



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Rural Economy and Connectivity Committee

**Wednesday 26 June 2019**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**Wednesday 26 June 2019**

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**RURAL ECONOMY AND CONNECTIVITY COMMITTEE**

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

Jeremy Balfour (Lothian) (Con)

Murdo Fraser (Mid Scotland and Fife) (Con)

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

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

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

Pauline McNeill (Glasgow) (Lab)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Rural Economy and Connectivity Committee

Wednesday 26 June 2019

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

### Decision on Taking Business in Private

**The Convener (Edward Mountain):** Good morning and welcome to the 22nd meeting in 2019 of the Rural Economy and Connectivity Committee. I ask everyone to ensure that their mobile phones are on silent.

Agenda item 1 is to consider whether to take items 4 and 5, discussions on the committee's pre-budget approach and our future work programme, in private. Are we agreed?

**Members indicated agreement.**

## European Union (Withdrawal) Act 2018

### Food and Drink (Amendment) (EU Exit) Regulations 2019

### Common Organisation of the Markets in Agricultural Products (Market Measures and Notifications) (Amendment) (EU Exit) Regulations 2019

### Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019

09:00

**The Convener:** We move to item 2. We have received consent notifications in relation to three United Kingdom statutory instruments, as detailed on the agenda. The instruments are being laid in the UK Parliament in relation to the European Union (Withdrawal) Act 2018. Are there any comments?

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** The Common Organisation of the Markets in Agricultural Products (Market Measures and Notifications) (Amendment) (EU Exit) Regulations 2019 that are before us are part of the general common organisation of the markets amendments. The Parliament has already dealt with and agreed to the Agriculture (Legislative Functions) (EU Exit) (No 2) Regulations 2019, which create a financial obligation on devolved Administrations to provide compensation to certain people.

The briefing notes tell us, as they have done previously, that UK Department for Environment, Food and Rural Affairs officials say that the UK Government will cover those moneys. However, we have not heard formally that that will be the case. As it is a cost that the devolved Administrations, including us, could potentially have to bear, I want to put on the record that I think that it is time that we heard formally. I am not asking for any action; I just want to put that on the record.

**The Convener:** It is certainly on the record. It might be appropriate for the committee to consider writing to ask for confirmation that that is the case. Does the committee have a view on that? There are some nods.

Is the committee happy to write to the Scottish Government to confirm that the committee is content for consent to be given to the UK SIs that

are referred to in the notifications and to write to the Government regarding the financial position?

**Members indicated agreement.**

## Transport (Scotland) Bill: Stage 2

09:02

**The Convener:** Item 3 is the continuation of our consideration of stage 2 amendments to the Transport (Scotland) Bill.

I welcome the Cabinet Secretary for Transport, Infrastructure and Connectivity, and his supporting officials. I also welcome the non-committee members who are present. Christine Grahame is standing in for Richard Lyle, who is away today.

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** Excuse me, I do not think that I have been here as a committee substitute before, have I?

**The Convener:** You have indeed.

**Christine Grahame:** That is all right; I do not have to declare any interests.

**The Convener:** We remember you, even if you do not remember us. [*Laughter.*]

**Christine Grahame:** I will take that in the way in which it was intended.

**The Convener:** You can make a declaration, if you want to do so.

I will explain the procedure briefly for anyone who is watching. There will be one debate on each group of amendments and I will call the member who lodged the first amendment in that group to speak to and move that amendment and to speak to all the other amendments in the group. I will then call any other members who have lodged amendments in the group. Members who have not lodged amendments in the group but who wish to speak should catch my attention. If he has not already spoken on the group, I will then invite the cabinet secretary to contribute to the debate.

The debate on the group will be concluded by me inviting the member who moved the first amendment in the group to wind up. Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press ahead, I will put the question on the amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the agreement of the other members to do so. If any member present objects, the committee immediately moves to vote on that amendment.

If any member does not move their amendment when called, they should say "not moved". Please note that any other member present may move such an amendment. If no one moves the amendment, I will immediately call the next

amendment on the marshalled list. Only committee members will be allowed to vote and voting in any division is by a show of hands. It is important that members raise their hands clearly in the air so that the clerk can record a vote. The committee is also required to indicate formally that it has considered and agreed each section of the bill, so I will put a question on each section at the appropriate moment.

#### After section 58

**The Convener:** The first group of amendments is on the recovery of unpaid parking charges. Amendment 260, in the name of Murdo Fraser, is grouped with amendments 261 to 268, 268A, 269 to 278, 319, 279 and 280.

**Murdo Fraser (Mid Scotland and Fife) (Con):** This group is a package of amendments that seek to introduce the concept of keeper liability in relation to charges for parking on private land. I appreciate that it is quite a legally complex area and that the committee has not previously taken evidence on the matter. Accordingly, if members will bear with me, I will set out some of the background to the issue and put the amendments in context.

I have a long-term interest in trying to improve the regulation of private car parks in Scotland. It is driven by my constituency mailbag, in that I have been contacted by hundreds of constituents who have been hit with what they believe are unfair penalty charges from unscrupulous private car park companies. Many of those charges originated at a particular car park in the centre of Perth, but since I have raised the issue, I have been contacted by people from right across Scotland who have faced similar difficulties.

I have had experience, as I am sure have other members, of people coming to me about penalty notices not being fairly issued. They have been issued because people have simply overstayed their parking by five minutes or less; because someone has correctly paid for their parking but inadvertently entered the wrong digit into a parking pay machine; or because the system for paying has been unduly complex and confusing. In some cases, the penalty charges have been extortionate, with a basic charge of £60 or £80 rising to £160. Often, those charges are then passed on to debt collectors and individuals are bombarded with threatening letters that indicate that court proceedings will be taken if they do not pay up. For many people, particularly the vulnerable or elderly, the whole situation can be very distressing and they end up paying those charges, even though they might not be properly due.

My research has led me to understand that there is no specific legislation in Scotland dealing

with the regulation of parking on private land and that it is covered at present by the general law of contract. That is a situation where Scotland has fallen behind other parts of the United Kingdom. The Protection of Freedoms Act 2012, which governs the situation in England, introduced an independent appeals system known as parking on private land appeals, or POPLA. It means that those who are hit with a penalty charge have recourse to an independent appeals system.

That has never applied in Scotland and we have a situation here whereby a penalty notice can be challenged only by going to the company that issued it in the first place, which is clearly a very unsatisfactory situation. In addition to introducing an independent appeals system, the Protection of Freedoms Act 2012 introduced keeper liability as part of a balanced package of reform.

My interest in the subject led me to introduce in December 2017 a member's bill proposal for regulation of privately operated car parking in Scotland. I proposed that the bill would cover five issues that I believed were necessary for reform: first, legislating for a maximum charge that could be recovered as a penalty for breaching the rules of parking on private land; secondly, introducing regulation for uniform signage to avoid the present confusing situation; thirdly, regulation for the appearance of penalty charge notices to make it clear that they are civil payments and to differentiate them from local authority-issued parking tickets; fourthly, the introduction of an independent appeals system in Scotland so that we mirror the situation in England and Wales; and, fifthly, the introduction of keeper liability in Scotland.

I ran a consultation on the proposed bill and received 136 responses, including from industry groups, consumer rights organisations and the general public. There was overwhelming support in principle for better regulation, with 93 per cent of those responding supporting it and only 4 per cent opposing it. I subsequently had very positive engagement around those issues with the former transport minister, Humza Yousaf, and the current cabinet secretary, Michael Matheson. The Scottish Government has always accepted the need for reform in the area concerned.

While I was carrying on that work, Sir Greg Knight, who is a Westminster MP, introduced a private member's bill—the Parking (Code of Practice) Bill—that had cross-party and Government support and is now an act. Sir Greg's act introduces for the first time a statutory code of practice for car park operators, which will be rigorously policed. The act ties compliance with the code to access to Driver and Vehicle Licensing Agency records. At present, a car parking company can pursue car owners only if it can

identify them. To do that, it must have access to the DVLA database. In the past, the DVLA was happy essentially to sell that information to anyone with a genuine interest but, in the future, only companies that comply with a statutory code of practice will be able to access the records. Without that access, a company's penalty notices will in effect be unenforceable.

Last year, this Parliament agreed to a legislative consent motion to ensure that the act applies in Scotland as well as south of the border. That deals with the first four points that I consulted on, as it will bring in an independent appeals system and address the other issues.

That leaves only keeper liability outstanding, which needs to be legislated for separately. I discussed the matter with the Scottish Government and we agreed that the Transport (Scotland) Bill would be an appropriate legislative vehicle for bringing in the reforms.

Having set out the background, I turn to the amendments. Keeper liability will make the registered keeper of a vehicle liable in the first instance for paying reasonable penalty charges for parking on private land. At present, under the general law of contract, a vehicle's driver is deemed to be liable for any charges that arise when parking on private land, because the car's driver enters into a contract with the landowner or car park operator. That leads to an obvious difficulty with enforcement, as the landowner or car park operator has to prove who the vehicle's driver was, which in practice can be extremely difficult.

Keeper liability allows penalty charges to be pursued against the registered keeper in the first instance. Alternatively, to avoid liability, the registered keeper can identify who the driver was, and the driver can then be pursued.

Keeper liability already exists as a concept in Scots law for those who park on public land. Anyone who parks on a public street and receives a parking ticket will find that it is addressed to the registered keeper. The concept also exists in relation to the likes of speeding offences—someone who is caught by a fixed speed camera receives a notice that is addressed to the registered keeper; if they were not the vehicle's driver at the time, they can pass responsibility on to that person. That issue has been at the heart of high-profile court cases in recent times.

Why should we support keeper liability in today's context? It is important to view it in the context of the wider reforms that I described. As part of a package of law reforms, it is intended to bring in a fair balance between the car driver's rights and the legitimate rights of a landowner or

car park company to recover costs for breach of contract.

I understand from the Scottish Government—I have no doubt that the cabinet secretary will confirm this in due course—that the introduction of keeper liability is intended to be tied to the date of introduction of the new statutory code of practice, which deals with the other concerns that I identified. I would certainly not support keeper liability as a standalone measure; it needs to be seen in the wider context.

In the consultation that I ran as part of my member's bill proposal, 35 per cent of respondents were in favour of keeper liability, 33 per cent were opposed, 15 per cent were neutral and 16 per cent were unsure. The high percentage of neutral or unsure respondents reflects the fact that the concept is quite difficult to understand. Nevertheless, a small majority were more in favour than against.

Only about 25 per cent of penalty charges for parking on private land in Scotland are being paid. There is a high level of uncertainty about where the law stands, and there is an urban myth, which is untrue, that such charges are not enforceable in law. Such uncertainty is not good for anyone. Bodies such as Citizens Advice Scotland have done excellent campaigning work on the subject, and everyone agrees that we need greater certainty.

The issue does not concern only commercial car parks. Many businesses and private individuals have a legitimate interest in protecting their car parking spaces. For example, at present, owners of flats in city centre developments with allocated parking spaces find it impossible in a practical sense to enforce their rights over their parking spaces without keeper liability. Their parking spaces are filled up by random members of the public coming in to get free parking rather than paying for it. That means that the people who have paid for parking spaces cannot actually use them. The same might apply to a shop with allocated customer parking or a business that has parking attached for its staff. Keeper liability ensures that these rights, which already exist in law, are much more easily enforced.

09:15

I thank the Scottish Government for all its support in drafting the amendments and for its co-operation.

Amendments 268A and 319, in the name of Pauline McNeill, seek to amend my amendments. As far as I can determine, they seek to ensure that any enforcement of notices can be done only by a public body. I cannot see how such an arrangement would work in practice.



The enforcement of notices for parking on private land is a civil matter between the landowner or their agent on the one hand, and the driver or keeper of the vehicle on the other. There is no locus for any public body to become involved, and no public body has an interest in the enforcement of the notices.

Moreover, I cannot see what public body or bodies would get involved in trying to resolve these matters. The Scottish Government has no interest in spending taxpayers' money on getting involved in resolving disputes between commercial companies and private individuals, nor have local authorities any interest in getting involved. There are simply no public bodies or agencies that have the capacity to take on such work.

I fear that Pauline McNeill's amendments, although they may be well intentioned, are essentially wrecking amendments that drive a coach and horses through the carefully balanced package of reform that I have been trying to take forward with the help of the Scottish Government. I therefore urge Pauline McNeill to withdraw her amendments.

I am happy to move amendment 260.

**Pauline McNeill (Glasgow) (Lab):** Amendment 268A would ensure that only someone who is employed by a public body could issue a parking enforcement notice, and that private companies could not be contracted by local authorities to issue parking enforcement notices. Amendment 268A would prevent private companies from issuing tickets with no authority to do so.

I want to set out why Murdo Fraser's amendments give me cause for concern, and why I lodged probing amendment 268A. First, I thank Murdo Fraser for his thorough explanation: that is the first time that I have heard the reasoning behind his amendments. Committee members are only too familiar with the fact that there is no requirement at stage 2 to submit a notice alongside amendments, so members can only read the amendments and try to understand what the member who has lodged them is trying to achieve.

Murdo Fraser's amendments would give to private companies wide-ranging powers that have not been tested, which causes me concern. My constituents in Glasgow have had no say about what I think would be quite sweeping powers. The amendments would introduce new keeper liabilities—apparently, because Scotland has fallen behind England in this area. I think that that idea should be examined. In many cases, Scotland does things differently—wheel clamping, for example, is not legal in Scotland, whereas it has taken England some time to legislate on that.

Falling behind England in such matters does not give me cause for concern.

As Murdo Fraser rightly said—I agree with him whole-heartedly on this point—the private car park industry has been notorious for giving drivers record-breaking parking tickets. In the first quarter of 2018, 1.5 million sets of vehicle records from the Driver and Vehicle Licensing Agency were applied for. Murdo Fraser mentioned the work that CAS has done. It noted that in 2015 the highest number of hits on its website were in relation to this issue. A parking notice is issued every five seconds, and the DVLA is on course to share 6.5 million records with private firms. I ask committee members to consider whether they are satisfied that a code of conduct would be enough when the industry has, for the most part, a poor reputation among our constituents.

Murdo Fraser said that only 25 per cent of fines are paid. Perhaps that is because people feel that they are being fined unfairly, which has been my experience with constituents. Car parks are owned by a variety of companies, including pension funds and finance companies. The cases that I know best are those involving town centre car parks, for which the rights have been sold to companies. Many supermarkets have done that. A lot of the cases that I get involve people who parked in a supermarket car park, went a short time over the period for which they were allowed to stay, and were issued with a parking notice.

There is a remedy for the issue that Murdo Fraser outlined of people parking in spaces in housing estates, where they are not supposed to park. People have written to me about that issue. Members might be familiar with the Dundee case in which Ms Mackie, who was a persistent offender, parked in a residents' parking bay that was for permit holders only. There is a remedy because, at the end of the day, there is a contractual obligation that can be enforced in court. As Murdo Fraser said, that is a civil matter.

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

**Pauline McNeill:** Yeah—she said with grace. *[Laughter.]*

**The Convener:** That did not sound very excited.

**Pauline McNeill:** I know from 15 years of experience what taking an intervention from Stewart Stevenson might lead to. *[Laughter.]*

**The Convener:** I am sure that he is going to come in with some pearl of wisdom.

**Stewart Stevenson:** It is not a pearl of wisdom; it is a genuine question. In essence, Pauline McNeill proposes that only public agents could recover what are private debts. There are other examples where that sort of thing happens, such

as policing at football matches, for which football clubs are charged. Is it the member's intention that the private body that is seeking to recover the private debt and that is compelled to use a public officer to do so would have to pay a fee to the public body that employs the officer for providing that service?

**Pauline McNeill:** That is a fair question. I emphasise that amendment 268A is a probing amendment. I suggest that there should be some public oversight of the private industry. If the committee agrees to Murdo Fraser's amendments, they will give far-reaching powers and will introduce keeper liability, which I will come on to address. I suggest a code of conduct that is not statutory. The committee needs to be careful.

The registered keeper cannot be held liable unless it can be established that they were driving the car when the alleged breach took place. In effect, that makes it difficult for parking companies to enforce tickets against the registered keeper. However, we should bear it in mind that many of those companies seek to enforce notices on very thin grounds.

We have heard about the code of conduct that was the subject of a legislative consent motion on a UK bill that was introduced by Greg Knight MP. That code of conduct is entirely about trying to regulate the private parking industry, and it is a good thing. However, the introduction of keeper liability through Murdo Fraser's amendments would go way beyond what the code of conduct seeks to do. As I said, motorists in England have probably experienced a more draconian approach by the private car parking industry because of the framing of the legislation there. In Scotland, there is what has been described as a loophole, but I do not believe that it is a loophole at all.

Murdo Fraser's amendments are about enforcement. Amendment 266 goes further than the powers that even the police have under section 172 of the Road Traffic Act 1988 by stipulating that, if a driver cannot "conveniently be contacted", the registered keeper would become liable. I ask members to test what the word "conveniently" means. If the keeper of a vehicle were to be pursued and said that their son was driving the car, what attempts would be made to find the driver? After all, it was the driver of the vehicle and not the keeper who breached the rules. Keeper liability makes the keeper liable no matter what, which cannot be right. The registered keeper could give the correct details, but it might be decided that it is not convenient to make the necessary inquiries. Who decides what "convenient" is? We have no guidance on what that means—I certainly could not find any.

Amendment 260 states:

"It is immaterial for the purposes of this Part whether or not the vehicle was permitted to be parked".

To me, that is a sweeping statement to have in an amendment. In plain English, that suggests to me that permission does not really matter. I suggest that amendment 260 should certainly not have got past Scottish ministers, because the provision in relation to keeper liability is far wider than what exists at the moment.

I accept that there are problems in relation to private dwellings. I have been contacted by businesses, including Barclays, which said that it has 3,000 parking spaces and wants to ensure that there are remedies, given that a lot of companies put up barriers. I have serious concerns about the amendments. I know that arguments need to be tested, which is what stage 2 is for, but the provisions in Murdo Fraser's amendments are quite wide.

As I said, Scotland has done things differently. There will be a code of practice, but we have not had a chance to discuss what the code will mean. If we are to introduce keeper liability as part of the code of practice, we need to be sure that the code of conduct, along with keeper liability, will not result in more of our constituents being affected.

Murdo Fraser's amendments would create an offence of parking by trespassing. Trespassing is not a feature of Scots law, so why should we now accept in Scots law a principle that we have not accepted previously? Believe you me: if the amendments are agreed to, more of our constituents will be affected—albeit that there will be a code of conduct, so there might be a limit, but we do not know what the limit will be. There are too many uncertainties. I ask the committee to scrutinise the issue very closely before such provisions are passed into law.

**The Convener:** A few members have indicated that they wish to speak. I ask Murdo Fraser, when he sums up, to clarify the position in relation to the code of conduct and whether there will be a statutory obligation. I also ask him to clarify whether non-compliance with the code of conduct would help anyone who wanted to appeal against a ticket. For reference, I admit that I have been caught by such a system on two occasions, but that will not affect how I vote—much.

**Mike Rumbles (North East Scotland) (LD):** From what Murdo Fraser has said, I understand that he has put a great deal of work into his amendments. However, the committee has been blindsided by them. I understand that he has worked with the cabinet secretary on the matter, but it has not come before the committee. Our job is to examine the proposals that are brought to the committee, but the 23 amendments in the group are in an area that we have not examined. Murdo

Fraser could have brought the matter to our attention at stage 1, when we could have taken evidence on the approach, but we have been blindsided.

I could not support the amendments for that reason alone, but I have many more worries about them. One worry is the change from contract law to criminal law. I do not understand why we should make the keeper, rather than the driver, liable under criminal law. That seems to be a complete change.

**The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson):** We are not proposing to change civil law to criminal law.

**Mike Rumbles:** You would put the liability into statute.

**Michael Matheson:** A civil law matter will not be changed to a criminal law matter. We are not doing that at all—it would remain within civil law.

**The Convener:** Thank you for that intervention. I am sure that you will have a chance to explain your position in detail later.

**Mike Rumbles:** This is exactly what I mean. The committee has not had the chance to look at the matter: we do not know anything about it. The committee's job is to examine all the issues.

**Murdo Fraser:** Mr Rumbles was on the committee last year, so he might remember that it debated a legislative consent memorandum to Sir Greg Knight's Parking (Code of Practice) Bill. In fact, I remember Mr Rumbles raising then precisely the issues that he is raising now. He is pushing the boundaries a bit by saying that the committee has not looked at the issues, because the committee had a debate at that time to which Mr Rumbles contributed.

**Mike Rumbles:** I thank Murdo Fraser for that intervention. For the record, I note that there was a very brief debate on a legislative consent motion. We are considering the Transport (Scotland) Bill and we have spent a great deal of time looking at all the issues at stage 1. There has already been controversy around the bill, when my committee colleague, John Finnie, lodged amendments on another issue. At that point, we were able to pause the stage 2 process and take evidence on the subject. We had just a short evidence session, but at least we took evidence on the matter. Murdo Fraser's proposal would be quite a major change in law, to which we should have given some time.

09:30

There are other issues. I am not generally happy about what has happened to protection of information that we give to the state. The state is

able to sell those details to private companies; I am not happy about that. The major issue is the change of the focus in law of liability from where it should rightly sit, which is with the driver, to the keeper, which is wrong in principle. I am not happy about that, so I will not support the amendments.

However, the most important reason for not supporting the 23 amendments is that the committee has not had time to do its job properly.

**Christine Grahame:** I support what is proposed in the amendments. I do not want to patronise Murdo Fraser by praising the clarity of his explanation.

First, such parking is a matter of civil contract, which people do not understand. People drive into a supermarket car park where there is a notice that says that two hours' parking is free, but there is a fine of £100 for an overstay, which will be only £50 if they pay it in a couple of days, but they do not understand that that is a contract. In law, that is an invitation to treat—in other words, if they drive in and park, that is the contract that they are entering into, and if they overstay their time that is a breach of contract for which there is a fine.

It brings clarity if we let people know that—it has happened before in areas where there has previously been free car parking.

Secondly, as the law stands, the driver is the person who is liable, because they are the person who read the notice, made the contract and breached it. However, the penalty notice goes to the keeper of the vehicle because that is all that the company has access to, through the registration number.

As you were, convener, I was recently caught for going five minutes over a time limit. That is not why I think that the proposal is a good idea: it is good because it would bring clarity to the law. The notice said that I was the registered keeper of the vehicle and that

"we have been told that you were the driver".

No one had told the company that I was the driver—it just put that in the notice. If we agree to the amendments, issuing such notices will have legal status, although they will remain civil matters. Clarity is the important thing. It is important that people and the private parking companies—whatever anyone thinks of the money that they make, which is irrelevant because we are talking about contracts—know where they are. If the provision were to become law and a vehicle keeper received a notice such as I received, they would know that it was legitimate and that they are liable if they do not declare who the driver was.

**Mike Rumbles:** I am puzzled as to why Christine Grahame thinks that it is fair, right and proper that someone who is not responsible for

driving the vehicle should suddenly become responsible under the bill?

**Christine Grahame:** The amendments would exempt stolen and hired cars. The keeper has given leave to someone to drive that car and they have responsibility for that vehicle. At the moment, the private companies say it anyway, although they have no right to say it and there is no appeal. Many of the things that the amendments would introduce would make it clear to all parties that it is a contractual matter. Contract law would prevail. That is why I cannot support amendment 268A.

**Pauline McNeill:** Will the member give way?

**Christine Grahame:** Let me just finish. Why should public authorities get involved in private contracts? They are a matter for the courts.

**Pauline McNeill:** Many car parks are revenue streams for companies, which is why they pursue people pretty hard. How can we stop that from happening? If we want to stop that from happening, we can do it by putting the code of conduct, which is simply a code, into statute. Surely, in order to balance the provision with protection for people, we want both aspects to be in statute?

**Christine Grahame:** I think that you are mixing that up with the fact that companies charge too much. Fines can be heavy and one can end up with a £100 fine for being five minutes over the time limit. Such car parks are revenue streams: do not think that I am happy about that. The point is that people are entering into contracts and so should be told of the possible outcome. The public can only not go into the car parks or come out early and leave them empty. Vote with your car.

**Mike Rumbles:** Will the member give way?

**Christine Grahame:** For heaven's sake! I will let Murdo Fraser defend his own amendments, if you do not mind. *[Laughter.]* I am not here in lieu of Murdo.

**The Convener:** I am going to move on. I should say that committee members, and Christine Grahame, should try to speak through the chair rather than just have conversations "across the chamber"—as Christine Grahame usually says to me. *[Laughter.]*

I will go to Colin Smyth and John Finnie.

**Colin Smyth (South Scotland) (Lab):** The amendments represent a significant change and, as Mike Rumbles said, the committee has not taken any evidence on keeper liability, which has been introduced quite late in the process at stage 2. The Government appears to support the amendments, but no evidence has been brought to the committee to show that. The Government has not put the matter in its own transport bill,

despite the fact that it claims to support the proposal.

The conduct of some private car parking firms is well documented. Murdo Fraser's member's bill contained proposals to tackle a large number of issues relating to private car parking firms, and four out of the five issues have been tackled. However, not one person has written to me to say that keeper liability is a particular concern for them—that is not the problem with private car parking firms. The issue is the failure of such firms to follow the existing rules, whether it be on signage or making it clear to people that they could be fined.

**John Mason (Glasgow Shettleston) (SNP):** Does Colin Smyth accept that, as well as some parking companies behaving appallingly, some drivers behave appallingly? There is a shopping centre near me where people sometimes park in spaces for the disabled just before 9 o'clock in the morning, run off to the bus, and then they come back at 5 o'clock, because it is cheaper to park in a space like that than it is to pay in the city centre. Does the member accept that there is bad behaviour on both sides?

**Colin Smyth:** There is, indeed, but the amendments would do nothing to tackle bad behaviour. The reality is that companies persistently abuse the existing rules. We have a code of practice that is not even statutory. Maybe that is the issue that should be addressed if we are to tackle the problem without adding an entirely new section to the bill.

I am concerned that the Government has done no consultation whatsoever on the issue: I have no idea what any organisation believes about the proposal that is before us. I am supportive of the UK legislation that was passed recently that tackled most of my earlier concerns, but I have a real issue with the committee being asked to agree to something that consists of 23 amendments—almost a bill in itself, frankly—and which should, therefore, be properly consulted on.

**John Finnie (Highlands and Islands) (Green):** I listened intently to what Mr Fraser said. Ordinarily, I would expect to find myself at the polar opposite to Mr Fraser on the issue of private companies, but that is not the case on this occasion. This is a measured response to the issue.

Similarly, if I, as someone who frequently goes on about private companies and is concerned about data protection, had such concerns about Mr Fraser's proposal, I would hope to articulate them today. However, I do not.

On the question of scrutiny, the committee does not take evidence on every conceivable thing. It is incumbent on us all to look at proposals and do

our very best to understand and clarify them on the day. I am satisfied that there is clarity on the issue and that Mr Fraser has proposed a measured response.

**Mike Rumbles:** It will be quite a major change in the law—it is not just an extra that has been brought to the committee. I will give you one example, and the member will perhaps tell me whether he thinks this is fair. I was in Edinburgh and my car was in Aberdeenshire, yet I got one of these notices because I had overparked, apparently. It could not have happened because I was here, in the Parliament, in Edinburgh. If we had changed the law like this, I would have become liable for whoever had used my car. Is that right? Are we not taking personal responsibility away from individuals?

**John Finnie:** I think that we are bringing responsibility into the situation. The reality is that hire cars and stolen cars are connected with the obligations of motor vehicle ownership, one of which is to ensure that we do our best to comply with regulations.

Regarding Pauline McNeill's amendments, I do not see that issue. I am very supportive of the public sector, but I do not see a role in this matter for those—

**Pauline McNeill:** Will the member give way?

**The Convener:** You have had a good chance. We are 40 minutes into the first group of amendments.

**Mike Rumbles:** On a point of order, convener. In the recent stage 3 debates in the chamber, the Presiding Officer was quite strong in his view that members were speaking for too long. He said that there should be ample time to debate properly at stage 2. If we are curtailed in what we are trying to do at stages 2 and 3, I worry about how we are doing our job.

**The Convener:** I always agree absolutely with the Presiding Officer; I am just asking people to be mindful that we have time limits and we have had quite a full debate on the issue. It is up to Mr Finnie whether he wants to take the intervention, but the cabinet secretary still needs to come in and summarise the points, as does Murdo Fraser.

**John Finnie:** I will leave it, given the time restraints that there may be. I have concluded.

**Michael Matheson:** As Mr Fraser has outlined, we have worked closely with our UK counterparts to regulate the private parking industry and ensure that its practices are transparent, consistent and, most of all, fair to everyone. I welcome the detail that was provided by Mr Fraser to highlight the importance of consistency and fairness to residents, motorists and landowners who are

trying to effectively manage car parking that can be used by everyone.

We are working closely with the UK Government on the matter and with a range of stakeholders on the development of a statutory code of practice that will specify in detail how private car parks are to be managed. These amendments complement that work because, although we are using legislative tools to ensure best practice across the car parking industry, we are also ensuring that the industry can operate effectively, fairly and consistently across the UK.

Amendment 268A, in the name of Pauline McNeill, seeks to amend amendment 268 to require that parking notices that are served on drivers for the purposes of meeting one of the conditions that are required for the right to recover unpaid parking charges from the keeper can be served only by public bodies, thereby attempting to render inoperable the keeper liability provisions that are promoted by Murdo Fraser. Keeper liability is not a new concept to Scots law; it is already used in Scotland by 21 local authorities that have decriminalised parking enforcement powers and that issue penalty charge notices to motorists who contravene on-street parking legislation.

However, the private parking industry is largely governed by contract law and, under that law, the vehicle's driver is responsible for any parking charges that may arise if they contravene any of the terms and conditions of the parking contract. Currently, private car park operators can charge for parking, but only operators who are members of an accredited trade association can obtain vehicle keeper information from the DVLA for parking enforcement purposes.

The keeper liability amendments that have been lodged by Murdo Fraser will tackle a misconception that is held by many motorists in Scotland who think that parking charge notices that are issued by private parking operators are not legally enforceable and can, therefore, be ignored. Amendment 268A is technically deficient, as the amendments that were lodged by Murdo Fraser will not apply to public roads, local authorities or state-controlled parking places or to any land that is subject to statutory control—they apply to private land.

09:45

**Pauline McNeill:** Are you satisfied with the drafting of the amendments on keeper liability, cabinet secretary? I am thinking, in particular, of the provision that I mentioned, which talks about a driver who cannot "conveniently be contacted"?

**Michael Matheson:** Sorry, which provision are you referring to?

**Pauline McNeill:** I am talking about subsection (1) of the new section that amendment 266 would insert. There is the issue of keeper liability, but the amendments that we are talking about seem to go further than section 172 of the Road Traffic Act 1988, because amendment 266 refers to a driver who cannot “conveniently be contacted”. Are you content with that drafting? How would the provision be interpreted? “Conveniently” can mean a whole lot of things, as I said. I do not think that Police Scotland, for example, would use that term in relation to keeper liability.

**Michael Matheson:** We are confident that the amendments are correctly drafted, because it is about the residence of the keeper of the property, but I am more than happy to check the point that you have raised and offer further clarification.

Amendment 319, in the name of Pauline McNeill, would introduce a prohibition on the recovery of unpaid parking charges by private companies, by adding a new provision that would prevent recovery of unpaid parking charges by

“a person who is not acting in the course of employment by a public body.”

Amendment 319 goes on to define “public body” for the purposes of this part of the bill.

The effect of amendment 319 would be to prevent private car parking operators from recovering unpaid car park charges. That is exactly the opposite of what Murdo Fraser is looking to do through the amendments that he has lodged.

**Mike Rumbles:** Will you clarify something, cabinet secretary? We are deficient in that we have not taken evidence on the proposal. As I understand it, if there is a speeding offence, the keeper of the vehicle is contacted and, in law, they are required to identify the driver, if they know who that was. There have been a couple of rather high-profile such cases in the courts.

Why, then, is there a need to move to keeper liability? I will use a personal example. I was in Edinburgh but my car was in Aberdeenshire, and the driver of my car overstayed in a car park; therefore, I got the penalty. I was not obliged to say who the driver was. Surely, the way to make the law consistent is to ensure that the law that we have in relation to speeding applies in the context that we are talking about. Therefore, we do not move to keeper liability; we tackle the person who was responsible for the offence.

**Michael Matheson:** A road traffic offence is a criminal law matter. The principle of keeper liability applies in that the notice of a speeding offence will be issued to the keeper. There is then a legal obligation on the keeper, under criminal law, to disclose whether they were driving the car or

whether another party was doing so. The difference with this is that it is civil law—it is contract law. The vehicle that enters the site—or whoever is driving it—must comply with contract law, and the keeper is liable under contract law. So it is—

**Mike Rumbles:** The vehicle is an inanimate object. The person who is doing it is the driver.

**Michael Matheson:** But it is the person who owns the car that is using up that particular—

**Mike Rumbles:** But it is the driver who put it there—

**Michael Matheson:** The car is using up that particular piece of parking space, which is why it comes under contract law, which is a civil matter—*[Interruption.]*

**The Convener:** Can we please not have conversations in the committee? Please contribute in the formal way. Cabinet secretary, you may take interventions, by all means, but I ask you and Mr Rumbles not to have a conversation.

**Michael Matheson:** The principal difference here is that it is about the vehicle that is parked in the space. The person who drives a vehicle over a particular speed is committing a criminal offence, not entering into a contract, as is the case when a car is parked in a parking space. That is why there is a different arrangement.

Furthermore, amendment 319 would, in effect, modify the Scots law of contract to render persons operating car parks unable to enforce the terms of the parking contract that the drivers had entered into. Simply put, that would enable every driver to park in a private car park without paying a fee in full knowledge that the company could never recoup any charges from them. I am certain that that is not a position that anyone in this Parliament would wish to encourage.

The parking industry is undergoing change for the better, and the amendments that have been lodged by Murdo Fraser seek to deliver consistency and fairness to operators and motorists alike. The Scottish Government supports Mr Fraser’s amendments. However, I ask Pauline McNeill not to move amendments 268A and 319. If they are moved, I urge the committee not to support them.

**Murdo Fraser:** I will try to respond briefly to some of the points that have been made. I thank everyone who has contributed to the debate, which has been helpful in exposing some of the issues. Pauline McNeill made some very good points in relation to her amendments, and I agree with a lot of what she said. She, Colin Smyth and Mike Rumbles probably made the biggest complaint—if I can put it that way—which was about a lack of consultation in advance of my

amendments being lodged. My response is that it is, of course, up to the committee to decide whether it wants to take evidence at stage 2, and it is quite entitled to do that. If committee members wanted to ask for evidence to be taken, they had that option.

We had an evidence session in this committee last year when we debated and voted on a legislative consent motion on the Parking (Code of Practice) Bill, so there was discussion around the issues concerned at that time. In addition, as I mentioned earlier, I ran a consultation on the member's bill proposal. It is therefore not as though there has not been any public engagement by the Parliament around the issues. That process has already been gone through, albeit—I appreciate it—not through this committee.

I agree with Pauline McNeill's point about the need for public oversight of private industry, which is precisely what the Parking (Code of Practice) Act 2019 does. Both Pauline McNeill and Colin Smyth complained that the code of practice is not statutory. However, that is a misunderstanding, because it is a statutory code of practice. It is set down in regulation by ministers and is, therefore, statutory. Those who do not comply with that statutory code of practice can have sanctions taken against them. The ultimate sanction is that they will be deprived of access to DVLA records, without which they will, in effect, not be able to enforce their penalty notices. That is therefore a severe sanction against them.

Incidentally, I say gently to Pauline McNeill that, although it is a popular view, the idea that trespass is not part of Scots law is not one that many Scots lawyers will recognise.

**Pauline McNeill:** It is not a major principle.

**Murdo Fraser:** I am sure that Christine Grahame will confirm that, if we study Scots property law, we will see that trespass does form part of Scots law—so it does exist. However, that is by the by.

Mike Rumbles said that he was not happy about the DVLA selling information to third parties. I agree with his point on that, but that is precisely the ill that the Parking (Code of Practice) Act 2019 seeks to deal with. The 2019 act makes it more difficult for companies to acquire information from the DVLA. They will be able to do so only if they can demonstrate compliance with the new statutory code of practice.

**Mike Rumbles:** The main issue is the moving of liability to the keeper of a vehicle rather than the driver—that is the nub of the issue. However, I have a technical question that I wonder whether Murdo Fraser can address in his summing up. Subsection (2) in amendment 260 states:

"It is immaterial for the purposes of this Part whether or not the vehicle was permitted to be parked (or to remain parked) on the land."

I am not sure what that means. Can Murdo Fraser explain it?

**Murdo Fraser:** I understand that the amendments are modelled on the Protection of Freedoms Act 2012, which relates to England and Wales. The amendments are modelled on the 2012 act and take their wording from it. As I understand it, the wording is intended to make it clear that the bill relates to the recovery of unpaid parking charges rather than to the question of consent to park on land. I do not know whether that explanation is sufficient to satisfy the member, but it is probably the best that I can do at the moment.

The debate over the past 50 minutes or so has demonstrated very helpfully the lack of certainty around the law and private parking in Scotland. That confusion is at the heart of the problem. Currently, only 25 per cent of parking notices in Scotland are paid. A lot of people think that they can just go in the bin and are not enforceable—in fact, they are enforceable, as the cabinet secretary said. Some people end up being taken to court and a lot of angst and suffering is caused as a result.

We need greater certainty and clarity. I am proposing part of a package of reform that will provide greater certainty and clarity for those who park their vehicles, those who operate the industry and those who have a legitimate interest in protecting their parking spaces. I press amendment 260.

**The Convener:** The question is, that amendment 260 be agreed to. Are we agreed?

**Members:** No.

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

#### For

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

#### Against

Rumbles, Mike (North East Scotland) (LD)

#### Abstentions

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 260 agreed to.*

*Amendment 261 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 261 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 261 agreed to.*

*Amendment 262 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 262 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 262 agreed to.*

*Amendment 263 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 263 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)

Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)

Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 263 agreed to.*

*Amendment 264 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 264 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 264 agreed to.*

*Amendment 265 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 265 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)



**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 265 agreed to.*

*Amendment 266 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 266 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 266 agreed to.*

*Amendment 267 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 267 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 267 agreed to.*

10:00

*Amendment 268 moved—[Murdo Fraser].*

**The Convener:** I call amendment 268A, in the name of Pauline McNeill. *[Interruption.]* There is nothing better than when it is the convener rather than the clerk who is right.

**Jeremy Balfour (Lothian) (Con):** That is once in a lifetime.

**The Convener:** Mr Balfour, please remember that it will be me who gives you the opportunity to speak later in the meeting.

*Amendment 268A not moved.*

**The Convener:** The question is, that amendment 268 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 268 agreed to.*

**John Mason:** Convener, there seems to be a pattern in the voting. Would it be possible to move the amendments en bloc?

**The Convener:** I am sure that it would be possible to do anything, but I am told by the clerks that parliamentary procedure means that I have to go through each amendment. Before Christine Grahame comes in and tells me that there is a way around that, I will keep pushing on. I am sorry.

*Amendment 269 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 269 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)

Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

#### **Against**

Rumbles, Mike (North East Scotland) (LD)

#### **Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 269 agreed to.*

**The Convener:** The pattern continues.

*Amendment 270 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 270 be agreed to. Are we agreed?

**Members:** No.

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

#### **For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

#### **Against**

Rumbles, Mike (North East Scotland) (LD)

#### **Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 270 agreed to.*

*Amendment 271 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 271 be agreed to. Are we agreed?

**Members:** No.

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

#### **For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)

Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

#### **Against**

Rumbles, Mike (North East Scotland) (LD)

#### **Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 271 agreed to.*

*Amendment 272 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 272 be agreed to. Are we agreed?

**Members:** No.

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

#### **For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

#### **Against**

Rumbles, Mike (North East Scotland) (LD)

#### **Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 272 agreed to.*

*Amendment 273 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 273 be agreed to. Are we agreed?

**Members:** No.

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

#### **For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

#### **Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 273 agreed to.*

*Amendment 274 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 274 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 274 agreed to.*

*Amendment 275 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 275 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 275 agreed to.*

*Amendment 276 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 276 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 276 agreed to.*

*Amendment 277 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 277 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 277 agreed to.*

*Amendment 278 moved—[Murdo Fraser].*

**The Convener:** The question is, that amendment 278 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
 Finnie, John (Highlands and Islands) (Green)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Greene, Jamie (West Scotland) (Con)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 278 agreed to.*

*Amendment 319 not moved.*

**The Convener:** The next group is on the enforcement of parking regulation in the vicinity of schools. Amendment 316, in the name of Jamie Greene, is grouped with amendment 317.

**Jamie Greene (West Scotland) (Con):** I apologise to members, as I have almost lost my voice. The Transport (Scotland) Bill has finished me off. I will keep my comments as brief as possible and hope that broadcasting will ramp up the volume so that I do not have to shout.

I lodged amendment 316 to try to address an issue that many members deal with regularly: parking outside schools. Many of us will drive past schools on the way into the Parliament and see signs that ask people not to park at the entrance or that beg drivers not to park in an obstructive manner, especially on zigzags.

Last year, when we started to discuss regulating pavement parking and double parking, Dundee City Council contacted my office to say that it had an issue with enforcing parking violations outside schools. I was intrigued to hear what the problem was, so we went along to a meeting between the council, traffic wardens and the local police, who regularly enforce traffic violations outside schools.

It was clear that there is a problem. As we have seen in the context of other provisions in the bill, there is a lot of confusion about who enforces what, what powers traffic wardens have in decriminalised areas and what powers the police have. The reality is that the picture is complex, and I would like to think that the committee can deal with the issue in the bill.

Outside many schools, traffic wardens and police officers try to regulate and manage a huge volume of traffic in the morning, and there are many questions about who can do what. Can a

traffic warden put a ticket on a car that is parked on double yellow lines? Can a traffic warden put a ticket on a car that is parked on a yellow zigzag that has yellow lines? Can a traffic warden put a ticket on a car that is parked on a yellow zigzag that has no yellow lines or signage? Can a police officer put a ticket on a car that is committing a breach that would ordinarily be enforced by a traffic warden in a decriminalised parking area if there is no traffic warden, regardless of whether there is deemed to be an obstruction? Can a traffic warden issue a ticket to a car that is parked on a white zigzag? I think that I am painting a picture of the complexity of the situation.

In Dundee, there are three full-time parking wardens—or parking attendants—and 15 part-time parking attendants. That is all well and good, but there are 46 schools in Dundee, so a complex buddying structure is required, whereby police officers enforce violations and obstructive parking issues around schools that have big problems and traffic wardens deal with other breaches of decriminalised parking rules.

Where there are no traffic wardens, there are only police officers, but they are unable to issue tickets for breaches that a traffic warden would normally issue. Equally, there are areas where there is only a traffic warden and no police officer and the warden is unable to enforce breaches. I think that that paints a picture of what the problem is.

**John Mason:** The picture in Glasgow is probably similar to the one that the member paints. There is no way that there are enough police and traffic wardens together to staff all the areas in Glasgow with parking problems outside schools. Does he accept that the answer is not double yellow lines or zigzag lines but exclusion zones round schools, because any lines will not be enforced?

**Jamie Greene:** The member makes a good point. He is right that the way to address the problem is not to put a police officer and a parking warden outside every school but to use the powers that the Parliament and the minister have to create regulations. Exclusion zones might be the answer. The solution that is proposed in the amendment is to ask the minister to introduce regulations that would create zones around schools by specifying what is the “vicinity of a school” and “days and times” when those zones could be enforced, which would ensure that any car parked in the vicinity would be considered to be creating an obstruction for which the police, for example, could enforce a sanction.

That might not be the answer, but it is certainly a valid proposal. I thank the Parliament’s legislation team for helping me to word amendment 316. The issue is complex, but I ask

the Government to take on board what the amendment proposes and work with the committee and members who have an interest in the matter to come up with a solution. Frankly, the status quo is not good enough and does not work.

I am sure that I will hear what the minister thinks of my proposal, but it would be one of addressing the problem by giving powers to police officers to enforce the bits of decriminalised parking outside schools that they currently cannot enforce or by giving parking wardens the power to enforce bits that the police currently enforce outside schools. By the way, I am proposing such powers only for areas around schools and I am not proposing a general mixing of decriminalised parking and police powers, because they are two distinct areas.

The fact is that there is an anomaly about who can enforce what, which is a problem. As John Mason said, we cannot solve that by simply staffing areas with more people, but we can solve it by changing the regulations on enforcement against obstructive behaviour. It is unacceptable that schools are begging drivers not to park in their vicinity. The solution is to say that drivers cannot park beside schools and make that enforceable by somebody, although I do not know who that would be in each circumstance. Of course, some local authorities do not have decriminalised parking and it is up to the police.

It is not right if a police officer and a traffic warden have to be outside a school at the same time in the morning and evening to enforce parking regulations. Those people tell me that they are not happy about that and that the system is not good enough, and I therefore believe that we have a duty to fix it. That is the premise behind my amendment.

I move amendment 316.

**The Convener:** Two members have indicated that they wish to speak, the first of whom is Mike Rumbles.

**Mike Rumbles:** Amendment 316 is a good amendment. I have heard the cabinet secretary saying previously in relation to amendments that it is clear what obstructions outside schools are, but I tend to agree with Jamie Greene that we could do with more clarity about that. I am conscious that we have just agreed to 20 amendments in the name of Murdo Fraser that call for clarity, although I think that they will mean that we will see a lot more people before the courts.

Leaving that aside, I think that amendment 316 would require the cabinet secretary to produce regulations to put it beyond doubt that parking around schools in specified circumstances causes an obstruction and I therefore think that we should support it. I heard what Jamie Greene said about

working with the minister for an amendment at stage 3, but I think that it is better to get this amendment into the bill at stage 2 and then work with the minister to tinker—if that is the right word—with it in order to get it right beyond doubt at stage 3. It is perhaps worth the minister doing that. I am conscious that I am speaking before the minister speaks and I do not know what he thinks about amendment 316. I hope that Jamie Greene presses the amendment, but if he does not, I will.

10:15

**Colin Smyth:** I very much welcome amendment 316. Jamie Greene has raised an important issue, which we see almost daily in our inboxes. Having said that, I am not convinced that the amendment will tackle what is largely an enforcement issue, and I would be keen to hear what local authorities think about the provisions that the amendment would introduce.

Subsection (2)(e) of the proposed new section calls for the regulations to be enforced by constables. Most councils in Scotland have decriminalised parking enforcement, and the amendment exposes yet again the inconsistencies that exist. Last week, we debated the enforcement of the ban on parking on cycle lanes and discussed the fact that the police can currently enforce such a ban but, even where parking enforcement is decriminalised, councils cannot enforce the ban unless there is a traffic regulation order. The bill sets out that the prohibition on pavement parking will be enforced by councils, even where there is not decriminalised parking. As I have said previously, we would have the crazy situation, in areas where there is not decriminalised parking enforcement, in which a council enforcement officer could walk down the street and ticket a car parked on the pavement but not a car parked on double yellow lines right next to it. The anomalies of decriminalised parking enforcement are not being addressed by the bill. The Government is ducking the issue, which is disappointing given that the bill has given us an opportunity to tackle it.

**Michael Matheson:** Amendment 316 seeks to place responsibility for enforcing parking at or near schools on the police rather than local authorities. Parking at or in the vicinity of a school has become a growing problem in recent years, and there have been an increasing number of complaints about the impact that that parking has on surrounding residential streets.

Although I appreciate the concerns behind amendment 316, there are some fundamental issues with it. For example, it does not offer a definition of the phrase “vicinity of a school”, which is relegated to subordinate legislation. The phrase

could be very difficult to define and may vary depending on a school's location and site.

The amendment would arguably be unworkable in residential areas, which is where the majority of schools are based, and could result in local residents committing an offence by parking outside their homes. I say that as someone who stays next to a primary school. If the Government had included such a vague and wide-ranging power in the bill, I have no doubt that it would have attracted a great deal of criticism from the Delegated Powers and Law Reform Committee.

Furthermore, amendment 316 seeks to create a new criminal offence, which the police will be required to enforce, irrespective of whether the local authority in question has obtained decriminalised parking enforcement powers. That goes against our policy on decriminalised parking enforcement, which seeks to give local authorities full control over parking, thereby freeing up vital police resources.

Finally, as I explained at last week's meeting when addressing amendments 290 and 291, in the name of Mark Ruskell, on a similar issue, the Traffic Signs Regulations and General Directions 2016 and the Road Traffic Act 1988 already make it an offence, enforceable by the police, to park on the zigzag markings at a school entrance. Should local authorities with decriminalised parking enforcement powers wish to enforce those or prohibit parking during specified times in neighbouring streets, they can do so by including them in a traffic regulation order. The procedure for doing so enables local residents to be given fair notice of parking proposals affecting their area.

Amendments 316 and 317, in the name of Jamie Green, while well meaning, are unworkable in practice and would cut across the right of local authorities to effectively manage parking in their own areas. However, I make a commitment to write to all 21 local authorities that have decriminalised parking enforcement powers to remind them what powers they have and what they can do to enforce parking at or near schools. I am more than happy to discuss the issue with the member in greater detail to consider what further measures can be taken forward.

**Mike Rumbles:** I want to ask a fundamental question about the regulation of parking outside schools across the country. In your previous discussion of the amendments in the name of Mark Ruskell, you said that you want to get rid of urban myths, saying that such parking is already against the law and that there are powers available to councils. Would you accept that there is genuine confusion as to what is, and is not, allowed, which does not exist for many other traffic regulations that apply throughout the country? Would you agree, in principle, that it would be

helpful if the Government introduced a formal set of regulations to clarify exactly what the law says and what it does, and does not, allow?

**Michael Matheson:** There may be some confusion between clarity and enforcement. Where parking has not been decriminalised, it is for the police to enforce it. As I said, if a vehicle parks on the zigzag markings at a school, the police can enforce that, because the person is committing an offence. Where parking has been decriminalised, it is a matter for the parking enforcement officers from the local authority. However, if the police see a vehicle parked where it is causing an obstruction, they can still issue a notice to that person for committing an offence.

**Colin Smyth:** Will the member take an intervention?

**Michael Matheson:** Let me finish the point that I am making.

The issue is about making sure that, where parking has been decriminalised, local authorities are adequately enforcing the provisions that are in place around schools. Even with greater clarity, I suspect that the core issue would be about enforcing the provisions around schools consistently. In my view, a level of clarity already exists, but I am keen to identify ways in which we can offer greater clarity. I suspect that that would not be in regulations but by giving local authorities more detail and reinforcing the information to them. The core of the matter is the issue of enforcement, rather than new legislation being required to deal with it.

**Colin Smyth:** The cabinet secretary said that he will write to the 21 local authorities that have decriminalised parking to remind them of the requirement for them to enforce it. However, does he accept that, in the 11 local authorities that have not decriminalised parking, responsibility for enforcement rests with Police Scotland, which is failing to enforce parking regulations at the moment? Should the cabinet secretary not also write to Police Scotland to remind it of its responsibilities to enforce parking properly? If the Government's view is that Police Scotland should no longer enforce parking, you should decriminalise it rather than leaving the current anomalies.

**Michael Matheson:** Decriminalisation is our preferred option, but it is up to local authorities to choose whether to do that. We cannot force a local authority to take forward a measure if it chooses not to do so. We have a process for local authorities to engage in if they want to decriminalise parking.

The nub of the matter is enforcement and making that adequate. I am happy to take that point away and look at further measures that could

be taken to ensure that local authorities are doing more, alongside Police Scotland, about parking issues outside schools. I recognise the challenges that may occur. However, there is also a need for car users to understand the risk at which they put children by being inconsiderate and not considering the implications of their parking behaviour around schools. We can do what we can to encourage greater enforceability, but there is also a personal responsibility on car users to recognise the risks that they create for children by irresponsibly parking in areas around schools where they should not.

**Jamie Greene:** I want to pick up on a few of the points that the cabinet secretary made. He said that

“in the vicinity of a school”

is difficult to define, but John Mason talked about creating an exclusion zone around schools. By default, that would require there to be a definition of the zone. It would be possible to say that, where the perimeter of the school ends, it is a residential area. When it comes to where people live, it is entirely possible to define what “in the vicinity” means. The bill does not need to provide a definition—I am not asking for that.

The cabinet secretary also said that he had a problem with the fact that the amendment would create an offence of causing an obstruction at a school. That is absolutely what I want to do—that is the whole point of my amendment. Inconsiderate parking outside schools is not just inconsiderate but dangerous, so it should be an offence.

On the enforcement of zigzags—

**Michael Matheson:** What you have described is already an offence. The amendment seeks to create a new offence over and above the provisions that are already in place for those areas where parking enforcement officers carry out enforcement for local authorities. It would be wrong to give the impression that there is not an existing offence.

**Jamie Greene:** It would also be wrong to give the impression that there are always traffic wardens and police officers outside schools. It is my understanding that, in decriminalised areas, where there are police officers but not traffic wardens, those officers cannot put tickets on cars that traffic wardens would normally put tickets on.

**Michael Matheson:** They can.

**Jamie Greene:** That is not the feedback that I have had from the police.

**Michael Matheson:** Police officers can still do that even in decriminalised areas.

**Jamie Greene:** I appreciate that I must move on, so I would like to close by thanking members for taking amendment 316 seriously. It deals with an important issue; it is not a political one. I do not think that just writing to those authorities that have decriminalised parking will be enough; they do not have enough traffic wardens. Dundee City Council is 28 traffic wardens short of being able to police the roads outside every school every day when it has to. It could be argued that that is the council's problem, but there will be a reason for that, which could be budgetary. It is not good enough just to say that that is the council's problem.

There are also 11 local authorities that do not have decriminalised parking. The police are not resourced to be outside every school in each of those areas. That would require the deployment of hundreds of additional police officers. That is not happening.

I do not think that the issue is one of enforcement; it is about getting the powers in the right place so that—outside schools only—there is some interchangeability, whereby both traffic wardens and police can ensure that cars are not parked in a dangerous manner. That is all that I am asking the Government to consider. Sending a letter to councils will not be enough. If the cabinet secretary is willing to work with me or any other member who has an interest in the matter to look seriously at what we could do in the bill to address a range of issues around parking and to make sure that we get it right, I would be very happy to work with him or anyone else on that.

**The Convener:** Do you want to press amendment 316 or to withdraw it?

**Jamie Greene:** I seek to withdraw it.

**The Convener:** Does anyone object to Jamie Greene withdrawing amendment 316?

**Mike Rumbles:** I do.

**The Convener:** The question is, that amendment 316 be agreed to. Are we agreed?

**Members:** No.

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

#### For

Chapman, Peter (North East Scotland) (Con)  
Greene, Jamie (West Scotland) (Con)  
Mountain, Edward (Highlands and Islands) (Con)  
Rumbles, Mike (North East Scotland) (LD)  
Smyth, Colin (South Scotland) (Lab)

#### Against

Finnie, John (Highlands and Islands) (Green)  
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
Mason, John (Glasgow Shettleston) (SNP)  
Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

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

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

*Amendment 316 disagreed to.*

**The Convener:** The next group is on the duty to consult access panels in relation to proposed cycle tracks. Amendment 259, in the name of Jeremy Balfour, is the only amendment in the group.

**Jeremy Balfour:** Good morning. A journey is only as accessible as its least accessible part. It is important that we remember that, as we look at amendments that I have lodged. We can have the most accessible paths, buses and so on, but unless the whole journey is accessible, one little bit can stop a disabled person being able to get to where they want to go. Many disabled people find their journeys being interrupted at the first stage, on the pavement.

10:30

Amendment 259 is not saying that we should not have shared spaces—I think that shared spaces can work really well. The amendment seeks to address the fact that the current inconsistent design of pavements and increased use of shared spaces mean that disabled people find it difficult to get around.

I can give you an example of what I am talking about that exists here in Edinburgh. If you go down Leith Walk from the Playhouse, you will see that, on the left-hand side, there is a shared pathway on most of that road. The only designation to show what is a cycle lane and what is a pavement for pedestrians to walk on is a white line. A person with a visual impairment, complete blindness or another disability can walk on to the cycle path with no warning that they have done so. A number of my constituents and people from across Scotland have given me similar examples.

There are ways around that. Different materials can be used to tell people what part is the cycle path and what part is the area on which pedestrians should walk. That can give people who use dogs or devices to help them with their disability much clearer understanding.

Amendment 259 says that, before any shared spaces are created, the local authority should “consult the access panel” so that it can be involved in evaluation and design of an area. Access panels could offer input, but they would not be able to prevent a shared space from being set up. I hope, however, that information that they could provide would enable shared spaces to be safer and much more accessible.

**John Finnie:** To my mind, that would be good practice in any case. Is it not happening?

**Jeremy Balfour:** Practice varies across Scotland. I know that some local authorities just go ahead and put in shared spaces without consulting access panels. Amendment 259 would simply enforce good practice.

The cabinet secretary might tell me that not every local authority has an access panel. I accept that, but I hope that the principle of amendment 259 is acceptable. If it is, I could do what I did last week in relation to my amendments to the Planning (Scotland) Bill, and give amendment 259 slightly wider scope, beyond access panels. I appreciate that not every local authority has an access panel, although I think that the ones that do not are nearly there.

For me, the principle is that we want shared spaces but with clear designation so that disabled people and other individuals—

**Christine Grahame:** Amendment 259 would make it mandatory for a roads authority to consult an access panel, but as you said, not every local authority has an access panel. If they havenae got one, they cannae consult.

**Jeremy Balfour:** I will take Mike Rumbles’s position: if the amendments are agreed to, I will be happy to clean up the wording at stage 3. Most local authorities have access panels, and there is a national access panel group that comes together that could also be used. For me, the principle is that we need to ensure that, for the benefit of people with disabilities, there is clear signage and a way of identifying which part of the shared space is a cycle path and which part is for pedestrians.

I move amendment 259.

**Colin Smyth:** I very much welcome amendment 259, in the name of Jeremy Corbyn—I mean Jeremy Balfour. I am not sure who would be more upset by that comment.

**Jeremy Balfour:** Corbyn!

**Colin Smyth:** The accessibility of our transport system and streets has come up quite a few times during our consideration of the bill. Stakeholders have made it clear that the status quo is not good enough. We need to use the opportunity of the bill to strengthen the law in order to underpin improvements. Too often, the needs of disabled people are overlooked in development of cycle lanes, whether we are talking about the needs of disabled cyclists or pedestrians. A previous amendment of mine was on floating bus stops, where cycle lanes run between the bus stop and the pavement, which causes a serious hazard for blind and visually impaired people.



It is clear that there has been insufficient consultation on such arrangements being implemented, either with an access panel or with similar groups that represent the views of disabled people. It would be a welcome addition that would give a clear statutory underpinning to best practice, so I am more than happy to support Jeremy Balfour's amendment 259.

**The Convener:** Christine, I was not sure whether your intervention—

**Christine Grahame:** It was an intervention based on amendment 259's use of the word "must".

**The Convener:** Okay.

**Mike Rumbles:** Amendment 259 is simply a matter of putting good practice into law and ensuring that it is a requirement. It is a worthwhile amendment. I take Christine Grahame's point and note Jeremy Balfour's response to it.

Amendment 259 is not perfect because, obviously, not every local authority will have an access panel, but rather than simply opposing the amendment, it is a good idea to put the provision in the bill and then to work on the wording for stage 3, perhaps with the cabinet secretary, to ensure that the Government is also happy with it. I hope that the Government will not oppose it. I support the amendment. We should get it in at stage 2, then we can come back and look at the provisions again at stage 3 with the full Parliament.

**Michael Matheson:** Jeremy Balfour's amendment 259—he is definitely Jeremy Balfour—seeks to place a duty on local authorities to consult an access panel of local residents prior to making a road, or part of a road, a cycle track. Although I fully appreciate the intention behind the amendment, local authorities are already subject to statutory duties that require them to carry out extensive consultation prior to making cycle tracks on their roads.

An order to redetermine a length of road to make it a cycle track is made under section 152(2) of the Roads (Scotland) Act 1984—not section 1, as amendment 259 states. The procedure for making such orders is set out in the Stopping Up of Roads and Private Accesses and the Redetermination of Public Rights of Passage (Procedure) (Scotland) Regulations 1986—with which I am sure all committee members are familiar.

The existing consultation requirements go well beyond what is set out in amendment 259. Where any proposal is the subject of an objection that is not withdrawn following a written explanation from the local authority, that proposal is ultimately

required to be remitted to Scottish ministers for consideration.

In addition, with respect to accessibility considerations, it should be noted that throughout the redetermination process, local authorities and Scottish ministers have a duty to have regard to the requirements of the Equality Act 2010. Therefore, I do not consider that we need to impose an additional duty on local authorities, as is proposed in amendment 259—notwithstanding the technical issues relating to the amendment itself.

I am more than happy to engage with Jeremy Balfour prior to stage 3 to consider whether there are further measures that we can take under the existing procedure that would provide greater clarity to the objectives that the member is seeking to achieve. I therefore ask him not to press amendment 259. If it is pressed, I ask the committee to reject it.

**Jeremy Balfour:** I welcome the cabinet secretary's remarks to some extent, particularly his final remarks about perhaps working with him to see whether we can find something. There is a principle here: yes, local authorities have to consult, but we need to move access panels—where they exist—to a higher level, almost to the level of community councils, such that they become statutory groups. They should be consulted. To expect access panels to know everything that is going on, even just within their area, is asking a lot of volunteers.

On the path here in Edinburgh that I talked about, the access panel did not respond, because it did not know about the proposal until it was too late.

In the light of what the minister has said, I will not press amendment 259 today, but I will be knocking on his door before stage 3.

*Amendment 259, by agreement, withdrawn.*

*Sections 59 and 60 agreed to.*

10:40

*Meeting suspended.*

10:45

*On resuming—*

## **Section 61—Compliance notices**

**The Convener:** Part 5 of the bill is on road works. Amendment 164, in the name of the cabinet secretary, is grouped with amendments 320, 165, 166, 325 and 181 to 183.

**Michael Matheson:** The amendments in this group in my name are largely minor or technical.

The Transport (Scotland) Act 2005 imposes a duty on the Scottish road works commissioner to make the Scottish road works register available for inspection. In practice, the ability to inspect the register does not make information about road works that may be of interest to the general public particularly accessible.

A separate issue is that certain information on the register may be commercially sensitive or give rise to security considerations, and it is not considered that such information should be freely available to the public.

Amendment 165 would change the current approach by requiring the commissioner to make publicly available information on the register about the timing, duration, location and purpose of works in roads. It is intended that that would make such information more accessible than would be the case if members of the public were simply permitted to inspect the register. The Scottish ministers would have powers to prescribe further information to which the commissioner should provide public access.

Amendment 165 would also require the commissioner to make all the information on the register available to persons with authority to carry out works in roads and to those whom the commissioner considers to have a sufficient interest in that information. That would make sure that the information necessary to ensure the safety of any works would be available to those who need it.

Proposed section 60 would insert a new provision in section 61B of the Roads (Scotland) Act 1984, which currently requires the use of suitably trained operatives and supervisors only where works involve breaking up or tunnelling under the road, or any subsequent reinstatement. However, in practice, roads authorities often undertake activities—such as painting road markings, flushing blockages in road drains and filling in potholes with temporary material—that are unlikely to include any breaking up of the road surface, but may require traffic management and other safety measures on the carriageway.

For safety reasons, it is considered that the carrying out of any works involving traffic management on the carriageway should be subject to similar requirements regarding the use of trained operatives and supervisors, irrespective whether they involve breaking up or reinstating the road, and amendment 166 will secure that.

Amendment 183 will require applications for warrants to exercise enforcement powers and for appeals against compliance notices to be made to sheriffs, rather than to summary sheriffs, as would be the case under the bill as introduced. The amendment follows representations made by the

Scottish Courts and Tribunals Service that applications of that kind may be inconsistent with the existing remit of summary sheriffs.

In its stage 1 report on the bill, the Delegated Powers and Law Reform Committee identified an incorrect cross-reference in a provision that would be inserted into the New Roads and Street Works Act 1991 by section 61(3) of the bill. I thank the committee for its diligent scrutiny of the bill, and amendment 164 will correct that cross-reference.

Amendments 181 and 182 are also minor amendments. They will remove definitions that otherwise would be inserted by the bill into the Transport (Scotland) Act 2005.

Amendment 320, in Jamie Greene's name, seeks to place a duty on road works authorities, and the Scottish road works commissioner, to set aside 5 per cent of the money raised by issuing penalties for road works offences and ring fence it for roads maintenance purposes. Although that may seem like a sensible way to contribute to better maintained roads, in practice it would not achieve that purpose.

The income received from issuing fixed penalties in Scotland is relatively limited. For example, Aberdeenshire Council reported receiving £2,600 in income from fixed-penalty notices during 2018. The amendment would result in £130 of that being set aside for roads maintenance rather than being spent on the administration of the scheme. At such low levels, almost nothing would be contributed to roads maintenance, but the revenue that was available to meet the costs of the scheme would be reduced, restricting the time that could be dedicated to the enforcement of compliance with road works duties.

Given the historically low levels of income that have been raised by the penalties, I am not persuaded that the administrative burden that would be associated with requiring the commissioner's penalties to be remitted to ministers and then redistributed to road works authorities would be justified by the scale and nature of the likely benefits. In addition, there is strong evidence to suggest that fixed penalties are successful in improving compliance with road works duties, and I am concerned that giving those penalties a revenue-raising purpose could undermine that success.

The intention behind amendment 325, which is also in the name of Jamie Greene, is to ensure that delays to certain road works of which advance notice is required—specifically, major works and works in traffic-sensitive areas—may be implemented only with the approval of the road works authority and the Scottish road works commissioner.

In my view, what is proposed in amendment 325 is unnecessary. There already exists an established system, which is covered in considerable detail in the nationally applicable code of practice for co-ordination of road works, for dealing with the approval of works that need to start later than indicated by a notice under section 113 of the New Roads and Street Works Act 1991. Under that process, undertakers must seek road works authority approval for delayed starts and, where they fail to do so, they may incur a commissioner penalty for failure to co-operate. There is considerable industry buy-in to the framework, the success of which is demonstrated by the fact that no commissioner penalty has been issued on that ground because compliance levels are so high. The framework achieves its objectives without placing an excessive burden on the Scottish road works commissioner in relation to operational matters when his role is otherwise entirely strategic.

I therefore cannot support amendments 320 and 325 and I invite Jamie Greene not to move them. If they are moved, I ask the committee to vote against them. I ask the committee to agree to the amendments in my name in the group.

I move amendment 164.

**Jamie Greene:** I thank the cabinet secretary for the spirit in which he made his comments on my amendments. I will briefly outline the intentions behind them. Amendment 320, as he said, seeks to ensure that a minimum of 5 per cent of the revenues that are achieved from fixed-penalty notices that are given for failure to comply with compliance notices are reserved solely for the purpose of improving the repair and maintenance of roads.

I think that we all understand that road surface quality is a big issue not just in Scotland but right across the UK, although it is perhaps more so in Scotland, where we have far more rural roads that are driven on by fewer motorists. Local authorities have had severe pressures on their ability to improve road quality. Rather than simply calling for money to be spent, I perhaps saw this as an opportunity to seek funding for that. If the minister thinks that 5 per cent would not achieve very much, maybe it would have been better to make the figure 95 per cent. Maybe I can propose that at stage 3.

The purpose of the amendment was to raise awareness of the issue. I am not aware of the scale of the funds from fixed-penalty notices. I am pleased that it is low, because that means that, in general, there are high levels of compliance. However, I am still unclear about where the revenue goes. I appreciate that it covers administrative costs, but if there is a surplus, I am not sure in which budget line it lies. I would like to

think that it goes towards improving the quality of our roads in Scotland. Perhaps that can be discussed in future. However, given the minister's comments, I am unlikely to move amendment 320. I think that I have made the point suitably.

Amendment 325 is on a different issue. I have had a lot of communication and dealt with a lot of casework on road works. I think that we all suffer from the bane of road works in our respective areas. Amendment 325 is concerned with situations where major road works are delayed, although I appreciate that it talks only about the process by which they go through approval for delay.

Proposed new section 113A(2)(b) of the 1991 act talks about delay to the start of works. In fairness to my team, I note that there should probably have been a paragraph (c) that talked about delay to the completion of works. Delay to the start is less of an issue. There is an issue when there is a large or unannounced delay to the completion of road works. There are many instances where we think that a road will be closed for four weeks but, for whatever reason, the contractor or the undertakers decide that it will take much longer, causing huge inconvenience. It is not clear to the public what process they use to get permission to delay the completion. Unless it is for public safety, if the reason for the delay is deemed inappropriate—for example, a cost-saving benefit or because they are underresourced or underfinanced to complete the work—I would like the road works authority or commissioner to say that they must get the work completed within the original timescale.

I appreciate that there is a code of practice around that matter. I will go away from this committee session and look at it and see how strong it is. However, it is an issue that undertakers elongate works. That is what amendment 325 sought to address, although it might have been poorly drafted. We have had a lot of amendments to work on.

I hope that the cabinet secretary and the bill team will take on board the concerns that have been raised through my amendments.

**Stewart Stevenson:** I have a couple of brief comments. On amendment 320, I reiterate my previous opposition to hypothecation of penalties and fines to particular purposes. They should go to the consolidated fund, which should provide funding to purposes that serve the public good, independent of the origins of the money. If we create a body that depends on penalties and fines, it creates a perverse incentive to collect them. Furthermore, success in raising money through penalties and fines causes a reduction in the income of the original body.

On amendment 325, I do not know what “undertaker” means. I think that it means statutory undertaker. Even there, there are difficulties, because not all the people who do road works are undertakers. An example of something that is not done by a statutory undertaker is the provision of district heating pipes, because district heating is not covered by statutory undertaker provision. In drafting terms, as it currently stands, amendment 325 is not supportable.

*Amendment 164 agreed to.*

*Section 61, as amended, agreed to.*

### **Section 62—Fixed penalty notices**

*Amendment 320 not moved.*

*Section 62 agreed to.*

### **After section 62**

*Amendment 165 moved—[Michael Matheson]—and agreed to.*

*Sections 63 and 64 agreed to.*

### **Section 65—Qualifications of supervisors and operatives**

*Amendment 166 moved—[Michael Matheson]—and agreed to.*

*Section 65, as amended, agreed to.*

### **Section 66—Commencement and completion notices**

*Amendment 325 not moved.*

*Section 66 agreed to.*

*Sections 67 and 68 agreed to.*

### **Before section 69**

**The Convener:** The next group is on regional transport partnerships: membership and finance. Amendment 255, in the name of Jeremy Balfour, is grouped with amendment 167.

11:00

**Jeremy Balfour:** The role of regional transport partnerships is to strengthen the planning and delivery of regional transport developments so that they better serve the needs of people and businesses. In order to ensure that a regional transport strategy is fully accessible and inclusive, it is important to have the insight and expertise of disabled people who fully understand the lived experience of disability.

Amendment 255 would lay down in statute a requirement for the membership of regional transport partnerships to include a minimum of two

disabled people—which I hope is already happening as good practice.

I move amendment 255.

**Michael Matheson:** I understand the aim of amendment 255 and thank Jeremy Balfour for lodging it. However, the duty that it seeks to impose would present a significant practical challenge for RTPs. In addition, through the national transport strategy review, work on a refreshed governance model for transport at a regional level is under way. That has the potential to refresh and update regional transport governance, so now is not the right time for the amendment.

From a practical perspective, I am not persuaded that imposing a duty on the Scottish ministers and RTPs to meet a quota of members with a disability is likely to be an effective way of ensuring that the interests and concerns of disabled people are represented. As committee members might be aware, other work is under way, as part of the review of our new national transport strategy. That will consult on ways to improve transport governance, as a result of which further legislative change may be required.

However, I agree that it is necessary for the needs and views of disabled people to be represented in decision making on transport. That is why, in delivering Scotland’s accessible travel framework, we have the accessible travel steering group, on which RTPs are represented alongside disabled groups and individuals. The work of the strategic group is closely aligned to that of the 15 public appointees who make up the mobility and access committee, half of whom are disabled people. Such governance design enables the full spectrum of disabilities to be considered in delivering improvements.

Engagement and participation is one of the key themes that was identified in the framework, with a focus on co-production of transport policies and practices, and sharing and learning from the experiences of disabled people. In my view, the actions that are being undertaken under the plan are a more effective means of securing the involvement of disabled people in transport planning and governance.

For those reasons, my view is that amendment 255 is not necessary or appropriate. However, I would be happy to ask my officials to engage with Mr Balfour and relevant stakeholders with a view to explaining in more detail the additional steps that we are already taking to support the framework and secure the delivery of the actions and improvements that it identifies.

I therefore ask Mr Balfour not to press amendment 255. If he does so, I ask the committee not to agree to it.

The bill as introduced makes changes to the way in which RTPs are financed, which will, among other things, permit RTPs to carry forward a surplus or a deficit. Amendment 167, which is in my name, is a technical provision that seeks to ensure that any deficit that is carried forward forms part of the expenses of an RTP for the year following that in which it was incurred. That would require partnerships to take any deficit into account when setting an annual budget and ensure that a carried-over deficit forms part of the expenses that require to be met by constituent councils. The local authority members of the RTP would be able to exert control to require the RTP to utilise those reserve funds to meet the deficit when it was considered appropriate to do so. The amendment puts in place a necessary additional safeguard against the possibility of RTPs building up significant deficits.

I invite the committee to agree to amendment 167.

**Jeremy Balfour:** I hear what the cabinet secretary says, but I think that we can all agree that the RTPs have a very important role to play. The disability community has been waiting for a long time to see better representation. It would be fair to say that, of all those with protected characteristics, disabled people feel left behind in that regard. As a country, we have taken legal steps to promote other characteristics positively, and I feel that that should now happen in relation to disability. I still think that at least two disabled people who have lived experience and can bring their expertise to it should form part of an RTP. I press amendment 255.

**The Convener:** The question is, that amendment 255 be agreed to. Are we agreed?

**Members:** No.

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

#### For

Chapman, Peter (North East Scotland) (Con)  
Greene, Jamie (West Scotland) (Con)  
Mountain, Edward (Highlands and Islands) (Con)  
Smyth, Colin (South Scotland) (Lab)

#### Against

Finnie, John (Highlands and Islands) (Green)  
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
Mason, John (Glasgow Shettleston) (SNP)  
Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

#### Abstentions

Rumbles, Mike (North East Scotland) (LD)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 1.

#### *Amendment 255 disagreed to.*

**The Convener:** Amendment 326, in the name of Rachael Hamilton, is grouped with amendment 327.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** I thank the committee for allowing me to speak to the amendments.

Amendment 326 would ensure that community benefit is taken into account by health boards or health and social care partnerships in tendering for non-emergency patient transport contracts. The definition that is used for "community benefit" comes from the Procurement Reform (Scotland) Act 2014. The amendment states:

"Before entering into a contract for the provision of non-emergency patient transport services, each health board (or, as the case may be, health and social care partnership) must have regard to the extent to which the contract will improve the economic, social or environmental wellbeing of the board's area".

Community transport operators are well placed to help people in hospital return scenarios, for example. Indeed, the chief executive of the British Red Cross said in the 2018 report "In and out of hospital" that home assessments that are carried out by transport operators as patients return home can reduce readmission rates. Checking that patients take their medication and that the heating is on, and ensuring that there is food in the house will help patients to feel more comfortable and allow them to continue their recovery. Those are all tasks that community transport operators already carry out with their passengers, and they will bring community benefit to the area in better outcomes for patients and saving health boards money as a result of fewer readmissions.

I would like to provide a little bit more background information on amendment 326. Cuts to bus services do not affect only rural communities, in which older people often struggle to get to their local hospital; they affect people in urban areas, too. A recent Community Transport Association survey found that almost a quarter of people aged 65 and over felt that

"there was no form of public transport which would get them or a loved one to their hospital appointments on time."

That also contributes to missed appointments. I refer to my constituency as an example. In the Borders, such missed appointments cost £1 million in 2016, and £15 million has been spent on taxis over the past three years. That proves that demand for patient transport services is outstripping demand.

Amendment 327 would compel health boards to work with community transport operators. Both amendments in the group are entirely reasonable. With them, a duty would be placed on the health boards or the health and social care partnerships,

as the case may be. Amendment 327 would require each board or partnership to work with community transport bodies in the provision of non-emergency patient transport services. It would also place a duty on boards or partnerships to report on how they have complied with the duty. That would provide significant opportunities for the local area, and existing services could be incorporated.

The definition of "community transport services" links to the definition of "community bus services" in the Transport Act 1985, but with modifications for services provided that are not necessarily provided by buses.

The amendments seek to ensure that we have more appropriate community transport that delivers for passengers, tackles the issues that are faced in rural areas and takes into consideration community benefit, in order to deliver better outcomes for passengers, integration joint boards and the local national health service boards.

I urge the committee to support my amendments, and I move amendment 326.

**Colin Smyth:** Amendments 326 and 327, in the name of Rachael Hamilton, look to strengthen the relationship between health boards and community transport. I very much welcome that.

In recent years, we have seen the Government's role in supporting community transport being eroded. The previous Labour-Lib Dem Scottish Executive provided direct support to community transport through the rural community transport initiative, which has, obviously, been discontinued, and the funds that were previously ring fenced at local government level are no longer ring fenced. That has meant that the support from local councils to community transport is being reduced in a time of major cuts to council budgets.

At the moment, Government support for community transport consists mainly of a pretty small level of funding for the Community Transport Association. Community transport plays a wider role and should be encouraged to do so. Certainly in my area, it is heavily involved in patient transport, but it does not get funding from the health board or health and social care partnership. That sort of situation often makes the service unviable. I have seen that recently in my area, where Annandale Community Transport Services is about to fold because of a lack of funding. That will actually increase costs on the local NHS, which could have to pick up the cost of the patient transport that will be lost as a result of that initiative folding.

I welcome amendments 326 and 327, because they focus our minds on the important role of community transport and the partnership that should be developed with the NHS. The bill is an

opportunity to enhance and support that partnership, so I support the amendments.

**Stewart Stevenson:** I have a number of technical issues with amendments 326 and 327. The main issue, which applies to both amendments, is that they do not seem to cover travel between health board areas. For example, people in Forres, which is at the extreme west side of NHS Grampian's area, might go to Inverness rather than Aberdeen if the nearest hospital, which is Dr Gray's, cannot provide the care. Therefore, when amendment 326 refers to

"the wellbeing of the board's area",

that is too restrictive. Similarly, amendment 327 refers to "its area".

**John Finnie:** Does the member not accept that there are arrangements between boards that would deal with that?

**Stewart Stevenson:** Mr Finnie is of course correct, which is precisely why people in Forres might go to Inverness. I am looking at the narrow issue that the proposed duty on boards is too restrictive if we want to achieve the public policy that is sought.

I do not want to take up too much time, but I have a wee issue with proposed new subsection (3)(b)(ii) in amendment 327, which refers to services being "cost effective". Given the broader benefits that are described in amendment 326, which refers to

"economic, social or environmental wellbeing",

I would not wish to deny health boards the opportunity to use community transport bodies even if, in an individual instance, it might be more expensive to do so. There is a bit of work to do on drafting.

I strongly support community partnership. In my constituency, three community partnerships operate, and I wish to support them strongly. However, I am not entirely clear that the amendments are as good a way of doing that as might be possible.

**John Finnie:** I support the amendments, which are about economy of effort and people working together. As others have said, no one dissents from the view that a lot of tremendous work takes place. The amendments would perhaps put that work on a firmer footing. I hope that any specific issues about wording will not dissuade members from supporting them. The principle is that our communities want that level of engagement between the two types of bodies.

**Mike Rumbles:** I congratulate Rachael Hamilton on lodging amendments 326 and 327, which are important. It is important to make those changes to the bill at stage 2. I am sure that the

cabinet secretary will criticise the amendments—that is his duty and right where he thinks that there is a technical problem—but that is the whole point of having the stage 2 and stage 3 process. We should get the amendments into the bill and the member can then work with the cabinet secretary before stage 3 to address the issues that I am sure he is about to raise.

**Jamie Greene:** I concur whole-heartedly with Mr Rumbles. It is just a shame that we have not taken that approach with some of the other amendments. There is always a difficult balance to strike at stage 2 in deciding whether to push something to a vote and try to get it into the bill in the knowledge that there may be technical issues, or to hope to bring it back at stage 3. Members have expressed broad support for the concept that Rachael Hamilton is trying to achieve, and I support it, too. If there are ways in which we can tidy up the amendments, I am sure that it is not beyond the wit of the legislation team to do that.

**Michael Matheson:** The amendments in the group are concerned with duties on health boards and I am conscious that the committee has not given consideration to the idea of conferring additional powers on health boards under the bill.

Amendment 326 would place a duty on health boards that are seeking to enter into a contract for the provision of non-emergency patient transport services to

“consider the extent to which the contract”

would, in addition to its main purpose,

“improve the economic, social or environmental wellbeing”

in their area. Although the amendment does not expressly state how that would be demonstrated, it is possible that health boards would have to consider producing a report or assessment outlining what they had done, which may be difficult for them to do.

11:15

I am aware of the importance of ensuring that transport provision—both public transport and community transport—dovetails with healthcare services to ensure that patients can travel to appointments without hindrance. Arrangements will be made in different ways across the country every day. Amendment 326 seems to assume that that is done by—

**Rachael Hamilton:** Will the cabinet secretary take an intervention?

**Michael Matheson:** No. I want to finish what I have got to say before dealing with any other points, given the time.

**The Convener:** Rachael Hamilton will have a chance to sum up at the end, so she may be able to make her point then.

**Michael Matheson:** Amendment 326 seems to assume that arrangements are made by way of formal contracts in a uniform manner, yet there will be a wide variation in provision. For patients with an explicit clinical need, direct support will be available from the Scottish Ambulance Service patient transport service. If the criteria are not met, patients without means of transport will be signposted to existing local voluntary and charitable organisations that provide such a service. A taxi might be the only means of transportation, in which case it may be possible for the patient to reclaim the cost of the taxi. Given those variations in approach, the amendment seems to be misguided in its approach to the issue.

Also, it is unclear how any contracts that health boards might have in place on the narrow issue of patient transport could be demonstrated to improve such broad outcomes as

“economic, social or environmental wellbeing”

across a geographical area. Those additional considerations would constrain health boards’ ability to focus the arrangements on the effective and efficient provision of patient transport. Therefore, it may become an onerous and bureaucratic undertaking for health boards, with questions arising on how it actually helps provision on the ground.

On amendment 327, I acknowledge the important role that community transport bodies might have in the provision of transport to hospitals and other healthcare premises. We know that health boards can, and do, engage with community transport providers on a regular basis. However, placing a statutory duty on health boards to work with those providers in the provision of non-emergency patient transport services raises a number of significant issues.

First, it runs counter to the whole ethos of the Scottish Government’s approach of not micromanaging health boards and allowing them discretion when it comes to the operational delivery of services in their area.

Secondly, community transport services may be provided under contracts. To the extent that the intention, or indeed the practical effect, of the amendment could be to confer an advantage on community transport providers in any process for awarding such contracts, it may give rise to a breach of procurement rules.

Finally, the amendment would oblige health boards to publish a report every year on how effective non-emergency patient transport services

in their area have been, including some financial assessment of cost effectiveness and a statement of any further actions that the board plans to take on such services.

Again, a binding national duty to undertake specific actions in such an area could create undue administrative burdens on health boards. Some actions, such as an assessment of cost effectiveness, could be challenging to demonstrate. Indeed, the amendment does not define cost effectiveness, so in its current form, it could lead to ambiguity. Additionally, it is not clear that publishing a report on such matters would actually benefit the transport that patients are seeking to be provided with.

For those reasons, I cannot support amendments 326 and 327. However, I sympathise with Rachael Hamilton's sentiment here. The issue has been raised consistently through our engagement as we shape the national transport strategy. It also straddles ministerial portfolios and the Cabinet Secretary for Health and Sport has an interest in it. Therefore, I would be happy for the Government to engage with Rachael Hamilton prior to stage 3 to consider the matter in further detail in order to explore whether there are further measures that could be taken.

Therefore, I ask Rachael Hamilton not to press amendment 326 or to move amendment 327. If they are pressed or moved, I urge the committee to vote against them.

**The Convener:** I ask Rachael Hamilton to wind up and to press or withdraw amendment 326.

**Rachael Hamilton:** I just want to make the point that transport does not currently dovetail. This week, I was at a round-table session specifically to discuss social isolation and loneliness in my constituency. There were community transport providers around the table, one of whom gave an example of a transport provider and a community transport service running in parallel, picking up people who were practically neighbours and who were going to appointments at almost the same time.

The current system is not working and it is not providing economic benefit. I do not think that the national health service will gripe about saving money; it needs to look at saving money, but we also need to consider the overall community benefits. It is all about providing a patient-centred service, which the current service is not.

I have received support today from members of the committee, so I may press both my amendments. I hope that I can take up the cabinet secretary's offer to work together, even though I have had support today, if these amendments are successful.

**The Convener:** Are you pressing your amendment?

**Rachael Hamilton:** Actually, I think that I may not press.

**The Convener:** You must make a decision, Rachael—it is either press or withdraw.

**Rachael Hamilton:** I seek to withdraw my amendment.

**The Convener:** Rachael Hamilton wishes to withdraw amendment 326. Does any member of the committee object?

**Mike Rumbles:** I object.

**The Convener:** The question is, that amendment 326 be agreed to. Are we agreed?

**Members:** No.

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

#### For

Chapman, Peter (North East Scotland) (Con)  
Greene, Jamie (West Scotland) (Con)  
Mountain, Edward (Highlands and Islands) (Con)  
Rumbles, Mike (North East Scotland) (LD)  
Smyth, Colin (South Scotland) (Lab)

#### Against

Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
Mason, John (Glasgow Shettleston) (SNP)  
Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

#### Abstentions

Finnie, John (Highlands and Islands) (Green)

**The Convener:** The result of the division is: For 5, Against 5, Abstentions 1.

I have always made it clear that, as convener, when I have the casting vote on a division I will vote in the same way that I did at the outset.

*Amendment 326 agreed to.*

*Amendment 327 moved—[Rachael Hamilton].*

**The Convener:** The question is, that amendment 327 be agreed to. Are we agreed?

**Members:** No.

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

#### For

Chapman, Peter (North East Scotland) (Con)  
Greene, Jamie (West Scotland) (Con)  
Mountain, Edward (Highlands and Islands) (Con)  
Rumbles, Mike (North East Scotland) (LD)  
Smyth, Colin (South Scotland) (Lab)

#### Against

Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
Mason, John (Glasgow Shettleston) (SNP)



Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine)  
 (SNP)

#### **Abstentions**

Finnie, John (Highlands and Islands) (Green)

**The Convener:** The result of the division is: For 5, Against 5, Abstentions 1.

Again, I will use my casting vote in the same way.

*Amendment 327 agreed to.*

#### **Section 69—Regional Transport Partnerships: finance**

*Amendment 167 moved—[Michael Matheson]—and agreed to.*

*Section 69, as amended, agreed to.*

#### **After section 69**

**The Convener:** The next group is on the accessible transport framework. Amendment 256, in the name of Jeremy Balfour, is the only amendment in the group.

**Jeremy Balfour:** “Going Further: Scotland’s Accessible Travel Framework” was published in September 2016. The purpose of the framework is to support disabled people’s rights by removing barriers, improving access to travel and ensuring that disabled people are fully involved in work to improve all aspects of travel. The framework provides a national vision and outcome for accessible travel, and was developed by a steering group that included organisations of and for disabled people, transport service providers, local government and Transport Scotland.

Amendment 256 would require ministers to report annually on what action has been taken to promote the framework and the outcomes that are detailed in it. The advantage of that would be that once a minister reports, this committee, or the Parliament itself, could at least evaluate whether progress was being made and, if not, what should be done to make things move more quickly.

I move amendment 256.

**The Convener:** No other member has indicated that they wish to speak, so I call the cabinet secretary.

**Michael Matheson:** Amendment 256, in the name of Jeremy Balfour, seeks to impose a duty on named public authorities to “have regard to” the document “Going Further: Scotland’s Accessible Travel Framework” in carrying out their functions. The amendment would also require the Scottish ministers to report annually on the steps that they had taken to promote the framework, and to

ensure that the framework was modified within five years of the date on which the bill received royal assent, or within five years of the date when it was last modified.

I begin by agreeing strongly on the importance of making travel accessible for everyone. The Scottish ministers have made clear their expectation that Scotland’s transport providers will continually improve their performance in order to help disabled people to make better journeys. The Government is taking a series of actions to help to make that happen, one of which is the work that we have done with disabled people’s organisations, transport providers, RTPs and local government to co-produce the accessible travel framework. The framework sets out a national vision and outcomes for accessible travel, and it highlights a range of specific actions to be taken with a view to achieving those outcomes.

Although amendment 256 is intended to bring additional impetus to development of the framework and implementation of the actions that it highlights, I do not consider that it would, in practice, achieve those ends. Public authorities and transport operators are already bound by various statutory equality duties relating to accessibility of public transport vehicles, the transport services that are provided and the exercise of relevant public functions. The accessible travel framework is not a statutory creation and is not intended to be something that has binding legal force; rather, it is intended to be the means through which disabled people and those who are involved in providing public transport across Scotland can work together in a more collaborative, flexible and responsive way to improve accessibility in all aspects of travel.

It is not at all clear that imposing an additional statutory duty that would require public authorities to “have regard to” the framework would, in reality, give the framework any greater status, or secure any increase in the pace of its development and implementation. That is especially so because amendment 256 does not provide any means by which compliance with the duty would be demonstrated, measured or enforced.

I recognise that, although some improvements have already been made as a result of the accessible travel framework, there is much still to do. I confirm that we are already working with stakeholders to increase the pace at which we implement the actions that are identified in the framework by moving to an annual delivery plan for this and future financial years, by agreeing realistic deliverables, by maximising delivery and by reducing inefficiencies. It should be stressed that, as the framework was, the annual delivery plans will be co-produced with disabled people. It will also be possible to monitor and measure

progress against the plans effectively. In my view, that is a much more appropriate approach to progressing the framework than imposing the additional general duties that are proposed in amendment 256.

There are also a number of technical issues with amendment 256 that mean that its legal effect is unclear. For example, it is not clear which part of the framework authorities would be obliged to have regard to. Would it be the vision, the outcomes or the action plan? Therefore, it is unclear what failure to comply with the duties would mean in relation to penalties.

For all those reasons, my view is that amendment 256 is not necessary or appropriate. However, I am happy to ask my officials to hold discussions with Mr Balfour and relevant stakeholders to explain in more detail the additional steps that we are taking to support the framework and to secure delivery of the actions that it sets out. Therefore, I ask Mr Balfour not to press amendment 256. I ask the committee to reject it, if it is pressed.

**The Convener:** I ask Jeremy Balfour to wind up and to press or seek to withdraw amendment 256.

**Jeremy Balfour:** I appreciate what the cabinet secretary has said, but there is a fear in some parts of the third sector that, over time, the accessible travel framework will gather dust, with no practical changes being made.

The main point for me, on which I disagree with the cabinet secretary, is that the advantage of amendment 256 is that it would require the Scottish ministers to lay an annual report before Parliament, and Parliament would be able to question the cabinet secretary on the report, if it so wanted.

11:30

**Michael Matheson:** On the concern about reports gathering dust, "Scotland's Accessible Travel Framework—Delivery Plan for 2019-2020" was published yesterday. It sets out the actions that will be taken this year, and it dovetails with the annual report that is laid before Parliament by the Mobility and Access Committee for Scotland.

**Jeremy Balfour:** I appreciate that, but I am trying to future proof the approach, in case future Administrations are not as proactive as you and your officials.

The key point is that my proposed approach would allow Parliament to be involved so that there would be scrutiny by MSPs. For that reason, I press amendment 256.

**The Convener:** The question is, that amendment 256 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
Greene, Jamie (West Scotland) (Con)  
Mountain, Edward (Highlands and Islands) (Con)  
Smyth, Colin (South Scotland) (Lab)

**Against**

Finnie, John (Highlands and Islands) (Green)  
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
Mason, John (Glasgow Shettleston) (SNP)  
Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Abstentions**

Rumbles, Mike (North East Scotland) (LD)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 1.

*Amendment 256 disagreed to.*

*Section 70 agreed to.*

### After section 70

**The Convener:** The next group is on accessibility of traffic lights. Amendment 257, in the name of Jeremy Balfour, is the only amendment in the group.

**Jeremy Balfour:** Members will be glad to hear that this is the last of my amendments.

I give credit to my two daughters, who brought the issue to my attention about nine months ago, when we were crossing the road. They had put their fingers under the button on the pedestrian crossing control box at the traffic lights. I thought that they were being their usual annoying selves and told them to take their hands away, to stop them getting dirty, but they said, "No—there's a thing that goes round when the green man appears." I suspect that many of us are unaware that there is such a thing. I did not know about it. There is a small and unassuming plastic or metal cone on the underside of a pedestrian crossing control box. When the light goes green, it starts to turn round. That means that someone who has a visual impairment or is completely blind is able to cross the road by themselves without assistance. The device is there for people who cannot see the lights: when they feel it rotate, they can cross the road.

Amendment 257 would place a duty on traffic authorities to ensure that new traffic lights have that feature for people with visual impairments.

**John Mason:** At some modern pedestrian crossings, the light is not across the road, but beside where people stand. Does that partly solve

the problem, or is the feature that you are talking about still needed?

**Jeremy Balfour:** For people who are completely blind, the position of the light does not solve the problem. There can be a light on the control box as well as the device that I am talking about.

Amendment 257 would require traffic authorities to report annually to ministers, and it provides that a summary be laid before Parliament. That is because there is a danger that such devices will be installed but not maintained. It is ironic that the device on the traffic lights that people use to cross to the headquarters of the Royal National Institute of Blind People in Scotland has been broken for the past 12 months. Although I have written to the City of Edinburgh Council on one or two occasions to ask for it to be fixed, as far as I am aware it has not been mended.

**John Finnie:** A common feature of bills that this committee and others consider is that they seek to provide for reports to Parliament to be produced annually or at some other specified frequency. Is there a concern that producing such reports just becomes an administrative process and the reports gather dust? I am absolutely with Jeremy Balfour on the need to have properly functioning and completely accessible infrastructure, but it seems that amendment 257 would place an onerous administrative burden on bodies, of the sort that I thought his party was against.

**Jeremy Balfour:** No new reports will be coming to Parliament as a result of amendments that I lodged, because my amendments have all been disagreed to, so far. I accept John Finnie's point, but there has to be a way for the third sector, in particular, to influence what is going on. If a report is laid before Parliament, the third sector can ask MSPs to ask questions about it, and MSPs have a duty to do so.

If that does not happen, the danger is that we will put in accessible traffic lights, but they will not be maintained properly by local authorities. I am against extra work that takes away from day-to-day provision, but accountability is needed, for which amendment 257 would provide. Rather than people with visual impairments having to wait, it would allow them—

**Maureen Watt (Aberdeen South and North Kincardine) (SNP):** Will Jeremy Balfour give way?

**Jeremy Balfour:** Absolutely.

**Maureen Watt:** My understanding is that almost all traffic lights have an audio alert, as well as a visual alert. It is sometimes turned off, but it can be turned back on underneath the bit that we press. Do most traffic lights have an audio alert that helps people with visual impairments?

**Jeremy Balfour:** They do have an audio alert, but on busy streets such as some in Edinburgh, Aberdeen, Glasgow and other cities, it is difficult to hear. A number of people have said to me that on busy days when there is lots of traffic on the road, they cannot hear it.

For people with a visual impairment, the device that I described is what they think makes them best able to go out and cross roads. The technology exists and is available. We are simply asking for it to be implemented, which would be good practice for disabled people.

I move amendment 257.

**Michael Matheson:** Amendment 257, in the name of Jeremy Balfour, seeks to impose a duty on traffic authorities to ensure that new traffic lights that are erected in their area are accessible for persons with disabilities. It would also require authorities to provide annual reports to the Scottish ministers setting out what they have done to comply with that duty, and what steps they have taken to make existing crossings accessible. The Scottish ministers would be obliged to lay a summary of those reports before the Scottish Parliament each year.

Although I completely agree with the principle of having pedestrian crossings that are accessible and straightforward for everyone to use, I do not consider that amendment 257 is necessary or appropriate.

Traffic authorities are given powers to provide pedestrian crossings on roads for which they are responsible by provisions in the Road Traffic Regulation Act 1984. The 1984 act also provides that the traffic signs that are used to indicate a pedestrian crossing must comply with the specifications that are set out in regulations that are made under that act. The current regulations are the Traffic Signs Regulations and General Directions 2016.

In making a decision on the location and type of crossing to be created, traffic authorities are guided by design manuals such as "Local Transport Note 2/95: The Design of Pedestrian Crossings". That document is currently being reviewed by the Department for Transport, with input from the Scottish ministers and local traffic authorities, and is expected to include updated guidance on accessibility issues, including the rotating cones to which Mr Balfour made reference.

Additional guidance for traffic authorities is provided in "Roads for All: Good Practice Guide for Roads", which was produced by Transport Scotland. That document also includes advice on the accessibility of pedestrian crossings. Transport Scotland is currently reviewing and updating that

guidance document in consultation with relevant stakeholders.

In addition, Transport Scotland chairs the roads for all forum, which meets quarterly and includes representatives from the Mobility and Access Committee for Scotland, the Guide Dogs For The Blind Association, RNIB, Living Streets, Alzheimer Scotland, the Scottish Accessible Transport Alliance, the Society of Chief Officers of Transportation Scotland, Disability Equality Scotland and other organisations that represent people with disabilities.

The main function of the forum is to advise Transport Scotland on the interests of disabled people in connection with development of standards for design, construction and maintenance of roads, and for layout and accessibility of public transport infrastructure, including pedestrian crossings. That ensures that the Scottish ministers are well informed on accessibility issues and can update regulations, design manuals and best-practice guides on the matter. I can confirm that members of the forum are involved in the update of the "Roads for All: Good Practice Guide for Roads", which I mentioned a moment ago.

It should also be noted that, in exercising their functions in connection with pedestrian crossings, traffic authorities are already subject to the duty to make reasonable adjustments for people with disabilities, and to the general public sector equality duty, as set out in the Equality Act 2010. Those duties can be measured and enforced using the machinery that is provided for in the 2010 act. For all those reasons, I consider that amendment 257 is not necessary.

It should also be noted that the reports that would be required by subsection (3) of amendment 257 would place an additional administrative and financial burden on traffic authorities. There has been no consultation of them or other stakeholders about the duties that would be imposed by the amendment. My view is that the existing arrangements can be made to work effectively; therefore, I ask Jeremy Balfour not to press amendment 257. If he does so, I ask the committee to reject it.

**Jeremy Balfour:** The simple answer is that in some parts of Scotland the system is not working, so I press amendment 257.

**The Convener:** The question is, that amendment 257 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
Greene, Jamie (West Scotland) (Con)

Mountain, Edward (Highlands and Islands) (Con)  
Smyth, Colin (South Scotland) (Lab)

**Against**

Finnie, John (Highlands and Islands) (Green)  
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
Mason, John (Glasgow Shettleston) (SNP)  
Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Abstentions**

Rumbles, Mike (North East Scotland) (LD)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 1.

*Amendment 257 disagreed to.*

**The Convener:** Amendment 321, in the name of John Finnie, is grouped with amendments 322 to 324.

**John Finnie:** The amendments in this group are the result of my work with councillors at the City of Edinburgh Council. They seek to alter procedural requirements regarding road and traffic regulation orders. I will speak briefly to each amendment.

Amendment 321 would remove the requirement for local authorities to refer to ministers any objections to an order under the Roads (Scotland) Act 1984. The current process of requiring referral adds considerable time and expense to the provision of active travel infrastructure by our local authorities. Redetermination orders are currently required for the conversion of carriageway to footway or cycleway, footway to cycleway, and so on.

Under current law, even the most minor changes to the extent of footways, such as minor kerb build-outs to help pedestrians to cross a road, should be the subject of a redetermination order. Objections, even if they are to minor changes, require referral to the Scottish ministers. That involves a risk that a public hearing will be called, and, even without a hearing, the consideration process can be lengthy. Anecdotal evidence suggests that many local authorities do not use redetermination orders, but current legislation and the legal advice to local authorities make it quite clear that they are required.

Amendment 321 is intended to speed up the redetermination process by granting local authorities the power to determine objections to a redetermination order. That change has the potential to remove nine to 18 months of delay to a scheme, which is important because the drawn-out nature of the delivery of a scheme is a source of great frustration to many local communities. The current need to refer all objections to the Scottish ministers, regardless of the scale of the project or the number or nature of the objections, also shows

a lack of proportionality. The additional time and resource that are required to manage the process for such a road order deters local authorities from pursuing schemes and detracts from their ability to deliver projects in a timely fashion.

Amendment 321 would remove the requirement that any unresolved objections to a redetermination order must be decided on by the Scottish ministers. That would grant local authorities the power to decide on objections to a redetermination order, thus avoiding significant delay and encouraging the delivery of more schemes enabling active travel. The change would enable local authorities to take a more nuanced approach when considering the appropriate response to objections to redetermination orders. The ability to reduce delays to projects would enable local authorities to better deliver on commitments, with the reduced administrative burden enabling resources to be deployed where they are most needed.

Amendment 322 follows on from amendment 321, which deals with the primary legislation, and addresses the secondary legislation. I will keep my comments on it brief. It alters the procedure for dealing with objections to such road orders and removes the requirement to prepare documents and submit them to the Scottish ministers. Currently, those documents provide the basis for ministers' decisions on whether a public hearing is required. Changing that regulatory procedure, in combination with amendment 321, would result in the removal of the need for any objection to a redetermination order to be submitted to the Scottish ministers for consideration, along with the preparation of the associated paperwork. Amendment 322 is required in combination with amendment 321 to streamline that process. The reasons why that is important and why members should vote for it are the same as those that I have given for agreeing to amendment 321.

11:45

Amendment 323 would remove the automatic triggering of a Scottish Government-led public hearing when an objection was received to an alteration to loading provision on the carriageway outwith peak hours. The current legislation is excessively stringent. There is a requirement for a mandatory public hearing with a Scottish Government reporter when there are objections to certain categories of restrictions that can be proposed under traffic regulation orders—notably, a loading ban operating outwith peak times regardless of the length of kerb line that is affected. The final decision for all other comparable traffic regulation changes lies with the local authority, so the current process is inconsistent with that.

Mandatory public hearings can significantly delay the implementation of active travel and other projects, and the resulting drawn-out delivery of schemes, as I have said, presents a source of frustration to communities that are impacted by a scheme. The prospect of needing additional time and resource to manage the TRO process also acts as a deterrent to councils progressing projects that involve the reallocation of road space. It also distracts from the will to deliver projects in a timely fashion. Like the previous amendment, the proposed change to legislation has the potential to remove nine to 18 months of delay in the delivery of projects. The ability to reduce delays in delivering active travel schemes would enable councils to support the Scottish Government in its commitment to delivering a healthier, more active Scotland.

Amendment 324 would increase the duration for which an experimental TRO could be kept in place and would provide a mechanism for converting experimental TROs to permanent orders. Experimental orders exist so that local authorities can test changes to road layouts, to better understand the effects, before making the changes permanent. However, experimental orders can run only for 18 months, which often does not provide sufficient time to assess the impact of the change or complete the legal process to make an order permanent. The 18-month timescale for making a TRO permanent means that that process must begin very shortly after an experimental TRO is put in place, to avoid a gap between the experimental TRO ending and the permanent TRO coming into place.

If a permanent TRO is not in place when the 18-month period expires, local authorities must go through the costly exercise of removing the changes that are implemented under the experimental order, even if those changes are beneficial. Therefore, experimental TROs currently fail to offer sufficient opportunity for local authorities to make informed decisions that are based on a proper analysis of the impact of changes before making more permanent alterations, particularly in relation to more complex or contentious projects for which experiments are often of the most value.

By extending the potential duration of experimental TROs, and by streamlining the process to convert them into permanent TROs, amendment 324 would enable local authorities to use experimental TROs more effectively. In particular, it would help to ensure that the impacts of a scheme were properly understood before any decision to make the order permanent was taken, and it would significantly reduce the risk of schemes that were working effectively having to be removed because a permanent order could not be delivered in time.

Amendment 324 would also allow the Scottish ministers to introduce a specific procedure enabling local authorities to convert an experimental TRO into a permanent TRO. At present, there is no procedure for that, and local authorities must go through the full existing TRO process to make any changes permanent.

I move amendment 321.

**Colin Smyth:** In recent weeks, we have seen that progress to increase the number of journeys that are made by bicycle is woeful, yet we also see that the current procedure delays projects that promote active travel in a prohibitive way and often for minor reasons. I very much welcome John Finnie's amendments, which could reduce timescales by up to 18 months in some cases.

It is important that objectors have a fair hearing. However, that needs to be proportionate, and it is clear that the current procedures are not proportionate. We need to see real changes to the promotion of active travel and the projects that support that. John Finnie's amendments offer practical change that would make a difference, and I am very happy to support them.

**Jamie Greene:** I will speak very briefly. I thank Mr Finnie for his explanation of his largely technical amendments—it was not entirely obvious from day 1 what they sought to achieve.

I have concerns about the fact that we are amending other pieces of primary and secondary legislation in a major way. Although it might be for the right reasons, as Mr Finnie alluded, we have not had a huge opportunity to debate the consequences of the changes as a committee. The outcome of the changes might be to allow certain things to happen differently from how they currently happen. As is always the case with legislation, however, if we change something, there are consequences.

**John Finnie:** Will the member take an intervention?

**Jamie Greene:** I will, in a second.

I do not feel that we have had the opportunity to consider fully every potential implication—positive or negative—of making the changes, especially the opportunity to hear from local authorities, which will be most affected by them. We simply have not had the opportunity to hear from them, which is a criticism not of the amendment but of the process that we have gone through.

**John Finnie:** I understand what Jamie Greene says. Does he accept that the arrangements that the amendments seek to change are out of kilter with other arrangements? I would be the last person to try to frustrate the right of a citizen to object, but there is a weighty administrative

process at present, which is frustrating progress on a number of schemes.

**Jamie Greene:** If John Finnie thinks that the current process is not working and that this is a way to change that, he is entitled to do so. I am keen to be open minded enough to listen to the cabinet secretary, who has a wealth of experience around and behind him. He can tell me whether the current system gives adequate protection to those who object or whether the amendments are necessary.

I also give great credence to the views of legal experts in that respect. Although I will listen to the debate as it progresses, my instinct is not to agree with the proposal that is in front of us unless we can be persuaded by a strong argument as to why it is needed.

**Michael Matheson:** Amendments 321 and 322 attempt to simplify the order-making process for redetermining the means by which the public right of passage over the road may be exercised. Currently, roads authorities must adhere to the procedure that is set out in the Stopping Up of Roads and Private Accesses and the Redetermination of Public Rights of Passage (Procedure) (Scotland) Regulations 1986. Those regulations include a process for remitting proposals to the Scottish ministers if objections are made to them by members of the public and they are not withdrawn, thereby providing an opportunity for an independent review of the proposals.

Amendment 321 seeks to enable new procedural regulations to be made in respect of redetermination orders, replacing the provision that is made for those orders in the 1986 regulations. No provision is made for the new regulations to require the involvement of the Scottish ministers when objections to a proposed order are received; instead, the amendment provides that an authority would be obliged simply to consider the objections before it could make the order.

Amendment 322 follows on from amendment 321 in that it would amend the 1986 regulations, removing the current process for remittance to the Scottish ministers and requiring instead that the roads authority must consider any objections itself. In practice, that might amount to the roads authority rubber-stamping its own decision, which could, in turn, lead to an increase in judicial review proceedings in respect of the orders.

It should also be noted that the change that is proposed by amendment 322 would also extend to the other orders to which the 1986 regulations apply, including orders permanently stopping up roads and preventing dangerous accesses from public roads to land. It is unclear whether the

amendment is intended to have such extensive application. Amendments 321 and 322 would, therefore, remove a significant part of the process that is currently attached to those orders. Any adjustments to that process would require careful consideration of the balance between the needs of road users and the maintenance of a robust and fair procedure for consideration of public objections. I am not persuaded that the amendments strike that balance.

Amendment 323 would amend the Local Authorities Traffic Orders (Procedure) (Scotland) Regulations 1999, which set out the procedure that is to be followed by local traffic authorities in making traffic regulation orders. The amendment would remove the obligation on such an authority to hold a hearing when it proposes to make an order that prohibits loading or unloading to which an objection has been made and not withdrawn. The authority would still have the power to hold a hearing before making the order, but it would no longer be obliged to do so. The authority could therefore decide, after considering the objections received, to make the order without any further procedure.

The amendment would mean no effective recourse for local people or businesses that might be adversely affected by such a decision, as the Road Traffic Regulation Act 1984 appears to prevent any challenge to the validity of orders that are made within the powers that that act confers and in accordance with the relevant procedural arrangements. Before introducing such a proposal, it would be necessary to consider carefully the balance of risk, to ensure that the procedure that attached to orders was fair and proportionate.

Amendment 324 relates to experimental traffic orders. The 1984 act provides for such orders to be made for a period that does not exceed 18 months. Mr Finnie's amendment would allow local traffic authorities to extend an experimental order for a further 18 months or potentially an indefinite period, as was required to enable the authority to evaluate the benefits and complete the process of making the order permanent.

By their nature, such orders are intended to be temporary. Further, it is already possible to make the effect of experimental orders permanent by promoting a permanent traffic regulation order. The procedural requirements that relate to permanent orders are set out in regulations. I am therefore not persuaded that amendment 324 is necessary.

For all the reasons that I have set out, I do not support the changes that amendments 321 to 324 propose. I have some support for the principle behind John Finnie's amendments of clarifying and streamlining the procedures for making redetermination orders and experimental traffic

orders, but careful consideration must be given to changing legislative procedures that provide people with the right to appeal against a road scheme that they consider would have safety implications for road users or an impact on the local economy.

We have made clear our commitment to reviewing the traffic regulation order process outside the bill framework, and a similar approach needs to be followed for the redetermination order process. I will ask my officials to take forward consideration of the issue in the context of the active travel task force delivery plan, which will be published shortly.

I would be happy to work with John Finnie on the TRO process review. I invite him to work with us to get to the core of the issues and to identify solutions that strike the correct balance between road user safety and maintaining a robust and fair process for considering objections. I therefore ask John Finnie not to press amendments 321 to 324 to a vote. If they are pressed, I ask the committee to reject them.

**John Finnie:** I thank those who participated in the debate, and I particularly thank Colin Smyth for his support. The cabinet secretary said that the amendments are about simplifying processes. Local authorities certainly would be obliged to consider objections. There are different legal views—I accept Mr Greene's position—but I would not support a rubber-stamping exercise that disenfranchised citizens of their right to appeal. The intention is certainly not to steamroller—that is a good metaphor—orders through. The amendments are about striking a balance and not about preventing challenge.

I am pleased to hear the cabinet secretary's comments about the requirement to clarify the issues and streamline the process. I am aware—in fact, we are all aware from the committee's other work—of the on-going work in that regard, and I would be happy to engage with the cabinet secretary on those issues. I will not press amendment 321 to a vote.

12:00

*Amendment 321, by agreement, withdrawn.*

*Amendments 322 to 324 not moved.*

### **Before section 71**

**The Convener:** The next group is on corporate offending. Amendment 168, in the name of the cabinet secretary, is the only amendment in the group.

**Michael Matheson:** Amendment 168 inserts in the bill a technical provision to deal with cases in which an offence that is created by or under the

bill is committed by an organisation such as a company or partnership rather than by an individual. The amendment provides that if an offence, despite it having been committed by an organisation, was committed with the consent of a person in a specified position in the organisation or was attributable to that person's negligence, both the person and the organisation may be prosecuted for the offence. The people in relevant organisations who may be caught by the provision are those who have some responsibility for the management or control of those organisations. It seeks to prevent individuals who are in positions of responsibility in organisations from hiding behind organisational structures to avoid criminal liability.

I move amendment 168.

**Jamie Greene:** I will be as brief as possible, given our time constraints this morning, but I want to raise an important issue.

Some of the amendments that we have agreed to on issues such as the workplace parking levy place a duty on companies to meet the obligations therein. Amendment 168 changes the rules. It basically says that it is not the company that is liable, but the individual members of a company. We need to be quite clear where liability falls in that regard.

The table in proposed new subsection (3)(c) sets out what constitutes a relevant organisation and what constitutes an individual. It includes words such as "manager" and "secretary". However, someone who is a manager of people in an organisation may have no direct corporate responsibility for that organisation. By default, given the way in which the amendment is drafted, the company could be liable and could pass on that liability to an individual who it deems to be appropriately attached to one of the descriptions under the heading "Individual" in the table. Those descriptions of individuals in the corporate structure are very loose and weak.

If the cabinet secretary wants to press the amendment, he will have to tighten up his description of how we make somebody accountable for an organisation. Not every manager, company secretary or officer will have full responsibility for the actions that their company takes. I have a concern that some of the amendments that we—or some members—have agreed to in order to include enforcement provisions in other parts of the Transport (Scotland) Bill will place a legal duty on individuals in organisations to fulfil those requirements, and that any prosecution will relate to those individuals and not to the company concerned. I have concerns about amendment 168 in that respect.

**John Finnie:** The principle is very well established. Intent would have to be shown for a crime to have been committed. If there is an act or admission that merits such a course, combined with intent, so be it. There is also a preventative element to the provision. I am very supportive of that principle.

**Stewart Stevenson:** I, too, strongly support the provisions in amendment 168. However, I want to get some clarity on the table that the amendment sets out, which describes an "Individual" in relation to the Companies Act 2006 and, as an alternative, a "Member" where the company's affairs are managed by its members. I wonder where and by what means such members will be identified.

**Mike Rumbles:** With the workplace parking levy, we have said that the employer is responsible for the charge. If non-compliance with the levy is an offence, we must hold companies responsible. It is right therefore that we hold responsible the relevant organisation. I thought that, in company law, directors were responsible for what a company does. However, amendment 168 refers to a

"manager, secretary or ... similar officer".

A manager does not have to be a director of a company. I do not quite understand why the Government has gone down this route, because I thought that directors of companies were responsible for what the company does.

**Michael Matheson:** By and large, amendment 168 reflects the existing law on corporate offences in Scotland.

Picking up on the specific point, the workplace parking levy is a civil matter, whereas amendment 168 deals with a criminal matter. The required threshold for a prosecution here is significantly higher than for a civil matter—it has got to be beyond reasonable doubt rather than on the balance of probability.

Let me give members an example. It could be a criminal offence for a company, in applying for a licence for workplace parking, to put false information in the licence application. It would be exactly the same if someone who owned a pub gave the wrong information on a licence application. That is a criminal offence. If the person who filled in the form gave false information because they were instructed to do so by one of their managers, that manager is the one who commits the criminal offence.

Jamie Greene raised the issue of the potential criminalisation of individuals. Let us keep in mind that any provision involving corporate offending has to be based on an investigation by the police, a report to the procurator fiscal and, potentially, further reports to be commissioned by the



procurator fiscal to determine whether an individual or a number of individuals have committed an offence. That is before the offence is even prosecuted. There are a number of checks and balances in our criminal justice system to determine whether somebody can be prosecuted in the first place. Jamie Greene's concerns and anxieties are dealt with, by and large, by the well-established principles within our criminal justice system.

*Amendment 168 agreed to.*

**The Convener:** Amendment 169, in the name of the cabinet secretary, is in a group on its own. Cabinet secretary, I predict that this might be your shortest contribution yet.

**Michael Matheson:** This may be the most anticipated amendment that the committee has considered in the past few years.

Amendment 169 inserts a technical provision into the bill to deal with the liability of the Crown for offences created by the bill and by any regulations made under the bill. The provisions in and under the bill, including offences, by default bind the Crown. However, as a matter of general policy, acts of the Scottish Parliament do not make the Crown liable for criminal offences. Instead, the liability of the Crown in respect of acts constituting offences is enforced through the civil courts. Accordingly, amendment 169 provides that the Crown may not be held criminally liable under any provision in the bill or regulations made under it.

Alongside that exemption from criminal prosecution, amendment 169 gives the Court of Session a power, on an application by the Lord Advocate, to declare unlawful any act or omission in respect of which the Crown would otherwise be criminally liable. The amendment does not affect the criminal liability of Crown servants, who may be prosecuted for offences created by the bill and regulations under it in the usual way.

I move amendment 169.

**John Finnie:** The cabinet secretary will be aware of sensitivities around the term "the Crown"; indeed, I lodged a successful amendment in relation to the workplace parking levy that specifically referred to the Crown. By "the Crown", do you mean individuals? If so, is it appropriate for individuals to have immunity?

**Michael Matheson:** It refers to organisations. Individuals are still covered by the law.

**John Finnie:** Can you confirm that every individual is covered?

**Michael Matheson:** Who would you think that we were seeking to exclude?

**John Finnie:** Would you exclude the Windsor family, for instance?

**Michael Matheson:** In relation to the Crown, the provisions in the bill are similar to those in any other bill that has been passed by the Scottish Parliament.

**The Convener:** The question is, that amendment 169 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
Greene, Jamie (West Scotland) (Con)  
Mason, John (Glasgow Shettleston) (SNP)  
Mountain, Edward (Highlands and Islands) (Con)  
Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
Smyth, Colin (South Scotland) (Lab)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**Against**

Finnie, John (Highlands and Islands) (Green)

**Abstentions**

Rumbles, Mike (North East Scotland) (LD)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 169 agreed to.*

*Section 71 agreed to.*

### Schedule

*Amendments 170 to 183 moved—[Michael Matheson]—and agreed to.*

*Schedule, as amended, agreed to.*

### Section 72—Regulations

*Amendment 184 moved—[Michael Matheson]—and agreed to.*

*Amendments 29 and 252 to 254 not moved.*

*Amendment 27 moved—[John Finnie]—and agreed to.*

*Amendment 317 not moved.*

*Amendment 279 moved—[Peter Chapman]—and agreed to.*

*Section 72, as amended, agreed to.*

### Long title

*Amendment 280 moved—[Peter Chapman].*

**The Convener:** The question is, that amendment 280 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Chapman, Peter (North East Scotland) (Con)  
Finnie, John (Highlands and Islands) (Green)  
Grahame, Christine (Midlothian South, Tweeddale and  
Lauderdale) (SNP)  
Greene, Jamie (West Scotland) (Con)  
Mason, John (Glasgow Shettleston) (SNP)  
Mountain, Edward (Highlands and Islands) (Con)  
Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine)  
(SNP)

**Against**

Rumbles, Mike (North East Scotland) (LD)

**Abstentions**

Smyth, Colin (South Scotland) (Lab)

**The Convener:** The result of the division is: For 9, Against 1, Abstentions 1.

*Amendment 280 agreed to.*

*Long title, as amended, agreed to.*

**The Convener:** That concludes stage 2 consideration of the Transport (Scotland) Bill. Thank you, everyone.

12:14

*Meeting continued in private until 12:37.*

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