



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Rural Economy and Connectivity Committee

**Wednesday 27 March 2019**

**Session 5**



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**RURAL ECONOMY AND CONNECTIVITY COMMITTEE**

**11<sup>th</sup> Meeting 2019, Session 5**

**CONVENER**

\*Edward Mountain (Highlands and Islands) (Con)

**DEPUTY CONVENER**

\*Gail Ross (Caithness, Sutherland and Ross) (SNP)

**COMMITTEE MEMBERS**

\*Peter Chapman (North East Scotland) (Con)

\*John Finnie (Highlands and Islands) (Green)

\*Jamie Greene (West Scotland) (Con)

\*Richard Lyle (Uddingston and Bellshill) (SNP)

\*John Mason (Glasgow Shettleston) (SNP)

\*Mike Rumbles (North East Scotland) (LD)

\*Colin Smyth (South Scotland) (Lab)

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

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

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

George Henry (Scottish Government)

Alex Hynes (ScotRail Alliance)

Andrew Mackie (Transport Scotland)

Michael Matheson (Cabinet Secretary for Transport, Infrastructure and Connectivity)

Stephen Rees (Scottish Government)

Bill Reeve (Transport Scotland)

David Simpson (ScotRail Alliance)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Rural Economy and Connectivity Committee

Wednesday 27 March 2019

*[The Convener opened the meeting at 10:00]*

### ScotRail Remedial Plan

**The Convener (Edward Mountain):** Good morning, everyone, and welcome to the Rural Economy and Connectivity Committee's 11th meeting in 2019. I ask you all to please ensure that your mobile phones are set to silent. I welcome Christine Grahame and Rachael Hamilton, who will listen to and take part in some of the committee's activity today.

Agenda item 1 is consideration of the ScotRail remedial plan. The committee will take evidence first from the ScotRail Alliance and then from the Cabinet Secretary for Transport, Infrastructure and Connectivity.

I welcome the first panel. From the ScotRail Alliance, we have Alex Hynes, the managing director, and David Simpson, the operations director. From Network Rail Scotland, we have Liam Sumpter, the chief operating officer. I ask Alex Hynes to make a brief opening statement—it should be of no more than three minutes, because there are lots of questions.

**Alex Hynes (ScotRail Alliance):** Thank you for the opportunity to appear before the committee. The fact that we are sitting here indicates that the service that some of our customers have received has not been good enough. We say sorry to customers who have been affected, and we know that we must do better. I am confident that we will do better through the delivery of the remedial agreement with Transport Scotland. It is a ScotRail plan. ScotRail relies on infrastructure performing and suppliers delivering but, ultimately, ScotRail is responsible for the service that our customers receive.

Under the remedial agreement, we will invest an additional £18 million to give our customers the service that they expect and deserve. I am sure that we will go through the remedial plan in detail, but I will give some highlights. We will recruit an additional 55 drivers and 30 conductors. Hitachi, which supplies our brand-new class 385 electric trains, will increase the number of technicians on trains to deal with incidents. We will increase the number of people who work in our control room, including with seven additional people from Hitachi. We will double our performance

improvement fund to £500,000 a year. We are also extending the contract on our locomotive-hauled trains in Fife, to protect capacity. We believe that, taken together, the actions in the £18 million agreement will improve the service that our customers receive.

There are positive signs that performance is improving. We recently recorded our fourth consecutive period of improved performance, in which almost 90 per cent of our 2,400 services a day met our punctuality target. That is up from 2,200 services a day at the start of the franchise. In the most recent four-week period, more trains ran on time in Scotland than ever before.

Glasgow Central station recently recorded its best period for two years, and our infrastructure's performance has improved significantly. The number of daily cancellations that are linked to train crew issues has reduced dramatically, and more than half of the Hitachi trains are now in service. We need to do much more to regain our customers' trust, but things are moving in the right direction.

ScotRail will face further challenges throughout 2019. Training new drivers takes 18 months in total, and we remain at the mercy of our train suppliers, which have let us down badly in the past. Although Network Rail is investing more than ever to prepare for the extremes of Scottish weather, the weather's unpredictability will continue to significantly impact Scotland's railway.

We are delivering the biggest change to Scotland's railway for generations. That is reflected in the fact that we were the fastest-growing part of the United Kingdom's rail network last year. Change is difficult and brings many challenges, but it will deliver huge benefits for Scotland. If we were not electrifying much of the central belt's railway, if we were not introducing so many new and upgraded trains, which will benefit the whole of Scotland, and if we were not training so many of our people, our job would be less complex. However, we are transforming Scotland's railway, and I am confident that we will get that right.

**Mike Rumbles (North East Scotland) (LD):** Alex Hynes's apology to passengers who have not received the service that they deserve was a good way to start.

I will focus my questions on the plans that have been put in place since your company took the contract on, in 2015. In 2016, you published the first improvement plan, and you had 249 action points. Two years later, you published the second improvement plan, with 20 measures for improvement. We now have the publication of the remedial plan, with nine new initiatives in it. Why have the 249 action points, the 20 measures for

improvement and the nine new initiatives failed to produce the required level of performance across the piece?

**Alex Hynes:** I do not accept the premise that the improvement plans have not worked. As I said in my opening statement, train service performance on Scotland's railway has seen its fourth consecutive period of improvement—

**Mike Rumbles:** If you are saying that the measures have worked, why are we in the position that we are in now?

**Alex Hynes:** We are here today to discuss the remedial plan and the remedial agreement with Transport Scotland, which is specifically about the number of cancellations that we experienced late last year in the east of the country. That is what the £18 million investment is about—it is targeted on those issues that we had at the end of last year.

Across the whole of Scotland's railway network, there is evidence that the underlying performance of Scotland's railway is improving. We have had our fourth consecutive period of improved performance, and more trains ran on time during the previous period than ever before. Through the changes that we have made to our timetable in the Glasgow area, for services going into Glasgow Central on the Strathclyde electric network, we are delivering much better levels of performance there.

The issue that we are discussing today is confined to the train crew issues that we have experienced in the east of the country. They are why we will invest an additional £18 million to make sure that customers get the service that they deserve.

**Mike Rumbles:** I challenge you on that. The information that we have in front of us, which our clerks produced, says that, when you took over the contract, the ScotRail public performance measure moving annual average was about 91 per cent. The target is 92.45 per cent, and the most recent information that we have is that performance is sitting at 87.5 per cent. I therefore dispute your analysis of the situation that things have improved—they have, in fact, got worse. That is why we are here again. We want to see why things have got worse.

We have a problem if you do not accept that the improvement plans have not worked. If they had worked, the performance indicators would show the company reaching its target.

**Alex Hynes:** I accept that we are not hitting our target. We are working flat out to remedy the issues that cause trains to be delayed, so that we can give our customers the service they expect and deserve. I am not disputing that we are not yet

hitting our target, but we are working flat out to do so.

**Mike Rumbles:** Can you show, in more detail, how you have taken forward the recommendations in the Donovan report?

**Alex Hynes:** We commissioned an independent review of train service performance at the back end of 2017, and we published all the recommendations in the early part of 2018. Across Scotland's railway, we accepted each of those recommendations and we have implemented them. For example, we implemented the cessation of skip-stopping, apart from when it is a last resort, and the number of skipped stops in Scotland is now down by more than 80 per cent, which I am sure is a measure that the committee and our customers welcome.

The independent Office of Rail and Road commissioned an independent review by Nichols of our implementation of the Donovan review recommendations. It published that review and it confirmed that the Donovan recommendations reflected the best plan to improve train service performance on Scotland's railway and that we were getting on with implementing those recommendations.

Nichols identified some areas of best practice in Scotland that we were proud of. It also identified some areas in which we could do even better by strengthening our level of programme management resource and governance to make sure that we do an even better job of implementing those recommendations.

**Mike Rumbles:** I have one final question. You are not hitting the performance targets, and, judging by what the minister said in response to my questions in Parliament yesterday, you are not likely to reach the level of service that the contract sets out until May next year. However, in April next year, the Government will have the opportunity to give you notice to end the contract. Do you believe that, by next April, your company will be able to meet the contractual target that has been set?

**Alex Hynes:** I believe that our performance is already improving. We do not have to wait for performance to improve. The contract measures the number of cancellations on what is called a moving annual average basis. Therefore, it takes a year for our historic performance to drop out of that number. Customers will not have to wait until May next year to see the delivery of an improved service; we are improving as we speak, week by week.

**Mike Rumbles:** So, you will have reached the performance target by next May.

**Alex Hynes:** In respect of the remedial plan and the £18 million investment that we are making due

to cancellations having been experienced in the east of the country, customers are already benefiting from improved service delivery, and we expect to be above the breach performance level by next May. That is not because customers will have to wait until May next year but because the contract works on a moving annual average basis.

**Jamie Greene (West Scotland) (Con):** Good morning, gentlemen. I want to pick up on something that you just said to Mr Rumbles. Am I correct in assuming that the remedial plan that we are talking about is to address issues only in the east of the country? I was under the impression that it was a remedial plan for ScotRail per se, which would deliver demonstrable benefits across the country. However, from what you have said, it seems that it focuses purely on the east. Which of the 2016 and 2018 performance improvement plans is relevant to improving performance in the rest of the country? Is the Donovan report relevant in that regard?

**Alex Hynes:** On Christmas eve, Transport Scotland issued us with a remedial notice because of the level of cancellations in the east of the country, and there was an expectation that we would also breach the public performance measure overall company limit. We have not breached the PPM overall company limit, although we expect to do so in the coming months because of the way in which the moving annual average works. The vast majority of the remedial plan and the £18 million investment is targeted at the issues that we saw pre-Christmas, which were primarily around train crew-related cancellations in the east of the country. That is not to say that the rest of Scotland's railway will not benefit from the investment, but that is the focus of the plan.

**Colin Smyth (South Scotland) (Lab):** I would like to follow up on that point. Mike Rumbles noted that it will take until May 2020 to exit the breach performance level under the remedial plan. When will performance levels and services meet the full performance target that is set out in the franchise agreement?

**Alex Hynes:** Are you referring to the 92.5 per cent figure?

**Colin Smyth:** Yes.

**Alex Hynes:** Our aspiration is to hit that target as soon as possible. It could take as long as 24 months before we reach that target, which reflects the fact that we are trying to shift the moving annual average calculation of train service performance. Clearly, it is not only ScotRail issues that cause ScotRail trains to be late. We are managing external influences such as weather, trespass and suicide, and we are managing infrastructure-related issues, which are, of course, the responsibility of Network Rail. Finally, we are

also managing ScotRail issues, which are primarily around train crew and the performance of our rolling stock. Our aspiration is to hit the 92.5 per cent figure as fast as we can by continuing to improve in each of those categories. However, it could take us 24 months to do that.

**Colin Smyth:** Yesterday, during topical question time, the cabinet secretary stated that ScotRail expected to hit the target by the end of 2021. Looking at your remedial plan, I see that it puts the projection for PPM at below 90 per cent at that point, and you have just said that it is likely to take 24 months for you to hit the 92.5 per cent target. Were the projections that were stated by the cabinet secretary wrong? He specifically said that ScotRail expected to hit the performance target by the end of 2021.

10:15

**Alex Hynes:** What the cabinet secretary said was accurate. The point that I am making is that it is not just ScotRail that directly influences the factors that cause trains to run on time—or not—in Scotland. As you will have seen yesterday, the new control period for Network Rail in Scotland, which starts next week, is the outcome of a regulatory review with the independent ORR. As part of that process, Network Rail had to set out an expected performance trajectory, so that we could set the outputs and the funding for Scotland's railway. As part of that work, we set out an expected trajectory to hit 92.5 per cent. Our target is 92.5 per cent, and we want to get there as fast as we can, but it might take us two years to get there.

**Colin Smyth:** I am confused. The cabinet secretary was clear in what he said yesterday—he said that ScotRail expects to hit 92.5 per cent by the end of 2020-21. However, according to the graph of the franchise PPM forecast on page 29 of your remedial plan, you do not expect to hit 92.5 per cent in period 13, which is in 2021. Your plan does not project when you will hit 92.5 per cent.

**Alex Hynes:** I ask David Simpson to clarify the position.

**The Convener:** Can I clarify something? The graph that Colin Smyth is looking at is on page 29 of the plan. I might be misreading it, but it appears to run only up to mid-2021—up to period 13.

**David Simpson (ScotRail Alliance):** That is March 2021—that is correct.

**The Convener:** That is what the question is about.

**David Simpson:** The graph takes us up to March 2021, so it covers the next couple of years, and it shows how the PPM forecast moves the MAA back towards the target. As Alex Hynes and

the cabinet secretary have said, we expect to reach the 92.5 per cent target by the end of 2021, although we are doing everything that we can to get there before then.

**Colin Smyth:** My interpretation is that period 13 represents the end of 2020-21—that is what everybody else interprets it as—but some people are obviously interpreting things differently. Are you absolutely adamant and confident that you will hit 92.5 per cent within the franchise? So far, you have not hit that figure.

**Alex Hynes:** That is our projection, but it is not wholly within the direct control of ScotRail or even the railway system. The measure takes into account all causes of delay, including trespass, suicide, the weather, infrastructure-related causes and train operator causes. We have our target and our forecast, but I cannot guarantee that they will be met, because ScotRail does not fully control the delivery of that performance.

**Richard Lyle (Uddingston and Bellshill) (SNP):** We see on the programme “Inside Central Station” that 950 trains a day go into Glasgow Central station. How many train journeys a day are there in Scotland? How many train journeys are delayed, cancelled or not put through because of Network Rail? You should gather data about how much Network Rail is affecting your business—I would like to know that.

**Alex Hynes:** A key benefit of the ScotRail Alliance is that we run the track and the train together. When my team and I get together to review the performance of Scotland’s railway, we have the train operating company and the Network Rail infrastructure manager working together to deliver performance on Scotland’s railway. About 250,000 customers a day use Scotland’s railway, which is the fastest-growing part of the UK rail system. We operate 10 per cent more services now than we did at the start of the franchise.

In general, the majority of the delay is attributed to Network Rail, which reflects the fact that, in any railway system, weather and infrastructure account for most of the delay. The proportion has changed a bit in recent months because of the issues that arose before Christmas, which is why we are sitting here today, talking about the £18 million investment that we are making. There are lots of reasons why trains do not run on time in Scotland, and they are not all within ScotRail’s direct control.

**Richard Lyle:** You have no drivers, you have no trains. I really want to know whether we should lay the blame on you or on Network Rail.

**Alex Hynes:** I am not interested in laying blame; I am interested in getting trains to run on time. That is what the ScotRail Alliance is about.

**Richard Lyle:** Is Network Rail not part of the problem?

**Alex Hynes:** The remedial plan sets out clearly why trains do not run on time. In order for ScotRail to succeed, Network Rail has to succeed.

**The Convener:** Jamie Greene wants to come in briefly before we move on to the next question.

**Jamie Greene:** On page 29 of the remedial plan, you say that, when the plan was submitted,

“we were not in Breach for PPM MAA as a whole ... there is a risk of this during 2019”.

Is that an admission that things are going to get worse before they get better?

**Alex Hynes:** No. It is about the fact that, in the coming period, we do not expect to achieve the same level as we did last year, so the MAA will drop, and that will breach the PPM level in the franchise agreement.

**Jamie Greene:** You expect your performance number to dip before it rises.

**Alex Hynes:** That is correct for the moving annual average.

**Jamie Greene:** Therefore, it will get worse before it gets better.

**Alex Hynes:** On a moving annual average basis, yes, but not on a period basis. As I said in my opening statement, we have now had four consecutive periods of improved train service performance in Scotland, and more trains than ever before have run on time in the past four weeks. There is a difference between the period number, which is the four-weekly number, and the moving annual average. The contract works on the basis of the moving annual average.

**Peter Chapman (North East Scotland) (Con):** The remedial plan states:

“Under this plan, ScotRail will invest £18 million to give our customers the service they expect and deserve.”

Where do those funds come from? Are they ScotRail Alliance funds or are they taxpayer funds? Over what period will the £18 million be spent?

**Alex Hynes:** The £18 million is, in effect, a £6 million a year investment for three years, and it is fully funded by Abellio ScotRail.

**Peter Chapman:** Are you confident that £18 million is enough to achieve what you have to achieve in that three-year period? It is only £18 million over a three-year period, which does not sound like a whole lot of money, given the scale of the Scottish railway system.

**Alex Hynes:** It is an injection by Abellio ScotRail of an additional £18 million, over and

above all our existing plans. We are already planning to spend 20 per cent more on the operations, maintenance and renewal of Scotland's railway infrastructure. The £18 million is additional—it is over and above anything that has been planned previously—because we know that we need to do better and deliver the remedial plan so that customers get the service they expect and deserve.

**Peter Chapman:** Many of your problems have been caused by the late delivery of the Hitachi trains and the refurbished 125s. The companies that were tasked to do those jobs have failed and are in breach of their contracts. What financial compensation are you pursuing from those companies so that you can get some redress?

**Alex Hynes:** You are right: Hitachi and Wabtech have failed, and we are disappointed with their performance. We are working hard with both companies to do the best that we possibly can to minimise the effect that the situation is having on ScotRail and Scotland's railway.

Our contracts with those manufacturers include an element of payment adjustment in the event of non-delivery, as does our franchise agreement with the Scottish Government. Essentially, we get a money flow from the suppliers that have let us down and, to the extent that we are not delivering our contract in full, there is what is called a committed obligation payment adjustment, whereby we have to pay penalties to the Scottish Government. That is the way it works.

**The Convener:** I want to bring in Stewart Stevenson, because he has some issues to raise.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** According to the remedial plan, you should have had 26 high-speed trains by December 2018 and you have had two. That is the most appalling contract failure out of everything that is before us. Who is the contract with? The leasing company is Angel Trains, but we are constantly talking about Wabtec. Who are you pursuing—Angel or Wabtec?

**Alex Hynes:** Our contract is with Angel Trains, which owns the trains. Angel Trains is project managing the refurbishment of the trains, and it decided to give the work to Wabtec, which has really struggled to deliver the refurbishment programme. That is the way in which the supply chain works.

Our contract is with Angel Trains and its contract is with Wabtec. It is Wabtec's poor delivery that has meant that we are not where we needed to be on the delivery of high-speed trains for Scotland. I am pleased to say that we now have the third refurbished HST. The customer feedback has been extraordinary, and we are looking forward to working with Wabtec and Angel

Trains to deliver all 26 HSTs so that we can recreate a genuine intercity network for Scotland.

**Stewart Stevenson:** I am wondering why Wabtec still has the contract with Angel Trains.

I want to focus on Angel Trains. Who owns that company? The most recent information that I have been able to find is that the Royal Bank of Scotland owns Angel Trains. Is that correct?

**Alex Hynes:** I am not sure that RBS is still the owner; I can get back to you on that.

**Stewart Stevenson:** I was not sure, either. My question was a genuine one.

**Alex Hynes:** I suspect that there are a number of shareholders. I do not believe that the company is owned by banks.

**Stewart Stevenson:** I return to the fundamental point: is it not time for Angel to discontinue the contract with Wabtec and give it to a company that can do the job? You expected to receive 26 refurbished trains by December 2018, and it has now managed to deliver three. Is it not the case that, at the current rate of progress, it will take until 2030 to deliver all 26 trains?

**Alex Hynes:** No, it will not take until 2030. As you might imagine, we have explored all options with Angel Trains and Wabtec, including termination. We recently decided that, to accelerate the refurbishment programme, 17 of the carriages that require refurbishing will be refurbished here in Scotland, in Kilmarnock. That is a good-news story for Scotland plc. We are working hard with Angel and Wabtec on all options to give us what we want—the best high-speed trains ever built—so that we can create an intercity network.

**Stewart Stevenson:** I have one final question on the HSTs. Given that the unrefurbished classic HSTs have a different operating profile and that you had not expected to have to train staff to operate them, what impact has Wabtec's failure to deliver the refurbished HSTs—as a result of which you have had to put the classics into service—had on the training schedule and the deployment of staff?

**Alex Hynes:** The failure by Angel and Wabtec compounded the training issues that we experienced at the back end of last year in two respects. First, the trains were late to us, which meant that the period that we had for training our people—primarily drivers and conductors—was compressed, and that made the December timetable change more difficult. Because we had to press what we call classic high-speed trains into service as well as refurbished ones, that added to the training requirement, as conductors had to be trained on the classic HSTs and the refurbished model. That is a great illustration of how our

suppliers really let us down, which made worse the issues that were experienced at the end of last year.

**The Convener:** Before we leave the money situation, I would like to ask a question that the committee has asked before. The service quality incentive regime fund is made up of fines for not achieving targets. How much money is in the SQUIRE fund at the moment?

**Alex Hynes:** I would need to confirm that in writing. You will know that, in January, we announced that we had reached a two-year high in terms of SQUIRE. We are working really hard on SQUIRE, it is going in the right direction and we are looking forward to that feeding through in better customer satisfaction.

**The Convener:** I am sorry—I do not understand what you mean by “the right direction”. The SQUIRE fund is made up of fines that are imposed as a result of targets not being met. Do you mean that more money is coming into the fund, with the result that you will be able to do more, or is does “going in the right direction” mean that less money is being brought in?

10:30

**Alex Hynes:** SQUIRE is the toughest service quality regime in the UK. Our SQUIRE performance is getting better and therefore the rate at which money is paid into the fund is slowing down.

**The Convener:** What applications have you made to the Government in the past six months to use the SQUIRE fund? Can you explain what they were specifically for?

**Alex Hynes:** There are hundreds of SQUIRE applications every year, so there are far too many to detail here. For example, we are making sure that every station in Scotland is fitted with real-time customer information—we are delivering that. We have also upgraded our stations on the key route between Edinburgh and Glasgow. We make literally hundreds of proposals and Transport Scotland approves them as necessary. I can follow up on that in writing to the committee, if you like.

**The Convener:** Okay. Finally on the SQUIRE fund, can you confirm whether any of the money from the fund is being used to fund the £18 million that you are investing in the railway?

**Alex Hynes:** Absolutely not. That £18 million is new money that is funded in full by Abellio ScotRail.

**The Convener:** I am sorry—this is the final question on the SQUIRE fund. Can you confirm whether you have any aspirations to use that

money to fund cheap travel to compensate passengers for ScotRail's performance in the past year?

**Alex Hynes:** We do not have such aspirations at the moment, because we fund that ourselves. In January, we announced a compensation offer over and above the delay repay guarantee for customers whose services were particularly affected by the issues that we are discussing today, to give free travel anywhere on the ScotRail network on weekends in spring. As I said, that has been fully funded by Abellio ScotRail.

**The Convener:** Thank you. I am sure that the committee will welcome your offer to give details on the SQUIRE fund, so that members can consider that information after the meeting.

**John Mason (Glasgow Shettleston) (SNP):** A number of members have questions about staffing. Mine is about staff working voluntarily on rest days, which I believe the contract and timetable depend on. Can you explain to us how that has come about, and where it is going in the future?

**Alex Hynes:** Relying on overtime working in all grades, such as cleaners, station staff, drivers and conductors, is standard practice across the UK rail industry. We have decided to invest further in employee numbers to reduce our reliance on rest-day working, to make our service delivery more resilient and to provide a better work-life balance for our employees. Our investment of £18 million over and above our existing recruitment and training plan for train crew is aimed at reducing our reliance on overtime working.

**John Mason:** Has that always been the approach, as far as you are aware? Is it not a new issue?

**Alex Hynes:** In UK rail, an element of overtime working is standard.

**John Mason:** My wider question, which follows on from that, is about the big picture. You clearly have long-term issues—overtime is an example—and the temporary issues of the new rolling stock, which is linked to training staff and drivers. To what extent are those issues really underlying problems that need to be dealt with? When the new rolling stock and new staff come into place, will things settle down almost automatically?

**Alex Hynes:** Customers do not need to wait to get improved performance because we are delivering improved performance now. We are working flat out to make sure that we get back to the levels that customers expect and deserve, particularly in the east of the country, where there have been too many cancellations. For example, we will finish attacking the training backlog for drivers at the Edinburgh depot at the end of this

week, so every driver there will be trained in the brand-new Hitachi trains. This week's service delivery has been better than the previous week's, because we have more Edinburgh drivers trained.

We are spending £16 million a week transforming the capacity and quality of Scotland's railway, and that brings challenges of change. We are delivering the biggest upgrade that Scotland's railways have ever seen, and we have to deliver a safe, clean, reliable service to our customers. I look forward to when Hitachi, Angel and Wabtec deliver and some of the big infrastructure projects are completed, so that we can focus on getting the system to work really well for the people of Scotland.

**John Mason:** I am enthusiastic about the railway and I am trying to be sympathetic. If a constituent comes to me and says that Abellio ScotRail is incompetent and, no matter what it does, should be replaced, but my feeling is that a lot of new things are happening and there are a lot of hiccups that are nothing to do with its underlying management, how do I answer my constituent?

**Alex Hynes:** Before Christmas, the late delivery of trains to Scotland's railway by Hitachi, Wabtec and Angel compressed the training programme. We also had an industrial dispute with the National Union of Rail, Maritime and Transport Workers, which compounded those issues, but which thankfully is now resolved. Those issues would have been faced by whoever operated the railway at that time.

**The Convener:** We have a series of questions on staffing.

**Maureen Watt (Aberdeen South and North Kincardine) (SNP):** I want to explore the human resources issues further. One of the graphs in the remedial plan shows that between 30 and 40 per cent of the causes of cancellation are to do with train crew. Given staff turnover and planned service increases, ScotRail says that it will recruit 55 drivers and 30 conductors. What is the level of staff turnover at Abellio ScotRail? I cannot see anywhere that you are recruiting the right people in the right place. The trains that are cancelled are often those that run first thing in the morning, which suggests that the right people are not in the right place or are not getting out of bed to get the train up and running on time. Will you explain more about the HR position in Abellio ScotRail?

**Alex Hynes:** Before Christmas, the issue—which is now largely, although not completely, resolved—was not about our not having enough train crew; it was about our not having enough train crew who were trained on the new types of train and the new routes. In some cases, we had to make the difficult decision to cancel services in order to attack the training backlog, which had

been made worse by the late delivery of the trains and the issues with the RMT last year. We had to eat away at the training backlog. For example, all the Edinburgh drivers will be trained in the new types of train by the end of this week.

That is why there has been a steady improvement in service delivery for the last four consecutive periods—that is, for 16 weeks. It is why last period more trains ran on time in Scotland than ever before. The £18 million investment by Abellio ScotRail is over and above anything that we planned to do. It was not that we did not have enough train crew; it was that they were not trained on the new routes and the new traction.

**Maureen Watt:** On your website, the information on jobs available for train drivers does not say that they are needed across Scotland. It does not say that someone can train in Aberdeen, Inverness, Glasgow or Edinburgh. We know that ScotRail employs a lot of members of the same families. How do people who are not in the know break into working for ScotRail?

**Alex Hynes:** We are recruiting hundreds of people in every position in our company—train cleaners, on-board hospitality staff, station staff, ticket examiners, conductors and drivers—because the railway is growing, and is growing fast. We are the fastest-growing part of UK rail. We are delighted by the people we manage to recruit into the business. We recruit well, and we train and pay people well. I would recommend the railway as a career to anybody. We are proud of our record of recruiting and training more people, paying them properly—we are a living-wage employer, for example—and giving them the skills not only to do their job but to help them get their next job.

**Maureen Watt:** You have not answered the question about staff turnover in ScotRail.

**Alex Hynes:** Staff turnover is less than 5 per cent. The UK rail industry has very low levels of turnover because, in general, our salaries benchmark well against the wider market.

**Maureen Watt:** How many people apply for each train driver position?

**Alex Hynes:** Every time we recruit drivers, we get thousands of applications. We pay a good basic salary, which comes with a good pension, job security and free travel, so the jobs are very attractive. We do not have a problem attracting people to the railway; the problem that we faced was the training backlog, which existed for the reasons that we have discussed.

**Maureen Watt:** You mentioned that it takes 18 months to train a train driver. Have you considered ways of reducing that timescale, which seems quite lengthy?

**Alex Hynes:** We have. We have been working with the train drivers union to reduce the training timescale as much as we can. We must remember that the role of train driver is safety critical and involves a high level of professionalism. Train drivers must be trained on all the types of train and all the routes that are served by one particular depot, which is why the training is very complex. However, it is one of the ways in which we keep the railways safe, which is why it takes so long.

**Maureen Watt:** Can the training be done in different parts of the country, or does everybody have to come to Glasgow, for example, to get it?

**Alex Hynes:** There is an element of common training, which every train driver receives, regardless of which depot they are destined for. That is classroom training, which is generally done in Glasgow. Once drivers have received the generic training, they go to their home depot, which might be Edinburgh, Bathgate, Inverness or Fort William, to do the specific training that is required for the specific routes that are served by that depot and the specific train types that are used on those routes.

**Maureen Watt:** I have one more question.

**The Convener:** I am sorry, Maureen—

**Maureen Watt:** It is very short.

**The Convener:** We are quite pushed for time; I will try to bring you back in at the end.

**John Finnie (Highlands and Islands) (Green):** Good morning. Mr Hynes, it seems to me—and this is certainly the view of the Scottish Green Party—that there is a structural flaw, given the issues that we face with the train operating companies. In the privatised UK rail network, many people need to get their cut. That said, I genuinely wish you well with your improvement plan, because our constituents are having to wait for trains and want them to run efficiently. I note, too, that 10 per cent more services are being provided than when the franchise started.

I want to look at tackling the causes of cancellations. What has been redacted from your remedial plan? There are a few graphs among the redactions. We are told that such redactions are permissible under the Freedom of Information (Scotland) Act 2002. Can you tell us about the information that we cannot see?

**Alex Hynes:** Can you clarify which bit of the remedial plan you are referring to?

**John Finnie:** Text has been redacted on page 7, a graph has been redacted on page 6, and so on.

**Alex Hynes:** We have redacted some detail that is commercially confidential and detail that relates

to the market for train crew, which we believe it would not be in the public interest to publish.

**John Finnie:** Okay. Thank you for that.

Section 2.1.1 of the remedial plan, which is headed “Number of traincrew at key depots”, states:

“ScotRail recruited 72 additional drivers in 2016 and 2017.”

Why was that number of drivers recruited at that time?

**Alex Hynes:** We recruit train crew all the time, based on a number of assumptions to do with timetables, train types, sickness and retirement levels, the age profile of the workforce and the rate at which people might leave ScotRail to work for other train operating companies. We maintain a workforce planning tool that looks three years forward. It is a very dynamic tool that we update on a four-weekly basis.

**John Finnie:** The second sentence in the next paragraph of section 2.1.1 says:

“Significantly larger numbers of drivers and conductors than forecast left ScotRail during 2018—turnover rates are reasonably predictable”.

Do you do exit interviews with people who leave ScotRail?

10:45

**Alex Hynes:** We do.

**John Finnie:** What information do you glean from those interviews?

**Alex Hynes:** As members can see from the remedial plan, driver turnover in ScotRail has been very low, historically. That reflects issues that we discussed earlier with Maureen Watt. The number of drivers who left ScotRail increased last year because of service expansion by other train operating companies in Scotland. It is not just ScotRail that is expanding its service: London North Eastern Railway and TransPennine Express, for example, are also doing so. Other train operating companies have different terms and conditions, and sometimes our drivers fancy a change—they might want to drive a different type of train over a different route, for example. The number of drivers who left the business therefore increased above the historical levels.

Some drivers come back. As part of our remedial plan planning, we have been talking to our recent leavers, some of whom are coming back to ScotRail.

**John Finnie:** Has the information that you have gleaned from those exit interviews resulted in changes—perhaps to terms and conditions?

**Alex Hynes:** We often talk with the Associated Society of Locomotive Engineers and Firemen about train drivers' terms and conditions; in fact, we have been working with it in a very co-operative fashion to remedy the issues that we saw at the end of last year. That is an on-going process. We work collaboratively with ASLEF and the drivers company council on what it takes to ensure that we deliver a better service for our customers.

**John Finnie:** I have mentioned those things because the next sentence says:

"In the period August to November 2018"—

which has an impact on now—

"this meant there were fewer spare staff within rosters to cover training requirements".

It is self-evident that driver numbers affect ScotRail's performance. Have you recruited enough drivers to deal with the expansion? Are you doing enough to retain staff?

**Alex Hynes:** We have drivers to cover train services, we have spares, and we have drivers in training. The compressed training timescale because of late delivery of rolling stock meant that our service was not as resilient as it should have been. We are investing £18 million to ensure that we deliver the full train service and improve performance, and so that our ability to absorb future risks is better.

**John Finnie:** Will the new staff be based in depots that are best located to tackle routes that suffer from significant disruption—for instance, the Borders railway?

**Alex Hynes:** Absolutely. It is clear that customers in the Borders and Fife have had a very difficult time. I have experienced that first hand, and I have engaged a lot with the public in Fife and with members of the Scottish Parliament who cover that part of the country. Those customers have had a very difficult time because the train services in the Borders and Fife are served by drivers who reside at the Edinburgh depot, where we have had to tackle the training backlog because of late delivery of Hitachi rolling stock.

**The Convener:** This is the perfect moment to bring in Christine Grahame.

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** That was an interesting segue to me.

As you know, most of the Borders railway runs through my constituency, and it terminates there. I have had lots of correspondence with you about failings, including one Sunday when we lost five services.

I want to talk about staffing, which has been one of the main issues that have been raised in relation to why trains have not run. You say in the plan that more than double the number of staff were lost in 2018 than in the previous two years. You must have known that that was happening, and you knew that a timetable was coming in December 2018, which meant that more staff were needed. When did you start to plan for the necessary crew with both of those factors in play?

**Alex Hynes:** We started to plan for every timetable change at the start of the franchise. That is why we recruited so many drivers in 2016 and 2017. We do not know that drivers will leave the company until they hand in their notice, and their notice period is shorter than the training time. As I said, the issue was not that we did not have enough train crew in Edinburgh; the issue was that we did not have enough train crew in Edinburgh who were trained on the new types of train and the new routes.

**Christine Grahame:** I understand that, but I asked when you planned. You must have seen things coming. There was a new timetable in December 2018, and you lost train drivers and saw the loss increasing. When was a plan put in place to ensure that there were sufficient crew to maintain the service on the east coast, particularly on the Borders service?

**Alex Hynes:** We are planning that all the time, because the situation is dynamic.

**Christine Grahame:** So, there is no flaw in the planning.

**Alex Hynes:** Clearly, we can say with the benefit of hindsight that we could have done a better job. We are very sorry to customers who experienced poor service at the back end of last year. That is why we are investing £18 million to make our service better.

**Christine Grahame:** Convener, with your leave, I note that nobody has asked about page 25 of the plan, which talks about developing and maintaining a plan.

**The Convener:** Christine, I respect you in the chamber, so I must, with the greatest respect, ask you to let me move on.

**Christine Grahame:** Well, I hope that somebody else picks up that question.

**The Convener:** Rachael Hamilton and other members want to come in, so it is only fair that we move on.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** The investment and the remedial action plan are very welcome, but my constituents believe that the plan is abstract and futuristic, and that it does not deal with the current

hell for disgruntled passengers and commuters. What can you say to them? The remedial plan is not a quick fix, so apart from what is in it, what can you put in place and do now for people who are, for example, being charged extra nursery fees or cannot get to work on time and whose jobs are on the line? I was trying to get on the 8.28 yesterday: you had promised three carriages on trains at peak times, but there were only two, and the situation is leading to overcrowding at Stow. You have already mentioned the issues with the Borders railway, but the people who use it really need reassurance,

**The Convener:** That was a long question, but I seek a short answer, Mr Hynes.

**Alex Hynes:** The first thing that I want to say to the customers on the Borders railway is that we are very sorry, and that we are working flat out to fix the issue. We do not have to wait to spend the £18 million to improve service delivery; I point out that our service delivery on the Borders railway is steadily improving week by week. When we finish the driver training backlog at Edinburgh—as I said, that will happen this week—that will really help our ability to run all the planned train services on the Borders railway and ensure that those services are formed with the correct number of carriages.

**The Convener:** Stewart Stevenson has the next question.

**Stewart Stevenson:** I do not think that I will take up a lot of time, convener, because I have already covered the questions that I had on the HSTs.

This week, I will be on 12 trains: two HSTs, one 170 and one 158, as well as eight 385s, which are absolutely lovely trains. I see Hitachi personnel being deployed on the fleet and at stations, and I have been to Craigentenny to see the investment that is being made there. How much difference is the hands-on engagement of Hitachi maintenance personnel, in particular, making to the situation, and is that providing insurance to ensure that the lovely, quiet, comfortable and more spacious 385s deliver on their very substantial potential?

**Alex Hynes:** We are delighted that Hitachi has finally delivered some trains to us, and we are absolutely delighted that customers love them. The feedback that we have had from customers has been extraordinary.

When any new train is introduced and exposed to our people and customers for the first time, they have to get familiar with it, and there is a learning curve. I am pleased to say that the performance of the trains in service has been pretty good. We have gone in at number 3 in the league table of new train introduction, which we are pretty pleased with, and the technical reliability of the trains has already exceeded what was delivered by the

previous class 170s. The great thing about brand-new electric rolling stock is that, because a lot of the issues are controlled by software, you get very high levels of reliability, once you get the software to work reliably.

In the short term, we have been putting a lot of pressure on Hitachi to deliver to us a train that works well in service, particularly with regard to the kinds of door issues that we often see when we introduce a new type of train. Every single day at Glasgow Queen Street, Waverley, Falkirk High and Croy you will see technicians from Hitachi deployed to ensure that if our train crews experience issues with the train, we can respond really quickly.

**John Finnie:** I understand that you plan to supplement the staff at the ScotRail Alliance integrated control centre with four new incident managers and three additional train-running controllers. What is the existing complement, and what difference do you expect these new staff to make?

**Alex Hynes:** We have about 75 staff in our integrated control centre. They are ScotRail employees and Network Rail employees who work together as one team. A key benefit of the ScotRail Alliance is that we have one control centre with one head of control who leads the team for Scotland's railways. To improve train service performance and to reflect the fact that we are operating more services than ever before on a network that is the fastest-growing network in the UK, we are injecting, as part of our £18 million investment, additional resources into our control centre to help with our ability to plan the network and recover from incidents when they occur.

**John Finnie:** In practical terms, what difference will that make? I presume that you can respond now if a breakdown occurs—

**Alex Hynes:** We will have more resources to cope with issues that arise. As the network gets busier, we might have two live incidents on the same bit of the network. Injecting more resources into our control centre will mean that we can respond more quickly than we could before, which is important. Because we are operating many more services each day, the potential impact of any single incident is greater.

**Stewart Stevenson:** I understand that there are ScotRail and Network Rail staff in the control centre. Is that approach unique or unusual in the Great Britain network? To what extent does that help with resolving problems? As we know, the majority of the problems arise from the infrastructure rather than the operator. It sounds as though having the two groups sitting together will help. Does it?

**Alex Hynes:** It does help, which is one reason why we have one of the lowest delays-per-incident figures anywhere in the UK rail network. The approach provides for swift and decisive decision making.

The best example I can give is that, during the beast from the east, we had a red weather alert for the central belt, and my team and I made the difficult decision to close the affected parts of the railway so that we could get everyone home safely, which we did. We made that decision as one team, without negotiating with other parties, as tends to be how things work south of the border.

**Richard Lyle:** To go back to a question that one of my colleagues asked, I have a question that has not been put. The complaint is often made that a company has too many managers. Do you have enough? The plan says that you will

“Create a Head of Operations Strategy role within the ScotRail Operations department organisation, which role shall be responsible for maintaining the three-year traincrew resource plan”.

That role is supposed to be in place by April.

**Alex Hynes:** We have enough managers, but we are going to focus additionally on that area as part of our £18 million investment.

**Richard Lyle:** So you are getting an operations manager.

**Alex Hynes:** We will create an additional post that focuses purely on delivery of the three-year workforce plan.

**Richard Lyle:** When will that person start?

**Alex Hynes:** The person will start in line with what is in the remedial plan.

**David Simpson:** In April—next month.

**Peter Chapman:** The remedial plan highlights a new focus on data collection and analysis, which looks at the causes of delays. What will that mean in practice? What impact can we expect on performance levels from the new focus?

**Alex Hynes:** We collect a lot of data about why trains miss the PPM, and, on the UK rail network, any delay in excess of three minutes is attributed to a root cause. As the remedial plan sets out, the main reason why we have missed our PPM target in recent periods is the number of trains that missed the PPM by one minute—those trains were six minutes late rather than four minutes and 59 seconds late, which would have been within the PPM.

That is why we have made small changes to our timetable in the Strathclyde electric area and have taken measures such as providing platform staff at Glasgow Central’s low level during peak times,

who are encouraging better customer management by getting customers on and off trains more quickly. That reflects the issue that a lot of the PPM failures are by as little as 60 seconds. If we can drag those trains that are currently outside the target within it, we can have a big impact on the public performance measure.

11:00

**Peter Chapman:** I understand that. As you say, in those cases, a minute can make a huge difference, so it should have a real impact on those figures.

**David Simpson:** One of our challenges is that the railway system measures delays to the minute but we have to look at seconds. The remedial plan talks about using the global positioning system data that our trains have to measure to the second rather than to the minute things such as the time taken between sections and station dwell times. That will help us to target where the trains are losing time at stations and on route sections, and we will be able to tackle those issues more effectively than we can with the data that we currently have.

**The Convener:** Maureen, would you like to ask the question that you were not able to ask earlier?

**Maureen Watt:** Yes, although it is out of sync now.

**The Convener:** I appreciate that.

**Maureen Watt:** It goes back to HR problems. We talked about drivers, but we did not talk about something that annoys a lot of people when they get on a train, which is being told that no tea trolley will be coming along. That upsets a lot of people, especially on a longer journey, when they have to sit on the train without a cup of tea and a biscuit. Why is there so often no tea trolley? We know that your staff are really good. They are often eastern European—is that having an effect? Why are there no tea trolley folk on so many trains?

**Alex Hynes:** The SQUIRE regime measures the delivery of service quality against the contract, including whether services have a hospitality steward on board. Sometimes, for unforeseen reasons, we are not able to provide one, and we are sorry when that is the case. However, our performance in that respect is much improved because we have been recruiting and training so many people in the hospitality grade. We do not always get it right, but it is improving.

That performance is measured by SQUIRE, and our target is that every train that should offer people the opportunity to buy food and drink on board provides that opportunity. We are investing more money in our food and drink offer on board,

as we can demonstrate with the intercity service. We are creating a cafe for the first time, and we are double staffing some of the services. Getting that right is very important, and we are moving in the right direction. In January, our SQUIRE results, which measure that performance, were at a two-year high.

**The Convener:** That leads neatly to the deputy convener's questions.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** I want to talk about customer satisfaction. In the latest national rail passenger survey, in Autumn 2018, customer satisfaction was at the lowest level it has been at—79 per cent. The survey samples 30 aspects of service. What are people most dissatisfied with?

**Alex Hynes:** The overall satisfaction score for any train operating company is driven primarily by the punctuality and reliability of the train service. We expect our £18 million investment in remedying the issues outlined in our plan to have an impact on train service performance, which will flow through to customer satisfaction, because punctuality and reliability are the biggest driver of that. The national rail passenger survey shows some good improvements in the areas in which we are investing.

**Gail Ross:** You were issued with a notice for a second remedial plan, which I believe is due to be published by 3 May.

**Alex Hynes:** That is correct. We will submit our remedial plan for the national rail passenger survey target of 3 May. Much of the territory that will be covered in that plan is discussed in the first remedial plan, because it is primarily about train service performance, and the £18 million investment that we are making will really help in that respect.

**Gail Ross:** Does the plan cover any other aspects, such as trolley services, which Maureen Watt mentioned, or other proposals?

**Alex Hynes:** We are still compiling the plan, but we are working hard on SQUIRE and we are going in the right direction. Customers can look forward to more reliable services, cleaner trains and better stations. Our investment across the network to make that happen is feeding in to better SQUIRE results.

**The Convener:** Committee members have a few other questions.

**Jamie Greene:** I want to clarify and check a few things that have come up in the discussion. The remedial plan says that it takes 12 months to train a driver, but, in your opening statement, you said that it takes 18 months. Which is it?

**Alex Hynes:** It varies according to depot, because what a driver has to learn depends on the number of routes and types of train. In the worst-case scenario of there being lots of routes and train types, it would take 18 months, but in other places, where a driver may use just one route and one type of train, it will be quicker.

**Jamie Greene:** Will you be introducing unrefurbished HST classics on to the network in the absence of the ability to refurbish them?

**Alex Hynes:** We have already done that, at the back end of last year. Each day, we have 10 sets of services that rely on high-speed trains. Today, for example, we have two refurbished intercity trains in service, and the remainder of our routes are serviced by classic high-speed trains. The customer feedback has been that people prefer a classic high-speed train to the class 170 trains, which have been replaced. We are keen to work with Angel and Wabtec to deliver the full refurbished product, because the customer feedback on that has been extraordinarily good.

**Jamie Greene:** My final question is about comments that were made by the First Minister in Parliament, which you may have spotted. She said that it is “the last chance saloon” for ScotRail. Do you agree with that premise? Can you turn it around this time?

**Alex Hynes:** We are confident that our £18 million investment in the remedial plan will give our customers the service that they expect and deserve. That is our total focus.

**The Convener:** A few members want to ask questions. I will allow one question from each member, so that everyone can get in. Maureen Watt can go first, then Peter Chapman, and I will try to let Christine Grahame in with a quick question.

**Maureen Watt:** Thank you, convener. When I listen to radio coverage of traffic problems, signalling is often cited as a cause of delays and cancellations on our railways. Is the signalling structure fit for purpose? My understanding is that it is Victorian. We often hear of problems at Montrose, and this week there were problems between Inverurie and Aberdeen. If we improve the signalling, could we speed up the service between Aberdeen and the central belt without having to dual at the Montrose basin?

**Alex Hynes:** Signalling is a key part of any reliable railway system. In the current period, our biggest incident so far has been a signalling failure in the Haymarket area, which involved a more modern type of signalling. That is one reason why we are spending 20 per cent more on the operations, maintenance and renewal of the network. It is the responsibility of Network Rail colleagues to deliver reliable signalling

infrastructure so that ScotRail can do a good job. In the coming weeks and months, a key area of focus for Liam Sumpter will be delivering reliable signalling, which is a prerequisite for a reliable train service.

**The Convener:** Thank you. To Peter Chapman, I repeat the word that I have used and ask for a “quick” question, please.

**Peter Chapman:** I spoke earlier about the late delivery of the trains and breach of contract by the companies that do that job. Can you give us some idea of the moneys that you are trying to recoup because they have let you down so badly?

**Alex Hynes:** The money is in the order of millions of pounds, and the penalties will be paid by the suppliers that have failed so badly.

As I said earlier, the way in which the franchise agreement works is that, when we do not fulfil our contractual commitments, we pay what is called a committed obligation payment adjustment to the Scottish Government. That normally works back-to-back with the commercial contracts that are in place.

**Peter Chapman:** Do those two sums of money balance out? Is that what you are saying?

**Alex Hynes:** Generally they do, but our focus is not on the money; our focus is on delivering the contract to the Scottish Government, because, by doing that, we will deliver a better service to our customers. That is our focus.

**Christine Grahame:** On page 25 of the remedial plan, paragraph 5 says that you will

“Create a Head of Operations Strategy”

to

“Develop and maintain an ongoing three-year traincrew resource plan based on future requirements”.

Why was there not somebody already doing that job, making sure that there were enough crew for the forthcoming needs of the ScotRail franchise? You are creating and developing that position only now.

**Alex Hynes:** There are two issues there. First, the issues that arose in recent months did not arise because of our not having enough train crew; they were due to our not having enough train crew who were trained in the new routes and the new types of trains. That is a separate issue from not having enough train crew.

In addition to addressing the training backlog in places such as Edinburgh, where the training finishes this Friday, we are creating an additional post, and we are looking further into the future to give the area additional focus. It is one of the things that we are spending £18 million on,

because we never want to see those challenges again.

**The Convener:** You talked about skip-stopping and how you are eliminating it. I am sure that you will have the figures to hand. How many trains have skip-stopped in the past week?

**Alex Hynes:** A train does not just skip a stop because the control centre has instructed it—

**The Convener:** With the greatest respect, you have explained skip-stopping to the committee before, and we are pretty sure that we understand it.

**Alex Hynes:** The number of skip-stops is down by 85 per cent since we implemented the Donovan recommendations.

**The Convener:** I am sorry, but I asked how many trains have skip-stopped in the past week.

**Alex Hynes:** I do not have that information to hand.

**The Convener:** Would it surprise you to hear that, just yesterday, trains on the east coast of Scotland were skip-stopping regularly? Do you think that that is acceptable? It is an issue that the Government and the committee have questioned you about. You and the Government gave the committee an undertaking that skip-stopping would stop, but it is continuing. Are you satisfied with that?

**Alex Hynes:** The Donovan recommendation was to use skip-stopping as a last resort. It is true to say that we overused it in the past, but we have implemented the Donovan recommendation in full and the number of skip-stops is down by 85 per cent. We use it only when it is the last possible way in which to restore a train service.

**The Convener:** My question was straightforward. Are you satisfied that, in the past week, you have cut skip-stopping in line with what the Government said would happen?

**Alex Hynes:** I am satisfied that we have implemented the Donovan recommendation. I am satisfied that we have cut skip-stopping by 85 per cent, which is what we promised.

**The Convener:** Maybe that is the point at which we should leave the issue and let the passengers on the east coast decide whether skip-stopping has been appropriately dealt with.

Thank you all for coming in and giving evidence to the committee this morning.

11:13

*Meeting suspended.*

11:21

*On resuming—*

**The Convener:** I welcome our second panel of witnesses on ScotRail, who are Michael Matheson, Cabinet Secretary for Transport, Infrastructure and Connectivity; Bill Reeve, director of rail with Transport Scotland; and Andrew Mackie, head of rail franchising with Transport Scotland. I ask the cabinet secretary to give an opening statement, which should be of no more than three minutes, please.

**The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson):** As the committee is aware, I instructed Transport Scotland to use the available contractual levers that are set out in the ScotRail franchise agreement to serve a remedial plan notice. The notice was specifically required as a consequence of ScotRail's unacceptable level of cancellations in the east of the country, where the moving annual average threshold level for cancellations exceeded breach in period 9 of 2018-19. Although ScotRail can point to the impact of the late delivery of trains and previous industrial relations challenges, those reasons are of no comfort to passengers in parts of the country where service reliability continues to be woefully below requirements.

If ScotRail is to address the unacceptable performance levels, the steps contained in its remedial plan must fix the specific contraventions of the franchise contract. Only through those key operational steps will we see reliable delivery of the planned benefits of the Scottish Government's record investment in rail, with more services, more seats, better reliability and faster journey times. You have heard from Alex Hynes and his team on the commitments that are contained in the remedial plan, which aim to restore the confidence of passengers and the Scottish Government. As the committee would expect, delivery of those commitments to the required timescale will be closely monitored and challenged by Transport Scotland. I have also instructed an independent senior industry specialist to closely scrutinise ScotRail's management of this critical plan.

I again stress that the remedial plan must address the franchise contraventions, which have frustrated passengers throughout Scotland. The duration of the remedial agreement will span to May 2020. That timescale is necessary to allow the full programme of contract commitments to be delivered, and as a consequence of the contractual tracking of ScotRail's key performance indicators on a rolling 12-month basis. That timeframe is required to recover the lagging annual average calculation on performance and for cancellations to fall below contract contravention levels. However, ScotRail can

achieve that only by making improvements now to deliver solid week by week and month by month performance improvements.

At First Minister's question time last week, the First Minister was clear that ScotRail should treat the remedial plan very much as "the last chance saloon". That is the nature of it. ScotRail has been left in no doubt that its recent performance levels have been completely unacceptable. You have heard from Alex Hynes and his team on the recent positive trends in performance, particularly in the Strathclyde network, which are to be welcomed. However, as it is a national rail franchise, all parts of the country must be on a trajectory to meet our challenging but achievable contractual regulatory targets. Professional and competent delivery of the remedial plan is now a mandatory step for the operator if it is to retain stewardship of the national rail franchise.

I am happy to answer any questions.

**The Convener:** Thank you, cabinet secretary. The first question will be from Mike Rumbles.

**Mike Rumbles:** Alex Hynes has just given us evidence, and in my view he started off in the right way, by apologising to the passengers who have been receiving the unacceptable service. However, when I questioned him, he seemed to be in denial that the performance levels were that bad, and he suggested that performance is improving and is on the right trajectory. I cannot understand that, because chapter 4 of the remedial plan, which starts with an analysis of the cause of the drop in the overall franchise public performance measure, says:

"Why has performance continued to decline?"

It is obvious that, as you have just said, cabinet secretary, the performance levels are completely unacceptable. You understand that, and I think that everybody else understands it. I am somewhat shocked by Alex Hynes's attempt to say that it is not that bad. Do you retain confidence in Abellio's ability to deliver the required level of service and performance as set out in the franchise agreement that it took on in 2015? If you do, what gives you that confidence? Previous improvement plans have not worked, and we are now on the remedial plan, but Alex Hynes seems to be in denial. Do you have confidence in Abellio?

**Michael Matheson:** I will try to unpick a few of the issues that Mr Rumbles raises.

We need to understand the purpose behind the remedial plan, which is to deal with the specific breaches of the franchise contract. As I mentioned in the chamber yesterday, the plan is specifically to get ScotRail out of those breaches of the franchise agreement. The reason why we took action was the unacceptable levels of

cancellations and performance, particularly in the east of the country. It is not an action that we take lightly, because it has serious consequences for the franchisee if it fails to deliver on any measures that are set out in the remedial plan. I am clear, as is the Scottish Government, that performance has not been good enough, particularly in areas such as the east coast. The remedial plan is drafted to address that specifically.

Wider work is also being undertaken in the network. Mr Rumbles referred to the improvement plan. There was an improvement plan in 2016 and a further iteration of it in 2017, which led to ScotRail instructing the Donovan review. As a result of the work that has been taken forward through the Donovan review, there are areas where improvements have occurred. That has not been the case in the east and certainly not for the passengers who have been suffering cancellations to the levels that we have seen. However, there have been improvements in the west in, for example, the Strathclyde electric area. At Glasgow Central station, the PPM is at over 95 per cent and in areas such as Milngavie and Whifflet, there have been marked improvements in on-time departures.

There have been improvements as a result of actions that have been taken through Donovan. However, ScotRail has to address wider issues in the whole network, which includes the east coast. It will take time for some of those actions to be taken. As the ORR report indicates, ScotRail is making good progress, but it needs to do more and there are further actions that it could take. Even though improvements have been made, people in the east are certainly not experiencing them, which is why the remedial plan is so important in addressing the issues.

On the point about confidence, in January, I met the chief executive and chief financial officer of Abellio and set out clearly the extent of my concerns about performance to date and about the fact that we went into a major timetable change in which ScotRail Abellio had made significant assumptions that were clearly inaccurate, which resulted in the crew shortage and training issues that it is now having to deal with. I have made it very clear to them that the remedial plan is an opportunity for them to get it right. If they do not, there could be serious consequences for ScotRail Abellio. Equally, I expect to continue to see progress being made on the wider actions that are taken around the Donovan review.

11:30

It is clear from the remedial plan and the discussions that I had with Abellio's senior management that they are determined to address those issues. Ultimately, the proof of the pudding

will be in whether it delivers on them. That is why I have asked for independent oversight in taking things forward so that I can get the assurances that I require that the organisation is making the progress that it needs to make.

**Mike Rumbles:** I am glad that you said that, cabinet secretary.

I would like to pursue that with one more question. Forgive me: I know that you will not have in front you the private paper for committee members that the clerks produced. It seems from the ScotRail PPM moving annual average graph that has been provided to us that, since it took over the contract in 2015, it has never achieved the level that it is supposed to have achieved constantly. Recently, the line on the graph, which is at 87.5 per cent, has almost fallen off a cliff. The trend is down.

I hear what you are saying, and it is absolutely right that you are holding Abellio to account. That is why my question focused on confidence. You may be doing everything that you can to ensure that Abellio achieves the performance objective but, from looking at the company's history, do you really have confidence that it can achieve the level that you expect it to achieve?

**Michael Matheson:** I have not seen the graph that you have referred to, as it is in a committee paper.

As Mike Rumbles will be aware, and as members heard in evidence earlier, a complex range of factors have an impact on performance in our rail network. Some of those factors are in ScotRail's control and some are not. There is no doubt that an accumulation of those factors has had an impact on performance over the past couple of years. That said, we can also see that in the UK as a whole; the downward trajectory is not peculiar to Scotland. The UK Government therefore commissioned the Williams review to look at the whole issue. Systemic problems are having an impact on performance.

Alongside those problems, there have been recent rolling stock issues, for example, which the committee has already discussed this morning. They have had an impact on ScotRail's ability to take forward the new timetabling programme.

The challenges that we currently face are not due to a lack of financial investment in our railways by the Scottish Government; it is clear that there are performance issues relating to the infrastructure and rolling stock elements. I have made the point time and again that infrastructure and rolling stock both have to play their parts in ensuring that we get better performance.

The additional rolling stock and the measures that are being taken forward as a result of the

Donovan review and the remedial plan should improve performance, but that needs to be sustained and maintained, and passengers need to experience that, as well. As I mentioned earlier, we can see benefits that have already come from the Donovan review in the Strathclyde electric area in the west of the country. If we can make improvements there, we want to see improvements in the rest of the network. That can be done, but we need to ensure that there is a clear focus in ScotRail and Network Rail on taking the necessary actions to deliver that on a sustained national basis.

**Mike Rumbles:** Do you want me to ask the next question, convener?

**The Convener:** Yes, I do, but I encourage both of you to remember that there are many other members around the table who want to ask questions. Succinct answers to succinct questions will allow every member the opportunity to ask their questions so that I do not get evil looks when I do not allow people in. The cabinet secretary should give short answers.

**Mike Rumbles:** Finally, what role did you and your officials play in the development of the remedial plan and its adoption as a formal agreement?

**Michael Matheson:** The remedial plan was submitted to Transport Scotland officials. They had the opportunity to review it and they brought in external expertise to give it some additional scrutiny, before giving formal feedback on it to ScotRail. Bill Reeve can say a bit more about the internal process in Transport Scotland.

**Bill Reeve (Transport Scotland):** As the cabinet secretary described, we received the plan, subjected it to scrutiny including on the basis of independent expert advice, took appropriate legal advice about how to make it enforceable, went back with some required changes and, after the proper process, we arrived at something that we were content to turn from the plan into an agreement.

**The Convener:** There are some follow-up questions.

**John Mason:** How much of the problem is an underlying management problem with Abellio ScotRail and how much is a teething problem because there has been a delay with the rolling stock and we have grown things so much and put in the electrification, so that any management would have had the same problems?

**Michael Matheson:** Which problem are you referring to?

**John Mason:** There is a remedial plan. It is a whole package of things. Could we say that it is 75

per cent teething problems and 25 per cent management?

**Michael Matheson:** There are a number of different factors. There is no doubt that the late arrival of the Hitachi rolling stock had an impact on the training programme and that continues to be the case. Secondly, the late arrival of the HSTs had a similar impact. That has also had an impact on capacity on particular routes, because the diesels on the routes where the Hitachi 385 trains are meant to go will be cascaded to other areas such as the Borders and Fife. That has not been possible because of the late arrival, the delays in training and the knock-on effect to train drivers who will take on the new rolling stock that will operate on the east coast.

**John Mason:** All that would have happened anyway, whether it was publicly owned or anybody else had been running the railways.

**Michael Matheson:** The failure in the delivery of the Hitachi and high-speed trains is down to Hitachi and Wabtec respectively. There is also the late arrival of the Azuma trains for the London North Eastern Railway, which is in public ownership run by the UK Government, so it is not about public or private ownership. It is about train manufacturers and companies that are undertaking refurbishment work failing to deliver on their commitments. Those are the basic facts.

The timetable change in December last year was a significant one to provide enhanced services. Its delivery was dependent on the new rolling stock being available on time, but the training and crewing programmes for that change were for ScotRail to manage and plan effectively and it got it wrong. On the basis of the information that it was giving to Transport Scotland, ScotRail had assumed that the crewing and training plan was achievable, although challenging but, once the timetable came in, it was clear that those assumptions were wrong. That is reflected in the arrangements that have been put in place to address it in the remedial plan. There is a senior manager responsible for oversight and a crewing strategy to enable more effective planning on those issues.

There was a combination of factors and they all interplayed at one time.

**Richard Lyle:** I have a question arising from the one that I put to Mr Hynes. Aside from train cancellations that are due to ScotRail, there continue to be issues with infrastructure such as signalling and track and other delays across the rail network that regularly impact on customers. What are you doing to manage Network Rail's performance, and how much say do you have over Network Rail?

**Michael Matheson:** There is no doubt that Network Rail infrastructure has an impact. Both parts of the system have a part to play in performance. There is no point in looking at just part of the system and thinking that, if we keep saying that ScotRail must do X, Y and Z, that will resolve all the problems because, in some periods, in excess of half of all cancellations and delays are caused by infrastructure failures. Therefore, it is clear that work still needs to be done there.

As part of his 100-day review, Andrew Haines, who is the new chief executive of Network Rail, has agreed to allow greater devolution of the management of Network Rail in Scotland, so rather than things being controlled from the organisation's headquarters in Luton—*[Interruption.]* I am informed that the headquarters is in Milton Keynes. Although there will be greater devolution of the management to the Scotland route, Network Rail, as an organisation, is accountable to UK Government ministers, not the Scottish Government ministers.

**Richard Lyle:** So you have no control over Network Rail.

**Michael Matheson:** No. We fund the work that Network Rail undertakes in Scotland. Just yesterday, I announced that we will invest some £3.8 billion in rail over the course of the next five years. That is a 21 per cent increase in investment. We have an infrastructure manager for Scotland in Network Rail, which is a post that we fund, but that person is not accountable to me or the Scottish Government.

**Richard Lyle:** So we fund a role that we have no control over.

**Michael Matheson:** No—Network Rail is not accountable to us for that.

**Jamie Greene:** With the greatest respect, Network Rail is the third party in the ScotRail Alliance, and the ScotRail Alliance is directly accountable to you. Is that not the case?

**Michael Matheson:** Alex Hynes, as the head of the alliance, is directly accountable to me, but there is no accountability for the actions of Network Rail.

**Jamie Greene:** According to page 15 of the remedial plan, infrastructure asset failures “have caused 2% of trains to fail PPM in the past year”.

In my view, that is 2 per cent too many, but we need to put the issue in perspective.

**Michael Matheson:** Does the figure that you are referring to appear in section 4.1.1?

**Jamie Greene:** It is in the first line of section 4.1.2 on page 15.

**Michael Matheson:** On average, in excess of 50 per cent of cancellations and delayed trains are a result of infrastructure failures. Back in the summer period, when it was very hot, more than 70 per cent of all cancellations and delays were due to infrastructure failures.

It is not a case of blaming one side or the other. When I raise this issue in the chamber, members say, “You’re just trying to use Network Rail as an excuse,” but I want Network Rail to get things right, too. Network Rail got it right on the Highland main line. It completed the programme of upgrades to the Highland main line on time and under budget, which is great, but we need to see more of that. When an axle counter at Haymarket fails twice in the course of two days, that is unacceptable. Improvements are necessary. It is not a case of playing off Network Rail against ScotRail; both organisations need to improve their performance so that passengers get the best service.

**Jamie Greene:** I could not agree more. All the focus should be on passengers.

I want to ask about a number of issues that came up in our session with the first panel, which you might have watched. We heard that it takes up to 18 months to train new drivers. As part of its remedial plan, one of ScotRail's flagship announcements is about the recruitment of 55 new drivers. Does that fill you with confidence that passengers are likely to benefit from improvements any time soon, given the substantial time lag between recruitment and going live on the network? It will be a long time before we can expect to benefit from that new resource.

**Michael Matheson:** I have two points to make. The key aspect of the remedial plan with regard to the east coast is the training of crew on traction and on route. As the committee heard from ScotRail, it is on target to get that training programme completed, which will provide more resilience in the east, where there have been significant challenges with cancellations.

ScotRail will need to continue to recruit drivers, because it still depends on rest-day working. It has expressed a desire to end the need for that, and part of the additional recruitment will help it to do that. However, as you will be aware, a variety of factors need to be borne in mind. The training timeframe can be longer, depending on where a driver will be based, what type of trains they will operate and which routes they will cover. Someone who is already qualified as a driver will need to acquire only route knowledge, so the process will be much quicker.

As ScotRail explained in its evidence, there are different timeframes. However, the key issue for the east coast in the remedial plan is the

completion of the training of the crew, and I believe that ScotRail expects that to be completed by the end of next week.

11:45

**John Finnie:** We have been here a couple of hours and I have not mentioned the Highland main line. I had no intention of doing so but, since you mentioned it—

**Michael Matheson:** I did.

**John Finnie:** Although the modest improvements are most welcome, the greater part of the line remains a single track, which will present significant challenges. In the meantime, the Government is spending £3 billion on the adjacent road.

I have a direct question. Should Abellio not meet the contractual requirements that are set out in the remedial agreement, what would happen and when?

**Michael Matheson:** The member will be aware that the Highland main line is one of the lines that we are looking at in control period 6. We will consider what further enhancements we can deliver, given the importance of the line to the Highlands.

The remedial plan is now part of the franchise contract. If ScotRail fails to deliver on the commitments that are set out in the remedial plan, it will be in default of the contract. Depending on the nature and purpose of the default, the Government will consider whether we should terminate the contract early. Following a failure to deliver on the commitments, the next step could be termination of the contract.

**Peter Chapman:** In your statement on ScotRail on 22 March, you said:

“I have instructed my officials to ensure robust measures are put in place to monitor progress very closely”.

What are those “robust measures”? How do they differ from current monitoring procedures?

**Michael Matheson:** There will be four-weekly meetings with ScotRail to go over the progress that has been made on the actions that are set out in the remedial plan. I am appointing Andy Thomas, who has considerable experience and expertise in the rail industry, to provide independent oversight of ScotRail’s progress, and he will report his view on that to my Transport Scotland officials. The combination of direct engagement with ScotRail and the independent oversight that I am putting in place will allow us to track very closely the progress that ScotRail makes.

**Peter Chapman:** That is a useful increase in monitoring but, if close monitoring is important,

which it obviously is, why did it take us this long to do that work?

**Michael Matheson:** Specific enhanced monitoring is being put in place under the remedial plan.

If Peter Chapman’s question is about crewing following the timetable change, I point out that ScotRail goes through a process of setting out the plans and arrangements that it has put in place to manage such issues. It is fair to say that all the assurances and information that ScotRail provided prior to the timetable change suggested that, although there would be challenges, they would all be manageable, and that ScotRail would be able to meet the additional crewing demands that would be required. However, it is very clear that ScotRail’s planning and the information that it provided were wrong.

ScotRail has now analysed in detail how it got it wrong, and that work is, in part, reflected in the measures in the remedial plan, which ensure that the organisation has a clear line of management that is responsible for dealing with such issues. If you were to ask me, “Why did ScotRail not have that before?”, I would say that that is a very good question. Putting that system in place is the right thing to do.

**Peter Chapman:** We have heard about the extra £18 million that the alliance will put in to help the situation improve over the next three years. Have any additional Scottish Government funds been made available to Abellio to develop or implement any of the proposals? If there is any extra money, under what mechanism and from what budget line is it provided?

**Michael Matheson:** No, there is no additional money from the Scottish Government. The £18 million comes entirely from Abellio.

**Colin Smyth:** It says a lot about how low our expectations are of ScotRail that we are discussing how it will get out of breaching the franchise agreement, rather than how it will hit the targets that have been set.

During topical questions yesterday, in reply to my question on ScotRail’s overall performance target, you said:

“ScotRail’s forecast for achieving the 92.5 per cent target is that it will do so by the end of reporting period 13, in 2020-21, and it believes that it is on track to achieve that.”—[*Official Report*, 26 March 2019; c 7.]

Do you stand by that statement?

**Michael Matheson:** I may have caused some confusion for the member with that response in the chamber. The figure that I quoted is the figure in the latter part of the Donovan review, which ScotRail is working to. However, the figure in the remedial plan is for period 13 in 2021-22. That is

the trajectory set by the ORR, because of the work that it believes that Network Rail has to undertake to achieve the 92.5 per cent target. As the committee heard from ScotRail, it is working to the Donovan review figure, for period 13 in 2020-21. However, in my response to Mr Smyth's question yesterday, I should have referred to the remedial plan figure, which is for 2021-22. I apologise for not providing him with accurate information when I responded to the remedial plan question.

**Colin Smyth:** The remedial plan is clear. It says that, by March 2021, the performance figure will in effect be less than 90 per cent, so well below the target. Today, ScotRail confirmed that it will not meet the 92.5 per cent target by March 2021, which contradicts the statement that you made yesterday. It did say, however, that it would meet the target by the end of 2021. Do you believe that that is accurate and achievable?

**Michael Matheson:** I apologise for giving Mr Smyth the wrong information yesterday, but I do not think that there is a contradiction.

The figure in the remedial plan is the ORR figure, which takes account of what Network Rail needs to undertake to achieve the 92.5 per cent target within the agreement.

The figure that I quoted yesterday is the figure that ScotRail is working to, as set out in the Donovan review. As the committee heard from Alex Hynes earlier, it is working to the Donovan review figure, but the remedial agreement recognises that the ORR projection—which includes the work that Network Rail needs to undertake—means that it could take a year longer.

**Colin Smyth:** ScotRail was very clear. It is not working to March 2021. It does not believe that it will meet the March 2021 figure. When do you think that ScotRail will deliver the performance target of 92.5 per cent?

**Michael Matheson:** I may have picked up ScotRail wrongly. When I heard its evidence, the figure that I offered was the correct figure that it is working to. However, the figure in the remedial agreement is different. That is the one that is from the ORR. As far as ScotRail is concerned, the new period starts next week and it should be working to reach the 92.5 per cent within the next period.

**Colin Smyth:** Absolutely. The 92.5 per cent target starts next month, in period 6. ScotRail will not meet that target. Do you think that it will meet the target in March 2021? If that is the target it is working towards, will it hit that target in March 2021 in this Government's opinion? Frankly, it made it clear today that it did not believe that it would.

**Michael Matheson:** There will continue to be challenges in achieving it. ScotRail should be

working to meet the target as best it can. If it cannot—

**Colin Smyth:** Cabinet secretary, the question is, when do you believe that ScotRail will meet the 92.5 per cent target?

**Michael Matheson:** It should be looking to meet the target as set out in the Donovan review.

**The Convener:** Cabinet secretary, Colin Smyth has pushed you hard on that issue. The question is when you think that ScotRail will meet the target, not when it should be looking to meet it or which figure is in which review. When do you think that it will meet the target?

**Michael Matheson:** I expect ScotRail to meet the target by period 13, in 2020-21, as was set out in the Donovan review.

**Colin Smyth:** If we look at the remedial plan, the projection is that punctuality will be below 90 per cent in March 2021, so how can you believe that ScotRail will meet the target of 92.5 per cent by that period?

**Michael Matheson:** The range of actions that ScotRail can take to improve performance are all the measures that were set out in the Donovan review in order for it to achieve that target. If it continues to make progress with those, it is possible for it to meet the target. I want to keep ScotRail focused on that and make sure that that is the date on which it is aiming to achieve the target.

**Colin Smyth:** If March 2021 is the target that ScotRail is working to and it fails to meet that target, what action will the Government take?

**Michael Matheson:** It depends on how much it has failed by and what the reasons are for that. However, if performance has not picked up from where it is at present, we will have to look at taking further action.

**The Convener:** I want to bring in Mike Rumbles and then come back to Colin Smyth.

**Mike Rumbles:** Pursuing Colin Smyth's point, I understand that the earliest time that you can give notice of terminating the contract is April next year. From your responses, it sounds as though you are not expecting Abellio to reach the targets until 11 months later. I pointed out in my earlier question that it has never achieved the target since it took the contract, so its whole track record is of poor performance. Would it not give it a major spur if you said that you would, at the earliest opportunity, examine whether to end the contract?

**Michael Matheson:** Abellio ScotRail is already aware of that. We need to keep in mind that if it fails to deliver on the commitments set out in the remedial plan, which it has to start implementing now, or fails to meet the timelines set out in that

plan, that gives us the opportunity to consider whether to terminate the contract. We do not have to wait until April next year to make that decision if ScotRail defaults on the remedial plan.

**Mike Rumbles:** If it does that, in April next year will you assess whether you should give notice to end the contract?

**Michael Matheson:** As the First Minister has already said, ScotRail is in “the last chance saloon”. That should make the potential consequences very clear.

**Colin Smyth:** The problem is that, sometimes, when ScotRail fails to hit a target, the target changes. It is about not just not hitting a target, but reaching a certain level below a target before you take any action against it. You have indicated that, if ScotRail does not meet the targets and timelines in the remedial plan, the franchise could be terminated. Can you expand on that? Will it be terminated if ScotRail misses one of those timelines, or two of them, and by how much will it have to fail to meet them? What are the exact criteria that you will use? When ScotRail has previously been in breach of its performance targets, they have been amended. Exactly which targets in the remedial plan will ScotRail have to breach, and by how much, before you seriously consider terminating the franchise?

**Michael Matheson:** Because the remedial plan commitments are now part of the contract to get ScotRail out of breach, if it fails to deliver on those it goes into default, which is the next level. If it goes into default, we have the opportunity to consider whether we should terminate the contract. You asked what, exactly, will determine whether we terminate the contract, but it depends on the reason for the default. For example, if ScotRail defaults on one of the commitments by doing it a day late, does that 24 hours justify termination of the contract? However, if it is something that we know that ScotRail will not be able to achieve at all—it will not deliver it and is not intent on delivering it—does that merit us considering whether to terminate the contract? You asked me for the specifics, but it depends on a number of different factors.

As I said, if it was clear that ScotRail was not going to deliver something or was incapable of delivering it and there was no will for ScotRail to deliver it, we would have to consider whether we should terminate the contract on that basis, because it would be failing to deliver on a contracted commitment, which would put it into default. However, as I mentioned, if it was something that was a day late or if a small oversight caused a delay in completing a piece of work that could be closed off in a relatively short period, and that had not adversely impacted on

the wider benefits from the remedial plan, clearly we would have to consider that as well.

12:00

**Jamie Greene:** This is getting as clear as mud as we progress through the conversation. There are 19 contractual commitments in the remedial plan, but it is entirely unclear as to how many of them ScotRail will have to fail to meet before you will consider terminating the contract. Some of the commitments are not expected to be achieved until May 2020 so, in effect, you are giving ScotRail carte blanche to continue as is. There are no real teeth to the threat that you may remove the franchise.

**Michael Matheson:** ScotRail has to fail to deliver on only one commitment—not several, but one—to be in default. The aim of the remedial plan is to get ScotRail out of breach. If it goes into default, it will be at the level below that again, which automatically gives us the right to consider whether we should terminate the contract, as one of our options. It is not a combination of issues that have to be breached; if just one commitment is breached, we automatically have that ability.

I hope that that has cleared up the mud for the member.

**Stewart Stevenson:** Given that we are talking about the potential end of the contract, how prepared is the Government to put in place an operator of last resort?

**Michael Matheson:** Legally, we have to put in place an operator of last resort, and we have arrangements in place for that should it be necessary. Those arrangements are regularly reviewed. Bill Reeve can say a bit more about the internal work that we do on that. We have legal arrangements in place should we need to step in as the operator of last resort.

**Stewart Stevenson:** Did you say that you have “legal arrangements” in place?

**Michael Matheson:** We have arrangements in place, and we have legal contracts in place to deliver an operator of last resort if required.

**Stewart Stevenson:** I misheard you.

**Bill Reeve:** I do not have much to add. We have some shelf companies ready for that eventuality, which is standard practice. We keep the operator of last resort arrangements under review, and we are refreshing the process as we speak. In Andrew Mackie’s franchise management team, he has a team that is focused on that work. That is good and prudent practice, and we have done it throughout the life of the current franchise, as we did with the previous one. That is standard operating practice for us.

**Stewart Stevenson:** There are issues about the structure of railways, which are addressed by the Williams review. My colleagues will ask about that, so I will not do so, but I have a more general question in that regard. There has been discussion about Scottish public sector organisations perhaps being a follow-on operator or a bidder for the franchise. The only name that I have heard so far is CalMac Ferries, but it perhaps has enough in its in-tray in trying to run the ferries. Can you assure me that it will not be CalMac, because I can hardly imagine that it would make things better? Indeed, the same applies to you personally taking control of the franchise, cabinet secretary, because, much as I respect your capabilities, I suspect that it might be beyond your personal reach.

**Michael Matheson:** It is probably more within Bill Reeve's personal reach than mine. We have secured the right to a public sector bid for the franchise. David MacBrayne Ltd is the only company in the public sector that has expressed an interest in possibly bidding for it. Ultimately, as a public body, when it comes to the opportunity to bid for the public sector contract, it would have to assess the issues that go alongside that in deciding whether to lodge a franchise bid.

You say that somebody else will ask about the Williams review, but the issue relates strongly to that review, because Keith Williams has already said that the existing franchise structure needs to change. Therefore, we are facing change of some fashion, although we do not know what its nature and scale will be. From what Keith Williams has said to date, it is clear that the existing franchise arrangements will not continue.

**The Convener:** We will come on to the franchise arrangements. Is Stewart Stevenson satisfied that he has an answer and that he does not need to be worried about who would take over control?

**Michael Matheson:** Unless he is making a personal bid.

**Stewart Stevenson:** I have heard what the cabinet secretary has had to say, and I have a supplementary question. It has been suggested to me that the cost of preparing a bid is in the order of £10 million to £15 million. If MacBrayne's, which is the company that owns CalMac Ferries, spent that money, would that be a useful way to spend that money, or would it be better to it on improving ferry services?

**Michael Matheson:** The cost of preparing a franchise bid is in the order of £10 million. That is not to secure the contract; it is just to prepare and submit the bid.

**John Finnie:** I do not share Mr Stevenson's concerns about CalMac, but what would the operator of last resort look like in advance of the

Scottish Government being able to prepare a public sector bid? You have said that there is a legal requirement or something in place. What did it look like before?

**Michael Matheson:** In what way?

**John Finnie:** What was it and how was it configured?

**Michael Matheson:** Do you mean the operator of last resort?

**John Finnie:** Yes.

**Michael Matheson:** I will ask Bill Reeve to explain that.

**Bill Reeve:** As I said before, we have maintained the shelf companies, which are ready to start if needed. We keep under review—

**John Finnie:** Excuse me, but what is a shelf company?

**Bill Reeve:** It is a company that is prepared and ready to be taken off the shelf and used as a legal vehicle. That would allow us to take over as the operator of last resort. We keep the current franchisee's key contracts under review, and we keep under review a standard pack with the information that we would need and the process that we would need to follow. We stay in close liaison with colleagues in the Department for Transport who have been through the process on a couple of occasions and who make certain that we keep up with best practice. We keep the process under regular review. We have maintained that information ever since we have had responsibility for franchises—that is, from 2005.

**John Finnie:** Can you say what that operator looks like? Who is it? It is clear that we will not engage a whole lot of new staff. Are senior personnel involved?

**Bill Reeve:** I will take the example of where the Department for Transport has stepped in in relation to the operator of last resort. That is a similar model. Typically, that would entail the transfer of all but a small number of senior managers from the existing operator. They would go into the new company under the Transfer of Undertakings (Protection of Employment) Regulations, and some senior posts would need to be filled with people with appropriate experience. I cannot say who they would be, because we would need to find out who was available at the time, but we have means of securing people with suitable expertise.

**John Finnie:** It does not sound terribly complicated, so it is very disappointing that the Scottish Government seems to have completely cooled on that. We hear a lot of comments about public ownership, but I will leave it there.

**Richard Lyle:** John Finnie said that he would leave it there, but, if ScotRail cannot solve things, why should we give the franchise to another private company? The words “take back control” are used nowadays with Brexit. Should we not take back control of ScotRail? We are putting millions of pounds into Scottish railways. Why do we not take ScotRail back under public control?

**Michael Matheson:** I will deal with Mr Lyle’s and Mr Finnie’s idea that the Scottish Government has completely cooled on the issue. [*Interruption.*]

**The Convener:** I am sorry, cabinet secretary, but I am struggling to hear. There are conversations going on.

**Michael Matheson:** It is factually wrong that the Scottish Government has completely cooled on the issue; that is not the case at all. The Williams review is currently taking place. It has already been indicated that franchising will change, but we do not know what that change will be. I have said to the Williams review that I want all options to be on the table, including the option of our having the ability to look at a public sector-run railway alongside the full devolution of Network Rail in Scotland.

**Richard Lyle:** So you get out from under—

**Michael Matheson:** May I just finish this point? When Mr Finnie says—

**Richard Lyle:** So you—

**Michael Matheson:** Hold on.

When Mr Finnie says that the Scottish Government appears to have cooled on the issue, he is wrong. We are dealing with a changing situation because of the Williams review, which we need to take into account.

That takes me on to Mr Lyle’s question, which was about why we do not just take back control of ScotRail. We cannot just take back control, because we do not have the powers to do that. In running rail services in Scotland, we are legally obliged to have a franchise in place. All we have is the right to have a public sector organisation bid for the franchise.

My view is that the existing franchise arrangements do not work in the interests of passengers, are no longer fit for purpose and need to change. We need greater integration of infrastructure elements, Network Rail and the rolling stock providers, whoever they are, whether the public or the private sector runs services. We need a complete realignment of how rail services are delivered.

That is what I want to see, through the Williams review. If franchising is ending, that is to be welcomed, and if the current franchising arrangement is ending, I want to see options that

allow us to consider all the models that could be applied in Scotland, including the ability to pursue the option of a public sector rail service in Scotland. However, to be able to do that, we would need to be given the powers on not just the rolling stock element but the network element, around Network Rail.

That is the opportunity that we have through the Williams review, and in my discussions with Keith Williams I have expressed that view and explained what we want from the rail review in the UK. I hope that that clarifies my position for Mr Finnie.

**The Convener:** I think that the next question, from Jamie Greene, is on that matter.

**Jamie Greene:** Yes. I thank the cabinet secretary for answering a question that I have not yet asked—it is a unique ability.

**Michael Matheson:** You are going to ask it anyway.

**Jamie Greene:** Indeed.

This is an important point. I want to take the politics out of the discussion about who owns the railways and the nature of the franchise. From my conversations with the industry, I think that it comes down to this: the problems that the industry is facing at the moment are such that even if David MacBrayne were to take over the railways tomorrow under some sort of shelf company arrangement—at the end of the day, anyone can set up a shelf company; it does not mean that they are running a business—it would still face the same problems of weather disruption, driver shortages, late delivery of fleet, rolling stock and so on.

You said that you want flexibility and options to do things differently. Realistically, what makes you think that the rail service would be run differently and better than it is currently being run?

**Michael Matheson:** That is why we want to be able to look at all the options. We want to consider whether there is a better way than the existing franchise arrangements, which could provide us with a more passenger-focused railway service and greater integration between the infrastructure and rolling stock elements than there is at the moment.

Given the recent challenges that we have had, no one is going to persuade me that we have the optimal model for running railways in Scotland. Is anyone seriously going to argue that we do? That is clearly not the case. We need to identify a better way to run our railways in Scotland, which includes the possibility of having them in the public sector.

However, you have raised important points. There are people—including people who are

sitting at this committee table—who say to me, “Just tear up the Abellio contract.” That does not resolve the crewing issue. It does not resolve the issue to do with late arrival of the trains from Wabtec and Hitachi. It does not get us any more drivers. It does not deal with the infrastructure challenges on the Scottish railways. All those challenges are still there; they cannot be magicked away. We need to find a way through them.

In trying to improve services for passengers, my focus is on what we can do with the contract that is in place to apply as much pressure as possible on the franchisee to deliver for passengers. One of the strongest elements that I can pursue is a remedial plan, which is put into the contract, so that if the franchisee is in breach of the terms they go into default on the overall franchise. We have to use the contract as it stands to maximise the benefit for passengers, and that is my focus at the moment.

However, the bigger picture is that it is clear that we do not have an optimal model. I cannot speak on behalf of the UK Government, but it is fair to say that it has woken up to that, which is why the Williams review is taking place. The question now is about what comes from Williams. We already have an indication that the existing structure will change and that franchising of the current nature will come to an end. The question is what the future will look like. Our engagement in that regard is focused on the point that, in Scotland, we want to be able to look at all the options, including the devolution of Network Rail so that we can get greater alignment between rolling stock and infrastructure. At the same time, we want to have the opportunity to look at different models for how we run our railway in Scotland, including a public sector option.

12:15

**Jamie Greene:** Thank you for that robust answer. I have some sympathy with what you are saying, because the problems that ScotRail faces will not go away overnight and ripping up the existing contract and replacing it with a new one under a different legal framework will not necessarily remove any of those problems. I picked up a hint of criticism of the ScotRail Alliance in your answer, when you said that you would prefer

“a more passenger-focused railway”

in Scotland. Does that imply that ScotRail is not passenger focused at the moment? What is your vision of the publicly run rail network that you would like to operate?

**Michael Matheson:** When I refer to ScotRail, I am talking about the rail network in Scotland as a whole. I know that passengers may not feel this,

but, from the discussions that I have had with ScotRail, I know that it wants to deliver the best possible service for passengers. Clearly, we are going through a period in which ScotRail has got aspects of training and crewing wrong, but the purpose behind the measures that it has taken is to provide better passenger services. Those have not yet materialised, which is a source of real frustration to me, given the amount of resource that we are putting into rail to help to deliver better services.

It would be unfair of me to say that ScotRail is not interested in trying to deliver good services for passengers—I believe that it is and that it is committed to doing so. However, there is a need for it to become more passenger focused on the infrastructure side. To me, that side feels too detached and remote, too process driven and not passenger focused. There is a need for that to change so that those on that side are much more focused on the work that they can undertake to reduce the risk of disruption to passenger services. At present, I feel that they are not focused enough on that.

Further, I feel that the regulatory framework that is in place is too inward looking and is not sufficiently focused on passenger needs, although I welcome the ORR’s statement that it is considering the possibility of fining senior managers in Network Rail for the failure to deliver on performance. That might be welcome, but we should have been focused on driving better performance in Network Rail at a much earlier stage. The regulator has a role in that, but it has not served that purpose as well as it should have.

**Jamie Greene:** Under the current franchise structure, one of the parties—Abellio—is a private operator. We know that the £18 million for the remedial plan that we have been discussing comes from Abellio, rather than from public funding. I presume that with a publicly owned and run service, the risk that is currently taken by Abellio—or by whichever company operates the franchise—would be transferred to the public purse. When will the Scottish Government set out the cost considerations relating to a fully publicly owned and run service, in which 100 per cent of the risk would be carried by the public purse? Obviously, we would expect you to be forthcoming with such plans.

**Michael Matheson:** That depends on what comes from the Williams review and the extent of the powers that we are to have. Will that review give us the power to look at a completely different model in Scotland, including the possibility of our having a public sector-run railway in Scotland? A variety of models could be considered for that, and they would all have to be worked through and considered. We need to see what comes from the

Williams review. However, we know that there will be significant change. The question is about what the scope and nature of that change will be. Once we know that, we will then have the opportunity to consider how to proceed in Scotland.

I have been very clear with my engagement with the Williams review and our officials have engaged with it and submitted material. We have continued to engage and, because it is due to report by the end of this year, I will look to have further engagement around making sure that Scotland's needs are taken fully into account in any changes that are planned. We should have all the levers of power on the options for running the rail services here in Scotland.

**Gail Ross:** The latest figures that we have, from autumn 2018, tell us that customer satisfaction is now at its lowest, at 79 per cent. That has obviously prompted the second remedial plan, which is due on 3 May. When I asked Alex Hynes about it earlier, he said that among the 30 aspects of service that the survey looks into, the greatest disquiet concerns punctuality and reliability, which is not a surprise. Can you provide us with an update on that plan from your point of view and tell us what you think should be in it to improve the levels of customer satisfaction?

**Michael Matheson:** As Gail Ross mentioned, that plan is due by the beginning of May. We will go through the same process that we went through for the first remedial plan: we will consider the detail contained in it, take advice including legal advice and feed back to ScotRail any aspects that we believe need to be included or expanded on in the plan. There is no doubt that punctuality and reliability are two key areas that ScotRail needs to address. That fits in very much with what the transport focus feedback tells us.

ScotRail needs to give much greater consideration to giving passengers advance warning. If a train is cancelled or delayed, for whatever reason, people need as much advance notice as possible. I have raised that issue before in my discussions with ScotRail. There is nothing more frustrating than turning up for a train that is cancelled. I have been there myself. Had I known about it an hour earlier, I could have made alternative arrangements to go a different way or by a different means. Earlier notification will be extremely important in helping to keep passengers informed. I get feedback from passengers that it is a major source of frustration and ScotRail needs to look at how it can communicate that more effectively.

**Gail Ross:** Another thing that annoys people is skip-stopping, and you can see why. Are you satisfied that that has come down to acceptable levels? Is any level acceptable?

**Michael Matheson:** Skip-stopping has always taken place within the system as a way of managing rolling stock and lines; it is not a new thing to the industry. Looking back over the past couple of years, we can see that it has been overutilised by ScotRail, but there have been significant reductions—it has reduced by almost 85 per cent, I think. It should be at an absolute minimum and only take place as a matter of last resort. Processes are in place to monitor that through the contract and ensure that it is only used for that purpose. I expect it to be used only as a last resort and, as part of the implementation of the Donovan review, we have seen a significant drop in skip-stopping over the past year.

**Gail Ross:** You talk about giving passengers advance notice if their train is cancelled or delayed, but how can they be given advance notice that the train will skip their stop? It must be intensely frustrating to be waiting to get off at the stop where someone may be picking you up or that is closest to your house—which is why you get off there—only for the train to rush through it.

**Michael Matheson:** Part of that is about on-train communication with passengers: not just saying that it will happen but explaining why. There are times when it is not clear to passengers why it has happened. It could be that there is a broken-down train somewhere else and if the train stops at a station it will cause even bigger problems through a ripple effect on that line and other lines.

The operator looks at the network to make a decision. If a train skips a stop, it will inconvenience passengers, but it could reduce wider inconvenience to a greater number of passengers who might be affected by a particular problem, whether that is a failure of the rolling stock or infrastructure. Skip-stopping should only ever be used as a last resort, but it is critical to communicate with passengers and explain why it is happening.

**Gail Ross:** Is there any form of compensation to reimburse passengers who might have to take an alternative form of transport home if they cannot get off at their stop?

**Michael Matheson:** I need to check on the exact details of that. There is the delay and repay system but I do not know whether it covers skip-stopping. I can check that for you.

**Andrew Mackie (Transport Scotland):** When there is a part-cancellation or a customer is affected by a service that has stopped early or has skip-stopped, that passenger is eligible to claim delay and repay if the delay is for more than 30 minutes.

**Gail Ross:** What about if they have to get a taxi to their house, for example, that they would not

have had to get if they had been allowed to get off at their stop?

**Andrew Mackie:** I am aware that a lot of customers make representation to ScotRail for over-and-above compensation when they have been inconvenienced at short notice and have required a taxi.

**The Convener:** Cabinet secretary, I am slightly heartened that you agree that the most important thing is getting it right for the passengers who travel on the train. However, what I find it difficult to understand is that every time we get into a discussion about this in the chamber, blame is passed to other people. I was looking at the moving annual average for delays. If we exclude delays that are caused by external reasons—we all know about those unfortunate events, such as people on the line—and if we exclude extreme weather, it is clear that the biggest delays are caused by ScotRail and not Network Rail. Why do we therefore continue to blame Network Rail when the figures prove that it is ScotRail that is more at fault than Network Rail?

**Michael Matheson:** I do not blame either. They both have a part to play.

**The Convener:** I totally accept that, but the answer always seems to be that if we had control of Network Rail, all the problems with ScotRail would go away, and that is not true.

**Michael Matheson:** With all due respect, I have not come in here today and said that it is all because of Network Rail. There are occasions when it is down to Network Rail, and there are times when it is ScotRail. We need both of them to be focused on delivering for passengers. No matter how few or how many they are responsible for, they have a part to play and the present structural arrangements do not allow them to be as focused on passengers' needs as they should be.

During the next five years, we will fund Network Rail in Scotland by putting £4.8 billion of investment into our rail system, and we have an infrastructure manager in Network Rail who is not accountable to the Government that is funding that infrastructure investment. That is simply not right and it needs to change.

**The Convener:** In fairness, when I was looking at the figures the other day, I looked back and saw examples of Alex Hynes blaming Network Rail, you blaming Network Rail and the First Minister blaming Network Rail. However, the figures show that in the past year, more delays were caused by ScotRail than Network Rail.

As somebody who uses the railway, my plea is for us all to work together in a joined-up way to get the best result, rather than looking to blame other

organisations, because surely all organisations bear responsibility.

**Michael Matheson:** Let me give an example of blaming Network Rail. The axle counters failed twice at Haymarket last week because of Network Rail, not ScotRail. It was for ScotRail to deal with the consequences of that failure. The communication of that problem was undertaken by ScotRail, not Network Rail. I saw the communication from ScotRail that said that a problem had been identified and Network Rail was en route. Then people were on-site and had identified the problem, and it would take an hour for the part to arrive. Then the guys were trying to replace the part and it was going to take X amount of time to complete. What communication did we get from Network Rail? Zero. That is an example of a failure on the part of the infrastructure provider. It should have communicated to the public more effectively, so that the public could have understood what was happening.

I am not playing one off against the other. However, if we are looking at our rail network and holding it to account, we need to be able to deal with both its parts, and right now, we do not have the power to do that.

**The Convener:** The point that I am making is that, according to the information that I have, a lot of the ScotRail delays are because of defective trains and lack of train staff, which also affects other rail operators, not just the one in Scotland. Maybe we can leave that there as an observation.

**Michael Matheson:** With due respect, convener, I hope you do not think that it is all just ScotRail's fault. I hope that you recognise that Network Rail also needs to deliver on its responsibilities.

**The Convener:** Absolutely. I accept that.

**Michael Matheson:** Good.

**The Convener:** I said earlier that I do not like blame being shifted when other people, or ScotRail, appear in the past year to be more at fault than Network Rail.

On that note, I thank you and your team for giving evidence. I will suspend briefly to allow the witnesses to change over and I ask committee members to stay in their places, please.

12:31

*Meeting suspended.*

12:32

*On resuming—*

## Subordinate Legislation

### Motor Sport on Public Roads (Scotland) Regulations 2019 [Draft]

**The Convener:** We move on to subordinate legislation and formal consideration of motion S5M-16261, in the name of the Cabinet Secretary for Transport, Infrastructure and Connectivity. I invite the cabinet secretary to move the motion—

I am sorry, in my excitement, as we get closer to the end of the meeting, I have jumped a page in my briefing.

Cabinet secretary, welcome again. I also welcome George Henry, who is the head of roads policy at Transport Scotland, and Stephen Rees, who is a solicitor with the Scottish Government. Cabinet secretary, I invite you to make brief opening remarks on the regulations—before I ask you to move the motion. I apologise again for getting things in the wrong order.

**Michael Matheson:** Thank you, convener.

Scotland has a long and proud tradition in the world of motor sport. We want to recognise that tradition and allow it to continue by permitting the holding of stage rallies and other motor sport events on Scotland's road network.

However, motor sports can be dangerous. We recognise the need to balance the potential for public enjoyment of and economic benefit from events with a high degree of safety for spectators and participants.

Since the tragic events at the Snowman rally in 2013 and the Jim Clark rally in 2014, which resulted in four fatalities, no motor sport events have been held on closed public roads in Scotland. Since then, we have had the benefit of learning vital lessons from the Government-led motor sport safety review and the detailed and thorough fatal accident inquiry into the fatalities. Steps have been taken to implement the lessons that have been learned, and the self-regulation of rally events that Motorsport UK enforces is now much stricter than it was before those tragic incidents. Motorsport UK has published the fourth edition of "Stage Rally Safety Requirements". The requirements have evolved into a comprehensive safety document, which covers all aspects of stage rallying.

The Scottish Government formed a motor sport on public roads advisory group, which was made up of key stakeholders, including Police Scotland, the Society of Chief Officers of Transportation in Scotland, the Convention of Scottish Local

Authorities, the Jim Clark rally organisers, the Isle of Mull rally organisers, motor sports governing bodies, Scottish Borders Council and active Scotland. All of those bodies were involved in designing both the public consultation and the draft regulations.

We received an impressive 3,788 responses to the recent public consultation on our proposals for the regulations, with 98 per cent of respondents backing the draft regulations' proposed two-stage application process. That process for motor sport events on public roads will put the governing bodies and local authorities at the centre, and will bring together the people who have greatest experience of running such events with those who have the best interests of their communities at heart, in order to ensure that such events are delivered as safely as possible. In developing the regulations, we examined what happens in other parts of the UK and we have, as a result, refined our regulations.

In the first steps of the application process, the event organiser will be required to approach the relevant motor sport's governing body for an event permit. The proposed route and public safety arrangements, and the question whether appropriate insurance cover is in place will be considered, and there will be close consultation between the motor sport's governing body, the roads authority and Police Scotland.

Once a permit has been issued by the relevant motor sport body, the second step of the process will require the event organiser to seek the approval of the roads authority to hold the event. That will be in the form of a motor sport order. The roads authority, which for roads other than trunk roads will be the relevant local authority, must consider factors including the likely impact on and benefit for the local community, and it must consider the local community's views. The authority must be satisfied with the proposed public safety and traffic management measures before it grants a motor sport order for an event. We are talking about public roads, so it is anticipated that local authorities will close the roads on which the event will be run using existing powers over special events that they have under road traffic legislation, which was amended to allow them to use the powers for motor sport events.

In conclusion, we believe that the regulations set out a robust and proportionate framework for authorisation of motor sport events on public roads in Scotland. I hope that my remarks prove to be useful to the committee's consideration.

**The Convener:** Thank you, cabinet secretary. It is a good job that we did not jump forward to the next bit of procedure, because we have a lot of

questions on the regulations. The first is from Stewart Stevenson.

**Stewart Stevenson:** I very much welcome the instrument because, of course, the sport is exciting and so on. However, as we move towards general use of electric vehicles on our public roads, and given that on our motor racing tracks we now have formula E, which features races between electric cars, has there been any indication from Motorsport UK, event organisers or anyone else involved about such events for electric cars and the move towards rallies featuring electric rather than diesel or petrol cars?

**Michael Matheson:** We have had no specific representations on that matter, but I have no doubt that, as more and more electric vehicles come on to the market, they will increasingly find their way into staged rallies. Whether vehicles in an event must be all electric and whether there could be mixture of internal combustion engine and electric vehicles would be a question for event organisers, but I suspect that as the number of electric vehicles becomes greater we will see a greater number of them being used in rally events.

**Richard Lyle:** Like my colleague, I welcome the regulations, because they will bring benefits to, and be good for, the Borders. I note from our papers that the review that was mentioned

“recognised that there is an inherent risk in taking part in or attending motorsport events and it sought to recommend reasonable and proportionate measures”.

In your opinion, have such risks been reduced and minimised as a result of the review?

**Michael Matheson:** As I have said, there have been significant changes to the governing bodies and the rules for holding events. They now have a more robust and stricter safety regime in place with regard to, for example, arrangements for spectator zones. That is now being used by the national governing bodies. The key point is that safety lies at the heart of the national governing bodies’ decision-making process in considering an event organiser’s application for a permit, and they must be satisfied that the safety arrangements that are put in place are sufficient and meet their standards and expectations.

Once the event organiser has received a permit and applied to the local authority—the roads authority—for an order to have the event, the local authority needs to be satisfied that the appropriate risk assessments have been undertaken and that the right safety measures have been put in place.

There is no doubt that the system now is much more robust than it was previously. That has been informed by the outcomes of the review and the fatal accident inquiries that were undertaken.

**John Mason:** I noticed that the public consultation was from 3 December to 28 January and that there were 3,788 responses, which is quite a lot. The plan is to have the next rally on 24 May. Has the process been a bit rushed? The committee is not getting quite as long to consider the matter as we normally get.

**Michael Matheson:** We got a large response, and 98 per cent of the respondents were in favour of what is proposed. There is more time for the event organisers; they could have the event later in the year than 24 May. Once Parliament passes the regulations, the event organisers will have to comply with them, but they can use the existing regime with the enhanced provisions from motor sport governing bodies that are already in place.

**John Mason:** Graeme Dey said in his letter to the convener that the Government

“will fulfil the statutory 40 day laying period, although not the 54 day convention.”

Are we rushing the regulations through in order to meet the May deadline?

**Michael Matheson:** The organisers will have the opportunity to consider having an event later in the year once the regulations are in place. If we do not put the regulations in place now, the organisers would not be able to undertake an event in the way that they would wish to, because they would run out of time. If we put the regulations through now, organisers will be given more time to consider an event later in the year.

George Henry wants to say a bit more about that.

**George Henry (Scottish Government):** The initial information that came from the Jim Clark rally organiser suggested that it wanted to run the rally on 24 and 25 May. However, that would be subject to approval being gained from Scottish Borders Council and Police Scotland.

On John Mason’s question about whether we are rushing the regulations through, the direct answer is no. If members wish to consider the regulations for longer, they can do so. Information came in late—just yesterday—that the Jim Clark rally organiser might seek to run the event later in the year, potentially in August. It would still need authorisation from Scottish Borders Council and Police Scotland, as well as the regulations being passed.

**Jamie Greene:** I thank the cabinet secretary, his team and his directorate for their work on an important subject that will affect many parts of Scotland. Many welcome opportunities will be provided to introduce or reintroduce such events to boost tourism—especially out-of-season tourism—and to support island communities, for

example on Mull. The regulations are therefore very welcome.

The regulations come, unfortunately, off the back of tragic events. I pay tribute to David Richards from Motorsport UK for the tremendous work that he has done on the subject.

On local decision making versus national guidelines, what role will the Scottish Government play in issuing appropriate guidelines that will assist local authorities to make decisions that will ensure that public safety is at the forefront of any events that are held?

12:45

**Michael Matheson:** The new regulations put public safety at the heart of every step of the process, which is now a two-stage process. The national governing body must be satisfied that public safety and the safety of drivers are being addressed. The local authority must also be satisfied that a full risk assessment has been undertaken, and it must engage with Police Scotland and the national governing body on safety matters to ensure that it is satisfied that all safety arrangements are in place, from its point of view.

There are therefore two checks in the system: at national governing body level—when a permit is asked for—and at local authority level, where, before a motor sport order can be obtained, there must be consideration of the safety measures and arrangements that have been put in place. We will consider what further information needs to be provided to local authorities to assist them in that consideration.

The new system is much cleaner and more safety-focused than was previously the case. Specific lessons have been learned from the fatal accident inquiries that we have had.

**Rachael Hamilton:** I thank the convener, the cabinet secretary and other members of the committee for the opportunity to discuss the SSI. I want to say how important the Jim Clark rally is to tourism in the Borders and Berwickshire. There have been shop closures in Duns recently; the rally will bring increased footfall and the economic regeneration that we have missed over the past few years. There is also the exciting news that the Jim Clark museum will soon open, which will attract more tourists. As has been said, the organisers are speaking closely with SBC and Police Scotland and—as George Henry said—it looks as though there could be a postponement of the date from May until perhaps August.

In the light of the timetabling constraints, will there be any commitment of goodwill from the Scottish Government in terms of provision of

resources—financial or otherwise—to reinstate the rally, which is so important to the economy of the Scottish Borders?

**The Convener:** Although it is not specifically on the SSI and its obligation, I will let Rachael Hamilton away with that question. The cabinet secretary may answer the question briefly, if he wants to. However, he does not have to answer it if he does not want to.

**Michael Matheson:** I will try to be helpful. There are no plans on our part to provide funding. I suspect that such engagement would be more with EventScotland and such organisations that can potentially provide some form of support. I am not sure what discussions are taking place with those organisations on helping to promote the event—which EventScotland can assist with—to attract more people to the area.

There is provision in the regulations for local authorities to set a fee, which would allow them to recover costs that they might incur in undertaking the work that is necessary to issue an order.

**Peter Chapman:** Schedule 2 contains a table showing statutory provisions disapplied by a motor sport order. As I read it, the items at the bottom of the table say that a person does not require obligatory test certificates or a driving licence, and that a person can do motor sports even while they are disqualified from driving. It seems that we are proposing that somebody who has been disqualified from driving can take part in rallies and drive around the countryside at horrendous speeds. Is that correct?

**Michael Matheson:** I will ask Stephen Rees to comment on those items and give a bit of background.

**Stephen Rees (Scottish Government):** The disapplications in schedule 2 relate to various provisions that may be problematic for those trying to hold a race or rally on the public road. The obvious disapplications relate to issues such as speeding and following traffic signs.

On the disapplications that Peter Chapman mentioned, the disapplication of the requirement for test certificates relates—I think—to vehicles. Obviously, vehicles that participate in rallies may not conform to the normal requirements for road vehicles. As I understand it, the requirement to have a driving licence is disapplied because it is possible for participants in such events not to have a regular driving licence; I also think that people can participate in rallies from the age of 16. On the disapplication of the provision about driving while disqualified, I think that the view was taken that that flowed from the fact that there is no need to have a driving licence. However, the two things are not necessarily connected.

**Michael Matheson:** The regulations are not dissimilar to those in the rest of the UK. They broadly reflect the provisions that have been put in place in the rest of the UK for such motor sport events.

**Peter Chapman:** I find that extraordinary, given that rallies were stopped for reasons of safety. It is incredible that somebody who has done something seriously wrong and has been disqualified from driving should be allowed to take part in a rally.

**Michael Matheson:** This is a self-regulatory regime. The regulatory body is Motorsport UK, which sets the criteria for participants in its events. The requirements are the same across the rest of the UK. Apart from the two-step process that we have put in place, our regulations broadly reflect those that exist across the rest of the UK.

**The Convener:** The next and, I think, final question is from Stewart Stevenson.

**Stewart Stevenson:** Maybe Stephen Rees can answer this. Is it correct that one cannot participate without a competitor's licence issued by Motorsport UK and that the standards required to obtain that licence are significantly more stringent than those for a public roads driving licence?

**Stephen Rees:** I have to confess that I am not aware of the specific requirements that Motorsport UK imposes on participants. There is nothing to prevent Motorsport UK from imposing more stringent requirements on some participants. The application of the provisions in schedule 2 does not prevent that.

**Michael Matheson:** The nub of the point is that Motorsport UK sets the criteria on who can participate in these events.

**The Convener:** I was wrong—that was not the final question. Mike Rumbles would like to ask the final question.

**Mike Rumbles:** Following on from Peter Chapman's question, I would like to focus on the issue of driving while disqualified. As I understand it, we either approve an SSI or we do not—we cannot amend it. I am not particularly persuaded that, because the UK has taken this action, we can take it in Scotland. We are not responsible for UK legislation; we are responsible for legislation here, and it is our responsibility to decide whether the regulations are appropriate. I do not think that they are, but I am very reluctant to oppose them for that reason.

I make a plea that we consider future SSIs before we are asked to recommend their approval. I do not like approving something that I am not happy with, but recommending that the Parliament approve it—[*Interruption.*] I am hearing comments from my left. If Mr Lyle and Mr Finnie could contain

themselves, it would be helpful. I have an issue that I am not happy with, and I am trying to articulate that.

**The Convener:** Can we let Mike Rumbles finish his point? I know that Richard Lyle wants to comment, and I am happy to let him do so. I ask Mike Rumbles to finish what he was saying. Is there a question for the cabinet secretary to answer?

**Mike Rumbles:** Yes. The cabinet secretary just said that Motorsport UK provides the criteria. If the regulations are approved, it would be helpful if he could pass on to that organisation my concerns and those of Peter Chapman.

**Michael Matheson:** I am more than happy to do that. The member has raised a reasonable point. If it would be helpful, I will also ask Motorsport UK to write to the committee setting out the criteria that it uses, which may provide greater clarity about the way in which it applies the regulations.

**The Convener:** Stewart Stevenson's point was linked to that. I think that Motorsport UK has its own licensing system for people who want to race motor vehicles, which includes certain health and driving capability requirements. It would be helpful to the committee to know that for future reference.

**Richard Lyle:** Surely people learn on motor sport tracks and in formula 1. How many great drivers have a public driving licence?

**The Convener:** I can partly answer that question. To take part in on-road racing, drivers have to have a motor sports driving licence, which requires them to go through a stringent test and have a health assessment.

**Richard Lyle:** I am talking about whether they hold a UK driving licence.

**The Convener:** They might not have a UK driving licence. They have to have a licence issued by, I think, the British racing drivers association. Am I right?

**George Henry:** The competitor's licence is issued by Motorsport UK—that is covered in its handbook.

**The Convener:** I am in danger of sounding like another member of the committee, so I will not go any further down that line. Peter Chapman has the final point on this.

**Peter Chapman:** I highlighted some items at the bottom of schedule 2 to the regulations. Perhaps we now have an answer to the question about the driving licence and there being a more appropriate licence for taking part in competitions. However, the disapplication at the bottom of schedule 2 says:

“Users of motor vehicles”

are to be

“insured or secured against third-party risks”.

I imagined that those drivers would have to have insurance in place, yet that disapplication suggests that they do not need it.

**Michael Matheson:** The event organisers have insurance cover in place, which brings us back to the self-regulatory nature of the sport. If an event organiser wants to host an event such as the Jim Clark rally, they have to put their proposal to Motorsport UK, and it must include appropriate insurance cover for the event. Before Motorsport UK grants a permit, it has to be satisfied that insurance cover is in place.

**The Convener:** As there are no more questions, we move to item 3, which is formal consideration of motion S5M-16261.

*Motion moved,*

That the Rural Economy and Connectivity Committee recommends that the Motor Sport on Public Roads (Scotland) Regulations 2019 [draft] be approved.—[*Michael Matheson*]

**The Convener:** The question is, that motion S5M-16261 be agreed to, on the understanding that the committee will be provided with more information on the driving licence provisions, as discussed during the meeting.

*Motion agreed to.*

**The Convener:** Thank you for your participation, cabinet secretary.

### **Agriculture Market Measures (EU Exit) (Scotland) (Amendment) Amendment Regulations 2019 (SSI 2019/89)**

### **Sea Fish Licensing (Foreign Vessels) (EU Exit) (Scotland) Order 2019 (SSI 2019/87)**

### **Sea Fishing (Licences and Notices) (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/88)**

**The Convener:** The next item of business is consideration of three negative European Union exit instruments, as detailed on the agenda. No motions to annul or representations have been received in relation to the instruments.

**Stewart Stevenson:** I have a couple of observations and a question on the Sea Fish Licensing (Foreign Vessels) (EU Exit) (Scotland) Order 2019. I very much welcome the fact that the order will prohibit foreign vessels from fishing in the Scottish zone unless they first obtain a licence from Scottish ministers. My constituents have long thought that such a measure should be in place, so I welcome it on their behalf.

The second paragraph of the policy note on the order says:

“Although this Order is being made to prepare for EU Exit it is not being made under the European Union (Withdrawal) Act 2018.”

I have a question to which I think I know the answer, but I need to hear it formally. It sounds as though we could have such a measure without leaving the EU, but that is probably not the case. I will support the order—I am not trying to overturn it. I just want clarity on what scope there is for taking such action independently of when, in what way or if we leave the EU, because my constituents would find that every encouraging.

13:00

**Peter Chapman:** I very much welcome the order, too. It has been required for some time, and the fishing industry in the north-east of Scotland will welcome it.

The policy note says that no foreign vessel will be allowed to fish in our waters without a licence, but it does not say anything about the criteria that will be taken into account in allowing a foreign fishing boat to obtain a licence. How will that operate in practice, how easy will it be for foreign vessels to obtain a licence, and what will they have to say and do to gain a licence? The policy note does not explain that, and I would like some clarity on the subject.

**Richard Lyle:** When the word “foreign” was used in the House of Commons, people did not like it. We must note that there are European boat owners who operate out of Scotland. The order will not exclude European fishing boats, because there are European owners who own access to Scottish waters.

**Stewart Stevenson:** The key point is that the order will bring them in—Scottish regulations will apply to all vessels in Scottish waters. At the moment, Scottish regulations do not apply to Spanish or Dutch vessels that fish in Scottish waters.

**Richard Lyle:** I think that you will find that those Spanish operators have Scottish licences.

**Stewart Stevenson:** No—they have Scottish quota, not Scottish licences.

**The Convener:** I am not sure that anyone around the table is qualified to give an opinion on that, so there are a couple of questions that we can legitimately take back to the Government. One is to ask the Government whether there are other legislative means of doing this apart from the way in which we are being asked to do it. We are being asked to do it in a specific way—that is what is on the table. We can also ask how people can obtain a licence.

That all does not prevent us from considering the motion. The question is, that motion S5M-16261 be agreed to. [*Interruption.*] Sorry—that is wrong. I need to organise my folders. It has been a long meeting.

Subject to the comments that I made, is the committee agreed that we do not want to make any recommendations in relation to the instruments?

**Members** *indicated agreement.*

**The Convener:** I am glad that we have agreed that. I have now apologised twice to the committee for getting things out of order. I will try to get organised for next week.

*Meeting closed at 13:02.*



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