



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 8 May 2019

Session 5



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RURAL ECONOMY AND CONNECTIVITY COMMITTEE
15th Meeting 2019, Session 5

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Peter Chapman (North East Scotland) (Con)
*John Finnie (Highlands and Islands) (Green)
*Jamie Greene (West Scotland) (Con)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*John Mason (Glasgow Shettleston) (SNP)
*Mike Rumbles (North East Scotland) (LD)
*Colin Smyth (South Scotland) (Lab)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)
*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Claudia Beamish (South Scotland) (Lab)
Finlay Carson (Galloway and West Dumfries) (Con)
Fergus Ewing (Cabinet Secretary for the Rural Economy)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 8 May 2019

[The Convener opened the meeting at 08:30]

Subordinate Legislation

Disabled Persons (Badges for Motor Vehicles) (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/128)

The Convener (Edward Mountain): Good morning and welcome to the committee's 15th meeting in 2019. I ask everyone to please make sure that their mobile phones are on silent.

Agenda item 1 is to consider a negative instrument, as detailed in the agenda. No motions to annul or representations have been received in relation to it. Is the committee agreed that it does not wish to make any recommendation in relation to the instrument?

Members *indicated agreement.*

Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of South of Scotland Enterprise as Specified Authority) Order 2019 [Draft]

The Convener: Item 2 is to consider one affirmative instrument: the draft Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of South of Scotland Enterprise as Specified Authority) Order 2019.

The committee will take evidence from Fergus Ewing, the Cabinet Secretary for the Rural Economy, after which the motion seeking the approval of the affirmative instrument will be considered. Members should note that there have been no representations to the committee on this instrument.

Along with the cabinet secretary, I welcome from the Scottish Government Karen Jackson, south of Scotland economic development team leader, Sandra Reid, south of Scotland enterprise bill team leader, Felicity Cullen from the legal directorate and Fraser Gough, parliamentary counsel. Cabinet secretary, would you like to make a brief opening statement of no more than three minutes?

The Cabinet Secretary for the Rural Economy (Fergus Ewing): Good morning. I

commend everyone for their diligence. It is not often that one starts a committee meeting before light has fully dawned. I thank the committee for the opportunity to say a few words about this order.

The purpose of the draft order is to enable the appointment of members to south of Scotland enterprise to be regulated by the Commissioner for Ethical Standards in Public Life in Scotland prior to the new body coming into effect in April 2020. This is an essential part of the law surrounding the creation of south of Scotland enterprise, as it will ensure that members have the right skills and expertise and that they are in place for the establishment of the new body in April. As highlighted in the committee's stage 1 report, none of us is in any doubt about the importance of getting the chair and board membership right and making sure that the board is made up of individuals with as wide a range as possible of interests, skills, expertise and experience relevant to the south of Scotland.

We want to ensure a diverse and strong field of suitable candidates and reach out in particular to those in the south of Scotland. Equality is an integral part of the Scottish Government's business and, as the Gender Representation on Public Boards (Scotland) Act 2018 is now in force, we will be working towards equal gender representation on the board.

Our aim is to have members who will provide a balanced mix of relevant skills and expertise to reflect businesses and communities in the south of Scotland. We also want to make sure that appointments are advertised publicly and made on merit, following an open, fair and impartial process. It is therefore crucial that we have the full participation of the commissioner's office in this process. That will ensure that appointments will be made on the same basis as for Scottish Enterprise, Highlands and Islands Enterprise and other public bodies.

The commissioner's office has been fully engaged in the process to date, which enabled us to go live with the advert for the chair appointment on 25 April. In line with my commitment to the committee on 30 January and in acknowledgement of the importance that the committee has placed on harnessing interest in the new body, the advert is being widely publicised. It is crucial that we reach out to attract people in the south and of the south. That means conducting a publicity campaign locally, including in local newspapers, and advertising publicly in a way that will attract a strong and diverse field of candidates.

The draft order will ensure that the appointment process can be progressed with immediate effect over a period of time commensurate with this

important task and with the full involvement of the commissioner's office. I hope that the order will receive the committee's support. I am happy to take any questions that committee members may have.

The Convener: Thank you, cabinet secretary. There are some questions, starting with one from Stewart Stevenson.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I welcome the approach to making sure that we, at the earliest possible moment, start to make proper preparations for the south of Scotland enterprise body in advance of completion of the parliamentary process. I note that the commencement provisions in the bill before us will require a commencement order after royal assent. I am sure that that is all in order for April next year.

However, during stage 2 later this morning, we will discuss a number of amendments that relate to the way in which appointments are made to the board. It would be useful to hear on the record that, in making appointments, the Government will take account of any decisions that we make on the amendments that we will consider later this morning, although I do not expect that they will be hugely material in light of the remarks that the cabinet secretary has already made.

Fergus Ewing: I am happy to give the assurance that we will take account of the changes made to the bill as at stage 1. I certainly assure members that will obviously be the case.

With respect, I do not think that that is a factor that will impede the orderly process of the appointment of a chair. It is important to see the process as a Gantt chart, whereby we have a certain amount of time to proceed in a sequential fashion, first with the appointment of a chair, then, when he or she is appointed, moving on to the appointment of a chief executive and board. That must be done sequentially and with the supervision of the Commissioner for Ethical Standards in Public Life in Scotland.

In order to meet the target date of April 2020 for the fully statutorily established south of Scotland enterprise agency, we will require to put the building blocks in place, which is really the purpose of the order.

I will ask that the point that Mr Stevenson has made be brought to the attention of the selection panel to make sure that it is taken into account fully.

The Convener: As there are no further questions, we move to item 3, which is formal consideration of motion S5M-17046, in the name of the Cabinet Secretary for the Rural Economy.

Motion moved,

That the Rural Economy and Connectivity Committee recommends that the Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of South of Scotland Enterprise as Specified Authority) Order 2019 [draft] be approved.—[Fergus Ewing]

Motion agreed to.

South of Scotland Enterprise Bill: Stage 2

08:38

The Convener: Today, we are undertaking stage 2 consideration of the South of Scotland Enterprise Bill. The cabinet secretary and his supporting officials have stayed with us for this item.

Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments that was published on Thursday, and the groupings of amendments, which sets out the amendments in the order in which they will be debated.

It might be helpful to explain the procedure briefly for anyone who is watching. There will be one debate on each group of amendments. I will call the member who lodged the first amendment in that group to speak to and move that amendment and to speak to all the other amendments in the group. I will then call any other members who have lodged amendments in that group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the usual way. If he has not already spoken on the group, I will then invite the cabinet secretary to contribute to the debate. The debate on the group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press the amendment, I will put the question.

If the member wishes to withdraw their amendment after it has been moved, they must seek the agreement of other members to do so. If any member present objects, the committee immediately moves to the vote on the amendment.

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

Only committee members are allowed to vote. Voting in any division is by a show of hands. It is really important that members keep their hands clearly raised until the clerks have recorded the vote. The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will put a question on each section at the appropriate point.

I hope that we can complete stage 2 today, but it depends on how we get on. With that, we will move straight to it.

Sections 1 and 2 agreed to.

Schedule 1—Members and staff

The Convener: Amendment 16, in the name of Colin Smyth, is grouped with amendment 17.

Colin Smyth (South Scotland) (Lab): Amendment 16 would require the agency's board to include representation from workers in the region, which would most likely be in the form of trade union representation. That would help to ensure that the region's workers have a voice in the new agency. The south of Scotland faces a number of significant challenges relating to areas such as low pay and job insecurity, and the new agency will play a key role in tackling those issues. I believe that representation of that kind is key to ensuring that the issues are viewed consistently as a priority for the new agency. It is important to note that there is precedent for that approach, which is taken in other public organisation boards such as that of Scottish Water.

The amendment would not interfere with the public appointments process. As far as the final selection is concerned, the decision would still be made independently by the public appointments body, as will happen with other members of the board. The amendment simply introduces a requirement for at least one of the selections to be representative of workers in the region.

Amendment 17 would require the agency's board to have knowledge of the whole region as far as possible and an appropriate spread of skills, interest, experience and expertise. The amendment would clarify in the bill something on which I am sure that everyone agrees in principle and would protect against the possibility of the board at some point inadvertently ending up with representation from, for example, only one particular part of the region or area of expertise. A number of stakeholders raised that point with the committee and highlighted the importance of the board being genuinely representative of the south of Scotland. The amendment is not overly prescriptive in what it entails or how it should be achieved. It would just enshrine in the bill the principle that the agency must be genuinely representative of the whole region.

I move amendment 16.

The Convener: Before I call other members, I note for the record that Finlay Carson has joined the meeting. Welcome, Finlay.

Stewart Stevenson: Broadly, amendment 17 makes a great deal of sense, although I have a

minor concern about proposed new sub-subparagraph (b), which refers to

“a broad range of interests, skills, experience and expertise.”

I am slightly doubtful about including “experience”, as that could be used as a way of making it more difficult for younger people to serve on the board. However, that is not to the extent that I want to oppose the amendment. I just make that as an observation for Colin Smyth to think about.

I have a slightly more substantial concern about amendment 16, which will not be a surprise to Colin Smyth. Proposed new subparagraph (1A) uses the phrase “and representative”. I am not greatly in favour of boards of this kind being ones that represent. In other words, the people who are there should be interested in the work of south of Scotland enterprise and in furthering that work, rather than being representative of anything. I am certainly content that members should be “knowledgeable” of the interests of workers and proposed new subparagraph (1B) makes a reasonable point. However, because of the use of the phrase “and representative”, I am disinclined to support amendment 16, at least at this stage and until I have heard what others have to say.

08:45

Jamie Greene (West Scotland) (Con): I thank Colin Smyth for his amendments; there is a healthy debate to be had on some of his points.

Like Mr Stevenson, I think that there is merit in amendment 17. I, too, had reservations about the word “experience” and wondered whether putting it in the bill would make it too prescriptive when it comes to ruling out potential candidates, and I hope that that is not an unintended consequence of the amendment.

Nonetheless, on balance, in the context of the whole bill, it would be wise to support amendment 17, because it is important that we take in experience and knowledge from the whole of the south of Scotland and not just from any one area of it. That is the feedback that we got, therefore I urge members to support amendment 17, but I ask Mr Smyth to reflect on the wording of it.

Equally, on amendment 16, I share Mr Stevenson’s concerns and am minded not to support it. I do not think that the board should be made up of representatives or representative groups in such a structured way. It is important that there is freedom and flexibility so that board membership can be as inclusive as possible. At its core, the board’s membership should represent the employees of the agency and the wider public for whom it operates. For that reason, I will not support amendment 16.

John Finnie (Highlands and Islands) (Green):

I did not quite envisage this line of debate. Like many members round the table, I have been a member of various boards. One of the first things that happens is that you are advised that, regardless of the basis of your being on the board, you represent the interests of the board. I do not see that that conflicts at all with what Colin Smyth is saying. Unless he tells me to the contrary, he is not suggesting otherwise. He is setting the parameters in relation to the person who will fulfil the role, who will represent the interests that have been mentioned, as Colin outlined very well. As he rightly pointed out, the proposed approach is not a first—it has already been taken by Scottish Water.

I ask members not to get hung up on the wording in the bill and to allow the fair work approach—which, in the chamber, all parties say that they want to be adopted in our deliberations—to manifest itself. I support that and I am relaxed about amendment 17.

Mike Rumbles (North East Scotland) (LD): On amendment 16, I am not comfortable with reserving a special place on the board for anybody. It is too restrictive. Of course, I would like to see people on the board who have experience as a worker—whatever that actually means—but I am not happy with giving special status to a person on the board. I will not be supporting amendment 16.

In amendment 17, I am not quite clear what is meant by the wording in new sub-subparagraph (a), which says:

“has ... knowledge of the whole of the South of Scotland”.

Will Colin clarify that in his summing up, in order to help me to decide whether to vote for the amendment? It seems nebulous to me and I do not understand it, so why would we put it into law?

Fergus Ewing: I am grateful to Mr Smyth for lodging the amendments, which give us the opportunity to debate these matters. That, in itself, is a good thing to do.

I was listening with care to the contributions of committee members. Paragraph 1(2) of schedule 1 to the bill provides that, in appointing members, we must be satisfied that they have

“knowledge or experience relevant to the discharge of South of Scotland Enterprise’s functions.”

That provision is already in the bill and, given the wide aims and powers of the agency, it ensures that members will bring with them wide-ranging skills and experiences. However, I recognise the need to take every opportunity to ensure that the board is diverse and knowledgeable about the south of Scotland. We

are committed to increasing diversity in our board rooms.

I am, on balance, happy to support amendment 17, and we will accept the amendment at this stage—if the committee is minded to support it, of course. However, having heard Stewart Stevenson, Mike Rumbles and Jamie Greene probe the precise meaning and significance of the words “experience and knowledge”, we will give further consideration prior to stage 3 as to whether further technical drafting is needed to deal with that issue. I am grateful to Colin Smyth for lodging amendment 17.

On the intention behind amendment 16, understanding workers’ perspectives will be important to the agency, including in its work to promote inclusive growth. After all, it will be operating in an area where there have traditionally been low wages and relatively few well-paid jobs. There should and will be nothing to prevent someone representing workers’ interests being appointed to serve as a member of the new agency—who will, of course, be appointed on the basis of merit and in accordance with the proper selection process.

However, other groups could also lay claim to expect an appointment to represent their interests. I will mention a few: business, farmers, forestry, textiles, young people and, indeed, older people. If one argues that all sectors—very important though they are—should have a voice on the board, where does one start and where does one stop? We need to balance what is desirable in practice with what is appropriate to expect in securing a broad range of interests, skills and experience.

I am mindful that the board quorum is six and that the maximum number of members is 10, plus the chair. I am making the point that it is not a huge board so, unlike other public bodies, it will not have the ability to reflect a very wide balance of interest groups.

It is also questionable whether such appointments should be reserved for representatives of particular groups when they are individual appointments made on the basis of someone’s skills, experience and expertise. However, I undertake that adverts for members’ appointments will set out the desirability of attracting applications from those who may represent workers and, indeed, some of the other groups that I have mentioned, where those individuals also feel that they have the right skills and knowledge for the role. We will also look carefully at how and where we advertise.

I ask Colin Smyth not to press amendment 16. We are minded to recommend the acceptance of amendment 17, subject to further analysis, which,

if necessary, we can bring forward for Parliament’s consideration at stage 3.

Colin Smyth: On amendment 16, I believe that it is important that an agency with this remit has appropriate input from workers. That is an important point of principle. Having that input would also help the agency to achieve its broader aims of supporting inclusive growth, safeguarding employment and promoting social development. I think that people in the south of Scotland will be deeply concerned that such an approach is used for one body such as Scottish Water but that it is perceived not to be appropriate for—

Jamie Greene: Can I make an intervention, convener?

Colin Smyth: I am happy to take an intervention, convener.

Jamie Greene: I was just checking whether we can cross-exam at this point.

The Convener: You absolutely can. Do you want to come back in?

Jamie Greene: I want to ask Colin Smyth how he defines a

“representative of the interests of workers”.

Amendment 16 says:

“The Scottish Ministers must ensure that at least one of the persons appointed is knowledgeable and representative of the interests of workers”.

The definition given to “workers” is that in the Employment Rights Act 1996. How do you define who is representative of the interests of workers? Anyone could make that claim, including a trade union, a body of organisations or a chamber of commerce. Would amendment 16 open it up to many people laying claim that they have a right to be on the board?

Colin Smyth: As I made clear in my opening comments, amendment 16 does not interfere with the appointments process, which will be independently run by the public appointments body. It will have to determine that any member that it appoints to the board meets the criteria that are clearly set out in proposed subparagraph (1B), which states:

“Before inviting applications for appointment, the Scottish Ministers must consult bodies representing workers,—

such as trade unions—

“or the interests of workers, in the South of Scotland about the particular interests, skills, experience and expertise required for a person to fulfil the requirements of subparagraph (1A).”

That wording makes it clear that there will have to be a consultation process before the appointment is ultimately made by the public appointments body. As I have already said, that

happens in respect of other Scottish public boards, such as Scottish Water's.

I am slightly concerned by the cabinet secretary's suggestion that because the board membership will be relatively small—anywhere from six to 10 people—a workers' representative may not be on the body. That is an issue of concern, given the Government's commitment to fair work.

John Finnie: Given the member's knowledge of the trade union movement and representative organisations, does he agree that it is highly unlikely that having a representative role would be the sole criterion for the selection of such people—given that they would have an extensive range of skills—although it is an important factor that should be considered?

Colin Smyth: Mr Finnie makes a valid point. Some members have suggested that there is a concern about the idea of a "representative" of the interests of workers in the south of Scotland, but I am very clear that when members sitting on such a board are making decisions, they are representing that board. That is an important point to bear in mind when considering amendment 16.

Members who support amendment 16 would be sending a clear signal that the Government and the Parliament are committed to the fair work agenda—to reject the amendment would be to undermine that commitment. That is one of the reasons why the Scottish Trades Union Congress, for example, is very supportive of the amendment.

It is important for members to look at the wording of amendment 17. It refers to the board membership being "taken as a whole". The amendment does not imply that every member should have experience, which would rule out young people, but is about consideration of the board as a whole. There is a specific reason why that wording was included in the amendment and that is to ensure that we are not overly prescriptive and have a view to the range of the membership of the board.

One of the important points that south of Scotland stakeholders have emphasised is the need for the board to have a geographical spread. It would not be possible for every community in every part of the south of Scotland to have membership on the board, but it is important that we have a spread across the region, representing not only the interests, skills and expertise of the region, but also its geography. We cannot have a concentration on the large towns, for example, but must draw on experience from across the region. However, as I have said, that relates to the board as a whole.

I will press amendment 16.

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

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Mountain, Edward (Highlands and Islands) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Rumbles, Mike (North East Scotland) (LD)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 9, Abstentions 0.

Amendment 16 disagreed to.

Amendment 17 moved—[Colin Smyth]—and agreed to.

The Convener: Amendment 18, in the name of Colin Smyth, is in a group on its own.

Colin Smyth: Amendment 18 clarifies that staff working in the agency must be covered by the principles of fair work as set out in the fair work framework or any similar framework that succeeds it. It is simply stating in the bill a principle that I hope that all members would support: public bodies should be delivering for their staff and the agency should be setting a good example of working conditions, given the role that it will play in promoting those principles among enterprises in the south of Scotland.

I am happy to leave my comments at that. I am sure that other members have views on the matter.

I move amendment 18.

09:00

Stewart Stevenson: The fair work framework is very welcome and it spells out a principle that I strongly support. However, there is a technical issue with using that reference in the amendment. As far as I am aware—although I am prepared to be corrected if I am wrong—the fair work framework has not been laid before Parliament so, if a court had to look at the legislation in 10, 20 or 30 years' time and depend on the framework for the decision that it might make, it might not be able to access the framework. If Colin Smyth had extracted from the framework the parts that he thinks are relevant to the bill and had put them in the amendment, that issue might not arise—

would be dealing with a different issue. On that basis, I am unlikely to support the amendment.

In passing, I note that amendment 21—I know that it is in another group—also refers to the fair work framework. The same remarks apply to it; I probably will not repeat them when we get there.

Richard Lyle (Uddingston and Bellshill) (SNP): I am not inclined to support amendment 18. The Scottish National Party Government established the fair work convention and has supported the fair work framework. The Government published an action plan to achieve its fair work aims by 2025 and has gone further than any previous Government in putting fair work first.

I have no issue with agencies supporting the concept of fair work through their actions. Maybe the cabinet secretary can advise us on how south of Scotland enterprise will help to achieve fair work for people who live and work in the south of Scotland and what the expectations are of the new enterprise body in that regard.

Does the cabinet secretary agree that the commitment of Colin Smyth and the Labour Party to such issues might be more credible if they had previously supported our efforts to have employment law devolved? I say that with the greatest respect to Colin Smyth. Labour members are late converts to the cause, but I welcome them. There are employment law matters that the Parliament and the Government should be able to legislate on—that relates to Mr Stevenson's comments. I will not support the amendment.

John Finnie: I fear that, not for the first time, we will hear a procession of speakers say that they are keen to support workers, but not supporting principles that would do that. If Mr Stevenson is correct, the committee should ask for the fair work framework to be published, so that we can look at it. If there is a will, there is a way.

Stewart Stevenson: I used the particular word "laid", rather than "published"—there is a legal difference. The framework has been published.

John Finnie: Thank you. If there is a will to have the principles pursued, the framework should be laid—whatever difference that word makes. The amendment makes a modest ask; if there is a will to deliver the principles, the mechanism should be put in place.

The cabinet secretary was pragmatic about amendment 17—I understand that he has reservations but is adopting the principle and will bring back a refined proposal at stage 3. I would like him to take the same approach to amendment 18. It is not unreasonable to support the amendment, and I will support it.

Jamie Greene: I have questions for the cabinet secretary. I am interested in whether all public bodies and their employees are by default covered by the Government's fair work framework. Is that a matter of policy or is it a statutory requirement? Does the framework cover the terms and conditions of public body employees or does that need to be specified in a bill? Would referring to the framework in this bill set a precedent for future bills that affect public bodies and mean that other bodies would have to adhere to the framework, which reflects principles of the Government of the day?

I have reservations about specifying terms and conditions for employees of a body that has not yet been set up and about linking them to a publication that has not been laid before Parliament and which might change in the future. That involves a risk.

The Convener: The cabinet secretary will get a chance to answer that when he makes his comments.

Mike Rumbles: I am concerned about amendment 18. If the fair work framework changed in the future because the Government did not like it, for example, we would have to use primary legislation to amend the requirement, because it is set out in primary legislation. Will that cause the Government a problem? It looks as though it might, but I would like to hear from the minister whether that is the case.

Finlay Carson (Galloway and West Dumfries) (Con): Although I commend Colin Smyth's objectives with this amendment, I have a concern that the cabinet secretary might be able to respond to. If the fair work framework changes from what was published in 2016, how would that be addressed to ensure that terms, conditions and suchlike would not become outdated?

Fergus Ewing: I thank members for their contributions. It was this Government that established the fair work convention and this Government not only supports the fair work framework but has published a fair work action plan and is now also committed to our fair work first approach. It is therefore self-evident that we are supportive of the efforts that have been described by Mr Smyth and others to implement the concept of fair work through our actions and our agencies. It is what we do to get it right that matters most and we are intent on getting it right. I want to make it absolutely clear that we expect the new agency to be an exemplar in this area. That is the aim.

I do not think that there is any difference between that aim and what has been set out by Mr Smyth and others; it is a question of how we achieve that fair work aim. I fully endorse the

vision of the fair work convention and I expect the agency to give appropriate consideration as an employer to what it will do to achieve the vision that

“by 2025, people in Scotland will have a world-leading working life where fair work drives success, wellbeing and prosperity for individuals, businesses, organisations and society.”

It is important to spell out that that is what we are trying to achieve, so that people following the debate will have a clear understanding of what we are all talking about.

There are mechanisms to achieve that vision and primary legislation does not appear to be the best or indeed the correct way to do it. Mr Stevenson and Mr Rumbles make fair points; if a piece of primary legislation refers to a document that has been published but not laid before Parliament, what happens if that document is changed? Primary legislation might then need to be changed, and it is difficult to change primary legislation. We would need to come back to Parliament and go through this whole process again. That would not be helpful and it could conceivably confound the aims that we are seeking to achieve.

Primary legislation has its role, but the main mechanisms for the new agency to achieve these objectives will be the operating plan and the employment manual for staff. The new agency will also become, like Scottish Enterprise and HIE, an accredited living wage employer.

This is a relatively new area of policy. I think that it was last autumn that the First Minister announced it, and she has driven it forward with her vision. It is one that needs to grow organically to make sure that it is implemented properly, and that will take time. However, we expect the new agency to establish the five dimensions of fair work, that is,

“an effective voice, opportunity, security, fulfilment and respect.”

I will give further consideration to how we impart those expectations to the agency in its role as an employer.

I have significant concerns about the amendment as it is drafted. It asks ministers and the Parliament to legislate on terms and conditions between employers and employees. We do not believe that we can do that, because such matters are reserved to the UK Government within the Employment Rights Act 1996. As members know, there are dangers and pitfalls in legislating in reserved areas.

I would like to answer Mr Greene’s point. The fair work action plan that was published on 27 February sets out how we will deliver our

ambitions on fair work. In short, it uses the Scottish Government’s agreement with the civil service trade unions as a model for getting public bodies and the relevant trade unions to sign up to a joint commitment to embedding fair work within all public bodies.

To conclude, convener, I agree with the aims of amendment 18. To answer Mr Finnie, there is a will and there is a way—it is just a different way from the one that Mr Smyth has proposed.

John Finnie: Will the cabinet secretary take an intervention?

Fergus Ewing: Yes, I am happy to do that.

John Finnie: If there is a will, will the Scottish Government bring forward proposals at stage 3 that encapsulate what Mr Smyth is trying to achieve?

Fergus Ewing: We will reflect on the content of today’s debate very carefully indeed. There is no difference in aims. This is the policy that we set out. We own the policy, if you like, together with those who support it, and we want to develop it in a consensual fashion across the board. However, we believe that it should be implemented through the methods that I have already described, such as the operating plan, the employment manual for staff and the letter of strategic guidance that ministers will issue to the new body. Those are the mechanisms that are deployed and that I understand have already been accepted by the Labour Party in previous legislation when Parliament has debated the matter.

I hope that Mr Smyth welcomes what I have set out and the clear commitments that we have given, and that he will not press amendment 18, which the Government cannot support on legal competence grounds.

Colin Smyth: On the cabinet secretary’s final point about the legal basis of amendment 18, the bill team accepted it as a legally competent amendment—or it would not have come before us today.

Amendment 18 would not change employment law; it would simply place a duty on the new body that happens to relate to working conditions. Clarifying the body’s responsibilities in relation to its own staff is very much within the scope of the bill and Parliament.

I believe that amendment 18 is drafted in a flexible way—the wording is such that it would not become outdated. It sets a floor rather than a ceiling when it comes to basic terms and conditions and rights that workers employed by the new agency should have. The amendment includes the words

“as the Scottish Ministers may prescribe”,

so if parts of the fair work convention and fair work framework are changed, the approach will have enough flexibility to incorporate the changes.

If the objections to amendment 18 are purely technical, I urge members to agree to it and get the principle in the bill—

Fergus Ewing: May I intervene on a point of fact?

Colin Smyth: Yes, I am happy with that.

Fergus Ewing: I was reluctant to intervene, but I felt that it is important to say that I have been advised that the legislation team of the Scottish Parliament does not assess questions of legal competence.

Colin Smyth: The point that I made very clearly is that the amendment has been accepted as a valid amendment. It has the full support of the STUC, whose legal advice might be slightly different from that of the cabinet secretary. If the cabinet secretary has legal advice that implies that there is a problem with the amendment, he might want to publish it. The STUC is a partner when it comes to fair work and it fully supports the amendment. I hope that that partnership will continue in the future.

As I said earlier, if the objections to the amendment are purely technical, I urge members to pass it to get the principle on the record, and then we can work on the wording of an amendment at stage 3 to address some of the concerns that have been raised this morning.

I press amendment 18.

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

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
Greene, Jamie (West Scotland) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Mountain, Edward (Highlands and Islands) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Rumbles, Mike (North East Scotland) (LD)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 9, Abstentions 0.

Amendment 18 disagreed to.

Schedule 1, as amended, agreed to.

Section 3 agreed to.

Section 4—Application of public bodies legislation

The Convener: Amendment 1, in the name of the cabinet secretary, is grouped with amendments 2 to 6.

09:15

Fergus Ewing: The amendments in this group apply various pieces of public bodies legislation to south of Scotland enterprise so that what applies to the existing enterprise agencies also applies to the newest one.

Amendments 1 and 2 are technical amendments in consequence of the others in the group.

Amendment 3 applies sections of the Further and Higher Education (Scotland) Act 2005 to south of Scotland enterprise, to ensure that various education bodies, including the Scottish Further and Higher Education Funding Council, have the same duties and power in relation to the new agency that they have in relation to Scottish Enterprise and HIE.

Amendment 4 will ensure that ministers can issue directions to the agency about development of Scotland's water resources in the same way that they can issue directions to existing enterprise agencies.

Amendment 5 will add south of Scotland enterprise to three provisions of the Community Empowerment (Scotland) Act 2015. The additions ensure that the new agency will have the same role in relation to community planning and asset transfers as the existing enterprise agencies have.

Finally, amendment 6 will ensure that the new agency is subject to the duties of all public bodies in relation to reporting about climate change duties compliance. Again, that will put it in the same position as existing enterprise agencies.

I move amendment 1.

Peter Chapman (North East Scotland) (Con): I will be brief. I support all the amendments in the group. They introduce mainly technical changes that improve the reading of the bill and will aid the implementation of its objectives. Some of the changes have been proposed as a result of the committee's stage 1 report and I welcome that.

The Convener: Do you want to wind up, cabinet secretary?

Fergus Ewing: I have nothing to add. I agree with Mr Chapman's comments.

Amendment 1 agreed to.

Amendment 2 moved—[Fergus Ewing]—and agreed to.

Section 4, as amended, agreed to.

Schedule 2—Application of Public Bodies Legislation

Amendments 3 to 6 moved—[Fergus Ewing]—and agreed to.

Schedule 2, as amended, agreed to.

Section 5—Aims

The Convener: Amendment 7, in the name of the cabinet secretary, is grouped with amendments 8, 19 to 25, 14, 9 to 11, 11A, 15, and 26 to 28.

Fergus Ewing: As the committee recognises in its report, the purpose of section 5, which is entitled “Aims”, is to set the direction of travel for the agency and to give it a clear mandate from Parliament without being overly prescriptive about how it will allocate resources and determine its priorities. I know that members understand the need for a careful balance in section 5, which must illustrate a range of activities that the agency can undertake to deliver its aims while enabling it to be both flexible and responsive.

The worst-case scenario would be for south of Scotland enterprise to consider that it could not act on a matter because its legal advice was that its aims were so tightly drawn as to prevent an action or growth opportunity from being taken up and progressed. That is obviously not a legacy that any of us would want to bequeath to the fledgling enterprise agency.

We should be mindful that the enterprise agency will exist primarily to foster and support sustainable economic development, jobs, investments and businesses, so we want to provide clarity for the new agency on how we expect those to be delivered.

Also, we should not forget that other legislation will continue to apply. We should not duplicate things that are already law, so we should be cautious that where statutory functions exist on a matter, we do not overlay them with different wording in the bill that could be interpreted differently from the original legislation on the same matter, which could lead to all sorts of potential difficulties. That is a technical but, I think, important point.

Nonetheless, the agency should be given, in law, a clear set of aims that Parliament wants it to have. I have listened to the calls for the bill to say more on those aims, especially in relation to environmental matters, so I hope that members will welcome my amendments in the group, as I

welcome many of theirs. I will speak to my amendments first and then turn to those of members.

Amendment 7 is a technical amendment that will simply pave the way for my other amendments in the group and those of other members.

Amendment 8 emphasises the agency’s role in supporting economic growth that is sustainable as well as inclusive, and responds directly to the committee’s call for the bill to make specific provision on development of a sustainable economy. This Government absolutely supports sustainability, not least in environmental terms.

Amendments 9 to 11 continue the environmental theme, and emphasise particular issues that the agency might look at to improve the environment of the south of Scotland as part of its work to build a sustainable economy there. I acknowledge and welcome Colin Smyth having signed up to amendments 9 and 10, and I am happy to accept his amendment 11A to my amendment 11. However, I would like to ensure that the wording is appropriate to delivery of our aims. I will be happy to liaise with Colin Smyth in advance of stage 3 to agree whether any technical or drafting changes are required.

I am also happy to support Stewart Stevenson’s amendment 23 and Richard Lyle’s amendment 24. They highlight the critical importance of physical and digital infrastructure, which many consultees mentioned in the initial stages of consideration of the bill. The need to tackle the challenges that are faced in that regard by communities and businesses in the south of Scotland was a key theme that emerged from our pre-legislative consultation and engagement, and it continues to feature in the work that we are doing now.

However, we must acknowledge that those things will not be the primary function of south of Scotland enterprise, nor should we take away other bodies’ existing functions—in particular, in transport, from Transport Scotland, where they primarily lie, regional transport partnerships or local authorities. There is no need for section 5 to mention transport and digital infrastructure twice, important though they are. I therefore invite Colin Smyth not to move amendment 25, if the committee is minded to accept amendment 23, in the name of Mr Stevenson, and amendment 24, in the name of Mr Lyle.

I acknowledge that section 5(2)(f) was too tightly drafted, so I welcome amendment 14, in the name of Gail Ross, which seeks to ensure that support for

“communities to help them meet their”

needs will be considered in the widest sense and not limited to community organisations. If the

committee is willing to support amendment 14, amendment 15, in the name of John Finnie, will fall, although I fully appreciate why he wants the agency to support such activity. In my view, section 5(2)(f), thus amended, will provide wide enough powers to support projects for community ownership and transfer without creating unnecessary duplication of existing powers and duties on local authorities, particularly under the provisions in the Community Empowerment (Scotland) Act 2015. Communities should be able to expect agencies to provide appropriate support to meet their aspirations. I hope that Mr Finnie agrees with that and does not move amendment 15, and that he will accept my undertaking on the record that the agency will have the power and responsibility to support such activity.

Amendment 22, in the name of Colin Smyth, underlines the importance of there being a range of business models that the agency should support, not least of which are social enterprises and co-operatives. The latter are particularly significant in the dairy farming sector. I am therefore happy to support the amendment, although I would like to ensure that the wording properly reflects the intention, and will advise if any technical changes might be needed at stage 3.

I am not entirely sure of the thinking behind amendment 26, in the name of Claudia Beamish. I welcome her to the committee. I will listen carefully to what she has to say, and respond to her in closing.

I turn finally to Colin Smyth's amendments 21 on fair work, and 27 and 28 on inequality. I will not repeat what I have said already. The Government has progressed fair work: we support it, and our support is clear and unequivocal. We have already indicated our expectation that the new agency be an exemplar, and have suggested the appropriate ways for that to be achieved in practice.

However, I hope that it will be useful to the committee if I add that I recently had the opportunity to have discussions with senior officials in the STUC, and have undertaken to look at the issues very closely, while remaining cognisant of the fact that elements of fair work are reserved, as I have already argued.

At this stage, I offer meetings to members of the committee who wish to discuss the matter further. I have made the offer to the STUC to engage prior to the time when it will be necessary to lodge stage 3 amendments, so that there will be sufficient time for members to decide whether they need to press matters by lodging stage 3 amendments.

I am keen to make it clear to the committee that we are working with the STUC, and that we are

happy to continue to work with members on all those matters. In the light of those undertakings, I ask Mr Smyth not to move amendment 21, on the basis that I will look at the issue further, have more discussions with the fair work convention, and speak with him ahead of stage 3, once we have determined what, if anything, might be possible.

We can all agree that low wages and the gender pay gap continue to be among the most serious issues that hold back the economy of the south of Scotland. Although Government research suggests that there has been improvement, they are serious issues and they persist. That should not be the case in 21st century Scotland. It is my firm belief that the new enterprise agency can achieve the aims of sustainable and inclusive growth only by tackling poverty and inequality, and by advancing social and economic policy. Achieving those aims will, by definition, tackle poverty and inequality.

The agency will be a public body, so it will be subject to other legislation in that regard. For that reason, I do not see a need to put the provisions in amendments 27 and 28 into the bill. There is existing statutory provision to achieve those aims in the UK Equality Act 2010, and in Scottish statutory instruments that have been made thereunder. I said at the outset that the matters are already the subject of law that has been passed by the UK Parliament and Scottish statutory instruments. It is important not to duplicate those for the reasons that I gave earlier, including the risk of creating overlap and confusion.

For those reasons, I suggest that Colin Smyth not move amendments 27 and 28, although I will, of course, listen with interest to what he and all other members say on the amendments.

I move amendment 7.

Colin Smyth: I will, in order to make things straightforward, take the amendments in the order in the grouping. I support amendment 7, in the name of the cabinet secretary. It will be a sensible change. The agency's environmental remit is—as well as its social remit—a key difference between it and the current Scottish Enterprise model, so it is right that the bill will expand on what that will entail.

The committee was very clear in its stage 1 report that, in striking the balance between keeping the agency's aims general in order to allow flexibility, and giving clear legal direction, the bill does not go far enough in respect of clear legal direction. Amendment of the aims is an important step.

09:30

I welcome amendment 8, which will clarify that growth will be sustainable. Amendment 19, which is in my name, would require the agency to encourage

“development of a sustainable economy”

as part of its aim. That is intended to highlight the importance of ensuring sustainability when the agency achieves its other aims. I appreciate that amendment 8, in the name of the cabinet secretary, makes a similar point, but amendment 19 is more comprehensive: as opposed to growth, it calls for sustainability across our economy as a whole. The amendment recognises the need to make wider changes to make our economy more environmentally and economically sustainable, and not just focused on growth.

Amendment 20 would require the agency to aim to increase the working-age population. The upward migration of young people and the increasing imbalance in the demographics of the region were raised by many stakeholders and are seen as major challenges facing the south of Scotland. Amendment 20 reflects the importance of the issue and of giving the new agency responsibility to pursue policies that will help to address that. There is precedent in primary legislation for including that. If members think back to the Islands (Scotland) Act 2018, they will recall that increasing population levels is the first aim in the section that sets out the remit of the national islands plan, so there is certainly precedent when it comes to tackling the population challenges that face our more rural areas.

Amendment 21 would require the agency to further the principle of fair work as defined in “Fair Work Framework 2016”, and to promote collective bargaining as part of its aims. The agency will have a responsibility to try to drive up wages and improve working conditions in the region. I believe that that should be clearly stated in the bill. Dumfries and Galloway is the lowest-paid part of Scotland. Wages in the Borders are also below the national average. The region needs high-quality, well-paid and secure jobs: that should be clear in the bill. I have heard the cabinet’s secretary’s comments. Perhaps in closing he can clarify whether he is proposing to lodge an alternative amendment at stage 3 to underpin the importance of fair work in the bill.

Amendment 22 would clarify the need for support for social enterprises and co-operatives as well as for more traditional business models. Social enterprises and co-operatives are of huge importance to the south of Scotland. The matter lies at the heart of the new model that is proposed for the agency. It will not be simply about supporting traditional enterprises, but will have a social element, of which social enterprises and co-

operatives are a key part. Amendment 22 would add that emphasis to the aims of the agency.

I support amendments 23 and 24 in the names of Stewart Stevenson and Richard Lyle, respectively. Clearly, they were lodged at about the same time as my amendments and are on tackling transport and digital connectivity. Those issues were raised many times in evidence. As a South Scotland MSP, if I were to look in my mailbag, transport and digital connectivity would probably make up the most significant part of the concerns that are raised by constituents.

When we heard evidence from the cabinet secretary during stage 1, he said that he was concerned by the suggestion that transport and digital connectivity should be part of the aims of the new agency, because that might in some way take authority and responsibility away from other agencies, such as Transport Scotland and digital Scotland. That will not happen, and I welcome the fact that the cabinet secretary appears to have changed his position on the matter.

It is about the new agency having a very clear leadership role; it is not about the new agency having responsibility for making the A75 a dual carriageway. It is about the agency having leadership in driving the importance of improving the infrastructure in the region—infrastructure that, I have to say, is holding the region back. The leadership role is absolutely crucial to the new agency. I am happy to support amendments 23 and 24. If they are supported by the committee, I will not move my amendment 25, which covers the same areas.

I have no objection to amendment 14, which would change “community organisations” to “communities”. I will listen to what John Finnie has to say when it comes to amendment 15 on community ownership, but it is important to stress that I do not think that amendment 14 goes far enough to enshrine the importance of

“supporting community ownership of land and other assets”,

as set out in amendment 15, which would be an important addition to the bill. The point was highlighted in the evidence that the committee took in Dumfries, in particular from Dr Calum Macleod, who also pointed out that Highlands and Islands Enterprise’s work on community ownership has been one of its huge successes. The new agency should play a similar supportive role in the south of Scotland.

There are about 500,000 acres of community-owned land in the Highlands and Islands, but in the south of Scotland there are only 800 acres of community-owned land. There are significant initiatives around the Mull of Galloway and Lochmaben, but we are far behind the Highlands

and Islands on community ownership, so it is important to include community ownership in the bill as a clear aim of the new agency. I do not think that doing so would prescribe how the agency should set up, for example, a community land unit in the way that Highlands and Islands Enterprise has, but it would give clear direction to the new agency that that is one of its aims.

We should also be very clear that the new agency will not take over the Scottish land fund's responsibility for funding, so that there is no expectation in that regard from stakeholders who have promoted and supported amendment 15. The new agency will drive the issue of community ownership of land and other assets.

The Convener: Colin, I understand that you have a huge number of very important points to make, but I do not want to limit the debating time for members to discuss the points that you and other members have raised. I ask you to bear that in mind as you continue with your comments.

Colin Smyth: Thank you, convener.

There are a number of significant amendments that would have a major influence on how the new agency will work. I support amendment 9, in the name of the cabinet secretary, which is a welcome amendment, as is amendment 10, which is about

“promoting the sustainable and efficient use and re-use of resources.”

Amendments 9 and 10 are very similar to amendments that I lodged and then withdrew because, although their wording was slightly different, they had the same aim.

I am pleased to hear that the cabinet secretary is supportive of my amendment 11A to his amendment 11, which would change

“supporting the transition to a low-carbon economy.”

to

“supporting the transition to a net zero carbon economy.”

If the amendments are agreed to, I am sure that any technical changes that require to be made to the provision can be made at stage 3.

I am very supportive of amendment 26, in the name of my colleague Claudia Beamish, who I am sure will set out in detail how it will work in practice.

On my amendment 27, it seems strange that we are supporting the aim of promoting and improving transport and digital connectivity in the south of Scotland—which, it has been argued, is not the main responsibility of the new agency—but not the aim of tackling poverty and inequality. As I have said, the broader remit of the new agency, which includes social and environmental responsibilities, is a key difference from the model that we have at

the moment. Low wages are a massive issue in Dumfries and Galloway and the Scottish Borders. That is not to say that they will be the focus solely of the new agency and not other agencies and legislation, but attracting high-skilled, high-paid jobs has to be a focus of the work of the new agency if we are to be serious about tackling poverty and inequality.

Amendment 28—

The Convener: To allow for a debate on the amendments, I ask you to be as concise as possible, please.

Colin Smyth: I will certainly do my best, but the problem is that most of the amendments in the group are in my name, and it will be difficult to have a debate if members are not aware of their aims.

Amendment 28 will make it clear that the agency has a strong social remit, which sits on a level playing field with its economic remit.

Amendment 29 will enshrine best practice in law. Sorry—I have gone too far. I will leave it there. I have covered all the amendments in my name in the group.

Stewart Stevenson: Colin Smyth referred to the evidence that the committee heard on digital connectivity. I, too, heard that evidence and took tent of it. Having the appropriate speed and availability of connectivity is a crucial way in which more rural parts of Scotland can be placed at an equal distance as urban areas are from services that are delivered digitally.

Notwithstanding the excellent reaching 100 per cent programme, which will make speeds of 30 megabits per second available to all premises in Scotland, it is worth saying that the first digital system that I worked on, in 1969, ran at 110bps, which was adequate for its time. The speed that we are now looking at—30Mbps—is more than 250,000 times as fast as that. The 30Mbps that is being delivered through the R100 programme will undoubtedly be overtaken by faster speeds and different technologies, so improving connectivity will be an important part of the agency's work. Connectivity is a vital utility for people who live in the south of Scotland and elsewhere in Scotland. In definitional terms, amendment 23 also covers work that the agency is likely to want to do on mobile hot spots, as well as on wired connections for broadband.

The indications are that the committee will support amendment 23. However, if the committee were not to support it, I would be entirely relaxed if it instead supported amendment 25, in the name of Colin Smyth.

I will say a few words on two of the other amendments in the group. In speaking to

amendment 18 in a previous grouping, I talked about the use of the fair work framework and the fair work convention. The same difficulties apply in relation to amendment 21, so I will not rehearse those arguments.

In the light of announcements that have been made subsequent to the lodging of amendment 11A, I suspect that the term “net zero carbon” might be substituted at stage 3 for “net zero greenhouse gas emissions”, which is a broader term that would accord with the amendments that have been lodged to the Climate Change (Emissions Reduction Targets) (Scotland) Bill, which is before the Environment, Climate Change and Land Reform Committee, of which I am a member.

Richard Lyle: There are numerous amendments in the group but, to save time, I will speak only to the amendment in my name, which is amendment 24. Through the committee’s work, we know how vital transport connectivity is to the success of communities and businesses across the south of Scotland, and that point has been reinforced by our evidence gathering on the bill. Amendment 24 responds to those concerns by making it clear that the south of Scotland enterprise agency could undertake activity to promote improvements to “transport services and infrastructure” across the south of Scotland.

In our consideration of the bill, the committee recognised the need for clarity on the roles and responsibility of agencies that operate in the south. Amendment 24 will not confer on the south of Scotland enterprise agency any existing statutory functions or duties, such as those that Transport Scotland and regional transport partnerships have. Instead, it will ensure that the new agency can complement the existing activities and advocate transport infrastructure and services that support the inclusive economic growth of the south that we all believe in. That is what the committee called for in our stage 1 report.

09:45

Gail Ross (Caithness, Sutherland and Ross) (SNP): In the interests of brevity, I will also just speak to the amendment in my name, which is amendment 14. The committee recently welcomed the remit for the new south of Scotland agency, which includes social development, and the evidence that we heard at stage 1 showed wide-ranging support for that to be included. It responds to the very clear need for support to help communities in the south of Scotland to further their interests and to meet their needs. We also heard concerns that the current wording in the bill at section 4(2)(c) is too narrowly drafted, because it referred only to community organisations, which might inadvertently restrict the support that can be

offered and who can receive it. I agree with those concerns.

As the cabinet secretary has stated, amendment 14 adjusts the wording to make it clear that the support for communities that could be provided by the new enterprise agency is not intended to be restricted solely to community organisations, and ensures that the agency can reflect and respond to the different needs and interests of communities across the area. The broad scope of the section, with the addition of amendment 14—should it pass—would allow almost any matter to be addressed, including community asset transfers and land ownership, which would make John Finnie’s amendment unnecessary. However, I heard Colin Smith’s point, and I will listen closely to John Finnie’s comments on amendment 15. I thank the cabinet secretary for his assurances in the matter and will wait to see whether John Finnie thinks that amendment 14 will suffice.

John Finnie: What we are doing now shows the importance of this building and the role that committees play in scrutinising legislation. I absolutely accept that we all want to make good law that is relevant and not open to challenge. The pressure that we all face as elected representatives is lobbying from individuals who want their particular interest put on the face of the bill because they perceive—rightly on occasions—that, if that interest is not expressly catered for, it is somehow devalued. We all know that that is not necessarily the case.

However, I am somewhat bemused by some of the discussion, in that we have commended the promotion of reserved issues, as Mr Stevenson did, although I have no issue with that. Amendment 14, in the name of Gail Ross, does not cover what is required. We mentioned the issue of community land ownership and, as the committee heard from Dr Calum Macleod of Community Land Scotland, part of the remit of the new agency should be to establish “a community assets team” within the agency, similar to the one that is operated by HIE. We have referenced the similarities with HIE a lot in our discussion about the powers in the bill.

Let me tell you our recommendation:

“The Committee further calls on the Scottish Government to amend the aim of ‘furthering the economic and social development of the South of Scotland’ to make specific provision in relation to ... supporting community land ownership and assets ownership”.

That is specifically what I am doing with amendment 15, and I hope for the committee’s support.

Colin Smyth touched on the huge disparity between the extent of community land ownership in the south of Scotland and in the Highlands and

Islands, and that perhaps has a historic basis. We know, for example, from Dr Calum Macleod that

“Community ownership contributes to local economic development in both rural and urban settings by generating business opportunities, employment and income streams for reinvestment by communities for their collective benefit.”

There are opportunities. The creation of the south of Scotland enterprise agency offers an opportunity for a step change to address what has been described as a “glaring discrepancy”.

If the cabinet secretary is saying, as he did previously, that the wording of the amendment has deficiencies—I cannot see that there are—given that this committee has always been a significant platform, and that a commendable approach has been taken by the Scottish Government on the changes on land ownership that are required, I hope that the amendment will be supported by members.

I will talk briefly about one or two of the other amendments. I hear what has been said in the repetition of some of the earlier discussion and I support Colin Smyth’s approach to a lot of those other issues. Given the time restraints, I will not go through them all, but I am also broadly supportive of the other amendments.

The Convener: Before I ask Claudia Beamish to speak to amendment 26 and any others in the group, I take this opportunity to welcome her to the committee.

Claudia Beamish (South Scotland) (Lab): Thank you, convener—that was in the nick of time. I am pleased to be here today and preface my remarks by saying how important and significant I think the bill is for the south of Scotland, which I represent. I declare an interest as a member of the Co-operative group of members of the Scottish Parliament.

I was pleased to hear the cabinet secretary say that he will listen to the points that I want to make on amendment 26. It would add to the aims in section 5 a requirement to encourage

“persons and bodies with an interest in the environment to co-operate in achieving environmental objectives.”

It is a probing amendment that would enable and facilitate a whole range of bodies and individuals such as farmers, land managers and communities—urban and rural—to work together.

I will give three quick examples, which are all things that would be difficult for groups to do without support and advice. The amendment would encourage groups to take such environmental projects forward. One would be river catchment-wide work—for example, actions to mitigate flooding such as repairing and planting. Another is agroforestry schemes, which would enable action on a scale that, because of

economies of scale, would make tree planting possible across smaller landholdings in a way that it would not be otherwise. The third example is woodland planting, of which there are already good examples by communities near Peebles and in other places in south Scotland. The amendment would support and facilitate communities to work on that with advice from the agency.

In view of the recent UK CCC report, this week’s United Nations report on nature and the shift to net zero emissions by 2045—to which, I am delighted to hear, the Scottish Government has now committed—I am clear that amendment 26 adds to the aims in a way that would facilitate a co-operative approach to positive environmental objectives. I look forward to hearing from the cabinet secretary on that.

I am not a member of the committee, but I want to say that I support amendment 15, in the name of John Finnie. I visited Gigha when I was on the Rural Affairs, Climate Change and Environment Committee in the previous session of Parliament and I understand the support that HIE has given to communities that are looking to move forward, so I think that it is very important that community ownership is part of the bill.

Peter Chapman: I will be as brief as possible. I have no problem with amendments 7 and 8, in the name of the cabinet secretary, or with amendment 19, in the name of Colin Smyth, which is very similar to amendment 8. I can also support amendment 20, in the name of Colin Smyth. It is obviously commendable that we should try to get more working-age people into the region.

Amendment 21, on the fair work framework, has basically been debated already, so I will not support that one. I have a problem with amendment 22, which seems to be very restrictive in promoting co-operative societies. I would like to promote all kinds of business models and do not agree with picking out one.

I support amendment 23, in the name of Stewart Stevenson, in principle, but I have a concern that we would be committing the enterprise agency to funding some of the work, and I do not believe that it is within its remit to do that. It is certainly within the remit to support and encourage.

John Mason (Glasgow Shettleston) (SNP): The word that is used in amendment 23 is “promoting”, which I think is much wider than just financing.

Peter Chapman: If that is the case, I am happy to support amendment 23, but we need to be sure that the agency is not expected to fund that work—that is my point. Amendment 24, in the name of Richard Lyle, relates to funding strategic reviews, which we can support.

As I said, I cannot support amendments 21 or 25. However, I heard Colin Smyth's point that, if the committee supports amendments 23 and 24, he will not move amendment 25.

I support amendment 14, in the name of Gail Ross. The cabinet secretary said that it might mean that amendment 15 will not be moved, although I suspect that John Finnie will press that amendment and, if he does so, I will support it as well.

Mike Rumbles: No one has done so yet, but it is important that we recognise what the cabinet secretary has done. In our stage 1 report, we asked him to lodge amendments on the environmental and other aims, and he has done that. Therefore, I will support the cabinet secretary's amendments on that in preference to any other approach.

I said to several members privately, when they asked me about their amendments, that I would have an open mind and would listen to the debate, as I am sure we all do. Before I heard John Finnie, I was minded to support amendment 14 but, based on what John Finnie so eloquently said, I will support amendment 15. It would achieve what we asked for in the stage 1 report, so it is appropriate that we support it. I certainly will not support amendment 41, in the name of John Finnie, which we will discuss later, but I will support this one.

Jamie Greene: A lot has been said on this large group of 18 amendments, and my colleague Peter Chapman has eloquently expressed our views on many of them. However, it is worth making a few quick general points for the benefit of members.

There is a choice to be made between amendments 23 and 24, which are on digital and transport infrastructure, and amendment 25, which is also on digital connectivity and transport. It comes down to the nuanced wording. I am minded to go in favour of amendments 23 and 24, because they refer to "promoting improved" digital and transport infrastructure rather than "supporting the enhancement" of those. By default, the term "enhancement" could be read as suggesting a duty to do something or a role in that, but that requires budget, which the agency may or may not have.

It is no surprise that this group of amendments on the aims is the biggest one, because there are so many asks of the committee and the new agency and people want it to be as expansive and comprehensive as possible. We all share that view, and I am sure that the cabinet secretary does, too. However, the problem that we always have with lists is that they are non-exhaustive—we have had debates on that many times in the committee. I am uncomfortable with starting lists

that we do not finish, although we have to be cognisant of the feedback that we had in the public meetings. There were specific asks on social enterprise, the environment, digital and so on, so we will support some of the amendments but not all of them.

I was a bit unsure about the rationale behind amendment 14, but I am happy with Gail Ross's clarification of it. Like Mr Rumbles, I have come round to amendment 15. Our group is minded to support it, because the issue was in the stage 1 report. There is no problem with the phrase "supporting community ownership". The amendment does not say that there will be huge swathes of budget to give to organisations to buy pieces of land. The term "supporting" is suitably positive and suitably vague in that respect, so I can support amendment 15. It really comes down to the wording. The terms "supporting" and "promoting" are helpful, while putting a direct duty on the agency will inherently lead it down a path that it might not want to go down.

10:00

John Finnie: I thought that the presentation that we heard on amendment 26, in the name of Claudia Beamish, was excellent. This is about the challenges that we face collectively, and I look forward to the cabinet secretary's response. After all, it is all about dialogue. In some of the examples that have been highlighted, it will be about the leadership that is shown as well as about collaborative working. I hope to hear a positive response from the cabinet secretary.

Finlay Carson: I share the concerns that have been expressed by Jamie Greene and John Finnie about the creation of lists. If we have lists that are too long and that do not expressly mention certain interventions, the suggestion might be that they are not so important, so, as a result, the lists might become a bit prescriptive.

Amendment 14 broadens the opportunities without concentrating on any particular intervention. I am not sure why social enterprises and businesses should be emphasised only if they are co-operative societies, and I think that amendment 14 would open things right up.

Colin Smyth: Amendment 22 actually refers to "social enterprises and ... co-operative societies",

not just co-operative societies. That is an important point, because it goes wider than co-operative societies to include all social enterprises. As far as the remit of the agency is concerned, that is clearly a change from the remit of, say, Scottish Enterprise.

Finlay Carson: My reading of the phrase

“supporting social enterprises and businesses that are co-operative societies”

is that it could exclude social enterprises and businesses that are not co-operative societies. We just need to be very careful about creating lists.

Amendment 9 refers to

“maintaining, protecting and enhancing the natural heritage”,

but one might argue that the agency should enhance the area’s cultural as well as natural heritage, and we might well lodge further amendments at stage 3 to address that issue.

Fergus Ewing: I am very pleased with the detailed discussion that we have had on the aims of south of Scotland enterprise, and it is right that we give the matter full consideration. As Mr Finnie has said, that is, in a sense, what we are here to do.

Although I do not support all the amendments in the group, I, for the most part, agree with the intention behind them. As Mr Rumbles has said, we listened very carefully to what the committee said in its report and lodged amendments to address the committee’s reflections and recommendations about the environment. I am grateful to Mr Rumbles for his comments in that respect.

Issues such as equalities and fair work will be included in the strategic guidance letters that will be issued to the agency and that will be dealt with in the strategic board’s strategic plan. If it is helpful, convener, I will write to you in a bit more detail about how strategic guidance letters deal with such matters, and I will provide examples of Scottish Enterprise, HIE and, indeed, the strategic board stating and showing how these vital matters are dealt with in practice, not through legislation but through letters of strategic guidance. That might help to inform stage 3 and give all sides a clearer understanding of how these matters can be dealt with in practice and not in primary legislation.

I encourage members to support amendments 7, 8, 23, 24, 14, 9 to 11 and 11A, which more clearly demonstrate how the new agency’s activities will balance a range of economic, social and environmental objectives to deliver inclusive sustainable growth and sustainable development.

Jamie Greene: What is the cabinet secretary’s understanding of the difference between amendment 19 and amendment 8? They are similar. One would add “sustainable” to the list of aims for economic growth, whereas the other would add

“the development of a sustainable economy”

to the list of aims. There is a similarity in the wording, but I am unsure which of those amendments would achieve the best result and whether the two are compatible.

Fergus Ewing: Not surprisingly, and for largely technical reasons, we prefer our amendment. The alternative—amendment 19—does not express the aim in the most felicitous way. However, we will reflect carefully on those matters and return to them before stage 3. Having hitherto looked carefully at the technical detail of all the amendments, that is our recommendation. It is not about good versus bad; it is about effective against slightly less effective and clarity versus potential vagueness. I will go on to illustrate some of the general points in relation to specific amendments.

We should bear in mind the fact that the bill has been drafted to provide flexibility in the activity of the agency. That was recognised by the committee in its report. We want the new agency to be able take a fresh, tailored approach to meeting the needs of the south and not to be constrained by legislation or artificial boundaries. Many members alluded to that as a desirable and necessary aim.

I will turn to some of the specifics. In amendment 15, John Finnie sets out his proposals, and we support his aspirations. However, we prefer Gail Ross’s amendment 14 to amendment 15 because agreeing to amendment 14 would mean that the bill would provide that we support “communities to help them meet their needs”. That is simple and straightforward.

John Mason: Will the cabinet secretary give way on that point?

Fergus Ewing: I will develop and complete these arguments, then I will give way to Mr Mason and to Mr Finnie, who also wants to intervene.

Quite rightly, Mr Finnie and others, including Mr Mason, have referred to the good work that HIE has already achieved in community land ownership. The community land unit was alluded to as the operational way in which HIE gave focus to those issues.

The legislation that set out the aims of HIE does not mention any of that. HIE was able to support community land purchase without that being referred to at all in its establishing legislation. It is precisely because the wording of the legislation that established HIE is broad that it is able to act in that way. Therefore, it is not necessary to specifically confer power in the way that Mr Finnie’s amendment seeks to do. In preferring Gail Ross’s amendment, we are simply making a judgment about what is technically preferable.

If members wish to raise further questions on those matters, I will be happy to accept all interventions.

John Finnie: I tried to lay out fairly groups' aspirations for what would be in the bill, but I readily accept the cabinet secretary's point and will support Gail Ross's amendment. The matter was addressed in our initial report on the basis of the evidence that we had received.

At the moment, I do not have intimate knowledge of the legislation that set up HIE, but I am sure that it did not include, for instance, promoting digital connectivity. Legislation evolves, and our position in relation to things evolves. However, I would have thought that the Scottish Government would want to trumpet the issue rather than have it contained in a generality. In relation to the Highlands and Islands, it is good news from the Scottish Government, and I would have thought that the Government would not have any difficulty in expressly catering for it in the bill.

The Convener: Cabinet secretary, it might be more appropriate for you to hear all the points that are going to be raised and then to come back on them—or would you like to address them individually?

Fergus Ewing: I will hear them all and then answer, if that is all right.

The Convener: That seems to be the logical way. John Mason will go first, then Mike Rumbles and Jamie Greene.

John Mason: My point is similar to John Finnie's. I am struggling to understand. I accept that the community ownership of land and other assets was not mentioned in HIE's legislation, but the Government and our party are committed to it and we have put a huge amount of money into buying Ulva, which I wholly support. We heard in evidence that, whereas in the Highlands and Islands there is quite a lot of community land ownership, there is virtually none in the south of Scotland. I am therefore inclined to support amendment 15 because it would underline what we are trying to do.

The Convener: Mike Rumbles feels that his question has been asked.

Jamie Greene: I want to respond to the cabinet secretary's point. I do not think that amendment 15 would confer any additional powers or even implies that. It simply does not state that. It just talks about

"supporting community ownership of land".

We all have our political views on that subject, but I think that that is a fair and reasonable statement to make. It does not deviate in any way, from a legislative point of view, on the powers that

ministers might or might not have already or those that the agency might seek to have. If the agency can use powers that exist elsewhere to purchase land, it is welcome to do so.

We have used the word "supporting" in other amendments that the committee supports, so it is acceptable. I do not see the direct relationship between supporting community land ownership and the sort of powers that the minister thinks the amendment might confer.

Fergus Ewing: I am grateful to the members for their points, and I will try to respond to each of them.

Amendment 14 covers more than ownership, although it encompasses ownership. If it is agreed to, amendment 14 will mean that SOSEA will be able to do everything that HIE can do. It goes wider than ownership. There might be ways other than community ownership in which communities might wish to be assisted, and the amendment would confer a wider range of powers.

I would have thought that it would be desirable to ensure that there is the widest range of powers for communities that wish to pursue options other than direct ownership of their land. That said, as Mr Mason said, the Government is completely committed—and my party has been so committed for as long as I can remember, which is more than four decades—to community land purchase. There is no question about the aims. We are not saying that amendment 15 is bad and that the other one is good; that is not the issue at all.

If the committee decided to go for amendment 15, we would have to consider what technical amendments would be necessary to avoid restricting the scope of the new agency at stage 3. I would certainly ask my officials to consider whether that would be necessary.

I assure Mr Greene and Mr Mason that the purpose behind our advice that amendment 14 is to be preferred is to ensure that the new agency can do exactly what Mr Finnie and other members have said it should be able to do. The new agency would be able to do more because the wording of amendment 14 would allow it to do more. The objection is entirely technical, but that is in the nature of drafting legislation. We are not in any doubt about political policies and their pursuit; the question is about how best to implement them and enable them to be enacted.

I will park that issue there and turn to amendment 26, if I may. I thank Claudia Beamish for coming to the committee and making her point. It is essential that everyone works together and co-operates, but that is not really about the agency. The bill is not really about telling third parties what to do—that does not really come under the scope of the bill. People need to work

together across the whole scope of government—that is expected and desirable—but it is not really within the scope of any bill that establishes a new body to state that third parties should co-operate. That should happen anyway.

10:15

Claudia Beamish: The point that I am making is not that they should co-operate. I am saying that this is a permissive, facilitating and supportive amendment for groups that might not have the capacity to do things collectively. It is a question not of what they should do but of what they could do.

Fergus Ewing: Again, although I support the aspiration, the point that I am making is that that is not suitable for inclusion in primary legislation. How can we enforce what third parties do together? Indeed, the phrase

“persons and bodies with an interest in the environment”

is vague. Who is to say whether someone has or does not have an interest in the environment? Arguably, everyone should have an interest in the environment, which means that everyone should co-operate with each other, and that is not really anything to do with setting up the agency.

In suggesting that members should oppose the amendment, I am not opposing the sentiment of it. I agree with the aim, but it is not really one that is *habile* for inclusion in primary legislation.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Given that things relating to the environment are moving at a rapid pace, will the cabinet secretary agree to take on board the idea of some of the amendments being redrafted before stage 3? That might enable us to take account of the climate emergency that we have now declared we are facing in Scotland.

Fergus Ewing: I am pleased to give the assurance that, before stage 3, we will consider that specific issue as well as amendment 26. Moreover, in various places, the bill imports a duty to consult. That is important, as that duty to consult will bring about what Claudia Beamish wishes to achieve. We will soon debate amendment 39, in the name of Maureen Watt, which proposes just that, in a particular context. Therefore, what Claudia Beamish sets out to achieve is achieved by other means. Given the undertaking that I have happily provided to Maureen Watt about the bigger picture of tackling climate change and ensuring that the new agency can do so effectively, I hope that Claudia Beamish will agree with me on that point and not press amendment 26.

I fully recognise Colin Smyth's desire to emphasise the importance of the fact that the new

body will tackle inequality and poverty in the south, and I addressed that in my opening remarks. However, I do not think that amendments 27 and 28 are the right way in which to achieve that. For the reasons that I set out earlier, which I will not repeat, I urge the committee not to agree to those amendments if they are pressed. I reiterate the undertakings that I have given previously to return to the committee and the STUC in good time before stage 3 to have further discussions on those matters, which we are happy to do.

Aside from the drafting, I think that there is enough in the aims, should the committee support my amendment 8, to allow clear direction to be given on wider Government priorities such as tackling poverty and promoting equality, and I specifically undertake to give that direction in the agency's first strategic guidance letter.

The last issue that I will talk specifically about is the debate about the options relating to transport, one “promoting” and the other “supporting”. We used the word “promoting” because, after careful internal deliberation with Transport Scotland, lawyers and others, we felt that it was the best word to use in respect of the role that the new agency should have. The option of using the words “supporting the enhancement of” had an element of vagueness, because it could import an obligation financially to contribute to matters that are the actual responsibility of other bodies.

Mr Greene set out the difference between the two options quite well, and I entirely agree that “promoting” should be preferred. It correctly encapsulates the role that stakeholders wish the new body to have—which it should have—without encroaching on the legal and executive responsibilities of other bodies, including Transport Scotland.

Rather than just read out all the stuff that I wrote earlier, I wanted to respond to members' concerns, which I am grateful to them for raising, and I hope that this collaborative and consensual discussion will lead to improvements to the bill. Whatever the committee decides, we are happy to continue to work with all members to get the best possible bill and to progress work prior to stage 3.

Amendment 7 agreed to.

Amendment 8 moved—[Fergus Ewing]—and agreed to.

Amendment 19 moved—[Colin Smyth].

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

Members: No.

The Convener: There will be a division.

For

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

Against

Lyle, Richard (Uddingston and Bellshill) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

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

Amendment 19 disagreed to.

Amendment 20 moved—[Colin Smyth]—and agreed to.

Amendment 21 moved—[Colin Smyth].

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

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
 Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Mountain, Edward (Highlands and Islands) (Con)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 9, Abstentions 0.

Amendment 21 disagreed to.

Amendment 22 moved—[Colin Smyth].

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

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Smyth, Colin (South Scotland) (Lab)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against

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

The Convener: The result of the division is: For 8, Against 3, Abstentions 0.

Amendment 22 agreed to.

Amendment 23 moved—[Stewart Stevenson]—and agreed to.

Amendment 24 moved—[Richard Lyle]—and agreed to.

Amendment 25 not moved.

Amendment 14 moved—[Gail Ross]—and agreed to.

Amendments 9 and 10 moved—[Fergus Ewing]—and agreed to.

Amendment 11 moved—[Fergus Ewing].

Amendment 11A moved—[Colin Smyth]—and agreed to.

Amendment 11, as amended, agreed to.

Amendment 15 moved—[John Finnie].

The Convener: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Peter (North East Scotland) (Con)
 Finnie, John (Highlands and Islands) (Green)
 Greene, Jamie (West Scotland) (Con)
 Mason, John (Glasgow Shettleston) (SNP)
 Mountain, Edward (Highlands and Islands) (Con)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Smyth, Colin (South Scotland) (Lab)

Against

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

The Convener: The result of the division is: For 8, Against 3, Abstentions 0.

Amendment 15 agreed to.

Amendment 26 moved—[Claudia Beamish].

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
 Mason, John (Glasgow Shettleston) (SNP)
 Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 Mountain, Edward (Highlands and Islands) (Con)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 3, Against 8, Abstentions 0.

Amendment 26 disagreed to.

Amendment 27 moved—[Colin Smyth].

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
 Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Mountain, Edward (Highlands and Islands) (Con)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 9, Abstentions 0.

Amendment 27 disagreed to.

Amendment 28 moved—[Colin Smyth].

The Convener: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
 Smyth, Colin (South Scotland) (Lab)

Against

Chapman, Peter (North East Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Mountain, Edward (Highlands and Islands) (Con)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 9, Abstentions 0.

Amendment 28 disagreed to.

Section 5, as amended, agreed to.

Section 6—Action plan

The Convener: Amendment 29, in the name of Colin Smyth, is grouped with amendments 30 to 39, 45 and 46.

Colin Smyth: Amendment 29 would set a requirement for the new agency to review its action plan annually. There would be no requirement for it to change the plan if it concluded that it still met its requirements. The agency would simply have to carry out an annual review to make sure that the plan was up to date. My amendment would enshrine best practice in law and ensure that the action plan could not be forgotten for years to come.

Amendment 31 would require the agency to consult local authorities while developing its action plan. I believe that that is a sensible provision that would ensure that there was local consultation during the development of the action plan.

Amendment 32 would require the agency to submit its draft action plan to local authorities for comment. John Mason has lodged an amendment that would require that it be submitted to the Parliament, which is perfectly reasonable. However, it is important that the plan also has local input, which is what amendment 32 seeks to achieve. In some ways, that is an alternative to the approach that is set out in amendment 33, to which I will speak in a moment. However, it seeks to ensure that local authorities would have an opportunity to give feedback on the action plan towards the end of the process. Ideally, that would be in addition to the consultation requirement that is set out in amendment 31, and would provide useful insight for local authorities and ensure that the agency works in partnership with the two local authorities.

10:30

Amendment 33 would require the agency's action plan to be agreed by local authorities as well as the Scottish ministers. It is, in effect, a stronger version of amendment 32, and would require local authorities to sign off the action plan. Again, the aim is to guarantee local input and collaboration between the agency and local authorities. It is crucial that we provide a mechanism to give local authorities a chance to respond to the action plan, but I would be happy to take a steer from committee members on whether that should be a statutory right to comment or a specific requirement to support the action plan. It is worth noting that there is precedent in law for such a proposal, in that, at the moment, local plans from the police and the Scottish Fire and

Rescue Service must be signed off by local authorities.

Amendment 37 follows on from amendment 33. As the Justice Committee highlighted recently, a weakness exists in the current sign-off process for local plans for the police and the Scottish Fire and Rescue Service, in that although such plans must be signed off by local authorities, no mechanism is in place should an authority say that it does not agree with a plan. Amendment 37 would ensure that a suitable process would exist should there be a dispute between a local authority and the new agency, although I hope that that would not arise if the organisations work together closely.

Amendment 34 would require the agency regularly to engage with local communities to gain feedback on its performance and receive views on what it should do in future. I believe that a requirement for community consultation should be set out in the bill. It is not good enough simply to say that something is best practice and then expect it to happen; it is important that we underpin it with a legal requirement. As I have said a few times today, there is no downside to enshrining best practice in legislation. It provides clarity on what is expected and helps to future proof the principles that have driven the agency's establishment. Amendment 34 is not prescriptive on what the consultation process should look like. It gives the agency flexibility in its approach and simply clarifies that, as part of its responsibility to keep the action plan under review, it should regularly consult the local community to gain feedback on its performance to date and its future work.

I am aware that amendment 39, in the name of Maureen Watt, proposes something similar. Although that would certainly improve the bill, I believe that amendment 34's proposed requirement for regular consultation is more appropriate than her proposed requirement to consult only on the development of the action plan.

Amendment 35 expands on amendment 34 by clarifying that local authorities, businesses, third sector bodies, social enterprises, trade unions and so on should be consulted as part of the agency's community engagement process. I believe that that would provide additional clarity on what is meant in amendment 34. The list of bodies in amendment 35 is by no means exhaustive; rather, it is a starting point to make clear the proposed scope of the consultation, in addition to amendment 34's requirement to consult people who live and work in the south of Scotland. Each of the bodies on that list has an important and unique perspective that would inform the agency's work. Amendment 35 would make it clear that they should be included in the consultation process.

Amendment 37 follows on from amendment 33, and I have probably covered it in my earlier comments.

Amendment 38 would require that the action plan be revised at least every five years, if that has not already been done during that time. As is the case with the requirement to review the plan annually, that simply sets a floor for regular revision. Such a timeframe is not unreasonable; indeed, I would hope that the plan would be revised sufficiently often that the requirement in amendment 38 need never be used.

Again, there is precedent for setting a timescale for revising plans. Members will recall that a specific timescale for revision of the forestry strategy was included in the Forestry and Land Management (Scotland) Bill, which was driven by this committee. It is important to set a timescale so that there is an upper limit for when the plan should be revised.

I think that I have covered all my amendments in the group.

The Convener: I think that you have.

Colin Smyth: I appreciate that there are quite a few of them.

I move amendment 29.

Maureen Watt: When we took evidence on the bill, we heard loudly and clearly that people across the south of Scotland wanted to shape the work of their agency. They are excited by the opportunities for growth that it will bring, but they want to ensure that their voice continues to be heard and that the agency will listen to their views and priorities. We as a committee wanted to enshrine that approach in the bill, and amendments 30, 36 and 39, in my name, would do that.

Amendment 39 would require the new agency to consult on its action plan, including on the development of a new or modified plan. It goes further and would ensure that the agency sets its consultation strategy and makes it clear whom it will consult, and why. That would give local people a formal channel through which to provide feedback on the performance and strategic focus of south of Scotland enterprise. As a result, it would enhance the accountability and transparency of the new enterprise body.

Amendments 30 and 36 are technical amendments to make that work. Amendment 30 flags the consultation duty section, and amendment 36 makes it clear that consultation must take place on modifications to as well as on replacing an action plan.

I agree with Colin Smyth that it is important that local authorities are consulted, but unlike him—I refer to amendments 31 to 33—I do not think that

their voice should have primacy or that they should be given any veto over the plans. Moreover, I do not think that the Scottish ministers should prescribe through regulations whom the new agency should consult. That is best left to those in the south of Scotland.

I am reluctant to see timetables for review prescribed in the bill. Public bodies are already required to do that, and we do not need to make additional provision for the new agency.

The amendments in my name strike the right balance. They would strengthen the bill by clearly providing a greater role for the people of the south of Scotland in shaping their new agency, and I ask members to support them.

Stewart Stevenson: Amendment 29 would basically require an annual review of the plan—in other words, the whole shebang would have to be looked at every year. It is worth saying that section 6(1)(c) of the bill creates the power for south of Scotland enterprise to

“modify its action plan at any time”,

subject to the Scottish ministers approving that. That is appropriate. I can see that south of Scotland enterprise may well wish to make amendments in a timeframe of a year or, indeed, less than that but, given the whole wheren of consultations that Colin Smyth proposes in his amendments, the requirement for an annual review would carry the very real danger that south of Scotland enterprise would spend all its time reviewing its plans, whereas its real objective is to support economic development, for example. That is the general point.

I have concerns about the specific wording of amendment 35. Proposed section 6(2)(2D) refers to

“businesses ... operating or otherwise having an interest in the South of Scotland.”

I simply do not know how that would be defined, because the provision is all-encompassing. The amendment appears to create a duty to find all businesses

“operating or otherwise having an interest in the South of Scotland”,

and that would be impractical.

The same observation applies to third sector bodies and trade unions under proposed section 6(2)(2D)(c) and (d).

Amendment 38 proposes a new section 6(5), which would state that

“If it has not previously modified its action plan in the 5-year period”,

the agency must modify the plan. It might be a brilliant plan that does not need modification in five

years. If it does not need modification, that is fair enough.

Colin Smyth: I am curious about the member's approach to the bill and his approach to the Forestry and Land Management (Scotland) Bill, in which he voted in support of a Government amendment that set a timescale on when the forestry strategy should be reviewed and amended. Somehow, he thinks that that should not apply to the south of Scotland enterprise agency.

Stewart Stevenson: I am simply looking at what is in front of me. I confess that I do not have the words relating to the Forestry and Land Management (Scotland) Bill in front of me, so I cannot make that comparison. I am sure that Colin Smyth would not mislead me in that regard.

The bottom line is that, if a plan is the plan that is needed, I am not sure why, statutorily, we would create a requirement to change it, because that change might be artificial. My issue is the wording of the amendment—it is slightly odd. I suspect that, in the real world, very few plans would survive for five years without being changed.

I am happy to support Maureen Watt's amendments.

Jamie Greene: I will try to rattle through the amendments in the group in a cohesive manner.

I will take amendments 29 and 38 together, because they are topical. I do not have a problem with inserting a requirement for an annual review. I think that the agency would naturally do that anyway, but I do not think that there would be any harm in putting the requirement for an annual review in statute. That does not mean that the agency should spend the whole year doing a review; nor does it necessarily mean that the plan must change every year. Amendment 29 does not say that—it simply says that the agency must cast its eyes on its plan at least once a year. I would like the agency to do that, and I think that it would expect to do that.

Such a review might simply say that the agency is happy with the plan as it is, and that it will keep calm and carry on. In that case, it will have done its review, which will be signed off appropriately. The review need not be a navel-gazing, laborious piece of work. Therefore, I support amendment 29.

I was minded originally to support amendment 38. However, I am concerned about what would happen if the plan were not modified at the end of a five-year period because the board saw no need to modify it. It could very well be that, after the fifth annual report—I repeat that I support there being annual reports—the board wants to continue along the same path, so there would be no need to modify the plan. On a technical level, would

amendment 38 require the agency to modify its plan?

I am sympathetic to Colin Smyth's aims, but I would not want there to be any unintended consequences, with a duty being placed on the board to do something that it does not need to do.

Colin Smyth: Will the member take an intervention?

The Convener: You will get a chance to comment when you wind up, but I will let you ask a brief question.

Colin Smyth: I am keen to know why the member's approach is slightly different from that which was taken in the Forestry and Land Management (Scotland) Bill. The wording in that bill is exactly the same as the wording that I have proposed, although the timescale is different.

Jamie Greene: We are not considering the Forestry and Land Management (Scotland) Bill—this is an entirely different bill for an entirely different agency with entirely different objectives. Members are perfectly entitled to take different views on the wording in the South of Scotland Enterprise Bill. However, I take Colin Smyth's point, and I appreciate that he has used similar wording.

As I said—perhaps Colin Smyth can think about this as other members speak—I am unsure whether, at the end of a five-year period, the agency would have to modify its plan. Could a continuation of the plan be a modification? In that case, I would be happy to support amendment 38. Perhaps the member could comment on that when he sums up.

On the other amendments in the group, there appears to be a choice between two camps. There are the amendments that were lodged by Maureen Watt and similarly worded amendments that were lodged by Colin Smyth. I am sympathetic to both, but I will outline my position on each of them.

I am minded to support amendments 30, 36 and 39 from Maureen Watt, which will provide for the consultation that people are looking for in the south of Scotland. It is important to include local authorities but the feedback that I have had from people in the south of Scotland is that they do not want local authorities to have a veto over the agency's decisions. Indeed, some people were adamant that they want no local authority involvement at all. To be sympathetic to the important role of local authorities in the south of Scotland, they should be part of the consultation process. Colin Smyth's amendments to that effect would perhaps be too prescriptive and binding on the role that local authorities would play.

10:45

Finally, although I do not support amendments 35 and 37, if they were to be agreed to, amendments 45 and 46 in later groups are linked to them and we would support those technical tidying-up amendments.

However, I am pleased to be able to tell Mr Smyth that I support amendment 34, which takes a more general and less prescriptive view of who should be considered in terms of the board's activities.

John Finnie: I like plans. I read a book about the Soviet Union and a dairy farm that used to have monthly production plans. People liked a break from the monotony, so they had fortnightly production plans, and they also became very popular, so they then had weekly production meetings. The phrase that I recall from that book was "eagle-eyed zealots" who were always on the lookout for anyone who would seek to put a plan into practice.

Therein lies the problems with a lot of this. It is entirely well-meaning but, despite what is being said, the focus of a significant part of the workforce will be on populating plans that will gather dust on shelves or be referred to occasionally.

I will not speak to all the amendments in the group. In this case, I think that Maureen Watt has got the balance right and I will support her amendments.

Richard Lyle: My reply to my colleague's comments is that communism did not work out very well, did it?

A company can have a plan but there has to be flexibility in its daily running. Most companies that have a plan review it. When I was on the council, planners continually reviewed plans and sometimes nothing got done, as far as I could see.

Yes, there should be a plan, but there should also be flexibility to ensure that the plan works. That is what a businessman, an entrepreneur or an official does every day of the week. As a boss said to me when I worked at the Royal Bank of Scotland, you have to look at the bigger picture.

The Convener: Cabinet secretary, it is now down to you to give the bigger picture.

Fergus Ewing: I will try to rise to the occasion, convener.

I am grateful to members for their contributions to the debate. We all want to achieve the same thing, and I am mindful of the fact that, at stage 1, the committee asked us to find a way to better consult the people who live and work in the south of Scotland.

I welcome Maureen Watt's amendments 30, 36 and 39. Indeed, if she had not lodged them, I might have been minded to do so. They ensure that consultation with people across the south of Scotland will continue by introducing a specific requirement for the new agency to consult local people. That was what the committee wanted the Government to do, and that is what we believe should be done without enfankling the new agency in an overly burdensome framework of overly prescriptive rules and regulations.

Maureen Watt's amendments are less prescriptive than, for example, Mr Smyth's amendment 34, which is at the same time both prescriptive and vague. It says that the agency "must regularly seek representations" from different people but—and this is not a criticism of Mr Smyth—it does not say what "regularly" means. Vagueness in legislation allows people to argue different things, and becoming enmeshed in side issues is never a good thing.

Mr Smyth's amendments 31 to 33, 37 and 46 deal with consultation with local authorities. The main reason for not accepting the amendments is that they would, in effect, give local authorities the right to veto plans. I do not think that the committee wants that and, as far as I know from my frequent engagement with them, neither do local authorities. No local authority should be able to direct an agency for the whole area about its plans. The desire is for the local authorities and the new agency to work together, and I am confident that they will do so because of the will that exists for that to happen. I urge members to reject Mr Smyth's well-meaning and well-intentioned amendments.

To be as helpful as possible, before stage 3 we will consider any further proposals on the key issue of accountability that members wish to put to me. The onus is on members. If they have any further thoughts after stage 2, I give the undertaking that we will carefully consider their proposals in the same way that we will collaborate with others.

I turn to the timetable and to timing issues. I point out that all public bodies are required by the Scottish public finance manual, which applies to public bodies, to review their corporate plans every three years. That requirement applies across the board. They are also required by the finance manual to produce an annual business plan.

Those are the rules that apply to Scottish Enterprise and HIE. There should not be a misalignment or disjunct between the other enterprise agencies and the new one. The new agency should be bound to operate in the same way as other public bodies with regard to reviews and business plans. We have made clear to the

other bodies that we expect them to align their planning cycles to a common three-year cycle, rather than having different three-year cycles.

Jamie Greene: I am a bit confused. Are you saying that the current enterprise agencies have one-year or three-year reviews of their action or other plans? Which plans are reviewed when? Amendment 29 asks for

"a review of the plan at least annually".

I presume that "plan" means the action plan, although that is not explicitly stated. I am trying to get my head around the difference.

Fergus Ewing: The position is that the enterprise agencies are required to review their corporate plans every three years. I put it to the committee that, given that the enterprise agencies are required to collaborate, as there are often issues that transcend boundaries—for example, companies operating in different parts of Scotland get help from different enterprise agencies, which have to collaborate—it makes a lot of sense for there to be alignment in the timing of their corporate plans and to have the same three-year cycle. That will require a little bit of synchronisation, if that is the right word, but that can readily be achieved. If a one-year review was required, that would be too frequent and would impose a significant burden on the agency and those consulted.

I have a specific point to make about that. I get the sense that Maureen Watt's amendments will be agreed to by the committee. Members should bear in mind that amendment 39 would import an obligation to consult when a plan is modified. If Mr Smyth's proposal to review a plan every year is agreed to, we must accept that if a plan is to be reviewed, the corollary is that there must be an opportunity to modify it as a result of that review. In order to modify it, there would have to be a consultation, which would import an annual round of consultations. The consultation process is not straightforward, so that would impose an unduly burdensome process. I am sure that Mr Smyth does not wish to do that. If members are minded to agree to Ms Watt's amendments, I urge them not to agree to the one-year review suggested by Mr Smyth.

Finlay Carson: Will the cabinet secretary take an intervention?

Fergus Ewing: In a moment—I want to make one final point.

If Mr Smyth agrees to withdraw amendment 29 and not to move his other amendments in the group, I will be happy to bring something back at stage 3 to provide for an aligned three-year cycle, so that we have clarity on such matters.

Convener, if I am permitted to give way to Mr Carson, I will do so.

Finlay Carson: I have a simple question. Is there an expectation, guide or policy about how extensive a review is required to be?

Fergus Ewing: I am not sure that there is, but I will come back to Mr Carson if I am incorrect. If one agrees that a plan should be reviewed, the review will of necessity and by definition encompass the whole plan. In contrast, if a partial review were to take place, that would need to be specified. If a bill says that a plan must be reviewed, all of the plan falls to be reviewed and the outcome of the review must result in the opportunity to modify the plan. If the plan were to be modified, that would entail a duty to consult every year, which would be an unreasonable burden.

Richard Lyle: Will the cabinet secretary give way?

Fergus Ewing: If the convener is so minded, I am happy to take a further intervention.

The Convener: Briefly, Mr Lyle.

Richard Lyle: If the enterprise body had to continually review and consult on its plan—it would have to consult, because otherwise people would say that it had not consulted local people, and one reason for establishing the body is to improve things—would it get mired in a lot of paperwork and meetings? The whole year could be away doing that.

Fergus Ewing: There is merit in what Mr Lyle says. Plans are important, but implementing them is even more important. We all wish the body to do the job that it is expected to do. It will be judged by how it does that job and not—I suspect—by the content of its plan, no matter how perfectly worded and comprehensibly drafted it is.

I encourage members to support Maureen Watt's amendments. I invite Mr Smyth to withdraw amendment 29 and not to move his other amendments in the group, and I refer to the undertakings that I have given the committee.

Colin Smyth: A lot of assertions have been made about the amendments in my name, but many of those assertions do not reflect the wording of the amendments or relate to their practical implementation.

Amendment 29 would require

“a review of the plan at least annually”,

but it does not say that the plan would have to be modified.

Richard Lyle: I see Mr Smyth's point—*[Interruption.]*

The Convener: I was slow in calling Richard Lyle's name, so the microphone was slow in coming on. I am sorry; that was my fault.

Richard Lyle: Knowing Colin Smyth, I think that he would ask for local people to be consulted as part of the annual review. As I said, if the agency has to spend time annually consulting, reviewing and holding public meetings—we have all held them and been at them, and we know how long it takes to get a view together—that will waste a lot of time.

Colin Smyth: The consultation requirements would be those that are set out in the bill—I will come to amendment 39 in a moment. Amendment 29 makes no reference whatever to consulting every time the body reviews its action plan. Amendment 39 says that, if the body were to modify the plan, it would be required to consult, but amendment 29 does not refer to consultation when the plan is reviewed.

Highlands and Islands Enterprise publishes an annual operating plan; the one that is in front of me is for 2018-19. It sets out such a plan every year. I am at a loss to understand why people think that south of Scotland enterprise should not have an annual plan, although one is produced for Highlands and Islands Enterprise.

Jamie Greene: I said that I am sympathetic to the idea of an annual review of the plan, which is a bona fide request to make of the agency.

However, having listened to the debate, I have a concern. I support amendment 39, on consultation on the action plan, but I do not want to end up in a situation in which, if we support both amendment 29 and amendment 39, the plan would have to be reviewed and consulted on annually. Even if the board's view was that the plan should not be modified, which, as Colin Smyth has said, would be perfectly acceptable, having to go through a consultation process—as is right and proper—before that decision was made would become the onerous task that I said it should not be. I am in a difficult position.

11:00

Every member is addressing the issue from an important angle. I wonder whether there is a better way for the committee to reflect on all the valid points that have been made and come back with something that works. I hope that we can get this right at stage 3.

Colin Smyth: In the debate, all sorts of myths have been invented about what consultation should look like. My view is that any organisation should have on-going consultation. That happens at the moment, with the predecessor to the south of Scotland enterprise agency carrying out regular

discussions and consultation meetings across the south of Scotland. It has done one set already and is about to carry out a similar process in only its second year.

A prescription for consultation is not set out in my amendments—it is not set out in anyone's amendments. It is up to the new agency to set out how it plans to consult, which should not be an onerous task. I return to the point that Maureen Watt is not proposing that there should be a consultation process every time the annual action plan is reviewed. I repeat that Highlands and Islands Enterprise has an annual operating plan, and I am at a wee bit of a loss as to why we should not have one in the south of Scotland.

Gail Ross: So far, we have had four descriptions or terms for the plan: a strategic plan, an operating plan, a corporate plan and an action plan. Are they all the same thing? Is the HIE operating plan different from an action plan? I am confused about terms that are being used interchangeably.

Colin Smyth: You would have to ask the cabinet secretary why the phrase “action plan” is specified in the South of Scotland Enterprise Bill. It is not my language; the people who drafted the bill specified an action plan. I can only work on that basis, and that is why my amendments refer to an action plan. The language is different from that used in the legislation that established Highlands and Islands Enterprise.

It is perfectly reasonable to ask the new agency to review its plan annually. That is different from saying that it has to modify its plan annually, which would be a decision for the new agency.

The Convener: I will try to add a bit of clarity. I, too, am confused about the plans. I noticed in what the cabinet secretary said some willingness to discuss the issue. It seems appropriate to try to get the plan right, so that it is not a plan for a plan, to be reviewed on a reviewable basis, whether that happens annually or there is a set period of five years. The plan must suit its purpose. I favour getting the cabinet secretary to draw up a process to ensure that the plan is appropriate and that it is reviewed at the appropriate time, which could be discussed at stage 3. Would Colin Smyth support that?

Colin Smyth: That is the point that I was coming to, convener. The two aspects to the proposals are the requirement to review the plan and the requirement to modify it after a certain period. As I said, the precedent for that is this committee's support for a Government amendment to the Forestry and Land Management (Scotland) Bill, which said that the forestry strategy had to be modified after a set period. The wording that I used in relation to

modifying the action plan is exactly the same—only the timescale is different.

I would support a process coming forward. My main concern is that there are currently no timescales in the bill. It is perfectly reasonable to have a debate if there is a commitment to bring forward proposals at stage 3 on setting timescales and requirements for the new agency as to when its plan has to be reviewed and when it has to be modified if there are no changes following the review.

I set a five-year limit because I would be astonished if the action plan from the new agency was not modified at all within a five-year period, given how the economy changes. I certainly share the views and comments expressed by the convener in that respect.

On amendment 39, in the name of Maureen Watt, my one slight concern is that it talks about the agency carrying out consultation

“Before making or modifying its action plan”.

I find that quite restrictive, as it would mean that the agency would consult only at the start of the process of making its plan or when it was modifying the plan. The process of consultation must be more on-going than that. I am happy to support amendment 39, but the wording needs to be looked at in more detail to ensure that consultation does not take place just when the plan is modified, because that might be five or 10 years down the line. Consultation should happen more regularly than that. As I have said, I am concerned about the wording, but I am happy to support the amendment at this time.

The cabinet secretary suggested that my aim was for local authorities to have a veto on the action plan. I stress that amendment 32 in my name refers to having “regard to any comments” made by the local authorities. That is no veto—no lawyer will tell you that having regard to something is the same as having a veto over it. It is important that we do not mislead people by implying that the amendment gives the local authority a veto over the action plan. All it says is that the local authority should be consulted and that the agency should “have regard to” the authority's comments.

Richard Lyle: One of the member's amendments—amendment 37—says:

“The Scottish Ministers must by regulations make provision for how South of Scotland Enterprise is to proceed where a draft of, or a draft modification of, its action plan is rejected by ... a local authority”.

I am sorry, but if he does not think that the local authority is going to try to interject with regard to the south of Scotland enterprise board, I have to disagree with him. It is something that the local authority could do.

If a cabinet secretary said to me, “I’ll work with you to sort out what you’re asking for,” I would grasp that invitation as soon as possible and not move that particular amendment. I therefore ask the member not to press or move any of his amendments and to work with the cabinet secretary to get what he wants. After all, that is what we all want.

Colin Smyth: I am happy to take advice from Mr Lyle at every opportunity, but it is important not to mislead the committee. In considering amendments 32 and 33, I come back to the point that, as I made clear in my earlier comments, one is an alternative to the other. One amendment would give the local authority the opportunity to decide whether it agreed with the action plan. That is exactly the same as what happens with the police and the fire service at the moment, and I note that Mr Lyle supported the legislation that deals with the local plan for the police and the fire service. The weakness with that provision is, as the Justice Committee recently pointed out, the lack of a resolution process for any dispute that might arise. What I am saying is that if the committee were to agree to amendment 33, a dispute resolution process would have to be put in place.

However, amendment 33 is an alternative to amendment 32, and amendment 32 does not give the local authority a veto over the action plan. It simply requires the local authority to be consulted and the agency to “have regard to” the authority’s comments. Surely nobody is suggesting that having regard to the local authority’s comments is somehow the same as giving the local authority a veto. It is important to point out that there are two amendments, and that they effectively give the committee a set of options.

Fergus Ewing: My argument was that the potential consequence of amendment 37 was to confer a veto on local authorities. It specifically says that where a local authority rejects

“a draft ... or a draft modification of”

the plan,

“Scottish Ministers must by regulations make provision for how South of Scotland Enterprise is to proceed”.

In other words, SOSE would put forward a draft plan and, if the local authority rejected it, Scottish ministers—the Scottish Government—would have to tell the agency what to do.

I do not recall anybody during the consultation process suggesting that the Scottish Government should step in and have the power that is set out in amendment 37, which is basically to direct the new agency on what to do in those circumstances. Perhaps I did not fully explain that that was how I interpreted amendment 37 and why I suggest that it should not be agreed to.

Richard Lyle: Will the cabinet secretary take an intervention?

Fergus Ewing: I do not think that I can; I am not the speaker.

The Convener: Hold on. I will let Colin Smyth back in, but we are getting to the stage of having a circular debate. I am close to saying that it is time for him to press or withdraw amendment 29 so that we can look at the other amendments. He can let Richard Lyle in, if he feels that it is appropriate to do so.

Colin Smyth: It is important to respond to the cabinet secretary’s point. Amendment 37 directly follows on from amendment 33. If we go down the route of allowing the local authority to decide whether it agrees with the action plan, which is what happens in relation to the police and the fire service, my view is that there should be a resolution process. One of the current major weaknesses in the legislation on the police and the fire service is that if there is a disagreement—if a local authority disagrees with the local plan for the police service, for example—there is no resolution process. The Justice Committee made it very clear that it thought that that was wrong and it is asking the Government to change it.

Again, I make the point that the alternative amendment simply allows the local authority to comment on the action plan, and the agency should have regard to those comments; it does not give the local authority a vote or say on the plan or a veto over it. Amendment 32 is an alternative to amendment 33, and amendment 37 would be moved only if amendment 33 was moved. It is important to place that on the record.

Richard Lyle: Will the member take an intervention?

The Convener: As far as I am concerned, this is critical legislation and it is right that, if members want to intervene and the speaker is prepared to listen to them, interventions should be taken. It is up to Colin Smyth whether he wants to take Mr Lyle’s intervention, but then I will ask him to wind up on the amendment.

Colin Smyth: I am happy to take the intervention.

Richard Lyle: The member has just explained that he has two counter amendments. I go back to amendment 37, which says that, if the council objects to the plan, the issue has to go back to the Scottish ministers. That is surely not the intention. At the end of the day, if the cabinet secretary is showing good grace by saying, “Let’s work on this,” I suggest that the member should work on it.

Colin Smyth: I am happy to work on the amendments. What I am not happy about is that people keep making frankly inaccurate references

to the amendments. Amendment 37 directly follows on from amendment 33. If amendment 33 is agreed to, there should be a resolution process in case there is a dispute. I come back to the fact that that is the very point that the Justice Committee made recently about the legislation for the police and the fire services. If amendment 33 is agreed to, amendment 37 would provide for the resolution process. However, there is an alternative to amendment 33—amendment 32, which does not require a resolution process.

Maureen Watt: Will the member take an intervention?

Colin Smyth: I am happy to.

The Convener: This is the last intervention.

Maureen Watt: As Colin Smyth has gone on, he has shown why it is important that we have flexibility and balance. From what he is saying, it feels as though the new enterprise agency will be bound up in consultation all the time. It is important to have consultation on the initial strategic plan, and flexibility needs to be built into that. The agency needs to get on with the job rather than constantly putting things out for consultation, which is what I feel that Colin Smyth's amendments would bind it to doing.

The Convener: I ask Colin Smyth to summarise very briefly and then to press or withdraw amendment 29.

Colin Smyth: I have been trying to summarise for some time, convener, but it is important to point out that people's interpretation of the amendments is slightly different from the wording. I am happy to leave it at that.

The important point is that a principle is missing from the bill, which is the need to consult the community in the south of Scotland. That is a major weakness in the bill as it stands, and I hope that, if there is a commitment from the Government to find wording that works between now and stage 3, we can find a way to meet that need.

Amendment 29, by agreement, withdrawn.

11:15

Amendment 30 moved—[Maureen Watt]—and agreed to.

Amendment 31 not moved.

The Convener: Does Colin Smyth wish to move amendment 32?

Colin Smyth: I will not move amendment 32, based on the commitment to look at the wording at stage 3.

Amendment 32 not moved.

Amendments 33 and 34 not moved.

The Convener: Does Colin Smyth wish to move amendment 35?

Colin Smyth: Again, on the basis of the commitment to look at the wording at stage 3, I will not move amendment 35.

Amendment 35 not moved.

Amendment 36 moved—[Maureen Watt]—and agreed to.

Amendment 37 not moved.

The Convener: Does Colin Smyth wish to move amendment 38?

Colin Smyth: Again, I will not move amendment 38 at this stage, on the basis of the commitment to look at the wording at stage 3.

Amendment 38 not moved.

Section 6, as amended, agreed to.

After section 6

Amendment 39 moved—[Maureen Watt]—and agreed to.

The Convener: Before I call amendment 40, I point out that we have a series of amendments that are all in groups on their own, so I am sure that we can be particularly focused on them.

Amendment 40, in the name of Colin Smyth, is in a group on its own.

Colin Smyth: Amendment 40 would create a duty on the agency to develop an equalities strategy as part of its action plan and to report against that regularly. The agency has an important role in tackling inequality, so we need an element of oversight and accountability in relation to its work in that regard. The strategy and, crucially, the requirement to report against it will provide that. In setting up a new agency, we should do all that we can to embed best practice from the outset, and that includes requiring the agency to produce an equalities strategy.

Again, I have tried not to be overly prescriptive with regard to what exactly that should involve, in order to give the agency flexibility. It is relatively common practice for bodies to produce strategies and reports of this nature. For example, Skills Development Scotland reports regularly on progress with regard to equalities. Amendment 40 would require the agency to proactively think through what it can and should do in that regard, to set out specific plans and, crucially, to be accountable for its progress, all of which are highly likely to improve how the issues are handled and the priority that they are given by the agency. That approach should be best practice for such

organisations and so should be specified in the bill.

I move amendment 40.

Fergus Ewing: I reassure the committee that equality will be integrated into all that the new agency does. In essence, my argument is that what is being sought is already in law. Once the agency is established, it will be added to the list of public bodies that are regulated by section 149 of the Equality Act 2010. The public sector equality duty will automatically apply to the agency, because the Scottish Government will make the necessary consequential legislative changes as soon as possible after the bill is passed. That is the normal practice but, because the issue is linked to reserved legislation, we cannot do it through schedule 2, as we have done for other legislation. It is not within the Parliament's legislative competence so to do.

All public authorities in Scotland are already required to produce reports on mainstreaming equality. Amendment 40 would place on the new body an additional reporting requirement that is neither necessary nor proportionate. However, I undertake to give further consideration to how we make clear the importance of equality and tackling inequality as part of the agency's work, as I fully appreciate the point that Mr Smyth is seeking to make. For those reasons, I hope that he will not press his amendment but, if he presses it, I ask members not to support it.

Colin Smyth: It is important to point out that what is stated in the amendment is not currently in law, because it is specifically about the new agency. It says that the agency's action plan

"must include a strategy setting out how South of Scotland Enterprise will ... comply with its duties under the Equality Act 2010"

and

"promote equalities in pursuing its aims."

It specifically requires that to be included in the action plan and requires the agency to report on performance. That is very different from what the law currently states, under which there will be no requirement for the agency to set that out specifically in its action plan.

However, I am happy to take on board the cabinet secretary's comment that we should look to see how we can be more specific about the agency's role. I hope that that will lead to an amendment, or a very clear process, from the Government ahead of stage 3.

The Convener: Do you wish to press or withdraw amendment 40?

Colin Smyth: Given the cabinet secretary's commitment, I seek to withdraw it.

Amendment 40, by agreement, withdrawn.

Section 7—General powers

The Convener: Amendment 41, in the name of John Finnie, is in a group on its own.

John Finnie: The group is entitled "Powers not to be used to contribute to arms trade". Although comparisons have been made with Highlands and Islands Enterprise, it does not currently have the general power that is set out in section 7. I made a number of inquiries with Highlands and Islands Enterprise to establish what moneys it has provided to the arms sector, and I got a reply detailing several companies, some of which had received substantial, six-figure sums. Following that, I had a meeting with the chief executive of Highlands and Islands Enterprise.

I want to be fair and balanced, as ever. Where someone owns a company that makes batteries, for example, one of their products might go into private cars but also into tanks. The fact that the company makes batteries does not mean that it is necessarily involved in the arms trade, so there is an important distinction there.

Members will be aware that, in a previous session, I asked questions on the issue and my Green colleagues have done so in the current session. Most recently, my colleague Ross Greer asked a question that drew the unequivocal and very reassuring reply from the Scottish Government:

"The Scottish Government has not used public money to support the manufacture or export of munitions from Scotland."

That is a clear statement. It is unfortunate that the next sentence begins with the words

"However, we recognise the vital role that Aerospace, Defence and Marine engineering sectors play in Scotland's economy".—[*Written Answers*, 23 February 2018; S5W-14271.]

Having taken reassurance from the meeting with the chief executive of Highlands and Islands Enterprise, I was surprised in, I think, the following week to receive an invitation—this will not come as a surprise to you, convener, because you will have received it too, along with Ms Ross—to a free workshop at the Inverness campus for local businesses

"to find out how the region can benefit from opportunities in the aerospace, defence, security and space industries."

The event was

"organised by Highlands and Islands Enterprise ... and ADS Scotland which is the Scottish branch of the aerospace, defence, security and space industry trade organisation, ADS."

We have repeatedly heard fine words from the Scottish Government, which has talked about UN

sustainable development goal 16, on peace, justice and strong institutions. The Government was asked what assessment had been made in relation to that.

People may well ask where the definition used in amendment 41 comes from. It is from the Stockholm International Peace Research Institute.

The issue is very clear. The finite public resources that are available to be spent in the south of Scotland should be directed to constructive and productive uses that benefit the whole of humanity, particularly the people of the south of Scotland.

I am optimistic that, given all those previous pronouncements, SNP members will have no difficulty in lending their support to the very modest proposal in my amendment.

I move amendment 41.

Mike Rumbles: So that those who are listening are aware of my background, I point out that I spent 15 years in the Army both at home and abroad and was involved in military aid to the civil power and other issues.

Rather than talk about the arms trade, as John Finnie has just done, I will talk about his amendment. His amendment is not about the arms trade. The arms trade is a serious subject that deserves to be treated seriously, but amendment 41 does not do that. The amendment would lead to the people of the south of Scotland facing serious situations.

In amendment 41, the definition of “arms trade” refers to sales for “domestic procurement” and the definition of “military services” includes providing “operational support”. If there was, God forbid, a crisis in the south of Scotland, the amendment—if it is passed into law—would prevent the agency from working with any other organisation or body to support military aid to the civil power in an emergency. In my view, it is an irresponsible amendment and we should have nothing to do with it.

Stewart Stevenson: The amendment states:

“South of Scotland Enterprise may not do anything which contributes financially to the arms trade”.

That is an all-encompassing definition that creates substantial difficulties, which I will come back to.

In proposed new subsection (3B), the definition of “military services” is services that are

“specifically provided to support military purposes, including ... information technology”.

If the military buys software from a computer retailer to run on a personal computer, it would certainly appear to be the case that that would be

information technology that is specifically provided to support military purposes.

The definition goes on to include “intelligence”. I want the intelligence services, including the security services, to continue to do their job. In 1967, I was a laundry van driver and one of my customers was a Government Communications Headquarters outstation, where I took roller towels and collected soiled roller towels weekly. That activity would be supporting the intelligence services and presumably contributing to their financial viability.

The definition of “military services” also includes “training”. One of the important parts of training, which I think John Finnie would wish to support, is training that relates to diversification of companies that are currently involved in the arms business into civilian business. It would appear that the provision of training that would help diversification would be banned under amendment 41.

Without seeking to engage on the principle that I think John is trying to address, the construction of the amendment creates real difficulties, such that it would be all but impossible for south of Scotland enterprise, or any other enterprise agency, to comply with the specific wording.

Jamie Greene: Amendment 41 does not merit huge swathes of our time, but it is important to address the point. I commend Mr Finnie for using the bill to make his point, which he has made well but, as far as amendments go, it is erring on the side of bonkers.

We should consider the strategic small and medium-sized enterprises operating in the south of Scotland that will look towards the new agency for assistance. I point to companies such as Penman Engineering in Dumfriesshire, which makes armoured vehicles for military services. What would happen if such a company approached the agency to ask for support to expand and develop its business and employ more local people or take on more apprentices? Amendment 41 would prevent the agency from dealing with such companies, and we just cannot have that.

11:30

Mr Finnie has made his point about the arms trade but, unfortunately, amendment 41 is so all-encompassing that it includes things such as the provision to our military of logistical support and facilities management services. That could cover anything—for example, it could cover the production of UHT milk for forces and squaddies or the making of woolly jumpers in the Borders. I say with all due respect to Mr Finnie that I cannot see how the committee can support an amendment that would restrict so many small and medium-sized businesses that operate in the

south of Scotland. The agency should have its arms open and should be all-encompassing.

Richard Lyle: I would love to live in a world where companies did not supply arms to other countries to kill people but, sadly, that is the world that we live in. Mr Finnie's point is about the arms trade. To me, that is guns, planes and bombs. What about tyres for planes or plastics that might be made down in the south of Scotland? Mr Finnie's amendment would cover anything that goes into a vehicle or a plane, as well as personal equipment. Mr Greene mentioned jumpers—soldiers who go to the Arctic might need a type of jumper or undergarment that is made in the south of Scotland.

I agree with Mr Finnie on the supply of arms—I wish it would stop but, sadly, it will not. Amendment 41 does not cut it, and I will not support it.

Finlay Carson: I strongly urge the committee to reject amendment 41. As Jamie Greene mentioned, in Dumfries we have a successful company that makes specialist and armoured vehicles. It is a fantastic example of enterprise and entrepreneurial behaviour in the south of Scotland, and it would be dreadful to think that an amendment such as amendment 41 might restrict that company's ability to grow and employ people.

The Convener: I have a brief comment about operational support for the armed services. One needs to be careful in this area, because—I speak from experience—the armed services are sometimes deployed on peacekeeping missions. If we were to hinder their ability to carry out peacekeeping, that would be detrimental. There are also soldiers who are deployed to prevent poaching in Africa. Mr Finnie's amendment would deny the new agency the opportunity to deal with companies that provide operational support for that. I am not sure that that is what he intends to do but, to my mind, that would be a consequence of the way in which amendment 41 is written. For that reason, I will not support it.

Stewart Stevenson: Convener, I should have made a declaration of interests: I am a committee member of the Highland Reserve Forces and Cadets Association.

The Convener: I am sure that, as you do not receive any remuneration for that, that is fine.

After we have heard from the cabinet secretary, I will come back to John Finnie.

Fergus Ewing: As the First Minister has made clear, the Scottish Government and its enterprise and skills agencies do not provide funding for the manufacture of munitions. Our agencies' support is focused on helping firms to diversify and to

develop non-military applications for their technology.

Although our enterprise agencies do not support the manufacture of munitions, they recognise the importance of the aerospace, defence and marine sectors in Scotland, which employ many young graduates in science, technology, engineering and mathematics. They work proactively with those sectors to help them to diversify their activities and to grow and sustain employment. That position would apply to the new agency as well.

Amendment 41 would penalise businesses that applied for support with such activities. It would also impact on small businesses, which dominate the rural economy in the south of Scotland and which might provide goods or services to main contractors, as Mr Greene and Mr Lyle pointed out.

As the committee will be aware, there are companies in the south of Scotland that operate in the area of defence. The new agency should be able to support them with diversification and non-military applications for their technology. The defence, aerospace and marine sectors in Scotland are very important to our economy and, if amendment 41 were agreed to, it could damage the contribution that companies in those sectors make, thereby putting jobs in the south of Scotland and elsewhere at risk.

The new agency provides the opportunity to deliver a fresh approach and to promote economic growth in a balanced way. As well as attracting inward investors, it will have the ability to support businesses in the area to establish and grow, and we want to ensure that it has the flexibility to do that. For that reason, I invite members not to agree to amendment 41.

John Finnie: I thank members for their contributions, but I think that some of them have not read amendment 41, which is, of course, competent or else it would not be in front of us.

Mr Rumbles's comments are incorrect, because proposed new subsection (3B) sets out that the term "military goods" refers to goods that are designed "for military purposes", so the amendment would not affect the fight against poaching or the making of woolly jumpers. We need to get the terminology correct.

Diversification is commendable and everyone wants to encourage it. However, the Scottish Government gave £2 million to Lockheed Martin, which is a company that made a \$0.25 billion profit a couple of Novembers ago, although the money was dressed up as money for the University of Glasgow. Raytheon has also received money, and it is complicit in the slaughter of innocent people in Yemen, where there is now a famine.

It is surprising that Mr Stevenson said that he was not seeking to engage on the principle. However, there is a principle behind amendment 41. If there was an opportunity to provide public moneys to one of two bodies, one of which was involved in providing military goods for military purposes, I hope that the money would be given to the body that was not involved in those activities. However, the evidence suggests that that would not be the case.

We have the opportunity to do something very modest. I hear what members have said, but I wish to 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

Finnie, John (Highlands and Islands) (Green)

Against

Chapman, Peter (North East Scotland) (Con)

Greene, Jamie (West Scotland) (Con)

Lyle, Richard (Uddingston and Bellshill) (SNP)

Mason, John (Glasgow Shettleston) (SNP)

Mountain, Edward (Highlands and Islands) (Con)

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

Rumbles, Mike (North East Scotland) (LD)

Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

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

Abstentions

Smyth, Colin (South Scotland) (Lab)

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

Amendment 41 disagreed to.

Section 7 agreed to.

Sections 8 to 13 agreed to.

The Convener: At the outset of the meeting, I said that we aimed to complete stage 2 today but that we would see how we got on. Unfortunately, it is clear that we will not be able to complete the rest of stage 2 today. We have got as far as we are able to go, so next week we will need to pick up from where we left off today. I remind members that amendments to the remaining sections of the bill can still be lodged, and that the deadline for doing so is 12 noon on 9 May, which is tomorrow.

We have other items on our agenda that, unfortunately, we will be unable to get to, so they will be rescheduled.

I thank the cabinet secretary, his officials and everyone else for attending today's meeting, and I look forward to the early start of next week's meeting.

Meeting closed at 11:38.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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