



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

COVID-19 Committee

Tuesday 19 May 2020

Session 5



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Pàrlamaid na h-Alba

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Tuesday 19 May 2020

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CORONAVIRUS (SCOTLAND) (NO 2) BILL: STAGE 2 1

COVID-19 COMMITTEE

5th Meeting 2020, Session 5

CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

DEPUTY CONVENER

*Monica Lennon (Central Scotland) (Lab)

COMMITTEE MEMBERS

- *Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
- *Annabelle Ewing (Cowdenbeath) (SNP)
- *Ross Greer (West Scotland) (Green)
- *Shona Robison (Dundee City East) (SNP)
- *Stewart Stevenson (Banffshire and Buchan Coast) (SNP)
- *Adam Tomkins (Glasgow) (Con)
- *Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Jackie Baillie (Dumbarton) (Lab)
- Alex Cole-Hamilton (Edinburgh Western) (LD)
- Neil Findlay (Lothian) (Lab)
- Jenny Gilruth (Minister for Europe and International Development)
- Mark Griffin (Central Scotland) (Lab)
- Patrick Harvie (Glasgow) (Green)
- Alison Johnstone (Lothian) (Green)
- Liam Kerr (North East Scotland) (Con)
- Gordon Lindhurst (Lothian) (Con)
- Pauline McNeill (Glasgow) (Lab)
- Mark Ruskell (Mid Scotland and Fife) (Green)
- Michael Russell (Cabinet Secretary for the Constitution, Europe and External Affairs)
- Graham Simpson (Central Scotland) (Con)
- Colin Smyth (South Scotland) (Lab)
- Shirley-Anne Somerville (Cabinet Secretary for Social Security and Older People)
- Kevin Stewart (Minister for Local Government, Housing and Planning)
- Andy Wightman (Lothian) (Green)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Virtual Meeting

Scottish Parliament

COVID-19 Committee

Tuesday 19 May 2020

[The Convener opened the meeting at 09:00]

Coronavirus (Scotland) (No 2) Bill: Stage 2

The Convener (Murdo Fraser): Good morning, and welcome to the fifth meeting of the COVID-19 Committee. The only item on our agenda today is stage 2 consideration of the Coronavirus (Scotland) (No 2) Bill. Joining the committee today are a number of ministers and other MSPs, and I welcome you all.

We have a lot to get through this morning, but it will work well if we take it slow and steady. When I call you to speak, please take a breath before speaking, to allow your microphone to be switched on. I remind members that they can request to speak by tapping “R” in the BlueJeans chat function. Once I call the relevant group, please speak only when I call your name.

Only committee members are eligible to vote, and voting will also take place using the BlueJeans chat function. Once I have read out the result of the vote, should you consider that your vote has been incorrectly recorded, please let me know as soon as possible. I will pause to provide time for that.

Depending on how long proceedings take, I will suspend the meeting for a five-minute comfort break at a suitable point. Given the time constraints, I encourage short, succinct contributions from all those who speak today.

We now move to declarations of interests from members. I declare that I am a member of the Law Society of Scotland and I have a property interest from which I derive rental income.

Annabelle Ewing (Cowdenbeath) (SNP): I refer members to my entry in the register of members’ interests. Therein, members will note that I am a member of the Law Society of Scotland and hold a current practising certificate, albeit that I am not currently practising. I also rent out a flat.

Neil Findlay (Lothian) (Lab): I am a member of Unite the union.

The Convener: We come to the stage 2 proceedings. Members will have in front of them the marshalled list, which shows the order in which amendments will be considered.

Sections 1 and 2 agreed to.

Schedule 1—Protection of the individual

The Convener: The first group of amendments is on housing and tenancies. Amendment 15, in the name of Graham Simpson, is grouped with amendments 16, 22, 17 to 20, 42, 46 and 47.

Graham Simpson (Central Scotland) (Con): Good morning, everyone. Good luck today—I know that you have a lot to get through. I have the convener’s words that we should keep things brief ringing in my ears as I start this first group, which could be quite meaty. Before I get into it, on behalf of everyone taking part I thank the Parliament’s bill team for getting through 56 amendments, which was quite a hefty task. I hope that they do not have such a hefty task when we move to stage 3 tomorrow.

Amendment 15 relates to the provisions in the bill that give students the right to give seven days’ notice to end their tenancy with a student housing provider. Amendment 15 is aimed not at damaging those provisions but at clearing them up.

I ask members to look at subparagraph 3(2)(b)(i) of schedule 1. My reading of the subparagraph draws the same conclusion as has been drawn by Universities Scotland and the Scottish Property Federation, and is that it applies to anyone on an existing tenancy. However, I cannot imagine that there will be many students still around or many who have signed a lease for the next academic year, knowing the risks that are associated with that.

Kevin Stewart wrote to me about the issue, for which I am grateful. He said:

“The provision purposely makes the distinction between leases ‘entered into’ before the Bill comes into force and those entered into after that date ... the main category we are seeking to address is leases which have already started, where the tenant has been in occupation, and which are about to come to an end. But we were also aware that the proposal would affect other leases.

We have chosen to treat all leases entered into before the pandemic (including those yet to start) in the same way because they have been impacted by an unforeseen event which we consider to be a justification for giving students the right to terminate on seven days’ notice.

On the other hand, students agreeing tenancies after the Bill comes into force will be aware of the risks and impact of the pandemic. We therefore don’t intend to make any amendments to the way the provisions are currently drafted.”

There is a gap between those who are currently students and who signed leases before the pandemic, and students who sign leases after the bill comes into force. My amendment 15 seeks to ensure that anyone who entered into a lease during the pandemic for the next academic year would not be covered by the provisions, which I think is the intent. It is simply a tidying-up amendment.

In a way, amendment 47 ties in with amendment 15, because it relates to the part of the Council Tax (Exempt Dwellings) (Scotland) Order 1997 that deals with student accommodation. Many large providers of purpose-built student accommodation have done the right thing and offered to release students from their leases for the summer term, but that could lead to an unintended consequence of those providers being charged vacant property council tax rates. Amendment 47 seeks to sort that out.

Amendment 46 also relates to council tax. It would exempt all former rented properties from council tax. I have had representations from landlords whose tenants have left—perhaps because they have lost work or were living away from home and have gone back home—with the landlords left with empty furnished properties. The landlords will fill the properties again if they are still in business, but they need help now. Amendment 46 would simply remove the burden on them of paying council tax, but only for now.

My final amendment in the group, which is probably the most controversial, is amendment 42. It seems to have set off alarm bells with ministers, but they should not be quite so worried. It relates to holiday lets. Members will be aware of the difficulties that the tourism industry is facing. Amendment 42 is intended to help those who run genuine self-catering businesses to fill their properties, while allowing them the flexibility of being able to return to business at a later date. The properties could be used to house key workers such as lorry drivers for a while. The Scottish Government fears that we could end up with mass evictions, but I really do not see those fears being realised.

A recent survey by the Association of Scotland's Self-Caterers of its members found that 61 per cent of respondents felt pessimistic about their businesses' sustainability and 37 per cent felt pessimistic in the longer term. The association is supportive of amendment 42. I realise that the amendment is far reaching—it deals heavily with tenancy law and would allow people running holiday lets to convert them into normal tenancies on a short-term basis. We would not ordinarily do that, but we are in an emergency. I commend amendment 42 to members.

I turn to the amendments in the group that Andy Wightman and Pauline McNeill lodged, on which members have had quite a bit of correspondence. Mr Wightman's amendment 16 and Ms McNeill's amendment 22 deal with funds for tenants. In my view, such an approach is not required; the issue should be dealt with through the welfare system. Amendment 22 is slightly better than amendment 16, but I suggest to Ms McNeill that a better solution to the issue that she is trying to address

might be to change the criteria for seeking assistance from the Scottish welfare fund so that they include rent arrears.

Perhaps the most controversial of Mr Wightman's amendments is amendment 17, which provides for a rent freeze. Many landlords have reduced rents to help tenants during the crisis; for example, I know landlords in Edinburgh who have reduced rents by 30 per cent for a minimum of three months. Of course, that is what should happen: tenants should tell landlords when they are facing difficulties and landlords should respond flexibly.

The committee has received a number of pieces of correspondence on amendment 17—members might or might not have had a chance to read them. The Glasgow and West of Scotland Forum of Housing Associations said:

"Amendment 17 seeks a two-year rent freeze from the date on which the No 2 Act comes into force. Currently it is impossible to estimate the financial losses which housing associations will incur as a result of lost rent and void costs during Covid. No association will want to impose large increases in the coming years".

On amendment 18, the forum said:

"Amendment 18 seeks to have liability for rent arrears incurred during the Covid period 'extinguished'"—

that is the word that the amendment uses. The GWSF went on to say:

"In GWSF's view this measure would be catastrophic, as it would effectively send a signal to 600,000 social housing tenants that rent was no longer payable during the Covid crisis. This would lead to many thousands of tenants who could still afford to pay their rent not doing so".

We had similar comments from the Scottish Federation of Housing Associations.

I urge members to reject amendment 18 and all Mr Wightman's amendments in the group, and to reject Ms McNeill's amendments.

I move amendment 15.

The Convener: I remind members that if they want to contribute to the discussion on the amendments, they must type "R" in the message box, please.

Andy Wightman (Lothian) (Green): As members are aware, the first coronavirus bill—the Coronavirus (Scotland) Bill—provided welcome protection for tenants by ensuring that notice periods for eviction would be extended beyond the current statutory limits. The approach ensures that, for tenants who are evicted during the emergency period, there is a longer period before they actually have to leave their homes. I lodged amendments to that bill that sought to ban the bringing of eviction proceedings during the emergency period, but my amendments were defeated.

As we consider the Coronavirus (Scotland) (No 2) Bill, I want to provide further protection for tenants, including beyond the end of the emergency period, when it is anticipated that tenants will remain vulnerable to eviction as a result of the financial hardship that they have experienced during this period.

I will briefly summarise my amendments in this group; last night, I circulated to committee members a note on their purpose and effect.

Amendments 16 to 20 would apply to all statutory tenants—social and private. If committee members are concerned about whether the amendments should apply to all social tenants and/or private tenants, we can discuss their concerns and perhaps make changes at stage 3, if that is deemed necessary.

09:15

Amendment 16 is designed to relieve hardship for tenants by placing a duty on Scottish ministers to establish a tenant hardship fund. Ministers were quick to establish the landlord loan fund, but tenants who face hardship—and we heard this from Mr Simpson—will have to rely on the benefit system. That is useless to many private tenants: it does not adequately cover their rental liabilities, particularly in expensive areas such as Edinburgh. The detailed eligibility and administrative criteria for the fund would be left to ministers to set out through regulations.

Amendment 17 recognises that existing hardships will be exacerbated if tenants face rent increases during and after the emergency period. To provide some certainty amid so much uncertainty, amendment 17 freezes rents at the level they are on the day of royal assent for a period of two years and prohibits any increase in rent during that period. If there are concerns about the date, in light of what Mr Simpson said about landlords reducing rents, it could be changed to, for example, 1 March.

Amendment 18 recognises that many tenants will be unable to pay their full rent because of their personal financial circumstances. The amendment provides for writing off any rent liabilities for any tenant who is unable to pay rent during the emergency period. The exact definition of such inability is for ministers to specify in regulations, but I envisage that being framed very narrowly, and it should apply only to tenants who are in greatest distress.

I reject the notion that responsible tenants will take that as a signal not to pay their rent. I would hope that they would find that any regulations that were approved under my proposed new provision would not cover them, so they would continue to be due to pay that rent. Amendment 18 is a

significant amendment because it writes off rent, rather than simply ensuring—[*Temporary loss of sound.*]

That is what amendments 19 and 20 do. Amendment 19 is a very significant amendment, and I hope that committee members will approach it sympathetically. It is designed to ensure that, after the emergency period is over, no landlord can seek to evict a tenant for rent arrears that were accrued during the emergency period. It is important to point out that we are not writing off any rents with this amendment. Any rent that has fallen into arrears will continue to be owed to the landlord; the landlord will be able to recover those arrears through the normal process of debt recovery. I am just seeking to ensure that no one loses their home because of rent arrears; in other words, I am seeking to ensure that arrears cannot be used as grounds for initiating eviction proceedings.

Amendment 20 has the same basic effect as amendment 19, although it is much narrower in scope. The landlord loan fund was established by ministers to assist landlords in financial distress, but there has been no equivalent for tenants. Amendment 16, as I have just outlined, would provide for such a fund. Amendment 20 seeks some conditionality around the landlord loan fund. In return for a loan—as a condition of receiving a loan—a landlord would lose the power to evict a tenant for rent arrears arising during the emergency period. As with amendment 19, the rents concerned would continue to be due, but would be disregarded for the purpose of seeking an eviction.

The Convener: Pauline McNeill will speak to amendment 22 and other amendments in the group.

Pauline McNeill (Glasgow) (Lab): As Andy Wightman said, many tenants will face severe economic hardship due to Covid-19. Government should seriously consider the importance of trying to avoid building up debt for tenants during this period and should consider the wider social implications if people are unable to hold on to their tenancies, building up huge arrears and debt.

Although I have accepted from the beginning that the Government has done a great deal, I do not believe that it has gone far enough. Graham Simpson is right to point out that there could be an option to expand the welfare fund but, like Andy Wightman, I believe that there will be a wider range of people who need help and who are not on universal credit. Amendment 22 seeks to set up a tenant rent support fund, because I believe that a wide range of tenants will be affected.

I agree with Andy Wightman that Government policy must be aimed at ensuring that no one

loses their home because of Covid-19. A range of tenants who may need help, including key workers and nurses. We also need to anticipate what might happen at the end of the period. Although we have an analysis of what is going on now, we need to think about what the severe implications might be for the future.

During the passage of the first emergency bill, I raised the idea of a fund to assist people who are affected by having a reduced income as a result of Covid-19—it is important to emphasise that the reduced income must relate to Covid-19. Amendment 22 would allow ministers to set up a support fund for tenants who have fallen through the gaps of universal credit or who are short of rent. It would be for ministers to set the rules on that.

Amendment 16, in the name of Andy Wightman, on a tenant hardship fund, seems to do the same thing as amendment 22, and I ask members to support that as an alternative to my amendment.

On amendment 17, which would provide a rent freeze for all tenants, Andy Wightman needs to address the question of the impact that that would have on local authorities and registered social landlords. We all have a great deal of sympathy for a rent freeze in the sector and for the wider benefits to society of trying to stabilise tenancies, but that needs to be weighed against the losses that will be experienced by councils and registered social landlords, in particular.

Amendment 18 proposes a disregard for rent arrears. That could be crucial in stopping debt and preventing people from losing their homes and is definitely worthy of consideration. Amendment 19 seems quite sensible in suggesting that rent arrears cannot be grounds for eviction. That is an important principle.

Finally, Amendment 20 is in line with my own views, which I made clear during the passage of the first emergency bill. Arrears should not be grounds for eviction, in line with the Government's no-evictions policy.

The Convener: As no other members wish to speak at this point, we will hear from the minister.

The Minister for Local Government, Housing and Planning (Kevin Stewart): There are several amendments in the group, and I will address each in turn.

I will start with amendment 15, in the name of Graham Simpson. I thank Mr Simpson for his helpful scrutiny of the bill. I accept the point that he makes in amendment 15 and I support its aim, which is to provide clarity. However, as I have said to him, the drafting of the amendment needs to be considered further, so I ask him not to press amendment 15. I will work with him to ensure that

an amendment can be made at stage 3 that will achieve his aim.

I will cover amendments 16 and 22 together, as they seek to do the same thing. We want to ensure that tenants who are facing financial difficulties that lead to rent arrears are supported to access all the help, support and advice that are available. Support for housing costs is the responsibility of the United Kingdom Government, through reserved benefits such as universal credit, which includes housing.

We have actively encouraged tenants to apply for the financial support for which they are eligible, including through a specific campaign letting tenants know about their rights and the changes that we made to support them through the first emergency act. I remind members that the Scottish Government took action under the first emergency act to protect tenants from any eviction action for six months.

In addition, we have provided Citizens Advice Scotland with £3 million to provide support to people struggling financially at this time. That includes an additional £100,000 for a new national helpline.

Although we have welcomed the UK Government's changes to the welfare system, equally, we have urged it on several occasions—prior to and during the coronavirus crisis—to go further and use its social security powers to make additional improvements to support those accessing benefits, including tenants who are struggling to pay rent.

The Scottish Government budgeted £71.2 million in this financial year for discretionary housing payments for tenants to ensure that we mitigate the bedroom tax in full and to help those struggling with their housing costs. The committee should note that that is an increase of nearly £10 million on the previous financial year. We expect the cost to increase significantly over and above that amount due to the additional numbers of people moving to universal credit who will be hit by the bedroom tax. All of that will need to be paid for out of Scottish Government funds.

I make it clear that no landlord should evict a tenant because they have suffered financial hardship due to the coronavirus pandemic. We expect landlords to be flexible with tenants facing financial hardship and to signpost them to the sources of financial support that are available.

A landlord who is facing financial difficulty due to a tenant being in arrears is able to access a loan from the Scottish Government where they have discussed rent issues with their tenant and made an agreement on managing arrears. For many landlords, there is a genuine prospect of rent being unpaid. If they face a delay in payment, the

loan will provide them with a short-term financial support that they need for the longer term. Of course, the loan must be repaid. That support is vital, given that it will do no good to tenants and the private rented sector in general if a landlord has to sell a home or has it repossessed because they cannot meet their final obligations on the property during the coronavirus emergency.

I urge the committee to reject amendments 16 and 22.

Amendment 17 does not take into account tenants' or landlords' individual circumstances, including their financial circumstances. It does not consider the negative impact of its effects, including on the ability of landlords to adequately service their properties, or the potential severe financial impact on registered social landlords, who are already concerned about the loss of income as a result of the coronavirus emergency. Therefore, it is no wonder that stakeholders such as the Scottish Federation of Housing Associations, Association of Local Authority Chief Housing Officers and the Glasgow and West of Scotland Forum of Housing Associations are united in their opposition to this amendment. They have expressed their deep concerns to the committee.

Legislation is already in place that provides stability to tenants in the private rented sector, and rents can be increased only once a year and with three months' notice. If a tenant is waiting for financial support, such as benefits, action cannot be taken. In addition, tenants have the right to challenge unfair rent increases. In the social sector, the current legislation ensures that landlords have a legal duty to consult tenants about rent setting. They must also take into account the importance of what current and prospective tenants, and other customers, are likely to be able to afford when they are setting rents.

Amendment 17 also pays no regard to the impact that it might have on the housing supply across the private and the social sectors. The committee should reject it.

09:30

In relation to amendment 18, as I said earlier, we have encouraged tenants to still pay their rent, if they can, during the course of the pandemic, to apply for all forms of financial assistance for which they are eligible and to seek advice and support. Although the emergency legislation will expire on 30 September, it can be extended for a further six months, and then a further six months after that, through affirmative regulations. We have made it clear that the Government will be flexible to meet

the needs of people as we assess the economic and social impact of the pandemic.

Amendment 18 takes a blanket approach to rent arrears that are accrued during the period for which the bill is in force. It does not consider the potential impact on landlords or the potential knock-on effect for housing stock that would occur should funds not be available to carry out the servicing of properties or, indeed, to make payments on the security of properties. We want to ensure that tenants can stay in their homes. Amendment 18 is a very blunt instrument, and I urge the committee to reject it.

The arguments against amendment 19 are much the same as those against amendment 18. As I said, we have made it clear throughout the crisis that no landlord should evict a tenant because they have suffered financial hardship as a result of Covid-19. We have asked landlords to signpost tenants to the range of support and advice that is available to help tenants to pay their rent.

As I said of amendment 18, amendment 19 takes a blanket approach to rent arrears. I also believe that it would not be right to include in the bill provisions that would, in effect, direct the First-tier Tribunal—an independent judicial body—to disregard particular evidence on why rent arrears occurred in a particular case.

I recognise the need to manage the effective transition from the temporary provisions in the coronavirus legislation to the provisions in the pre-Covid-19 legislation. That is why I am actively pursuing making the rent arrear eviction grounds discretionary in nature, which will enable a tribunal to examine all the reasons for the accumulation of rent arrears as a result of the Covid-19 pandemic. For those reasons, I encourage the committee to reject amendment 19.

I turn to amendment 20. We have acted to protect tenants from eviction action during the emergency period. In addition, we have given the First-tier Tribunal discretion in considering whether it is reasonable to grant an eviction order. It can take the full circumstances of the case into account, including whether the landlord has been a recipient of our landlord loan fund. Of course, landlords will not profit from such loans—they must be paid back—and it does not benefit the tenant if a landlord's property is at risk because the landlord cannot service the debts or the mortgage on a property. Amendment 20 risks landlords being put off applying for the loan and, instead, seeking eviction at the earliest opportunity. To take a loan, landlords would need to be willing to accept the lack of transparency on the period during which the provision would impact on their ability to operate the rental property.

However, I recognise the need to ensure that we do our utmost to protect tenants, so I will lodge an amendment at stage 3 for a new regulation that will make a power to create private landlord pre-action protocols similar to those that are currently in place in the social sector. It will place on landlords a duty to undertake certain actions to support their tenant prior to being able to go to a tribunal to seek an eviction order. That approach will support tenants far more effectively. For those reasons, I encourage the committee to reject amendment 20.

I turn to the amendments on council tax. It is in no one's interest if housing stock sits idle and unused, which is why the Government has taken concerted action to get empty homes back into use. However, we must ensure that any action that we take in the midst of this crisis does not have unintended consequences. We oppose any relaxation of the rules on private rented tenancies to enable eviction to take place on the ground that the landlord wishes to return a property to the short-term rental market. That could lead to mass evictions when social distancing restrictions are lifted, and it would undermine our policy of providing tenants in the private rented sector with security of tenure. There are no unreasonable legislative barriers that would prevent the owner of a short-term let from moving into the private rented sector; indeed, there is evidence to suggest that a number of owners have already made that switch. We therefore do not believe that any change to legislation in this area is necessary.

A fundamental principle of our private rented sector policy is to provide tenants with security and stability. Once a property is let under a private rented sector tenancy, it becomes the tenant's home. We will not dilute those rights by making special provision for short-term let owners to move in and out of the private rented sector market. I therefore urge Graham Simpson not to press amendment 15 and, if he chooses to do so, I urge the committee to reject it.

Amendment 46 would exempt from the payment of council tax all dwellings that are "available for rent" and "not occupied", but I do not believe that it is required. Dwellings that are empty and unfurnished already qualify for such an exemption for several months. In addition, the Government is strongly encouraging local authorities to use the powers that they already have to defer payment of council tax bills for which landlords are liable now. That would remove the immediate pressure on landlords and would mean that the tax could be paid once their income has increased. Furthermore, there is financial support available to help landlords, whether their property portfolios are small or large.

There are a number of flaws in the wording of amendment 46. One such flaw concerns the term "available for rent", which could apply to types of properties beyond what I think Graham Simpson intends the amendment to cover. For example, the wording means that the amendment, if it is passed, could apply to self-catering lets, bed and breakfasts and other situations that do not involve private landlords. Another flaw is that the amendment sets no timescales in respect of lack of occupancy and gives no clarity on how long properties would need to be vacant before the proposed exemption from council tax would apply. As a result, the measures could apply to properties that have lain unoccupied for just one day or since last year. I therefore oppose amendment 46 both on policy grounds and because of legal issues with the drafting.

This has been a long discussion on this group. It began with one of Mr Simpson's amendments that we will return to at stage 3, when I hope we will agree on a way forward in co-operation. As I said, I support amendment 15 in principle, but there are some issues with its drafting.

On amendment 47, the Council Tax (Exempt Dwellings) (Scotland) Order 1997 sets out dwellings that are exempted from paying council tax, including dwellings that are occupied by one or more students, a student's spouse or dependant, school leavers or people under the age of 18. Under amendment 47, properties that would in usual times be covered by those exemptions but which are not covered due to being unoccupied for coronavirus-related reasons would be exempt. That would cease to have effect when the provisions of the eventual act end. Given that amendment 47 relates to properties that would be exempt from council tax in normal times and that the measure introduced by the amendment would last only as long as the bill itself is in force, the Government supports the principle of the amendment. However, there are areas where it needs to be refined. Therefore, if Mr Simpson does not press amendment 47, I will be happy to make a commitment that the Government will work with him to draw up an appropriate stage 3 amendment.

I thank the committee for bearing with me through that lengthy discussion about this group of amendments.

The Convener: Thank you, minister. As you have said, that was a comprehensive assessment of the group.

Graham Simpson: I thank members who have taken part in the discussion on the group, and I thank the minister for what was, as has been said, a comprehensive look at all the amendments in the group.

I accept what the minister had to say about my amendments 15 and 47, which both relate to student properties, and I fully accept the points that he made, so I am prepared not to press the amendments, on the basis that he will work with me over the next few hours to get better wording.

I also heard what he had to say on my amendment 46, which relates to council tax. Having reviewed the wording in that amendment, I agree with him that it is flawed and would not achieve what I seek, so I will not move amendment 46, which we will come to later.

I will move amendment 42, which relates to holiday lets. I have not heard from other parties their views on it, but we should have the flexibility that I described earlier.

We have covered the other amendments in the group in some detail, so I will leave it there.

Amendment 15, by agreement, withdrawn.

09:45

The Convener: Amendment 16 is in the name of Andy Wightman. Because the technology that we are using does not allow interventions, it is reasonable to allow members who have lodged amendments a brief opportunity, in determining whether to move them, to respond to what they have heard in the debate. I invite Andy Wightman to respond briefly to what he has heard, and to say whether he will move amendment 16.

Andy Wightman: Thank you, convener. I will move amendment 16.

The minister said that no landlord should evict a tenant because of coronavirus, but the reality is that tenants will be evicted because of it. He also said that the Government wants to ensure that tenants can stay in their homes, but the reality is that many tenants will not be able to stay in their homes, because of coronavirus.

The minister mentioned the defence in the First-tier Tribunal for Scotland, which has powers of discretion, but they will last only as long as the emergency period.

I am disheartened that the minister, who had advance sight of the policy intentions of my amendments a week ago, has made no attempt to discuss them with me or to seek to strengthen the rights of tenants. I acknowledge that some of the amendments might be rather too far-reaching or too coarse, but there is no reason why they cannot be refined.

Amendment 16 moved—[Andy Wightman].

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 16 disagreed to.

The Convener: Amendment 22, in the name of Pauline McNeill, has already been debated with amendment 15. I invite Pauline McNeill to respond briefly to the debate, if she wishes to do so, and to say whether she will move amendment 22.

Pauline McNeill: I will move amendment 22.

I agree with Andy Wightman that tenants will potentially be evicted from their homes if we do not take a more radical approach to protecting them. The times that we are living in are unprecedented, so I ask the committee to think ahead. What we know now is nothing to what we might experience in the months to come; the impact could be profound.

I believe that my proposed national fund and Andy Wightman's proposed fund are much the same. Ministers will have to go much further in order to prevent tenants from building up huge arrears and from being evicted from their homes.

I ask the committee to consider that, if people lose their homes and build up huge debt, and we do not do more to help folk who are renting in all sectors—the private rented sector, in particular—there will be an impact on individual tenants and there will be massive and much wider social and economic impacts.

I urge the committee to support amendment 22.

Amendment 22 moved—[Pauline McNeill].

The Convener: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)

Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 22 disagreed to.

Amendment 17 moved—[Andy Wightman].

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 17 disagreed to.

Amendment 18 moved—[Andy Wightman].

The Convener: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 18 disagreed to.

Amendment 19 moved—[Andy Wightman].

The Convener: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 19 disagreed to.

Amendment 20 moved—[Andy Wightman].

The Convener: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 20 disagreed to.

10:00

The Convener: Amendment 21, in the name of Neil Findlay, is grouped with amendments 24, 26, 27, 30, 31, 33, 34 and 50.

Neil Findlay: Amendment 21 seeks to establish a system of national collective bargaining in the private care home sector. When I was the convener of the Health and Sport Committee, Scottish Care, which represents care home owners, and the trade unions that represent the workforce asked for such a system to be introduced. The bill gives us the opportunity to do that.

Whether we like it or not, adult social care is an industry. Hands-on care is highly skilled and increasingly complex. However, the terms and conditions of employees are precarious and unacceptable. Poor-quality jobs and reward mean poor-quality care.

Individual rights are insufficient to remedy those problems. Care workers have been silenced by the structure of the care market. The Government

must act to raise the quality of employment across the care sector. Sectoral bargaining would create decent work and, crucially, would raise the quality of the care that is provided.

At present, many people who are not deemed by their employer to be front-line workers are not paid the living wage in the care sector; they are paid the minimum wage. They include cleaners, drivers, cooks, laundry staff and handymen. Many of those people work 12-hour shifts. If they are off work, they lose 12 hours' pay and, as we have become aware in recent weeks, they are put on statutory sick pay. As a result, they try their best to come to work, even when they are sick. That is not a good thing.

As an example of a major player in the sector, HC-One has been very topical recently; it has not paid a penny in corporation tax in the UK since 2011, but has managed to pay shareholders £48 million.

Small, family-run care homes have a good record for the way in which they treat their staff and have good relations with them, but many such homes pay little more than the rates that I have already referred to.

Home carers have their own issues. Some have to buy their own uniforms; some have to use their own phones for work; and they are given no travelling time between clients. Those issues in the sector have long been documented.

In a sector that is supposed to protect elderly and vulnerable people, and which has its profits provided by exploiting workers where there is no trade union to intervene, the current crisis is nothing new. We have been speaking about it for years. The Covid-19 crisis has merely exposed it and brought it into the public domain a bit more. We have the opportunity to intervene, and to start the beginning of the end of a public service and health disaster.

On Thursday evenings, people stand on their doorsteps and clap for key workers. That is a good thing. The committee can turn that easy symbolism into something real, genuine and practical—something that will deliver positive and much-needed improvements in the pay, terms and conditions and morale of the workforce and, crucially, in the quality of the care that they provide.

I plead with members to support amendment 21. In my opinion, one of the most important things that we can do is to have a proper system to reward those who deliver that crucial care, keep them safe, and build a respectful relationship between the owners of those homes and the workers who deliver the care for us.

I move amendment 21.

The Convener: I call Monica Lennon to speak to amendment 24 and all other amendments in the group.

Monica Lennon (Central Scotland) (Lab): Amendment 24 in my name seeks to establish a social care staff support fund. Like many other members, I have serious concerns about what is happening in our care homes—they really are the crisis within this crisis. There are on-going issues with testing and there is confusion about the application of guidance. Even in the past couple of days, care workers have spoken out in the media about their worries that they will be unable to live on statutory sick pay should they test positive for coronavirus. That should not be a factor in whether they can continue to earn a living. We need staff to be safe and well at work, but if they have Covid-19 or are awaiting test results, they should not be in the workplace putting themselves and, of course, the residents at risk. I believe that a mechanism needs to be in place, because many have already faced financial detriment.

Amendment 24 seeks to address that. The committee has heard from experts such as Sir Harry Burns that staff are unwittingly spreading Covid-19 in care homes. Many staff have been asymptomatic and care homes have not had the benefit of routine testing. Whether or not Covid-positive staff are asymptomatic, they should not be at work, but nor should they suffer financial detriment because of that. I have consulted trade unions. I should have said at the beginning that I am a member of the GMB union and Unite. I believe that amendment 24 is necessary at this juncture in the crisis, so I hope that members support it.

I will briefly address the other amendments in the group in my name. Amendment 30 would introduce a duty on the Care Inspectorate to lay a report before Parliament every two weeks during the emergency period setting out which care home inspections have been carried out and the findings of those inspections. There is so much concern about the way in which care homes are handling the crisis. Amendment 30 would improve transparency and ensure that information is available quickly to all MSPs to give an overall picture about on-going problems with particular care homes or providers across the country and, importantly, a picture of where extra support is needed.

Amendment 31 seeks to put a duty on Social Care and Social Work Improvement Scotland to impose temporary management on a care home during the emergency period if the existing management is unable to perform its functions due to reasons connected to the coronavirus.

Amendment 50 would put a duty on ministers to establish the position of national social care officer

to advise the Scottish Government on the needs of the social care sector in relation to the coronavirus. We all agree that the social care sector has been badly hit by the virus, and the needs of workers and care home providers for PPE have not always been heard. Dr Donald Macaskill of Scottish Care has publicly stated that the response has been patchy and not joined up. I believe that the appointment of a national social care officer is needed to strengthen the voice of the care sector and ensure that a unified approach is taken. None of us wants a postcode lottery in relation to the quality of care and PPE.

On the other amendments in the group, I support amendments 33 and 34 in the name of my colleague Jackie Baillie, which I believe will increase transparency and reporting, although I am sure that Jackie Baillie will speak for her own amendments. I also support amendment 21, which Neil Findlay has just spoken to.

I welcome Government amendments 26 and 27, in the name of the cabinet secretary, which would give ministers powers to take control of a care home service and give local authorities the power to purchase a care home or service during the emergency period if that was necessary. There is a case for extending that provision beyond the emergency period, although I appreciate that we are dealing with the immediate term at the moment. I believe that those amendments can work with my amendment 31, which relates to temporary management and could also apply due to short-term illness, but might stop short of full control being taken of a service.

In summary, I support all the amendments in the group.

The Convener: I call Michael Russell to speak to amendment 26 and the other amendments in the group.

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): This is a serious part of the bill, and the Scottish Government has taken this group of amendments seriously. I am grateful to Neil Findlay, Monica Lennon and Jackie Baillie for their contributions to the debate.

We must provide whatever urgent or emergency actions we can to improve the situation, or to do things that we feel would otherwise be in doubt. We need to remember that this is not about taking actions beyond that emergency situation—I will return to that point in a moment. The actions have to be possible, practical and proportionate; we have tried to make them so, particularly in the amendments in my name. Some elements in the other amendments reflect that, too, and I will refer to those.

We are endeavouring to assure the most important people in the situation—those who are being cared for, and the staff—that we are trying to do all the things that are possible, practical and proportionate, to help them at this difficult time. The amendments in my name do that in two ways. We put beyond doubt that health boards, agency bodies and local authorities have the power to purchase a care home or care-at-home services, if—I want to make that clear—there was a failure to continue service, the provider of that service was in serious financial difficulty or the provider had ceased to provide a service and was willing to sell.

Amendment 27 will allow the Scottish ministers to make an application to a sheriff to appoint a nominated officer—someone whom they consider suitably qualified to carry out the running and operation of a care home, to direct existing staff and to bring in additional staff as necessary. The sheriff must grant the order if it appears to them that there is a serious risk to the life, health and wellbeing of any person in the care home as a result of the coronavirus pandemic.

Importantly, that provision will enable Scottish ministers, in extreme situations, to exercise those powers before making an application to the sheriff, provided that they apply to the court for the necessary order as soon as it is practical. I will lodge amendments at stage 3 to make that even clearer and ensure that there is a strong limit on what can be done.

Scottish ministers would exercise that power in advance of the judicial process only if they judged that it was essential to prevent that serious risk to life, health and wellbeing. In normal circumstances, residents at risk would be moved to another home: it would be impossible and unsafe to do that during a pandemic and nobody would support that action.

We are trying to provide practical, proportionate and possible actions that can make a difference. We have to support the social care sector and we have already made substantial efforts to do so. We have put in enhanced clinical leadership, provided by directors of public health with the support of medical directors, nurse directors, chief social work officers, care inspectors and others.

We have put in enhanced testing regimes in care homes, as well as access to appropriate PPE, additional support for the workforce and direct intervention on infection and protection control. Extensive work is already under way to support the social care sector: an initial £50 million has been announced to support the immediate challenges in the sector, which the health and social care partnership mobilisation plans have identified.

We are taking forward that work across the board, with providers, directors of public health, health and social care partnerships, regulatory bodies and other key professional groups. I hope that all of that is providing not just the assurance, but the practical difference that will take things forward. By clarifying the purchasing powers, we are again trying to ensure that the risk is reduced for the vitally important people who are helped and served by the social care sector. We are also reassuring staff that under no circumstances would their employment cease: we know that their work is so important that it must continue, and we are taking exceptional steps to ensure that it does.

If amendments 26 and 27 are agreed to today, we will make minor technical adjustments at stage 3 to clarify that the ability for ministers to act in advance of court order will relate to the prevention of an imminent and serious risk, and we will tighten the time limit to get a court order, so that it must be obtained within 24 hours of intervening. I hope that the committee will agree to amendments 26 and 27.

The intention of amendment 31 is not dissimilar. Every member—not just those who are speaking in committee—and everyone in society is concerned about the safety of staff and residents. It is right that the Care Inspectorate should be clear about its rights and responsibilities. However, Scottish ministers already have the power to confer additional functions on it, and amendment 27 deals with any concerns that might exist about that. We acknowledge what Monica Lennon is asking for in amendment 31, but I hope that she will accept that that power is already there.

10:15

Neil Findlay, when speaking in support of amendment 21, raised very serious concerns that will need to be addressed. However, the question is whether amendment 21 is the way in which to address those concerns and make progress. The demography of the workforce and the historical status of care work mean that, as the member knows, only a small proportion of the workforce are members of unions. If we were to put in national collective bargaining instantly—I dispute whether that would be possible—we could end up in a situation where there might be a negotiation between a purchaser and a provider but without organised labour being in the right place in those negotiations.

We have made additional funding available to increase the capacity of social work support and ensure fair working conditions. We will continue to provide support. We have made a commitment to pay at least the real living wage for those working on publicly funded contracts; we have introduced

sick pay for those who are sick or self-isolating; we have introduced access to childcare, testing and PPE; and we have given guidance on the use of PPE and infection control and made sure that that is clear and up to date. There is also a national approach to the recruitment of social care staff, to maintain service levels.

We recognise that there are differences in terms and conditions between workers who are employed in different sectors. We are clear that that is not desirable, but, in my view, change cannot be made by a simple amendment to the bill.

Last year, the Fair Work Convention published “Fair Work in Scotland’s Social Care Sector 2019”, which commits to establishing fair work practices. The fair work in social care implementation group exists—it has been established to focus exactly on that issue. It will make recommendations to a group that is chaired by the Cabinet Secretary for Health and Sport and the Convention of Scottish Local Authorities’ health and social care spokesperson. It would be wrong to legislate on this issue in an emergency bill in a way that cannot be effective. It would be far better to back what is going on and to take the urgent actions that are being taken to support the workforce.

Amendment 24 relates to the establishment of a social care staff support fund. We agree that the workforce is essential, is a priority and should be supported. Anyone who develops Covid-19 symptoms must self-isolate and must be supported by their employer to do so. It is not acceptable for any of our key workers to feel under financial pressure to keep working if they fear that they may have the virus.

The issue of workers experiencing financial hardship is of real concern to the Government, and we have taken—and continue to take—extensive action on that. We have agreed with COSLA to meet the additional costs incurred through Covid-19, which includes payments to the third sector and independent care providers.

Let me be clear that social care employers have a duty of care to their workforce. We would expect them to be guided—we insist that they are guided—by the coronavirus fair work statement, which says:

“No worker should be financially penalised by their employer for following medical advice. Any absence from work relating to COVID-19 should not affect future sick pay entitlement, result in disciplinary action or count towards any future sickness absence related action.”

Some private social care providers, which are businesses, have terms and conditions for their staff that allow for the proper payment of sick pay. Those that do not, should—and they are governed by the coronavirus fair work statement.

The Cabinet Secretary for Health and Sport has already asked employers to discuss with her what they are doing to improve the situation. The Government will continue that work. We need to put in place a workable system, with funding via local authorities, and we are doing so.

I turn to amendments 30, 33 and 34. Access to information is crucial. All inspection reports compiled by the Care Inspectorate are published. That practice already happens; there is no need to legislate for that to happen. However, Monica Lennon is right that we need to look at accelerating the publication timescales during the current crisis. There may be an opportunity to consider publishing a summary of the new weekly reports, which we have insisted on from the directors of public health. That is being explored.

If Monica Lennon will allow us to have the opportunity to explore that, we will see whether we can integrate that into our reporting processes, to make sure that additional information is provided. Monica Lennon has asked for reports every two weeks. However, provided that we can make it work, which is what we are trying to do, our proposal would give us weekly reports.

Amendment 33 requires daily reports on deaths in care homes. We provide daily data on suspected Covid-19 cases, and National Records of Scotland provides weekly data. We have examined the existing legislation on data collection and there are powers in place to issue daily reports on deaths in care homes, if that can be done. However, we must be careful that we are not providing a number of sets of data that are increasingly hard to reconcile and for the public to understand. We really must not get into the situation that we have seen elsewhere in which there is confusion about how deaths are reported and published. Publishing a third set of data would cause such confusion. We are committed to transparency and to seeing whether we can publish weekly reports. We recognise the need for accurate data and we will continue to pursue that.

On amendment 34, the Care Inspectorate is not responsible for the supply of PPE; its role is focused on the scrutiny and inspection of services. There is no role for the Care Inspectorate in that, and therefore it is not possible for the Government to address that issue in the bill.

Amendment 50 would require the Scottish ministers to appoint a national social care officer. I give you the name of Iona Colvin, who currently holds the position of the Scottish Government's chief social work adviser. That is an existing, established role that provides advice to ministers on all matters relating to social work and social care. For example, the chief social work adviser is a member of the health and social care management board and has been fully engaged in

all the planning and response in relation to the virus.

The chief social work adviser is also the Scottish Government sponsor of the Scottish Social Services Council, which is the registration body for all social care workforces. There is no space for an additional officer in this; indeed, that would further confuse the chains of information and reporting. I am sure that Monica Lennon is not seeking to impose confusion and I hope that she will take my assurance that that is the situation.

Jackie Baillie (Dumbarton) (Lab): Amendment 33 would place in statute a requirement on care homes to report all deaths to the Care Inspectorate on a daily basis and, in turn, for the Care Inspectorate to report those figures on a weekly basis to the Scottish Government for publication. That is no different from what already happens—the reporting requirement on care homes is currently contained in guidance—but such is the importance of the situation, I believe that that requirement should have statutory underpinning during the emergency period of the Coronavirus (Scotland) (No 2) Bill.

Members may recall the lack of transparency at the very start of the pandemic, when the Care Inspectorate suggested that people should use freedom of information legislation to access information about the number of Covid-19 deaths in our care homes. I very much welcome the Scottish Government's instruction to the Care Inspectorate to publish that information, but what a scandalous lack of accountability there was at the beginning. Amendment 33 beyond doubt the requirement for transparency placed on the Care Inspectorate.

Amendment 34 recognises the areas that require to be monitored if we are to effectively tackle Covid-19 in our care homes. I do not think that anyone would disagree with that. We would all acknowledge that care homes have become the epicentre of the Covid-19 pandemic. We know that there were issues with a lack of availability of PPE at the beginning and that, in some cases, the quality of PPE was poor. In the HC-One care home in my constituency, staff told of PPE being locked in cupboards while Covid-19 raged through the care home. HC-One care homes in Scotland, from Castle View in Dumbarton to Home Farm on Skye, have experienced more than 200 deaths from Covid-19. Our sympathies are, of course, with those who have lost loved ones, but they need more than our sympathy; they need us to act.

Then there is the issue of testing. The lack of testing for staff and residents is frankly appalling. The hesitation and, in some cases, the refusal by care homes to engage in testing has been incredibly counterproductive. The Scottish

Government may have been slow to start testing, but some care homes appear to be reluctant to test in case staff then go off sick. It is as if they would rather have care home staff carrying the virus in work than being off. I want the Care Inspectorate to monitor that. Placing these issues as a condition of registration of a care home shows that we regard these issues as important and ensures that the Care Inspectorate knows what is expected of it.

I have to say that the Care Inspectorate has been posted missing during the pandemic. It is beyond disappointing that, when it should have been stepping up to the plate, the Care Inspectorate appears to have taken a light-touch approach and stepped back. At a time when people are dying in their hundreds in care homes across the country, that is an extraordinary decision and I am surprised that ministers would have agreed to it.

The amendments would put beyond any doubt our expectations and demand action on the areas that we know would make a difference. I support all the other amendments in the group, but I have a question for the cabinet secretary. The Care Inspectorate already has the power to close down care homes, although it is not a power that it has used much, which is surprising. Will the new power be exercised by the Care Inspectorate or by ministers directly?

My amendments are complementary to all the other amendments in the group, so I hope that members will support them all.

The Convener: A number of members wish to speak in the debate. I should say, for the benefit of those members and those who are moving amendments, that once we have had the open debate I will allow everyone who is moving an amendment to respond briefly to the points that have been made, in lieu of the fact that we cannot have interventions during the debate. If members have questions to pose to the movers of amendments, the movers can respond to them when they wind up.

Annabelle Ewing: I wish to make a brief intervention in support of amendments 26 and 27, in the name of Michael Russell, the cabinet secretary. As we have heard, they would allow the Government to make a swift intervention in the running of a care home in circumstances in which, because of coronavirus, the status quo presents

“a serious risk to the life, health or wellbeing”

of any person in the care home.

As we have heard, the powers would be exercisable by way of application to a sheriff, except in exceptional circumstances. I welcome the fact that the cabinet secretary will have a

further look at the conditions that would pertain to proceedings in the first instance without a prior application to the court.

The provisions would put beyond doubt that health boards and local authorities could seek to purchase a failing care home. That could happen when there was a willing seller. The prescribed circumstances that are set out in the provisions would also require to be met.

In the context of the pandemic, the emergency powers are patently necessary, proportionate and appropriate. They are also an appropriate safeguard, not only because of their scope and the prescribed conditions that they set out, but also, crucially, because of the Government's power to intervene in the running of a care home. The provisions are time limited and decisions made under them can be appealed.

I am happy to support such important amendments. It is particularly important that they will provide much needed reassurance to the public.

Ross Greer (West Scotland) (Green): I will be brief. I am broadly supportive of the amendments in the group, but I have one question on amendment 31 for Monica Lennon that I hope she will answer in her closing remarks. It is very much in line with what the cabinet secretary said.

My thoughts are that what is intended by amendment 31 is perhaps better covered by amendment 26, especially given that that involves a multiagency approach. If Monica Lennon intends to press amendment 31, will she outline what specifically it will contribute that is not covered by amendment 26, in the name of the cabinet secretary?

The Convener: I have some brief comments on amendments 26 and 27 in the name of the cabinet secretary, on care homes. Although I do not necessarily intend to oppose the amendments, they have caused a degree of concern in the care home sector. The majority of care homes in Scotland, whether they are run by local authorities, charities or the private sector, are well-run institutions that provide an excellent standard of care for their residents.

10:30

Over the past few days, the care home sector has expressed concern that it is being made something of a scapegoat for failings elsewhere. On issues such as testing and PPE, the sector feels that it is being unfairly blamed by the Scottish Government for some of the problems that it has had to face. I would welcome some assurance from the cabinet secretary that that is not the case and that the care sector, whether its services are

run privately, by the third sector or by local authorities, is highly valued.

Can the cabinet secretary tell us what discussions there have been with the care sector, including bodies such as Scottish Care, about the wording of amendments 26 and 27? Amendment 27 grants local authorities the power to take over care providers. Has that been discussed with COSLA? In the past decade or more, we have seen a trend in local authorities moving out of care homes. It seems a strange reversal of that direction of travel to give local authorities the right to step back in. I am interested to know whether local authorities have expressed any interest in stepping back in, given the trend that we have seen in recent times.

I invite each member with an amendment in the group to respond briefly to the points that have been made and to answer any questions. I will start with Jackie Baillie.

Jackie Baillie: Amendment 33 requires care homes to report to the Care Inspectorate daily, and requires the Care Inspectorate to report to Scottish ministers weekly, so I am confused by the cabinet secretary's comments—that is what happens now and is what Scottish ministers have instructed. We need transparency and it is clear from the behaviour of the Care Inspectorate at the outset of the pandemic that that requirement needs to be in statute.

Amendment 34 is pragmatic and focuses entirely on the issues that we know will make a difference in tackling Covid-19. It is not evident that the Care Inspectorate has been fulfilling its functions and so we need to put that beyond any doubt. At the end of the day, we need to put in statute what matters to us rather than stay silent.

Monica Lennon: I ask members to support amendment 24 on the social care staff support fund. Amendment 24 is not just about trying to address a financial issue; it is about saving lives.

We have seen an extraordinary number of deaths in care homes. Right up until this morning, I have been contacted by care workers and their family members asking for support for this measure. I welcome the discussions between the Cabinet Secretary for Health and Sport and COSLA, but the fund would be a direct way of addressing the issues that care homes across the sectors are facing. I ask the committee to support amendment 24.

I accept Mike Russell's point about there already being a chief social work officer but the trade unions have been asking for a dedicated officer and they feel very frustrated. Unison and GMB Scotland have been writing to ministers and Government officials on that point since March—I have seen several letters—and they feel that they

have not had a response. For the duration of the crisis, it would be helpful to have a senior officer who is focused on social care. The officer that Mike Russell mentioned has a much bigger portfolio and their responsibilities include children and families. Having a dedicated officer would be important for the duration of the crisis. The First Minister's appointment of an additional deputy chief medical officer was very welcome, so I would have thought that the Government would want to keep such issues under review at all times.

Ross Greer's question is a good one. My honest answer is that I am not entirely sure. I am supportive of the Government's amendments; I take it in good faith that the amendments in Mike Russell's name broadly tackle what I am asking for in my amendment. However, at this moment, because there has not been a lot of dialogue about the amendments, I would feel safer moving my amendment in the hope that we can have conversations with the Government later on.

I know that we are pushed for time, convener, but I ask committee members to support all the amendments in the group. I think that there is broad consensus but there are things that we could perhaps debate and further negotiate later today.

Fundamentally, we are lodging these amendments because we want to protect people's lives and people's livelihoods; that is what is at stake.

The Convener: I invite the cabinet secretary to respond.

Michael Russell: Briefly, on what Monica Lennon has just said, I believe that her amendment 31 is dealt with entirely by amendment 26, which has additional elements in it so I think that it is clearer. Amendment 26 is also drafted in such a way that it achieves what we set out to achieve. I therefore ask Monica Lennon, despite what she said, not to move her amendment. I am happy to talk to her and to make sure that the health secretary has a conversation with her in case there are things that occur to her between now and stage 3 that she would like to add.

Jackie Baillie asked whether we are standing back or whether we are going to intervene. I think that our amendments speak for themselves. The power to directly appoint somebody to take over a care home when that is required is within the bill. That shows that we are determined and we are already acting in a determined fashion. However, I agree with Murdo Fraser that all actions have to be proportionate. That is why I stressed the need for actions to be proportionate, practical and possible. There will continue to be discussions with Scottish Care, COSLA and others about how

the provisions will be implemented and we will continue to refine them at stage 3, looking at how they should operate. They are designed to be proportionate and I do not think that anything is served—I make this point strongly in light of the debate—by worrying people about what is a generally high standard of care. Everybody knows people who are in care homes. People will be worried. There is a high standard of care from very committed and high-quality carers and we have to make that absolutely clear.

When the circumstances demand change, change should take place and when the circumstances demand that that change should take place urgently, it should take place urgently, so we will do that. I do not believe that amendment 21 is either possible or practical at this stage although I do not disagree with the intention behind it; there has to be a workable system.

Finally, on amendment 50, I can certainly take away the suggestion that the chief social work officer should have an additional member of staff available to them—that may be something that we can do—but that is not what the amendment says. As we already have somebody fulfilling that function, it is neither sensible nor practical to have an amendment that duplicates that. I am happy to consider what Monica Lennon has said. If she does not move amendment 50, we can see what can be done.

The Convener: I invite Neil Findlay to wind up the debate and indicate whether he intends to press or withdraw amendment 21.

Neil Findlay: Convener, I intend to press amendment 21. I agree with some of your comments that some care homes are being unfairly blamed for the failings at a much higher level in relation to PPE, the care that the homes have been able to provide and the safety of workers in those care homes.

Many care homes are providing good care despite the system, not because of it. They are providing good care because of the commitment of people within those care homes, who are often the lowest paid and in the most precarious work, and I think that that is happening despite the system.

If we look back over the past few weeks and months at the major issues—PPE, testing, whistleblowing, statutory sick pay, death in service and pay and conditions—those issues are all raised time and time again by people in the care sector, yet they are having to be raised in the media and ministers are having to be dragged to address them.

That is not how it should be. Formal systems should be set up through which staff can raise issues and be confident that they will not be victimised for doing so. I am sure that, during this

crisis, many members have been contacted by staff in various sectors, and the first thing that they say is, “Please don’t mention my name.” They are afraid of being exposed, victimised at work or sacked. That is because we do not have collective bargaining and trade union representation in some sectors.

These are hugely important issues. The cabinet secretary said that there must be an emergency, if we are to take action. Well, the Scottish Government thought that the restriction of freedom of information rules was an emergency measure, and I think that the protection of workers in our care sector is an emergency. The provision of good PPE, testing and protection for whistleblowers and people who want to raise concerns about care is an emergency measure.

Time and time again, we hear from Government about working parties and committee reports. We could fill the Parliament with the reports on social care that have come out over the years. The cabinet secretary said that the Covid fair work statement covers everything that we are talking about, but that is a statement, not legislation; we need legislation that puts in place a formal structure. I tried to bring in such an approach when the Procurement Reform (Scotland) Bill was going through the Parliament, but my proposal was rejected. We have an opportunity to remedy the situation.

I think that I am correct in picking up that the cabinet secretary said that the Government has made provision for the living wage in public contracts. If that is the case, how is it that some cleaners, drivers and laundry workers in the care home sector are being paid the minimum wage, not the living wage? They are engaged in contracts with councils and other public sector agencies.

The cabinet secretary has not reassured me. We are talking about the quality of care, safety and wellbeing of residents, and the safety, wellbeing and dignity of the staff who provide services. I ask members please to support amendment 21.

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)

Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 21 disagreed to.

The Convener: We move to the next group, which is on a young carer grant supplement. Amendment 23, in the name of Alison Johnstone, is the only amendment in the group.

Alison Johnstone (Lothian) (Green): Good morning, committee. I will be brief.

Amendment 23 would direct the Scottish Government to provide a supplement to the young carer grant. Members will be aware that the bill makes provision for a supplement to the carers allowance, which is welcome recognition of the additional and, perhaps, more intensive care that is required in many homes at this time. However, many 16, 17 and 18-year-old young carer grant recipients are also doing a considerable amount of care—at least 16 hours per week—and will be under similar pressure, but will not be eligible for the supplement unless they care for 35 hours or more.

10:45

I am sure that we all agree that the young carer grant is not purely a symbolic payment; it is a reflection of the value and importance of the care that is provided by young carers, and it is paid for specific purposes, including to promote the health and wellbeing of the young carer. That purpose applies even more during the current period, which is why it is especially important that we recognise the contribution of, and pressures on, eligible young carers by paying them a little more.

I understand that Carers Trust Scotland has been making similar calls for additional hardship payments for young carers at this time. However, I am not asking the Scottish Government simply to replicate the supplement for carers allowance recipients. Because the young carer grant is a yearly payment, a supplement would have to work differently, which is why I have left it to the Scottish Government to establish how it might best support young carers.

Young carers are providing incredible support in challenging circumstances, so it is vital that we show them parity of esteem with provision of support through a supplement to their carers allowance. It is important that Parliament has the opportunity to consider offering that, which is why I have lodged amendment 23.

I move amendment 23.

The Convener: Thank you. I invite Shona Robison to contribute.

Shona Robison (Dundee City East) (SNP): I have sympathy for amendment 23, which is in Alison Johnstone's name, but I am not convinced that it is the best route for giving more support to young carers. There are a couple of specific issues. First, the young carer grant is not supposed to be an income replacement. I also have concerns that a supplement might put additional pressure on Social Security Scotland, which we know is already under pressure due to Covid-19.

I would like to know what engagement Alison Johnstone has had on whether her proposal is the best way to support young carers. I also have a question for the Cabinet Secretary for Social Security and Older People about whether the Scottish Government is actively considering ways to support young carers, other than that route.

Shirley-Anne Somerville (Cabinet Secretary for Social Security and Older People): I am very pleased that the coronavirus carer's allowance supplement has been welcomed by many people, including Alison Johnstone, who has always been an advocate for carers—in particular, young carers. The supplement aims to support those who have the most intense caring roles and are on the lowest incomes, using the coronavirus carers allowance as a proxy for that. Supporting carers aged 16 and over who are facing financial pressures is the right thing to do. I very much hope that the supplement will be passed as part of the bill tomorrow.

The young carer grant, like the carer's allowance supplement, remains a Scotland-only benefit, but its aim is very different. Young carers play a very important role in our society, and the brand-new young carer grant supports young carers aged 16 to 18 to access life opportunities that are the norm for many of their non-caring peers. It is important to recognise that the grant is not intended to be an income replacement for households; there is no means testing, nor are there income or earnings requirements. The number of hours of caring that is required is less than half that which is required for eligibility for the carers allowance.

The Scottish Government continues to promote the young carer grant through the Covid-19 crisis. We have also been working with Young Scot to ensure that the opportunities that are available for young carers aged 11 to 18 through the Young Scot card are suitable in respect of social distancing and self-isolation, and that new rewards are being made available to that wide range of young carers. That very much deals with the health and wellbeing aspects that Alison Johnstone talked about in her opening remarks.

The Young Scot card has no eligibility criteria related to the level of care, and cards are available to a broader age range than the young carer grant, which is only for 16, 17 and 18-year-olds.

We think that working with organisations that support all young carers who are aged 11 and upwards, as we are doing, is the best way to use our additional resources—as well as using the young carer grant. I absolutely assure Alison Johnstone and the committee that we are working on plans to do much more in that respect.

I firmly believe that Alison Johnstone and I start with the very same question: how can we best support young carers at this time? I believe that the alternative approach that I have suggested is the right one, for three key reasons.

First, the support will be available to a wider age range of young carers. Secondly, it aims to encourage more young carers to engage with local services as a potential way to access other information and support, such as the development of a young carer statement. Thirdly, we want the focus of support to be on what young carers say they want, and on their taking breaks and looking after their own wellbeing—the key outcomes that we all want to be achieved for young carers.

However, I would have concerns if amendment 23 were to be passed. First, I want to support all young carers of all ages—not just those who are eligible for the young carer grant. Secondly, I do not want funds to be diverted from the wider group just to those who are eligible for the grant.

Finally, I wish to impress upon members, who might not be as immersed in the detail of the social security programme as members of the Social Security Committee are, the seriousness of my main concern, which is the pressure that would be placed on Social Security Scotland. The agency is rightly concentrating on continuing to pay the much-needed benefits that we have already implemented, and on increasing their take-up. That is being done with the added pressure of ensuring that we are keeping our staff safe and providing advice as they work from home while meeting increased demand on services, as more people become eligible for our benefits during this difficult time.

Any additional pressure on the service puts that work at risk. For example, we are now gearing up to ensure that people are aware of, and are encouraged to apply for, the best start grant school age payment, and we want to be able to process those applications as soon as possible, so that people get funds in their pockets.

We are also planning to do more to encourage people who are new to the benefits system—there are many—to apply for benefits. If effort is diverted

to another project, work will inevitably be negatively impacted.

The Government is supporting and will continue to support young carers, as we deal with the current crisis. We absolutely agree with Alison Johnstone that young carers should be supported. However, I urge her not to press amendment 23, and I ask the committee to vote against it if it is pressed, given its potential impact on work that we are already doing to support young carers and the risks that it would pose to on-going delivery of live benefits and to the planned work to support people who are new to the welfare system.

Alison Johnstone: I will respond first to Shona Robison. I have been discussing the issues at some length with young carers organisations. It is important to note that, when the young carer grant was established last year, a number of organisations that help young carers called for a much higher rate. The Carers Trust recommended £600, which is double the current £300, and I do not believe that the trust would have suggested that amount if it thought that it would provide an inappropriate incentive to care.

In lodging amendment 23, I was taking account of the fact that 78 per cent of unpaid carers in Scotland are having to provide more care for their loved ones during the pandemic. Two in five of them are providing more care because their local care and support services have been reduced or closed.

However, it seems that many of the arguments that have been put forward in favour of the carers allowance supplement apply just as much to recipients of the young carer grant. I have listened very carefully to the cabinet secretary's assurances that the Scottish Government has plans to get a range of extra support to young carers through means other than the young carer grant, and that that might be quicker than focusing solely on the grant itself. I have been discussing those issues, too, with young carers organisations.

I am reassured that the Government shares the broader intention behind my amendment 23, and that it has robust plans to support young carers, albeit not in exactly the way that I have suggested. I appreciate the cabinet secretary's comments that her proposals will reach a greater range of young people, from the ages of 11 to 18, not just those aged from 16 to 18. I very much look forward to hearing more about those plans as soon as possible.

That said, I am happy not to press amendment 23.

Amendment 23, by agreement, withdrawn.

Amendment 24 moved—[Monica Lennon].

The Convener: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 24 disagreed to.

The Convener: It is 3 minutes to 11; we will have a short suspension for a comfort break before we move on to the next group of amendments. We will reconvene at about 5 past 11.

10:57

Meeting suspended.

11:05

On resuming—

The Convener: We move to group 4, on the extension of services under the minor ailment service. Amendment 25, in the name of Alison Johnstone, is the only amendment in the group.

Alison Johnstone: Amendment 25 seeks to do two things: it would extend

“minor ailment service consultations”

to anyone

“seeking information or advice about oral ... or other forms of self-administered contraceptives”,

and it would enable pharmacists to

“prescribe ... free of charge, oral ... or other ... self-administered contraceptives.”

On 23 March, the extension of the minor ailments service was announced, and it can now be accessed by anyone. However, many organisations have called for the service to be extended further, specifically to cover the prescription of contraceptives.

One of my amendment’s most important aspects is its potential at this time to ease the pressure on the national health service and general practitioner surgeries. In addition, the potential for a coronavirus baby boom has become

apparent at a time when men and women are confined to their homes together and access to birth-control measures, such as the fitting of coils and implants, is severely hampered. Enabling women to access contraception and advice at their local pharmacies will therefore surely help to prevent unwanted pregnancies.

Sadly, we are only too aware of a reported increase in domestic violence at this time. Women may not have the agency or the ability to make GP appointments, or they may find themselves unable to keep an appointment, so it is hugely important for them to be able to access contraception and advice at their local pharmacy, where they can also access other advice from a pharmacist. At this time, a consultation with a pharmacist is one of the few informal face-to-face encounters that people can have with the health service, so that access is very important.

In recent days, the British Pregnancy Advisory Service, the Royal Pharmaceutical Society in Scotland, Community Pharmacy Scotland and Reform Scotland have all discussed the proposed amendment with me, and I think that it is fair to say that they warmly welcome it. The Scottish Government has already taken steps to mitigate the impact on reproductive rights at this time; my amendment seeks to build on that work and remove barriers that may prevent access to contraception.

I move amendment 25.

The Convener: I do not see that any committee members want to contribute to the discussion, but Alex Cole-Hamilton would like to do so.

Alex Cole-Hamilton (Edinburgh Western) (LD): Thank you, convener. I am not a member of the committee, but I want to voice my support, and my party’s support, for Alison Johnstone’s amendment 25. I was a co-signatory to a letter that was issued on the subject at the start of the emergency, and I echo the points that Alison Johnstone made about the propensity for unwanted pregnancies at this time and, more critically, about the use of pregnancy as a tool of coercive control in abusive relationships. We therefore need to make it as easy as possible for family planning to continue in order to enable women to have ready access to contraception and to relieve the burden on the NHS.

Michael Russell: I thank Alison Johnstone for lodging amendment 25. I will lay out the situation briefly, which I hope will persuade Alison Johnstone that her amendment is unnecessary.

Most individuals access long-lasting oral contraceptives through one of a range of existing service providers: GP practices, community-based clinics and some young people’s services. Many of those services are continuing, even at a distance,

and we encourage individuals to engage with those services for the strong reason that they need safe and effective access that takes proper account of the risks and benefits to them as individuals. The Scottish Government is already undertaking a detailed scoping exercise on how to make bridging and long-lasting oral contraception available through the Community Pharmacy Scotland network, which is exactly what amendment 25 is about.

Consideration is being given to the availability of long-acting oral contraceptives to the network outwith the existing minor ailment service or the new pharmacy first Scotland service. Scoping work has identified key issues that need to be addressed to deliver the service safely and effectively and in accordance with the risks to, and benefits for, each individual. Briefly, appropriate, accredited training would need to be in place for community pharmacists to make sure that they can safely prescribe the medication and patient group directions would be needed to give pharmacists the necessary legal basis to do so. In Scotland, amendments to the Human Medicines Regulations 2012 (SI 2012/1916) would be required to enable pharmacists to prescribe prescription-only medicines, and alas, those changes would have to be made by UK ministers.

Pharmacists in Scotland can supply prescription-only medicines without a prescription in certain circumstances, but further work would be required on the patient group direction. We also want to make sure that those services align effectively with those of existing providers to ensure a seamless referral to the most appropriate service provider. We need to consider whether an individual would benefit from an alternative form of contraception, such as a long-acting injectable contraceptive or an intrauterine device.

The Scottish Government recognises what Alison Johnstone is arguing for and thinks that the on-going scoping exercise has the potential to deliver change, but it is not a straightforward policy to deliver and especially not in an emergency. Also, primary legislation is not required to deliver the change.

I invite Alison Johnstone not to move amendment 25. While her point is well made, the work is being done and I am sure that the Cabinet Secretary for Health and others who are responsible will note her view that that work should be speeded up. I do not think that including the provision in the bill would provide any effective change and it would push things in a direction in which we do not believe it is presently safe to go.

The Convener: I invite Alison Johnstone to wind up and to press or withdraw amendment 25.

Alison Johnstone: As members are aware, unplanned pregnancies can be incredibly costly in many ways and amendment 25 seeks to prevent a significant rise in their numbers during the lockdown. The British Pregnancy Advisory service stated that one quarter of the abortion clinics in its network closed at the start of the outbreak of Covid-19 and that there are serious concerns about women's health. It said that

"Women with severe health issues who have been told to self-isolate"

may be

"forced to choose between risking their health by leaving the house and being compelled to continue an unwanted pregnancy that also threatens their health."

While the decision to allow women to take both abortion pills at home will have a positive impact, we need to take steps to prevent unwanted pregnancies to further mitigate any risk to women's health. Follow-on contraception is already being supplied along with the morning after pill by pharmacists, and some pharmacies already provide the birth control pill without a GP prescription—for example, Superdrug allows patients to order the pill online. However, the big difference is the cost—and that is what I am trying to remove. People are currently charged for that service and we cannot expect them to pay for necessities such as contraception, especially given the financial hardship that many will now be facing.

Amendment 25 seeks to make birth control free and as easy to access as possible at the current time. The cabinet secretary has expressed reservations on whether the minor ailments service, as written in my amendment, provides the right vehicle for that. However, the minor ailments service enables individuals to consult with a pharmacist, receive advice and, in some cases, medicine can be prescribed for minor issues. Prescription would be free of charge, just as it would have been had the individual visited a GP with the complaint.

11:15

Pharmacists have such expertise, skills and experience and they can already prescribe for a range of conditions. All that I am asking for in my amendment is that that scope be widened. From the discussions that I have had in the past week with the Royal Pharmaceutical Society and Community Pharmacy Scotland, I believe that the cabinet secretary's reservations can be overcome and we can move to a situation where those who require contraception—emergency contraception is already available—and need that bridging, supportive prescription at this time can access it.

I will push ahead and press amendment 25.

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 25 disagreed to.

The Convener: Group 5 is on bankruptcy. Amendment 1, in the name of Jackie Baillie, is grouped with amendment 2.

Jackie Baillie: I am pleased to speak to my amendments 1 and 2. The scale of the economic devastation due to Covid-19 is yet to be fully appreciated. Thousands of people have already lost their jobs and, if it had not been for the job retention scheme, thousands more would probably have joined them. We need only look at Ovo Energy's announcement today of the loss of 2,600 jobs, the majority in its customer services division in Scotland, to understand how bad this will get.

We all know that we have debts. We have debts from mortgages, car loans, store cards and credit cards. Debt is a factor in how we live our lives. When a person is working and they have an income to service that debt, it is not a concern or a worry, but if they lose their job, that balance is gone, the equilibrium is shattered and they find that they are in a position in which they are simply unable to cope financially and they cannot service their debt. We know that the anxiety, the sleepless nights and the spiral into poor mental health all follow, so people desperately need help.

Amendment 1 builds on the Scottish Government's proposal in the first coronavirus emergency bill for a debt moratorium. That proposal was welcome but, to be honest, it felt like a job half done, because we know that, unless we freeze interest rates, charges, fees and penalties, the debt will continue to grow.

If we are honest about this, there are many responsible lenders that already do the right thing, because they get it. However, there are lots that do not, most notably payday lenders, whose additional interest charges and fees can lead to the debt increasing exponentially. An initial debt can increase by thousands of pounds, taking the

individual into even more financial strain and worry.

The proposal is very much time limited—it is not intended to be in place for ever and a day. It would go hand in hand with the moratorium and would allow people the time to arrange to settle their debts or, if they cannot do that, to be subject to full diligence and recovery action. It would give people a much-needed breathing space. Of course, breathing space is the name given to the proposal that is being consulted on by the United Kingdom Government, which is exactly the same and was a Conservative manifesto pledge. Some would say that it is radical, but it is just a matter of decency and common sense. If members need further convincing of that, I would say that, if the UK Government were to implement the proposal ahead of Scotland, that would be an opportunity missed by us all.

Amendment 2 is the easiest thing in the world to agree to. The Scottish Government recognises that it should lower the up-front charges that it levies for access to bankruptcy solutions. That is absolutely correct, but it has been a little timid. People who are considering bankruptcy are not cash rich, and fees act as a huge barrier to people accessing that debt solution. Instead of lowering the fees a little, which still leaves a problem, we should remove them completely for the current short period of time when the pressure is the greatest.

If members need further convincing on amendments 1 and 2, let me say that they are supported by Citizens Advice Scotland, StepChange Debt Charity, Money Advice Scotland, the Govan Law Centre and specialist money advisers such as Alan McIntosh. They are the experts in the field, and we should listen to them because they know the scale of what is coming.

Amendments 1 and 2 are about recognising the terrible times that we are in and providing a lifeline to people whose world has just come crashing down. If members need reminding of the scale of the problem, I point out that, in April alone, an extra 900,000 people across the UK became unemployed.

I move amendment 1.

The Convener: As no committee members wish to comment, we will move on to the minister, Jenny Gilruth.

The Minister for Europe and International Development (Jenny Gilruth): Jackie Baillie is a long-time advocate on debt issues, and I have some sympathy for her amendment 1. If it were in any way possible to accept it in the circumstances and the timescale that we have, I would consider doing so, but it simply is not possible.

Last November, we included the ideas in Jackie Baillie's amendment 1 in our consultation on the Bankruptcy and Debt Advice (Scotland) Act 2014, and we look forward to further developing them in the near future. However, I note that fewer than half of the respondents agreed that we should adopt such an approach.

As Jackie Baillie noted, over the past three years, the UK Government has been working on a similar plan, but it has not yet been able to introduce a suitable scheme. That shows how complicated it is to implement what seems to be a simple idea. It may be doable in time but, as we know, the bill is emergency legislation that we hope will be in force by the end of the month, and it is simply not possible to introduce such a fundamental change in a fortnight. That would not be possible even outwith the current unparalleled times.

Under amendment 1, the Accountant in Bankruptcy would need to develop a system for collecting the details of all an individual's creditors and a way of notifying them that a moratorium was in place. Creditors would also need to adjust their systems. Creditors include many smaller bodies such as credit unions, for whom system development is not easy, especially when it has to be done rapidly. Such creditors could suffer disproportionately from the amendment, which is why the Association of British Credit Unions Ltd has written to the committee opposing the amendment.

Because of the simplicity and speed of our current system, a change such as the one that Ms Baillie proposes would mean that we would need to look again at the whole approach. Not to do so would potentially leave the system open to wide-scale abuse. The UK Government, which has been working on the matter for much longer than we have, is struggling to deal with that issue. It is worth pointing out that the UK Government's proposals would apply for a period of 60 days rather than six months.

Of course we want to ensure that anyone who is in debt speaks to their creditors, as they will often need help through things such as reduced payments, payment plans, freezing interest or repayment holidays. I encourage anyone who is in debt to seek appropriate advice and support. I remind members that we have provided Citizens Advice Scotland with £3 million to provide support to people who are struggling financially at this time, which includes an additional £100,000 for a new national helpline.

The Scottish Government is keen to do more in the area where we can, but we cannot move on the issue at this moment because of the timescales accorded to the bill. I therefore urge Ms

Baillie not to press amendment 1. If it is pressed, I urge the committee to reject it.

On amendment 2, I am sympathetic to abolishing all up-front fees for debtor applications. We have, of course, moved a very long way in that direction in the proposals that we have included in the bill by exempting individuals who are in receipt of certain benefits from the fees that apply to the minimal asset process and reducing the other application fees, with the MAP fee falling from £90 to £50.

I appreciate the consensual way in which Jackie Baillie has approached the matter, and of course we want to help people who are in debt. I ask Ms Baillie not to press amendment 2. We will then work together to agree a position for stage 3.

Jackie Baillie: It is fair to say that we live in unprecedented times and that the scale of the impact on household finances and people's lives is not yet known. There are huge implications for our economy and our society, and the amendments were lodged in light of that.

This is an emergency and the proposed measure is temporary. Far more sweeping changes, which the committee will support, are being brought in elsewhere in the emergency bill. I have every confidence that the Scottish Government can put the necessary changes in place in time. Working with the sector will enable it to do that.

Arguments have been made about notifying individual people about a moratorium. That would need to happen anyway, because the first bill put a moratorium in place. I do not accept that that would lead to additional work that would be impossible to do.

I hope that the Conservatives on the committee will vote for their own party's policy and that all members will listen to the experts, such as Citizens Advice Scotland, Money Advice Scotland, StepChange Debt Charity and Govan Law Centre. We have a responsibility to support hard-pressed people in our communities, and we should put their interests first—and certainly before the interests of high street loan sharks in the form of payday lenders, with their exorbitant charges and interest rates.

We can all talk about social justice; now is our opportunity to do something about it. Tackling poverty must be more than something that we simply put in the nice-to-do box. We need to act, and there is no time more important than now to take that action.

I heard what the minister said. I will therefore not move amendment 2, but I intend to press amendment 1, so that we make a difference to the

lives of people in Scotland who are struggling financially.

The Convener: Jackie Baillie has indicated that she intends to press amendment 1. A member has a connection problem, so we will have a brief suspension while we try to resolve that before we go to a vote.

11:28

Meeting suspended.

11:34

On resuming—

The Convener: We are now back and, thankfully, the connection problem has been resolved.

The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 1 disagreed to.

The Convener: Amendment 2 has already been debated with amendment 1.

Jackie Baillie: I am happy not to move amendment 2 and to work with the minister to bring something back at stage 3.

Amendment 2 not moved.

Amendments 26 and 27 moved—[Michael Russell]—and agreed to.

The Convener: Group 6 is on regulation of businesses. Amendment 28, in the name of Colin Smyth, is grouped with amendments 29, 32 and 49.

Colin Smyth (South Scotland) (Lab): Amendments 28 and 29 aim to tackle the problem of Scottish Government guidance on business closures not currently being enforceable in a number of areas. That is because the guidance has been backed up in law through regulations in some areas but not others. As members will know,

the Government has used regulations to close a prescribed list of non-essential premises from cinemas to nightclubs. Regulations have also been used to bring an element of enforcement to social distancing in the workplace.

However, although guidance states that

“all business premises, sites and attractions”—

apart from those listed in specific exemptions—should close, and that those within exempted categories must

“apply social distancing requirements and keep open only those premises or parts of premises that are truly critical or essential to the national and international COVID effort”,

the guidance on what is “critical or essential” has no basis in law. Although the vast majority of businesses have followed the guidance as best they can, some have not, because they know that the guidance cannot be enforced. Amendment 28, in my name, would require the Government to bring forward regulations to enforce its guidance on “essential work”.

We will all have been contacted by constituents who have been told to go to work by employers who claim that the work that they do is essential, when those workers know that it does not fit into any reasonable definition of “essential work”. Those workers have consequently been forced to put themselves and others at risk. That has undermined the Government’s “Stay at home” message, and I have no doubt that it has led to some people contracting Covid-19, which has meant that it has taken longer to begin to lift wider restrictions on other businesses that have followed the guidance.

I know that some businesses that have remained open will have based their decision on their genuine interpretation of what is “essential work”. The Government’s argument may well be that it is difficult to define in law the guidance on what is “essential work”, but that raises questions about the clarity of the guidance. If there is a need to underpin the guidance in law through regulations, that process will improve the clarity of the guidance. More important, it will ensure that we have a route to enforcing that guidance.

Amendment 29 seeks to learn from the problems that have been caused by not backing up the guidance on essential work in law by making it a requirement for the Scottish Government to introduce regulations setting out what businesses must do to protect health when they reopen. Again, the aim is to provide a statutory basis for forthcoming Scottish Government guidance.

It is clear that not all workplaces have been taking proper precautions so far. Indeed, 390 complaints have been made to the Health and

Safety Executive about Scottish workplaces since early March. That is going to become more of an issue as more businesses are advised by the Government that they could reopen, and we need to ensure that robust, enforceable guidelines are in place and backed up in law. Although there is legislation in place that requires social distancing to be implemented in workplaces, that is not enough to ensure the safety of workers and customers. It is also far from clear how that is being properly enforced at present.

Amendment 29 would allow for the creation of more comprehensive and legally enforceable regulations as we move to the next stage of safely allowing more businesses to reopen. I have sought to avoid being prescriptive with regard to what should be covered by those regulations in order to give the Scottish Government freedom to make decisions based on the evidence that is available to it.

If the cabinet secretary is not supportive of my amendments, I hope that he will give an assurance that the Scottish Government will review the regulations on business closures that are currently in place—including those that relate to the enforcement of social distancing—to assess their effectiveness. It is clear that, at present, there is not sufficient enforcement in the workplace. I also ask the cabinet secretary to confirm that the Scottish Government has the powers to regulate on business closures without further primary legislation being required.

As we move to the next stage of easing the lockdown, I ask the Government to take on board the legitimate concerns that have been raised about the initial guidance on business closures and essential work not being legally enforceable, and to commit to working with the trade unions to agree what elements of any future guidance could be legally underpinned through regulations.

I move amendment 28.

Neil Findlay: Amendment 32 is an important amendment. Throughout the pandemic, we have watched as trade unions have played a very important and responsible role. Without them, the furlough scheme, the business support schemes, the PPE crisis and safety in care homes and the NHS, among many other issues, would not have been brought to the public's attention or have been addressed as quickly as they have been, and I think that initiatives would have been watered down, with many more workers and members of the public losing their jobs, their livelihoods and, potentially, their lives. The value of trade union health and safety reps, who have long been derided and mocked by those who criticise their role as a burden on business or "health and safety gone mad", is now all too

evident to anyone with an ounce of common sense.

Amendment 32 calls for the establishment of a trade union health and safety fund that would build and sustain a network of workplace health and safety representatives across Scotland. Those reps would be trained and would be well able to ensure that all our workplaces were safe for workers and the people they serve. The setting up of such a fund would be a positive public health initiative that would benefit employees and employers alike. As I said earlier, we will all have been contacted by employees with concerns about safety in the workplace. All of them begin by saying, "Please don't pass on my name to my employer." The proposal in amendment 32 would give those workers protection and a voice in the workplace.

Alex Cole-Hamilton: I again thank the committee for allowing me to take part in this morning's proceedings.

I will not take up much time. I will begin by setting out what amendment 49 is not: it is not a charter for cafes, pubs and restaurants to invade pavements. It states clearly that it would be an offence to obstruct pathways or thoroughfares for people with any kind of disability.

11:45

Amendment 49 is about the restarting of the hospitality industry, on a socially distanced basis for as long as the virus is with us. We need to think about how we do that, for it is a critical part of the employment sector and a huge provider of jobs in Scotland. Other countries that are slightly ahead of us in the virus curve have attempted to do that in two ways. Examples are Australia and Lithuania.

Australia has started to allow businesses to open but has limited the number of customers to five or 10. Customers and proprietors agree that that is not really worth the candle; in many cases, businesses have shut back down.

Vilnius is the capital city of Lithuania. It has in effect turned its centre into an open-air cafe, encouraging businesses to adopt streets and squares, and closing, on a temporary or more permanent basis, certain city centre roads, so that cafes can reopen on them. [*Temporary loss of sound.*]

My proposal would build on the progress that we have already secured on adaptations in our towns and cities—widening our pavements and closing streets to traffic—and concerns only the introduction of cafe furniture on thoroughfares on which vehicles which are no longer allowed.

The Convener: No committee member has indicated that they want to speak on group 6, so I call the cabinet secretary, Michael Russell.

Michael Russell: I thank Colin Smyth for a thoughtful and interesting contribution about the bill. Before I come to the issue of regulations, I want to give him some early assurances.

Last week, the First Minister was very clear about the legal protection for workers who are being asked to go into unsafe workplaces. I reiterate that not only is there no obligation on them to do so, they are actively entitled to refuse. In those circumstances, they should have all the support that the Government and we as politicians can give them.

There is a role for the HSE, and others such as council trading standards, environmental health and—eventually—the police on the issue of unsafe workplaces and people being pressured to return to them. However, Mr Smyth’s concerns go further—and I accept them.

There is a requirement to look at the guidance that is given, and the regulations that exist, and to make sure that there is a possibility—no, a certainty—of legally enforcing issues to do with return to work. Mr Findlay mentioned that in talking about amendment 32, and it has been an issue for all of us as MSPs. People have come to us saying, “Don’t tell anybody who I am, but I am concerned about going back to work.” For many people, there will be an issue in going back to work, which we need to resolve.

I therefore want to make it even clearer that we will take on board the concerns that have existed, given that the trade unions had initial guidance that some elements were not legally enforceable. We will look to work with the trade unions and others to agree what other elements of the lockdown regulations require to be made legally enforceable, as some elements already are. We will do that when the regulations are reviewed next week and subsequently.

We have a distance to travel in terms of regulation; that is clear to every one of us. That travel has started, albeit very slowly, and I assure Mr Smyth that we recognise the issues.

However, I want to make a point about regulations that also relates to Alex Cole-Hamilton’s amendment 49, and to another amendment later on.

The Government believes that making changes to the regulations should be done as part of the on-going review process. That is under way. It is well understood; it gives the opportunity for participation in that process; and, most of all, it makes sure that the process is informed by the available scientific and medical evidence and the

assessment of risk that the health protection regulations themselves demand.

We are setting out our strategy for the relaxation of the lockdown. That will include publication of the analysis and the modelling and, therefore, amendments 28 and 29 are not within that process. I hope that the assurances that I have given Mr Smyth tell him that we as a Government and I personally are very concerned about those issues. We will feed that into the consideration of the regulations, and we will make sure that the aims and concerns of working people are addressed.

I therefore ask Mr Smyth not to press amendments 28 and 29 but to work with us on the strategy.

On amendment 32, Neil Findlay will be aware that matters of public safety relating to employment and industrial relations are reserved. That is a difficulty for us. Amendment 32 aims to establish a trade union health and safety fund to enable trade union health and safety representatives

“to conduct inspections of workplaces”.

There are dangers that such an amendment would be outwith the Parliament’s legislative competence. That is not a small matter for an emergency bill, and I will return to that issue when I speak to another amendment.

The bill is being taken through Parliament using our emergency procedures, and it will require royal assent to be expedited. Anything that might hold it back would hold back all its provisions, including those on the carers allowance. Therefore, we need to be careful.

The bill reflects the importance that the Scottish Government places on responding in a way that we can. I am in favour of being able to legislate on everything—not all committee members are. In the circumstances, we have to bear in mind how the bill is to progress and how it will require to have royal assent expedited.

We are undertaking continuous review. We know that the majority of employers will be responsible. We want to make sure that the roles of the Health and Safety Executive, council environmental protection officers and trading standards officers and the police are recognised in the bill.

We have established groups to look at how people go back to work. We are trying to progress that, but amendment 32 would put us in a difficult position with the whole bill and does not recognise the way in which the regulations—[*Temporary loss of sound.*]—so I urge the committee not to support it.

Amendment 49 also reflects on the issue of regulations. I know that Alex Cole-Hamilton is well intentioned, but there are issues relating to regulations and of public expectation that need to be thought about. This is a process of continuous review. To change the regulations in the way sought would be outwith that process and would not pay attention to the scientific or modelling aspects of what we are trying to do.

When lockdown measures are adjusted to allow the businesses that Alex Cole-Hamilton has mentioned to operate, that power will be exercisable in line with the applicable legal requirements at the time under the regulations. Businesses operating under such a provision would not commit an offence under the Roads (Scotland) Act 1984, because the regulations will cope with that. I do not think that the amendment is appropriate or necessary. It would cause confusion. It would confuse the public, who would think that what is covered in the amendment will happen at some point in the near future in some way. That will not happen at some point in the near future, and it would be wrong to include it in the bill in that way.

I ask the members not to move their amendments in this group. If they move them, I ask that the committee does not support them. Colin Smyth's amendments are the most substantial. They make important points. I hope that I have reassured him on those points, and I am happy to continue to do so, and to make sure that other ministers do so as well.

The Convener: I invite Colin Smyth to wind up briefly and to indicate whether he will press or withdrawal amendment 28.

Colin Smyth: I am grateful to the cabinet secretary for his comments and reassurances. He has emphasised that the current guidance, which the Government has stressed, is not legally enforceable in relation to non-essential work. He has also made clear that the Government has the power, through regulations, to underpin in law the guidance that it has issued on business closures. Crucially, I think that the cabinet secretary has given a commitment that, as we move to the next stage of easing the lockdown, the Government will work with the trade unions to agree what elements of any future guidance can be secured with regulations and what elements of the existing guidance—for example, on social distancing—should be reviewed to ensure better enforcement. On that basis, I will not press amendment 28, and I will not move amendment 29 when the time comes.

I have a brief word to say about Neil Findlay's amendment 32, which would establish a trade union health and safety fund. I think that it is clear to us all that trade unions have an invaluable role

to play in protecting workers—and no more so than during the pandemic. In the absence of more robust legislation, greater support for our trade unions is all the more vital, so I hope that members will support amendment 32.

Amendment 28, by agreement, withdrawn.

Amendment 29 not moved.

Amendment 30 moved—[Monica Lennon].

The Convener: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Tomkins, Adam (Glasgow) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 30 agreed to.

Amendment 31 moved—[Monica Lennon].

The Convener: The question is, that amendment 31 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 31 disagreed to.

12:00

Amendment 32 moved—[Neil Findlay].

The Convener: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 32 disagreed to.

The Convener: Amendment 33, in the name of Jackie Baillie, has already been debated with amendment 21. I believe that Monica Lennon will move the amendment on Jackie Baillie's behalf.

Jackie Baillie: It is okay, convener—I am still here.

The Convener: I am sorry—you had disappeared from my screen. I take it that you will move your amendment.

Jackie Baillie: Yes, I will move my amendment—you do not get rid of me that easily.

Amendment 33 moved—[Jackie Baillie].

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Tomkins, Adam (Glasgow) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 33 agreed to.

Amendment 34 moved—[Jackie Baillie].

The Convener: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 34 disagreed to.

The Convener: Amendment 35, in the name of Alison Johnstone, is in a group on its own, on the Scottish wealth fund—monitoring applications.

Alison Johnstone: Amendment 35 aims to ensure that the Scottish Government considers what further support may be needed for the Scottish welfare fund during the crisis. The Scottish welfare fund is one of the Scottish Government's primary means of getting money to people who are struggling. Preliminary management information published by the Scottish Government shows a 59 per cent national increase in applications for crisis grants in March 2020 compared to 2019. I understand from some local authorities that changes in some areas are much higher, even in the context of the significant increase. Understandably, there is now considerable pressure on the fund, so it is vital that we consider systematically whether there is a need for more funding.

Yesterday, the convener of the Social Security Committee received a letter from the cabinet secretary outlining the mechanisms that the Government has put in place for overseeing the fund. The letter was received after the deadline for lodging amendments, so I was unable to consider it when working up amendment 35. I will listen carefully to anything further that the cabinet secretary has to say on that issue. However, with so much pressure on the fund, for now, amendment 35 would provide for sensible and modest good governance measures.

I move amendment 35.

Shirley-Anne Somerville: Although I agree with the sentiment behind amendment 35, I ask Ms Johnstone not to press the amendment, as it would require us to do less than we do at present. Since the amendment was lodged, we have provided the Social Security Committee with further information on the processes that we have established. The Government is already requesting and receiving monthly management information from local authorities on applications and expenditure relating to the welfare fund. With some caveats, we are now able to aggregate and publish monthly data returns and the national demand for and expenditure on grants from the

Scottish welfare fund. We have also published the first data on the Scottish Government website.

I assure the committee and Ms Johnstone that I am absolutely committed to continuing to monitor demand and expenditure and will maintain close engagement with local authority decision makers to ensure that they are able to keep providing this vital service. That will include working with local authorities to assess needs and how best and when to allocate the balance of the £23 million as we assess the impact of the current pandemic.

Amendment 35 would dilute the current good working practice that we have established by requiring the Scottish Government to request information from local authorities without specifying the nature of the information or the frequency with which it is to be requested and without requiring local authorities to provide that information.

It may be helpful for me to remind the committee that the Scottish Government has already committed an additional £45 million to the welfare fund to help to meet additional demand as a result of Covid-19. That means that local authorities have more than £80 million available for the Scottish welfare fund awards in 2021, compared to £33 million in the previous financial year. Recent data shows that local authorities have sufficient funds to meet the current demand.

However, we are going further than considering the data every month. The Scottish Government continues to engage regularly with local authority welfare fund practitioners, and officials exchange information by email and conduct regular teleconference discussions to understand directly the impact of Covid-19 on the Scottish welfare fund in each area. That approach enables us to gauge demand for assistance from the fund and any need for further support and flexibility for local teams to meet that demand.

I understand why the member has lodged amendment 35, but, given that the information is already regularly requested, provided, carefully considered and published, there is no reason to introduce a legal obligation in the emergency bill to ensure that that occurs. On that basis, I urge Ms Johnstone not to press her amendment.

Alison Johnstone: The current health crisis is turning into an income crisis for hundreds of thousands of Scottish households. A recent survey for the Scottish Government revealed that 41 per cent of Scots believe that the coronavirus is already having a negative impact on their household finances, and research by the Institute for Public Policy Research Scotland and the Standard Life Foundation revealed that 49 per cent of households with dependent children in Scotland find themselves in the two most serious

categories of financial stress: “In serious financial difficulty” and “Struggling to make ends meet”.

It is therefore vital that we ensure that the Scottish welfare fund, which is one of the main ways in which Scotland can get support to people who are struggling, is in as strong a position to help as possible. That is why I lodged amendment 35. It is vital that people can access the cash that they need, when they need it, and it is central that we keep the issue under active consideration.

The cabinet secretary has expanded on the mechanisms that are being put in place to ensure that the fund is able to respond to the increased pressures on it. I note that she has put in writing to the convener of the Social Security Committee that she will

“continue to monitor demand and expenditure and will maintain close engagement with local authority decision makers to ensure that they are able to keep providing this vital service.”

That being the case, I am assured that the matter is in hand, and I will not press amendment 35.

Amendment 35, by agreement, withdrawn.

The Convener: We move to group 8, on marriage and civil partnerships. Amendment 36, in the name of Adam Tomkins, is grouped with amendment 37.

Adam Tomkins (Glasgow) (Con): In the context of an earlier group of amendments, Mike Russell said that, in this bill, we should do that which is possible, practical and proportionate. Those are exactly the tests that I have sought to apply in lodging amendment 36.

There is no legal bar to, or ban on, people getting married in Scotland, but, as a matter of fact, we know that people are not able to get married in Scotland at the moment, principally because registrars are not licensing, registering or solemnising at marriage ceremonies.

No part of amendment 36 seeks to permit anyone in Scotland to hold a large wedding party or reception of any sort. All that is needed for a lawful marriage or civil partnership ceremony to take place in Scotland is the presence of five people: the registrar, the two parties to the marriage or civil partnership and two witnesses. We all know that there are hundreds of rooms in Scotland that are more than capable of holding five people who could at all times maintain social distance and comply with all the public health regulations.

Why is it, then, that in practice people are not able to get married? One reason that is proffered is that registrars are so busy registering deaths. We all know that, tragically, there is an increased mortality rate in Scotland because of Covid-19.

However, it is important that we bear in mind at all times the tests that the cabinet secretary has brought to bear in this bill—that we must do that which is possible, practical and proportionate. It is possible for people—it ought to be possible for people—to get married in Scotland subject to safe social distancing. It is practical to enable those steps to be taken, and it is disproportionate to have any sort of blanket ban, whether that is a ban in law or just in administrative regulation and practice, on practically any wedding taking place anywhere in Scotland at any time.

That matters for two reasons. First, it is disproportionately and unfairly adding to stress and anxiety for people who might have any number of reasons for not just wanting but needing to get married quickly. Since I raised the issue in Parliament last week, I have had a lot of correspondence from not just constituents in Glasgow but people all over Scotland who have given me all sorts of reasons why they need to get married quickly. Their visas are about to expire, or they are at or near the end of life. There are any number of reasons why people need to get married quickly.

12:15

It matters for people's mental wellbeing and for the reduction of anxiety, but it also matters because the right to marry is exactly that, as I said in the stage 1 debate in the chamber last week. It is a convention right under the European convention on human rights. It is a human right. It is unlawful for us—and, indeed, for the Registrar General—to interfere with the practical exercise of that convention right unless there is a pressing social need that requires that restriction or interference. A disproportionate lack of ability for people to get married, even if it is not a legal ban, is unlawful and is contrary to our international human rights obligations.

In trying to remedy all of that, my amendment is actually quite modest. It does not require that all marriages must take place; it simply requires the Scottish ministers to take steps with the Registrar General to ensure that, even in this time of the coronavirus and the public emergency, such marriages as can safely take place are able to safely take place. I suppose that it represents a sign in legislation that ministers must take steps with the Registrar General to ensure that that which is possible, practical and proportionate happens. For those reasons, I hope that the committee will support my amendment.

I move amendment 36.

The Convener: I invite Gordon Lindhurst to speak to amendment 37.

Gordon Lindhurst (Lothian) (Con): Sorry, convener, did you call me?

The Convener: I did. We are ready for you, Mr Lindhurst, whenever you are ready.

Gordon Lindhurst: My apologies. Your voice—your dulcet tones—cut out after your first two words, so I was not sure whether you had called me.

My amendment 37 seeks to allow marriages to take place in places of worship again by amending the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. As members will be aware, regulations 4, 6 and 7 place a ban, as it were, on the use of places of worship except for certain limited purposes. One of those is the conduct of funerals, which is subject to social distancing restrictions and the relevant health guidelines.

Because of the regulations, there is in effect a prohibition on weddings, which can at least theoretically still take place in other places, but not in places of worship. That might seem somewhat surprising. The issues that my colleague Adam Tomkins raised with the committee with regard to his amendment apply equally to my amendment. I will not go over those again. However, it seems that the provision—no doubt unintentionally, but effectively—discriminates against Christians and members of other religions who wish their marriage ceremony to take place in their place of worship. I think it is fair to say that, at the current stage, the restriction is no longer appropriate.

It may be that those with legal training or minds think alike, but while listening to the cabinet secretary on other points I, too, thought of the three-point test of the practicality, possibility and proportionality of what is set out.

My first comment is that what amendment 37 seeks to achieve is practical, because places of worship are public buildings that are designed to be used for a variety of purposes. If they are being used for funerals while social distancing and other requirements are in place, there is no practical reason why they should not be allowed to be used for weddings under the same restrictions. Those who would like their marriage ceremony to take place at this time realise and accept that they cannot have the bigger party or ceremony that they might have wanted. Therefore, it is practical.

What the amendment seeks to achieve is also possible, because, as I said, funerals are allowed in places of worship under the regulations.

Viewed against what is, in effect, a general prohibition on the use of places of worship for the purpose of marriage as a result of the emergency regulations, the question is whether that prohibition that is proportionate. It does not seem

so to me, given the background that it is possible for weddings to take place in other buildings, including some public buildings, subject to health guidance and social distancing regulations.

I encourage the committee to support amendment 37, because it fulfils the three tests that the cabinet secretary set out: practicality, possibility and, in light of the stage that we have reached, proportionality.

Ross Greer: I am supportive of Adam Tomkins's amendment, but I have a question for Gordon Lindhurst. I sympathise with amendment 37, but I am concerned that it raises an accidental issue of inequality, because it covers marriage but not civil partnership. Obviously, religious representatives can conduct civil partnership ceremonies.

Perhaps I have misunderstood and Mr Lindhurst or the cabinet secretary could offer clarification. If civil partnership is simply an omission, that can be resolved in an equitable manner by lodging the amendment again at stage 3, with the clarification that it refers to marriage and civil partnership. If Mr Lindhurst would consider doing that, I would most certainly support such an amendment.

The Convener: Mr Lindhurst will get a chance to respond in a moment.

Pauline McNeill: I thank Adam Tomkins for bringing the issue to the Parliament, because it is a serious matter. He spoke about it last week and the cabinet secretary replied, but I do not think that ministers have a complete understanding of the implications for those who plan to marry and have been unable to.

I am not a practising lawyer, but I am a law student. I was taught that marriage is essentially a contract, and that contract is all important. We will be equalising the law in relation to civil partnerships this afternoon. The consequence of being married or in a civil partnership is that people have legal rights.

I am sure that, like me, other members have had many couples writing to them who are more concerned about refunds for postponing their marriages. I think that the Government has a responsibility to emphasise to couples who delay their marriage that a promise to marry does not convey any rights on them. The all-important date is the one when they enter into a marriage or a civil partnership in law.

Therefore I fully support Adam Tomkins's amendment 36. I will not be able to vote on it, but I urge committee members to think about the importance of the matter. There will also clearly be a backlog when couples are able to choose their dates, so we need to smooth that out. The public

will thank ministers if they deal with the issue by backing Adam Tomkins's amendment 36.

Like Ross Greer, I am very sympathetic to amendment 37. When Gordon Lindhurst sums up, he could perhaps address the question that was raised. Today in the chamber, we will equalise the law; at least, we will certainly discuss making sure that marriage and civil partnership are on an equal footing.

The Convener: I will go back to Gordon Lindhurst to respond briefly to the points that have been made.

Gordon Lindhurst: Thank you, convener—I think that I am live again.

On Ross Greer's point, the drafting happened rapidly over the past week, following the bill's introduction. The intention was not to exclude any type of ceremony that a public place of worship of whatever religion may choose to hold. I would certainly be supportive of widening the scope of amendment 37 through an amendment at stage 3.

Places of worship may hold any number of different religious ceremonies that are not general public gatherings, whether marriage ceremonies or other ceremonies such as those that Mr Greer referred to. I do not think that there is, at this stage, a practical reason why those ceremonies should not be allowed. They are, in essence, ceremonies relating to private individuals that can be subject to the guidelines on social distancing.

Amendment 37 was restricted perhaps because of the urgency with which it was lodged and the question of simplicity and clarity. However, I would support broadening it out to include whatever other ceremonies are held in public places of worship, or whatever ceremonies public places of worship, of whatever religion, choose to lawfully hold within their premises. I hope that that addresses the question raised by Ross Greer and Pauline McNeill.

Michael Russell: I welcome the opportunity to speak to these amendments, whose sentiment I agree with. It is perfectly possible for the committee to support one of them. However, the other one has difficulties, and I will explain what those are.

I say to Pauline McNeill at the outset that, if I did not understand the complexity of the issue, I do now. Like Mr Tomkins, a number of people contacted me after the issue was raised at stage 1. Of course, immediately after stage 1, we were able to provide information from the National Records of Scotland about marriages and civil partnerships during the pandemic, which—contrary to what people believe—are possible and are continuing in emergency circumstances. We will continue to provide that information.

Mr Tomkins's amendment is worthy of support because it goes further than that. It makes it absolutely clear that the registrar general and the Scottish Government should be considering how we should take the issue forward. It recognises the points that Pauline McNeill made in relation to legal difficulties and legal obligations, and it recognises Mr Tomkins's points in relation to civil rights.

When we consider how to make the proposal real, we have to take into account a number of practical points, such as the capacity of registrars to act. Many registrars are working from home and it is not possible to solemnise marriages or civil partnerships on video, Zoom, BlueJeans or any other platform; nor should it be—we agreed on that earlier.

There is also the need to consult local authorities, which provide day-to-day registration services. A vital point in relation to Mr Lindhurst's amendment is the need also to make sure that any relaxation of anything under lockdown regulations is supported by scientific and medical evidence in the context of moving forward from where we are.

Mr Lindhurst talked about the judgment on lockdown and "the stage that we have reached", but that has to be supported by the scientific evidence. I made the point in relation to earlier amendments that, in general, I have resisted changing the lockdown regulations on the basis of judgments other than those that are based on widely available scientific and medical evidence.

It is perfectly possible to accept Mr Tomkins's amendment and I would like to do so. However, some of the wording in it requires to be changed. For example, civil partnerships need to be included, and the provision needs to recognise that they are not solemnised but registered. In the circumstances, changes need to be made to the amendment, and if it is agreed to by the committee, I would like Mr Tomkins to commit to working with us to get the wording exactly right.

12:30

On Mr Lindhurst's amendment, I have some further points to make. It is possible, at present, for a marriage to take place anywhere. We do not require amendment 37 to allow marriages—once they start up—to take place in religious premises. We must also listen to what religious bodies are saying. They recently held a virtual conference with the Scottish Government and have taken a cautious approach to reopening places of worship. Before we take any such step, it is important that we engage fully with religious bodies about what it would mean.

The use of a Scottish statutory instrument is not the only way to amend regulations. We have a

binding commitment in legislation: as soon as the evidence—led by scientific and medical advice—suggests that a restriction is no longer necessary, we are under a duty to withdraw that restriction.

I want Mr Lindhurst to understand that my reservation is not about the principle of the matter; it is about how we proceed. I can give him a commitment that as the regulations—which are reviewed every three weeks—are considered, the issue will be high on the list of matters to be considered and we will consider it carefully. However, the right way to do that is in the light of scientific and medical evidence.

Both Mr Tomkins and Mr Lindhurst quoted my use of the terms "practical, possible and proportionate". I do not want to overdo this, but although I think that Mr Tomkins's amendment meets all three of those tests, I do not think that Mr Lindhurst's amendment meets the test of being possible, because the issue that it raises is not being judged in the way that every other move out of lockdown must be judged. I think that we have all accepted that.

I ask Mr Lindhurst not to move amendment 37, but to accept that we will work with him and with others to ensure that the issue is considered in the review process. I am happy to discuss the review process with him in the coming weeks as further discussions take place. I am sure that the Deputy First Minister will do that too; he has taken a significant role in that work.

I think that we can move forward with Mr Tomkins's amendment 36, which will restore a human right and will give people what they want: the right to get married. I hope that we can do that as soon as the medical and scientific evidence allows us to do so.

The Convener: I invite Adam Tomkins to wind up and to press or withdraw amendment 36.

Adam Tomkins: It does not happen very often, but I agree with everything that the cabinet secretary has said. I sincerely welcome the all-party support that amendment 36 has obtained. I am grateful to Ross Greer and Pauline McNeill for their kind words earlier in the debate.

I want to mention one thing that the cabinet secretary talked about and which I did not mention in my opening remarks. I share the view that we should not conduct marriage ceremonies online via Zoom or Skype. There is a very real risk that it might be easier for sham marriages to get under the radar in those circumstances than through marriages that take place offline and not virtually.

I do not think that there was ever any intention by any minister or parliamentarian of any political persuasion to interfere unnecessarily with the right to marry. It is an issue that we did not think about

when we were focused on the first coronavirus legislation, which we enacted a few weeks ago. However, the discussion shows that parliamentary democracy is still able to function, and to function well, even in difficult and challenging times.

The issue came to our attention because of representations from constituents across Scotland. We have been able to bring those representations to Parliament in a non-partisan way, to try to ensure—within the very real limits of social distancing and behaving safely in public at all times—that people can continue to exercise their fundamental right to marry.

I press amendment 36.

Amendment 36 agreed to.

The Convener: Amendment 37, in the name of Gordon Lindhurst, has already been debated with amendment 36.

Gordon Lindhurst: In the light of the cabinet secretary's comment that his reading of the regulations is that they would not actually prohibit wedding or marriage ceremonies taking place in places of worship, and his commitment to move forward with speed on that—[*Interruption.*]

The Convener: I am sorry, but we are going to have to suspend, because an announcement has just been made about a fire in the Scottish Parliament building.

12:35

Meeting suspended.

12:40

On resuming—

The Convener: I apologise for that interruption. I suggest that we finish the group that we are on and then have a suspension for lunch. I hope that that will allow the fire that is going on in the background to be put out. [*Laughter.*]

I will go back to Gordon Lindhurst. I am sorry that we cut you off in mid flow.

Gordon Lindhurst: Thank you, convener. I am sure that everyone is looking forward to lunch, so I will be very brief, as I had intended to be before we had to suspend the meeting.

In the light of the cabinet secretary's point that the regulations would not prevent the use of public places of worship for weddings or marriages—[*Interruption.*]

The Convener: I apologise, but there is another announcement about the fire. [*Interruption.*] It seems that the fire has been dealt with, so you may continue.

Gordon Lindhurst: I will try to get this finished. It seems to be me that is causing these interruptions.

In the light of the cabinet secretary's point and his commitment to work with religious bodies on resolving the matter and to move forward as soon as possible, as well as the fact that the committee accepted Adam Tomkins's amendment 36, I will not move amendment 37 at this stage.

Amendment 37 not moved.

The Convener: It is appropriate to take a break at this point before we move to group 9. I suggest that we reconvene at 1.15.

12:42

Meeting suspended.

13:15

On resuming—

The Convener: Welcome back, everybody. We move to group 9, which is on concessionary travel. Amendment 38, in the name of Neil Findlay, is the only amendment in the group.

Neil Findlay: Amendment 38 is supported by the Poverty Alliance. The amendment recognises the economic hardship that is being faced by low-paid people, many of whom are the workers who have got us through the depths of the crisis. Working people, some of whom are in the lowest-paid sectors of the economy—cleaners, carers, shopworkers, bus drivers, bin men and women, and many others—have been at the forefront in the crisis.

We will all have been contacted by constituents who have lost their lift to work because the person they car-share with is no longer working, or their shifts or hours have been cut or changed. We will also have heard from many people who have lost their jobs or fear that they will lose their jobs when lockdown is lifted. Today's unemployment figures show just a glimpse of what is to come, which will be a huge crisis for many families.

My proposal would help people in the circumstances that I have mentioned by providing free bus travel for people who are in receipt of qualifying benefits, including carers allowance, for the duration of the provisions of the 2020 act being in place. That would help some of the lowest-paid people get to work, and it would help those who are out of work to get to interviews and appointments to seek employment.

The Covid-19 crisis has had a disproportionate impact on women, young people and the poor, and the unemployment figures are really stark. The proposal is a relatively modest one that would

help some people who are in the depths of the crisis.

I move amendment 38.

The Convener: Thank you, Mr Findlay. No other member wants to comment on amendment 38, so we will go to the minister.

I am sorry, minister—we are not hearing you. We will suspend briefly to resolve the issue.

13:19

Meeting suspended.

13:22

On resuming—

The Convener: I apologise for that. We can start again. Minister—it is over to you to speak to amendment 38.

Jenny Gilruth: Before I start, I will check that you can hear me.

The Convener: Yes, we can hear you.

Jenny Gilruth: Great. Thank you.

As Mr Findlay outlined, amendment 38 seeks to introduce free bus travel for people who are “unemployed and seeking work” and who are in receipt of certain benefits, or who have partners who are in receipt of those benefits. An extension to the existing concessionary fares scheme such as is proposed by amendment 38 would normally require careful planning, impact assessment and consultation, and could not be implemented by the expiry of the bill in September. Also, 7,500 electronic ticket machines, mostly on buses, would need to be updated to accept a new category of entitlement, which normally takes six to eight weeks to plan, deliver and test.

New concessionary travel cards would need to be issued. The card-issuing process is currently suspended because local authority staff have been diverted to Covid-19-related work, and the company that produces the cards has ceased operations for safety reasons.

Entitlement under the proposed scheme would also present problems. Existing concessions are based on criteria that are well defined and easy to evidence. Being in receipt of benefits is relatively easily evidenced, but it is not clear how applicants would adequately demonstrate that they are seeking work. The process for assessing eligibility would therefore require to be devised.

Cost is also a very significant consideration. The largest cost of an extension to the concessionary travel scheme would come from the need to replace bus operators’ lost revenue. Estimating that cost would be complex, but the immediate

additional cost per month is likely to be between £420,000 and £1 million. If the scheme were to be extended into a period during which demand for bus travel returned to normal, that cost would rise to £2.8 million, and potentially up to £6.7 million, per month, which is the equivalent of £33.6 million, or up to £80 million, per year. There is no budget provision for such a scheme at this time, especially given the need to focus resources on maintaining essential services despite reduced income and higher unit costs.

Finally, we need to strike a balance between safety, affordability and ease of travel. We want people who need to travel to be able to do so safely, including by bus where that option is suitable. However, capacity on buses will for some time remain severely constrained by the need for physical distancing. That means that we must be mindful of the need to manage demand. An extension of free travel could be seen to run counter to that.

That said, the committee might be interested to know that before the Covid-19 outbreak, Transport Scotland officials had been working on a number of proposals to extend free bus travel, including to companions of disabled children under five and to recipients of the new young carer grant, and it had been reviewing the case for extending travel concessions more generally to young people under the age of 26. That work has been affected by the need to enable officials and our stakeholders to focus on the response to the Covid-19 epidemic.

Given the need to focus resources on fighting the outbreak, and based on the understanding that the Government is already committed to, and planning for, a properly supported extension of the concessionary bus fares initiative, I urge Neil Findlay not to press amendment 38. If he presses it, I ask the committee to reject it.

The Convener: I ask Neil Findlay to wind up and to say whether he wishes to press or seek to withdraw amendment 38.

Neil Findlay: It appears that the civil servants have been busy with their big list of excuses for why certain things cannot happen. In my opinion, they have been pulling these responses from a very deep book.

It appears to be that while we are able to provide financial support to landlords, Airbnb owners and private schools, we are unwilling to help those who have got us through the crisis: the low paid and people in precarious employment, who would benefit greatly from such an initiative.

The bill is testing the Government’s claims that it is progressive on so many fronts. Every progressive amendment that has been put forward today has been rejected by the Government, with

the support of the Conservative Party, so it is no surprise that they have chosen to reject amendment 38, too. I press amendment 38.

The Convener: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 38 disagreed to.

13:30

The Convener: Group 10 is on sale of alcohol. Amendment 39, in my name, is the only amendment in the group.

My amendment 39 seeks to make a temporary adjustment to the licensing laws for off-sales of alcohol. Presently, alcohol can be purchased only after 10 am, Monday to Sunday. Amendment 39 would allow that to be temporarily suspended so that alcohol could be purchased from 8 am throughout the week.

The reason for that is very simple. I have highlighted the issue previously, during proceedings on the first emergency bill and again in the stage 1 debate on the current bill. As we know, groups of individuals, most notably those who are in vulnerable groups, but also NHS workers, have had specific shopping times reserved for them in supermarkets—usually, before 9 o'clock in the morning—in order to avoid their coming into contact with large numbers of other people. The measure, which many retailers have introduced, has been warmly welcomed by people in those groups.

Although the issue is not as prominent as it was several weeks ago, it is, nevertheless, still an issue for individuals in those groups. Indeed, when I was in my local Co-op the other day, I saw that it still had signs up saying that shopping before 9 o'clock is reserved for individuals in those categories.

Of course, that puts those people in an unfair position, because although they can do their weekly shop, the one thing that they cannot do is

buy off-sales alcohol, whereas people who are shopping after 10 o'clock are able to do so. That means that if they want to purchase alcohol, they have to make another trip the shop after 10 o'clock, and to put themselves at risk, so there is a good health reason why amendment 39 is necessary, as well as there being an issue of fairness. We should not discriminate against people who, through no fault of their own, are unable to shop at the same time as everybody else.

Of course, the current licensing laws were made at a time when we did not imagine that there would be any issues as a result of vulnerable individuals not being able to shop at a particular time of day.

For me, it is an issue of fairness. I have had quite a lot of representations from constituents who have raised the matter with me. I know that there are people who have increased health issues in relation to alcohol more generally, but it seems to be unfair that although people can freely purchase alcohol after 10 o'clock if they wish—there are no restrictions on that—people in the relevant group face restrictions.

The arguments have been fairly well rehearsed. It is a very modest proposal, so I am happy to move amendment 39.

Alex Cole-Hamilton: I will not take long. I just want to say that the Liberal Democrats support amendment 39, which is in the convener's name.

I understand the arguments that have been articulated on both sides. We have to recognise the exceptional times that we are in. The licensing tool of opening hours is rather ineffective in tackling Scotland's unhealthy relationship with alcohol. Had the convener brought to the committee an amendment calling for a change to minimum unit pricing or its abolition, we would not have been able to support it, because that is an efficacious measure.

The current situation is rather arbitrary—as you described it, convener. It impacts and impedes two particular groups—vulnerable people and hard-working NHS employees—who might have only that opportunity to go to the shops. Therefore, for the duration of the emergency, and with the recognition that we can change the measure back when things settle down and we go back to normality, the Liberal Democrats support amendment 39.

Monica Lennon: I think that the convener already knows that I do not support amendment 39; I do not believe that now is the time to relax laws that are in place to protect public health and to reduce harm in our communities. The World Health Organization has advised that, if possible, people should be avoiding alcohol at this time, or

cutting down on drinking, because alcohol can suppress the immune system and make us more susceptible to infections and diseases. We have to be careful to avoid mixed messages on public health during the pandemic.

I have consulted organisations including Alcohol Focus Scotland and Scottish Families Affected by Alcohol and Drugs, both of which advise against the proposal. Findings from initial research show that alcohol sales have already increased during lockdown—alcohol is still widely available and can be purchased during many hours of the day. The proposal is not reasonable and does not provide reason enough to change the existing laws.

As well as my role on the committee, I am the health and social care spokesperson for the Scottish Labour Party and am in contact with front-line workers most days. No one has expressed concern to me about not being able to buy alcohol during certain hours. They have raised issues about PPE and about pay and conditions, which is why I lodged amendment 24, on a social care staff support fund, which the committee did not support.

We are in the business of considering emergency legislation and proposals, so I do not believe that changing alcohol licensing laws is necessary at this time. I am very concerned. People who have issues with and dependency on alcohol come from all walks of life, including the older population and NHS and social care workers, who are under considerable stress at the moment.

Before the pandemic, we knew that approximately 60,000 young people were living in homes in which alcohol is a problem. At the moment, those young people do not have the escape of school or youth clubs, and are not able to see their friends. We must be careful of any unintended consequences of the proposal, so I will vote against it. I urge the convener not to press amendment 39.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am designated as a vulnerable person as I am in my eighth decade. Therefore, every 10 days or so, I am shopping at 8 or 8.30 in the morning, when alcohol sales are currently forbidden. During my visits to various retail outlets, I have found that none of my fellow septuagenarians or those who are older are heading to purchase any drink. We can be quite clear that alcohol is not a necessity of life.

In 2005, I was present, as were two other committee members, when Frank McAveety persuaded us to introduce the provision to ban alcohol sales before 10 in the morning. At the time, I was doubtful, but events have shown that that restriction has had no adverse effects and I would be reluctant to make a special case for the

short period of time during the coronavirus pandemic—it sends entirely the wrong message to do so. With hindsight, Frank McAveety was right in 2005, and we should try to do the right thing now and stick with the policy that he persuaded us to enact 15 years ago.

Michael Russell: Thank you for raising the issue with me prior to the meeting. I know that the committee has considered the issue during the passage of both coronavirus bills and I am grateful for the positive engagement although, regrettably, I cannot support amendment 39.

As the committee is aware, since 2009, legislation has provided that alcohol can be sold only between 10 in the morning and 10 in the evening, seven days a week; there is no discretion for alcohol to be sold outwith those times. That measure was, and is, a key part of the Scottish Government's public health policy and is concerned with addressing Scotland's challenging relationship with alcohol.

As a Government, we are concerned that a significant relaxation of the current regime, as proposed in amendment 39, suggests that the coronavirus outbreak is a time when more alcohol could, and should, be purchased. Monica Lennon has made it clear that the WHO certainly does not advise that, and the interim chief medical officer has advised that cutting back the amount that people drink may help to reduce the health risks and associated complications that are linked to coronavirus. Of course, key workers are doing an incredible job, but I do not think that the licensing regime presents an insuperable obstacle to allowing them to buy what they want.

There are other options, including ordering alcohol for delivery. We understand that there are fewer reports of large queues at supermarkets than there were in the early days—people have adjusted their shopping habits.

There are some policy concerns with the amendment. Allowing sales “from 8am” on any day of the week without qualification would be open to misinterpretation about the closing time. It might suggest that 24-hour sales would be acceptable. I know that the member does not intend that, but the amendment could be interpreted in that way.

Amendment 39 also refers to “retail alcohol sales”, but that phrase is not used in the Licensing (Scotland) Act 2005 and it is not entirely clear what the phrase means. Does it apply only to off sales or does it include on sales? The amendment is not restrictive and would allow anyone aged 18 or over to make use of the additional hours. The question of making such a change for those whose choices are restricted is one debate, but the question of making the change absolutely

unrestricted so that it applies to everyone is another debate.

We therefore cannot support amendment 39 and suggest that it should be opposed.

The Convener: I will briefly respond to the points that have been made. On the points that the cabinet secretary and Monica Lennon made about alcohol sales going up more generally, I suppose that off-sales of alcohol will be up, but of course on sales will have disappeared altogether, so that is a balancing factor. Sales might be up among the general population, but I am sure that that is not the case for those who are unable to purchase alcohol because of restrictions.

Stewart Stevenson said that he did not see septuagenarians in his shop going to purchase alcohol before 10 o'clock in the morning. That is not a surprise, because they are not allowed to. They would be very disappointed even if they got to the aisle, because they would not be allowed to purchase anything.

Mr Stevenson took a paternalistic attitude to the issue when he said that he does not regard alcohol as a necessity. There are many things that we can still buy during lockdown that are not strictly necessities. We should be prepared to trust people a little more and allow them some personal responsibility and to make judgments for themselves.

I am disappointed that Monica Lennon is not prepared to give a bit more support for NHS workers by allowing them this little perk of purchasing alcohol before 10 o'clock in the morning.

For all those reasons, I will press amendment 39.

The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Tomkins, Adam (Glasgow) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 39 disagreed to.

Schedule 1, as amended, agreed to.

Section 3 agreed to.

Schedule 2—Operation of the justice system

The Convener: We move to group 11, on fixed penalty notices under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. Amendment 3, in the name of Ross Greer, is the only amendment in the group.

13:45

Ross Greer: Amendment 3 is, I hope, a relatively small change to bring the bill into line with existing Government policy and, more important, Police Scotland's standard operating procedure, by raising the age at which a fixed penalty notice can be issued, from 16 to 18.

In Scotland, in a variety of legislation and Government policy, we recognise 18 as the age at which someone is regarded as an adult. That is the case in our national youth justice strategy, in the Children and Young People (Scotland) Act 2014 and in criminal justice legislation. It is also generally the case in Police Scotland's standard operating procedure.

If members agree to amendment 3, that will bring our approach into line with the United Nations Convention on the Rights of the Child, which underpins a lot of policy approaches to which the Scottish Government is committed and which the Government intends to incorporate into Scots law. It will also bring us into line with the approach that is taken in the rest of the UK.

Amendment 3 is supported by the Children and Young People's Commissioner Scotland, the Scottish Youth Parliament, Together Scotland, and Clan Childlaw. Police Scotland confirmed to the children's commissioner this morning that it supports the amendment, on the basis that it addresses a misalignment between the 2020 regulations and Police Scotland's standard operating procedure and a variety of legislation.

I am not sure whether it was the intention that the 2020 regulations should permit the issuing of fixed-penalty notices to people from the age of 16. I am aware that the regulations were drafted very quickly, given the circumstances, so that might not have been the intention at all. Regardless of whether it was the intention, there is a misalignment, which amendment 3 would simply correct, so I hope that members will agree to the amendment.

I move amendment 3.

Jenny Gilruth: I understand why Mr Greer lodged amendment 3.

The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 are in

line with other relevant legislation. In Scotland, parental responsibilities and rights stop at age 16, with the exception of the responsibility to provide guidance, which lasts until 18. In addition, there is a cut-off at 16 for fixed-penalty notices under antisocial behaviour legislation.

However, I understand the points that Ross Greer, the Children and Young People's Commissioner Scotland and children's charities made about the need to protect young people.

In the context of policing during the current pandemic, Police Scotland says:

"Police Scotland is founded upon public service and operates under the fundamental principle of policing by consent ... Our officers will continue to engage with the public in a positive and constructive tone as we support our colleagues in the health service at this extraordinary time. The powers being afforded to our officers will be used as a last resort and only where people are defying very clear and sensible advice which is designed to protect them from harm."

The Scottish Government recognises that 16 and 17-year-olds might be particularly vulnerable. On that basis, we support amendment 3 and agree that fixed-penalty notices should no longer be capable of being issued to young people aged 16 and 17 under the 2020 regulations.

As the Children and Young People's Commissioner said in his briefing to members, it is important that amendment 3

"does not detract from the important public health message to children about the purpose of the lockdown provisions."

Ross Greer: I thank the Government for its support and I thank the Children and Young People's Commissioner Scotland for taking the lead on the issue. I thank members of Scottish Youth Parliament and the various organisations that campaigned in support of amendment 3, which I press.

Amendment 3 agreed to.

The Convener: We move to group 12, on proceeds of crime: time limit for payment of confiscation orders. Amendment 4, in the name of Liam Kerr, is the only amendment in the group.

Liam Kerr (North East Scotland) (Con): Thank you, convener, and thank you to the committee for considering my amendment. It asks that paragraph 8 be left out of schedule 2, from page 13 on line 31.

Paragraph 8 is headed "Time limits for payments of confiscation orders". It runs from line 31 on page 13 until the end of page 15. The policy memorandum gives a clear summary of the practical impact of the paragraph. It gives criminals more time to pay proceeds of crime orders.

At present, when a criminal has been judged to have to pay the proceeds of crime, under a confiscation order, they must do so by the end of 12 months from the date on which the order is made. If paragraph 8 is passed, it will allow the criminal to apply for an order to extend the period in which they may pay, if they are not able to pay

"for a reason relating to coronavirus".

That provision has concerned me from my initial reading of the bill. I ask committee members to keep in mind that what is being dealt with are the proceeds of crime: the ill-gotten gains of a convicted criminal who has profited from their criminality. Many members of the public will find it difficult to accept that drug dealers and organised criminals who are subject to orders under the Proceeds of Crime Act 2002 could be extended an opportunity to pay later, when their victims and so many law-abiding members of the public are struggling financially due to the pandemic.

I question the fairness of allowing drug dealers more time to pay back the proceeds of crime because they are facing challenges, presumably in liquidating the assets that were bought with those proceeds, while those from whom they might have stolen, extorted or forced that money beg for help from both the UK Government and the Scottish Government in a context where there is a finite amount offered.

I was steeled in that conclusion during the stage 1 debate, when I heard James Kelly say that

"A recent freedom of information request highlighted that there was £6 million in unpaid and unrecovered confiscation payments."—[*Official Report*, 13 May 2020; c 71.]

How can it be right, when both of Scotland's Governments are working to support those who have never done wrong, that we are £6 million short of where we should be, and yet we are proposing to give even more time for people to settle their debt from the proceeds of crime?

I also read with interest the concern of Annabelle Ewing, in the committee meeting on 12 May, that the provisions could "facilitate evasion" and suggested that

"the matter should be looked at very carefully, because Scotland has had great success with proceeds of crime confiscations and, when we get to the new normal, whenever that might be, it would be a pity if there was any backtracking in that regard."—[*Official Report, COVID-19 Committee*, 12 May; c 8.]

The fact that three voices from across the parties are raising concerns about the issue merits caution. As I said in the stage 1 debate, in emergency legislation, we must be cautious about what we do and avoid unintended consequences.

My amendment exercises that caution, and I would be grateful for the committee's support.

I move amendment 4.

Annabelle Ewing: I had not initially planned to speak, but I want to clarify what Liam Kerr attributed to me. I raised that issue in committee, and I think that it was a perfectly reasonable issue to raise. However, the evidence that we took from the Law Society, which can be seen in the *Official Report* of that meeting, provided sufficient reassurance, as did the clarification from the Law Society that in fact it was the Crown Office that had sought those provisions.

Michael Russell: The amendment seeks to assert that coronavirus never happened and did not change things. I just do not think that that is a tenable starting position, and therefore there is a strong logical argument against amendment 4, even before we start to consider its content.

It is a fact that, at present, a court cannot allow a payment period of more than 12 months from the date that a confiscation order is made. No matter what we think of the accused, he or she might have practical difficulties outwith their control relating to the coronavirus. For example, they might be unable to sell property in order to raise funds for the order.

All the bill does is give the court discretion to allow more than 12 months when the court is satisfied that that is necessary for a person and that the reason is related to the coronavirus. No convicted person is being excused from paying a confiscation order—those orders will remain in force. All that is being questioned is whether the ability to pay within 12 months is a factor that can require additional time, as a result of the pandemic.

In addition, before allowing the extension, the court must be satisfied that the accused was or is unable to pay in that time as a result of coronavirus. If the court is satisfied, it can decide on the appropriate extension. That also gives the prosecutor an opportunity to make representations.

The amendment is therefore proportionate and possible, and it is also very practical. It relates to the real world, in which we have a pandemic.

Liam Kerr: I am very grateful for the contributions that have been made.

The cabinet secretary talks about the real world. I am not persuaded that the public would view sending serious criminals to jail if they do not pay back what they have been ordered to under the Proceeds of Crime Act 2002 as unfair and outwith the real world. In the real world, people will be much more concerned with the victims of organised criminals in deprived communities, who

might be struggling to pay bills during this economic crisis while the wrongdoers are apparently being given extra time to pay back for their offences.

The key argument that I heard from the cabinet secretary and Annabelle Ewing, who rightly brought up the Law Society's evidence to the committee, was that the coronavirus situation is novel and unprecedented. Let us say that a criminal could not liquidate the proceeds of crime through selling the house that they had bought with those proceeds. There is no doubt that these are challenging times, but the property market is nevertheless moving. Solicitors are working and estate agents are marketing, and there are innovative means by which viewings are being conducted. I do not find myself losing sleep over the fact that a criminal might have to sell a property that they have bought with the proceeds of crime for less than it might otherwise have fetched.

Should we really be extending the time to await the possible recovery of the housing market? In that case, criminals might even make a profit. Is that really what we should be doing? I say no.

I am genuinely grateful for the committee's time on the matter, but I request that it look favourably on my amendment 4, which I press.

The Convener: The question is that, amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Lennon, Monica (Central Scotland) (Lab)
Tomkins, Adam (Glasgow) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Greer, Ross (West Scotland) (Green)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 4 disagreed to.

Schedule 2, as amended, agreed to.

Section 4 agreed to.

Schedule 3 agreed to.

Section 5 agreed to.

Schedule 4—Other measures in response to coronavirus

14:00

The Convener: We move to group 13, on “Keeper’s website: definition”. Amendment 5, in the name of Stewart Stevenson, is grouped with amendment 6.

Stewart Stevenson: Amendments 5 and 6 have no policy effect. In paragraph 9 of part 3 of schedule 2 to the bill, the domain name of the Scottish Courts and Tribunals Service website is provided to aid interpretation. These amendments have an identical purpose for the keeper of the Registers of Scotland.

I move amendment 5.

Jenny Gilruth: I thank Mr Stevenson for lodging amendments 5 and 6. Although they are not essential, I agree that they provide more certainty for stakeholders on the specific website where practical details will be published. On that basis, I ask members to support amendments 5 and 6.

The Convener: I ask Mr Stevenson to press or withdraw amendment 5.

Stewart Stevenson: I press amendment 5.

Amendment 5 agreed to.

Amendment 6 moved—[Stewart Stevenson]—and agreed to.

The Convener: We move to group 14 on land and buildings transaction tax: repayment of additional amount. Amendment 40, in the name of Liam McArthur, is the only amendment in the group.

I invite Beatrice Wishart to speak to and move the amendment on behalf of Liam McArthur.

Beatrice Wishart (Shetland Islands) (LD): Amendment 40 would extend the proposed change to the additional dwelling supplement by extending the timeframe from 27 to 36 months, in line with the timeframe that already exists elsewhere in the UK.

In 2016, Liam McArthur raised concerns about the

“fear that the 18 month threshold will prove particularly problematic in places like Orkney, and could adversely affect the local market”.

The housing market in Orkney and other island communities operates differently to the market in other parts of mainland Scotland. Properties can remain on the market for prolonged periods often extending beyond 18 months.

A further extension of the timeframe would provide more breathing space for those who are trying to sell up in areas that move more slowly,

and it would also “island-proof” the original legislation. Given that we do not know how the property market will react to the coronavirus crisis, that breathing space could make all the difference.

I move amendment 40, in Liam McArthur’s name.

The Convener: I will speak briefly in support of the amendment. The decision regarding the period by which to extend the concession for reclaiming additional dwelling supplement is, in essence, a matter of judgment. The Scottish Government chose the figure of 27 months; the UK Government, in relation to transactions in England, has gone for a slightly longer period of 36 months. It is entirely debatable which figure is correct or appropriate.

I observe that the property market south of the border has already started to kick back into life. We have seen property viewings happen there this past week, whereas the ones in Scotland are still in lockdown and are likely to remain so for some weeks yet. The argument for Scotland taking a different position from that of England on the matter is, if anything, that Scotland should be given a longer period for reclaiming ADS because the market might be slower to recover here.

It is matter of judgment, but Beatrice Wishart makes a reasonable case why properties in certain parts of Scotland might sit on the market for a long time even in normal circumstances. That is even more the case today with the lockdown and all its implications. Amendment 40 is a reasonable proposition, and I hope that members will support it.

Jenny Gilruth: As Beatrice Wishart is aware, amendment 40 is not essential, as the bill already contains the power necessary to extend the 27-month period within which a previous main residence must be sold in order for a taxpayer to claim a repayment of the ADS. In that regard, the initial nine-month extension provided for in legislation was intended to reflect a proportionate approach, taking into account an initial analysis of the impact of the pandemic on the market and the extra time that might be needed, in particular, to assist any taxpayers whose transactions might have fallen through just before the lockdown began.

However, I understand the concerns that the member raises about the potential impact on the markets in island economies and in rural communities and the desire to give affected taxpayers a stronger measure of reassurance that the pandemic will not prevent them from being able to reclaim the ADS. I am therefore content to accept the amendment in order to provide that additional assurance. Although, of course, the position remains uncertain, given that the

amendment will double the time that is currently available to affected taxpayers, the Scottish Government would not, at this point, expect a further extension to the repayment window to be required in the future.

Beatrice Wishart: I am very pleased with what I have heard, and I will press the amendment.

Amendment 40 agreed to.

The Convener: We come to group 15, on relief to be provided to small business tenants. Amendment 41, in the name of Alex Cole-Hamilton, is the only amendment in the group.

Alex Cole-Hamilton: Amendment 41 comes from casework. I am sure that all members will have many examples from their constituencies of businesses that have fallen through the cracks in one way or another with regard to the business grant relief that the Scottish Government is offering through local authorities. There are a range of different problems, but this one represents low-hanging fruit and should be easy to rectify.

At present, many companies that are tenants in large office blocks—sometimes in managed service accommodation—do not pay business rates directly to the local authority but do so through a management charge or rental agreement with a managing company such as Regus. That is particularly apposite in my constituency of Edinburgh Western, where many of the businesses that operate on the Gyle industrial estate do so on those terms.

This is an issue of viability for those businesses. Without the grants to which they would otherwise be absolutely entitled by paying business rates directly, businesses may well go under. The funds may be the difference between their remaining viable and not. At present, by and large, local authorities are discriminating against those companies, which are as deserving as any other but just have different terms under which they pay their business rates—through an intermediary.

Amendment 41 sends a signal, as much as anything else. It sends a signal to struggling businesses that are tenants in managed service accommodation: “We have your back.” It also sends a message to local authorities, which must recognise the very different ecosystems in which companies operate. I also want to give local authorities the confidence to award grants with a flexibility that recognises the very different circumstances in which people pay business rates and, as such, are deserving of the support.

I move amendment 41.

Jenny Gilruth: I note that Alex Cole-Hamilton raised this issue during the stage 1 debate. Although the intention behind the member’s

amendment is laudable, it could cause untold damage to public finances. As such, it is not an amendment that the Scottish Government can support.

The amendment would introduce a statutory scheme to complement the existing scheme that is being delivered administratively and flexibly in partnership with local authorities. The Scottish Government has frequently shown a willingness to respond to feedback from businesses and councils on the administration of the current scheme. The Government has adapted the scheme on numerous occasions through changes to guidance, without recourse to legislation, and it is actively considering how it might best deliver support for tenants or occupiers who are not ratepayers.

The Government’s primary concern is that amendment 41 would apply to the full financial year, without a specific qualifying date. That would break the link with the current Covid-19 pandemic and could allow unscrupulous businesses to relocate frequently and use temporary lease arrangements to evidence their eligibility for multiple grant payments.

The amendment also does not recognise the temporary nature of some lease arrangements. For example, a market trader could lease a spot at a different farmers’ market every day and qualify for a grant at each. For the avoidance of doubt, no one is questioning that market traders might be struggling through the current crisis and are worthy of support. However, such support must be delivered sensibly. It is not necessary to do so through primary legislation, and particularly not in the way that amendment 41 proposes.

I encourage the committee to reject amendment 41 and to allow the Government to continue to work in partnership with local authorities to get support to businesses that need it.

The Convener: I ask Alex Cole-Hamilton to wind up and indicate whether he wishes to press or withdraw amendment 41.

Alex Cole-Hamilton: I intend to press my amendment, but before I do so I would like to address some of the minister’s points.

I welcome the fact that the Government has closed a number of loopholes that have seen businesses unwittingly fall through the cracks in the available support, but that does not include the one that I have mentioned, and I did not want to let an opportunity go by to deal with it in statute. Let us face it: a lot of things in statute are about signalling and giving permission to local authorities—which probably already had such permission—by laying out in no uncertain terms that they have the ability, for example, to make awards to businesses. I know that the Scottish

Government has been grappling with the issue, but it is not moving fast enough for the businesses that are affected.

Finally, I accept what the minister has said on the point about the qualifying date. However, I do not think that that is an impediment to progressing the matter at stage 3. If we were to put my amendment into the bill at this stage, we could easily amend it at stage 3 with a qualifying date and, if need be, a sunset clause that would make it coterminous with the rest of the bill.

For all those reasons, I press amendment 41.

The Convener: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Lennon, Monica (Central Scotland) (Lab)
Tomkins, Adam (Glasgow) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Greer, Ross (West Scotland) (Green)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 41 disagreed to.

The Convener: We turn to group 16, which is on the execution of documents. Amendment 8, in the name of the cabinet secretary, is the only amendment in the group.

Michael Russell: Amendment 8 will allow notaries public, solicitors and advocates to execute documents on behalf of others without their having to be physically present, and to administer oaths, affirmations and declarations without being physically present with the person making the oath, affirmation or declaration.

We all know that, in most current circumstances, it is not possible for the people involved to be physically present, which is why these changes are necessary. I am grateful to the Law Society of Scotland for raising the matter.

I move amendment 8.

The Convener: As you know, cabinet secretary, I am a member of the Law Society of Scotland. I had a discussion with it about the issue. It is very supportive of amendments that would mean that the notarising of documents is still possible in the current lockdown arrangements, when it is not possible for two individuals to be in the same room. I understand that the society is also

producing new guidance on how notaries public should operate in the current climate. Amendment 8 is therefore helpful.

14:15

Stewart Stevenson: I agree with what has been said about amendment 8, which is very helpful. I merely put on the record that I hope that its success during the current crisis period might lead us to revisit the change that it makes and make it a permanent change in how we do things in the future. I say that as someone who—in a rather different context—had to fly all the way to San Francisco just to sign a contract in person. It took precisely 20 minutes for me to do so, after which I got back on the plane and came home. In the modern world, it is absurd not to do things in the way that is proposed in amendment 8.

The Convener: I invite Mr Russell to wind up.

Michael Russell: I have nothing more to say. I press amendment 8.

Amendment 8 agreed to.

The Convener: We move on to group 17, which is on freedom of information. Amendment 7, in the name of the cabinet secretary, is grouped with amendments 48, 9 to 14 and 45. I invite Jenny Gilruth to move amendment 7 and speak to all the amendments in the group.

Jenny Gilruth: The Scottish Government recognises the importance of openness and transparency in ensuring good governance. Freedom of information legislation is at the heart of ensuring openness and transparency, and we are proud that Scotland has the most open and transparent freedom of information regime in the UK.

We have listened, and we respect the will of the Parliament. We will reflect carefully and make changes where necessary—that is never more important than it is with emergency legislation. The Coronavirus (Scotland) Bill was amended at stage 2 to ensure that it fully took account of the views of the Scottish Information Commissioner, who is our independent regulator. We welcome the cross-party input that has shaped the Coronavirus (Scotland) (No 2) Bill, which is reflected in the amendment that I will shortly invite the committee to support.

I stress the importance of fairness. The Coronavirus (Scotland) Act 2020 made substantive changes to the timescales for handling freedom of information requests and reviews, and authorities have acted in reliance on those changes, as they were entirely entitled to do. It is clear that the mood of the Parliament is in favour of making further substantive changes to the way in which FOI law operates, and that is reflected in

the Government's amendment 7. However, we consider that it is essential to ensure that no authority is unfairly penalised as a result of the proposed changes to the law, so transitional arrangements for on-going cases are necessary.

Amendment 7 is a carefully weighted compromise that seeks to balance all those factors: openness and transparency, the will of the Parliament and the need for fairness. It does three things: it adjusts the timescales for responding to requests; it removes provisions that have proved to be unnecessary; and it makes transitional arrangements in the interests of fairness.

On timescales, the deadline—I stress that it is a maximum, not a target—for responding to FOI requests will reduce from 60 days to 40 days. That will apply to all Scottish public authorities other than the Scottish ministers, for whom we will revert to the original Freedom of Information (Scotland) Act 2002 deadline of 20 working days. Allowing other authorities a maximum of 40 working days will maintain flexibility during the present emergency for health boards, local authorities and the police, among others.

During the debate on the Coronavirus (Scotland) Bill, comparisons were made with the UK Freedom of Information Act 2000 and the position in New Zealand. Authorities that are subject to the UK act have always had the ability to extend the deadline for responding to 40 working days. In New Zealand, it is possible for authorities to extend for an open-ended period of time that is “reasonable”, having regard to the circumstances. The relevant part of amendment 7 takes us no further than those other jurisdictions, where the flexibility that is built into the FOI legislation is always available. It recognises the concerns that have been expressed by the Parliament, while giving authorities the flexibility that has been praised elsewhere. Accordingly, I hope that the committee supports those proportionate measures.

Amendment 7 also restores the original 20-working-day deadline for responding to FOI reviews for all authorities and repeals the Scottish ministers' ability to make direction that further extends the deadlines for authorities other than themselves. On balance, we no longer think that those measures are necessary, so we are taking the opportunity to bring them to an end in accordance with our commitment to keep the emergency legislation under continuous review and to bring emergency provisions to an end at the earliest opportunity.

Finally, amendment 7 contains transitional provisions to ensure that no authority finds itself inadvertently breaking the law as a result of the changes to the timescales. If the amendment is accepted, the changes that it makes will come into

force at the earliest opportunity, on the day after royal assent. It would be in no way fair if authorities found themselves retrospectively unable to comply with timescales because the law has changed. If a request was received 45 days before the legislation came into force and was still outstanding at that point, the authority would automatically have failed to comply with the new timescales and would be unable to do anything about it. Appropriate transitional provisions ensure that we avoid that risk, while the new timescales will apply immediately to all new requests and reviews once the provisions come into force.

I turn to the other amendments in the group. Amendments 11 to 14, in the names of Mr Greer and Professor Tomkins, go further than the Government's amendment 7, as they seek to restore the original deadline for requests of 20 working days for all authorities, not just for the Scottish ministers. In our view, that does not give other authorities the flexibility that they need at this time—the flexibility that exists in other countries that are held up as examples to us. Further, those amendments contain no transitional protection for on-going cases, and as such they would expose hard-pressed authorities to the risk of breaking the law through no fault of their own. For those reasons, we cannot support the amendments.

Mr Cole-Hamilton's amendments go further still. In addition, amendment 9 would take away the ability of the commissioner and authorities to issue formal notices electronically. The commissioner supports the ability to issue notices in that way because it makes it easier for him to carry out his duties while his offices are physically closed. The Coronavirus (Scotland) Act 2020 contains a number of provisions that make it easier to use electronic documents and to give notice electronically, and amendment 9 runs counter to those aims. I urge Mr Cole-Hamilton not to press amendment 9, given its potential impact on such useful administrative flexibility.

Mr Cole-Hamilton's amendment 10 goes further still, as it would remove the Scottish Information Commissioner's ability to take into account the impact of coronavirus in deciding whether an authority has failed to comply with the timescales in FOISA. The provision of such discretion for the commissioner attracted support from Mr Greer at stage 2 of the bill that became the Coronavirus (Scotland) Act 2020, and from Professor Tomkins in his comments to *The Ferret* last week.

The Government considers that giving the commissioner such discretion is essential to enable our FOI law to operate flexibly—as FOI law operates in those other countries that have been highlighted to us as examples of good practice—during the emergency period. Indeed, the discretion will last only for the duration of the

emergency, unlike in those countries where it is a permanent feature of the FOI landscape. For those reasons, we cannot support amendment 10.

Amendment 48, in the name of Mr Findlay, would substantially constrain the commissioner's ability to exercise his discretion. As drafted, it would mean that the commissioner would have to be satisfied that an authority had failed to comply with timescales due to the effects of the coronavirus and also because it was operating under the extended deadline of 60 working days, in addition to the failure being reasonable in all other circumstances. We cannot see how those conditions could ever be satisfied, which means that the measure is, in effect, inoperable.

Amendment 48 would also require the commissioner to

“regard the public interest test as the primary consideration”

in assessing whether a failure was reasonable. If that is intended as a reference to the public interest test in FOISA, it should be noted that the FOISA test applies only where an authority has applied a qualified exemption to withhold information. The public interest test has no role to play where an absolute exemption is applied, or where an authority has disclosed all the requested information but has simply failed to adhere to the time limits. Again, such a requirement would in effect make the provision impossible to operate, and we therefore cannot support amendment 48.

Amendment 45 would require the Scottish ministers to report to Parliament every two months on their FOI performance while the FOI provisions in the Coronavirus (Scotland) Act 2020 remain in force. The Scottish Government is happy to report on its FOI performance, but I want to make the committee aware of the range of reporting provisions that already exist. Like all Scottish public authorities, we report most of our information every three months to the Scottish Information Commissioner, who proactively publishes that information. In addition, as part of the commissioner's on-going intervention in Scottish Government FOI practice, we report to him monthly on our performance. Once those performance figures have been supplied to the commissioner, we proactively publish them on our website.

Given the existing reporting arrangements, I suggest that much of what Mr Findlay seeks to achieve is already proactively put in the public domain. The introduction of a further reporting requirement that would sit between the existing monthly and three-month reporting cycles does not seem to be proportionate, and we will not support amendment 45.

The Scottish Government is committed to getting the balance right on freedom of

information. We want to ensure that access to information is protected, and that hard-pressed authorities on the front line are not forced to choose between complying—[*Temporary loss of sound.*]—and providing essential services in the face of this emergency.

We have listened carefully to the views that have been expressed inside and outside Parliament. Amendment 7 strikes an appropriate balance, and I invite the committee to support it.

I move amendment 7.

The Convener: Monica Lennon will speak to amendment 48, in the name of Neil Findlay, and to other amendments in the group.

Monica Lennon: Neil Findlay has asked me to give his apologies; he wanted to speak to his amendments himself, but he has had to go to the chamber for other business. I fully support the minister when she says that Government should be open and transparent and that that is in essence about trying to get good governance. For that reason, I will speak to Neil Findlay's amendments on his behalf.

Amendment 48 proposes that, if a Scottish public authority has failed to comply with a relevant period, the Scottish Information Commissioner must take into account the public interest test. I will explain briefly.

A designated body needs to be held accountable for operational and staffing decisions that have resulted in poor management of information during the period of the emergency, and have made it difficult for staff to respond promptly, within the normal 20-day response time. That could include, for example, deploying staff to other roles, or actively advising them that the duty could, in effect, be suspended.

In the making of such decisions, the public interest—in requiring public bodies to diligently deliver FOI rights—should have featured large in its decision-making process. The Scottish Information Commissioner, when hearing appeals about delays in the answering of requests, needs to consider the public interest test in relation to the designated body's compliance with the time limits. That is what Neil Findlay would have said in support of his amendment.

Amendment 45 would put a duty on the Scottish ministers to lay reports in Parliament, during the emergency period, about how many requests they have not complied with, how many requests have been received, and what the backlog is, notwithstanding what the minister has said.

The rationale behind amendment 45 is that, as the public face of the Covid-19 emergency response, it is appropriate for the Scottish

Government to be seen to deliver on its daily commitment to transparency and accountability.

In addition, being willing to report on progress and compliance with FOISA duties sets a very good example to the rest of the public sector about how the Scottish Government is performing.

The Scottish Government is still subject to formal intervention by the Scottish Information Commissioner, due to poor practice, so we are looking for MSPs to have additional reassurance about FOI performance. In addition, a robust reporting regime is important for MSPs because of outstanding business from 21 June 2017, resulting from Scottish Parliament motion S5M-06126, with which I am sure the Minister will be familiar:

“That the Parliament condemns the Scottish Government’s poor performance in responding to freedom of information requests; calls for an independent inquiry into the way that it deals with these, and agrees to undertake post-legislative scrutiny of the Freedom of Information (Scotland) Act 2002, and welcomes commitments by the Scottish Government to adopt a policy of pro-actively publishing all material released under FOI to ensure that it is as widely available as possible.”—[*Official Report*, 21 June 2017; c 100.]

Since the minister has said that she wants to respect the will of Parliament, I hope that she will take that reminder in the spirit in which it is intended.

In recent days, the public have been quite alarmed, for example about the Nike outbreak at a hotel in Edinburgh, which they were not informed of—we have had to rely on journalists to provide that information. While the committee has been sitting today, I think that there have been further questions about that to the First Minister at her daily press briefing. In order to try to restore public confidence and trust, it is important that we have full transparency.

In the main, MSPs have tried to avoid unnecessarily burdening our public authorities during the pandemic. We have tried to use the channels available to us, including urgent written parliamentary questions and oral questions in the chamber. In response to written questions, particularly with regard to health data, we are being given a holding response or are routinely being told that the Scottish Government does not hold the information. That is why we do not support amendment 7. We want the 20-working-day deadline to be restored, because of the importance to the public interest and good governance that we have as much access to information as possible.

14:30

Alex Cole-Hamilton: I thank the minister for raising the issue of my amendment 9 and, in particular, of the deletion of paragraph 7 of

schedule 6, part 2 to the Coronavirus (Scotland) Act 2020. I should alert the committee that that is a drafting error that occurred as a result of the instructions that I gave to clerks. If amendment 9 is agreed to, I plan to reinstate paragraph 7. As the minister articulated, the exchange of FOI via electronic communication will make the Scottish Information Commissioner’s office more fleet of foot. In addition, it is a far more environmental way to operate. With that assurance, I will move amendment 9.

Amendment 9 is far more surgical than amendment 10, which deletes all the provisions on freedom of information in the Coronavirus (Scotland) Act 2020, so I will largely speak to amendment 9. It is clear that parliamentary opinion and the united forces of all Opposition parties against the provisions in the first bill should have been a bellwether on whether it was agreed to in the first place. However, I acknowledge the distance that the Government has travelled and I am grateful to it for that.

Had amendment 7 been part of the bill as drafted, we might not be here now. I and a number of colleagues had a lot of sympathy for extending timescales, particularly for certain organisations that we felt might not be able to cope with an FOI request when they were so crucially in the teeth of the pandemic crisis. I am speaking particularly about NHS boards and the councils. Nevertheless, they are the arms of delivery and they are where the information lies. We have now seen how the crisis is playing out, and it is fair to say that there are some very busy departments, such as critical care, intensive treatment units and convalescence. The information commissioner can use discretion on the application of FOI requests, but I do not believe that boards are so universally busy that they would not be able to respond within the 20-day deadline. The same applies to local authorities. Although parts of the organisation, particularly those that give out business grants, for example, will be exceptionally busy, the lockdown and the fact that people may not be using services as much as they were may mean that councils are perhaps not as busy as we feared that they would be.

It is vital that we rectify our FOI provisions in this country. Catherine Stihler from the Open Knowledge Foundation was quick to point out that Scotland was in the unenviable position of being the first country in the world to introduce new restrictions on freedom of information as a result of the coronavirus outbreak. I am very grateful for the assurance from the minister that we will rectify that to a certain degree today; it is just a matter of the degree to which we do so.

Ross Greer: Amendment 11 and my other amendments are essentially identical to Mr

Tomkins's amendments; they are just in a different format. They seek to remove the restrictions on freedom of information in the previous bill. I will not talk much about the general principles of that—it was well rehearsed during the passage of the previous bill, and other members have mentioned it today. However, I want to make it clear that my amendments and those of Mr Tomkins remove the restrictions that were placed on freedom of information, while maintaining the very helpful provisions that were included in the previous bill, namely the ability to give notice electronically—already mentioned—and the discretion for the information commissioner to consider the impact of the virus when he is assessing whether public bodies have met their obligations.

On that point, I do not believe that it was necessary to include that provision in the previous bill—I believe that the Information Commissioner essentially already had that discretion. However, to remove it now would create confusion about whether he still has it. It is unnecessary to create such confusion when I believe that we are all comfortable with him having that discretion.

I oppose the Government's amendment 7, and I urge other members to oppose it too. If amendment 7 is agreed to, and if the amendments in my name and in Mr Tomkins's name are also agreed to, we will end up with a mess that we will have to correct at stage 3.

The Government's amendment retains some of the extensions for public bodies, which I simply do not believe are necessary. As Mr Cole-Hamilton highlighted, Scotland has taken a step here that no other comparable country has taken; indeed, only Brazil has taken anything like the step that we have taken. Therefore, I do not believe that we should agree to the Government's amendment. However, I welcome the effort that it has made to reach out to Opposition parties to try to achieve a compromise on the issue.

I am aware that Monica Lennon is speaking to Neil Findlay's amendment 48. I am still not entirely clear what the amendment seeks to achieve and how operable it would be. I would welcome some expansion from Monica Lennon on the amendment. I suggest that amendment 48 is not moved at this stage, but lodged for stage 3 tomorrow—or whenever we deal with stage 3—to give us a bit more time to consider it further. I am not quite clear what the benefit of introducing the public interest test in this way would be.

There is an element of throwing the baby out with the bath water in Alex Cole-Hamilton's amendments 9 and 10, although I recognise that he said that there is a drafting error in amendment 9. I suggest that he does not move amendment 9, because my amendments and Mr Tomkins's amendments achieve exactly what I believe Mr

Cole-Hamilton is trying to achieve, and our amendments would not require further amendment at stage 3. I therefore suggest that we agree at stage 2 to amendments that do not require further revision at stage 3, and I believe that my amendments and Mr Tomkins's amendments command a majority of support.

In particular, I note that amendment 10, in the name of Alex Cole-Hamilton, is opposed by the Campaign for Freedom of Information in Scotland. On that ground, I think that we should oppose the amendment.

I absolutely support the principle of Alex Cole-Hamilton's amendments, but I think that they go too far for the reasons that have already been mentioned—they would remove helpful provisions that we all in fact support, such as the ability to give notice electronically and making it clear that the Scottish Information Commissioner has that discretion.

I thank Mr Tomkins for the work that we have done together on the issue and I wish him well in rebuilding his reputation from that brief moment of association with me. I urge members to support both my amendments and his.

I support amendment 45, in the name of Neil Findlay, which is being moved by Monica Lennon, and I urge colleagues to support it also. Robust reporting is essential to achieve transparency, and transparency is in turn essential for public confidence. It is never more important to have public confidence in Government at all levels than at a time of crisis.

Adam Tomkins: I thank all the other members who have contributed to the debate, and I thank Ross Greer for his kind remarks. I do not think that my reputation needs rescuing at all from working with him on the issue. Not only are he and I agreed, but all four Opposition parties in the Scottish Parliament are completely agreed that it was neither necessary nor appropriate for the Scottish Government to seek in its first emergency coronavirus legislation to immunise itself and public authorities the length and breadth of Scotland from the ordinary rules of scrutiny and access to Government information.

Like Mr Greer, I do not want to rehearse all the arguments of principle, but I will address directly two of the erroneous and unhelpful remarks of the minister's officials, which the minister read out to us at the beginning of the debate on this group of amendments. The first relates to retrospection. When the Parliament wrongly legislated to extend the periods in which public authorities must comply with FOI requests, it was the Government that insisted that those extensions take retrospective effect. Therefore, if someone made an FOI request in March in the expectation that

the request would be dealt with in the ordinary 20-day period, that 20-day period was retrospectively extended to 60 days, notwithstanding that the request was made before the commencement of the previous legislation, because that is what the Government insisted on.

If the Government is right that the extension of timelines has retrospective effect, it must surely follow—this is the consequence of the Government's own logic—that any attempt by the Parliament to put those extensions back and revert to the normal position whereby public authorities have 20 days to respond to FOI requests will also have retrospective effect. By the Government's own logic, there is no need for transitional arrangements.

The second response to what the minister, Jenny Gilruth, said is the point that Ross Greer made very sensibly a few minutes ago—that none of us, apart from Mr Cole-Hamilton, is seeking to remove from the legislation that we passed last month the commissioner's overriding discretion to rule in any particular case that a failure to comply with the statutory deadline was not unreasonable for reasons relating to the coronavirus.

Those two points combined more than meet any objection that the minister's civil servants have put together for her as to why the amendments in my name or in Mr Greer's name should not be supported.

All four Opposition parties in the Parliament are united in their condemnation of what the Scottish National Party has sought to do here. I hope that we can proceed as follows. Amendment 7, in Mr Russell's name, can be rejected because it does not go far enough to right the wrongs that were legislated for a month ago. I hope that Mr Cole-Hamilton will not move amendments 9 and 10, because—this is the one thing that the minister said that I agree with—they go too far, throwing various legislative babies out with the bath water. It would be unhelpful if Mr Cole-Hamilton were to insist on those amendments going ahead.

I very much hope that Mr Greer will move amendments 11 to 13 and that the committee will support them. Then I will not need to move—and will not move—amendment 14, which would have the same effect as Mr Greer's amendments 11 to 13. Finally, I hope that Monica Lennon will move the two amendments in this group in Neil Findlay's name, because I would like to be able to support both of those amendments.

There have been some questions about the meaning of Neil Findlay's amendment 48, but it seems to me that the meaning is quite straightforward. The minister spoke a lot of legal gobbledegook earlier, deliberately trying to confuse matters, but the effect of amendment 48

is very straightforward. In any case, when the commissioner has to make a decision about whether a failure to comply with the statutory deadline to process an FOI request is reasonable, the effect of amendment 48 is to say that the overriding consideration that the commissioner must bear in the front of his mind as he considers that question is the public interest in the disclosure of information—which, after all, the Government holds in our name. That is the effect of amendment 48; it is not particularly complex or controversial. It is the right thing to do, and I hope that the committee supports it.

The Convener: No other committee members have indicated that they wish to speak on this group, thankfully, so we turn to the minister to wind up.

Jenny Gilruth: I waive my right to wind up, and I press amendment 7.

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

Against

Fraser, Murdo (Mid Scotland and Fife) (Con)
Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Tomkins, Adam (Glasgow) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 7 disagreed to.

14:45

The Convener: Amendment 48, in the name of Neil Findlay, has already been debated with amendment 7. I invite Monica Lennon to say whether she wishes to move or not move amendment 48.

Monica Lennon: I will move the amendment. I thank Ross Greer for his question. Adam Tomkins has already provided a helpful answer, so I will not repeat that. The issue is about ensuring transparency and ensuring that, if there is a so-called failure to respond to FOI requests, the public body had reasonable grounds, such as having to redeploy staff. Adam Tomkins explained that perfectly well.

I am sorry that Neil Findlay is not here to move the amendment himself.

I move amendment 48.

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Tomkins, Adam (Glasgow) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 48 agreed to.

The Convener: Amendment 9, in the name of Alex Cole-Hamilton, has already been debated with amendment 7. I invite Alex Cole-Hamilton to say whether he wishes to move or not move amendment 7.

Alex Cole-Hamilton: I should have stated in my remarks earlier that it is my intention not to move amendment 10.

As regards amendment 9, I am persuaded that the combination of amendments in the names of Mr Greer and Mr Tomkins will accommodate what I sought to achieve without the need for further amendment at stage 3. On that basis, I will not move amendment 9.

Amendments 9 and 10 not moved.

Amendments 11 to 13 moved—[Ross Greer]—and agreed to.

Amendment 14 not moved.

Amendment 45 moved—[Monica Lennon].

The Convener: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Tomkins, Adam (Glasgow) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 45 agreed to.

Amendment 42 moved—[Adam Tomkins].

The Convener: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Tomkins, Adam (Glasgow) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 42 disagreed to.

The Convener: We are making good progress, but we have five groups left, which will take us a little time. I suggest that we take a five-minute break and reconvene at 3 o'clock.

14:55

Meeting suspended.

15:00

On resuming—

The Convener: Welcome back. Group 18 is on traffic regulation. Amendment 43, in the name of Mark Ruskell, is the only amendment in the group.

Mark Ruskell (Mid Scotland and Fife) (Green): Over the past couple of months, we have got used to social distancing and the importance of creating the right space in our communities for walking, cycling and going out for a run without fear of infection from Covid-19 or risk of injury. Across Scotland, there have been calls for pop-up cycle lanes, safe crossings and expansions of pavements, and traffic speed reduction measures have been put in place. During the lockdown, walking and cycling have been and will remain popular. However, because restrictions on public transport will remain, we will also see a return to the use of the car. In order to get the balance right between creating that safe space for distancing in our streets and avoiding conflict between motor vehicles, cyclists and pedestrians, emergency measures will need to be brought in.

I welcome the announcement on funding and guidance on space for distancing that the Scottish Government made several weeks ago. However, since then, I have been speaking to those who will be tasked with implementing those measures. I have had a meeting with Sustrans Scotland, which is managing the funds that will go to local authorities. I have had discussions with the Society of Chief Officers of Transportation in Scotland; it represents all the 32 local authorities' heads of transport, who, in the months to come, will roll up their sleeves and put those measures in place.

I asked them whether we could take any other measures through the Coronavirus bill that would smooth implementation, reduce bureaucracy and increase flexibility in putting in place the measures on space for distancing. Their conclusion was that the simplest and most effective change that we could make would be to the traffic regulation order process, which would allow those measures to be put in place on a temporary basis for six or 18 months. Extending that period to 24 months would give them the discretion to put in place those emergency measures for up to two years. They would have the flexibility to monitor the use of the measures and review them; if communities wanted some measures to become permanent, the extension would give councils enough time to bring forward a permanent traffic regulation order.

With amendment 43, I am going for a simple tweak; it is about giving councils flexibility, cutting bureaucracy and allowing officers to focus on delivery now rather than filling in forms for bureaucratic regulation order processes. It is also about maximising the benefit from the money that we are putting in; if there is scope to make any of the temporary measures more permanent changes in our communities, let us take that opportunity.

I move amendment 43.

Jenny Gilruth: I note Mark Ruskell's points on amendment 43, which seeks to make it easier for local authorities to assess the effectiveness of temporary measures to promote active travel. Mr Ruskell is trying to be helpful with his amendment, but the Scottish Government does not believe that it is necessary or appropriate for the bill.

Temporary traffic regulation orders and experimental redetermination orders can be in force for up to 18 months, as the member is aware. That is a sufficient period to enable traffic authorities to respond to the risk of transmission of the coronavirus.

Given that the bill covers only the period from its enactment until 30 September, and given that if measures are extended by the Parliament that will be only until 30 September next year, it would

create confusion to temporarily extend the duration of TTROs and experimental redetermination orders that will fall away when the bill's provisions expire.

In addition, amendment 43 would apply not just to Covid-19-related orders but to all TTROs, whatever their reason, such as TTROs for road works.

If a local authority is working to make temporary measures permanent, such as measures on active travel, and has not had adequate time to complete the procedures in that regard, the Scottish Government has the power to grant a six-month extension to the existing 18-month maximum duration of a TTRO, if that is requested. There is also provision in the Roads (Scotland) Act 1984 for experimental redetermination orders to last beyond 18 months while authorities are taking steps to comply with the procedures that will make them permanent.

Given the exceptional times in which we are living, I have asked officials to look at the TTRO extension approval process, to ensure that any extensions that are required for Covid-19-related issues are dealt with efficiently.

For the reasons that I have set out, I cannot support Mr Ruskell's amendment 43. I ask him not to press the amendment to a vote.

Mark Ruskell: I am disappointed by that response, to be honest. Substantial amounts of Government money are going to local authorities to enable them to bring in emergency measures—we are talking about £10 million. It would be a travesty if temporary pop-up cycle lanes were put in place and improvements to our streetscapes were made only for those measures to be ripped out unnecessarily at the end of the lockdown and the requirement for social distancing.

The minister said that the Scottish Government can grant extensions. That seems to be a hugely bureaucratic process. Is the minister really asking local authorities to consider what measures they want to extend and then apply to the Scottish Government to extend the duration of each and every pavement widening measure, cycle lane or crossing point that they think should continue in the months to come? That would place a huge bureaucratic burden on the Scottish Government and would mean that council officers' time was locked up in writing requests to the Scottish Government.

Why not just give councils what they have asked for, that is, an extension of the emergency procedure to 24 months? That would give councils the clarity, simplicity and flexibility that they want. I am disappointed by the minister's approach, and if she has the opportunity to speak again on the

matter, I ask her to say whether she will consider tweaks to the approach at stage 3.

The Convener: Unfortunately, we do not have the opportunity to go back to the minister at this point. Are you pressing amendment 43?

Mark Ruskell: Yes.

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 43 disagreed to.

The Convener: Group 19 is on low-emission zones. Amendment 44, in the name of Mark Ruskell, is the only amendment in the group.

Mark Ruskell: I am sure that everyone in the committee is aware that 2,000 people in Scotland die as a result of air pollution-related health problems every year. That is a shocking public health crisis. It is also a lung health crisis.

An increasing amount of medical evidence shows that the number of people who are susceptible to Covid-19 goes up in areas where there is very high air pollution. We face twin health crises. Covid-19 is affecting our lungs, and that is being exacerbated by poor air quality in our towns and cities. A related issue is that people who have had Covid-19 might have long-lasting health impacts, and poor air quality can impact on their health and quality of life.

We need a public health response not just to Covid-19 but to poor air quality in our towns and cities. Now is the time to join the dots and to accelerate roll-out of low-emission zones, rather than to put that on pause.

I understand the challenges that councils face. I have just explained one of the challenges, which I hope the Government will try to resolve, but it is disappointing that the first four LEZs that were scheduled to be introduced at the end of this year in our biggest cities have been postponed—not to mention the next tranche of LEZs for our other air quality management areas across Scotland.

I have lodged a measured amendment. It would have been tempting to put in the legislation a target date for the roll-out of LEZs, although I do not believe that that is possible under the provisions of the Transport (Scotland) Act 2019. However, it is important that the Scottish Government recognises that LEZs have an important public health intervention role, particularly in protecting our lung health, and that Parliament gets the opportunity to scrutinise progress—and any reasons for lack of progress—at the end of this year. We have to combine LEZs and our whole approach to clean air with our public health approach to Covid-19.

Ross Greer: As you would expect, I am very much in support of amendment 44, on low-emission zones. I will briefly highlight an example that shows why. It does not come from the four major cities, where the initial LEZs were to be rolled out, but comes from Bearsden, which is in my region.

Bearsden has the unfortunate distinction of having an air quality management area along Drymen Road, with a small primary school playground at its centre. Bearsden primary school's playground probably has the worst air quality of any school playground in Scotland. The quality of the air has been getting worse; it has not been improving. I have been pushing the East Dunbartonshire Council to consider putting in place a low-emission zone. Indeed, when I asked at First Minister's question time, the First Minister agreed to open up discussions between the Government and the council about whether an LEZ could be implemented for the area. That would be very much in the interests of public health and the health of children, as Mark Ruskell mentioned.

However, given the proposed delays to the initial LEZs, I have serious concerns that the knock-on delays to potential LEZs down the line will compound the public health problems that we have right now. We have seen a huge, dramatic and predictable reduction in air pollution on our streets because of the lockdown. We must ensure that the post-lockdown normal is a new normal in which we do not simply go back to having the children at Bearsden primary school literally struggling to breathe—sometimes, they could taste the air. That would not be an acceptable normal to go back to. I very much hope that we agree to amendment 44 and that we continue to play a firm parliamentary role in order to ensure that LEZs are rolled out as quickly as possible.

Jenny Gilruth: Amendment 44, in the name of Mark Ruskell, would create a requirement for Scottish ministers to report by December 2020 on the progress that has been made towards the establishment of low-emission zones under the

Transport (Scotland) Act 2019. It is right that we review how low-emission zones can be designed in the light of the coronavirus and how our cities might witness a green recovery transformation in tandem with the Covid-19 recovery plan. I am happy to accept the requirement to keep the Parliament updated on that important work, and I urge members to support amendment 44.

15:15

Mark Ruskell: I am happy to press the amendment. Mr Greer makes an important point. There are more than 30 air quality management areas across Scotland, where communities are facing poor air quality and are suffering from the health impacts of that. The convener will be aware that there is an air quality management area in Perth, including Bridgend and Atholl Street. It is important that we maintain progress on the issue and that the Government is held to account but also able to update Parliament on the progress that is being made.

Amendment 44 agreed to.

Amendments 46 and 47 not moved.

Amendment 49 moved—[Beatrice Wishart].

The Convener: The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Tomkins, Adam (Glasgow) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For: 5, Against 4, Abstentions 0.

Amendment 49 agreed to.

Amendment 50 moved—[Monica Lennon].

The Convener: The question is, that amendment 50 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 50 disagreed to.

Schedule 4 agreed to.

Section 6—Advancement of equality and non-discrimination

The Convener: Group 20 is on the advancement of equality and non-discrimination. Amendment 51, in the name of Mark Griffin, is grouped with amendment 52.

Mark Griffin (Central Scotland) (Lab): Amendment 51 seeks to ensure that, in using its powers under the bill, the Government does so in a way that is inclusive and communicates appropriately with all people, particularly those who have a disability or communication needs. The amendment, which is sponsored by deafscotland would align the duties on Government under the bill with those in the Social Security (Scotland) Act 2018 and the recently passed Consumer Scotland Bill.

In the time that has passed since the British Sign Language (Scotland) Act 2015 received royal assent, BSL users have seen a huge leap in awareness of their language and in the support that they receive. For example, it is notable that there are British Sign Language interpreters at the First Minister's daily briefing. However, given the huge changes in daily life over the past two months, there are areas where messages and guidance could have been better communicated and made more inclusive, and therefore better received, understood and accepted by the widest possible sections of society.

Inclusive communication is about sharing information in a way that everybody can understand across all modes of communication. It is also about making sure that Government recognises that people understand and express themselves in different ways. Crucially, that means that they are able to understand the guidance independently and can best protect themselves and their family.

Amendment 51 would not mandate making publications, paperwork, adverts or correspondence fully accessible, but it would place a duty on Government, when exercising its powers under the bill, to take into account the needs of those with a range of communication requirements. Although technology has been a

godsend for people during the crisis, there are many who are not technologically adept or able, and who do not have the resources that many of us enjoy. For some, that will have been extremely isolating and will have exacerbated deprivation.

In its response to the Equality and Human Rights Committee's inquiry into the impact of Covid-19, deafscotland reported how deaf and hard of hearing people have been badly hit by the pandemic. It pointed out how, for example, face masks inhibit lip-reading; how shielding has prevented older and unwell deaf people from accessing repairs; how Covid-19 information lines are not BSL enabled; how publications are not converted to BSL; and how confusion has arisen regarding the availability of audiology services.

Although the wider public has absorbed the science and statistical information over the past two months, I am sure that the committee will accept that there have been times when our constituents—and members—have found some of the information complicated or even confusing, and that it could have been better communicated.

Imagine that you have a consistent communication disadvantage or use another language. How would that impact on your ability to navigate the current time and exercise your rights in the period of lockdown while you are cut off from your vital support networks? It would be entirely unbearable. Ensuing that we have inclusive communication at the heart of the crisis is a simple matter of fairness.

I move amendment 51.

The Convener: I believe that Monica Lennon will speak to amendment 52 on behalf of Pauline McNeill.

Monica Lennon: I have had to pivot from standing in for Neil Findlay to standing in for Pauline McNeill.

Amendment 52 would require Scottish ministers to

“request information from the Police Service of Scotland”

and third parties

“on incidences of domestic violence”

during the emergency period

“for the purpose of measuring the extent of domestic violence”.

According to Police Scotland, the number of requests from people seeking information about whether their partner has been abusive in the past was 18 per cent higher in the first month of lockdown compared with the same period in 2019. The number of calls to Refuge's national domestic abuse helpline had risen by 49 per cent after three weeks of lockdown. Fourteen women and two

children were killed by men in the UK in the first three weeks of the lockdown, which is more than three times higher than in normal times.

With her amendment, Pauline McNeill seeks to raise the issue at this stage in order to allow ministers to focus on what further action should be taken to protect women in the lockdown period and beyond. Amendment 52 will require ministers to request that information from Police Scotland and third parties so that they can monitor the extent of domestic violence.

Pauline McNeill and I understand that ministers are alive to the issues and are concerned about them, and we are confident that they are willing to take further action. I will be interested to hear the minister's response, but I know that the issue enjoys general cross-party support.

I fully support Mark Griffin's amendment 51, and I thank deafscotland for the briefing that it sent to the committee before today's meeting.

The Convener: I ask the Minister for Europe and International Development, Jenny Gilruth, to comment on the amendments in the group.

Jenny Gilruth: I thank Mark Griffin and Pauline McNeill for lodging their amendments. I am also grateful to Monica Lennon, who spoke on behalf of Pauline McNeill, for her contribution.

The Government agrees that, with the public being asked to do extraordinary and difficult things, it has never been more vital to communicate in an inclusive way about what is being asked and what is changing. We heard about that from Mark Griffin. We are happy to accept amendment 51. We will, however, seek to make a clarificatory amendment at stage 3, both to amend the new duty in the Coronavirus (Scotland) Act 2020 and to include a definition of “inclusive communication”, as exists in section 4(2) of the Social Security (Scotland) Act 2018.

As Monica Lennon outlined, amendment 52 raises the issue of the incidence of domestic abuse during the coronavirus outbreak. It is a Scottish Government priority that victims of domestic abuse and gender-based violence get the support that they need during these challenging times and are kept safe from harm.

Earlier this month, we published guidance on domestic abuse to support the coronavirus regulations and ensure that anyone who is experiencing domestic abuse or any form of harm is in no doubt that they may leave home to seek help from support services, family or friends, or to report it to the police or take measures to stay safe. Today, COSLA and the Scottish Government have published guidance for local authorities on tackling all forms of violence against women and girls, including domestic abuse.

We are aware of how quickly the landscape is changing in the current crisis, and that is also true of what we are learning of domestic abuse during this time. We are sympathetic to the need to ensure that information about the incidence of domestic abuse is collated and monitored during the pandemic to ensure that our responses are effective and appropriate.

15:30

We entirely support the aim of Ms McNeill's amendment, although we consider that it should be linked to the more expansive and recently introduced definition of domestic abuse, rather than referring to domestic violence.

I therefore ask that amendment 52 not be moved. I commit to working with Ms McNeill to agree a form of her amendment that will, I hope, be supported by all parties at stage 3.

The Convener: Thank you, minister.

I ask Mark Griffin to wind up and to press or withdraw amendment 51.

Mark Griffin: I welcome the Government's commitment to support amendment 51 and to support the principle of Pauline McNeill's amendment 52. I am sure that she would welcome the opportunity to work with the Government before stage 3. I also look forward to working on my amendment with the Government and with deaf Scotland.

I ask members to support amendment 51, which I press.

Amendment 51 agreed to.

The Convener: I ask Monica Lennon to move or not move amendment 52.

Monica Lennon: It is clear from the minister's remarks that there is a shared willingness to make sure that anyone who is a victim or survivor of any form of domestic abuse can get access to support. That is a priority.

I think that Pauline McNeill will welcome the commitment to work together at stage 3. On that basis, I will not press amendment 52.

Section 6 agreed to.

After section 6

The Convener: Group 21 is on conditions on support for business. Amendment 53, in the name of Patrick Harvie, is grouped with amendments 54 and 55.

Patrick Harvie (Glasgow) (Green): I hope that members can hear me above the noise of the road works that have just started outside my flat and that that will not interfere.

I know that members have all been working on this session for a long time. There is light at the end of the marshalled list; we are approaching the end.

I will not say much about amendments 54 and 55, except that I support their principles. They would be useful additions to the bill and I look forward to hearing the member make the case for them.

Amendment 53 in my name relates to an extremely important point of principle. It is one that a number of other European countries—Denmark, France and Poland—and at least one other UK nation, Wales, have already adopted as a Government position. It is that the taxpayer-funded bailout, and the public money that is going to the private sector, important though it is, must come with some expectation that a fair contribution will be made by the recipients. In particular, that money should not go to bail out firms that are based in tax havens.

We have been campaigning for that principle. In just two weeks, around 7,000 people in Scotland have added their names in support of an online petition that we established on the issue. It is a general principle that the First Minister and the Cabinet Secretary for Economy, Fair Work and Culture have also said warm words about. I hope that they will be persuaded of the need to turn those words into action and to include in the bill the clear principle that firms that are based in tax havens should not get the kind of public bailout that many of them seem to expect is their right.

These are extraordinary times that we are living in, and words such as "unprecedented" have probably been overused in recent weeks, but the level of public support for businesses is certainly extraordinary. It has always been my view that private sector economic activity is dependent on society. It depends on the role of the state in public funding and on the provision of infrastructure, the rule of law and a healthy, educated population. All those things are preconditions for economic activity. However, the dependence of the private sector on the public—on collective provision—is all the more clear now, and the ideology of the free market has been exposed as a myth like never before.

That being the case, I believe that Governments have now regained the authority, which they should never have given away in the first place, to set a clear expectation of the kind of society and economy that they seek to build. The First Minister said much the same: that the recovery from the coronavirus pandemic must involve building a fairer, greener and more equal Scotland. If we are serious about making that happen, we must be clear that companies that have been organising their affairs in such a way as to minimise their

contribution to those public provisions—our infrastructure, the rule of law, health, education and all those other public purposes on which they depend—should not expect to come cap in hand to the public purse.

Any of us who take a walk down any high street or through any shopping centre in Scotland can see companies—high street names—that have organised their affairs so as to hold intellectual property in companies that are registered in tax havens or which siphon off their own profits through tax havens. Many of those companies have a shocking track record, treating their employees badly with poverty wages and zero-hours contracts, and they have organised their affairs in a complex way in order to siphon their profits out of the reach of taxation and out of the country.

It is unacceptable, both for the interests of our economy and on a moral level, for those same companies to expect to gain the benefit of a public bailout paid for by the rest of us—by those of us who pay our taxes. I very much hope that the cross-party support that is being given to the principle of my amendment—restricting the bailout paid to those firms that are based in tax havens—will be given effect by an amendment to include that in the bill. Amendment 53 is an attempt to do that, using the European Union’s list of tax jurisdictions that are non-transparent, and it would allow the Scottish ministers to determine any others beyond those that are recognised by the EU.

I very much hope that my amendment will gain the support of all parties, in particular that of the Government—especially given the First Minister’s recent words in support of the general principle. If we believe in the principle, we should put it into the bill.

I move amendment 53.

Monica Lennon: Amendment 54, in the name of Neil Findlay, would essentially ensure that Scottish ministers cannot provide business support unless the business allows its employees to access union representation. Earlier today—much earlier—Neil Findlay talked about the vital role of trade unions in helping to keep people working, to keep services running and to keep citizens safe throughout this crisis.

Unions can carry out that role only if they can get into workplaces or if they can have access to employees in order to offer advice and support to their members and to work with employers. In their day-to-day role, trade unions work very closely and without rancour with employers, resolving workplace issues at source. In many areas of the economy and society, however, some employers

do not allow trade unions access to workplaces so that they can speak to their members.

Like other members, I have been contacted by employees who have been worried about the safety of their workplaces during the current crisis, whether that was about PPE or safe physical distancing in the workplace. Many of them were frightened and asked for their names to be withheld when they got in touch. In too many of our workplaces, there is a climate of fear, which we need to address. Being represented and recognised by a trade union takes away some of that fear. Amendment 54 seeks to give unions the right to access the employees of companies who are contracted to do work that is paid for by the public purse. We believe that the amendment seeks to use public procurement policy to deliver the fair work agenda.

I remind members of my registered interests as a member of the GMB and Unite unions.

Amendment 55, which is also in the name of Neil Findlay, seeks to ensure that companies that are contracted to undertake work that is paid for by the public purse to deliver goods or services relating to the Covid-19 crisis pay at least the real living wage. That is a straightforward amendment that will lock in a key fair work principle. Neil Findlay tried to implement that change when the Parliament debated the Procurement Reform (Scotland) Bill, but the First Minister, who was leading the debate at the time, rejected the proposal. Neil Findlay asks the committee to support the proposal this time around.

For the record, I support Patrick Harvie’s amendment 53.

Stewart Stevenson: I am taken by the arguments that Patrick Harvie made in support of his amendment 53. However, I will speak mainly about Neil Findlay’s amendments, which I must say are the most poorly drafted amendments that have been before us today. As someone who was, in my 30 years as a software engineer, a member of a trade union, I should not be taken as having difficulties with trade unions that represent employees in the workplace.

The drafting of amendment 54 is so all-encompassing as to be absurd. It talks about “any function” and “any enactment” and goes on to state that

“The condition is that the business allows access to its employees for representatives of trade unions.”

The amendment would mean that a one-man taxi business in which the man who operates the taxi has a spouse or partner who answers the phone on his behalf, and is in a small way an employee, would be caught by the provision. That would not be proportionate or proper.

I know what Neil Findlay is trying to do, but amendment 54 is a million miles off, in drafting terms. I will not speak about the policy: I am sure that the cabinet secretary will do that.

In relation to the proposed living wage condition in amendment 55, the trouble is that I have no sense whatever what it means. Subsection (1) in the proposed new section talks about “a living wage”, and subsection (2) talks about “a living wage”, then later in the same sentence is mentioned “the living wage”. The interpretation subsection gives no link to any definition of “living wage” that is currently used, of which there are several. I am therefore left wondering what would be sufficient to ensure an acceptable standard of living in any particular context, because amendment 54 gives us absolutely no guidance on that. It could be argued that the amount should be thruppence an hour or something, which would, of course, be utterly unacceptable.

Amendments 54 and 55 are poorly drafted, so we simply cannot agree to them. I will let the cabinet secretary speak to the policy issues, rather than to the drafting.

Michael Russell: I also declare an interest as a member of a trade union. I remain a member of the University and College Union—[*Temporary loss of sound.*]*]*—so, when it comes to my remarks about Neil Findlay’s amendments, I ask him to bear that in mind.

15:45

I will start with Patrick Harvie’s amendment 53. We absolutely need to accept the principle of the amendment and are supportive of it. I want to make sure that it appears in the bill: that is where we are trying to get to.

It is wrong that businesses that engage in tax avoidance or evasion should be able to access any funding support packages at this time—or at any other time, in my view. It is essential that everyone pays their fair share of tax to fund the vital services and infrastructure that we are relying on now, more than ever. Those who do not do so should not be eligible for financial assistance from the taxpayer and the state.

Of course, we must get the provision right. The amendment that I hope we will eventually be able to include has to be right. It must not harm any innocent individual or business by refusing flexibility. We must also make sure that broadness in its scope does not put us in a difficult position in terms of eligibility.

I want to see such an amendment being made to the bill. I support the principle and, as Patrick Harvie said, the First Minister has been very clear that she does, too. I want an amendment to set up

the core principle of fair tax, which will apply to all new grant applications to existing schemes. The amendment should make it clear that the company or entity recipient is carrying out business in Scotland. It should also refine the definition of “tax haven” to be more precise than the definition that Patrick Harvie has used.

If Patrick Harvie will accept our intention, I will be happy to help him to lodge, for stage 3, an amendment in his name that will do those things, and thereby allow the amendment the broadest possible support. Therefore, I will be grateful if he does not press amendment 53 today, so that tomorrow we can lodge an amendment that we can all be confident will do what he suggests, in the right way.

I will not comment on the drafting of amendments 54 and 55 from Neil Findlay, because Stewart Stevenson has done that. It is telling that Monica Lennon accepted that the second of the two had been moved before and was simply coming back; we have heard Mr Findlay argue for it before. On the first of the two amendments, I am not saying that I am against the trade union issue; we just know where Neil Findlay is coming from. Both amendments misrepresent what is currently happening. That is my strong objection to them.

Our fair work first approach already includes

“genuine workforce engagement such as trade union recognition”

as one of the five key criteria for accessing grants. That is what Mr Findlay wants with amendment 54, but it already exists. The criterion has been attached since April 2019 to business support grants that are awarded by Scottish Enterprise. From April 2020, it also applies to grants that are awarded to businesses by the other enterprise agencies. Grant applicants are expected to demonstrate their commitment to working towards that criterion.

The new pivotal enterprise resilience fund, and the creative or tourism and hospitality enterprises hardship fund, which were introduced to mitigate the effects of Covid-19, specifically ask grant applicants to demonstrate a similar commitment.

Amendment 54 would add a level of complexity that would slow down the process, but for no benefit at all. In addition, the Scottish Government is clearly committed to promoting collective bargaining and is working with the Scottish Trades Union Congress to progress it in key sectors.

As Monica Lennon said, amendment 55 has been rejected before. Why was it rejected before? It was rejected because it had previously been established that public bodies cannot mandate payment of a living wage as part of the

procurement process. We cannot will away that law: I wish that we could. There is a means through which to deal with that fact—Monica Lennon and Neil Findlay might want to address it—which is to have independence and so have all those powers in the Scottish Parliament.

It is not possible to reserve any element of the overall tender scores specifically to payment of the living wage. However, although the power to set the rate of the living wage is reserved to Westminster, we have used the levers that are at our disposal to address the living wage in procurement by issuing both statutory guidance and best-practice guidance for public bodies, on addressing fair work practices, including the living wage. That guidance applies to all regulated contracts, whether or not they are related to the coronavirus. Amendment 55, once again, attempts to assert something that is far from being fact.

In conclusion, I say that, if Patrick Harvie will not press amendment 53, I will work hard with him to develop an amendment that fulfils its principle and intention, which we entirely agree with. There are a myriad reasons why amendments 54 and 55 should not be supported by the committee.

The Convener: Thank you, cabinet secretary. Patrick Harvie may wind up and press or seek to withdraw amendment 53.

Patrick Harvie: I admit that, when I asked the legislation team to come up with an amendment on the topic, my expectation was that the Government might say, “We’ll do this, but we don’t want to put it in legislation.” I am therefore pleased to hear that the cabinet secretary is willing to accept an amendment to establish the principle. That would be an important step forward in respect of how we treat tax avoidance in Scotland, and not just in relation to the current emergency. I hope that we will build on that principle for the future.

I am absolutely clear that I want the most workable amendment—I want something that is effective. If the Government is proposing to seek concrete ways to improve my amendment 53, I will be willing to seek the committee’s permission to withdraw it, and I will lodge another amendment. I hope that I can agree that amendment with the Government—but, come what may, I will lodge an amendment for stage 3. I hope that all the political parties will back it and put the principle in the bill. Many thousands of people in Scotland would expect nothing less of us than that we establish the principle and ensure that there is some meaning to the aspiration that the current crisis will allow the creation of a fairer and more equal Scotland.

Amendment 53, by agreement, withdrawn.

The Convener: Amendment 54, in the name of Neil Findlay, has been debated with amendment 53. I ask Monica Lennon to say whether she intends to move or not move amendment 54.

Monica Lennon: I wish to move amendment 54. Am I permitted to respond to what the cabinet secretary said?

The Convener: Yes—briefly, please.

Monica Lennon: I am disappointed by the approach that Stewart Stevenson and the cabinet secretary have taken. Neil Findlay has been consistent in his approach, and he can be proud of that approach. He is consistently on the side of workers in trying to promote the fair work agenda. He does not just talk up trade union rights; he actively tries to deliver them, and he would not make any apologies for that.

The drafting of amendments can always be improved. I would have preferred to have heard the cabinet secretary take that approach.

During the crisis, workers from the public sector, the third sector and the private sector have died. Others have become ill, and some have lost their incomes. We are raising the issues because they are really important, so I had hoped that we would receive a better response from the Government.

Today has not been a good day for trade unions or workers’ rights, in the light of some of the earlier amendments. If we had a fully operational FOI system, we might have heard who has been lobbying the Government and its party’s members on the amendments. Perhaps we will find that out in due course.

Amendment 54 moved—[Monica Lennon].

The Convener: The question is, that amendment 54 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 54 disagreed to.

The Convener: Amendment 55, in the name of Neil Findlay, has already been debated with

amendment 53. I invite Monica Lennon to move or not move amendment 55.

Monica Lennon: I was not in Parliament for the debate that Neil Findlay made a note of and the cabinet secretary referred to. From memory, I think that the argument was that we could not do these things because we were part of the EU. We have all tried to avoid constitutional point scoring in these debates, but the cabinet secretary did invite me and Neil Findlay to support independence if we wanted to achieve this. I ask the cabinet secretary to go back and speak to his officials, to see what more can be done on this issue. It is not quite as he characterised it. We have raised the matter consistently because we strongly support the principle and I hope that we can do what is right for workers without point scoring.

Amendment 55 moved—[Monica Lennon].

The Convener: The question is, that amendment 55 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Greer, Ross (West Scotland) (Green)
Lennon, Monica (Central Scotland) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Robison, Shona (Dundee City East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Tomkins, Adam (Glasgow) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 55 disagreed to.

Sections 7 to 12 agreed to.

After section 12

The Convener: Finally, we come to group 22, on reports by the Scottish ministers on coronavirus subordinate legislation. Amendment 56, in the name of Adam Tomkins, is the only amendment in the group.

Adam Tomkins: Amendment 56 is based on and seeks to give effect to a recommendation of the Parliament's Delegated Powers and Law Reform Committee. Not all the secondary legislation that is in force in Scotland to deal with and respond to the coronavirus pandemic has been made under the emergency legislation that we have passed in the Scottish Parliament or that we have given consent to with respect to the UK Coronavirus Act 2020. That has the consequence that not all of the powers that ministers and other

public authorities have to deal with the coronavirus are subject to the safeguards that we have carefully put in place in the UK's and Scotland's primary legislation.

There are two sets of safeguards that are particularly important and would always be important in any sort of emergency or expedited legislation that conferred extraordinary powers on ministers and other public authorities. Those powers need to be limited in time—which is to say subject to sunset provisions—and they need to be subject to strenuous, serious, regular and full reporting requirements.

All that my amendment seeks to do is extend the reporting requirements that already pertain to subordinate legislation that is made under legislation such as the Coronavirus (Scotland) (No 2) Bill to all secondary instruments that relate to the coronavirus pandemic.

16:00

Yesterday, I corresponded with Mike Russell about my amendment. That correspondence records that the Scottish Government is happy to accept the spirit of amendment 56—it is happy to accept the amendment in principle—but that there are a number of drafting deficiencies in it that would need to be fixed to make it operable in the way that is intended by me and by the Delegated Powers and Law Reform Committee. Therefore, I do not intend to press amendment 56 at stage 2, on the assumption that the cabinet secretary is about to say that he will work with me overnight to ensure that a revised version of it can be lodged for stage 3 tomorrow.

I move amendment 56.

Michael Russell: I think that we can short-circuit matters quite effectively. I am grateful to Adam Tomkins for the discussion that we have had. I commend that approach, because it is a way to get progress on amendments. Those members who simply trog along with an amendment that might be fine from the point of view of the execution of the idea but not the execution of the policy should take a leaf out of the book of those members who work on amendments in an effort to get them right.

Amendment 56 is an important one, because the process is important. I have made a commitment to follow what the Delegated Powers and Law Reform Committee wants, but there is some detail that needs to be considered. For example, there are Scottish statutory instruments that are not the responsibility of the Scottish ministers, such as acts of sederunt and acts of adjournment. There are some SSIs that, even though dealing with the coronavirus is not their primary purpose, might contain elements that relate to the

coronavirus, and we must be careful to ensure that we do not draw the provisions so wide that every piece of subordinate legislation that goes through will be dragged in.

I am happy to confirm what I said in my letter to Mr Tomkins. I think that we can get a version of his amendment that meets the requirements of the Delegated Powers and Law Reform Committee and of Mr Tomkins but that is also operable, so that we can have single, unified reporting process through which we can take matters forward. I have already written to the Presiding Officer, the Parliamentary Bureau and the convener about how we might advance the reporting process, and we can roll into that the detail that is in amendment 56.

I am happy to confirm that I will seek to work with Mr Tomkins to get an amendment that can be lodged for consideration at stage 3.

The Convener: I invite Adam Tomkins to wind up.

Adam Tomkins: I very much welcome what the cabinet secretary has just said and the spirit in which he has approached the matter throughout the legislative process. I thank him for that, and I look forward to working with him between now and stage 3, so that we can get this right.

I do not intend to press amendment 56.

Amendment 56, by agreement, withdrawn.

Sections 13 to 15 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill.

The bill will now be republished, as amended at stage 2—that will be done as soon as possible today—and emailed to members. Amendments may now be lodged with the clerks in the legislation team. We believe that the bureau will meet at 4.30, when it will determine a deadline for lodging stage 3 amendments. I am sure that an announcement will be made immediately thereafter.

I thank all members for their contributions in what has been a very long meeting. I also thank Jim Johnston and our team of clerks for all their assistance, and broadcasting for what was, on the whole, a flawless performance. Thank you, everybody, and have a good afternoon.

Meeting closed at 16:04.

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The deadline for corrections to this edition is:

Tuesday 16 June 2020

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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