



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Net Zero, Energy and Transport Committee

Tuesday 3 September 2024

Session 6



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NET ZERO, ENERGY AND TRANSPORT COMMITTEE
24th Meeting 2024, Session 6

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

*Jackie Dunbar (Aberdeen Donside) (SNP)

*Monica Lennon (Central Scotland) (Lab)

*Douglas Lumsden (North East Scotland) (Con)

*Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Carolyn Boyd (Scottish Government)

Fiona Hyslop (Cabinet Secretary for Transport)

Gillian Martin (Acting Cabinet Secretary for Net Zero and Energy)

David McPhee (Scottish Government)

Bill Reeve (Transport Scotland)

Graham Simpson (Central Scotland) (Con)

Jan Spy (Scottish Government)

Mark Sweeney (Scottish Government)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
Net Zero, Energy and Transport
Committee

Tuesday 3 September 2024

[The Convener opened the meeting at 09:22]

Decision on Taking Business in
Private

The Convener (Edward Mountain): Good morning and welcome to the 24th meeting in 2024 of the Net Zero, Energy and Transport Committee. Agenda item 1 is for the committee to decide whether to take in private item 8, which is consideration of the evidence that we will hear today on the United Kingdom Passenger Railway Services (Public Ownership) Bill. Do we agree to take that item in private?

Members indicated agreement.

The Convener: We agree, so item 8 will be taken in private.

Passenger Railway Services
(Public Ownership) Bill

09:22

The Convener: Item 2 is consideration of a legislative consent memorandum on the Passenger Railway Services (Public Ownership) Bill. I welcome Fiona Hyslop, the Cabinet Secretary for Transport, and the Scottish Government officials who are joining us today—Jan Spy; Bill Reeve, director of rail at Transport Scotland; and Fiona Brittle, senior rail policy manager at Transport Scotland. Good morning to you all. Cabinet secretary, I believe that you want to make a brief opening statement.

Fiona Hyslop (Cabinet Secretary for Transport): Thank you, convener. Good morning, members, and thank you for inviting me to discuss the legislative consent memorandum for the UK Government's Passenger Railway Services (Public Ownership) Bill. I welcome the objectives of the bill as introduced and I recommend that the Scottish Parliament should give it legislative consent.

The bill represents an important development for which the Scottish Government has long advocated—the shifting of rail services back into public ownership across the UK. The bill aligns with the Scottish Government's policy aims and objectives of a fully publicly owned railway to deliver for the people of Scotland and to achieve our vision of a reliable, resilient, affordable and accessible railway.

As members might be aware, the Scottish Government has already sought to achieve that for ScotRail and the Caledonian sleeper services as far as is possible within the current legislative framework, which is reserved. In 2022, operator of last resort deployment brought ScotRail and the Caledonian sleeper services into public ownership and control. Our duty to provide or secure the provision of services under section 30 of the Railways Act 1993 was engaged, and those services are now delivered through arrangements with our wholly owned company, Scottish Rail Holdings Ltd, and its subsidiaries.

The Scottish arrangements already align with the UK bill, and amendments to section 30 of the 1993 act will mean that those arrangements can continue on an on-going basis; indeed, achieving that aim as well as protecting Scottish devolved policy interests has been my key priority with the bill. Officials' extensive engagement with the UK Government Department for Transport and with Scottish Rail Holdings has allowed us to consider and take an informed view of the bill's policy intent since July, and I thank them for that. I also

welcome the willingness of the UK Government secretary of state to engage with me and transport ministers from the other devolved Governments on the bill and, in particular, the close working among our officials.

The bill allows services to be delivered by a public sector company as the first-choice option rather than as the last resort. It allows current public sector delivery arrangements to be permanent, which will provide a stable network on which we can continue to provide reliable, affordable and attractive services.

The bill amends the Railways Act 1993 to replace the presumption that rail passenger services should be delivered by franchises with a presumption that they will be brought into public ownership when current franchise agreements end. It expects franchising authorities, including the Scottish ministers, to provide or secure the provision of designated services according to their duty under section 30 of the 1993 act, which is currently known as the operator of last resort duty.

The Scottish Government considers that the bill engages the legislative consent process, as modifications to the 1993 act alter the executive competence. The bill removes the power to award franchise agreements and the requirement to publish a statement on how that power will be exercised, and it proposes a new duty to designate services that ought to be provided under section 30. It prohibits extending existing franchise agreements or agreeing new ones, although the UK secretary of state, as the only franchising authority still to have franchise agreements in place, will have a temporary power to make further short-term awards or extensions to incumbent franchisees in certain circumstances.

The bill amends section 30 to ensure that the duty exists on an on-going basis, and not only in circumstances when no franchise agreement is in place in respect of the services. Franchising authorities may secure the provision of services to fulfil that duty only by directly awarding a contract to a public sector company, which can be a wholly owned company.

Finally, I have another important rail-related announcement on which I would like to update the committee directly. As the announcement will be made via the answer to a Government-initiated question this morning, it would be remiss of me not to use the opportunity provided by this morning's meeting to give an update.

I am announcing today that the Scottish Government has agreed to ScotRail moving to replace the intercity high-speed train fleet that operates between Glasgow, Edinburgh, Aberdeen and Inverness. More than 4 million passenger journeys were made on intercity trains in the past

year, and I want to maintain and, where possible, increase that number. This planned investment will ensure the reliability of our intercity routes for the long term, reduce emissions from intercity services and support our efforts to decarbonise Scotland's railways. The contract notice will be published in a few weeks, and I will update the committee on progress.

In the meantime, I thank you for inviting me to discuss the legislative consent memorandum for the UK Government's Passenger Railway Services (Public Ownership) Bill, which I am happy to answer questions on.

The Convener: Thank you, cabinet secretary. That was an interesting announcement, and I am sure that members will be considering the questions that they want to put on it when they come to the end of the first lot of questions that we have already discussed.

I also need to make an apology, as it was remiss of me, when welcoming the Government officials, not to welcome our colleague Graham Simpson, who will be asking questions at the end of the session. Please accept my apologies if I appeared to ignore you, Graham—you were not ignored.

Douglas Lumsden will ask the first question.

Douglas Lumsden (North East Scotland) (Con): Good morning, cabinet secretary. My first question is about the fact that ScotRail and Caledonian Sleeper are already in public ownership. Do you have any concerns that the legislation that is coming through will force Scottish ministers always to consider public ownership first and that it will take away the Scottish Government's right to move services to a private company?

Fiona Hyslop: The Scottish Government's policy decision is that our preference is for public ownership—and, similarly, that is the new UK Government's preference. I think that there were also continuing concerns during the previous UK Government as to whether public ownership was the right way forward.

Different Governments can make decisions at different times about what their policy priority is. The bill aligns with the Scottish Government's approach, which is why we are saying that we want Parliament to give consent to it.

The decision would be up to a future UK Government. This is a reserved area, so we must ensure that our powers, which we have used to our best ability under devolution, can be protected, and that is what we are doing. As I said in my opening remarks, the current rail service operation is on a more temporary basis; the bill will put it on a more permanent one.

09:30

I think that your point is about what would happen if a future Scottish Government took a different decision. I will give my understanding of how the UK Government has framed its position; I might bring in Bill Reeve on the technicalities. There is currently a presumption in favour of franchising, with an exemption for an operator of last resort, which we have used. The bill will flip that, so that the presumption is that there will be public ownership. That does not preclude a private company from operating in the future—there would be a period of designation that would allow the UK Government to decide on that at some point, if it chose to. That is my interpretation of how the UK Government has framed the legislation.

I understand that the legislation would operate with an interplay between sections 24 and 30 of the 1993 act, but the UK Government is doing that in quite a technical way. I would interpret that in layman's terms as leaving a window open and not closing it completely. Bill Reeve can explain the technicality of what the UK Government is doing and can correct me if I have misrepresented it.

Bill Reeve (Transport Scotland): You are exactly right, cabinet secretary. I will also turn to Jan Spy for any particular legal detail that we need to explore.

The bill proposes to amend section 24 of the 1993 act in a way that would allow the cabinet secretary to designate an exemption for services that are covered by the section 30 presumption of public ownership. That would not remove the need for any alternative arrangement to be subject to the various procurement rules that might be enforced at the time. It is not clear to us how that would be exercised and, as a matter of policy, it is not something that we would choose to exercise. Would Jan Spy like to add anything?

Jan Spy (Scottish Government): No—you summarised the position well, thank you.

Douglas Lumsden: I will follow up. The cabinet secretary is right that this is a policy decision at present. I completely respect that there is the preference of the Scottish Government, but is it not the case that what is coming through will take away the ability to do something different? The Scottish Government has the ability and right to make decisions on Scotland's railway, but that will be eroded slightly by what is coming through here.

Fiona Hyslop: Well, you might say that the UK Conservative Government eroded the option of future UK Governments to have public ownership. That is what it did when it privatised the railways. It is open to any UK Government to overturn that in the future, and that is exactly what the incoming UK Government could do.

As for the sections, I make the important point that I am interpreting the UK legislation; it is not our preference or our policy. We believe that public ownership is the right way forward, which is why we took the steps that we did. We were the first to do so, and I think that, in recognition, the UK Government is now catching up to the position that we have been in.

If it helps, I have found the provision that might reassure you on whether the options would be there if, at some unlikely point, a Government came into Scotland that wanted to do something different. Our understanding—remember that this is what the UK Government has put in—is that the bill amends section 23 of the 1993 act so that the Scottish ministers will have a duty, from time to time,

“to designate services”

that

“ought to be provided under section 30”,

rather than under a franchise agreement. The bill will also amend section 24, which I referred to, so that the Scottish ministers could exempt services from such designation and allow for them to be provided otherwise than under section 30. That is very technical, but we understand that that is what the UK Government is doing.

If services were exempted from designation by order, the duty under section 30 would not apply and the Scottish ministers could make alternative arrangements to secure the provision, which could include a contract award to a private operator. That is our understanding of what the UK Government is doing—as I said, it is leaving the window open. That is not our preference, but the provision is in the legislation.

The Convener: Cabinet secretary, you have made an announcement that, truthfully, I need a moment to consider. I do not know whether this is possible, but it would be very helpful if you could share what you read out with the committee clerks now, so that that can be circulated to committee members for them to look at when considering their other questions. Truthfully, I did not catch all that you just said and its ramifications.

Fiona Hyslop: I am happy to do that, if we can find a technical way of doing so. I am sure that my office is watching this session and that we can find a way of doing that.

Jackie Dunbar (Aberdeen Donside) (SNP): It is in the email.

Douglas Lumsden: A GIQ is coming on that.

The Convener: Okay. Fine. Thank you for pointing that out to me. As you can imagine, I do not have time to look at my computer while I am trying to convene this meeting. I now know that

there will be a GIQ, and the clerks will make sure that committee members get that.

I apologise for that interruption, and I thank members for pointing out that information, but the—

Fiona Hyslop: Convener, I also want to say that, as you know, I have the utmost respect for the Parliament, and it has always been open for ministers to make announcements in chamber or in committee.

The Convener: Cabinet secretary, I am delighted that you chose the committee to do that, and I am not criticising you for that. While I am trying to convene the meeting, I am also listening to what you and other members are saying, so it would be helpful to have that information in front of me. I can have that now, so that is perfect.

Fiona Hyslop: Excellent.

The Convener: Please do not take that as a criticism.

Monica Lennon wanted to ask a question.

Monica Lennon (Central Scotland) (Lab): Yes, and I will maybe come back with questions about the announcement at the end.

The Convener: Yes, please.

Monica Lennon: Good morning, cabinet secretary. In your helpful opening statement, you were really clear that the bill will facilitate policy alignment between the Scottish and UK Governments. That is positive and well understood. Will you say a bit more about ScotRail and the Caledonian sleeper service and how the Scottish Government envisages that publicly owned cross-border railway services will interact with or work alongside those services? For example, are there any downsides or impacts that will need to be mitigated, or, overall, does it feel like a positive measure?

Fiona Hyslop: Obviously, any rail disruption causes issues and problems for commuters, as we all know. We have not had the same degree of industrial action as has taken place over the past number of years in England, which I think has caused the majority of the cross-border problems.

There might be interaction between cross-border problems as a result of industrial action or, indeed, as a result of problems like the one that I experienced with LNER on Sunday. It seemed that everybody travelling from Waverley station who was going south to London had to turn up at Haymarket instead, which made it rather congested. My understanding is that that was as a result of a breakdown—and breakdowns happen.

Some of the issues will occur on an operational level. However, I hope that there will be a degree

of stability in the system. I think that pay negotiations are being finalised, and I am very pleased that the rail unions are recommending that the Scottish pay offer is accepted. I understand that something similar is being attempted in the rest of the UK, which is welcome.

There is a combination of things. Public ownership in and of itself has, I think, stabilised our relations with the trade unions. They have said that relations have been in a much better place since public ownership. Will it be the same with the UK Government? I would hope so, but we obviously have not seen evidence of that yet.

Another benefit of public ownership is that we are focusing on passenger service delivery as opposed to companies seeking profit. That allows reinvestment in the service. It is quite telling that 400 additional staff members have been employed since public ownership. A lot of those are front-facing and public safety roles. The figure includes 260 new drivers, and another 160 drivers are being recruited currently. Replacing drivers is always a challenge. People retire, they can work for other companies and so on. Ensuring that we are not dependent on overtime and rest-day working is a common interest, and trying to achieve that is the right thing to do. Trade union members are perfectly entitled not to work on a rest day or to do overtime.

If there could be more stability in the system, that would really help everybody. It would mean that we would not have to have the temporary timetables that we have seen. The major disruption that is caused by strike action in the rest of the UK has had knock-on effects.

It is all quite complex. I am not going to assume that public ownership will suddenly resolve everything and that everything will be okay. Some of the issues will be at the operational level, and what happens will depend on the attitude of the employers and their behaviour towards their workforce. There are many challenges ahead. There always are, as I have realised since taking on the transport brief.

Monica Lennon: That is helpful. I remind the committee of my entry in the register of members' interests: I am a member of the National Union of Rail, Maritime and Transport Workers parliamentary group.

You talked about the importance of investing in the workforce and having good industrial relations, which help with passenger safety and passenger experience. From your early discussions with your UK Government counterparts, are you feeling more optimistic that there can be that stability and a policy approach of goodwill towards the workforce that will mean that we will see an

improved picture across the railways, not just in Scotland but across Great Britain?

Fiona Hyslop: There is much to do. I have met Louise Haigh. I would like to thank again the parliamentary authorities, the committee and the committee clerks for their co-operation on the LCM, because, obviously, we had to do this at pace during the summer, because Parliament was in recess, and I did not want us to be left out of it, which could have happened. I am very appreciative of my officials and of the UK Government officials. I am working with the minister to align things because something happened when our parliamentary terms did not align. That has been good co-operation.

I have not yet met Sir Peter Hendy, the new UK Minister for Rail, although I did meet him when he was in his previous position as chair of Network Rail. I hope and intend to meet him.

Monica Lennon: Thank you.

The Convener: Thank you, Monica. Jackie Dunbar, I fear that your question might have been answered so I will move on to the next one, if you are happy to allow me to do that.

The deputy convener has some questions.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Good morning, cabinet secretary. You have touched on the engagement that you and your officials have had with UK officials and UK ministers, and it seems as though that has all been very positive and there have been good intergovernmental relations on the bill. Has there been any further discussion on possible wider reform of the British rail industry? The Scottish Government is a leader in the renationalisation of our railways. Is there anything that the UK Government is learning from Scotland?

Fiona Hyslop: There is indeed, and, to be fair, it started under the Conservative Government with the proposal to integrate track and train. Scotland has already done that. We work very well with Network Rail and ScotRail and that work provides efficiencies in investment and planning. I visited the control centre and discussed the multiple storms that we had last year and how we react when there are major weather-related disruptions. The integration of track and train is a positive step forward.

Members will be aware that the previous UK Government seconded Alex Hynes into the Department for Transport to work on the rail reform legislation. I gave evidence on that and I shared my evidence with the committee. That legislation is a step forward for England and Wales but I have concerns about how it might operate in Scotland. The incoming UK Labour Government has picked up the baton on that, and our

understanding is that it will take forward a more substantial piece of legislation, which will be the formation of Great British rail. That is the legislation that the committee should take a close interest in. I certainly am, as cabinet secretary, because we do not want to see complete centralisation that would undermine the progress that we have made in integrating track and train.

We want to operate and co-operate with that in a positive way. I communicated some of my concerns to the then chair of Network Rail, Sir Peter Hendy, who is the new UK Minister for Rail, so he should be familiar with them. The issues and concerns that I expressed when I gave evidence to the UK Transport Select Committee just before the close of the UK Parliament still stand.

09:45

We have yet to see the substance of that legislation. Given the level of co-operation that we have engendered to date, I hope that there will be a practical way forward to ensure that my concerns will be addressed. Obviously, there is more to do. The bill is short and sharp; it is about bringing rail into public ownership at the end of each franchise.

More substantive rail reform legislation is still to come, and we will need to keep a close eye on that when it is published. In advance of that, I hope that the relationships that we have built to date, at both official and ministerial level, will stand us in good stead so that we can try to make sure that our interests in Scotland are protected.

The Convener: I am looking around the table. Mark Ruskell, I think that I cut you off. You might have wanted to come in on an earlier question.

Mark Ruskell (Mid Scotland and Fife) (Green): I will come in on that briefly.

I am also interested in the wider picture of rail reform and I am wondering where that is at the moment. The bill has been a good first start on improving relationships between the two Governments and, I hope, between all devolved Administrations and the UK Government. The next most substantial reform will be to set up GB rail. What timeframe do you see for that coming through and will the Scottish Government be directly involved in its governance? Is there a clear model for how devolved Administrations will be involved in that?

Fiona Hyslop: The clear model, which I will continue to set out, is for rail services to be fully devolved to Scotland. I have already stated that in my meeting with the UK Secretary of State for Transport. The right way forward for Labour would be for it to recognise devolution and that Scotland has been leading in much of the policy direction

that it wants to go in. If, following the understanding that we can have devolved operation of transport services, Labour wanted to copy our model for the rest of the UK, it would be a shame and, I think, a retrograde step if it centralised rail. That would be problematic, and I would like to see the full devolution of rail services.

It is early doors and, to be fair to the new incoming UK Government, it is focusing on the immediate legislation that we are discussing. I hope that the atmosphere is favourable and there can be an understanding. I would hope, with Alex Hynes having been seconded into the UK Department for Transport, that there will be an understanding in the centre of the UK Government of Scotland's position and the opportunities that exist.

I am not sure whether there have been discussions at official level on the likely timescales for the next phase of the establishment of GB rail.

Bill Reeve: At the moment, we do not have firm dates for the next step. We know that a rail reform bill will follow. I would characterise the discussions with our UK Government colleagues as constructive and perhaps as having been more open in recent weeks and months. We look forward to co-operating with them on the rail reform bill. At the moment, with regard to the matter under consideration, we have seen no substantive provisions from colleagues on how devolution will be treated alongside rail reform. We have asked clearly to be engaged in those discussions in order to help to shape the legislation in a satisfactory manner, and we expect to secure that opportunity.

Mark Ruskell: That is useful.

I have a question about open access operators, such as Lumo and Grand Union, which are coming in and utilising space in the rail network. Will those contracts continue?

Bill Reeve: We have yet to see the specific provisions that any rail reform bill may contain. I think, from discussions, that our expectation is that existing operations would be permitted to continue, but I could not answer that definitively until we see the details of any bill.

Fiona Hyslop: Even just looking at the LCM-related legislation, we can see that establishing the timeframe for when franchises might come to an end will be a challenge. The approach will not be to have full-scale nationalisation on day 1; it will be a rolling issue.

On the wider issue of GB rail reform, I am conscious that this committee has a full agenda and that your interest in the issue is similar to ours. Therefore, I undertake to keep in close contact with the convener and the clerks to share

what we know about timescales for scrutiny and engagement, so that our work can be aligned and we can all take the opportunity to ensure that Scotland's interests are protected.

Mark Ruskell: Do you have a view on the open access operators? Would you prefer the entire rail network to be brought under national control?

Fiona Hyslop: There is an underutilisation of the potential of what we have in our railways, and there are different ways of trying to resolve that. There is far more that can be done on freight, and I am keen to do that under control period 7. We have strong targets under CP7, and I am glad that the UK does, too. However, when it comes to utilising our rail tracks, there are a lot of moving parts, as it were, not least in terms of what is electrified, what is not electrified and what that means in terms of speed and so on. Obviously, the fact that some operators are cutting cross-border services to Scotland does not help. Of course, as we have seen recently, some of that space has been filled by open access operators, and we have to watch where things are going on a UK basis.

Bill Reeve: On the timing of the legislation, I have just been reminded that we have been told that it is expected to be introduced in Westminster before the summer recess next year. We have no more details than that.

The Convener: The example of Lumo is interesting because a lot of people benefit from being able to get reduced fares as a result of an operator coming in from outside, and I am sure that you will bear that in mind.

My question relates to the issue of money operating in a round-robin fashion. Network Rail gets around £2.1 billion a year from train operating companies, which helps to finance Network Rail, and about £58 million comes in from freight. If you take the train operating companies out, they will no longer be making contributions, so the money for Network Rail will have to come from the Government.

I know that you will probably say that the Government already gives money to private operators to run the services, but are you convinced that the proposal will not lead to increased costs for running the track, given that more than 50 per cent of Network Rail's budget currently comes from private operators? Are you satisfied that funding for the railway lines will not decrease?

Fiona Hyslop: I cannot speak for the UK Government, but I can speak to our experience over the period of our public ownership of rail. Remember that it has been quite a short period. With the establishment of Scottish Rail Holdings Ltd and with our pressing down on spend, we

have managed to reduce costs rather than have costs increase. We have seen substantial passenger-number increases—I will look up the figures later but, obviously, they have increased substantially since the pandemic period. Our satisfaction levels are the third or fourth highest in the UK, and that figure has increased, with the latest finding being a satisfaction level of 91 per cent. Under our public ownership, good things are happening in terms of cost and satisfaction levels. Performance levels have gone down, but that is because things were more efficient during the pandemic, as there were fewer passengers and so on.

I think that our experience to date indicates that public ownership has benefits.

The Convener: I do not want to get into whether public ownership has benefits. What is slightly concerning to me is that the public performance measures for ScotRail have gone down. We are told that a lot of that is to do with problems south of the border that result in trains coming up late—that is the excuse that we are given, despite the fact that the service has been cut. I want to be sure that reducing the amount of money that private companies contribute to Network Rail is not going to exacerbate the problems and is not going to affect Caledonian Sleeper Ltd, which uses rails south of the border to provide the service. Are you convinced that there is not going to be an increased cost or a diminution of access to the tracks south of the border?

Fiona Hyslop: I will bring Bill Reeve in on that. However, our investment in Network Rail using the current system—remember that CP7 is the first control period that we are going into with public ownership—has gone up substantially. We have a pipeline of activity and works, so the investment is in place.

You are probably trying to get at the displacement of funding from the private companies and how the Government accounts for that. I can give you evidence on what we have done. We are the trailblazers in that area because we have done it for the past two years. I cannot speak for what the new UK Government will do: that would be speculation. From our experience, it should be positive, but I cannot give you firm commitments because I am not responsible for the UK Government's decisions on the matter.

I ask Bill Reeve whether he can enlighten us about the private train operators' investment.

Bill Reeve: The efficient cost for the infrastructure that Network Rail delivers is determined independently by the Office of Rail and Road through the five-year control period process. I think that you are touching on how that cost is

met, convener. There are two principal sources: one is a direct grant from Government, including the Scottish Government for Scottish infrastructure, and the other is track access charges. There is a small contribution to the track access charges from freight companies.

The Convener: It is £58 million.

Bill Reeve: Indeed.

There is also a small contribution from open-access operators—it is very small—but the rest comes from franchises or section 30 operated publicly owned operators. To be honest, there is a bit of a trade-off regarding whether that is funded through the franchise contract from a combination of revenue and franchise payments from Government, or through the direct grant.

The answer to your question is that we should focus on the efficiency of Network Rail's delivery rather than on how those costs are funded. I am not sure that I have seen much in the funding mechanism that has driven that efficiency, as distinct from the relentless focus on efficiency of delivery of that work.

Fiona Hyslop: I undertake to ensure that the point is made to the UK ministers and that they are asked whether they can identify how the costs will be met.

On the more substantive point, which is about how we get efficiency out of Network Rail and deliver value for money for the £4.2 billion that the Scottish Government is contributing over CP7, I have already made arrangements to meet the ORR biannually. I will meet its board to ensure that the ORR ensures that Network Rail delivers. The ORR is the regulator to ensure that we get value for money and delivery. That is the substantive mechanism to ensure that Network Rail delivers. I have, if anything, intensified my discussions with the ORR.

The Convener: Okay. My point is that I want to know what the true costs are, that they will be met and that the change will not affect services in Scotland in any form. In the past, we have heard that poor railway network maintenance has resulted in reduced services in Scotland. I am sure that you will work on that.

Graham Simpson, do you want to ask any questions on this matter before we go on to the announcement that the cabinet secretary made?

Graham Simpson (Central Scotland) (Con): Yes. Thanks, convener.

Mark Ruskell asked about the open-access operators such as Lumo. I was not clear from your answer, cabinet secretary, whether you think that such an arrangement should continue.

Fiona Hyslop: I am fairly open on open access because there are opportunities that have not necessarily been fulfilled. Open access challenges the main operators to ensure that they have better services. However, that will be more an issue for the UK Government, because most of those services are cross-border services. Therefore, as the bill progresses through the House of Commons, the matter will be subject to scrutiny.

Open-access operators operate even though we have public ownership of the railway in Scotland. That is primarily because of the arrangements that the UK Government makes. I think that we have the space for that. I do not think that it is problematic, but that depends on the extent and scale of open access and whether it is seen as being a few companies doing it on occasion, as opposed to there being a full roll-out of open access and so on.

The issue is more for the UK Government, but we will keep a keen interest in it.

10:00

Graham Simpson: It comes down to track capacity, does it not?

Fiona Hyslop: Yes.

Graham Simpson: From your answer, can I take it that you quite like the choice that the situation offers customers?

Fiona Hyslop: The impact is still to be assessed. I see that it is operating and I have no difficulty with it, but it is not the main issue that we are dealing with just now.

My first answer was clear that where there are opportunities in terms of track access, open access has worked. It has, in many cases, replaced services that have been withdrawn, but it is a different operating model, a different pricing model and has a different position. The UK Government can do that for particular reasons. It is not an area that I have had discussions with the UK Government about, so I am just saying that the jury is out on it, but the way that it has operated to date has helped to use existing track availability.

Graham Simpson: You spoke earlier about your wish to see rail being fully devolved. What exactly do you mean by that?

Fiona Hyslop: The operation of track and train is still fully determined and fully decided by the UK Government, under the Railways Act 1993, and issues still have to be referred to, approved by or agreed by the UK secretary of state. The real problem that we had with the Conservative Government's rail reform legislation last year was that even had we wanted to make decisions about franchising or other areas, we would have had to

seek permission from the UK secretary of state. This is about making more permanent the powers that we have.

I will continue to have that discussion with the UK secretary of state as the UK Government's second major piece of legislation on Great Britain rail reform comes through.

Graham Simpson: But the legislation that the committee is considering today—I go back to Douglas Lumsden's line of questioning—tells the Scottish Government and the Welsh Government what they have to do. If a future Scottish Government were to say, "We actually think that we need a different model," there is a piece of legislation that says, "No—you have to do this as your first option." As someone who has spoken passionately about devolution, surely you must think that that tramples all over devolution, does it not?

Fiona Hyslop: We either deal with where we are now or we determine that we want to try to cause a fight about the principle of decision making on the issue. It is the case that rail legislation remains reserved. That is why I am referring to the main piece of UK legislation that is coming and our opportunity to have full devolution through it. While UK rail legislation remains reserved, I have the opportunity to ensure that what is a temporary system of public ownership becomes a permanent system of public ownership. I am going to take it; I think that it is important that we take that opportunity.

I could have just said, "Well, that's it. It's the summer recess—they can get on with it at some point in the future and we'll try to get some changes down the line," but you know that when you have an opportunity for UK legislation—or, indeed, Scottish legislation—to deliver the policy output that you want, you take the opportunity. That is why, while UK rail legislation remains reserved, I want to make sure that the Scottish interest is protected, and the Scottish interest is protected by our recommending that Parliament approve, with legislative consent, the opportunity to make sure that the temporary public ownership of rail becomes permanent.

Graham Simpson: But that is because you agree with—

The Convener: Sorry—I still am the convener. I will let you have one more question, then I will move on.

Graham Simpson: One more?

The Convener: Yes—the one that you are asking now.

Graham Simpson: Thanks, convener.

Cabinet secretary, this is happening because you agree with the policy of the current UK Government. I am talking about a future Scottish Government taking a different view. This legislation says, “No, no, no—you must do nationalisation.” Knowing you as I do, I think that, in the past, you would have been jumping up and down about it if the previous UK Government had attempted to do that.

Fiona Hyslop: On that note, I look forward to—

The Convener: I will let you come back in, cabinet secretary, and then I am going to move on to the very important question that Jackie Dunbar asked just before the committee meeting, which has allowed you to make your statement.

Fiona Hyslop: If I may, I would like to address Graham Simpson’s point. I look forward to Graham Simpson agreeing with the Scottish Government—and, I assume, voting with the Scottish Government if we bring this to Parliament—that rail services should be fully devolved, which would enable Scottish Governments of any colour to decide what policy on rail they want. I am looking forward to that support.

The Convener: That was nicely parked, minister.

Let us move on to the announcement that you have made to the committee this morning. I reiterate that I am delighted that you made it to the committee—I just want to make sure that committee members have a chance to ask questions about it. Douglas Lumsden has indicated that he wants to ask a question, as has Bob Doris.

Douglas Lumsden: On the announcement, are there any timescales for replacement of the HST or intercity 125 trains, which are going to be 50 years old next year? In the written answer, you say that the decision follows a process of appraisal to look at different options to replace the trains. Can you give us a bit more information on that? Are they going to be diesel, electric or hybrid? What are you going to be purchasing?

Fiona Hyslop: That is an important question. I have been asked in the committee before about replacement of high-speed trains. We have taken the decision that ScotRail can go forward with procurement. It is going to run an open competition for replacement of trains, so it is not possible to say what type of trains they will be. That will be set out when it runs that competition. The requirement will be for trains of an intercity type to serve long-distance travellers, with corresponding levels of passenger comfort and amenities.

On timing, the procurement will start, in relation to the issue of contract details for the procurement, in the next few weeks. As a result of the procurement, there will be determination of what type of trains they will be. We certainly want to achieve carbon reductions. The extent of electrification that is required, for example, will be determined by the outcome of the procurement exercise. However, it is important to reassure you that the cost of infrastructure to support the replacement is part of our financial planning, so we have worked closely with the Exchequer and finance officials to ensure that the potential capital requirements are understood.

As I said, the type of train will be determined in the outcome of the procurement exercise. Any modern train will be cleaner and greener than its predecessor, so I say to members who have asked questions in the chamber about the comfort and experience of passengers that those things will also be improved.

I give the commitment, as I have done in my correspondence with the committee, that we will keep you updated on progress, which will give you some indication of the timeline. However, we are at the start of the process; I thought it important to come to the committee and let you know that the process has now started. We will keep you updated, which will give you the answers that you probably want as to when, where and so on, but we need to let the procurement exercise start.

Douglas Lumsden: What has the appraisal, which has already been done, shown? Will that be released to the committee?

Fiona Hyslop: That assessment helped us to make sure that we have our finances in position and are capable of dealing with the potential procurement. That exercise has been done. Our job now is to let ScotRail get on with the procurement, which is what I am announcing to Parliament will happen.

Douglas Lumsden: I am sorry, but will the committee get to see the appraisal?

Fiona Hyslop: Can I take that question back and think that through?

Douglas Lumsden: Of course.

The Convener: Bob Doris wants to come in, then Monica Lennon.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): I have a couple of brief questions, cabinet secretary. First, can I check whether the announcement today is set in the context of the 2022 strategy and the Scottish Government’s commitment to replace 65 per cent of the train fleet, or about 675 carriages? That was placed on the Public Contracts Scotland website

at the time. Is the announcement part of that wider modernisation and decarbonisation process?

Fiona Hyslop: The other thing to let the committee know is that we obviously have the new climate change plan, which the committee will consider. As I have told you before, we will have to refresh the decarbonisation plan, which we will do, and it will come shortly after the climate change plan because we have to align it with that.

In terms of where we are now, I cannot get into the detail of carriages yet. If there is anything that I can follow up on about where that sits within the 2022 commitment, I will be happy to do so. It sits in our wider plans for Scottish rail. As I said, we are already taking action. Barrhead is electrified and work on East Kilbride is commencing, which will have an interchange and so on. Obviously, there are challenges elsewhere.

Seventy-five per cent of passenger journeys are currently on electric trains, which is good. However, you were talking about numbers of trains. Again, there is an interplay. Since public ownership, there has been a 7 per cent increase in the number of passenger seats. When it comes to 200 journeys operating to full timetable, we acknowledge that we are not currently doing that.

Bob Doris: That is helpful. There was an announcement in 2022 that 65 per cent of Scotland's train fleet would be replaced as part of modernisation and decarbonisation. I was just trying to check whether this initiative sits as part of that wider commitment. I am happy to take more information at a later date, cabinet secretary.

My second question is about the procurement process. Clearly, I want to make sure that Scottish companies can be part of the procurement supply chain. As I have done before, I note that I am delighted that the Caley works has reopened in Springburn and is now in the business of modernising and building trains, through Gibson's Engineering Ltd. I just want to make sure that Scottish companies—wherever they are in Scotland—can be part of that huge economic, employment and skills opportunity, and get a slice of that very welcome announcement. Will the procurement process make sure that there is weighting towards Scottish supply chain businesses?

Fiona Hyslop: It will be an open procurement, to ensure that we have value for money and deliver what we need in terms of passengers, track and train. As you might appreciate, I do not want to comment on any individual company.

Bob Doris: Of course—absolutely.

Fiona Hyslop: That would not be appropriate, particularly as we are about to move into procurement. However, I think that everyone has

heard what you have had to say, and I am sure that there will be a lot of sympathy towards that from many people.

Monica Lennon: You said that the announcement provides a path towards a decarbonised intercity network. In your statement, you talked about the potential for a reduction in emissions from intercity services. Can you advise the committee by how much emissions will reduce? What does the modelling say on that?

Fiona Hyslop: Any replacement will need to ensure that it supports a greener fleet. That is one of the clear points that I want to make. However, it will be an open procurement, so I cannot give a figure until the procurement is concluded. I hope that you can appreciate that. A reduction is my commitment, but I cannot say by how much, because the procurement is only just starting.

Monica Lennon: Okay, but are you confident that there will be a reduction in emissions as a result of the investment?

Fiona Hyslop: Yes, that is part of our requirement.

Monica Lennon: Okay. Briefly, to build on Bob Doris's questions about the supply chain as it affects community wealth building—to make sure that the investment benefits people and communities in Scotland—how does today's announcement fit with the Scottish Government's wider aspirations and commitments on a just transition? Do you expect that it will make a significant contribution to green transport and good jobs for the climate?

Fiona Hyslop: Any investment in rail is good for the rail industry. From here, I will go to speak at lunch time to the Railway Industry Association, which represents a number of Scottish companies and international companies that are based in Scotland. Our approach to rail is looked on with envy from other parts of the UK, because we have had a constant pipeline—whether of track or train—in procurement and, obviously, there are supply companies in that firmament. As part of our contribution to the economic wellbeing of Scotland, we very much want that area—and jobs, apprentices, the skills base and everything else within it—to progress. That is all part of how we see the rail industry in Scotland.

The rail industry and rail provision in Scotland are not just about providing passenger transport, core though that is: they are also about the economic, social and environmental impacts. We look at things in the round in that context, and we are working closely with rail unions in that regard.

10:15

Graham Simpson: How many trains are we talking about?

Fiona Hyslop: The open procurement process will establish the optimum requirement for delivery of the trains. I have talked about improvements in passenger service, and ScotRail will establish and publish the contract details in the coming weeks.

The Convener: I have a final question. This is good news, as far as it reads, but my concern is that it would cost a massive amount of money to electrify the two most difficult railway lines—the one from Perth to Aberdeen and the one up to Inverness. We have seen the cost of electrification between Glasgow and Edinburgh, but those are the two lines that need most investment and most trains, because diesel trains are used to chug up there. If there is an open contract, surely people will go for the easy option and, yet again, Aberdeen and Inverness will be left on the sidelines with old trains—or will you ensure that that does not happen?

Fiona Hyslop: In relation to operation for Inverness, Aberdeen, Dundee and Edinburgh, it is important that the lines for those four cities are all supported.

I understand that 25 trains are being replaced—someone has helpfully indicated to me that that is the number.

The Convener: I hope that you are right. Inverness has often been last to get investment, whether it be in roads or rail, so it will be interesting to see what happens.

Thank you for making the announcement to the committee and for answering our questions. I will briefly suspend the meeting to allow for a change of witnesses.

10:17

Meeting suspended.

10:22

On resuming—

Subordinate Legislation

Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024 [Draft]

The Convener: Welcome back to the meeting.

I apologise for the fact that we are running a wee bit late, as another item was added to the agenda earlier. However, if people can keep their questions short, I might be able to get us back on schedule.

Agenda item 3 is consideration of a draft statutory instrument. I welcome Gillian Martin, the Acting Cabinet Secretary for Net Zero and Energy—thank you for making yourself available for this session, cabinet secretary. I also welcome, from the Scottish Government, David McPhee, deputy director, circular economy; Mark Sweeney, senior policy adviser, product stewardship; and Carolyn Boyd, who is a lawyer. Thank you all for coming.

The instrument is laid under the affirmative procedure, which means that it cannot come into force unless the Parliament approves it. Following the evidence session, the committee will be invited, under the next agenda item, to consider a motion to recommend that the instrument be approved. I remind everyone that Scottish Government officials will be able to speak during this item but not in the debate that follows.

I invite the cabinet secretary to make a short opening statement.

The Acting Cabinet Secretary for Net Zero and Energy (Gillian Martin): I will keep it brief, convener. Thank you for the invitation to give you evidence this morning.

We want to ban the sale and supply of single-use vapes in order to make our communities greener and healthier. Research commissioned by the Scottish Government found that up to 26 million disposable vapes are consumed in Scotland in just one year, and that that consumption involves between 800 tonnes and 1,000 tonnes of packaging. It also found that, of those vapes, an estimated 10 per cent were littered and more than half were incorrectly disposed of.

It is not just a problem in Scotland: across the UK, 73 per cent of vapers say that they throw away single-use vapes, which leads us far from the circular economy that we are all trying to build. The lost lithium is equivalent to throwing away the lithium in 5,000 electric vehicle batteries every year. Some 5 million single-use vapes are thrown

away every week in the UK, and it is estimated that, of the single-use vapes that are returned to shops or sent to recycling centres, only 1 per cent are recycled, due to the complexity of doing so. Batteries from electrical items, including vapes, have been responsible also for approximately 700 fires in bin lorries and at recycling centres in the UK, and that impact has been felt keenly in Scotland.

This year, 54 per cent of vape users under 18 said that a single-use vape was the vaping device that they use most frequently, so action clearly needs to be taken. In last year's programme for government, we therefore committed to take action to tackle the environmental impact of single-use vapes. We have consulted on the policy proposal, the draft regulations and impact assessments, and we have worked very closely with the respective Governments across the UK to align our policies, and we have laid the draft regulations before you today, in keeping with our commitments.

If the draft instrument before you is passed by the Parliament, it will ban the sale and supply of single-use vapes in the course of business in Scotland from 1 April 2025. That date was agreed with the other UK nations, which are also implementing a ban. We are the first to lay regulations for the policy, and each nation will bring its own legislation in due course. The ban will reduce waste and the number of single-use vapes littered, and it will tackle our throwaway culture by encouraging more sustainable behaviour.

We have worked very closely with trading standards officers to ensure that they have the necessary powers to enforce the regulations, which reflects their feedback through our various consultations. We will continue to work closely with them as we move towards implementation.

From litter on our streets to the risk of fires at waste facilities, single-use vapes are increasingly an issue for our environment, local communities and young people. The draft instrument is a crucial step in tackling their environmental impact, and I urge you to support it. I am happy to take any questions.

The Convener: Thank you, cabinet secretary. Jackie Dunbar has the first question.

Jackie Dunbar: Good morning, cabinet secretary. My first question has probably been answered, but is there anything further that you wish to add as to why the Scottish Government feels it important to implement the regulations, especially just now?

Gillian Martin: We want to take single-use vapes—or disposable vapes, as they are better known—out of the economy altogether. For a

number of reasons, there is no ability to recycle them, even if they make it to recycling plants. The process is quite a manual one. Disposable vapes are not designed to be taken apart or to be recycled.

I have spoken about the volume involved. If local authorities had to recycle disposable vapes, it would cost them £200 million. There are a number of advantages to taking them out of the equation completely. First, they will not be littering our streets. As everyone here will have noticed over the past few years, once we spot one of them in the street, we spot 10 of them. When they go into a bin, they are going in with the general rubbish. As I mentioned, there is lithium in there, which is a very precious resource. We often mention that there is not enough lithium available for the larger batteries that we need for EVs. Cumulatively, vapes have a large amount of lithium in them, which is ending up in general waste.

The ban will have a health impact, too. We know that many of the uptakers of the single-use vapes are likely to be under age. They are getting hold of them somehow—that is what teenagers do. The vapes are very attractive. They often have flavours associated with them that are attractive to younger people. If we take them out of circulation, younger, underage people will be less likely to access vapes, because they will not be likely to buy a rechargeable and reusable one, for so many reasons. There are a number of advantages to the measure.

Fires have been associated with vapes. If they are not disposed of properly, they are likely to go into general waste and cause a fire in a bin lorry. There have been so many instances of that happening already. As I say, there are a huge amount of advantages to the ban. The draft instrument is a set of environmental regulations, but they reach more widely than that, including into health.

Jackie Dunbar: It is vital that we separate the single-use vapes from the vaping products that are used as a smoking cessation tool. I am a former smoker who used to use vapes, so I know the benefits of them.

Did I hear you correctly, cabinet secretary? Did you say that local authorities have costs of about £200 million per year?

10:30

Gillian Martin: No. If we were to put in place a requirement for local authorities to collect and recycle these types of disposable vapes, that would be the cost of it. They are extremely expensive to recycle because, as I say, they are not designed to be taken apart easily. In effect,

you would have a person breaking them open and separating them into their component parts. By taking them out of the waste equation altogether, we are getting rid of that difficulty. Even if we were to recycle them, and even if we were to go down the route of saying that they have to be recycled in a certain way, the cost would be huge. As I mentioned, only 1 per cent of the ones that are brought back or put into recycling are recycled properly anyway, given the difficulty of recycling them. Most of them go into general waste or are thrown down in streets, into hedgerows or out of cars.

Jackie Dunbar: I am sorry; I picked that up wrong, and I apologise. Do we know the current cost to local authorities of single-use vapes?

Gillian Martin: I am not sure whether it is quantifiable, so I will look to my officials.

David McPhee (Scottish Government): I do not have the exact figure for the recycling point, but what we know from our impact assessment is—

Jackie Dunbar: Sorry, I just want an overall figure.

David McPhee: At the moment, most of them are dealt with through residual waste, because that is where they are put. Most of the disposable vapes are not being recycled, and that is the point. If we were to recycle them, it would be expensive. However, we know from the impact assessment that there will be a saving of £7.4 million from a reduction in the number of fires, which also cost local government, and £2.5 million from landfill. That is just that end of it. Recycling them is very expensive.

It is worth noting the exponential growth that we have seen in disposable vapes in the past four years. They have gone from a very small base to large numbers, and the numbers could grow much higher. The point is that the increasing amount of disposable vapes means increasing demand on waste services. It would mean lost lithium, but if we were to recycle them, which is what we hope to do with all products when they come to the end of their lives, it would be extremely expensive because of the type of products that they are. That increasing volume is the concern.

Jackie Dunbar: Thank you, convener. I appreciate that.

The Convener: Thank you, Jackie. I have a few questions, but I will make an observation first. Cabinet secretary, it was interesting that you said that disposable vapes are often used by people who are under age. I have certainly seen—I think that we all have—shops where disposable vapes are made attractive to children. I have also seen those shops selling ice creams to attract people. I

know of one situation where ice creams were being sold with a disposable vape as a free gift on the side of it. It is quite evident that there is a problem. As long as the Government accepts that the regulations are not going to absolve it from preventing young people who should not be supplied vapes from getting them, I think that they are a step forward.

Is the definition flexible enough to allow future proofing? One of the issues that have been raised with us is the use of coils, but ceramic plates are now used in disposable vapes, and pod vapes are being used. Are you convinced that the legislation will prevent some clever person from getting past the definition of disposable vapes in the regulations?

Gillian Martin: There are a number of things in there. All four nations have tried to engineer the regulations to future proof them to make sure that the definition that was developed alongside all the other nations takes into account the kind of feedback that you have just given. Single-use vapes are defined in the regulations as products that are “not rechargeable” or “not refillable”. In effect, in order not to be caught by the regulations, the vape has to be rechargeable and refillable. In order to be considered rechargeable, it has to have a rechargeable battery and, separately, a replaceable coil. That seems to be quite a narrow definition, and I hope that it addresses some of your points.

Notwithstanding that, there is a huge industry associated with the manufacture of single-use vapes. It is not in the UK; it is usually in China. Are there going to be attempts to re-engineer them in a way that takes the regulations into account? Potentially, yes. We are alive to that. The very fact that they are in the regulations means that, as the four nations implement the ban, we will have to keep a keen eye on any innovations that in effect work around the regulations. We want to be able to respond to any risks that might arise, such as those resulting from innovation.

However, the regulations are quite tight in identifying the type of products in the market today that we want to take out of the system, as well as what is not a disposable vape. That addresses Jackie Dunbar's point that, for many people, using rechargeable and refillable vapes is part of their journey away from smoking.

The Convener: In relation to rechargeable and reusable vapes, vapes that allow one refill before becoming useless could be cheaper than ones that can be refilled numerous times. I do not know—I have never used them. I was a smoker, but I have never been attracted to vaping. How do we avoid that?

Gillian Martin: I am not entirely familiar with reusable devices that would work only a couple of times. It seems to me that, if you were going to invest in something of a certain price that was designed to be reusable, you would want it to last, so I think that consumer choice will come into play.

Do my officials have anything to add? I am not entirely sure how we can predict how consumers will react.

The Convener: I do not know. All that I am saying is that, if you can get a vape with a cheap battery that can be recharged a couple of times or one with an expensive battery that can be recharged 20 times, for example—I do not know whether those figures are even relevant—the one that can be recharged 20 times will cost more than the cheap one that can be recharged a couple of times. I want to ensure that we do not just move to an intermediate stage at which people throw away something that meets the definition and is cheaper.

David McPhee wants to come in.

David McPhee: Carolyn Boyd might want to come in, too, because she is closer to the regulations.

I confirm again that we have worked closely with people in trading standards and with other nations to ensure that the regulations are as tight as they can be, although we note that, with innovation, it is almost impossible to completely future proof them.

On the point about devices that could be charged more than once, you are right that there could be a cost model in which such a vape would be cheaper than one that could be reused for a long period, but it would still be more expensive than a disposable one. There is an argument about the cost per use. If you are going to reuse a vape many times, you get better value per use from a fully rechargeable one. As far as we are aware, a disposable vape tends to be more attractive to people who do not want to recharge it, for a variety of reasons—they might not want to carry it about, or perhaps they should not have it.

We think that the definition gives us the best chance to prevent the most voluminous disposable vapes. We cannot stop people having rechargeable and refillable vapes but—Carolyn Boyd might want to talk about this—the regulations say that the refills must be readily available. For example, a vape might be technically refillable but it might take six weeks to get a refillable pouch. The vapes must be readily refillable. As much as possible, we are reducing the ability to buy disposable vapes. Anything that is left is, in theory, a reusable vape, even if it is less reusable than those at the top end.

The Convener: My point is that, with computer printers, for example, we went through a stage when it was cheaper to buy a new printer than it was to buy the ink cartridges to go in the printer, so people ended up throwing away a perfectly serviceable printer because it was cheaper to buy a new one with printer cartridges installed. I just want to ensure that we do not go that way with this issue.

Gillian Martin: We need to be alive to any kind of modifications that there could be to things that are on the market. As I have said, the four nations have worked together to put together a definition that, we think, will avoid that kind of situation. However, there are, of course, some very clever people out there who might see a gap in the market, so we need to be alive to that as the regulations are implemented.

The Convener: Mark Ruskell has a follow-up question, and then it might be appropriate to bring in Carolyn Boyd if she wants to come in.

Mark Ruskell: If manufacturers could bring the price of rechargeable vapes down to the same price as disposable vapes, would people not just buy rechargeable ones but continue to chuck them away? In that case, would it not be more sensible to have some kind of minimum price, even for rechargeable vapes, so that we do not just perpetuate the current disposable culture, in which people have vapes that are technically rechargeable and refillable but which are so cheap that they just chuck them away, as they are doing now?

Gillian Martin: I think that taxing the devices was considered as an option. Zero Waste Scotland's scoping report looked at the options for managing the environmental impact of single-use vapes, but it concluded that, although taxation might support the policy objectives, it would have a limited effect if it was not tied to waste management outcomes. When it comes to the possible implementation of a duty on vapes, consideration would need to be given to the people who access them for smoking cessation and the equality impact that such a measure would have.

It could be argued that the higher the price of something, the less likely people are to buy it. However, we must recognise that, although vaping has health implications, because it involves people taking nicotine into their bloodstream—obviously, I am not a health minister, so I will not go into too much detail on this—if we make vapes too expensive, that could affect a lot of people who are trying to quit smoking, who see vapes as an alternative. Vapes are not prescribed as a smoking cessation tool. They have been brought in by manufacturers as an aid. Most smoking

cessation tends to involve the use of patches, gums and so on.

In the round, the four nations thought that introducing regulations on single-use vapes would be the best first step, and that it would represent quite a large step in getting rid of the litter problem. However, that does not stop us looking at what might happen after 1 April and how consumer behaviour might change. The convener made that point, and you are making a similar point. How might behaviour shift? What might the design of reusable vapes look like? What littering implications might a shift to reusable vapes have? Although the regulations relate to single-use vapes, in the future we will have to monitor how they work and to look at some of the consequences of the kind that you have described with regard to what happens to reusable vapes.

Of course, we are looking at how we dispose of electrical items in general as part of all the waste management strategies that are in train under the Circular Economy (Scotland) Act 2024. As vapes are one example of such items, they will be taken into account as part of that. However, I think that the regulations, in taking disposable vapes off our streets, out of our bins and out of circulation, will have an enormous impact and will be a major first step.

Mark Ruskell: I absolutely welcome that. I suppose that it is a question of whether we trust the vaping industry, given where it has been and what it has developed into, to work in the spirit of the regulations that are being put in place and to establish a genuine market for rechargeable, reusable vapes that might have a role to play in smoking cessation but which are not more widely available to a market that is huge and growing. I have my doubts that smart people somewhere will not find a way around what is proposed by targeting the price point. People on the boards of vaping companies will be thinking, “Let’s go for the price point—that way, we’ll keep our market alive.” Why would they not do that?

Gillian Martin: In its consultation, the UK Government included a proposal to introduce a duty on all vapes. I am trying to think whether that was a pre-general election commitment or a post-general election commitment. We are awaiting the publication of the report and, obviously, we are working with counterparts across the UK on what the next steps might be. Therefore, the introduction of a duty on all vapes is not off the table.

We are concentrating on bringing in the regulations on single-use vapes, but we are doing so with an eye to what might happen, which will inform what the UK Government does with regard to the imposition of a duty on rechargeable and reusable vapes. If what you and the convener are

suggesting might happen does happen and there is innovation such that, in effect, reusable vapes end up costing the same as disposable ones, with the result that people, rather than recharging them and reusing them, do not value or look after them, that will inform the conversations that we have on the potential imposition of a duty on reusable vape mechanisms in the future.

The Convener: The deputy convener has some questions.

10:45

Ben Macpherson: On the points that have just been made, we will also need to keep an eye on what the European Union does in this space, because when that huge market begins to regulate, it could have a significant impact in terms of market change. Perhaps there will be good lessons learned from Scotland and elsewhere that can help in that process.

Gillian Martin: Yes.

Ben Macpherson: Over the summer, when I was out and about in my constituency, I talked to a lot of small businesses about a variety of issues. The convener said that he had heard about a business that was perhaps not acting responsibly. However, most grocers’ shops, or other shops, that do not specialise in these products but sell them as part of the range of products in their store, will be thinking about what the ban will mean for them. Can you give them any reassurance in that regard?

Trade bodies have raised concerns about the impact of the ban on the viability of small retailers. What engagement has there been to help to mitigate any negative impacts that the ban may have on small businesses? For example, is it helpful that we are considering the regulations now, in order to ensure that there is around six months’ notice to enable those businesses to clear their shelves—so to speak—of products that, in the spring, will no longer be legal?

Gillian Martin: It is exactly that. You point to the fact that, if the regulations are passed, the ban will not be in force until 1 April. There has in fact been more notice, because the retail industry has known about, and seen, the regulations, which went out for consultation. We have had live consultations with retailers as part of the process. In addition, the proposal was in the programme for government last year, and it has been a topic of conversation in the Parliament for quite some time, with many MSPs lobbying for a ban on these products for very good reasons.

There is the official notice period: if Parliament agrees to pass the regulations, retailers have six months to run down their stock. There will always

be an impact associated with not allowing retailers to sell a profitable item—there is no getting away from that. In the past four years, these items have exploded on to the scene. Initially, I think there was a single digit percentage of people using them, but that has gone up to about 50 per cent of people. They have become extremely popular.

If we look at the demographic of people who use them, we see that—as the convener said—many are younger people. I am quite shocked to hear that people can get a vape with their ice cream—that takes me back to the 1980s, when the rogue ice cream guy would sell you a single cigarette and a match when you went out to get an ice cream. I think we all recognise that that kind of thing used to happen—I did not realise that it was happening with vapes, but I am steeped in that experience.

The flavours associated with vapes mean that they are attractive to younger people. Of course, I am not saying that retailers are selling them to young people; young people are just doing the same as has been going on since time immemorial. Kids outside the shop get hold of a guy who is going in for his messages and say, “Can you buy me one of these?”, or older siblings or friends, or whoever, are buying them. That is just the way that teenagers operate—we know that.

With regard to the business case—yes, retailers will no longer be able to sell that profitable item, but they have notice in order to run down their stocks. They can decide whether they want to start selling the reusable products instead, alongside the refills for those; there is another stream of income in servicing the demand that might come from people who used to buy single-use vapes, legally, as their preferred model. There will be a market there, and it is for retailers to make that business decision.

I will give you a bit of background. We contacted every vape retailer in Scotland. We identified those through the register of tobacco and nicotine vapour products retailers. Seven thousand retailers in Scotland are registered. We contacted them all and invited them to provide feedback on the draft regulations, as part of the development of the business and regulatory impact assessment. We conducted the Scottish firms impact test—the SIFT—and we interviewed 11 businesses that came forward. With them, we worked through some of the potential impacts on them. The themes that were identified included funding for enforcement and the potential for illicit sales—going underground. A variety of businesses responded.

Of course, that is not the end of the consultation. Once the regulations are approved—as I hope they will be—by the Parliament, we will

get in touch with every single one of the 7,000 members on that register, to alert them to the fact, if they have not already seen it, that the regulations have been passed.

Ben Macpherson: That engagement will be important to stakeholder organisations as well, so I welcome that reassurance.

The Convener: I encourage committee members to put short questions, and witnesses to give short answers, because we are quite pushed for time.

I have a very short question. On 1 April 2025, will the whole of the United Kingdom or just Scotland implement the measures?

Gillian Martin: As things stand, we are all going forward as one, and we want to go forward as one. Obviously, a new Government is in place, and I need to make sure that everything is still in train, so I am writing this week just to get confirmation of where the other nations are and to let them know that we have laid our regulations and started the process.

Should I get an answer that says, “Actually, no, we are not ready to go on 1 April,” a couple of options are open to us. If the period is quite short, we could decide to change our regulations to come in at a date along with everyone else’s. If it is only a couple more months, I do not think that there is any harm in that. However, if it is a couple more years, that is a different question altogether, and we would need to think about how we might go forward, because that would be a couple of years of those items still being on the streets, still in our bins and still causing the problems that they have caused.

As things stand, I have not had confirmation that the implementation date has changed. I think that I signed off on a letter to the UK Government yesterday, to say that we are ready for 1 April and to ask whether others were ready and whether that was still the plan.

The Convener: I just note that I would have deep concern if we were all to go forward on different timescales, because that would mean that an illicit market was easily fuelled from elsewhere. I will leave it at that, but I will certainly come back on this whole thing if implementation does not happen all at the same time.

Monica Lennon: I have a few questions on enforcement issues. However, I first want to pick up on concerns about underage sales, which were raised with me over the summer in Hamilton and across Lanarkshire.

In her written submission to us, Laura Young said that

“a pitiful number of fines have been given out in comparison to the underage sales we know are happening across Scotland.”

With that in mind, how will the regulations be enforced—in particular to mitigate the risk of illicit trade? As well as hearing from Laura Young, we have heard from the Convention of Scottish Local Authorities and the professional body the Society of Chief Officers of Trading Standards in Scotland, which highlighted that enforcement capacity may be an issue due to resourcing difficulties. Will the Scottish Government make additional resources available to assist with that?

Gillian Martin: The enforcement of anything that we bring in is absolutely crucial.

First, there is the communication that we would have with retailers around what the ban means for them. Twenty-nine of the 32 local authorities were supportive of the proposal. Their trading standards officers already have the powers to deal with any kind of illicit goods being sold, and these regulations add to that.

However, as you will remember, beyond the enforcement powers that trading standards officers already have and the offence provisions that are in these regulations, the Circular Economy (Scotland) Act 2024 amended the regulation-making powers in the Environmental Protection Act 1990 to enable enforcement officers to issue fixed-penalty notices as an alternative to prosecution for offences. The shorter, sharper and more effective approach of fining—rather than prosecuting, using the whole court process—will be a lot more straightforward than some of the processes that we have had, and that might release a bit of capacity in the system.

The Cabinet Secretary for Finance and Local Government is the person who you have to ask about finance for local government; it is not really for me to answer that. However, as with any ban, there will be an initial concentration of activity until everyone gets used to the fact that single-use vapes are no longer available and then there will be a tailing off. Those products just will not be in the system any more and retailers will get used to that. All the mechanisms for the public to report anyone selling them will be open, as well.

Monica Lennon: I am sure that we will keep an eye on the resourcing issue. How will the regulations be enforced in respect of illegal sales online or from private dwellings that trading standards officers will not be able to enter? What is the strategy for tackling illicit trade?

Gillian Martin: The sale of anything online is subject to the same regulations as the sale of anything on the high street. If it is illegal to sell something online and it is a UK-based business that is doing so, that business is subject to the

regulations that we have here, so it would be breaking the law.

In the case of online sales from outside the UK, there will be increased funding from the UK Government to the Border Force and His Majesty’s Revenue and Customs to deal with that. They are preparing for the fact that there will probably be an issue with people purchasing single-use vapes online, although not necessarily from the UK. If you purchased something such as a dangerous weapon or illegal pharmaceuticals, those would be subject to customs searches. In the same way, Border Force and HMRC are alive to the fact that people might try to bring in single-use vapes from outwith the country by purchasing them online. Therefore, more resources will be put into those mechanisms at UK level.

Monica Lennon: SCOTSS has made detailed recommendations on enforcement powers, saying that the powers that are provided in the regulations are “restrictive and impractical”. What discussions are taking place between the Scottish Government and trading standards officers—particularly those who run local government trading standards departments—to address those concerns? Are you satisfied that the enforcement powers that are currently in the regulations are appropriate?

Gillian Martin: As I mentioned, there is now the ability to issue fixed-penalty notices, which has been done in concert with SCOTSS in relation to the powers that trading standards officers need. Giving them that extra power was one of the reasons why we brought this in when we did, through the Circular Economy (Scotland) Act 2024. Perhaps my officials have more detail on the on-going discussion with SCOTSS.

David McPhee: I will make one point about engagement, then I will perhaps ask Carolyn Boyd or Mark Sweeney to say something about the fixed-penalty notices side of things and in particular about bringing those powers into force.

We engaged with trading standards colleagues as soon as we announced that there would be a ban—we spoke to them immediately. They have been heavily involved in drafting the regulations, and they provided feedback to us. We worked with the regulatory review group, which includes trading standards colleagues, and we continue to engage with it on the challenges around the issue.

As is always the case, there might be a desire among trading standards colleagues to go even further on some of these things, but we are sometimes controlled by how far we can push regulations in this space.

11:00

We are providing as many powers as possible and intend to bring in regulations for fixed-penalty notices. I will hand over to Carolyn Boyd to talk about that.

We have regular and constructive dialogue with colleagues from trading standards about the impact on regulations and the demands that that will place on them. We recognise that there are competing demands caused by other regulations and that there are many pressures on the trading standards service and we are working with them and with other colleagues to understand those. There is a positive dialogue. As we move towards implementation, we will work with them to ensure that we have the right guidance and will engage with retailers to ensure understanding. That is also part of our conversations.

That is all I have to say about engagement, but Carolyn Boyd or Mark Sweeney may want to say more.

Monica Lennon: Before you bring them in, I refer you to the submission to the committee from SCOTSS, which says that impact assessments

“do not adequately address the resource implications for local authorities”.

I heard what the cabinet secretary said about the opportunity to use fixed-penalty notices and about the wider circular economy framework, but it is important that that concern is not dismissed. Will that be discussed? Should finance colleagues be brought in to allow joined-up thinking?

David McPhee: I will build on my previous answer by saying that we are discussing those impacts. The flipside is that banning vapes will change what trading standards have to do, because, at the moment, they regulate the sale of disposable vapes. We spoke earlier about the impact on fires and waste, which already have costs for local government. It is important to understand the full picture.

That conversation is continuing and, as the cabinet secretary said, will affect other budgets, too. We are continuing our conversations about the wider impact on local government. Many in local government have called for the ban because they know the impact that that will have not only on trading standards but on waste and litter, and we are trying to work positively with them.

Mark Sweeney (Scottish Government): Following the first consultation on the draft regulations, and in response to communications from trading standards, we updated the definition and the enforcement powers.

Building on what David McPhee said, we expect to see savings for local authorities, particularly in waste management, due to a reduction in gate

fees and in litter and cleansing costs. We estimate savings of £10.2 million over 10 years, made up of £7.4 million from a reduction in fires, £2.5 million from landfill and incineration fees and £300,000 from litter and cleansing. Those savings are expected.

Mark Ruskell: My question is based on what the cabinet secretary said about timescales. You are seeking a four-nations approach and want all the nations to move at the same time, which sounds sensible. If timescales diverge and there is a need for discretion, do you have an exemption under the United Kingdom Internal Market Act 2020 that would allow you to make a decision about Scotland going first or going later?

Gillian Martin: The new UK Government is now in place and I have written a letter asking for confirmation of the go-live date for the other three nations. I made the point that we do not want to diverge. There are very good reasons for us all going at once, including the obvious environmental reasons and some of the other issues that have been raised today.

I made the point that if there is a small gap we would still want to move at the same time as everyone else, but that a gap of years would be a completely different question. I am hopeful that such a gap will not happen. We have had a general election, there is a new Government and the Government machine has probably had to pause, which might have had an impact. I do not know about that because we have not had any confirmation.

We are ready to go. I have laid the instrument. We all agreed the date of 1 April 2025 and we need to get ready. If other Parliaments and Governments are not in that space and there is a time lag, we will look at our go-live date. Why would we go live two months before the rest of the UK? That would not make sense. However, if the measure comes off the table—I do not think that it will—or the gap is years long, that would be a completely different question. If I was told that there would be such a gap, I would try to convince them that it cannot be delayed for years.

Mark Ruskell: You have not requested an exemption under the United Kingdom Internal Market Act 2020.

Gillian Martin: No. We will take things as they come. I have asked for clarification first. I have mentioned that that mechanism exists. I do not want to have to use it; I want us to go together.

The Convener: Bob Doris has a couple a questions.

Bob Doris: I have a couple of brief questions, convener. I return to the issue of enforcement. Under regulation 9, enforcement officers will have

the power to sample and take possession of single-use vapes. That is quite a precise definition. The powers are not framed more broadly, such as to seize or sample single-use vapes or items that are suspected of being single-use vapes. Is the instrument too restrictive to enable enforcement officers to take appropriate action? Will you give assurances about that?

Gillian Martin: I need a bit of clarification on your question. Enforcement officers will have the powers to go in and seize single-use vapes. What is the issue?

Bob Doris: Officers will have to identify vapes as such. It has been put to me that they would have to take a sample and identify an item as a single-use vape before they can then move to seize and confiscate it. Under the regulations, they cannot take a batch of items that they suspect to be single-use vapes at that point, so there could be a delay in the process. Are the powers drawn too narrowly? Will enforcement officers be able to go in and, if they have a reasonable suspicion that there are boxes upon boxes of single-use vapes, seize them at that point?

Gillian Martin: That is my understanding. Maybe my officials can help. Is your point that the enforcement officers might take items that are not single-use vapes in error?

Bob Doris: It is the converse, actually. The briefings that I have looked at ahead of today's meeting say that if enforcement officers were not clear about whether items were single-use vapes, they could hesitate and not seize the items at that point. However, if the powers were drawn more broadly, they could seize the items, establish that they were single-use vapes and retain them. The instrument defines single-use vapes; it does not cover items that are suspected to be single-use vapes.

David McPhee: Carolyn Boyd is the lawyer and expert. I reaffirm that we have worked closely with trading standards. As far as I am aware, no one from trading standards has raised concerns about that aspect. There is lots about their powers and their ability to do things, but not necessarily specifically about being unable to identify whether there is an issue to consider. Officers have powers to seize things that are obviously single-use vapes. Where there was uncertainty, they would have to go through a process to make clear what an item was, which would include sampling, as you mentioned. If an item was clearly a single-use vape, there would be no need for sampling; it would just be dealt with there and then. If something was open to debate, they might have to sample the items and then return to seize them.

Is that Carolyn Boyd's reading of it? Are you aware of any other conversations with trading standards about that element?

Carolyn Boyd (Scottish Government): I cannot speak to conversations with trading standards.

It is important to distinguish between the different powers. There is a power to take samples of a single-use vape or components of single-use vapes. The enforcement officer has the power to subject single-use vapes to any process or test and to dismantle them. If any single-use vapes are found in the premises that the enforcement officer has entered, the officer can seize them and retain them to use in evidence and to examine them.

Enforcement officers do not need to take each single-use vape and conduct a scientific process or test to show that it is a single-use vape, if you see what I mean. If a trading standards officer has entered the premises and single-use vapes are there, they are empowered to take those single-use vapes.

Bob Doris: I was not suggesting that. Rather than be a pedant, I will seek an assurance, which I think that Mr McPhee gave, that trading standards officers are content that they have appropriate powers, but that the Government will keep that under review, along with trading standards officers, and would act if there was a gap in the regulations that needed to be plugged.

Gillian Martin: Of course. That comes back to the earlier point about what happens if something else enters the market that looks different or whatever. Obviously, we will be alive to anything that happens, in a four-nations approach, where that might be the case and might cause any dubiety. For the moment, I think that the single-use or disposable vape has a fairly obviously different appearance from the rechargeable type.

Bob Doris: I will leave it at that. The important thing is that trading standards officers, who will have to enforce the regulations, have said that they are content.

David McPhee: I never want to put words into somebody else's mouth, so I will make it clear that we worked closely with trading standards officers in developing the regulations and, as far as I am aware, I have not heard any concerns about that element. As has been mentioned in other briefings, trading standards officers might prefer even stronger powers in some spaces, but they have been involved in developing the regulations and have commented on them. On that specific issue, I am not aware of any specific concern that this would prevent them from doing what has to be done.

Bob Doris: If there is a grey area, I simply ask for a wee bit of clarity. I ask the cabinet secretary to give a commitment that, once the regulations are passed and we move into the enforcement stage, the issue will be kept under review and you will continue to work with trading standards to see whether there are any issues regarding enforcement.

Gillian Martin: We will always do that. When the regulations land and once they are enforced, we will keep an eye on how they are working. If any issues come up that have not been considered, of course we will look at that again. However, that point has not been raised—hence my initial confusion as to your question. I hope that my officials have been able to give you certainty that that has not been an issue.

Bob Doris: I think that I have got certainty, because trading standards are content at the moment, but my question is inspired by the fact that there are a lot of technical regulations, and we have a lot of expertise in the committee clerking team and the Scottish Parliament information centre team to identify areas where the legislation can potentially be improved.

I will move on. Another thing that we have learned on the committee is what the WEEE regulations are. For anyone who is watching the meeting, I should say that they are the waste electrical and electronic equipment regulations. I also note that a UK-wide vaping product duty will be implemented in 2026. I would like to know about the interaction between the WEEE regulations and other potential fiscal measures in relation to these matters. Take-back schemes are still required in relation to vapes and vaping products, but I understand that compliance with them has been relatively low.

That is the general context. Has the Government thought about the interaction between the WEEE regulations, the forthcoming vaping products duty in 2026 and what we hope to move to legislate on this morning?

Gillian Martin: I am going to have to bring in my officials. The WEEE regulations concern things such as the take-back of rechargeable items. Now that the regulations that we are considering today are coming in, there will not be that take-back responsibility. Can I bring in my official on that specific point?

Bob Doris: Of course.

David McPhee: I might go to Mark Sweeney, who has been heavily involved in the consultation on the WEEE regulations. With the UK Government, we have consulted on a WEEE extended producer responsibility, which I think is what Mr Doris is referring to, because a collection requirement is already in place.

Bob Doris: Yes.

David McPhee: The key point is about the interaction between all the measures. The measures are all interacting across the circular economy space, and there are absolutely interactions between the health stuff, the duty on vapes and wider things that we want to do on the WEEE EPR and other EPRs. For example, as part of the consultation, it was highlighted that dealing with vapes is much more expensive than dealing with all the other WEEE, which is why thought was being given to creating a separate category for vapes. Under EPR, the idea is that the producer pays for the waste cost, and the point is that it is much more expensive to get rid of a vape than other types of WEEE. That was in the consultation and is part of what we may regulate on.

If, for some reason, the regulations that we are considering today were not passed, disposable vapes would be captured under the WEEE collection side, and the cost might be there to deal with that. That will still be the case for reusable vapes.

11:15

However, if the regulations are passed and we take disposable vapes out of the question, the interaction with the WEEE EPR falls away. I absolutely agree that all those things are interlinked and have an impact on each other, including the duty on vapes. It comes back to whether, if we ended up with a cheaper product, the duty would push it into being more expensive and therefore less throwaway-able anyway. However, that is about the reusable side of things rather than the disposable side, which is what we are here for today.

Bob Doris: I am content with that. It is a complex area. It is about ensuring that the Government is live to the interaction between the regulations and the wider WEEE and other fiscal measures. That has been helpful. The terminology is dreadful—when I hear “WEEE” I think of a Nintendo Wii from several years ago—but I will leave it at that.

The Convener: I am definitely going to leave it at that; that is all the questions from the committee.

We will move on to agenda item 4, which is a debate on motion S6M-13568, which calls on the committee to recommend approval of the draft regulations. I remind members that only they and the cabinet secretary can speak in the debate. I invite the cabinet secretary to speak to the motion if she feels that it is necessary or just to move the motion.

Motion moved,

That the Net Zero, Energy and Transport Committee recommends that the Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024 [draft] be approved.—
[Gillian Martin]

The Convener: I say at the outset that there are a lot of moving parts in the regulations. We have heard from all the committee members about the difficulties of identifying the different types of vapes and whether they are reusable or single use.

What would concern me more than anything else is if not everyone in the United Kingdom went forward with the approach on 1 April next year. That would cause me grave concern. However, as an individual, I am perfectly happy to support this on the basis that everyone will move forward on the same date.

Given the points that have been made, as the legislation progresses and comes into force, it would be helpful for the committee to be kept aware of how it is actually working and whether it is achieving its aims. Does anyone want to ask the cabinet secretary anything that they have not asked already or to make a comment? Bob Doris has his hand up.

Bob Doris: I have a brief observation. I did not think that I was going to make this comment, but I commend the Government for taking a very proportionate approach and looking constructively at the four-nations approach to going live in April next year. The Government is not rushing towards the need for an exemption from the UK Internal Market Act 2020 but taking a four-nations approach in the first instance, as we all have a common interest in the issue. That is a good tone to set as we seek to engage with the new UK Government, with the backstop measure of that exemption as and when required. I think that that is the way to do business, so I say thank you, cabinet secretary.

The Convener: Douglas Lumsden wants to say something, too.

Douglas Lumsden: I, too, welcome the four-nations approach, which is the right way to go about the regulations. The only other thing that I will add—the cabinet secretary has mentioned it—relates to flavours and packaging. That is a problem in relation to single-use vapes, but it is also a problem in relation to multi-use vapes. I understand why that would not fit in with the regulations, but I would like it to be addressed somewhere—maybe in a health regulation or something—because the cabinet secretary is right that the flavours and packaging are targeted at younger people. We have heard a lot about how vapes are good for smoking cessation, but we are seeing now that, often, vapes are being targeted

at people who go straight into the use of vapes. It would be good if the Government addressed those issues, too.

The Convener: Would the deputy convener like to ask a question or make a statement? The cabinet secretary will get a chance to answer all the points that have been raised at the end of the debate—or during it, if she wants to.

Ben Macpherson: I will make some brief comments in the same spirit as those that other colleagues have made. It is important to get the regulations right and, if the timescale needs to flex because of other Governments' situations, that is absolutely the right thing to do.

I am reassured by the cabinet secretary's comments on her proactive communications in order to seek that clarity. I am sure that the Scottish Government will keep the committee and Parliament updated on the communications with the UK Government and the other devolved nations. If the timeframe needs to change to make sure that a four-nations approach can be taken, that seems like the sensible thing to do.

The Convener: Cabinet secretary, do you want to comment on anything that you have heard?

Gillian Martin: I welcome the support for the regulations' intentions and for the approach that I am taking on any flexibility that we might need, should other nations not be ready. I do not know about that for sure, but the point is taken, and it is certainly my view, too.

Concerns about flavouring and packaging, which Douglas Lumsden raised, will be addressed in UK legislation—the Tobacco and Vapes Bill. He is absolutely right about the people who have marketed them. Let us face it—there has been a marketing attempt to attract younger people, and they might try the same thing with the more reusable vapes, although I would suggest that they are harder to hide from parents. Those points are being taken on board at UK level as well, and we support that.

The Convener: The question is, that motion S6M-13568, in the name of Gillian Martin, be agreed to. Are we agreed?

Motion agreed to,

That the Net Zero, Energy and Transport Committee recommends that the Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024 [draft] be approved.

The Convener: The committee is agreed, and we will report on the outcome in due course. I invite committee members to delegate authority to me, as convener, to approve the draft report for publication.

Members indicated agreement.

The Convener: It is fair to say that we should include in our report the concerns about moving forward together as the whole United Kingdom and refer to the flexibility that is required to do so.

Thank you, cabinet secretary. Some of your officials are staying, but I will briefly suspend the meeting to allow other people to change places.

11:22

Meeting suspended.

11:28

On resuming—

The Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2024 [Draft]

The Convener: Welcome back. Agenda item 5 is consideration of another draft statutory instrument. I welcome Gillian Martin, the Acting Cabinet Secretary for Net Zero and Energy. She is joined by officials from the Scottish Government: Andrew Mackie, head of environment and forestry sponsorship hub; David McPhee, deputy director, circular economy; and Carolyn Boyd, a lawyer.

The instrument is laid under the affirmative procedure, which means that it cannot come into force unless the Parliament approves it. Following the evidence session, the committee will be invited, under the next agenda item, to consider a motion for the committee to recommend that the instrument be approved. I remind everyone that the Scottish Government officials will be able to speak under this item but not in the debate that follows.

I invite the cabinet secretary to make a short opening statement.

Gillian Martin: I will make it as short as possible, convener.

The committee will recall that, during the passage of the Circular Economy (Scotland) Bill, amendments were lodged by the Government to ensure that various pieces of legislation that would apply to Scotland's other public bodies would also apply to Zero Waste Scotland. The transition follows a decision that was made by the Office for National Statistics for Zero Waste Scotland to be classified as a public sector organisation, as it is primarily directed and funded by Scottish ministers. Work is well under way to ensure an orderly transition, and—subject to how the committee votes today—we fully expect the change of status to take effect from 1 October. Zero Waste Scotland will be subject to the same provisions on public finance and accountability as

other public bodies in Scotland, and it is important that the organisation has a designated accountable officer as part of routine good governance.

11:30

Zero Waste Scotland will not be part of the Scottish Administration under the Scotland Act 1998. That means that, for the purposes of the Public Finance and Accountability (Scotland) Act 2000, the permanent secretary, as principal accounting officer, cannot appoint an accountable officer for Zero Waste Scotland. However, article 2 of the draft order requires that Zero Waste Scotland be audited by the Auditor General for Scotland, which consequently engages the relevant provision of part 2 of the 2000 act.

Where a body's accounts are subject to audit by the Auditor General, the permanent secretary will then be given power to designate an accountable officer for Zero Waste Scotland under section 15(3) of the 2000 act.

I hope that that gives a summary of what we are doing; I will close there.

The Convener: Thank you, cabinet secretary. Does anyone have any comments on what appears to be a good idea?

Mark Ruskell: I have a brief comment, convener. I am really looking forward to Zero Waste Scotland growing into the role. It has been a long time coming, and I think that it will enable Zero Waste Scotland, as an organisation, to drive forward progress in the circular economy in a way that is fully accountable. I look forward to Zero Waste Scotland attending the committee in the future.

The Convener: Does anyone else have any comments?

Douglas Lumsden: Can the cabinet secretary confirm whether the change will mean that Zero Waste Scotland is open to freedom of information requests at this point?

Gillian Martin: Yes.

Douglas Lumsden: Okay—thank you.

The Convener: As there are no other comments, we move to item 6, which is the debate on motion S6M-13501, which calls on the committee to recommend approval of the Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2024.

I invite the cabinet secretary to move the motion.

Motion moved.

That the Net Zero, Energy and Transport Committee recommends that the Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2024 [draft] be approved.—[*Gillian Martin*]

Motion agreed to.

The Convener: The committee will report on the outcome of the instrument in due course. I invite the committee to delegate authority to me, as convener, to approve the draft report for publication. Are members happy with that?

Members indicated agreement.

The Convener: Good. I thank the cabinet secretary and her officials. Some of you are staying with us for the next item—or are you all staying?

No—I see that there will be a wee changeover. You can do that while I introduce the item. I thank you for being here.

Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024

The Convener: Our next item is consideration of a type 1 consent notification for a proposed UK statutory instrument. On 5 June, the Minister for Climate Action notified the committee of the UK SI. The instrument will involve the UK Government legislating within devolved competence and it seeks the Scottish Government's consent for it to do so.

The Scottish Government proposes to consent to the instrument, which, as the clerk's paper explains, would require producers of products to pay the full net cost of managing their packaging at the end of life.

The committee's role is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making those regulations within devolved competence, and in the manner that has been indicated. If members are content for consent to be given, the committee will write to the Scottish Government accordingly. In so writing, we have the option to draw matters to the Government's attention, pose questions or ask to be kept up to date on relevant developments.

If the committee is not content with the proposal, it may make one of the two recommendations that are outlined in the clerk's note. We can recommend that the provisions should not be made at all, or that the Scottish Government take an alternative legislative approach—for example, by bringing forward its own Scottish statutory instruments.

I hope that that is all clear. To help to inform our decision, we have invited the cabinet secretary to stay and give evidence. I am not going to welcome you back again, Gillian, but you are here with us.

We are also joined by a number of Scottish Government officials. David McPhee is doing a third tour of duty in his role as deputy director for the circular economy; Alex Brown is, I think, joining us for the first time as circular economy policy officer; and Carolyn Boyd is on her third tour of duty, too. Thank you for joining us.

I now move to questions from members, with the first question coming, I believe, from Jackie Dunbar.

Jackie Dunbar: Thank you very much, convener, and welcome again, cabinet secretary.

I have just a quick question. Has the Scottish Government been in contact with the Convention of Scottish Local Authorities on this matter? Are you able to tell us whether COSLA is satisfied with the proposal or does it have any outstanding concerns regarding the cost of recovery for local authorities?

Gillian Martin: We have absolutely been in touch with COSLA throughout the whole process. I am really pleased that the UK Government has brought forward these regulations, and I hope that the committee will agree that they really represent a step change in the management of waste; instead of its being a burden on the taxpayer and on the public purse, there will be a vehicle for the manufacturers of products to pay for the management of their packaging waste. I think that it will mean a number of things, and I think that COSLA is supportive of it.

What effectively will it mean? It is expected that £1.2 billion a year will come to local authorities UK wide, and with the consequentials, that will translate into £120 million a year for Scotland. That is what is anticipated; it might be more or it might be less, but that is what it is anticipated will come to local authorities from the scheme administrator as a result of its handling of waste packaging.

What that will mean, initially, is that authorities can invest that money in improving their recycling processes without—and this is crucial—putting the burden of dealing with the waste on council tax payers or on the funding that they get from Government. Initially, there will be two streams of funding, because authorities will have to put in place a certain amount of adaptation with regard to the waste management that we ask them to do. Effectively, though, the money that will come to them as a result of EPR is going to help them to significantly improve their waste management.

Jackie Dunbar: Thank you. That is me, convener.

The Convener: Thanks, Jackie. I think that Douglas Lumsden has some questions.

Douglas Lumsden: I just want to double check something with regard to an issue that Jackie Dunbar raised. Will the extra money that comes into local authorities from EPR be seen as additionality? Because of the money coming in from EPR, will the Scottish Government look to rein some of that back in and reduce their block grant?

Gillian Martin: Local authorities will receive the full net costs of managing packaging through EPR, taking account of efficient and effective service provision. That might mean that, over time, the money that councils decide to spend on the waste management envelope will get taken over by the funding coming from EPR. As a result, it will come down to councils' decisions about how they manage their funding.

I am not going to look into the future and say what the finance secretary of a future Government might do about council settlements—indeed, I do not think that you would expect me to do so—the idea is that there will be additional money coming from EPR and then, as a result of councils' spending decisions, they might be in a position to release money that they would otherwise have spent on waste management to spend on other areas. What that will mean for future council settlements is not something that I am able to answer here and now, because obviously that will be up to a future finance cabinet secretary to decide.

However, that is the mechanism that will be put in place. Essentially, EPR is all about producers having responsibility for waste management—in this instance, of packaging, although other regulations that I hope we will be able to agree to might come forward from the UK Government, extending EPR to other types of waste.

Douglas Lumsden: I guess from that answer, however, that a lot of local authorities will not be getting too excited. They will feel that extra money will be given on one hand and taken away on the other, because you cannot really give them assurance that it is additionality.

Gillian Martin: The thing is that you cannot give assurance about future budget settlements at all, Mr Lumsden, as you know. I am not in a position to say what will happen in future with regard to council tax settlements. However, it is about the fundamental principle that, with regard to waste management, the four nations of the UK are, as a whole, moving towards the responsibility for paying for the handling of waste coming not from

the public purse but from the producers of the items that we use.

I do not know whether David McPhee wants to come in.

David McPhee: To confirm that point, the aim of the policy is not to pay local government to deal with waste twice—not that Mr Lumsden is suggesting that. It is not about their having money to deal with waste and then getting extra money to do so, but about the fact that the waste services for packaging will be paid for by the producers. Local government will therefore have enough money to deal with waste through getting the net cost of providing an efficient and effective service, which means that the pressure is broadly taken off the public purse to allow that money to be spent in other ways.

As the cabinet secretary has said, we cannot say what future settlements will be. However, the point is that that cost will always be met by the producers, therefore taking that burden off local government, which means that funding is essentially available for other services, and local government no longer has to look inside its budget settlement and ask, "How do we deal with packaging waste?" because that is paid for through the packaging EPR. The idea is that the burden is moved towards the producers rather than the public purse.

Douglas Lumsden: Okay. I will move to the next question. Have Scottish businesses or stakeholders raised any specific concerns with you about the impact of the EPR on packaging?

Gillian Martin: Initially, there were obviously a lot of questions around what it might mean for them and a discussion about what influence they would have in the design of the EPR. The administrator put together a steering group, because it was important that businesses had an influence on how the EPR would be designed—obviously, this is a UK instrument that is coming to us to agree on. It allowed members of that steering group to perform an advisory role.

Indicative producer base fees were released in August and gave businesses indicative accounts of what they can expect to pay per tonne under the EPR. Those have been dealt with at the four-nations level, because the business community has been involved in the design of the EPR from the get-go.

It might be important to say that I am genuinely looking forward to seeing how businesses and producers of goods and packaging adapt to that. I think that what we will see as a result is an improvement in our packaging, as they will not want to pay a lot of money for the soft packet plastics and so on. I am excited to see how that will develop. I think that we will see a revolution

and innovation in the way that packaging for our goods is manufactured and designed, because businesses and producers will want to take the waste plastics away as much as possible. I hope that the fact that this is getting moved across all four nations means that they will see a market for better packaging—not only are there market opportunities for those producers, but they are also looking at how to bring down waste at source.

Douglas Lumsden: Have we learned from other countries already? Has that behaviour changed and has packaging changed?

David McPhee: Alex Brown might want to comment on that, because she is more of an expert than I am. The packaging EPR is not unique to the UK; that approach is taken throughout the world.

11:45

To return to the cabinet secretary's point about business being involved in the conversation, it is difficult to talk about business as one homogeneous group—there are people who disagree, to varying degrees, with how the regulations will be implemented. Broadly, we have engaged closely with the bodies that oversee producers in order to understand their position. They bring expertise, because all the producers work abroad. Many companies are multinational. They know how these things work and have fed that information in to the Department for Environment, Food and Rural Affairs and ourselves. They will be involved with the scheme administrator set-up in order to make sure that best practice is brought in as much as possible.

Obviously, within that there will always be producers that want to go to X, whereas the Government will want to go only to Y. I will not suggest that we all agree and that we are all completely happy; there is compromise within that conversation. However, businesses have been involved in the development of the scheme administrator and the policy more generally, and they are working with us. Businesses have raised concerns about it being a public sector administrator, but that was defined by the way in which the scheme is currently set up. Conversations continue with businesses about how we can address that and how we can look forward and make it more in line with other countries in that respect. We continue to engage regularly with business.

DEFRA is taking the lead on that engagement, but, at a Scottish level, we are speaking to organisations that represent businesses to help us to understand how the policy can work most effectively for them. Most of the business organisations that I speak to recognise why the

approach has been taken. They may not agree with every element, but they recognise it and are looking to respond to it. They are looking to innovate and move forward. There is good engagement in that respect.

The Convener: There are a few other questions, which I hope will be short and receive short answers. Sorry—I should not have said that before your question came up, Ben.

Ben Macpherson: It is okay. Much of what I was going to ask about has been covered by Douglas Lumsden's questions on engagement with business. Unless the cabinet secretary and her officials have anything more to say about that, I am happy to move on.

The Convener: Cabinet secretary, is there anything that you want to add?

Gillian Martin: No. I think that we have covered it comprehensively.

Mark Ruskell: I am curious about how this relates to where we currently are with deposit return schemes. I presume that the EPR regulation also incorporates bottles, cans and glass. I am interested in looking at that and getting your views on it. Do you see there inevitably being a DRS across the UK in the run up to 2028?

Gillian Martin: I do not want to go too much into DRS, but I will give you an update. Obviously, DRS regulations will be completely separate from the EPR regulations. It is another area in which we are working very closely with the other three nations of the UK, and we have signed up to work with the UK Government on DRS regulations. When the new UK Government came in, I wrote to it to reiterate our stance on DRS.

I will hand over to my official to talk about the interaction between the EPR regulations and DRS.

David McPhee: DRS items are not included in the packaging EPR regulations for the reason that DRS has to be set up by industry, so businesses will be spending their money to get ready for it. Any items that are included in the DRS at the moment are not included in the EPR, because producers will be focused on that. However, there is a backstop in that, if the DRS is not up and running by—I think—1 January 2028, all the items that are in the DRS will come into the EPR regulations. That is an incentive to businesses.

Gillian Martin: I want to make it clear that every one of the four nations wants the DRS to be up and running well before that.

Mark Ruskell: To be clear, if there is no DRS, businesses will have to pay through the nose for EPR post-2028. A wine and spirits company, for example, that is using glass extensively may be looking at the lack of a DRS scheme for glass right

now and thinking, “Well, we’ve got out of that.” However, come 2028, if there is no DRS for glass bottles, it will have to make a payment through the scheme to enable local authorities to collect all of its glass. There is no way to get away from paying for the cost of collection; it is just a case of which mechanism it might go through. Is that a fair assessment?

Gillian Martin: That is a fair assessment.

Mark Ruskell: What do you think will happen with the DRS, given the context of the EPR being brought in with a backstop of 2028?

Gillian Martin: On that, we have written to the UK Government to reiterate the position that we had signed up to with the previous Government before the general election. We had said that we would work in lock step with the other nations to roll out the DRS. In the same vein as the previous discussion around vaping, I have been in touch with them about moving ahead on that on a four-nations basis. I will keep you updated on that, but our position remains that we want a DRS working as soon as possible.

Mark Ruskell: That is great. When will the draft circular economy 2030 route map be finalised? Lorna Slater provided an earlier version of that, which the committee saw in January. It would be useful to know when that whole picture can be finalised and brought forward.

Gillian Martin: I think that we are on record as saying that we aim to publish that by the end of the year, so nothing has changed in that respect.

The Convener: Douglas, is your question specifically on this matter? If not, I will take Bob Doris’s question next.

Douglas Lumsden: No, it is not.

Bob Doris: My question is not on this either.

The Convener: It can be a short question anyway.

Bob Doris: It will be, convener. There will potentially be £120 million per annum going to Scottish local authorities from a system administrator, who is to be appointed. That is very welcome. On parliamentary scrutiny in relation to all of that, do you anticipate that the system administrator would come to this Parliament to explain how they arrived at the breakdown for all 32 Scottish local authorities, to ensure that they are getting an appropriate share of the pot of cash that is created across the UK? What thoughts has the Scottish Government given to ensuring that the data that we get and the cash that local authorities get will be accurate and appropriate for each local authority?

Our committee papers state:

“The SA will then distribute that funding to local authorities. It will calculate the ‘net efficient disposal costs’ (efficient disposal costs in an assessment year, less waste income for that year)”,

which is partly because certain aspects are reserved. The explanation goes on. I will not go on, convener, but it can get quite complex.

Gillian Martin: I want to say a couple of things before I directly answer your question. One of the issues that we brought to the table when we were talking about the regulations was the fact that a lot of our local authorities cover rural parts of Scotland and we do not want them to be disadvantaged in relation to urban local authorities. Therefore, we managed to get “must” changed to “may” in the regulations and that kind of thing, in order that that is taken into account in looking at the funding that is given as a result of the activities that are happening at a local level. Rurality is taken into account. Highland Council is in a completely different situation to Glasgow City Council with regard to how it manages its waste. That adaptation was made to ensure that the process did not disadvantage a lot of rural councils. I think that the Welsh Government was very sympathetic to that for similar reasons.

On your substantive point about the scrutiny of how the money is spent, allocations will be given to councils, so we will be able to scrutinise how that money is deployed at a council level. However, on the system administrator coming here to give evidence, it will be a UK-wide system administrator role, but I would say that it is probably good sense for them to engage with all four Parliaments to ensure that they are scrutinised as much as possible. Of course, the Scottish Government will want the data as it relates to our local authorities, and it will be essential that we have that.

David McPhee: We are working on a four-nations basis, which is why we have one scheme administrator. Obviously, that efficiency is a benefit of doing this at a UK level. Regulations were brought to this committee earlier in the year in relation to the data that we need to collect around EPR, so you can see that there is a process for that. As I said, my understanding—Alex Brown can correct me if I am wrong—is that there will be a public document that sets out how the calculations work, and it will be possible to interrogate that.

The cabinet secretary made a point about ensuring that we take account of our rurality and our specific issues, and we have worked very closely with the UK Government to do that.

It is supposed to be as transparent a scheme as possible, but we have still to get to the point where our local authorities know what they will get under that efficient and effective calculation. There will

still be an engagement piece to make sure that we understand what that looks like and that we can test it to ensure that it is being calculated effectively.

Bob Doris: Clearly, we can engage in partnership with local authorities on scrutiny work in relation to that issue, but I asked that question because I wonder whether the quantum of cash that will be available for Scotland has been agreed, because we are talking about levies that will apply to businesses like Amazon, which operate across the UK and internationally. Will the remote and rural weighting kick in once the cash has been established for Scotland or will that weighting be at a pan-UK level, which would give Scotland a larger pot of cash to begin with? Those things become quite important. Also, at a later date, a local authority that felt that it was not getting a reasonable share of the pot of cash might want to come to this committee and ask what we can do about that. That is why I was asking about the scheme administrator. I am trying to future-proof parliamentary scrutiny as much as anything else.

The Convener: It is a very interesting question. I am thinking about some local authorities that burn a lot of their waste because there is no other way to dispose of it—those with island communities, for example—and I wonder whether they will be disadvantaged as a result of the proposal. Cabinet secretary, could you address that issue?

Bob Doris: To be fair, I did not ask about incineration.

The Convener: No, but I did.

Gillian Martin: I am not sure that I am able to go into that level of detail, but the point is that the system involves the costs of dealing with the waste being met by the fund, not the other way around. It is not a case of “This is what we collect and this what you’ve got”; it is, effectively, a case of “This is how much it is going to cost us to deal with this packaging, therefore this is the money that is required.”

Bob Doris: That is helpful.

David McPhee: To be clear, the £120 million is not a fixed figure, and neither is the £1.2 billion—those are based on estimates. The process still has to be gone through, and it will build up to a determination of what the costs are. At that point, the producers pay those costs.

Bob Doris: I am delighted that, in a few years, we will be in a position to scrutinise all of this anyway. It is a really positive step, but I am thinking about the future situation in which such vast sums of cash are, quite rightly, going to our local authorities, and I expect that Parliament will

want to keep an eye on how that money is being used and on whether local authorities are getting a reasonable share of the overall pot of cash.

Douglas Lumsden: I have a brief question. Will importers of goods into this country have to pay the charge as their goods come in? Is that how we will ensure that there is a level playing field?

David McPhee: Anybody who sells here will pay the charge.

Gillian Martin: As with any regulations, anyone who is trading in the UK is subject to the laws.

Douglas Lumsden: So, it is not just producers of products who would have to pay, but importers of products, too.

Gillian Martin: Yes.

The Convener: There are no more questions for the cabinet secretary. Normally I would suspend the meeting to allow the cabinet secretary to depart; however, I am going to push on, because we have quite a lot still to do. I thank you, cabinet secretary, and your various teams, including the longstanding members of your team who have attended all three of our evidence sessions, for coming this morning.

The next part of our meeting is to ask members’ views on whether the committee agrees with the Scottish Government’s proposal to consent to the UK Government making those regulations within devolved competence. Does anyone have views on that, or are we happy to approve the proposal? Bob Doris’s point was interesting, and the committee will want to keep an eye on how that cash is allocated. I am happy to listen to any comments.

As no member wishes to comment, is the committee content that the provisions that are set out in the notification should be included in the proposed UK SI?

Members indicated agreement.

The Convener: We will write to the Scottish Government to that effect.

That concludes our meeting in public. We will now go into private session.

11:59

Meeting continued in private until 12:14.

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