



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 25 February 2020

Session 5



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ECONOMY, ENERGY AND FAIR WORK COMMITTEE

6th Meeting 2020, 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:

Jamie Hepburn (Minister for Business, Fair Work and Skills)

CLERK TO THE COMMITTEE

Alison Walker

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Economy, Energy and Fair Work Committee

Tuesday 25 February 2020

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Gordon Lindhurst): Good morning, and welcome to the sixth meeting in 2020 of the Economy, Energy and Fair Work Committee.

Agenda item 1 is to decide whether to take agenda item 5 in private. Do members agree to do so?

Members indicated agreement.

Subordinate Legislation

Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Consumer Scotland as Specified Authority) Order 2020 [Draft]

10:01

The Convener: Agenda item 2 is subordinate legislation. We have with us Jamie Hepburn, who is the Minister for Business, Fair Work and Skills; and Laura Barrie, Norman Munro, Laura McGlynn and Erin McCreadie, who are from various Scottish Government teams.

I invite the minister to make an opening statement on the order.

The Minister for Business, Fair Work and Skills (Jamie Hepburn): Thank you, convener. I thank the committee for considering the order, which was laid on 24 January—the day after the stage 1 debate on the Consumer Scotland Bill.

The purpose of the draft order is to enable the appointment of the chair and members of consumer Scotland to be regulated by the Commissioner for Ethical Standards in Public Life in Scotland prior to the new body coming into effect in April 2021—presuming, of course, that Parliament passes the Consumer Scotland Bill. That will be a vital step towards ensuring that members of consumer Scotland have the right skills and expertise, and that they are in place for day 1 of consumer Scotland. Appointing the right people with the right skills is crucial for any organisation, and it is particularly the case for consumer Scotland, which will be a small body with a wide remit whose success will depend on the credibility of its investigations and relationships management.

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

We also want to ensure that the appointments are made on merit, following an open, fair and impartial process that will be publicly advertised. The full participation of the commissioner's office will help to ensure that. The commissioner's office has been fully engaged to date: it will assist with interviews and will be involved in a widely publicised advertising campaign that is designed to attract a strong and diverse field of candidates.

The draft order will allow the appointment process to be progressed with immediate effect and, we hope, will enable the chair of consumer Scotland being in place by September 2020. The chair will then be involved in recruitment of the chief executive and other members, which will all be done with the full involvement of the commissioner's office.

I hope that the order will receive the committee's support. My officials and I are happy to take questions.

The Convener: Thank you, minister. It appears that there are no questions for you, so we will move to agenda item 3—the formal debate on the motion to approve the instrument, which is subject to affirmative procedure. I invite the minister to move the motion.

Motion moved,

That the Economy, Energy and Fair Work Committee recommends that the Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Consumer Scotland as Specified Authority) Order 2020 [draft] be approved.—[*Jamie Hepburn*]

Motion agreed to.

The Convener: Does the committee agree that I, as the convener of the committee, and the clerk should produce a short factual report on the committee's decision and arrange to have it published?

Members indicated agreement.

Consumer Scotland Bill: Stage 2

10:04

Section 1 agreed to.

Schedule 1 agreed to.

Section 2—The general function of providing consumer advocacy and advice

The Convener: Amendment 20, in the name of Andy Wightman, is grouped with amendments 23 and 4.

Andy Wightman (Lothian) (Green): I have a number of amendments to the bill in a number of groups. They share an attempt to move us beyond conventional ideas of consumers and consumption and instead to recognise that consumption is a critical part of a much wider debate about the economy and sustainability. Consumerism is one of the dominant global social forces, so its impacts must be understood beyond the conventional paradigm of the individual person choosing to buy a product or a service.

Amendment 20 seeks to broaden the general function of consumer Scotland in relation to the concept of harm. It would replace the objective of reducing harm to consumers in Scotland with a duty to reduce harm to consumer interests. Consumer interests are referred to elsewhere in the bill—in section 20 and, tangentially, in section 23. It is a broad term that is readily intelligible by the courts, and it is flexible in relation to emergent issues that might affect consumers. Amendment 20 specifies examples of harm to such interests as “harm that is ... financial ... emotional ... environmental” and “physical”.

Amendment 23 would add a further objective to the list in section 2, that of

“promoting and enhancing wellbeing”.

That does not need further elaboration; it recognises that wellbeing is an important social and public policy goal that can be advanced by high standards of consumer advocacy and advice.

I will support the minister's amendment 4.

I move amendment 20.

Jamie Hepburn: I appreciate the consideration that Andy Wightman has given to the bill. It is clear that our aspirations and ambitions for consumer Scotland are closely aligned. It is, and always has been, the Scottish Government's intention to provide meaningful results for consumers; everything that the bill does is designed to achieve that, which is why it provides for publication of a consumer welfare report.

I remain open to doing more to reaffirm our intentions, but we must do so in a way that avoids unintended consequences. For that reason I urge Andy Wightman not to press amendment 20. I fully support the point that he makes: harm to consumers takes many forms. However, as we have seen in the debate on the definition of “vulnerability”—which we will return to later—there is a risk in using even non-exhaustive lists, which should be avoided.

I am concerned that—much like the issue of vulnerability—amendment 20 might encourage consumer Scotland to operate and to consider issues through a certain lens. That is, I presume, the intention behind seeking to include amendment 20 in the bill. The risk is that we might unintentionally circumscribe consumer Scotland’s thinking, such that the body is slower than it might otherwise be to recognise other kinds of harm that we do not yet foresee. I therefore suggest that the ordinary meaning of “harm” is more flexible and does not require explanation.

I suggest that we instead provide examples of harm—such as those that are laid out in Andy Wightman’s amendment 20—in the explanatory notes, so that we acknowledge the variety of forms that harm can take.

I have listened with interest to the evidence on wellbeing that has been submitted to the committee. I thank Andy Wightman for championing the issue. He did that during the stage 1 debate and has discussed the matter with me in advance of stage 2. I respectfully suggest that my amendment 4 offers greater specificity than the general requirement to consider wellbeing in Mr Wightman’s amendment 23, even without amendment 4’s expressed geographical limit to “in Scotland”.

However, I would be keen to work with Mr Wightman ahead of stage 3 to include in the bill a specific reference to wellbeing in a way that does not prioritise wellbeing over the advancement of inclusion, fairness and prosperity. That could be achieved best by its being added to the detail that is laid out in amendment 4. I hope that Mr Wightman is willing not to move amendment 23 and to support my amendment 4. I am sure that we can work together to ensure at stage 3 that wellbeing is more explicitly referenced in the bill.

The Convener: No other member wishes to speak to the group, so I ask Andy Wightman to wind up and either to press or seek to withdraw amendment 20.

Andy Wightman: I will deal with the minister’s final points with regard to wellbeing. I am happy not to move amendment 23. I do not agree that amendment 4 encompasses wellbeing, but I am

happy to have that conversation in advance of stage 3.

I understand where the minister is coming from with regard to amendment 20. We have discussed the risks that are inherent in setting out even a non-exhaustive list for a body that is designed to operate independently. Notwithstanding the non-exhaustive list of four factors in the amendment, I still have a concern about the language in section 2(a), which is focused on

“reducing harm to consumers in Scotland”.

It is couched in conventional terms; the only harm that can take place is to the consumer who would, I presume, be actively engaged in consumption of a product or service. The point that I have tried to make with amendment 20 with regard to language—replacing “consumers” with “consumer interests”—is that consumer interests are much broader than the individual interests of any one consumer who might be affected by an issue that is related to their transactions for products or services. I was keen to get recognition through the amendment that harm can take place to consumer interests, broadly speaking. I do not need to go into how, but harm can go well beyond the interests of a single consumer at any one time.

Jamie Hepburn: I understand the issues that Mr Wightman has raised, which I am very willing to consider. My primary concern about amendment 20 is the inclusion of the list. I am more than happy to discuss his wider point in advance of stage 3, if he is willing, but my concerns about that element of the amendment remain, at this juncture.

Andy Wightman: I thank the minister. I understand his point about the risks that are inherent in setting out a list. Amendment 20 is a whole that cannot be split at this stage. However, in the light of the minister’s comments, I am happy not to press amendment 20. I look forward to discussing with the minister how section 2(a) is framed, in advance of stage 3.

Amendment 20, by agreement, withdrawn.

The Convener: Amendment 21, in the name of Andy Wightman, on businesses, is grouped with amendments 24 and 36. Andy Wightman will speak to and move amendment 21, and speak to the other amendments in the group.

Andy Wightman: Amendment 21 would replace the word “businesses” in section 2(b) with “entities”. Not all entities that supply goods and services will be businesses, in the conventional sense of the word. For example, the rise of the peer-to-peer or sharing economy, and the fact that many services are delivered by not-for-profit organisations mean that “entities” is a more appropriate term.

Amendment 24 would delete the word “business” from section 4 for similar reasons, and amendment 36 deals with the question slightly differently by defining business to include “not for profit enterprise”. Whatever route is taken, it is my view that we need to clarify the language throughout the bill. I look forward to hearing the minister’s response on the matter.

I move amendment 21.

Jamie Hepburn: As I said earlier, Mr Wightman and I are in close agreement about how and why consumer Scotland should operate.

10:15

I urge Mr Wightman not to press amendment 21. It is not entirely clear what exactly could, or would, be captured by the term “entities”. It could be argued, for example, that it would exclude sole traders: it is not clear that they might be considered to be “entities” under the legal definition. The reference to business is already very wide; if there is something missing that Mr Wightman seeks to cover, again I will be very happy to speak with him in advance of stage 3 in order to understand more about that and to consider whether we can work out an alternative approach.

On amendments 24 and 36, although I note that consumer Scotland has always had the power under the bill to investigate non-business sectors, as a result of section 4(2)(b), I concede that clarity might be useful. Accordingly, I urge the committee to support both amendments.

The Convener: No other member wishes to speak on the group, so I call on Andy Wightman to wind up and to press or seek to withdraw amendment 21.

Andy Wightman: I am grateful for the minister’s comments. I am happy not to press amendment 21, on the understanding that we can have a conversation about what exactly “businesses” means in law, and whether issues remain to be resolved.

Amendment 21, by agreement, withdrawn.

The Convener: Amendment 22, in the name of Andy Wightman, is grouped with amendments 27 and 28.

Andy Wightman: Amendment 22 is a substantial amendment. It is designed to ensure that one of consumer Scotland’s objectives under its general functions would be to provide consumer advocacy and advice, with a view to, in addition to the other factors that are set out in section 2,

“promoting a reduction in the consumption of natural resources.”

It is now widely known and accepted that, globally, we consume as if we had three planets—to be precise, 2.68 planets’ worth of natural resources—and the capacity to absorb the resultant waste. As Friends of the Earth points out in its briefing, Scotland’s material consumption across all sectors accounts for 68 to 74 per cent of our entire carbon footprint. Over the past years, there has been a particular focus on plastics in terms of both the production and the disposal of a product that is derived from non-renewable resources.

Internationally, the United Nations has adopted guidelines for sustainable consumption. In its most recent conference on trade and development, it highlighted the importance of consumer protection laws based on promoting sustainable consumption.

It is self-evident that we need to reduce consumption of natural resources, because they are finite, because consumption drives climate change, because rates of consumption in the rich world impose a disproportionate debt on poor countries, because consumer choice can help to drive the process of reducing impacts on the natural world and because we have international obligations, under the UN sustainable development goals, particularly goal 12, to ensure sustainable consumption and product patterns.

The United Nations recently said:

“In 2017, worldwide material consumption reached 92.1 billion tonnes, up from 87 billion in 2015 and a 254% increase from 27 billion in 1970 with the rate of extraction accelerating every year since 2000. This reflects the increased demand for natural resources that has defined the past decades, resulting in undue burden on environmental resources. Without urgent and concerted political action, it is projected that global resource extraction could grow to 190 billion tons by 2060.”

Amendment 22 is modest in its language but important in its scope. It would require consumer Scotland to undertake its functions with a view to, together with the other matters in section 2, promoting the reduction that is required in the consumption of natural resources.

Amendment 27 adds that, in exercising its functions,

“Consumer Scotland must have regard to the environmental impact of the actions of consumers.”

That is self-explanatory.

Amendment 28 would place a requirement on consumer Scotland to produce three-yearly reports on the impact of the actions of consumers on progress toward the net zero emissions target which is set out in the Climate Change (Scotland) Act 2009, and to report on the nature and extent of the impact of the actions of consumers where they have a negative impact on that progress.

I move amendment 22.

Jamie Halcro Johnston (Highlands and Islands) (Con): I have sympathy with what Mr Wightman is trying to achieve, but I do not think that it is a role for consumer Scotland, so I will not support amendment 22.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I have a question for Mr Wightman on the definition of “natural resources”. Would things such as water and fruit be included under the definition? I am sure that he is not intending that we reduce our consumption of water and fruit.

The Convener: I will let the minister come in before I allow Mr Wightman to respond.

Jamie Hepburn: That is very generous of you, convener.

The Convener: I try to be, but one cannot always be generous.

Jamie Hepburn: There is little in the principles that Mr Wightman has laid out from which I would demur. The intent and principle behind amendment 22 are in keeping with the view, which I have always had, that the body should tackle hard questions and drive meaningful change. Environmental sustainability is, of course, a key priority for the Government.

I recognise the intent and spirit of amendment 22, but I am concerned that the phrasing could be open to interpretation and could lead to unintended consequences. The deputy convener’s question gets to the heart of the issue. I am not seeking to be obtuse, but amendment 22 does not set out a hard-and-fast legal definition of “natural resources”. Does it encapsulate things such as fruit and vegetables? I do not think that that is Mr Wightman’s intention.

Andy Wightman: In international law, “natural resources” is not a contested term, but I understand that it could be open to interpretation if it is referred to in legislation. If the minister is sympathetic to the idea behind amendment 22, and if his only concern is how we define “natural resources” in law—I know that he has some way to go in his remarks—would he be sympathetic to incorporating such a function if we were able to reach agreement on a definition?

Jamie Hepburn: That was precisely the point that I was coming to. I urge Mr Wightman not to press amendment 22 and to discuss the matter with me. As I said, I am not unsympathetic to the intent behind the amendment; I know what it is trying to achieve. We are happy to look at whether such a definition is used in wider international law and at whether a slightly different form of terminology would achieve what has been laid out. Amendment 22 could be open to interpretation and might lead to consequences that are not being

sought, but I commit to working with Mr Wightman on that issue.

Amendment 27 has my full support. It usefully makes clear that, as has always been the case, consumer Scotland is being established to have regard to environmental matters. The explanatory notes make clear that consumer Scotland having such a regard is a legal consequence of its inclusion, under schedule 2 to the bill, in the list of bodies that are covered by the Freedom of Information (Scotland) Act 2002. Among other things, that will require consumer Scotland to act in a way that is calculated to contribute to the delivery of climate change targets. There is no harm in—indeed, a lot of good will be achieved by—amendment 27 making that more explicitly clear. I urge the committee to support amendment 27.

I appreciate the intent behind amendment 28, and I am genuinely committed to looking at what it seeks to do, but I hope to address the matter outwith this process, which picks up on the point that Jamie Halcro Johnston made. Amendment 28 would place the responsibility for preparing an environmental impact report on consumer Scotland’s shoulders, but I am not convinced that consumer Scotland is the most appropriate body to prepare such a report. I stress that consumer Scotland will have a role in supporting our climate change ambitions. As I have outlined, that will be made more expressly clear if amendment 27 is agreed to, which I hope that it will be.

Amendment 28 would somewhat change the body’s role from focusing on and understanding areas of consumer harm to focusing on the impact of consumer activity. Undoubtedly, that is a commendable aim, but we have to be clear that, as the financial memorandum sets out, consumer Scotland will be a small and fairly nimble body. It cannot do everything, nor should it try to do. It cannot be all things to all people; nor should it seek to be. It will not necessarily have the scientific expertise that will be required if it is to discharge the proposed duty in a meaningful fashion. Other bodies, such as the United Kingdom Committee on Climate Change and the Scottish Environment Protection Agency, might be better placed to carry out the assessments that are proposed in amendment 28. Consumer Scotland could collaborate with such organisations, if they thought that its input would be useful.

Finally, by the time consumer Scotland is established, in 2021, the Scottish ministers will have a duty under the Climate Change (Scotland) Act 2009 to set out, as part of our climate change plan,

“proposals and policies for taking, or supporting, action to reduce emissions ... associated with the consumption and use of goods and services in Scotland.”

As we have heard many times, and as has been expressed clearly to this committee, consumer Scotland must be designed in a way that minimises the risk of duplication. Amendment 28 could increase the risk of duplication.

I reiterate my commitment to look at the issue, and I urge Andy Wightman not to move amendment 28. Consumer Scotland is not the natural home for his proposed duty, but I will be happy to discuss with him how we might explore the aims of amendment 28 and use the Government’s wider powers, responsibilities and influence in that regard, without the issue becoming part of consumer Scotland’s activity.

Andy Wightman: I am encouraged by what you said, minister. Thank you for your helpful comments, to which I will come.

I understand why Jamie Halcro Johnston might take the view that this is not the role of consumer Scotland. However, amendment 22 is trying to make consumer Scotland a little bit bolder, by making it a body that understands that there is more to consumers and consumption than has conventionally been regarded as the case in the world of consumer affairs.

The world has moved on. We are in a climate emergency. We live in a globally connected world, in which patterns of consumption have been highlighted by a range of international bodies as incredibly important drivers of not just environmental degradation and climate change but poverty. I do not think that it is unreasonable, in 2021, when we are talking about consumer affairs and consumption, to incorporate functions in that regard.

What I heard from the minister was some sympathy and the suggestion that the kind of consideration that I am proposing is potentially appropriate. He was not definitive on that point, but he said that he is happy to discuss the matter.

The minister also said that he is concerned about the definition of “natural resources”. Willie Coffey asked me about that, too. I will have further discussions with the minister on this, but my understanding is that the term “natural resources” is well understood under international law to include elements such as water, soils, minerals, timber and biodiversity—those are natural resources.

We all have a duty to manage natural resources in a sustainable way, and consumption is clearly one of the drivers of our not doing so. We saw the impact of that in a recent report that set out the decline in Scotland’s biodiversity. Consumption is a central issue, and I do not understand why a

duty relating to reducing consumption cannot be part of a modern consumer body.

However, I do not want to split the committee at this stage. Therefore, I am happy not to press amendment 22, on the understanding that I will discuss with the minister how we can come up with language to secure duties in relation to reducing consumption.

The Convener: Does any member object to amendment 22 being withdrawn?

Andy Wightman: Convener, I have not concluded my remarks.

The Convener: Sorry, Mr Wightman. I thought that you had. I was rushing you on; I beg your pardon.

Andy Wightman: I apologise.

I thank the minister for supporting amendment 27.

I will be happy not to move amendment 28. I heard what the minister said about the Scottish ministers’ duties under the 2009 act in relation to consumption—I confess that that has passed me by; I will take a close look at the provision. The matter needs to be looked at, but if the Scottish ministers’ duties are sufficiently well defined in the 2009 act, I am happy not to press the case—for the moment, anyway.

Amendment 22, by agreement, withdrawn.

Amendment 23 not moved.

Amendment 4 moved—[Jamie Hepburn]—and agreed to.

Section 2, as amended, agreed to.

Section 3 agreed to.

10:30

Section 4—The research and investigation function

Amendment 24 moved—[Andy Wightman]—and agreed to.

Section 4, as amended, agreed to.

After section 4

The Convener: Amendment 37, in the name of Jackie Baillie, is grouped with amendments 5 to 7.

Jackie Baillie (Dumbarton) (Lab): I am happy to speak to amendment 37 and the other amendments in the group. As members will know, I call this the “Whirlpool amendment”. I do so because it is simply not good enough that, last year alone, white goods caused a house fire in Scotland every single day. That is despite

Whirlpool's recall of more than 1 million tumble dryers and washing machines.

Product recalls demand serious action of us and of the United Kingdom Government. Most recalls achieve about a 10 to 20 per cent success rate, which means that thousands of faulty, dangerous machines remain in people's homes today.

Manufacturers and retailers experience major problems tracing consumers with a recalled item if that item has not been registered. Electrical Safety First has found that about only one third of Scottish consumers bother to register their appliances.

Having a central body—consumer Scotland—as a single, trusted source co-ordinating recall information is key to reaching consumers with consistent and effective messages.

Amendments 5 to 7, in the name of the minister, seek to do the same thing, but I consider my approach to be more comprehensive.

Amendment 37 would ensure that consumer Scotland provides the relevant and necessary information to consumers.

I move amendment 37.

Jamie Hepburn: I note, as I did in our stage 1 debate, that the bill as introduced would allow consumer Scotland to provide information on product recalls. However, as Jackie Baillie has laid out, the danger posed by unsafe products is undisputable; so is the evidence that product recalls are often currently ineffective tools for removing that danger from people's homes. Those are issues that we have had cause to debate in Parliament before.

The committee, and Jackie Baillie in particular, made a compelling case at stage 1 on this issue. I have been convinced that, in light of the particular danger to consumers, the bill should explicitly charge consumer Scotland with taking action in that area.

I thank Ms Baillie for her work on the issue, especially for coining the pithy "Whirlpool amendment" terminology that she has rehearsed again today.

Both Ms Baillie's amendment 37 and my amendment 5 put it beyond doubt that consumer Scotland will provide consumers with information about major product recalls happening in Scotland.

I consider that both our amendments have strengths and merits. I argue that mine is more comprehensive than Ms Baillie's. However, rather than reject one or other of them today, I suggest that she withdraw hers, in which case I will not move mine, and that we agree to work together to unite those strengths.

My amendments impose a duty on consumer Scotland to ensure that information and advice is not only provided to consumers on product recalls, but provided on actions by manufacturers where the response to the dangerous product includes more than just a recall, such as offers by manufacturers to repair products at home, which forms part of the current Whirlpool recall. That is a positive step and widens the impact that consumer Scotland can have in that area.

Jackie Baillie's amendment requires consumer Scotland to do three things: to maintain a database, to publish information about that database and to provide advice to any consumers who are affected or are potentially affected by product recalls.

On the database, I can see the attraction of a centralised information source. I would, however, be keen to understand how it would work in practice, and I would be particularly keen to see how it will ensure that it does not add duplication or confusion, which the committee has been clear that it seeks to avoid. For example, the UK Government already maintains a database with information on product recalls, as, I believe, does the Chartered Trading Standards Institute. To be fair, it might be argued that those databases are not sufficiently well known or are inconvenient for consumers to use, so there may well be a case for consumer Scotland to keep one. Given the need to ensure that any database would maximise clarity for consumers rather than confuse them, I believe that the issue merits fuller discussion.

During the stage 1 debate, we also heard that the issues that prevent consumers from responding to recalls are not only to do with awareness and that consumers are also influenced by issues such as difficulties with finding serial numbers or concerns about providing retailers with personal data at the point of sale. Those issues might not be solved by a database, but it is entirely possible that consumer Scotland can investigate how manufacturers, retailers and the consumer protection system can create behaviour change. Again, I believe that that warrants fuller discussion.

My only other question around Jackie Baillie's amendment concerns whether it could be read as requiring consumer Scotland to provide bespoke, individual advice to specific consumers, which would mean that it would essentially become a front-line advice organisation. That is open to interpretation but, as drafted, there are two separate requirements. One is to publish the information in the database; and the other is to provide further information to any consumers who are affected or are potentially affected. If that is interpreted in a way that requires consumer Scotland to provide specific advice to individual

consumers, that could cut across the roles of organisations such as Advice Direct Scotland or Citizens Advice Scotland. It would also go against the grain of everything that I have thus far laid out to the committee. Indeed, external stakeholders of consumer Scotland will primarily use it as a strategic investigatory body rather than a front-line advice organisation.

There is also an issue that, if consumer Scotland is required by law to provide advice to any consumer who is affected, that might raise expectations that the body will proactively seek to identify and advise consumers, which would be almost impossible to achieve and would be extremely resource intensive.

I am sure that those outcomes are not what Jackie Baillie is seeking to achieve. That is why I am keen to work with her to ensure that they are avoided. I recognise the successful work that she has done to move the debate on product recalls forward, and I ask her to withdraw her amendment today, with the assurance that I will not move mine, so that we can bring back an appropriate amendment. Should she choose to press it, I ask the committee to reject it and support the amendments in my name, which achieve the objective of establishing a recall function of consumer Scotland while avoiding the issues that I have laid out.

Jackie Baillie: I am glad that everybody is calling my amendment the Whirlpool amendment. I am also glad that the minister recognises that this is a good idea and that he has introduced his own amendments in the area. I still prefer my amendment, although I understand his comments about how it could be open to interpretation. However, to be frank, the databases that currently exist are not good enough, as I think that he acknowledges, and the provision that I seek to introduce is not intended to replace the roles of front-line advisers such as those in Citizens Advice Scotland, as I think that he also knows.

That being said, in the interest of harmony, I am happy to compromise by withdrawing my amendment so that I can have a discussion with the minister prior to stage 3, and I will lodge an improved amendment for stage 3.

Amendment 37, by agreement, withdrawn.

Section 5—The information function

Amendments 5 to 7 not moved.

Section 5 agreed to.

Section 6—General provision about functions of Consumer Scotland

The Convener: Amendment 8, in the name of the minister, is grouped with amendments 9, 11, 38, 39 and 17.

Jamie Hepburn: I begin by thanking everyone who gave evidence to the committee on the range of bodies that consumer Scotland should collaborate with. They were right to highlight that the consumer protection system consists of organisations beyond public bodies, and that many others do important work. In fact, Which? submitted a briefing at stage 2 that agreed with the conclusion in the committee's stage 1 report about the need for consumer Scotland to establish close working relationships with a variety of stakeholders.

In recognition of that, I have lodged two packages of amendments. Amendment 8 recognises that ministers might wish to put beyond doubt that there are certain bodies or office holders whose activities should be taken into account by consumer Scotland. I am thinking of bodies such as Advice Direct Scotland, Citizens Advice Scotland and trading standards organisations. As members will be aware, the Which? briefing also welcomed this regulation-making power to name bodies with which consumer Scotland should work.

Amendment 9 expands the general collaborative provisions to cover any persons who are carrying out similar activities.

By choosing to use the word “persons” rather than “bodies” in the amendments, I have allowed for the possibility that commissioners or other office holders might also operate in areas of interest to consumer Scotland, and they should also be considered. I hope that that demonstrates to the committee and to those who gave evidence that their concerns have been heard and acted upon.

On Jackie Baillie's amendments, I am pleased to say that I can offer my support for amendments 38 and 39. We have heard many times about the risk of duplication in the consumer landscape, and both amendments sensibly seek to lessen that risk. I note, however, that if my amendments are agreed to today, as I hope they will be, amendments 38 and 39 might need to be revisited at stage 3 on a technical basis to ensure that the use of the term “person” is consistent across the bill. As I say, that would be a small technical matter, which I am sure that we could resolve at that stage.

I move amendment 8.

Jackie Baillie: The minister has recognised that the main concern is about the potential for

duplication of the work of other bodies. The consumer protection landscape is indeed complicated, with a variety of organisations already working in the areas of advocacy, advice, enforcement, and redress.

The lack of clarity around how consumer Scotland will interact with those existing bodies is largely being resolved by my amendments and, indeed, by the minister's, which are welcome. I am delighted that the minister will support amendments 38 and 39, and I urge other members to support my amendments and the minister's.

The Convener: As no other members wish to speak on the amendments, the minister may wind up.

Jamie Hepburn: I am happy to move on, convener.

Amendment 8 agreed to.

Amendment 9 moved—[Jamie Hepburn]—and agreed to.

The Convener: Amendment 25, in the name of Andy Wightman, is grouped with amendments 26, 10, 2 and 40. I draw members' attention to the pre-emptions that are shown in the groupings paper.

Andy Wightman: Amendment 25 is designed to shift the focus from "vulnerable consumers" as a class of people, to the factors that lead to their vulnerability. As drafted, section 6 contains an exclusive list that includes, for example, older people, people on low incomes and so on.

Amendment 26 narrates the non-exclusive list of characteristics that can lead to vulnerability—for example, age, health and geography. The minister's amendment 10 will achieve broadly similar ends, but is drafted in much more general terms. Jackie Baillie's amendment 2 would add to the exclusive list a catch-all category that is similar to the more general amendment 10.

There is clearly a little bit of overlap among the amendments in the group, and pre-emption applies, although I am never very good at working out the consequences of pre-emptions and how to vote.

Anyway, having considered the amendments in the group, I am content with the minister's amendment 10, because it will achieve the key objective of moving away from an exclusive list and focusing on individual circumstances.

The Competition and Markets Authority provided comments to the committee that suggest defining a "typical consumer" to mean the same as an "average consumer", as used in the Consumer Protection from Unfair Trading Regulations 2008. That is, it suggests that we define "typical consumer" such that it is consistent with

terminology in other legislation. I am sure that the minister will reflect on that suggestion; I just wanted to ensure that it was drawn to his attention.

10:45

I believe that I am obliged to move amendment 25, as it is the first amendment in the group, but I might, subject to the minister's comments, not press it. I will support amendment 40.

I move amendment 25.

Jamie Hepburn: The amendments in the group are all quite significant, so there is a lot to address. The convener will need to forgive me—I will get through this as quickly as I can.

I will set out my thinking on amendment 10, which is in my name, and on the key differences between the definition of vulnerability in that amendment and the alternative definitions that have been set out by Ms Baillie and Mr Wightman. I will then turn to Ms Baillie's amendment 40.

How we define "vulnerability" or a "vulnerable consumer" is at the heart of the bill and of the aims of the new body. That is why it is so important that we get it right. The Government's amendment 10 responds to calls for us to be more open by reflecting the fact that vulnerability is not fixed. We took on board the reality that it is not dependent on characteristics alone and that we cannot assume that a particular characteristic will always result in vulnerability. Instead, vulnerability is based on context and individual circumstances, and can vary for people over time. Indeed, almost all of us will be vulnerable at some point—for example, because of bereavement or because of lack of expertise in complex matters.

I thank everyone who made those points in evidence to the committee or during the stage 1 debate. I am especially grateful to Jackie Baillie for pointing us in the direction of the Scottish Legal Complaints Commission's definition of vulnerability. My amendment 10 utilises that definition as the basis of what we seek to define as a "vulnerable consumer" in the context of the bill. In doing so, amendment 10 makes it clear that vulnerability can be about a consumer's characteristics, their circumstances or both. It also recognises that circumstances and characteristics can be permanent, long term or short term.

On Andy Wightman's point, I have seen the Competition and Markets Authority's suggestions in relation to what a typical consumer, in contrast to a vulnerable consumer, might look like. Members could reflect on the fact that the CMA also suggests that it could be left to consumer Scotland to define that in the course of its activity. However, I am happy to look further at the matter.

On amendment 2, although Ms Baillie and I have sought to achieve similar aims, I believe that the Government's amendment 10 responds more closely to the committee's recommendation. In particular, Ms Baillie's amendment would maintain the list of circumstances, such as age and disability, that gave rise—rightly so, I have concluded—to some of the initial criticisms. I believe that providing a principles-based definition of vulnerability, without prejudging the types of vulnerability that it might cover, is the neater solution.

Beyond the list, the Government's amendment 10 differs in two other significant ways. First, my amendment does not include the criterion that defines a "vulnerable consumer" as one who is

"less able ... to protect or represent their interests in the market",

which is in the Scottish Legal Complaints Commission definition, and is included in Ms Baillie's amendment 2. I chose to remove it on the ground that it is quite limiting. A consumer who struggles to represent their interests might experience harm as a result, but that represents only one possible cause, when there might be many.

Therefore, I moved away from the causes of harm, and instead included the harm that consumers are most likely to experience: having "fewer or less favourable options". To ensure that consumer Scotland can act pragmatically, amendment 10 will require only that circumstances or characteristics "may" mean that the person has

"significantly fewer or less favourable options"

than the "typical consumer". That means that consumer Scotland will be able to act without needing to prove that harm is definitely occurring. We have also included a catch-all provision for harm that is not captured by that most likely cause.

The second difference is that my amendment 10 will also work with the possible extension of the definition of "consumer" to include small businesses, which we will come on to discuss later. In contrast, Ms Baillie's amendment 2 lists only individuals as examples.

For those reasons, I believe that the Government's amendment 10 represents what stakeholders and—if I have correctly interpreted what the committee sought from a new definition in its stage 1 report—the committee want.

Andy Wightman's amendment 25 seeks to change the label "vulnerable consumers" to "consumers experiencing vulnerability". I fully appreciate and understand why he has proposed changing the language. By changing the emphasis as he suggests, he is—I think—seeking to send a

message that consumers are not defined by vulnerability, and that they are not vulnerable at all times. However, although I support the motivation, I must note that the term "vulnerable" is used throughout the statute book, including very recently—in the short title, no less—in the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019. We should not upend that convention without a very good and clear reason for doing so. If changing the label were the only way to clarify our view of vulnerability, we might have such a reason. However, it is clear from the definition that I propose that the bill refers to circumstances and context, which are crucial.

However, if there is a strong feeling across the committee that more needs to be done to clarify that consumer vulnerability can fluctuate, that can be included in the explanatory notes, and I am happy to commit to doing that.

I cannot, in any event, support amendment 25 because it directly conflicts with my amendment 10, which continues to define "vulnerable consumers". There is also reference to that term in section 13. I therefore urge Mr Wightman not to press amendment 25. However, if he is minded to explore the matter further in conjunction with the Government in order to find a way that would work, and which would adopt consistent language throughout the bill, I would be happy to work with him to that end.

Mr Wightman's amendment 26 includes a different and very thoughtful list of examples of what might be felt to constitute vulnerability. However, the central criticism still applies: a list runs the risk of encouraging expectations—within and outwith consumer Scotland—of what "vulnerability" means. In contrast, the Government's amendment 10 makes it clear that vulnerability is about a comparison with the typical consumer, and does not make assumptions that people in particular categories will, or will not, definitely fall within the definition of "vulnerable".

Amendment 10 will also remove the perception that listed characteristics will be privileged over others, and it will leave equal space for a range of foreseeable and unforeseeable circumstances. That is not to say that we cannot supplement the explanatory notes with examples of vulnerability, if that is considered to be desirable. Mr Wightman's list would be an excellent starting point for that. That might strike the right balance through ensuring that the bill is not prescriptive and that guidance exists.

Finally, on Jackie Baillie's amendment 40, I am fully supportive of everything that Ms Baillie is seeking to achieve, so I commit to ensuring that she is successful at stage 3. With that assurance, I urge her not to press the amendment and to relodge it in a slightly different form.

I will explain why. I would be happy for subsection (b) in amendment 40 to apply to the consumer welfare report; indeed, if that suggestion had been presented as a specific amendment on its own today, I would have urged the committee to support it. It is extremely sensible for a body that has been asked to pay particular attention to the interests of vulnerable consumers to demonstrate how it has done so. When we come to stage 3, I will support such an amendment to section 16.

However, in relation to the proposed subsection (a) in amendment 40, I do not think that the welfare report is the correct place for ensuring that consumer Scotland's board reflects the views of vulnerable consumers, nor is that something that consumer Scotland is obliged, or even able, to ensure. As such, asking it to report on how it has done that will not achieve the desired results.

Instead, because ministers will approve appointments to the board, I argue that they should be responsible for ensuring that membership aligns with the priorities that we have established for the body in legislation. I note that there is already precedent for that: paragraph 14 of schedule 1 of the Social Security (Scotland) Act 2018, for example, sets out criteria that ministers must have regard to when making appointments to the Scottish Commission on Social Security.

If Ms Baillie does not move her amendment 40 today, I will work with her before stage 3 to ensure that we find wording on the board's membership that will ensure the outcome that she seeks. As I said, I will also support her if she lodges another amendment to section 16 that ensures that the consumer welfare report will set out how consumer Scotland has had regard to the views of consumers with vulnerabilities.

I apologise for taking some time there; however, the convener will appreciate that the matters are fairly detailed and complex.

Jackie Baillie: I am pleased to speak to amendments 2 and 40, which are in my name.

As we have recognised, the window of vulnerability can be open at various points in a person's life. Many factors can affect a person's ability to be treated fairly as a consumer in the marketplace. Those might include characteristics such as one's having a recognised disability, or circumstances such as the death of a loved one meaning that the person must deal with the funeral market. I believe that for consumer Scotland to be able to deliver results under its remit—which we want it to do—such variable and shifting definitions of vulnerability should be captured in its advocacy work.

The minister will be surprised to hear that I actually prefer his amendment to mine. I never

thought that I would say that—and I might never say it again—but on this occasion I will be happy not to move amendment 2, in favour of supporting the minister's amendment 10.

Amendment 40 is about ensuring that the views of vulnerable customers are heard at all levels of governance in consumer Scotland, whether that involves the board membership or how the body exercises its functions. I should say that the Scottish Co-operative Party strongly supports that move. I am aware that my amendment would make consumer Scotland responsible for something for which I should have made the minister responsible, so on the basis of the minister's very positive comments, I will not move amendment 40. I will resubmit my proposals as two separate amendments, prior to stage 3.

Jamie Halcro Johnston: I am grateful to Jackie Baillie for not moving amendments 2 and 40.

Scottish Conservatives believe that amendment 10, in the name of the minister, contains the most suitable definition to enable the inclusion of small businesses, so we will support that.

The Convener: Andy Wightman will wind up and press or seek to withdraw amendment 25.

Andy Wightman: I am glad that Jackie Baillie, the minister and I agree on key points. The committee also seems to agree on matters that I raised at stage 1, which are that we all experience vulnerability at some stage, and that the exclusive list that is set out in the bill is therefore not appropriate.

I commend the minister for the elegant way in which he has presented amendment 10. I have a few questions, but I will be happy to pick them up in discussions with him prior to stage 3. I am grateful to him for commending my list in amendment 26, which might make its way into the explanatory notes—so there might yet be a legacy of mine in the bill. *[Laughter.]*

Agreement to amendment 26 would pre-empt amendments 10 and 2. I seek to withdraw amendment 25 and will not move amendment 26.

Amendment 25, by agreement, withdrawn.

Amendment 26 not moved.

Amendment 10 moved—[Jamie Hepburn]—and agreed to.

Amendment 27 moved—[Andy Wightman]—and agreed to.

Amendment 11 moved—[Jamie Hepburn]—and agreed to.

Section 6, as amended, agreed to.

Sections 7 to 12 agreed to.

Section 13—Forward work programmes

11:00

The Convener: Amendment 12, in the name of the minister, is grouped with amendment 13.

Jamie Hepburn: Members will be relieved to hear that I will not take as long with my remarks on this group.

Consumers are vital to the Scottish economy and play an important part in building a more inclusive, sustainable economy, which is a key priority of this Government. However, consumers in Scotland do not currently have a dedicated voice to champion them and focus solely on their interests. It is our intent that consumer Scotland will be that dedicated champion, but it will be only as good as the people it serves. If consumers are not aware of the organisation, the Government and the Parliament, in taking forward the legislation, will have failed in our collective task. That is why the Consumer Scotland Bill needs to make it clear, with no room for doubt, that consumers will be listened to and that there will be proper engagement with them in setting priorities.

I consider that the original drafting of section 13, on forward work programmes, made it clear that consumers were included in the consultation requirement, as they have the most direct interest in consumer matters. However, having listened to committee members, I am happy to make that much more explicit on the face of the bill.

For completeness, I also propose an amendment to section 16, on the consumer welfare report, to ensure that it remains in line with section 13. Any difference between the two sections might have led to an inference that consumers are somehow not meant to be captured by the broad language in section 16.

I move amendment 12.

The Convener: If no other member wishes to speak on the amendments, I invite the minister to wind up.

Jamie Hepburn: As above.

The Convener: As above. *[Laughter.]*

Jamie Hepburn: As will appear in the *Official Report*.

Amendment 12 agreed to.

Section 13, as amended, agreed to.

Section 14—Reports on investigations

The Convener: I call amendment 38, in the name of Jackie Baillie, which has already been debated with amendment 8.

Jackie Baillie: Which one is amendment 38?

The Convener: It is an amendment to section 14.

Jackie Baillie: That is the one that the minister supports. I will move that one. This is an exciting, red-letter day.

The Convener: We are all very excited about it.

Amendment 38 moved—[Jackie Baillie]—and agreed to.

Section 14, as amended, agreed to.

Section 15—Annual report

Amendment 39 moved—[Jackie Baillie]—and agreed to.

Section 15, as amended, agreed to.

Section 16—Consumer welfare report

Amendment 13 moved—[Jamie Hepburn]—and agreed to.

Amendment 40 not moved.

Section 16, as amended, agreed to.

After section 16

Amendment 28 not moved.

Sections 17 to 19 agreed to.

Section 20—Duty to have regard to consumer interests

The Convener: Amendment 29, in the name of Andy Wightman, is in a group on its own.

Andy Wightman: Amendment 29 replaces the “have regard to” provisions that are imposed on relevant public authorities in section 20, which are currently focused on the impact of decisions on consumers and the desirability of reducing harm. It replaces them with provisions that say that public authorities should have regard to the impact on consumer interests, which mirrors my earlier amendment 20, and on the desirability of promoting and advancing wellbeing. Again, that mirrors my proposed amendments to section 2, which were debated earlier. I have lodged amendment 29 so that we can debate the issue of wellbeing. I look forward to comments from the minister, and from other members of the committee, if they wish to make any.

I move amendment 29.

Jamie Hepburn: I recognise the concerns that have been expressed to the committee about the consumer duty. However, I am committed to a consumer duty that does not impose market solutions on complicated policy issues or turn valuable public services into purely transactional arrangements. Our intent has always been to

ensure that consumers are considered in the policy-making process and, perhaps more importantly, are encouraged to shape those policy decisions. Tackling issues such as the global climate emergency will require engaged consumers who are willing to accept and drive change. I want the consumer duty to play a part in making that happen.

I am concerned that Mr Wightman's amendment 29 may have exactly the unintended consequence that he wants to guard against. The concept of consumer wellbeing is not at present defined, and to some it will inevitably suggest only the traditional consumer lens of price and convenience. If that is the case, changing the emphasis from considering impact and reducing harm to increasing wellbeing could make public authorities more concerned with market solutions than they may otherwise be.

As far as I know, the proposed change of emphasis in the duty is relatively untested. Public authorities that might expect to be responsible for the consumer duty—of course, we have still to consult on that matter—will not be expecting such a change of emphasis. They have not been consulted on it and they would rightly be concerned that they had not been given time to consider the impact on them of the change of emphasis.

However, as I set out during the debate on the first group of amendments, I remain convinced that wellbeing must be one of the foundations on which consumer Scotland is built. In an earlier debate, I committed to working with Mr Wightman to amend the bill at stage 3 to include wellbeing as one of consumer Scotland's core functions, as I think it should be. I therefore urge Mr Wightman not to press amendment 29 at this stage.

Andy Wightman: I welcome the minister's comments. As he said, our discussion on the first group related to wellbeing and the language in section 2, on which he committed to have discussions, so I am happy to wrap up those discussions with the questions that I have raised about section 20. In that light, I seek to withdraw amendment 29.

Amendment 29, by agreement, withdrawn.

Section 20 agreed to.

Sections 21 and 22 agreed to.

Before section 23

The Convener: Amendment 14, in the name of the minister, is grouped with amendments 15, 3, 30 to 35 and 16. I draw members' attention to the pre-emptions in the group, which are shown in the groupings document.

I call the minister to move amendment 14 and to speak to all the amendments in the group. No doubt, he will speak for the length of time and in the detail that is appropriate, which is a judgment call for him—within reason. Over to you, minister.

Jamie Hepburn: You talked about pre-emption, convener, and you have pre-empted my apology for taking some time with this group.

The Convener: There is no need to apologise.

Jamie Hepburn: It is a detailed series of amendments that will take some time to go through.

I will first address the expansion of the definition of "consumer" to cover small businesses. I thank Jackie Baillie for her amendment 3. I recognise that we have both responded to the concerns that were raised with the committee in evidence that small businesses often face similar issues to those that individual consumers face. However, I respectfully suggest that Ms Baillie's amendment presents a number of challenges. Most notably, it would add small businesses to the definition of "consumer" but would not address the original stipulation that the term "means an individual", which is an issue that my amendment 14 seeks to address.

I am also concerned that amendment 3 could cause confusion. In particular, I foresee two unintended consequences. First, sole traders, who are likely to be some of the small businesses that most often experience the same issues as individual consumers, would be excluded from consumer Scotland's consideration. That is because they fall equally into the existing category of an individual, and the bill as drafted excludes individuals if they are dealing in the course of a business.

Secondly, to be considered as a consumer, an individual must be buying from a seller who is carrying on a business. However, as I have noted, Ms Baillie's amendment 3 does not address the fact that small businesses are not individuals, and therefore no similar condition would be attached to small businesses. The same disparity is also true with regard to the location of consumers. An individual would have to be in Scotland, whereas a small business could be located anywhere.

In contrast, my amendment 14 provides that the consumer can be either an individual acting outwith business purposes or a small business, including one that is run by an individual. I believe that that represents a more comprehensive solution to the issue that the committee highlighted at stage 1.

Amendments 3 and 14 also differ on the definition of small businesses. The Government amendment does not provide a strict definition. In

our discussions with the Federation of Small Businesses, it has recognised the value of proposed new subsection 1(b) in amendment 14. If the bill was legislating for consumer Scotland to provide individual dispute resolution services, a definition of small businesses according to staff headcount may have been necessary. However, given that the body will investigate issues of general concern and will be an advice and advocacy body, I am keen to avoid what could be arbitrary cut-off points on staff numbers or perhaps on annual turnover, as has been discussed.

As the body will be focused on general concerns, it seems unlikely that such a solution would have any practical meaning at all. That is illustrated by Ms Baillie's amendment. Headcount can be a useful metric in many cases, but it neither reflects that some businesses rely more heavily on staff than others nor takes into account the proportion of part-time as opposed to full-time workers in an individual workplace. For that reason, I believe that the Government amendment represents a more comprehensive and flexible solution.

However, I recognise that the issue is complex and that a number of elements must be considered. For example, I accept that some stakeholders are concerned that the expansion will shift the balance so that consumer Scotland no longer primarily focuses on individual consumers and that finite resources may be diverted to consider issues that affect only small businesses. I am confident that that will not be the case. Of course, it will be for the body to identify its work priorities. As I have noted in my response to the committee, the bill includes a number of safeguards to ensure that that is done in collaboration with consumers and other organisations. As respondents noted in the committee's evidence sessions, consumer Scotland will be required to develop criteria to ensure that its work priorities are chosen transparently and consistently. Those, too, will be developed collaboratively.

The Government has been consistent from the outset that the body will act only when there is compelling evidence of consumer harm, and it is unlikely that a purely business issue would meet that test. I recognise the arguments that have been made that, although there is significant crossover between the issues that small businesses and individual consumers face, there can sometimes be tension between the two. I believe that that tension is mitigated by the wording in amendment 14. Small businesses will be included only when they are in essence the purchaser in a relationship and not when they are the seller or provider of goods, services or products.

Under both amendments, the definition would be extended to cover the whole bill and so it would also impact on the consumer duty. Consumer Scotland will develop guidance in consultation with those to whom the duty applies, which will be used to provide clarity on how the inclusion of small businesses should operate in relation to that duty.

I am open to finessing at stage 3 the provisions that amendment 14 will insert, if there is strong consensus on that today or if we agree that it is necessary following further representations from stakeholders. My aim is to avoid unintended consequences and to ensure that the bill gives the body and the duty that it seeks to create the greatest possible chance to succeed.

Mr Wightman's amendments 30, 31, 33 and 35 would ensure that the definition of "consumer" also covers "a group". The consequences of doing so are unclear, so I urge Mr Wightman not to move the amendments. I am aware of the representations that were made by some MSPs, including Mr Wightman, during the stage 1 debate that the definition should be widened further, perhaps to consider families or communities of interest. I have great sympathy with that view, but it is my understanding that a group—and certainly a family—would normally not have legal personality, so the consumer would still be an individual who purchased goods or services on the group's behalf. In essence, groups of consumers are already encapsulated in the definition of "consumer" in the bill, so I am unsure about what the practical impact of the amendments would be.

11:15

In amendment 36, Mr Wightman has sought more explicitly to include not-for-profit organisations, and amendments 30, 31, 33 and 35 might also be intended to do that. If that is the case, amendment 36, which has already been debated in the group 2 debate and which I have urged the committee to support, will already achieve that. If Mr Wightman still believes that something else needs to be done, I urge that that be more fully explored in advance of stage 3 so that we can find wording that would make that clearer. Accordingly, I urge Mr Wightman not to move amendments 30, 31, 33 and 35. Further, the expanded definition would impact on the definition of "consumer" that is used for the consumer duty, and I believe that the consequences of that are not understood.

I recognise that amendments 32 and 34, which would expand the list of activities of consumption to include recycling, sharing and disposal, are again designed to send a clear message that consumer Scotland will not be limited by a traditional and conventional view of consumption, but will instead take a whole-life approach to the

issue. Again, I am in full agreement with that position, but I have technical concerns about the amendments. In particular, I am not sure that sharing could be covered by the bill, given that the definition of “consumer” rightly requires that the person on the other side of the transaction is acting for business purposes. That means that peer-to-peer sharing would not be caught.

Sharing by a business is already covered by the person who receives the shared goods. Reuse, which one of Mr Wightman’s amendments seeks to establish, is just a type of use, so it is already covered by our provisions. I am also not sure what including recycling or disposing would add in practice. Under consumer Scotland’s investigatory powers, it would already be able to investigate those services. If someone purchased a recycling or disposal service to get rid of an old appliance, for example, that would already be covered, as it involves the purchase of a service. If the aim is something more specific—for example, to encourage consumer Scotland to champion ideas such as the circular economy—that might be better achieved in another way, such as through the body’s environmental duties.

I am open to exploring all those options at stage 3.

Andy Wightman: Will the minister take an intervention?

Jamie Hepburn: Yes, of course—although I am just about to conclude.

Andy Wightman: That is why I seek to make an intervention.

The minister mentioned recycling and disposal. The bill requires a service to be procured. Is it the minister’s understanding that, when one recycles materials in a local authority recycling facility, for example, that is covered by the definition of a consumer in the bill?

Jamie Hepburn: Yes. Is that clear enough?

Andy Wightman: Indeed it is.

Jamie Hepburn: As I was saying, I am open to exploring all the options that are available to us at stage 3, and I would like to do so in conjunction with Mr Wightman, who has set out a number of constructive suggestions. On the basis that I would like to explore the options further, I request that he does not move his amendments so that we can undertake that discussion.

I move amendment 14.

Jackie Baillie: We have all acknowledged that small businesses and microbusinesses often face the same disadvantages that individual consumers face in their knowledge of the markets, their bargaining power and, indeed, their ability to enforce their rights when things go wrong. There is

an overlap between the interests of consumers and the interests of small businesses and microbusinesses, and I am pleased that the minister has recognised that.

With regard to the minister’s amendment 14 and my amendment 3, the issue that is before us is whether we apply the approach to small businesses, which are obviously a much larger grouping, or just to microbusinesses, which have fewer than 10 staff. I have gone for microbusinesses in order not to skew consumer Scotland’s focus away from individual consumers by too great a degree, because the new body will have only finite resources. Which? indicated that it foresaw difficulty with potential conflicts between small businesses and their customers.

The minister’s amendment 14 is wider than my amendment 3. I ask him to give a reassurance that he will work with interested organisations prior to stage 3 to ensure that the primary duty to consumers is safeguarded. If he can do so, I would be happy to not move amendment 3.

Jamie Hepburn: Will the member take an intervention?

Jackie Baillie: I had just finished, but I will carry on speaking in order to give way.

The Convener: I will allow that.

Jamie Hepburn: I think that that is the only way that I can speak at this stage.

Jackie Baillie: Ah!

Jamie Hepburn: Actually, do I not get to conclude this debate, convener?

Jackie Baillie: You do.

The Convener: We will see about that.

Jamie Hepburn: In that case, I do not need to intervene at this juncture. Forgive me, Ms Baillie.

Jackie Baillie: Excellent. Thank you.

Jamie Hepburn: I will come back to the issue in my conclusion.

Jackie Baillie: I have finished, convener.

Andy Wightman: As the minister has noted, amendments 30 to 35 fall into two distinct groups. Amendments 30, 31, 33 and 35 are concerned with expanding the definition of “consumer” beyond an individual to include a group of any sort. I heard what the minister had to say about the potential difficulties with that, and I am content not to move those amendments.

On amendment 14, I again note the comments of the Competition and Markets Authority. Paragraph 8 of its evidence to the committee for stage 2 says:

“the definition of consumer, as set out in the Consumer Rights Act 2015, and relied on for the purposes of consumer law enforcement, does not cover small businesses. While this limitation on the definition of consumer does not apply universally across the regulatory sphere, it is important to note the restriction for many of the circumstances where, as a consequence of its work, Consumer Scotland looks to the CMA or another consumer protection enforcer to take action to address problems encountered by small businesses. We note that other routes to addressing business disputes exist for small business”.

I am sure that the minister has taken careful note of that.

We have to decide whether we should include small businesses as consumers, given that some of the consequential complaints may not be able to be progressed by other bodies because they exclude small businesses. On balance, it is probably appropriate to go with the minister's amendment 14. Those concerns have an impact on my amendments 30, 31, 33 and 35.

Amendments 32 and 34 are substantive policy amendments that seek to expand the definitions of “consumer” and “consumer matters” so that they go beyond merely purchasing and receiving as set out in the bill and incorporate the reusing, sharing, recycling or disposal of goods and services. I have listened to the minister's comments about how some of those processes are captured and how sharing could not be captured, due to the language elsewhere in the bill.

Amendments 32 and 34 will probably not be moved, because they are likely to be pre-empted by amendment 15, which will probably be supported. However, I welcome the minister's commitment to explore how we can ensure that the important focus on recycling, disposal and so on can be made more prominent.

Dean Lockhart (Mid Scotland and Fife) (Con): In relation to amendments 14 and 3, which would expand the definition of “consumer” to include small businesses, I thank the minister and his team for working with me and agreeing the change ahead of stage 2. We have consulted with stakeholders on how best to achieve that. In short, we believe that the more flexible definition of small businesses that is set out in amendment 14 is preferable. We will support it for that reason.

The Convener: I call the minister to wind up.

Jamie Hepburn: Thank you for reminding me earlier that I had the opportunity to do so, convener—it has not happened often today, which is why I forgot.

I thank Mr Lockhart for his support for my amendment 14. Turning to Ms Baillie's point, I recognise the concern that she raises. I think that it is misplaced, but I understand it. In a sense, it is because there is still an underlying idea—this gets

to the heart of what the Competition and Markets Authority has said—that consumer Scotland will act as an adjudicator or will resolve individual disputes. It will not, as that is not its function. It would be complicated to have an investigatory body grapple with a specific definition, based on size, of what a small business is. I am willing to discuss the issue further, but my sense is that consumer Scotland will be capable of managing the issue as a priority.

In my opening remarks, I tried to make the point that, although some of the concerns that have been raised suggest that the interests of businesses are in contrast or opposition to those of consumers, it is important to remind ourselves that the provisions that we seek to add to the bill define small businesses as consumers and not as providers of services.

I am happy to pick up Andy Wightman's points with him. What he is seeking to achieve is already in the bill but, if we can do something to make that clearer, either in the bill or in explanatory notes or guidance, I am happy to discuss that with him.

Amendment 14 agreed to.

Section 23—Interpretation

The Convener: We come to amendment 15. I remind members that, if it is agreed to, amendments 3 and 30 to 35 will be pre-empted and will not be called.

Amendment 15 moved—[Jamie Hepburn]—and agreed to.

Amendment 36 moved—[Andy Wightman]—and agreed to.

Amendment 16 moved—[Jamie Hepburn]—and agreed to.

Section 23, as amended, agreed to.

Section 24—Regulations

Amendment 17 moved—[Jamie Hepburn]—and agreed to.

Section 24, as amended, agreed to.

Sections 25 and 26 agreed to.

Schedule 2—Application of Public Bodies Legislation

The Convener: Amendment 18, in the name of Jamie Hepburn, is grouped with amendment 19.

Jamie Hepburn: I hope that the debate on this last group will be uncontentious, so my remarks will be short. Amendments 18 and 19 are minor and technical.

Amendment 18 will ensure that consumer Scotland must have regard to island communities

when discharging its functions. The amendment is technical in nature, as it would be possible to use existing powers under the Islands (Scotland) Act 2018 to provide for this. However, I am keen to include it in the bill, as it is a particularly relevant duty. We are all aware of the added difficulties that consumers in island communities face, which we have debated previously in Parliament. The issues range from parcel delivery charges to the generally higher cost of goods and services. It is particularly appropriate that we amend the bill to ensure that island communities are considered ahead of the duty in the 2018 act formally coming into effect.

Amendment 19 will bring the bill in line with standard practice for the majority of bills and gives flexibility to allow certain parts of the bill to be brought into force on different days if that is necessary.

I move amendment 18.

The Convener: One never knows what may be controversial. However, as I see that no member wishes to raise any matter regarding the amendments, apparently, this is not controversial.

Amendment 18 agreed to.

Schedule 2, as amended, agreed to.

Section 27—Commencement

Amendment 19 moved—[Jamie Hepburn]—and agreed to.

Section 27, as amended, agreed to.

Section 28 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. We will now move into private session.

11:30

Meeting continued in private until 12:10.

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