



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 19 November 2019

Session 5



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ECONOMY, ENERGY AND FAIR WORK COMMITTEE
32nd Meeting 2019, Session 5

CONVENER

*Gordon Lindhurst (Lothian) (Con)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Jamie Halcro Johnston (Highlands and Islands) (Con)
*Dean Lockhart (Mid Scotland and Fife) (Con)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Gregor Boyd (Scottish Government)
Neil Findlay (Lothian) (Lab)
Kate Forbes (Minister for Public Finance and Digital Economy)
Rhoda Grant (Highlands and Islands) (Lab)
Derek Mackay (Cabinet Secretary for Finance and Fair Work)

CLERK TO THE COMMITTEE

Alison Walker

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Economy, Energy and Fair Work Committee

Tuesday 19 November 2019

[The Convener opened the meeting at 09:47]

Decision on Taking Business in Private

The Convener (Gordon Lindhurst): Good morning, and welcome to the 32nd meeting in 2019 of the Economy, Energy and Fair Work Committee. I ask everyone in the public gallery to turn off any electrical devices or to set them to silent.

Agenda item 1 is a decision on whether to take an item in private. Do members agree to take agenda item 5 in private?

Members indicated agreement.

Subordinate Legislation

Official Statistics (Scotland) Amendment Order 2019 [Draft]

09:47

The Convener: Item 2 is subordinate legislation. I welcome Kate Forbes, who is the Minister for Public Finance and Digital Economy. She has with her Gregor Boyd, who is a senior statistician from the office of the chief statistician and data officer, and Poppy Wilson, who is one of her officials.

I will hand over to the minister to allow her to make a very brief opening statement on the instrument.

The Minister for Public Finance and Digital Economy (Kate Forbes): Thank you, convener—it will be brief.

Our aim in updating the Official Statistics (Scotland) Order 2008 is to increase the quality and value of statistics that are used to inform debate. To support that aim, we have been working with a range of public bodies to build their statistical capabilities. However, to be able to produce official statistics, non-Crown public bodies need to be listed in legislation and named by order.

The purpose of the amendment order is to extend the definition of official statistics in the United Kingdom Statistics and Registration Service Act 2007 to include statistics that are produced by seven non-Crown bodies. Those are Bòrd na Gàidhlig, NHS Education for Scotland, Public Health Scotland, the Scottish Fire and Rescue Service, the Scottish Qualifications Authority, Skills Development Scotland and VisitScotland. Bringing those public bodies into the scope of official statistics will, we hope, provide public reassurance of the quality of the statistics that they produce and ensure that they are as transparent as possible.

The 2008 order was previously amended in 2012, when five additional bodies were named. Since then, a wide range of organisations have been developing their analytical functions and are now keen to be recognised as producers of official statistics. Following consultation this year, we recommended adding those bodies.

Naming additional producers of official statistics will bring even more data and statistics into the scope of the UK Statistics Authority's "Code of Practice for Statistics" and will ensure that the statistics that are produced by the seven bodies can be designated as official. It means that they will produce and publish to the professional

standards that are set out in the code. Incidentally, the UK Statistics Authority is a non-ministerial department that was created by the Statistics and Registration Service Act 2007, with a statutory objective to safeguard and promote the quality of official statistics.

We have engaged with a number of organisations that produce statistics in Scotland to discuss bringing their statistics into the definition of official data. Our approach is to name only the bodies that are now in a position to produce official statistics and have the resources and data in place to produce high quality official statistics. We will continue to engage with public bodies and declare any official candidates in the future. I am happy to take any questions.

Andy Wightman (Lothian) (Green): Thank you, minister. You said at the end of your statement that the bodies are in a position to produce official statistics and have the resources to do so. What process has been under way to allow you to come to that conclusion?

Kate Forbes: There has been an active process over the past few years. Each of the seven bodies has a slightly different story with regard to its progress to the point where it believes that it has the capability with regard to the integrity of its data and the resources to support the production of the statistics. The new order has been under consideration for several years. The first order was scrutinised in, I think, 2008, and when we previously came before the committee, we set out our belief that an orderly approach to naming new producers of statistics was in the best interest of maintaining trust. We have taken time to consider which bodies are in a position to be named and have engaged with them along the way. For example, the Scottish Fire and Rescue Service has probably been in a position to produce those statistics for longer, and others have probably taken a bit more time to get there.

Andy Wightman: My question was about what process has been undertaken to ensure that the organisations have the capacity and resources. You said that they believe that they have the ability. Did the UK Statistics Authority undergo some process with them? Is it more than just a belief?

Kate Forbes: I will ask Gregor Boyd to take you through the process.

Gregor Boyd (Scottish Government): The process has been led by the office of the chief statistician in the Scottish Government. We have involved the regulator, and we have had joint events with the regulator for the non-Crown bodies to help them to understand what is required of them and to satisfy the chief statistician that the bodies are ready to produce official statistics.

Andy Wightman: Thank you.

The Convener: I have a question for Mr Boyd. Is there a quality assurance scheme to ensure that those organisations and others are producing reliable statistics on an on-going basis?

Gregor Boyd: This is just the start of the process. We are keen to support the organisations and the producers, and we will do so. How it will work is that the office of the chief statistician will make available professional support, training and guidance to the organisations. Each organisation will be allocated to the analytical topic area in the Scottish Government that is most relevant to them and will be provided with day-to-day advice and support by it.

The Convener: Your answer is about advice and support. My question was about how you will ensure that the quality of the statistics that they produce meets the standards. What checks will be in place to ensure that?

Gregor Boyd: That is not quite a role for us. We see the Office for Statistics Regulation as being responsible for making sure that the organisations produce stats of the required quality.

The Convener: Minister, is that correct? Who is responsible for ensuring that the statistics that are produced meet the standards?

Kate Forbes: There are two perspectives on that. The first is about ensuring that the quality of the core data is adequate, for which there will be the on-going support that Gregor Boyd spoke about to ensure that the bodies have the resources and capability to produce the data. When the data is published, the regulator's role is to ensure that the data that is produced continues to meet the high standards that are expected.

The Convener: Thank you. The deputy convener has a question.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Minister, I want to put a marker down with this question. When the organisations produce statistics for us, will they be able to report per constituency? My understanding is that there is not much statistical output in the Parliament that relates to our constituencies. I am sure that it would be of interest to those of us who represent constituencies to be able to understand what is happening in them. It is very rare to get such understanding. I want to put down a marker for the possibility of moving towards that at some stage.

Kate Forbes: That is an interesting observation and I will take it away with me. It is for those arm's-length organisations to determine the format in which they publish the data, but your point is certainly one to be raised with them. I believe that the committee has already had sight of what data each of the bodies will produce. Obviously, some

parts of that data would be easier than others to cut on a more local basis.

Gregor Boyd: As part of the Scottish Government's offer to those organisations, we will provide them with access to, and encourage them to use, the statistics.gov.scot open data platform, which is our means of disseminating small area statistics, including at constituency level. We want to publish as much as we can at those levels.

Willie Coffey: Thank you.

The Convener: As there are no further questions from members, we move to agenda item 3, which is the formal debate on the motion to approve the affirmative instrument. As no member wishes to speak, I invite the minister to simply move the motion.

Motion moved,

That the Economy, Energy and Fair Work Committee recommends that the Official Statistics (Scotland) Amendment Order 2019 [draft] be approved.—[*Kate Forbes*]

Motion agreed to.

The Convener: In light of the timing for this Scottish statutory instrument, I ask the committee to agree that I and the clerk produce a short factual report on the committee's decision and arrange to have it published. Is that agreed?

Members indicated agreement.

The Convener: I suspend the meeting briefly to allow the minister to leave and the Cabinet Secretary for Finance, Economy and Fair Work to come in for the next item.

09:57

Meeting suspended.

09:58

On resuming—

Scottish National Investment Bank Bill: Stage 2

The Convener: Agenda item 4 is consideration of the Scottish National Investment Bank Bill at stage 2. We are joined by Derek Mackay, the Cabinet Secretary for Finance, Economy and Fair Work. I welcome the cabinet secretary and the two officials accompanying him. We will move straight to the marshalled list of amendments.

Section 1—Duty to establish the Bank

The Convener: Amendment 25, in the name of Dean Lockhart, is grouped with amendments 48 to 56.

Dean Lockhart (Mid Scotland and Fife) (Con): Good morning, cabinet secretary. My amendments 25 and 48 to 56 would change the name of the bank from the Scottish national investment bank to the Scottish development bank. Amendment 25 is a probing amendment.

10:00

I propose the name change for a number of reasons. First, it would better reflect the bank's fundamental purpose and role. We have heard a lot of evidence at committee about the bank's proposed role and responsibilities—it will not only invest in markets, products and services but be involved in initiation and development. That means that, quite rightly, the bank's role will be much wider than merely passively investing in markets, products and services. The name change would also futureproof the bank's role as it develops over the many years to come.

The name change would reflect best international practice for banks of the same nature. The leading transformational banks across the world include the KfW in Germany, which is referred to as a development bank. The transformational banks in Singapore and China were also referred to as development banks, and that is also the case with the Industrial Development Bank of India.

The name change would also avoid confusing the bank with the Scottish Investment Bank, which has existed for a number of years and has a distinct, set role, as the cabinet secretary will know.

The phrase "investment bank" has negative connotations relating to the financial crisis. In that regard, constituents have raised with me whether they should approach the investment bank, in light of their concerns that it might want part of their

business in return for any financial assistance that it might give. Changing the bank's name would address those concerns and make the bank more accessible to the markets and businesses that it sought to help.

I hope that there is some consensus in the committee on my proposal to change the bank's name, given that the concept of a development bank was first put forward by John Swinney in 2014 when he proposed the establishment of a business development bank.

It is important to recognise that there would be some minor administrative costs in changing the bank's name, but I believe that they would be immaterial when compared with the bank's proposed operating costs, which are estimated at £25 million a year. I believe that the most important thing is to get the name of the bank right at the outset, recognise the full development role that it will have in the economy and ensure that it gets maximum buy-in from all stakeholders.

I look forward to the cabinet secretary's response to my amendments.

I move amendment 25.

Andy Wightman: I am fairly open minded about the matter but, having heard what Dean Lockhart has said, I am not convinced that the case has been made for a name change. I am relaxed either way about the bank's name, and I will remain relaxed, regardless of the outcome of the committee's vote. If there is a strong case for changing the bank's name, I am happy to hear it. However, I am not persuaded that Dean Lockhart has made a particularly strong case, although I am open to the debate. I am keen to hear what the cabinet secretary has to say on the matter.

The Cabinet Secretary for Finance, Economy and Fair Work (Derek Mackay): As committee members will be aware, the Government announced plans in its 2017-18 programme for government to establish the Scottish national investment bank, and I think that the name is now well established. Since that announcement, we have held two public consultations, commissioned and published an implementation plan and undertaken extensive engagement with stakeholders and the wider business community. That engagement included a series of events over the summer across Scotland and in London—the events were chaired by Benny Higgins and attended by more than 300 stakeholder representatives.

As we know, the bank will be a cornerstone institution in Scotland's financial landscape, and the name was chosen to reflect its profile and our intention for it to invest in businesses and communities right across Scotland.

As members will recall, during its evidence sessions, the committee heard about the importance of raising awareness of the bank and engaging with stakeholders and the business community. We want to ensure that there is demand for the bank, and work is already under way to develop a pipeline of investments for when the bank opens.

For reasons of clarity and continuity, I urge members to resist amendment 25. In all our engagement, we have found that the name "Scottish national investment bank" is understood, and we propose to stick with it.

The Convener: I ask Dean Lockhart to wind up and indicate whether he wishes to press or withdraw amendment 25.

Dean Lockhart: I remain unconvinced that the label "investment" is the right one to describe the bank's purpose. The substance of the evidence that we heard is that the bank will be very much involved in the development of markets, products and services. However, I have given due consideration to the cabinet secretary's remarks and I will not press amendment 25.

Amendment 25, by agreement, withdrawn.

Section 1 agreed to.

After section 1

The Convener: Amendment 1, in the name of Jackie Baillie, is grouped with amendment 16.

Jackie Baillie (Dumbarton) (Lab): Amendment 1 aims to put the purpose of the bank on the face of the bill, rather than simply in supporting documents, in order to ensure permanency. If we agree—and we do—about the bank's important role in transforming Scotland's economy, let us set out its purpose not only in the articles of association, but right at the heart of the bill. That would make it clear that the bank's focus would not be solely on economic returns but would also take into account social and economic aspirations.

Amendment 16, in the name of the cabinet secretary, is remarkably similar to amendment 1, so we are not that far apart. However, I prefer to have the bank's purpose at the heart of the bill, rather than in the form of a direction to put it in the articles of association. I hope that the cabinet secretary will agree with me.

I move amendment 1.

Derek Mackay: Jackie Baillie has helpfully moved the Government's thinking on in respect of the issue, and I hope that, in turn, she will see a refinement that can be taken forward. My amendment 16 and Jackie Baillie's amendment 1 would both reintroduce into the bill the vision for

the bank that is articulated in the implementation plan.

The Scottish Government has always been clear that that vision will be realised across our work to establish the bank. The bill is only one part of that, which is why it was not included in the bill as introduced. However, having carefully considered the points that were made in the committee's stage 1 report, we have reconsidered that omission, and amendment 16, in my name, would require the bank's articles to set out the vision for the bank.

That approach has a few advantages over the approach that amendment 1 takes. A company's articles of association are its constitution. Should Scottish ministers, as shareholders, consider the company to be acting outwith the bounds of its articles, we would be able to engage with the bank to address that; ultimately, we would have legal recourse.

Through its usual scrutiny powers, Parliament would have some oversight of the relationship between Scottish ministers and the bank, including in relation to how Scottish ministers exercise their role as shareholders. By proposing to locate the "purpose of the Bank" in primary legislation rather than in the articles, amendment 1 lacks clear carry-through to the bank's constitution. Stating the vision in the articles allows some flexibility in future arrangements. If amendment 16 is agreed to, the process for updating or refreshing the vision, should that be required in years to come, would be that set out in section 20. Parliament would get to vote on any proposed changes, but there would be no requirement for primary legislation, or for its demands on parliamentary time, which, in this case, would be disproportionate.

In the interests of transparency, we included the entire text of the vision in amendment 16. However, it could be easily argued that certain parts of the vision should be updated, even since its initial publication, which was less than two years ago. As an example of why a vote on proposed changes might be necessary, the reference to "low carbon" could be changed to "net-zero emissions"—a point that we may well consider ahead of stage 3. For those reasons, I respectfully request that Jackie Baillie does not press amendment 1, and that members support amendment 16.

Dean Lockhart: I agree with both Jackie Baillie and the cabinet secretary, whose amendments are similar in effect. On balance, the formulation in amendment 16 gives a bit more flexibility for the bank's vision, or purpose, in future, so we will support amendment 16.

The Convener: I ask Jackie Baillie to wind up and to press or withdraw amendment 1.

Jackie Baillie: I listened very carefully to the cabinet secretary and I am glad that we have managed to move the Scottish Government's thinking on. I still prefer amendment 1, but in a spirit of consensus that I hope will continue throughout the meeting, I am prepared to withdraw amendment 1 in favour of amendment 16.

Amendment 1, by agreement, withdrawn.

Before section 2

Amendment 16 moved—[Derek Mackay]—and agreed to.

Section 2—The Bank's objects

The Convener: Amendment 17, in the name of Andy Wightman, is grouped with amendments 3, 4, 4A, 26, 57, 27 to 30, 58, 18, 5, 31 and 59.

Andy Wightman: Amendment 17 seeks to delete the ancillary objective in section 2(2)(a), "investing in inclusive and sustainable economic growth".

The committee is familiar with the issues around that terminology; over the past few years, it has questioned the definition of "inclusive economic growth". It is my view that the terms have no real meaning and should not be used in relation to the objects of a public bank. It is as simple as that; members will no doubt take a view.

I support all the amendments in the group with the exception of amendments 26 and 57, in the name of Rhoda Grant, as what they propose is effectively achieved by amendment 4.

Amendment 27, in the name of Rhoda Grant, refers to "sustainable growth" and thus in my view suffers from the same problem as section 2(2)(a), which my amendment 17 seeks to delete. Amendment 30, in the name of Jackie Baillie, has the same problem.

Amendment 28, in the name of Rhoda Grant, is interesting but perhaps superfluous in relation to the existing objects in paragraphs (c) and (d) of section 2(2). I am interested in what Rhoda Grant has to say.

Amendments 18 and 5 are similar; I prefer amendment 5, in the name of Jackie Baillie.

I move amendment 17.

The Convener: I call the cabinet secretary to speak to amendment 3 and the other amendments in the group.

Derek Mackay: Although I will be as brief as possible, you will appreciate, convener, that there are a number of amendments in the group.

Amendment 17, in the name of Andy Wightman, would remove the object of

“investing in inclusive and sustainable economic growth”.

It will not surprise Mr Wightman to hear that I do not support his amendment. Inclusive and sustainable economic growth is a key part of Scottish Government policy. I also point out that the bank will be investing in propositions that can command some rate of return and by definition it will be investing in economic growth. Of course, we want that growth to be inclusive and sustainable.

Amendments 3 and 4, in my name, give effect to a number of the recommendations made by the committee at stage 1 that the Scottish Government has subsequently accepted. We have been clear throughout our work to establish the bank that it will deliver a range of financial, social, environmental and economic returns.

We considered carefully the recommendations made by the committee concerning anchoring non-financial returns in the bill and the alignment between the vision for the bank and its objects. Amendments 3 and 4 respond to those recommendations. In particular, amendment 4 responds to the climate emergency that the First Minister declared earlier this year. It provides for a link to the world-leading climate change legislation that the Parliament recently passed.

In practice, amendments 3 and 4 will require the bank to take social and environmental wellbeing into account in its investment decision making, including whether a prospective investment would contribute to or negatively impact on environmental or social wellbeing, for example.

Amendment 4A, in the name of Maurice Golden, would further support that goal, and I am pleased to support it, subject to taking the opportunity at stage 3 to address some drafting concerns.

10:15

I also welcome amendment 26, in the name of Rhoda Grant. Amendment 4, in my name, refers to supporting

“the transitions required to meet the net-zero emissions target”.

Amendment 4 intends to capture the range of transitions that we know are needed across various sectors of our economy if the target is to be met. Amendment 26 clarifies that the bank should also promote the just transition principles, and I am happy to support it.

Amendment 57, in the name of Rhoda Grant, also refers to the just transition principles. That seems to duplicate provision elsewhere, and I ask Rhoda Grant not to move it for that reason.

Further, although supporting the just transition principles will be one of the key means by which the bank will deliver environmental and social returns, it will not necessarily be the only means. It is worth while keeping those elements separate so that they each speak to all the bank’s activities.

Amendments 27 and 28, in the name of Rhoda Grant, and amendment 30, in the name of Jackie Baillie, seem only to duplicate objects that are in the bill. For that reason, I ask members to reject them.

I turn to amendment 29, in the name of Jackie Baillie. We will debate fair work on several occasions this morning. For clarity, I intend to support amendment 47, in the name of Willie Coffey, which provides for a fair work direction to be issued to the bank.

As Jackie Baillie will be aware, employment law is reserved. For that reason, as well as to ensure a tailored approach to fair work, a duty to issue a fair work direction was included in the South of Scotland Enterprise Act 2019, rather than a definition of fair work itself. The direction will define fair work for the purposes of that direction and it does not give a legal meaning that can be cited in other legislation. Therefore, amendment 29 lacks legal meaning and, regrettably, I cannot support it.

Further, the procurement legislation cited in amendment 29 applies to a narrow set of circumstances and defines a living wage as

“remuneration which is sufficient to ensure an acceptable standard of living.”

Requiring that the bank checks that measure against the entire workforce of an enterprise, which might include workers who are based outside Scotland, is unlikely to be possible in practice. That is in no small part because the measure contains a degree of subjectivity that would require a lot of local and workforce-specific knowledge to accommodate.

Amendment 58, in the name of Rhoda Grant, clarifies that the bank should contribute to the achievement of the Scottish Government’s social and environmental, as well as economic, policy objectives. I am happy to support amendment 58.

Amendment 5, in the name of Jackie Baillie, and amendment 18, in my name, seek to provide for a new object for the bank relating to its contribution to promoting equalities. As the committee heard at stage 1 and as Jackie Baillie has rightly been pursuing, there is an opportunity for the bank to make a substantial positive contribution in that respect. There are well-evidenced issues regarding access to finance for women-led businesses in particular, and the bank will be subject to the public sector equality duty and the

Scotland-specific duties under the Equality Act 2010. Amendments 5 and 18 seek to reinforce that.

There are two reasons why I consider amendment 18 to be preferable. First, its reference to

“promoting the advancement of equality and non-discrimination”

gives the bank a clear remit to engage beyond its own activities to seek to influence the wider sector.

Secondly, the drafting of amendment 5 risks the bank being seen as responsible for the elimination of discrimination, which it cannot achieve on its own. The bank must certainly contribute to that, and the drafting of amendment 18 recognises that.

For those reasons, I ask Jackie Baillie not to press amendment 5 and to support amendment 18. If there are further points that we can work on together in that regard, I assure Jackie Baillie that I will be happy to engage with her on those matters.

I cannot support amendment 31, in the name of Jackie Baillie. The amendment would provide for a new object for the bank of “meeting regional investment targets”, which the bank itself will set. I have spoken previously about the importance of the bank serving all of Scotland and not just the central belt. I suggest that the approach that Jackie Baillie appears to be promoting in amendment 31 is not the right one.

The committee raised the issue when taking evidence from stakeholders back in May. It heard from Robin McAlpine that

“it is important for the bank to monitor in regional terms where its investment goes. However, it must be driven by demand”.

Ray Perman from the Royal Society of Edinburgh also said that taking a merit-based approach, rather than making pro rata allocations of investment to regions,

“is absolutely the right approach.”—[*Official Report, Economy, Energy and Fair Work Committee*, 7 May 2019; c 33, 32.]

Mr Perman highlighted the experience in the 2000s of regional venture capital funds in England, where some regions had a shortfall in demand that meant that the money could not be committed. Ultimately, the then UK Government moved to national level funds to address that.

Jackie Baillie’s amendment 31 does not reflect the evidence that the committee received or lessons that have been learned elsewhere, and I do not support it. However, I understand the intention and drive behind the amendment.

I turn to amendment 59 in the name of Claudia Beamish. Although I appreciate the intention

behind amendment 59, it reads like a duty to be placed on the bank, rather than an object that sets out the bank’s purpose as an organisation. There is a need for some clarity here and amendment 59 risks starting the development of an exhaustive list of elements that the bank should take into account in its decision making. The objects of the bank is not the right place to do that.

Further, amendment 4 would require the bank to “promote environmental wellbeing”, which would clearly encompass biodiversity. Amendment 58, in Rhoda Grant’s name, clarifies that the bank will support the Scottish Government’s environmental objectives. Supporting biodiversity is a key part of that. If Claudia Beamish were to return at stage 3 with an amendment that was more complementary to those provisions, I would be willing to consider it carefully. However, I would be reluctant to support amendment 59 as it is currently drafted.

I urge members to support amendments 3, 4 and 18, in my name, amendment 4A, in the name of Maurice Golden, and amendments 26 and 58, in the name of Rhoda Grant.

The Convener: Thank you, cabinet secretary. Dean Lockhart will speak to amendment 4A, in the name of Maurice Golden, and the other amendments in the group.

Dean Lockhart: For the reasons that the cabinet secretary has mentioned, it is important that one of the bill’s objects specifically promotes the circular economy as part of a just transition to a low-carbon economy.

On amendment 17, in the name of Andy Wightman, I recognise the issues with the definition of inclusive growth, having heard evidence in the committee on the subject. However, it is important to reference the bank’s objects, including sustainable economic growth and inclusive growth.

We can agree to amendments 3 and 4, in the name of the cabinet secretary, because we agree with their sentiment. The issues that are covered in amendments 26 and 57, in the name of Rhoda Grant, are already covered by amendment 4, which, on balance, we prefer.

We can agree to amendment 28, in the name of Rhoda Grant, which would insert

“promoting and developing the activities of Scottish business”

into section 2. That would be a helpful addition.

Amendments 29 and 30, in the name of Jackie Baillie, are covered by amendment 47, which we think is a better formulation of the objects.

We will agree to amendment 58, in the name of Rhoda Grant.

Amendment 18, in the name of the cabinet secretary, would insert

“promoting the advancement of equality and non-discrimination”

into section 2. We prefer that wording to the formulation in amendments 5 and 31, in the name of Jackie Baillie, so I will be voting in favour of amendment 18.

Rhoda Grant (Highlands and Islands) (Lab): My amendments 26 and 58 add ancillary objects to the articles of association.

Amendment 26 seeks to enshrine the principles of a just transition in the bill. There has been some discussion about the bank’s missions, and it is clear that dealing with a climate emergency will be a top priority. However, we all know that that comes with challenges and, as we move to a zero-carbon economy, we must not leave anyone behind. We have to deal urgently with the climate emergency, but we cannot do that to the detriment of those who are already disadvantaged.

We hope that the bank will play a crucial role in the progression to a zero-carbon economy. In doing so, it should also embrace the principles of a just transition. Amendment 26 will put that aspect into the bill. It is different to the Government amendment 4, because it is about promoting a just transition rather than being only about investing in it. I ask members to reconsider and support that amendment.

Amendment 57 is similar, in that it would place “social inclusion and environmental wellbeing”

in the ancillary objects. With the right lending criteria, the bank could transform the lending landscape for socially just projects in Scotland, unlocking vital finance for the just transition to a zero-carbon economy.

Amendment 27 would add “growing the Scottish economy” to the ancillary objects, and amendment 28 would add

“promoting and developing the activities of Scottish businesses”

to the objects.

Amendment 27 would ensure that the bank embeds an overarching principle of

“growing the Scottish economy in a sustainable manner”

in order to secure Scotland a long-term and prosperous future.

So far, short-term investments or quick economic fixes have failed the Scottish economy. The bill should make reference to “growing the Scottish economy” and supporting Scottish businesses.

Amendment 28 says that the bank must support Scottish businesses. Other lending streams, such as regional selective assistance, have all too often focused on foreign businesses, creating a volatile economy. The Scottish national investment bank should become an opportunity for home-grown businesses to capture investment that they have struggled to gain in the past with other agencies.

Although our research and development is globally competitive, we fall down on bringing it to market and benefiting from the manufacturing of a product, which often goes overseas. Home-grown businesses are more likely to stay in the country and investment in them will have a longer lasting impact.

Amendment 58 will ensure that “social and environmental principles” are factored in along with the economic objects for the bank. It is easy to see where the bank would look to boost the economy, but we must also make sure that it safeguards social and environmental principles. The bank must be ethical and hold itself to the highest standards.

The Convener: Jackie Baillie will speak to amendment 29 and the other amendments in the group.

Jackie Baillie: If we want to deliver fair work and avoid contributing to widening labour market inequalities, amendment 29 is essential.

As the cabinet secretary knows, about 470,000 people in Scotland earn less than the living wage. Therefore, the bank should not invest in enterprises that make the statistics worse. The Scottish Government rightly talks about having a living wage nation. We should express that commitment in the bill.

However, I hear what the cabinet secretary says. I will consider amendment 47, but if it does not provide sufficient comfort, will he be open to discussing the matter further prior to stage 3? If he is, on that basis, I will not move amendment 29.

I will not move amendment 30, because it is covered by amendments elsewhere.

Amendment 5 is to insert

“advancing equality and eliminating discrimination”

into section 2. There is a subtle but important difference with the cabinet secretary’s amendment 18, which is to insert

“promoting the advancement of equality and non-discrimination.”

The formulation in amendment 5 is much better, because it is about the clear integration of the ambition to advance equality in all aspects of the bank: in its recruitment, in its operational

processes, in the setting and implementation of missions, and not just in its lending decisions.

The Scottish Government recognises equality as an overarching principle, but that is not included in the bill. If we do not include it properly now, we run the risk of it not being a priority or being considered at a late stage in the process.

If members need further convincing, they should consider the inequalities that operate in the labour market now: the gender pay gap of 5.7 per cent and the employment rate for disabled people of 45 per cent, which is half the rate for non-disabled people.

Amendment 5 is the stronger amendment. I urge members to support it, rather than the cabinet secretary's formulation. There is precedent for it. The saying goes that imitation is the sincerest form of flattery. I copied the wording that the Scottish Government used in the Social Security (Scotland) Act 2018 and in the Equality Act 2010.

Amendment 5 would make the objectives more robust and would apply to every action of the bank. I had hoped that, given that I faithfully copied the Scottish Government's own wording when I wrote amendment 5, the Government would at least agree to that amendment, but there we go.

10:30

I am happy to have further discussions with the cabinet secretary. I understand that he welcomes the direction of travel and will ensure that it happens. I just want to ensure that that is the case because the Highlands, for example, have suffered from underinvestment, with the majority of the investment going to the central belt. We do not want the Government's investment bank to take that approach.

The Convener: I call Neil Findlay to speak to amendment 59, in the name of Claudia Beamish, and the other amendments in the group.

Neil Findlay (Lothian) (Lab): My colleague Claudia Beamish is at another committee, so I will speak to amendment 59 on her behalf.

Amendment 59 seeks to require investment decisions to consider how the financing and lending activities would

"contribute to the protection and enhancement of biodiversity, including the marine environment."

We know that we face a climate and environmental emergency. The rate of species loss is of great concern. The amendment simply asks that the bank considers how its activities would impact on-going efforts on biodiversity and improving our environment.

The cabinet secretary has said that he is willing to engage in discussions with Claudia Beamish and, in her absence, I will make an executive decision to accept that offer. I will advise her of that after the meeting. If those discussions are not fruitful, we will bring back the substance of the amendment at stage 3.

The Convener: As no other member wishes to speak on this group of amendments, I invite the cabinet secretary to respond to what has been said.

Derek Mackay: I underline my commitment to work with members where I have said that I will do so. Depending on the outcome of any votes, we will ensure that we make progress on the matters on which we can agree at stage 3, particularly those relating to the equality issues. The intentions are broadly similar, but how we get there might require further refinement.

The Convener: I call Andy Wightman to wind up, and to press or withdraw amendment 17.

Andy Wightman: I have a few comments to make. On amendment 17, I hear what the cabinet secretary has said about inclusive and sustainable economic growth being Government policy, but that does not mean that it is an appropriate objective for a public bank. I was slightly surprised to hear Dean Lockhart agree with me that "inclusive growth" has no meaning, but then go on to say that he thinks it is a good idea to include that in an act of the Scottish Parliament, but there we are.

I have listened to the points made by Rhoda Grant and the cabinet secretary on amendment 26. I am happy to support that amendment.

On the debate about amendments 5 and 18, I remain persuaded that amendment 5 is preferable. The idea of promoting advancement is very similar to other formulations that I have seen in Scottish legislation about duties to consider the desirability of something. Such duties are quite weak. However, I hear what the cabinet secretary has said about discussions on that issue and I agree that there is no great distance between the two amendments. I will press amendment 17.

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

Members: No.

The Convener: There will be a division.

For

Wightman, Andy (Lothian) (Green)

Against

Baillie, Jackie (Dumbarton) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)

Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 17 disagreed to.

Amendment 3 moved—[Derek Mackay]—and agreed to.

Amendment 4 moved—[Derek Mackay].

Amendment 4A moved—[Dean Lockhart]—and agreed to.

Amendment 4, as amended, agreed to.

Amendment 26 moved—[Rhoda Grant].

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

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Wightman, Andy (Lothian) (Green)

Against

Halcro Johnston, Jamie (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)

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

Amendment 26 agreed to.

Amendment 57 not moved.

Amendment 27 moved—[Rhoda Grant].

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

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Halcro Johnston, Jamie (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 27 disagreed to.

Amendments 28 to 30 not moved.

Amendment 58 moved—[Rhoda Grant]—and agreed to.

Amendment 18 moved—[Derek Mackay].

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

Members: No.

The Convener: There will be a division.

For

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Halcro Johnston, Jamie (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Against

Baillie, Jackie (Dumbarton) (Lab)
 Wightman, Andy (Lothian) (Green)

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

Amendment 18 agreed to.

The Convener: I call Jackie Baillie to move or not move amendment 5, which has already been debated.

Jackie Baillie: I will move the amendment, but I welcome the opportunity for discussion with the cabinet secretary.

Richard Lyle (Uddingston and Bellshill) (SNP): You want to have your cake and eat it.

Jackie Baillie: Absolutely. *[Laughter.]*

Amendment 5 moved—[Jackie Baillie].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Halcro Johnston, Jamie (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 5 disagreed to.

Amendment 31 not moved.

Amendment 59 not moved.

Section 2, as amended, agreed to.

After section 2

The Convener: Amendment 32, in the name of Rhoda Grant, is grouped with amendments 68, 45 and 46.

Rhoda Grant: Amendment 32 would add a section entitled “Balanced scorecard” to the bill, which would require the bank to have regard to the economic, social and environmental impacts of its investments when making them.

According to the implementation plan, the bank—with reference to the national performance framework—should

“take into account economic, social and environmental returns when making investment decisions. A balanced scorecard will be developed between the Bank and the”

Scottish Government

“to establish the requirement and measurement of non-financial returns.”

However, the balanced scorecard is not referenced in the bill or in any of its accompanying documents. That is cause for concern, as non-financial returns must be anchored in the bill. Therefore, I lodged amendment 32, to put the balanced scorecard in the bill.

Amendment 68 makes the point that the meaning of “performance”, as it appears in section 13, should also include “non-financial performance”. That would have the effect of ensuring that the bank, when it makes its annual performance return to Scottish ministers, reports on its whole performance, rather than simply on the financial performance of its investments.

While building the economy, the bank must take a holistic approach to all aspects of our society’s needs, and amendments 32 and 68 would help to ensure that it does just that.

I move amendment 32.

Jackie Baillie: I hope that amendments 45 and 46 are fairly straightforward.

As it stands, the bill contains no detail on the indicators that will be used to report on the bank’s progress towards achieving its missions. We believe that the success of the bank should not be measured purely in terms of commercial success and economic returns; rather, the bank should also use wellbeing indicators that reflect its approach to investment. For the bank to have its full socioeconomic and environmental impacts, non-financial returns must be measured and scrutinised. Aligning the bank’s investments with national outcomes and the national performance framework is the right approach—I hope that the

cabinet secretary agrees and supports amendment 45.

I hope that he also agrees with amendment 46. I know that it is quite detailed, but amendment 46 is all about the data. If you care about it, measure it. The Government’s own equality impact assessment demonstrates the lack of available data and research on equalities in finance, so the approach could make a difference in how the bank operates.

10:45

We could have a debate about the public sector equality duty and how effective it is. I have to say that the regulations are too vague and too high level. People are setting their own outcomes and are, as a consequence, failing to protect people who have protected characteristics. Amendment 46 offers an opportunity for the bank to be world leading by ensuring that it collects equalities data to inform its investment decisions.

I hope that the cabinet secretary will also support amendment 46.

Andy Wightman: I broadly agree with amendment 46, in the name of Jackie Baillie. It would be excellent if the bank were to be the first public institution to do what the amendment intends. However, I have some questions. Subsection 5(a) refers to collecting information on “the Bank’s investment outcomes”, which would be quite a complex and long-term task—it might even not be possible—but subsection 5(b) and 5(c) are about internal matters to do with employment and recruitment of staff, and subsection 5(d) concerns the products that the bank offers. I wonder whether the drafting of the amendment should be revisited to ensure that it makes greater sense.

I was preparing for the stage 2 process and noted that section 14(4)(a)(i) makes reference to

“performance in relation to ... The Bank’s mission statement,”

At the risk of embarrassing myself, I say that I am not sure that the bill states anywhere that the bank shall have a mission statement. Is that an oversight? I have made the point, although I could be wrong.

Dean Lockhart: I am happy to support amendment 32, in the name of Rhoda Grant, on having a “balanced scorecard”. That would address a number of issues that have been highlighted by members about social and other impacts of the bank, beyond its economic impact. If we agree to amendment 32, amendment 68, in the name of Rhoda Grant, will not be needed, because the details that would be required on non-financial performance will already be covered by the need for the “balanced scorecard”.

Although I understand the sentiment behind Jackie Baillie's amendment 45, which seeks to add that the bank's performance should be measured against a national planning framework, it would be too onerous for the bank to have regard to all the targets that would be set out in a national planning framework. Instead, the bank should be held to account by reviewing its implementation of the strategic missions.

On amendment 46, the imposition of a requirement on the bank to collect detailed disaggregated information would be onerous. It will already have to comply with equality legislation. We must be careful not to impact on the operational independence of the bank. That would be covered by the "balanced scorecard" that we could agree to.

The Convener: If no other member wishes to speak, I hand over to the cabinet secretary.

Derek Mackay: On a point of accuracy on technical matters, although Dean Lockhart did not use the acronym, "NPF" can stand for the national performance framework or the national planning framework, which he referred to a couple of times in his remarks. I am sure that he meant "national performance framework". I am so well sighted on both because when one has had ministerial responsibility for both, one has to reflect on the difference between the two. For accuracy, I point out that we propose to align the bank's delivery with the national performance framework.

I will make a technical confession: Andy Wightman is right. We will be happy to return at stage 3 to the technical matter that needs to be tidied up—the point on the mission statement. I think that that is a score draw on technical issues between the Government and committee members.

In the stage 1 report, the committee called for non-financial returns to be anchored in the bill. I am pleased to discuss the amendments that aim to achieve that. As members will be aware, the implementation plan stated that the bank should consider "social and environmental returns" as well as economic returns

"when making its investment decisions."

Rhoda Grant's amendment 68 clarifies that the performance of investment should include non-financial performance. Members will be aware that section 13 of the bill will allow ministers to require the bank to provide particular information on its investment performance. Amendment 68 will apply also to that provision by clarifying that ministers will also be able to require specific information on the bank's social and environmental returns. I am therefore happy to support amendment 68.

Rhoda Grant's amendment 32 would require the bank to prepare and update a "balanced scorecard" that would have regard to performance on economic, social, environmental or any other financial or non-financial impacts. I will support amendment 32. As members will know, it is already intended that the bank will adopt a balanced-scorecard approach to measuring the impact of its investments. The Government has committed to working closely with the bank on developing that approach.

Jackie Baillie's amendment 45 would mandate that performance against the national performance framework be reviewed and published at least every five years, along with the review of performance against missions and objects. I am happy to support amendment 45, subject to the opportunity to address at stage 3 some drafting concerns that we have. However, I certainly support the intention of amendment 45.

For practical purposes, however, I clarify that it would not be appropriate for the bank to be measured against every aspect of the national performance framework, given the framework's inherent national focus. Not all the national indicators could be used to determine confidently how the bank's activity alone had performed: for instance, many indicators use data from nationwide surveys, with no further breakdown.

Many indicators might also simply not be appropriate for measuring the bank's performance. For instance, there is a national indicator on measuring perceptions on access to the criminal justice system, which is unlikely to be relevant for measuring the success of the bank's investments. Therefore, amendments regarding measuring performance against the national performance framework need to be considerate of that and allow for flexibility.

I encourage members to support amendments 68, 32 and 45, and I would be happy to engage further with Jackie Baillie on the measurement issues. I appreciate the point that Jackie Baillie is trying to address with amendment 46, but there are issues in current collection and use of information that the bank can learn from and address in its early days.

However, I am concerned that amendment 46 is quite prescriptive for inclusion in primary legislation. I appreciate the reasons why Jackie Baillie has focused on gender, but I am concerned about the proposed longevity of the provision and what use it would be in responding to issues that might be identified in the future. Again, I would be happy to work with Jackie Baillie on the detail of what the amendment proposes, and to return to the issue at stage 3.

The Convener: Thank you. I invite Rhoda Grant to wind up and to press or seek to withdraw amendment 32.

Rhoda Grant: Dean Lockhart said that he thinks that amendments 32 and 68 propose the same thing, but that is not the case. The “balanced scorecard” will be introduced to the bill by amendment 32. Amendment 68 refers to the reporting to the Scottish Government that is already in the bill, and which refers to performance. Amendment 68 would make it clear that reference to performance in reporting back to the Scottish Government includes financial and non-financial performance. Amendments 32 and 68 therefore propose separate things. I would appreciate Dean Lockhart’s support for both amendments.

On amendment 46, it is important that the bank gathers information, particularly information that is disaggregated by gender, because we have seen a disbalance in the past: investment that has gone to women has not been the same as that which has gone to men.

If we are going to create a truly equal society and close the gender pay gap, we need to measure what we are doing towards that. I am not sure whether Jackie Baillie is minded to bring the matter back at stage 3, but I think that it is hugely important to have it in the bill.

Amendment 32 agreed to.

The Convener: Amendment 33, in the name of Rhoda Grant, is in a group on its own.

Rhoda Grant: Amendment 33 would create a new section after section 2 that would require the bank to prepare a minimum ethical standards document. The document would be subject to affirmative procedure. As we debate and create the Scottish national investment bank, it is clear that we want it to maintain the highest ethical standards. Banks have, in the past, failed to do that, which is why we must do more than hope that the Scottish national investment bank does so. We must ensure that it does so: amendment 33 would put that in the bill.

I move amendment 33.

Dean Lockhart: I have highlighted the importance of the operational independence of the bank. I understand the sentiment behind amendment 33, but I think that it would be overprescriptive and difficult to work, in practice.

Derek Mackay: Amendment 33, in the name of Rhoda Grant, would require

“the Bank to prepare a document setting out minimum ethical standards for investments”.

It would also require that that document be laid before Parliament and be subject to parliamentary

approval. As I discussed with the committee during my stage 1 evidence, it will be for the bank to communicate its approach to investment through its investment strategy and ethical statement, which will rightly be for the bank’s board to establish. It would be normal policy for public or private sector investors to set out which sectors or activities they would exclude or restrict in terms of their investments. The Government will want to give a clear steer to the bank on what it feels should inform that ethical statement; to that end we have commissioned the Ethical Finance Hub to prepare advice based on best industry practice.

For the bank to function effectively and successfully as an ethical lender, it is right that it develop and take ownership of its own ethical stance. It is also important that the organisation ensures that that is fully embedded in its policies and procedures, in its approach to delivering on the missions that are set by the Government, and in its corporate culture, values and behaviours. The bank will communicate and account for its approach in its annual reports.

It is important to underline that, as sole shareholder of the bank and setter of its missions, the Government of the day could act to reinforce its expectations if the bank were found wanting, in either its policies or its conduct. In turn, Parliament of course has the power to scrutinise how the Scottish ministers exercise their right as shareholder and sponsor. For that reason, I do not support Rhoda Grant’s amendment 33.

Finally, I am not sure whether the intention is that only the bank’s initial ethical statement would require approval, or if it is envisaged that Parliament would be involved each time a statement was amended. The bank’s minimum ethical standards policy will need to be able to evolve as new sectors and risks emerge. I would not want us to put in place a process that could risk stymieing the bank making changes during a recess, for example, or that could, in the case that Parliament did not approve a position, leave the bank’s investment strategy uncertain.

In striking the right balance between political involvement and operational independence, Parliament should have in its view ministerial oversight of the bank.

For those reasons, I ask Rhoda Grant to seek to withdraw amendment 33. I will, of course, be happy to share with her and with Parliament our thinking on the possible content of ethical standards as that develops: now that we have a chair designate for the bank, that discussion can deepen as we get closer to vesting day. There is absolutely willingness on the part of the Government to engage further on the matter.

The Convener: I call Rhoda Grant to wind up, and to press or seek to withdraw amendment 33.

Rhoda Grant: It is really important that the bank has minimum ethical standards that are overseen not just by the bank but by the wider public. If only Scottish ministers have oversight, then something going wrong would surely rebound on them. Having those ethical standards open to scrutiny by Parliament would be better and would create confidence in the bank's maintenance of them.

However, I have listened to what has been said, and do not think that I have support for amendment 33, so I seek to withdraw it and will take the cabinet secretary up on his offer to discuss the matter further, with a view to bringing it back at stage 3.

Amendment 33, by agreement, withdrawn.

The Convener: We will take a short break.

11:00

Meeting suspended.

11:08

On resuming—

Section 3—General powers

The Convener: Amendment 34, in the name of Neil Findlay, is grouped with amendments 60 to 63 and 35 to 37.

Neil Findlay: I declare an interest as chair of the Public and Commercial Services Union parliamentary group. I will speak to amendments 34 and 61 to 63.

Amendment 34 seeks to ensure that the bank operates to the highest ethical standards in relation to tax avoidance and tax evasion. Tax avoidance arrangements are defined in section 63 of the Revenue Scotland and Tax Powers Act 2014, which states:

“An arrangement (or series of arrangements) is a tax avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement.”

Tax evasion is much simpler—it is the deliberate attempt not to pay tax.

Members of the public are expected to abide by the law, and the spirit of the law, and to pay the taxes that they owe—they are penalised if they do not do that—and companies should be no different. The public are sick to the back teeth of seeing multinational companies making huge profits and paying little or no tax.

Recently, I read an article in the press that said that Amazon, in a good example of such behaviour, paid more tax to Fife Council in the form of rates than it did to the Treasury in the form of corporation tax. The Scottish national investment bank should not be lending to companies that are engaged in such activities. It should be encouraging good corporate governance and responsibility, which includes paying the taxes that are owed. The bank should not be lending to tax evaders or avoiders.

I turn to amendments 61 to 63. The bank should also play a leadership role in shaping the economy and demonstrating how, through its lending policy, it is seeking to drive a fair work agenda that encourages and enshrines rights and responsibilities. It should do that by a policy of deliberately prioritising lending and indeed refusing to lend to enterprises that do not pay the real living wage or create precarious work that denies workers basic rights and prevents them from getting a mortgage, sick pay, holiday pay and so on because of the uncertain nature of their work, including zero-hours contracts. It should refuse to lend to companies that use payroll or umbrella companies that are set up deliberately to

rip off the taxpayer and the company's workers. It should fail to engage in lending to companies that fail to recognise trade unions, which we know are best placed to guarantee the rights of workers. We all know that unionised workplaces are safer, have better pay, more stable workforces, better staff retention and fairer working conditions. For those reasons, we should pass the amendments and ensure that the bank becomes a model of ethical lending.

The cabinet secretary said previously that the bank would have a fair work direction. That is all very well, but we have seen in the past what happens with that. For example, during the passage of the Procurement Reform (Scotland) Act 2014 in the previous parliamentary session, we were told that many issues, such as those around blacklisting, the living wage, zero-hours contracts, community benefits and so on, would be covered in guidance. However, we know that the guidance is not worth the paper it is written on—once the bill was passed, everything remained the same: we saw companies that blacklisted workers getting contracts for the Dundee waterfront, and anti-trade union activity at the Dumfries hospital.

Earlier, the cabinet secretary said that the bank's activities and employees would be covered by the public sector equality duty. If that is the case, the bank should also be covered by the public sector pay policy.

I move amendment 34.

Jackie Baillie: Amendment 35 is about consulting local authorities. I lodged the amendment because if we consult local authorities ahead of investing in a particular area, we will ensure that the bank's lending is being put to its optimum use. That has the potential to ensure that local authorities could put in place complementary activities and development plans. It is right to ensure that there is consultation with the key people on the ground, so I hope that the committee will accept amendment 35.

Amendment 36 was debated at stage 1. The committee had a strong view that the bank must invest more widely than in the private sector alone. I want the bill to maximise the impact of the bank by developing a financial institution that allows particular organisations, such as co-operatives and social enterprises, to secure finances. I appreciate that some in the voluntary sector consider that to be too restrictive, so, if members are minded to support amendment 36, I will seek to add to the provision at stage 3, to widen it to third sector opportunities.

Dean Lockhart: Amendment 37 is a probing amendment that I lodged to seek the Scottish Government's views on whether restrictions will be imposed on the bank board's freedom to decide

how and where it will grant financial assistance under section 3 and what those restrictions might be. Our approach is that the bank should have operational independence to decide on areas of investment according to the missions to be achieved. I therefore invite the cabinet secretary to comment on whether he intends to impose restrictions on how and where the bank can invest and whether he will allow the bank to have operational independence to decide the best areas of investment according to the missions set out in section 11.

11:15

Andy Wightman: I have three points on the amendments in group 6. I welcome Neil Findlay's amendments 34 and 61 to 63, but I would like him to address in his closing remarks the reference in amendment 62 to companies having contracts with an umbrella company, because I am not entirely clear why that would be deemed to be a bad thing. He mentioned a few bad practices, but it would be helpful for me if he could elaborate on that.

On amendment 35, I have a later amendment on non-executive appointments in relation to local authorities. The question that I have about amendment 35 is how it would impact on questions of confidentiality if the bank was considering supporting proposals that were before it. I am not clear how any bank, whether private or public, could consult local authorities on what could be commercially sensitive matters.

On Dean Lockhart's amendment 37, I am not clear about subsection (2) of the proposed new section after section 3, which states:

"The articles of association must provide that the Bank's board is not limited in the areas".

I am not sure of the definition of the word "areas". Dean Lockhart mentioned the operational freedom of the bank, which, of course, the bank should have, but it will be a public bank that will be financed, at least in the short to medium term, by public money. The bank will therefore be constrained in what it can do by both the eventual act and the articles and memoranda of association; and it will be constrained in so far as ministers see fit by directions that the shareholder gives. It therefore seems to me that amendment 37 is unnecessary and unwelcome.

Derek Mackay: Jackie Baillie's amendment 35 would set out in the bank's articles of association that the relevant local authority must be consulted before investment could be provided in its area. I am clear in my intention that the bank will be a national institution that will invest in businesses and communities in every part of Scotland and it will be up to the bank to decide where and when to

invest. However, to help achieve that, we will engage with local authorities and enterprise agencies to ensure that we attract demand right across the country. Local authorities will have a critical role alongside other key partners in ensuring that businesses and communities get the support and advice that they need when engaging with the bank.

I am also mindful of the debate that we have had around Business Gateway and the understanding of place and economic strategy. However, requiring local authorities to be consulted before any investment is not the best way to pursue that agenda, because it would place an unnecessary burden on local authorities to expect them to liaise with the bank on every project in their area and it would risk delaying the provision of finance to an otherwise successful applicant to the bank. Given that the bank's investments will be merit based, that also brings into question how it would be handled if a local authority were to suggest that an investment should not be made. For those reasons, I cannot support amendment 35 and I ask members to consider that.

Amendment 34, in the name of Neil Findlay, aims to restrict the bank from providing finance to organisations involved in tax avoidance or evasion. In fairness, Neil Findlay has made the point that tax evasion is an illegal activity and that the bank would not engage with organisations that perpetrated it. Standard due diligence on the part of an investor will identify cases where tax evasion has been found. If an organisation undertook tax evasion after the bank had provided it with finance, standard contractual practice would ensure that the bank had the right to seek repayment of its investment.

I have some concerns about the application of the provisions relating to tax avoidance in amendment 34. I do not take the issue lightly, but I am concerned that amendment 34 would be counterproductive in its attempts to deal with the problem.

Amendment 34 would require extensive investigations into the tax arrangements of a prospective customer before the bank could make any investment. That work would likely have to be contracted out to specialist firms at significant expense. Standard practice is that the applicant for finance covers due diligence costs, so the effect would likely be to penalise smaller companies and, in particular, small and medium-sized enterprises, which would find that burden prohibitive. Those are the very types of organisations that the bank is set up to support, and I am sure that Neil Findlay would not want to unfairly impact SMEs that act lawfully in that way.

I hope that members are assured that if an organisation is found to have engaged in tax evasion, that will be detected and will prohibit it from future engagement with the bank. I expect the bank to manage risk in a way that will allow it to consider when further due diligence might be required. I urge Mr Findlay to withdraw amendment 34 for the reasons that I have set out.

Amendment 36, in the name of Jackie Baillie, sets out that the bank may provide finance to co-operatives, community benefit organisations and social enterprises. The Government has previously clarified to the committee that third sector bodies, community interest companies, social enterprises and co-operatives may seek financing from the bank. I am happy to state that again for the record.

I was on course to support amendment 36, but I note that the Scottish Council for Voluntary Organisations and Social Enterprise Scotland have raised concerns about it, and in particular that it might be "unnecessarily limiting"—I think that Jackie Baillie recognised that point. If Jackie Baillie is willing to not move the amendment, I am happy to consider how that point can be addressed in other ways, but I do not wish to support the amendment as currently drafted on the basis of the issues identified by SCVO and Social Enterprise Scotland. I am happy to continue working on that with Jackie Baillie, who mentioned adding to the provision. The offer is there to see what that addition looks like and how else we can address the matter.

Dean Lockhart said that amendment 37 is a probing amendment. It would mandate that only the bank's board could make decisions about the provision of finance. It would allow ministers to propose restrictions, but it would require that those would have to be approved by a resolution of Parliament before they could come into effect.

We have already discussed amendment 33, in the name of Rhoda Grant, which was similar in effect to amendment 37 and would have provided for the bank to have minimum ethical standards for investment, and for those to be approved by Parliament.

When discussing amendment 33, I said that it is normal policy for investors to set out which activities they would exclude or restrict in terms of their investments. However, the Government will want to give direction to the bank on what it feels should inform that ethical statement. To that end, we have commissioned Ethical Finance Hub to prepare advice that is based on best industry practice.

In line with those comments, I do not support amendment 37, in the name of Dean Lockhart. However, I appreciate the intention behind it of

ensuring that the bank has sufficient certainty when planning its investment activities, and I am happy to engage with him separately on how that can be provided to the bank.

Amendments 60 and 61, in the name of Neil Findlay, would prohibit the bank from investing in companies on the basis of their remuneration policy or use of zero-hour contracts.

Although I share Neil Findlay's enthusiasm for embedding fair work practices in Scottish businesses, the approach that he has set out in the amendments to achieve that goal is blunt. It fails to take sufficient account of the many companies in Scotland that want to be fair work employers but require support to achieve that aspiration.

As I said during my remarks on amendment 29 in group 3, the living wage as defined in the Procurement Reform (Scotland) Act 2014 is not the same as the real living wage. Further, there is some inherent subjectivity in the term, which would make enforcing amendment 60 challenging.

It is important for the bank to take a supportive rather than punitive approach to promoting and encouraging fair work. My view is that it is better to help an organisation pay the living wage by supporting it through investment that enables it to grow, improves its employment practices and creates new jobs.

These amendments would potentially exclude employers that we would otherwise wish to support from seeking finance from the bank. For example, as currently drafted, the amendments would mean that a small company in which the owner pays themselves from dividends would not be eligible for support.

Finally, it has to be recognised that not all zero-hour contracts are exploitative—we of course do not support exploitative zero-hour contracts—and there are some cases in which staff prefer them. In those instances, I do not agree that the employer should be prohibited from accessing finance from the bank as a consequence.

There also appears to be an issue of practicality and enforceability, particularly for businesses that employ staff in other countries. I therefore cannot support amendments 60 and 61, for the reasons that I have set out.

Looking ahead to the group on the fair work direction, this would enable the bank to take a much more nuanced approach to how it supports the implementation of fair work practices—one that recognises the many businesses that want to adopt fair work practices and supports them to achieve that ambition. In addition, by making the bank subject to a fair work direction, we would also ensure that it supports businesses to

introduce the full range of fair work principles, including investment in skills and training and reducing their gender pay gap.

Amendment 62, in the name of Neil Findlay, would restrict the bank from giving finance to a company in a contract with an umbrella company. I heard Neil Findlay's reasoning; however, I am concerned that amendment 62 puts us in the position of judging companies on their structures and not their actions. The reason I make that point is that umbrella company structures are used for a range of entirely legitimate purposes that the bank may come into contact with. One clear example is in management buyouts. The bank may well wish to support management buyout initiatives in certain circumstances that can see companies grow and innovate. Umbrella company structures can be used to support or undertake a buyout, but amendment 62 would effectively block that sort of investment: I do not think that that is the intention behind the amendment. If the bank were not able to support companies that make use of umbrella companies, that could limit the number of viable investments the bank could make.

The final amendment in this group, amendment 63, concerns trade union recognition. It would appear to seek to prevent the bank from investing in companies that have refused a request by employees to have their interests represented by a trade union under the terms of the Trade Union and Labour Relations (Consolidation) Act 1992. I have concerns that the drafting may be wider reaching than that. This Government fully recognises the need to enhance workforce engagement and increase collective bargaining in the workplace. That is why in our most recent programme for government we have committed to working with the Scottish Trades Union Congress to increase the number of workers covered by collective bargaining.

My concerns with amendment 63, however, are similar to those that I highlighted in relation to amendments 60 and 61; namely, that it requires the bank to make a sweeping judgment about all companies, rather than taking into account local conditions and individual circumstances, even in the narrower reading of the amendment. The amendment does not allow the bank to make informed decisions about the companies that it can and cannot invest in, and I urge the committee to reject it. I am happy to engage further with Neil Findlay on this, because I think the amendment has some unintended consequences.

Neil Findlay: I will press all the amendments. I am very disappointed in the cabinet secretary's response. It looks as though he has had his team searching for as many excuses as possible for not implementing these amendments, which represent a significant step forward in our ability to advance

the roll-out of the real living wage to as many workers as possible in Scotland. This is supposed to chime with the fair work agenda of the Scottish Government. He raises similar red herrings about zero-hours contracts and trade union rights.

Mr Wightman asked me to address umbrella companies. An umbrella company, as I am sure Mr Wightman knows, is not a company that makes things to keep the rain off when it is wet, but a payroll company, particularly dominant in the construction industry at the moment, that often pays the minimum wage and encourages workers to claim expenses in a taxation and national insurance scam. The employee is often left paying national insurance both for himself or herself and for their employer. Far more stringent action has recently been taken by Her Majesty's Revenue and Customs, and we have seen their proliferation on big construction projects such as the Aberdeen bypass and the Forth bridge.

In the previous parliamentary session, we had a debate in committee on the expansion of umbrella companies, which are a pernicious way of employing people, particularly in the construction sector. The bill gives us an opportunity, given that the investment bank is likely to finance the type of projects that I mentioned, to take action over umbrella companies and the scams that they are involved in. It is very disappointing that the minister seeks to reject amendment 34. I will press amendment 34 and move my other amendments in the group. If he seeks discussions, I am more than happy to enter into discussions with a view to lodging similar amendments at stage 3.

11:30

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

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 34 disagreed to.

Amendment 60 moved—[Neil Findlay].

The Convener: The question is, that amendment 60 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 60 disagreed to.

Amendment 61 moved—[Neil Findlay].

The Convener: The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 61 disagreed to.

Amendment 62 moved—[Neil Findlay].

The Convener: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 62 disagreed to.

Amendment 63 moved—[Neil Findlay].

The Convener: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 63 disagreed to.

Amendment 35 moved—[Jackie Baillie].

The Convener: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 35 disagreed to.

Amendment 36 not moved.

Section 3 agreed to.

After section 3

Amendment 37 not moved.

Sections 4 and 5 agreed to.

Section 6—Directors: appointment

The Convener: Amendment 64, in the name of Jackie Baillie, is grouped with amendments 19, 65 and 6 to 8.

Jackie Baillie: I shall be very brief. Amendment 64 was lodged because the draft bill stipulates only that

“directors are to be appointed by the Scottish Ministers.”

There are no specific requirements to have trade unions represented on the board. Ensuring diverse governance arrangements and a specific role for trade unions would result in better outcomes for not just workers but, ultimately, the economy. I note that amendment 65 has the same effect. I will, therefore, support all the amendments in the group, and await the cabinet secretary’s comments.

I move amendment 64.

Andy Wightman: I will restrict my remarks to amendment 19. The cabinet secretary said a few moments ago that local authorities will have a critical role in the affairs of the bank. There are banks in other countries, such as KfW in Germany, that include regional authorities—the *länder*—as full members. Rather than section 1 stating that the bank

“has the Scottish Ministers as its only member”,

my preference would be that it also included local authorities as a member. However, that raises some difficult technical problems, so I have left it to one side.

Instead, I have focused on section 6, which relates to the appointment of directors to the board. Amendment 19 provides that

“at least two non-executive directors are to be appointed by Scottish local authorities”.

Local authorities are critical partners in economic development and I think that their perspective and experience should be made available to the board of the bank. They would be able to exercise the power to appoint two non-executive directors every four, five or six years—however long the term of appointment is, which is governed elsewhere in the bill or the articles of association. Local authorities would not be directly involved in the affairs of the bank, but they would have a stake in it and the interests of local government would be reflected, at least in part, in the appointments that they chose to make. I think that amendment 19 is straightforward and I look forward to hearing what members think.

Rhoda Grant: Amendment 65 requires that directors have knowledge of industry and of workers’ points of view. The amendment ensures that views from both areas will be represented on the board of the bank and makes provision for the Scottish ministers to consult with representatives of trade unions and organisations representing business. That will ensure that the bank engages with those organisations and it should encourage buy-in from them. I would expect the bank to have

knowledge of business, but it is also important to have buy-in from organisations representing businesses. Such organisations often do not have a good understanding of trade unions and workplace issues, so the amendment would ensure that there would also be representatives on the board with that understanding. Jackie Baillie's amendment 64 also does that. I will listen to the committee's views on both the amendments.

Derek Mackay: Amendment 6 is a technical amendment that will ensure alignment between the bank's articles of association and the Commissioner for Ethical Standards in Public Life in Scotland's code of practice. It provides that the maximum cumulative term for a non-executive director will be eight years, as specified in the code of practice.

Jackie Baillie's amendment 64 would require the Scottish ministers to appoint a representative of a trade union to the bank's board. The bank's directors will be responsible for ensuring the success of the bank, and ensuring that appointed directors have the right skills and experience is, of course, fundamental to that. Although gaining the perspective of trade unions will certainly be of value to the board, that is best achieved through stakeholder engagement rather than by appointing individual representatives. As directors of a public limited company, directors of the bank will ultimately have fiduciary duties and can be held accountable for the failure of the company. That would also apply to any representative. Any deviation from the practice of appointing non-executive directors to the bank's board on the basis of merit would risk undermining the capacity of the Scottish ministers to hold the board to account for its performance. For those reasons I do not support amendment 64, although I have sympathy with its aims.

Jackie Baillie is right to say that amendment 65, lodged by Rhoda Grant, is a compromise—it is a more appropriate amendment. It will ensure that the Scottish ministers take account of the interests of workers as part of the wider skill set that non-executive directors should be required to have. Businesses will also be a crucially important community of stakeholders for the bank, so I whole-heartedly support their inclusion in amendment 65 to ensure that their interests are also considered as part of the bank's governance. I urge members to reject amendment 64 and to support amendment 65 for the reasons that I have given.

I recognise that the intention behind amendment 19, in the name of Andy Wightman, is to give local authorities a stake in the bank, but what is being proposed will not achieve that aim. Rather, it will muddy lines of accountability by confusing the bank's governance structures. The bank's board

must be accountable only to the Scottish ministers for its performance in delivering against the strategy that they have set for it. Making specific board members accountable to other organisations—

Andy Wightman: I am not suggesting that the directors should be accountable to Scottish local authorities. Those directors will be appointed by Scottish local authorities, but once they are in post, they will be directors of the company and will be governed by the same lines of accountability as the other directors. I want to be clear on that.

I thought that I made it clear in my remarks that I am not seeking to provide local authorities with a direct stake in the bank. That was the intention behind amendment 1. I am still interested in that, but I am not moving in that direction at the moment. Amendment 19 is about the power to appoint. Once those directors were appointed, the lines of accountability would be exactly the same as for all other directors.

Derek Mackay: I appreciate that point of clarification, but I am still of the view that it would be inappropriate and overly restrictive for local government to have places on the board, as described by the member. However, I welcome the clarification, because there is an important distinction between who appoints board members and to whom they are accountable.

It will be important for the Scottish national investment bank to engage with local authorities on the issues that I mentioned earlier, such as the economic strategy, the nature of investment and the focus on place.

The proposals captured in amendment 19 are at odds with the wider governance structures of the bank, which have not been set up to give local authorities a wider role in that corporate governance. In all other respects, the Scottish ministers retain the role of sole shareholder. I think that that is only right and it also suggests that amendment 19 is not suitable in isolation. That is why I cannot support amendment 19.

I turn to amendments 7 and 8. I am sure that many members would agree that it is prohibitively restrictive to set out key aspects of the bank's pay and conditions in legislation, particularly given that it is an institution that will help to shape our economy for generations to come. We are in the process of designing a pay and reward structure for the bank that reflects the fact that it will be both a financial services institution and a public body. We are benchmarking against similar institutions, such as the British Business Bank and the Development Bank of Wales, to arrive at a package that is competitive but not excessive. That is in line with the recommendation made by

the committee at stage 1, on the basis of the evidence that it had heard from stakeholders.

The bill includes a direction-making power in relation to remuneration in section 8, which can be exercised if necessary. However, in practice, if it is to remain effective, the bank must have the ability to determine what is an appropriate pay and reward structure for staff. The bank will only be as good as those who work for it, so it is vital that it has the flexibility to recruit and retain staff with the skills and experience to deliver the bank's ambitious remit. Placing qualifiers around the bank's pay and reward structures will remove that flexibility. I therefore ask members to vote against amendments 7 and 8.

11:45

However, I wish to address a couple of specific points. We intend to offer a defined contribution pension scheme, a proposal that is designed to recognise the unique type of institution that the bank will be within the Scottish public sector. I do not see that as setting a precedent for wider public sector settlements.

A defined contribution pension scheme is not without precedent in the Scottish public sector. For example, Business Stream, a subsidiary of Scottish Water, uses such a scheme. The use of incentives is common practice within the comparator public sector banks, so our proposals remain in line with recommendations in the committee's stage 1 report. The incentives will be administered annually but paid out over an extended period of up to four years, and only on the achievement of measurable impact against mission and objective-based targets.

I hope that this explanation is helpful for members and I am happy to provide updates as the policy develops.

Neil Findlay: The bill says nothing on the future pay, pensions and rewards and devolves all of that to the board and chief executive. The national investment bank will be established as a non-departmental public body and form part of the public sector landscape in Scotland. As such, the terms and conditions should at least match those applied across the public and governmental sector, including on pay, access to a defined benefit pension scheme and any other rewards. Remuneration must be aligned with Scottish ministers' pay policy and fair work practices. A defined contribution scheme does not align with what is being offered elsewhere.

The investment bank should not repeat the past failures of the banking sector in its lending, for example by engaging in irresponsible lending or other dodgy practices that we have seen over the years, and it should also avoid following the lead

of those commercial banks in downgrading the pensions of their staff. We should be offering the same as in other areas of the public sector that are covered by ministerial pay policy, which means that staff should be covered by a defined benefit scheme.

In the example that the cabinet secretary has given, it appears that he has had his officials scouring the landscape to find an example of a pension scheme that fits this proposal, and all they could come up with is a single one in Business Stream. His argument does not stack up.

Across the Government and agency sector, the payment of performance-related bonuses has been excluded from pay awards for many years. Recruitment and retention supplements are currently used, particularly in core Scottish Government roles, and golden hellos and other such incentives have been used in other areas of the public sector. Those are regularly reviewed through market pay comparisons to ensure that the case for them is robust, and that has also reduced the risk of equal pay claims.

The investment bank staff who will transfer from Scottish Enterprise will have their terms and conditions protected on transfer, which is good. They are the basis for a fair package for all Scottish national investment bank staff. There is no need to waste time and resources trying to develop new terms and conditions that will create a two-tier workforce. Colleagues working next to each other on different contractual arrangements will inevitably create division within a new workforce. The bank would be setting off on a very bad footing. Creating performance bonuses and target-driven incentivised pay for senior executives and staff will lead us back to repeating the mistakes of the commercial banking sector. We should not do that.

The minister said that the bank will be covered by the public sector equality duty. If he accepts that, it follows that the bank should also be covered by public sector pay, rewards and pensions policy.

Dean Lockhart: Amendments 64 and 19 would restrict the operational independence of the bank, and on that basis are not appropriate. However, I can support amendment 65, which sets out appropriate guidelines on qualifications for non-executive directors.

Amendment 8, in the name of Neil Findlay, would also impact on the operational independence of the bank's recruitment policy and how it operates in practice. We therefore do not believe that to be an appropriate change.

Andy Wightman: Neither amendment 64 nor amendment 19 would restrict the operational independence of the bank. They are about the

rules governing the appointment of directors. As I made clear during my intervention on the cabinet secretary, once directors are appointed, they will be subject to exactly the same duties as every other director. What Dean Lockhart said is a red herring.

The Convener: I am scouring the cabinet secretary's face to see whether he wishes to come back in at this point.

Derek Mackay: I reinforce the point that the structure that we are looking at for the bank is similar to those of a number of organisations, but it is important to look at the arrangements for comparator banks in Wales and the rest of the UK. I have covered those points.

For the avoidance of doubt, Neil Findlay has made the point that existing staff would transfer into the bank under the transfer of undertakings regulations, as appropriate. That is also an important point to make. As operational policy is progressed, I will be happy to continue to engage with Parliament.

Neil Findlay: The cabinet secretary never mentioned it, and I wish he would, because twice I have asked why, if the bank is covered by the public sector equality duty, it is not covered by the public sector pay, pensions and rewards policy.

The Convener: I will allow the cabinet secretary to come back in on that one point, then we will move on.

Derek Mackay: We have made it clear from the start that we are setting up a new organisation that has a specific mission. We have learned lessons from other banks, and we are looking at best practice in other banks of a similar nature across the UK. We want to make sure that the remuneration and incentive scheme is right, but it absolutely will not be a bank of the ilk that gave banks a bad reputation, with the incentives and inflated pay that caused great controversy. The First Minister has been clear from the outset about how the bank should operate. It will not be a bonus culture; it will be about the right missions and the delivery under them, and I think that it will command respect. For those reasons, we should recognise that it will be a unique organisation.

Because of the nature of the bank, its pension contribution arrangements will not set a precedent for other organisations. I have been clear about that.

The Convener: Jackie Baillie can now wind up and indicate whether she wishes to press or withdraw amendment 64.

Jackie Baillie: I will start with amendment 64 and pick up on something that the cabinet secretary said, because I am sure that he did not intend to use this phraseology. He seemed to

suggest that trade union representatives were somehow without merit.

I see that he is shaking his head; I am pleased to see that.

I am happy to withdraw amendment 64 and support amendment 65. There is no problem with Andy Wightman's amendment 19. He will appreciate that councillors who sit on health boards are accountable to those boards, not to their local authorities, so the cabinet secretary's argument is invalid.

I support the cabinet secretary's amendment 6, as I do amendments 7 and 8 in the name of Neil Findlay. Neil Findlay's amendments are necessary because of the Scottish Government's current direction of travel. I thought that we had seen enough of bankers' bonuses. I hear what the cabinet secretary has said—he might call it incentive pay—but if it looks like a bonus and it behaves like a bonus, it is a bonus, and calling it something different does not hide that fact.

Defined benefit pension schemes are the norm throughout public sector pay policy. This will be a public bank, not a private bank, and as such, it should conform to public pay policy. I therefore urge the cabinet secretary to reflect on that in his discussions with the civil service trade unions. In the meantime, I ask members to support amendments 7 and 8.

Amendment 64, by agreement, withdrawn.

Amendment 19 moved—[Andy Wightman].

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

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 19 disagreed to.

Amendment 65 moved—[Rhoda Grant]—and agreed to.

Section 6, as amended, agreed to.

Section 7—Directors: tenure

Amendment 6 moved—[Derek Mackay]—and agreed to.

Section 7, as amended, agreed to.

Section 8—Remuneration

Amendment 7 moved—[Neil Findlay].

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

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 7 disagreed to.

Amendment 8 moved—[Neil Findlay].

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 8 disagreed to.

Section 8 agreed to.

Section 9—Committees

The Convener: Amendment 20, in the name of Andy Wightman, is grouped with amendments 38, 39, 21, 40, 66 and 67.

Andy Wightman: It is clear that, to some extent, the amendments in the group seek to

achieve the same ends, and I am relaxed about where we get to. I am aware that we might get to a muddled position, but I am sure that we can clarify that at stage 3.

I am not particularly taken by amendment 38, in the name of Rhoda Grant, which would introduce a statutory duty to set up four committees. For example, I think that the investment and ethics committees could run together. However, I am quite relaxed about it, and will be guided by members as to which options are most attractive.

My fundamental point with amendment 20 is that it is important that there is a statutory duty for the bank to have an ethics committee, which would be complementary to the audit and risk committees that are already set out in section 9. There will be an ethics statement, which has been an important part of the debate about the bank, and it is not very problematic to insist that that be prescribed in the legislation.

In relation to amendment 38, I think that it would be quite normal for a bank to have remuneration and nominations committees, and those might be matters that the board wants to reflect on. As I said, members might take the view that we should prescribe those things, too, but I am quite relaxed about that.

In relation to amendment 67, in the name of Jackie Baillie, there was some debate about the advisory group and who it would be advising. Amendment 67 is helpful in that regard, because there has been a lack of clarity. Although there might be some details in the amendment that need a bit of work, the sentiment is important and I will vote for it.

I move amendment 20.

12:00

Rhoda Grant: I will speak to amendments 38 to 40 and 66, in my name.

Amendment 38 ensures that reference to all six committees should be placed in the bill. The bill already lists the audit and risk committees, but the others also warrant a mention in the bill.

Amendment 39 is an alternative. All six committees should be listed in the bill but, arguably, the ethics committee is the most important and should be at least equal to the audit and risk committees. If the committee were not in agreement that all six committees should be listed in the bill, members will agree with me that the ethics committee should be.

Amendment 40 puts the purpose of the ethics committee in the bill, and amendment 66 requires the bank's directors to confer formal functions on

the remuneration, nominations and investment committees.

Jackie Baillie: I will be brief. The advisory group will deliver vital support to the bank in setting missions and directing investment decisions. In turn, the advisory group must be well supported by the bank to carry out its duties. The bill should ensure representation from trade unions on governance advisory structures. Amendment 67 reflects the committee's thinking and, specifically, the recommendation to enshrine the advisory group in the bill.

Dean Lockhart: With regard to amendment 67, we agree that it would be helpful for the advisory group to be embedded in the legislation. Likewise, I am relaxed about amendment 20, but I think that it is overly prescriptive to set out in primary legislation the names of the individual committees and how they will be established. A better formulation would be a requirement on the board of directors to create such committees as it deems appropriate to deal with those matters and to allow the board of directors to set up committees to do that.

Derek Mackay: I turn first to those amendments that would place a requirement on the bank to establish a committee that is responsible for overseeing its approach to being an ethical investor. I appreciate that members are keen to ensure that the bank operates effectively as an ethical investor. I share the view that that is important. The Scottish Government has already taken steps to support that. We have committed that the bank will produce an ethical statement. We have also committed that the bank will align its activity with the United Nations guiding principles on business and human rights and the UN global compact.

However, as the committee has heard from a number of stakeholders during stage 1 scrutiny of the bill, the governance arrangements and operational structures that are put in place for the bank must be determined by the bank. That not only ensures that the bank can develop an effective and flexible response in the context of the bank's wider operational structures but creates a clear and distinct relationship between the bank and its shareholders.

Providing specifically for an ethics committee might not be the most effective means of infusing ethics into the bank's decision making around its investments. All members should be thinking about ethics. Feedback from stakeholders suggests that divorcing ethics from the main board risks sidelining or compartmentalising that issue. As the amendments that have been lodged show, there are a number of possible approaches to that. I encourage members to avoid a muddle by heeding my advice.

A further option would be to have ethical investment as a board-level responsibility. It is important that we put the right conditions in place—through the shareholder framework, the missions and the bill—for the bank to develop as an ethical investor, rather than trying to provide the precise mechanisms for it to adopt.

Although I respect the intention behind the amendments, for those reasons I cannot support amendments 20, 39, 21 and 40. There is an appetite for more detail on how, in practice, the bank will approach its role as an ethical investor. As the establishment of the bank progresses, we will have conversations with the newly appointed chair of the bank on that issue, to provide that assurance to members.

I also urge members to reject amendments 38 and 66, on the basis that the bank requires the operational flexibility to determine its internal governance arrangements. The committees that are referenced in amendment 38 mirror those that are mentioned in the shareholder framework document that I shared with the committee in May. The committee's stage 1 report recommended that the Government consider providing for the establishment of such committees in the bill. However, it remains our view that writing the bank's governance provisions into legislation risks straitjacketing it into arrangements that might be ineffective in practice, without giving it the opportunity to make simple adjustments. I therefore think that it would be wrong to set all that out in primary legislation.

Andy Wightman: The cabinet secretary has said that it would be wrong to set out such provisions in legislation, but section 9 does precisely that. Section 9(2) says:

"The articles of association must require—

- (a) that the Bank have—
 - (i) an audit committee, and
 - (ii) a risk committee".

If it is appropriate that the bill specifies the committees that should be in the articles, I do not see how there can be an argument against incorporating reference to other committees. If there is an argument against incorporating in the articles an investment and ethics committee or an ethics committee, the same argument would surely apply to the audit committee and the risk committee. I am not sure what the cabinet secretary's precise argument is on that point.

Derek Mackay: I will come back to the very specific matter of the advisory group which, for the reasons that we have debated and heard about from Jackie Baillie, I support.

There are specific reasons for the requirement to have an audit committee and a risk committee.

The thrust of this argument is about whether to have an ethics committee. What I am trying to express is that the bank's ethical approach should be integral and central to it, and it will be set out in different places. I do not see the need to separate it out into a sub-committee of the main board. It should be central to the operation of the bank and of the board, and should be shared by all members at the highest level. I am not looking to separate it out or to micromanage the whole structure of the bank, but there are very specific reasons for having an audit committee and a scrutiny committee. I wish to return to the advisory group point later.

The other reason for not being too rigid in primary legislation is that we might have to return to these matters. What if we wanted the nature of the bank to change? Are we seriously suggesting that the Parliament should have to consider that in primary legislation? For those reasons, I do not want to be overly prescriptive.

After the stage 1 debate, the committee asked the Government to consider how the advisory group could be reflected in the bill. Amendment 67, in the name of Jackie Baillie, proposes the inclusion of such a group in legislation. The implementation plan recommended the establishment of a group including representatives of stakeholders and wider society to advise ministers on the bank. As members will be aware, the Government had already intended to set up an advisory group, but amendment 67 now sets out a requirement for it in the legislation.

In our response to the committee's report, our view was that an advisory group was not a matter for legislation. However, if it is the Parliament's view that, for the avoidance of doubt, such a group should be provided for in the bill, we would be willing to support that, subject to having the opportunity to make refinements and adjustments at stage 3. On that basis, I would be happy to support amendment 67.

The Convener: I call Andy Wightman to wind up and press or withdraw his amendment.

Andy Wightman: I intend to press amendment 20.

I am a little bit confused by the cabinet secretary's response. He suggested that there was an alternative way forward, but no amendments on such a course have been lodged. He argued that ethics should be central to the board and not separated out. I agree with that, but the fact that we set up—or required the bank, in its articles, to have—an ethics committee would not mean that that was being separated out; it would simply highlight the importance and significance of ethics. The bill makes similar provision for an audit committee and a risk committee.

The cabinet secretary also argued that we should not be overly prescriptive but questioned what would happen if the articles were to change. That is covered in section 10. All the articles of association that are prescribed in the bill can be amended or repealed only in line with section 20, which requires a special resolution of the bank's members that has been

"laid before, and approved by resolution of, the Scottish Parliament."

There is nothing novel about that. The bill already provides that amendments to the articles must be approved not just by the Scottish ministers but by the Parliament, which I think is perfectly appropriate.

I encourage members to ponder this point carefully. Although we disagree on the approach, I think that the cabinet secretary agrees with me that ethics are vital. They require thought and deliberation, exploration, analysis and debate, and those processes are best done not in the full board but in a dedicated committee. There are plenty examples of that. A dedicated committee can look very carefully at these matters and bring recommendations to the main board. I do not think that there is anything problematic here. Requiring there to be an ethics committee would give the public, the taxpayers and voters in Scotland a degree of comfort that the public money that the bank is going to invest will be invested in an ethical way, in line with what people across the country now expect. Amendment 20 would simply make sure that there is a forum in the bank with that dedicated purpose.

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

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 20 disagreed to.

Amendment 38 not moved.

Amendment 39 moved—[Rhoda Grant].

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

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 39 disagreed to.

Amendments 21, 40 and 66 not moved.

Section 9 agreed to.

After section 9

Amendment 67 moved—[Jackie Baillie]—and agreed to.

Section 10 agreed to.

Before section 11

The Convener: Amendment 22, in the name of Andy Wightman, is grouped with amendments 23, 9, 10, 42, 41, 11, 24 and 43.

Andy Wightman: Amendment 23 is consequential to amendment 22, so I will set it to one side.

The Scottish Government's programme for government stated:

"We confirm in this Programme that its primary mission—

that of the Scottish national investment bank—

"will be to transition to net zero".

Therefore, that is not simply the Government's intended mission, or the first of a series of missions; it is the bank's "primary mission". The bill does not make any reference to primary, secondary, tertiary or quaternary missions; it simply talks about there being missions. However, on the basis of the Government's own statement, it regards the transition to net zero as a "primary mission"—in other words, not as the bank's first mission but as one that is more important than any of the others. At least that is how I interpret the statement, which is fairly unambiguous.

12:15

It is therefore my view that it would be appropriate—although this is a departure from the

way in which the bill is structured—to set out in the bill what I refer to as a "strategic mission". Amendment 22 states:

"The strategic mission of the Bank is to undertake investments that will facilitate the transition to a net-zero emissions economy."

I anticipate objection to that wording on the basis that, if it is to be a strategic mission, we will soon—or one day, I hope—have achieved it, and the mission will no longer be relevant. That is a criticism, because the bill would then have to be amended. The challenge that we face is so profound that I agree with the Government that net zero should be its primary mission, which should be set out in the bill. When we achieve the target in 10, 15 or 20 years, it will be relatively straightforward to bring forward an amending bill; perhaps other things will need to be changed at the same time.

Amendments 10 and 11, which are concerned with consultation, raise a separate question as to how missions are set. I agree with those amendments. It is important that Parliament has the opportunity to scrutinise the missions, and perhaps the relevant committee should have the opportunity to debate, call evidence on and make representations to ministers about them.

However, in my view, the bill is deficient—as I indicated in my earlier remarks—in that, although it requires in section 20 that the Parliament should approve any proposed changes to the memoranda and articles, it does not provide for any parliamentary oversight of the mission-setting process. Derek Mackay's amendments 10 and 11 provide for consultation, but my amendment 24 would require that such additional missions should be approved by resolution of Parliament. I believe there may be a drafting error in my amendment—it should refer only to "additional" rather than to "strategic" missions.

I do not think that that is a great deal to ask—it is already the case, for example, with the national planning framework, which we debated in the Planning (Scotland) Bill. It would be a simple resolution, and Parliament would have had the opportunity to undertake some scrutiny as outlined in amendments 10 and 11. It seems straightforward and logical that Parliament should then resolve to either accept or reject those changes.

Although I hear Jackie Baillie's argument, amendment 42 duplicates amendment 10 to an extent. I look forward to listening to Dean Lockhart's arguments for amendment 43; I am broadly content with it, although I have some questions.

I move amendment 22.

The Convener: I call Jackie Baillie to speak to amendment 9 and other amendments in the group.

Jackie Baillie: I will be brief. Amendment 9 is necessary because the missions need to be linked to the bank's objectives. There is little in the bill about how the missions will be developed—if I was being generous, I would say that it is a bit vague—and the approach to developing them needs to be coherent and consistent. In addition, amendment 9 will ensure that equality—which we have to discuss as an ancillary objective prior to stage 3—is mainstreamed through all the missions so that gender is considered at the earliest and highest levels of mission setting.

In drafting amendment 42, I have again opted to flatter the Scottish Government, this time by copying its approach to its own Gaelic-language plan; there is therefore a legislative precedent for the approach, which I think is elegant. It is similar to the cabinet secretary's amendment 10 but, as that amendment does not appear to have regard to any resolution of the Parliament, my preference is quite naturally for amendment 42.

The Convener: I call the cabinet secretary to speak to amendment 10 and the other amendments in the group.

Derek Mackay: Having met the Opposition spokespeople to discuss the matter, I have tried to find a way through the issue of engagement on missions. The process by which missions are to be set for the bank has—rightly—been a subject of debate throughout the parliamentary process for the bill. Professor Mazzucato said:

“meaningful public participation in the selection process of missions is essential”,

and the Government has always recognised that. We have been extensively engaging with stakeholders to develop the first set of missions, and recently I held the discussions that I just mentioned, following the committee's work at stage 1.

I will speak to my amendments 10 and 11 before turning to those of other members. We have accepted the committee's recommendation at stage 1

“that the Parliament should be formally consulted on those areas that will set the long-term focus of the Bank's work”,

and my amendments 10 and 11 give effect to that commitment.

Amendment 10 provides that a statutory public consultation must be undertaken before a mission is set, modified or brought to an end. The statutory consultation must last for at least 40 days, and it will begin when ministers lay before the Parliament a statement that describes their proposal.

Amendment 11 requires ministers to lay before the Parliament a statement that describes how the consultation responses shaped the final set of missions that was provided to the bank. By introducing that process, we will ensure that the missions emerge from a thorough public consultation process and so cannot be arbitrarily set or modified at any given point. That will give the bank certainty in carrying out its activities.

I turn to other members' amendments in the group. Jackie Baillie's amendment 42 is similar in effect to my amendments 10 and 11. The important thing here is that the Parliament has an opportunity to influence the development of the missions. That will be achieved through meaningful discussions on the content of the missions and through the Parliament seeking assurances that they will contribute to our addressing major challenges that face Scotland. In my view, my amendments 10 and 11 will achieve that best, by allowing for flexibility in how the Parliament considers that it should influence the development of the missions once a proposal has been presented to it.

Amendment 42 would require a final proposal to be presented. That might be appropriate, but my amendments 10 and 11 will also enable consultation to happen earlier in the development of missions, which will increase the scope for their content and subject matter to be influenced by the Parliament's view. For those reasons, amendments 10 and 11 are more appropriate than amendment 42, which I respectfully ask Jackie Baillie not to move.

I turn to Andy Wightman's amendments 24, 22 and 23. I do not support amendment 24. As I said, missions will be set between Scottish ministers and the bank. The strategic planning of Scottish Enterprise and other public bodies is not subject to approval by the Parliament; in the case of Scottish Enterprise, the Government sets out guidance for it to consider when it determines its priorities. For the Parliament to approve the bank's missions would be a departure from normal practice and would blur the Parliament's role in holding ministers and public bodies to account. I fully endorse the Parliament retaining a role in meaningfully influencing the development of the missions, and amendments 10 and 11 will achieve that by providing for the Parliament to be consulted and allowing flexibility in how the Parliament thinks that it can best have input on mission development.

I regret that I cannot support Andy Wightman's amendment 22. The Government has already announced that the bank's primary mission will concern the just transition to net zero carbon. It could be decided that that mission should be updated to reflect the latest policy priorities and

stakeholder views, and the Government is providing for an extensive and meaningful consultation process to enable that. Under Andy Wightman's amendment 22, primary legislation would be required before changes could be made. That would create an unnecessary process, so I do not see value in supporting the amendment.

I accept that the fact that we might achieve a mission is not a reason not to have it there, but I have other reasons for not supporting amendment 22. It is expected that the bank will work towards addressing multiple challenges that Scotland is facing, and it would be odd for only one of them to be accounted for in the bill. We have consulted on two other missions, on adapting to demographic and technological changes and on improving places across Scotland. Given the bank's wider purpose and the importance of those issues, I do not agree that one mission should be singled out in the bill.

Furthermore, the Government has already agreed that support for the transition to net zero emissions ought to be anchored in the bill, and amendment 4 was lodged to achieve that. It is more favourable to have an additional object of

"investing to—

(i) promote environmental wellbeing, and

(ii) in particular, support the transitions required to meet the net-zero emissions target"

than it would be to create a statutory mission.

That is because the bank will have to consider that when making any potential investment. For example, when considering a prospective housing investment, it might consider the energy efficiency of the housing stock to be constructed or whether district heating initiatives are being considered. That additional object created by my amendment 4 fully supports a consistent approach across the bank's activities to support the transition to net zero emissions. Although it would be unacceptable for the bank's missions to change frequently, enshrining them in legislation would add an unnecessary level of inflexibility when it came to modifying them when the time was right.

Amendment 41, in the name of Dean Lockhart, would create a duty on ministers to consult and "reach agreement" with the bank's board before missions are set, modified or ended. I appreciate the principle behind amendment 41 but I cannot support it as currently drafted and I will explain why. It is entirely sensible that the bank's board be consulted on any proposal for setting, modifying or ending a mission. That will help to protect the bank from having too many missions or being set unrealistic missions and it will give the bank greater agency when undertaking its work. I intend for a consultation with the bank to happen regardless, through establishing a Government

sponsorship unit and shareholder agreement. Given the novel and innovative mission-oriented approach, I am happy for that to be included in the bill. However, giving the bank a veto over setting, modifying, or ending a mission is unsuitable, particularly as proposals for missions will already have been subject to widespread consultation, including with the Parliament. For that reason, I ask Dean Lockhart not to move amendment 41, but I will be happy to work with him ahead of stage 3 to address the issue that it raises.

Amendment 43 from Dean Lockhart would allow the bank to propose the setting, modification, or ending of a mission. I will support amendment 43. Ministers will, of course, consider any proposal that they receive from the bank, but it is reasonable to guarantee such an approach.

Amendment 9, in the name of Jackie Baillie, would add a positive duty on Scottish ministers to outline how the missions set for the bank would contribute to the bank's objects. Amendment 9 is a sensible amendment, although I have some concerns about its wording. If we have the opportunity to address those concerns at stage 3, I will be happy to support the amendment now.

To sum up, I encourage members to support amendments 9, 10, 11 and 43.

The Convener: Thank you. I invite Dean Lockhart to speak to amendment 41.

Dean Lockhart: As the cabinet secretary said, amendment 41 would require the Scottish ministers to consult and seek to "reach agreement"—those are the key words—with the bank's board on any changes to the bank's missions. Over time, the board will have the best informed view of how the bank can implement policy and address the grand challenges. It will be important for the board to be consulted by the Scottish ministers if there is to be a change in mission and the board will be able to determine and advise the Government whether any mission or policy change is within its powers to deliver.

I understand that the cabinet secretary is concerned about the board having a veto. I am happy to revisit the drafting of amendment 41, but as drafted it would not give the board a veto: it would be a duty on the Government to seek to "reach agreement". However, at the end of the day, if agreement was not reached with the bank's board, the ministers would still have power to change the mission. Let me address the cabinet secretary's concerns by saying that we are not seeking for the board to have a veto in that regard.

The Convener: Thank you. If no other members wish to speak on the group 9 amendments, I will allow the cabinet secretary to come back briefly on that point.

Derek Mackay: Our strict reading of amendment 41 is that what it proposes equals a veto, so we cannot support it. However, I am happy to return to the issue at stage 3 to reach mutual agreement about what we are trying to do in section 11, to enable matters to be referred to the board but not to give the board a veto. If we can agree on that, then I hope that we can find appropriate wording for an amendment.

The Convener: I invite Andy Wightman to wind up and to press or withdraw amendment 22.

Andy Wightman: I have a few brief points. I did not speak to amendment 41, but I think that it is important that missions are things that the member of the bank—the sole shareholder—decides on, so agreement with the bank’s board is not appropriate.

12:30

Dean Lockhart referred earlier to “grand challenges”. I do not think that that is a reference to a television programme. Grand challenges are a new element in the landscape of the Scottish national investment bank, and I learned what some of the draft grand challenges are from stakeholders, who—as with many Government initiatives—appear to be far better sighted on the intention of ministers than we legislators are.

There is a serious point here. The bill talks about missions—they are deemed to be important enough to be in the bill—so if, as I understand from the flow charts that I have seen from stakeholders who are more involved in the matter than I am, the grand challenges sit above missions and are, therefore, more important than the missions, perhaps the bill should have a section on them, too. I would like some exposition—perhaps not now, but before stage 3—about what those grand challenges are and how they fit in. If there are to be grand challenges within which the missions need to sit, that will prescribe what the missions can be. If missions are important enough to be set out in the bill and to consult Parliament and others on, it is self-evident that the grand challenges should also be consulted on.

I made an error when I talked about amendment 24. The word “strategic” should have been in there. Section 11 is all about that.

I will close with an appeal to the committee to consider the intention behind amendment 22. The transition to net zero emissions is the biggest challenge that the planet faces. It will supersede any other grand challenge or mission that the bank might adopt or have placed upon it. Therefore, there is a very strong argument for setting it out in the bill.

The Convener: Thank you, Mr Wightman. This is not a television reality show, although some might wish it were. It is reality. Does the cabinet secretary want to come back in on the point about grand challenges?

Derek Mackay: I had two attempts at briefing Opposition spokespeople. I am happy to have a third go and to prepare a presentation on where the grand challenges fit in and why I do not think that it is appropriate to put them into primary legislation. I will try to be helpful in that regard.

The Convener: Not today, however.

Derek Mackay: Not today.

The Convener: Mr Wightman, do you wish to press or withdraw amendment 22?

Andy Wightman: I press amendment 22.

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

Members: No.

The Convener: There will be a division.

For

Wightman, Andy (Lothian) (Green)

Against

Baillie, Jackie (Dumbarton) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 22 disagreed to.

Section 11—Setting missions

Amendment 23 not moved.

Amendment 9 moved—[Jackie Baillie]—and agreed to.

Amendment 10 moved—[Derek Mackay]—and agreed to.

Amendment 42 not moved.

Amendment 41 not moved.

Amendment 11 moved—[Derek Mackay]—and agreed to.

Amendment 24 moved—[Andy Wightman].

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

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 24 disagreed to.

Amendment 43 moved—[Dean Lockhart]—and agreed to.

Section 11, as amended, agreed to.

Section 12 agreed to.

After section 12

The Convener: Amendment 12, in the name of Jackie Baillie, is grouped with amendment 44.

Jackie Baillie: I believe that I am on a roll now, so I hope that the cabinet secretary will take the same approach as he took to the previous two amendments and support my amendments 12 and 44. They would place a duty on the bank to create, maintain and use an equality strategy that covers every aspect of its operations, governance and wider societal and economic roles.

The strategy could include the bank's contribution to economic development, the role of missions, lending processes and outcomes, recruitment, and internal policies and processes, as well as how the bank might contribute to the skills pipeline and promote activity from women-led businesses, and its governance. We can see the reach that an equality strategy would have. The production of such a strategy would further the Government's wider objectives on equalities, and specifically gender equality, and help to ensure that wider social and wellbeing impacts are placed at the centre of the bank's day-to-day operation.

That is quite a big agenda for an equality strategy, but it is essential in the new institution of the Scottish national investment bank. It is nothing new, as successful gender strategies have international precedent. The European Investment Bank has a strategy on gender equality and women's economic empowerment, and I look to the German investment bank's gender strategy. We would be following and among the world's leading investment banks if the Scottish Government adopted the approach.

Let me pre-empt what I think the cabinet secretary will say. As we rehearsed earlier, the public sector equality duty is not the answer. Performance against the PSED is currently poor. As I said earlier, regulations are vague and bodies end up identifying their own broad and generic outcomes that do not do what is required, which is to protect people with individual protected characteristics, because they simply disappear. The ethical statement that the cabinet secretary proposes will be too broad to specify what is required. Ultimately, it comes down to whether we want equality to be at the heart of the bill, or not. I hope that the cabinet secretary does.

I move amendment 12.

Derek Mackay: I thank Jackie Baillie for lodging amendments 12 and 44. The bank's contribution to the promotion of equality is clearly an important issue and I welcome the opportunity to speak about it today.

Amendment 12 provides for the bank to develop an equality strategy and amendment 44 would ensure that the bank's performance was assessed against that strategy. The provisions in amendment 12 are focused predominantly on gender equality, which is understandable given the well-evidenced issues in access to finance for women-led businesses and the recruitment and retention of women in the finance sector. Those issues should be taken seriously.

The bank will have a significant opportunity to deliver positive returns for women in particular, and it must endeavour to establish from the start best practice that can contribute to wider sectoral change. That is one of the reasons why the bill makes the bank subject to the Gender Representation on Public Boards (Scotland) Act 2018.

We have already made commitments that will support the bank to promote gender equality. We have committed that the bank will become a signatory to the women in finance charter, which aims to address the gender imbalance at all levels across the financial services sector. Further, orders will be laid to make the bank subject to the public sector equality duty and the Scotland-specific duties resulting from the Equality Act 2010. I recognise that Jackie Baillie referenced those.

The Scotland-specific duties will place a number of requirements on the bank, including requirements to report on its gender pay gap and occupational segregation, publish gender-disaggregated employee data, implement gender mainstreaming, develop equality outcomes and report on progress towards meeting those outcomes. I am concerned that there is a large amount of duplication between those duties and

amendment 12. In addition, through the public sector equality duty, the Equality Act 2010 requires public authorities to assess their policies against all the relevant protected characteristics rather than focusing on gender, although I appreciate that Jackie Baillie's amendment mentions that the strategy should consider other characteristics.

Given the importance of the issue, I am happy to undertake to work with Jackie Baillie before stage 3 to seek the best possible outcome, if she is content to withdraw amendment 12. If she is keen to push it to a vote, we have some concerns about the way that the amendment is expressed that we would wish to address at stage 3. For example, subsection (2)(b)(i) seems to require the bank to take steps to "ensure gender equal outcomes" in the delivery of investment to enterprises. That requirement would arguably be too prescriptive were it to apply to the bank's own investments, but the current drafting suggests that it could apply to business investment more widely. It would clearly be impossible for the bank to achieve that.

I disagree with Jackie Baillie. It is not a question of whether gender equality should be at the heart of the bill—it should be. The question is how, and on that basis I am happy to work with Jackie Baillie to make further progress before stage 3.

The Convener: I ask Jackie Baillie to wind up and press or withdraw amendment 12.

Jackie Baillie: I am struck by the fact that the Government's team is male and the committee is predominantly male. I would hate for it to be the look of our consideration of the amendment that the men were denying the bank an equality strategy.

I take the cabinet secretary's comments in a positive spirit and I will be happy to work with him, but I want to press my amendment to a vote. Although I recognise that the view seems to be that the amendments in the group are too prescriptive, the cabinet secretary knows full well that, if we want change, we have to say exactly what we want to do and we have to do it in such a way that it is not open to interpretation or confusion.

I am consensual, and although I would like to have a coherent approach to adopting an equality strategy, I am willing to work with the cabinet secretary to lodge an amendment at stage 3 that will command support. In the meantime, I press amendment 12.

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 12 disagreed to.

Section 13—Report on investment performance

Amendment 68 moved—[Rhoda Grant]—and agreed to.

Section 13, as amended, agreed to.

Section 14—Review of performance

Amendment 44 moved—[Jackie Baillie].

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 44 disagreed to.

Amendment 45 moved—[Jackie Baillie].

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

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Wightman, Andy (Lothian) (Green)

Against

Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)

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

Amendment 45 agreed to.

The Convener: I call on Jackie Baillie to move or not move amendment 46.

Jackie Baillie: I want to move amendment 46, but I will take up the Scottish Government's offer of further discussions before stage 3.

Amendment 46 moved—[Jackie Baillie].

The Convener: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Halcro Johnston, Jamie (North East Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Lockhart, Dean (Mid Scotland and Fife) (Con)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

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

Amendment 46 disagreed to.

Section 14, as amended, agreed to.

After section 14

The Convener: Amendment 47, in the name of Willie Coffey, is in a group on its own.

12:45

Willie Coffey: The purpose and effect of amendment 47 is simply to align the new institution—the Scottish national investment bank—with the Scottish Government's commitment to fair work practices. It will require ministers to issue a direction to the bank within a year of the new section coming into force. The direction must make it clear that the bank must

“seek to promote fair work in exercising its functions”.

The intention is to ensure consistency with the implementation of fair work across the public sector landscape. The amendment also provides that ministers must consult the bank and those who represent the interests of workers and businesses in Scotland.

I hope that the amendment will be viewed as an appropriate measure that reflects the importance of fair work in a proportionate manner, and that the committee will support it.

I move amendment 47.

The Convener: As no other member wishes to speak on the amendment, we turn to the cabinet secretary.

Derek Mackay: I thank Willie Coffey for lodging amendment 47. It is my firm view that the bank will be able to have a significant impact on the advancement of fair work principles among employers in Scotland. The effect of amendment 47 is to place on Scottish ministers a requirement to set a fair work direction for the bank. That is similar to the requirement in the South of Scotland Enterprise Act 2019. It will be important that the approaches that are taken to the directions are closely aligned while being tailored to the specific activities of each organisation. We have committed that the bank will be a fair work employer, but even more important, perhaps, is the bank's potential to embed fair work practices across the Scottish economy through its role as a cornerstone institution. I share that ambition, and for that reason I support the amendment.

The First Minister has committed that, by the end of the current session of Parliament, we will extend fair work criteria to as many funding streams, business support grants and public contracts as we can. Amendment 47 will ensure that the bank aligns with the commitment to fair work first, under which employers are asked to commit to investing in skills and training, no inappropriate use of zero-hours contracts, action to tackle the gender pay gap, genuine workforce engagement and payment of the real living wage. We have discussed all those matters this morning.

It is important to be ambitious in setting a fair work direction for the bank to enable it to support business to adopt the full range of commitments. It is important to recognise that the bank will engage with a wide range of organisations and businesses and, as I mentioned earlier, some situations will require a tailored approach. For instance, a small business or a developing social enterprise might be unable to deliver each of the commitments at a certain point, but it might be worthy of support. The bank will be able to use its position to encourage improvement in practices over time for the benefit of the organisation and its employees. To set out in a direction how that might be handled will be helpful to the process.

It is essential that, during the development of the direction, ministers engage with appropriate organisations, such as the STUC, and the bank in order to ensure that the direction's effectiveness is

maximised. Amendment 47 sensibly provides for that.

I urge members to support amendment 47 and give the Scottish Government the tools to ensure that the bank participates fully in helping to embed fair work practices across Scotland's business community.

The Convener: I call on the deputy convener to wind up and press or withdraw amendment 47.

Willie Coffey: There is no need for me to wind up, convener, given what the cabinet secretary has said. I press the amendment.

Amendment 47 agreed to.

Sections 15 to 21 agreed to.

Schedule—Application of public bodies legislation

Amendments 48 to 54 not moved.

Schedule agreed to.

Sections 22 to 24 agreed to.

Section 25—Short title

Amendment 55 not moved.

Section 25 agreed to.

Long title

Amendment 56 not moved.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the cabinet secretary and his officials, Max McGill and Graham Watson.

12:50

Meeting continued in private until 13:01.

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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