The UK Government has published a white paper that sets out that there would be a withdrawal and implementation bill, which—if there is a deal and agreement on the withdrawal agreement—would provide for the implementation period. The provision to be made in the no-deal SI would, in effect, be deferred until the end of the implementation period, which will be set out in the withdrawal agreement.

The arrangements would be maintained in the wider partnership, as set out in "The Future Relationship between the United Kingdom and the European Union" paper, which the UK Government has published and in which it has set out its desire to reach a wider deal with the EU. As Alex Reid said, the policy preference of the Scottish and UK Governments is to maintain those arrangements and to reach an agreement. The arrangements have not yet been agreed, but they would be agreed as part of that wider partnership. The EU says that the arrangements are still up for negotiation, and the wider aspects that Andy Wightman mentioned might come into the negotiation in determining whether a deal can be agreed.

**Andy Wightman:** How clear were the Accountant in Bankruptcy and the Scottish Government in their view that the instrument should be allocated to category A as opposed to category B? Was that a marginal view?

**Alex Reid:** I do not think that it would be classed as a marginal decision. It was based purely on the arrangements that have been put in place in other contexts to deal with difficult areas that span competence—for example, the general legal effect of a company winding up is reserved and the process of a company winding up is devolved. We need to think of practical ways in which to deal with that.

We have previous examples of where such an approach has been taken. It seems to be the only feasible approach that can result in legislation that is effective for the user and which does not try to unpick the issues of reserved and devolved competence in separate instruments. We had no doubts about the category that this fell into.

**Jackie Baillie:** I wonder why you did not consider separate Scottish legislation in areas in which there was clear responsibility, such as personal insolvency and receivership—or maybe you did. You have legislated before in Scotland; why are you passing responsibility to the UK Government?

**Alex Reid:** The approach that is taken in the draft instrument is not to have those issues covered by UK legislation. The plan is to address deficiencies that relate to purely devolved matters in a Scottish statutory instrument.

**Jackie Baillie:** When can we expect to see that? I am conscious that it is not the only instrument that the Accountant in Bankruptcy needs to deal with—I am sure that Mr Fisher is ageing rapidly as he considers all the instruments that need to be introduced. I am interested in teasing out how you will manage the process.

**Alex Reid:** We have already undertaken work to address the deficiencies and plan what needs to happen in Scottish legislation. The timing for developing and laying that legislation will need to take account of other Scottish Parliament priorities that come along and of the impact of not making such an SI, but there should certainly be no difficulty in introducing it within the bounds of those priorities well in advance of Brexit.

**Jackie Baillie:** I appreciate how difficult it is to speculate, but I am interested in unintended consequences. What would be the likely impact of not legislating quickly in the areas of devolved responsibility?

**Alex Reid:** In the areas of devolved competence, I do not think that there would be a significant impact. The volume of cross-border activity in the areas of personal insolvency and receivership is not high—that is certainly fair to say. Receivership appointments are diminishing; receivership action is raised by a floating charge holder, and the floating charge would need to emanate from before 2003. In the last two years of receivership, there have been only six receivership appointments in Scotland. They are few and far between, and even fewer involve cross-border insolvency. In personal insolvency, there are certainly very few cross-border cases.

The impact is not likely to be significant, but that is not to say that we would not need to address the deficiencies that would certainly be created in a no-deal scenario.

**Jackie Baillie:** Okay. I would like to explore something with Mr Fisher. We were told that we are talking about in the order of 100 SSIs and legislative consent motions, taken as a package. How many are we asking the UK Government to run with and how many are we legislating for? I appreciate that it is a bit of a blancmange at the moment, but it would be useful to get an order of magnitude.

**Graham Fisher:** I am afraid that I do not have a breakdown of the figures to hand. I will have to give you that information later.

**Jackie Baillie:** That would be very acceptable.

**John Mason:** To continue that line of thinking, is the subject of insolvency unusual in that it is so intertwined with Scotland and the UK that it makes a lot of sense for one jurisdiction—the UK—to deal with it? Is that unusual? Are there many other similar subjects?

**Graham Fisher:** I will take that one. It is safe to say that it is unusual. The section C2 reservation in schedule 5 to the Scotland Act 1998 is particularly difficult when it comes to corporate insolvency, especially in the area of winding up, where the process of insolvency is devolved, but the general legal effect of such insolvency is reserved. That leads to difficulties.

However, there are certainly other areas of regulation where there are mixed areas of responsibility. It is relatively common in particular areas. On EU matters, there is a practice of using section 57(1) of the Scotland Act 1998 in some cases to allow those very mixed areas to be dealt with more straightforwardly.

I know that the committee has considered insolvency in that context in relation to the mixed area of winding up, particularly in approving the Scotland Act 1998 order that would allow the corporate insolvency rules to be made together with the UK Government. There is an on-going project to replace the corporate insolvency rules.

I do not know whether I can say yes to both parts of the question.

**John Mason:** That is fair. I share the convener's concern that the committee is being asked to approve something that we have not really seen, but I accept that that is not the responsibility of officials.

Finally, we received a briefing from R3, the Association of Business Recovery Professionals, which is concerned that if we go down this route and there is no deal, UK practitioners will recognise what people in the EU are doing, but there is no guarantee that EU practitioners will recognise what we are doing in the UK, which would put the UK at something of a disadvantage. Is that a fair comment from R3?

**Alex Reid:** Maybe Graham Fisher could refer to the statutory instrument on whether EU insolvency procedures would be recognised here.

**Graham Fisher:** That is part of the provision that would be made in the SI. Broadly, we agree with what R3 is saying about the potential impact of Brexit in general and how the reciprocal arrangements could fall down, which would put people in Scotland at a disadvantage.

**John Mason:** Thank you. That was helpful.

**The Convener:** As there are no further questions, I will allow the witnesses to go back to the blancmange of EU directives and trust that it does not age them too much. I thank them for coming in.

11:58

*Meeting continued in private until 12:53.*

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