



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 2 March 2021

Session 5



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ECONOMY, ENERGY AND FAIR WORK COMMITTEE

7th Meeting 2021, Session 5

CONVENER

*Gordon Lindhurst (Lothian) (Con)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Maurice Golden (West Scotland) (Con)

*Richard Lyle (Uddingston and Bellshill) (SNP)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Alex Rowley (Mid Scotland and Fife) (Lab)

*Graham Simpson (Central Scotland) (Con)

Andy Wightman (Lothian) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michelle Ballantyne (South Scotland) (Reform)

Neil Bibby (West Scotland) (Lab)

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

Ivan McKee (Minister for Trade, Innovation and Public Finance)

CLERK TO THE COMMITTEE

Alison Walker

LOCATION

Virtual Meeting

Scottish Parliament

Economy, Energy and Fair Work Committee

Tuesday 2 March 2021

[The Convener opened the meeting at 08:00]

Decision on Taking Business in Private

The Convener (Gordon Lindhurst): Good morning, and welcome to the seventh meeting in 2021 of the Economy, Energy and Fair Work Committee. I have apologies from committee member Andy Wightman.

The first item on the agenda is a decision on taking item 7 in private. Do members agree to take that item in private? I see that members agree.

Subordinate Legislation

Registers of Scotland (Fees) Amendment Order 2021 [draft]

08:00

The Convener: Item 2 on the agenda is consideration of subordinate legislation. The committee will take evidence on the Registers of Scotland (Fees) Amendment Order 2021, which is before it in draft form. I welcome Ivan McKee, the Minister for Trade, Innovation and Public Finance, and his officials. I invite the minister to make an opening statement.

The Minister for Trade, Innovation and Public Finance (Ivan McKee): Good morning. The keeper of the Registers of Scotland plays a vital role in the Scottish economy by guaranteeing property rights as well as running a number of other important legal registers. Registers of Scotland has largely managed to keep its fees steady since 2011 through realising efficiencies in its internal processes. However, as members will be aware, it has not been possible to hold fees at the same levels forever.

In our view, it is the right time to set out a new fee structure for Registers of Scotland that recognises the cost of doing business today. The order in front of the committee seeks to do that. Members will have seen the public consultation and responses and will—I hope—agree that stakeholders and customers are strongly supportive of what is proposed.

As the convener mentioned, I am joined here today by Kenny Crawford from Registers of Scotland, and by Graham Fisher and Calum Ross from the Scottish Government legal directorate. We are happy to answer any questions that you may have relating to the instrument.

The Convener: Thank you, minister. If members have questions, they should indicate that by typing R in the chat box.

As there do not appear to be any questions from members, we move to agenda item 3, which is the formal debate on the motion to recommend that the instrument be approved.

I invite the minister to move the motion.

Motion moved,

That the Economy, Energy and Fair Work Committee recommends that the Registers of Scotland (Fees) Amendment Order 2021 [draft] be approved.—[*Ivan McKee*]

The Convener: As no member wishes to speak in the debate, I will put the question on the motion.

The question is, that motion S5M-23985 be agreed to.

Motion agreed to.

The Convener: In light of the timing, I invite the committee to agree that the clerks and I will produce a short factual report of the committee's decision and arrange to publish it.

As no member has indicated otherwise, that is agreed.

Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 [draft]

The Convener: Item 4 is also consideration of subordinate legislation. The committee will take evidence on the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021, which are before the committee in draft form. I welcome Jamie Hepburn, the Minister for Business, Fair Work and Skills, and his officials. I invite the minister to make an opening statement on the instrument.

The Minister for Business, Fair Work and Skills (Jamie Hepburn): Thank you, convener. I thank the committee for taking the time to consider these draft regulations, which aim to make a small number of changes to bankruptcy administration that I believe are very welcome. They seek to make permanent some of the temporary changes that were introduced by the emergency Coronavirus (Scotland) (No 2) Act 2020.

There is broad cross-sector support for the measures. The committee has written to me about consultation, with smaller creditors in particular, on the regulations. It is important to consider the views of creditors on all these issues. We have consulted creditor groups and a number of credit union representatives, and no representations have been made against the proposals.

As I set out in my reply to the convener, the changes will have a very limited impact on creditors. The regulations seek to entirely remove bankruptcy application fees for those in receipt of prescribed benefits, to help the most financially vulnerable in our society. They will also reduce fees for everyone else who is dealing with unsustainable debt and is in need of the relief that is provided through bankruptcy.

The regulations are a significant step in removing barriers to bankruptcy and encouraging those who are struggling to get the help that they need. That is particularly important in these troubling and uncertain times.

I noted with interest "The Woolard Review—A review of change and innovation in the unsecured credit market", which was published by the Financial Conduct Authority last month. It deals

primarily with the unsecured lending market, but it touches on the need for both the United Kingdom Government and the devolved Administrations to ensure that debt solutions best serve people in financial difficulties. It mentions that

"it is unfair when the ... poorest are asked to provide £90"

for a debt relief order application. The measures go a long way towards ensuring that we have a fair fees regime that recognises the barriers that exist.

The regulations will also provide greater flexibility and streamlining of the bankruptcy process. The increase in the debt threshold for entering a minimal asset process bankruptcy to £25,000 and the removal of student loans from the calculation will allow the financially vulnerable easier and more seamless access to a fresh start through bankruptcy where they might require that.

In conclusion, the regulations provide a great opportunity to streamline and improve the bankruptcy process, to improve access to debt relief through bankruptcy and to ensure that procedures are well placed to react to any future increase in demand.

I am joined by Fiona Henry from the Accountant in Bankruptcy and Francesca Morton from the Scottish Government's legal directorate. Along with them, I am happy to take any questions that the committee may have.

The Convener: Thank you, minister. Are there any questions from committee members?

Committee members have no questions, so we will move on to agenda item 5, which is the formal debate on the motion to approve the affirmative instrument. I invite the minister to move the motion.

Motion moved,

That the Economy, Energy and Fair Work Committee recommends that the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 [draft] be approved.—[*Jamie Hepburn*]

The Convener: Does any member wish to speak in the formal debate on the motion? No member wishes to do so.

Motion agreed to.

The Convener: In light of the timing, I invite the committee to agree that the clerks and I will produce a short factual report on the committee's decision and arrange to have it published. That is agreed. I thank the minister and his officials. I will briefly suspend the meeting to ensure that everything is ready for the next item on the agenda.

08:07

Meeting suspended.

08:09

On resuming—

Tied Pubs (Scotland) Bill: Stage 2

The Convener: Welcome back to the meeting. Agenda item 6 is our continued consideration of the Tied Pubs (Scotland) Bill at stage 2.

I again welcome Neil Bibby, who is the member in charge of the bill. He is present to speak to and move his amendments. I also welcome back the Minister for Business, Fair Work and Skills, Jamie Hepburn, and our fellow MSP Michelle Ballantyne.

I remind members to restate any declarations of interests. I do not know whether there is anything to be declared other than what was declared last week or whether there have been any changes in interests.

I see that there is nothing further to declare.

I ask non-committee members not to use the dialogue box during voting. Any member who wishes to catch my attention should type R in the chat box, and they should contact me or the clerks via the usual means if there are any technical problems.

Schedule 1

The Convener: We begin consideration of amendments by returning to the group on the requirement to offer a market-rent-only lease. We have heard from all members with amendments in the group, so we will now hear from Neil Bibby.

Neil Bibby (West Scotland) (Lab): Good morning. I refer members to my entry in the register of members' interests, as I did last week.

Before I speak to this group of amendments, I thank committee members, again, for their continued consideration of stage 2 amendments. I look forward to concluding the proceedings in a timely fashion. As I did last week, I will keep my contributions concise and to the point. I will not waste any of our time by speaking to amendments that ignore the Parliament's support for the general principles of the bill at stage 1, such as those that would remove the role of the adjudicator and other fundamental provisions altogether.

First, I will speak to the minister's amendments in the group. Providing for a market-rent-only option for tied tenants is a central and fundamental part of the bill. In drafting the bill, I paid careful attention to the MRO lease that is available to some tied tenants in England and Wales under the Small Business, Enterprise and Employment Act 2015, and to the many reports of the failure of its provisions. That failure seems to be due, in part, to the many complex trigger points and criteria that

govern whether a tenant has the right to request that an MRO offer be made.

I am keen to avoid such problems in providing for an MRO lease in Scotland. Therefore, the bill gives tenants an unqualified right to request an MRO offer from their pub-owning business. I am acutely aware from my on-going liaison with tied tenants that they view the right to request an MRO offer as an essential part of rebalancing the relationship between tenants and landlords and addressing the vast difference in power.

I thank the minister for engaging me in discussions over a number of weeks on the amendments that he has lodged to allow the code to specify circumstances in which an MRO offer need not be made by a pub company, and for listening to my views and concerns. I was reassured by the minister's comments last week. I do not believe that it is the Government's intention to undermine the spirit of the fundamental right that is provided for in the bill that all tenants should be able to request an MRO offer. I acknowledge that there might be limited circumstances in which it would not be appropriate for a request for an MRO offer to be honoured, and that it would therefore be appropriate for the code to specify such circumstances. On that basis, and having heard the minister set out the Government's intentions, I will support amendments 5 to 8.

The other amendments in the group, which I have considered carefully, all appear to weaken the MRO provisions that are set out in the bill and in the minister's amendments. Many of them would add the trigger points and criteria that have caused confusion in England and Wales and led to the MRO provisions being deemed a failure. Some of the amendments appear to go even further. One of my central aims was to learn lessons from the legislation in England and Wales and to significantly simplify, where possible and appropriate, in the bill all such provisions, and particularly the MRO measures. Many of the amendments would greatly complicate the MRO process and render it unworkable and unusable.

We have heard from the minister that there will be a full consultation process to inform the drafting of the code. That consultation process is the right and proper place to consider the issues that are raised by some of the amendments. The issue is too important to risk including any of the amendments in primary legislation without proper consideration and without consulting those who will be affected most by the measures. I therefore urge the committee to reject all non-Government amendments in the group.

The Convener: I invite Graham Simpson to wind up, press or withdraw amendment 48 and to give any other indications that he wishes to at this point.

08:15

Graham Simpson (Central Scotland) (Con): I welcome Neil Bibby and, indeed, the minister back to the committee. Members are well aware that we had something of a marathon session last week. Our approach was to lodge a lot of amendments. We genuinely want the bill to work for everyone and for a sector that is really up against it right now.

Although I got the impression that Neil Bibby and the minister quite liked some of the amendments, it became obvious last week that none of them was going to get through. On that basis, Maurice Golden and I have decided to not move or withdraw all our amendments that are left to consider. We will work with Neil Bibby and—if he wishes—the minister in order to get the best bill possible at stage 3.

I will not speak to any of my amendments for the purposes of stage 2. I wish to not move or withdraw them—I will not press any of them. I really want to make progress.

The Convener: I thank Mr Simpson for his indication prior to the meeting regarding his intention not to move the amendments that he referred to. However, we will have to come to them in terms of the formal procedures as we move through the bill.

Amendment 48, by agreement, withdrawn.

The Convener: I turn to amendment 49, in the name of Maurice Golden. Although Mr Simpson has already given us an indication regarding that amendment, I invite Mr Golden to confirm that he does not intend to move amendment 49 and to comment on any further amendments, if he so wishes, at this point.

Maurice Golden (West Scotland) (Con): I had a meeting yesterday with the member who is proposing the bill, Neil Bibby, and we agreed to work together constructively at stage 3. That offer would extend to other parties in order that we achieve the very best that the bill can provide for tenants and the pub sector. I echo the comments of Graham Simpson and confirm that I will not move amendment 49 or the other amendments in my name in the group.

Amendment 49 not moved.

Amendments 50 and 51 not moved.

The Convener: I call on Richard Lyle to move or not move amendment 52. He may, as other committee members have done, also give an indication about his other amendments.

Richard Lyle (Uddingston and Bellshill) (SNP): Since consensus is breaking out all over the land, in keeping with the comments of my Tory colleagues, I am quite happy not to move my

amendment either. Since they have decided to change their minds and withdraw or not move their amendments, I certainly agree to do the same.

Amendment 52 not moved.

The Convener: Does the minister wish to move amendment 5?

Jamie Hepburn: I hope that the committee will forgive me, convener, but I wish to move amendment 5.

The Convener: I do not think that we need to forgive you on this occasion.

Amendment 5 moved—[Jamie Hepburn]—and agreed to.

The Convener: Rachael Hamilton is not present at today's meeting. She has indicated that she will not move amendments 53 and 54.

Amendments 53 and 54 not moved.

Amendments 55 and 56 not moved.

The Convener: Alexander Stewart is not present at today's meeting and has indicated that he does not intend to move amendment 57.

Amendment 57 not moved.

The Convener: Does Michelle Ballantyne wish to move amendment 58?

Michelle Ballantyne (South Scotland) (Reform): As has been said, it became apparent at last week's meeting that there would not be support for amendments to the bill other than the ones that the minister has lodged. I exchanged emails with the minister and Neil Bibby and, on the basis of those emails, I will not move my amendments. However, that is not because I have changed my mind; it is because we must be realistic about whether there is support for the amendments that have been lodged. When it is clear that there is not, it is not a good use of everybody's time to spend hours going through them all.

As we move to stage 3, I hope that there will be some meaningful discussions about the market-rent-only option in the bill, because, if we do not get that right, it will endanger the sector. I look forward to working productively with the minister and Neil Bibby to ensure that we have a win-win situation for tenants and the pub sector.

Amendments 58 to 66 not moved.

The Convener: Jeremy Balfour is not present at today's meeting, but he indicated that he does not wish to move any of his amendments in this group.

Amendments 67 not moved.

The Convener: Amendments 67A, 67B and 67C therefore fall.

Amendments 6 to 8 moved—[Jamie Hepburn]— and agreed to.

Amendments 68 to 84 not moved.

Schedule 1, as amended, agreed to.

Section 2—Scottish Pubs Code Adjudicator

The Convener: The next group of amendments is entitled “Scottish Pubs Code Adjudicator and Scottish Ministers’ duty to seek to make code and appoint adjudicator”. Amendment 85, in the name of Richard Lyle, is grouped with amendments 85 to 99, 99A, 100, 103, 101, 102, 104 to 121, 9, 122 to 127, 129, 128, 131, 130, 130A, 130B, 132 to 142, 10, 11, 143 to 146, 1, 148 to 163, 2, 164 to 168, 3, 169 to 173, 178, 185, 196, 200, 213, 216, 224, 229, 234, 247, 250 and 259.

Amendments 85 and 86 not moved.

Section 2 agreed to.

Schedule 2—Scottish Pubs Code Adjudicator

Amendments 87 to 99 not moved.

The Convener: Amendment 99A falls.

Amendments 100, 103, 101, 102 and 104 to 121 not moved.

The Convener: I invite the minister to speak to amendment 9 and other amendments in the group.

Jamie Hepburn: I lodged amendment 9 because there is no provision in the bill to allow a right of appeal for businesses to challenge the imposition of or the amount of the adjudicator’s annual levy. The amendment will enable businesses to challenge levies that they consider to be unfair or unreasonable and to appeal to the sheriff court. That will be consistent with other appeal processes that are introduced under the bill if Neil Bibby’s amendments 12 and 13, which are to be debated in a later group, are agreed to. I say now, as I will say again later, that I support those amendments. Amendment 9 is valuable as it will ensure fairness for business.

Amendment 10 was lodged to clarify the responsibilities of the Scottish ministers when drafting the Scottish pubs code and to avoid uncertainty over the status of the code. The regulatory principles are fair in themselves and they underline the central tenet of the bill, which is fairness and balance in the relationship between landlords and tenants. However, the drafting of section 3(1) is subjective. It could undermine the code and create uncertainty for tenants and pub-owning companies alike. Amendment 10 will require ministers to “use their best endeavours” in exercising the power to make the code consistent

with the regulatory principles. I believe that that is more appropriate and more legally sound.

Amendment 11 was lodged to ensure that a consistent approach is taken with regard to the application of the regulatory principles for the adjudicator.

I was going to speak to all the other amendments in the group, but I will be a bit quicker as I will speak only to those that were lodged by Mr Bibby. Amendments 1 to 3 relate to something that I set out as being important in the stage 1 debate—that sufficient time must be given to draft the code that the bill requires. I am grateful to Mr Bibby for the time that he spent discussing the matter with me. He will speak to his amendments, but I agree that we need two years rather than one to publish the code. We need time to do this properly. As I made clear last week, we need to consult stakeholders fully to ensure that we get the code right.

I also agree that to have a first review of the code after two years and a further review every three years thereafter is a sensible timescale that will allow time for any changes to bed in and avoid a constant cycle of review. I ask members to support amendments 9 to 11 as well as Mr Bibby’s amendments in the group.

I move amendment 9.

The Convener: I invite Neil Bibby to speak to amendment 1 and the other amendments in the group.

Neil Bibby: I thank those members who have agreed to withdraw or not move their amendments for doing so and for the spirit of their comments. As Michelle Ballantyne said, it was clear from last week’s meeting that the vast majority of those amendments were unlikely to gain support. It is preferable for the bill to be passed with as much consensus as possible, as I have said from the start of the process.

I am happy to continue discussions with members who have indicated that they want to do so before stage 3. I acknowledge the helpful discussion that I had yesterday with Mr Golden and his indication that a handful of amendments might return at stage 3. I am certainly happy to engage with him in order to agree, I hope, on the best way forward for Scotland’s tied pubs.

08:30

I will speak to my amendments in the group and then to other, related amendments. The bill requires the Scottish Government to lay the regulations containing the code and appoint an adjudicator within a year of the day after the bill receives royal assent. The minister made it clear that, for various practical reasons, the

Government's view was that a longer maximum period should be provided for, both to take account of the challenges of current circumstances, such as dealing with the on-going Covid pandemic, and to ensure that the code is not rushed and is subject to full consultation. Amendment 1 will therefore increase the maximum period to two years.

The Government's view is reasonable and I am encouraged by the minister's comments that the Government will work to make the code and appoint an adjudicator as soon as is possible and practical. That will not necessarily take the full two years that are allowed for by the amendment. Two years is the maximum that should be available, so I do not support amendments 148 to 151, which propose longer periods of between three and six years.

I put on the record that concerns have been raised with me by the tenanted sector that a longer interim period between the bill being passed and the code and adjudicator being in place will open the door for pub-owning businesses to take steps to seek to avoid the code. I am considering whether steps could be taken, including an amendment at stage 3, to address those concerns, and I will continue my discussions on the matter with the industry and the minister.

My amendments 2 and 3 will extend the review periods in the bill. The bill requires Scottish ministers to carry out a first review of the code and the adjudicator's performance as soon as is practical after 31 March in the year following the one in which the adjudicator is appointed, and further reviews to be carried out every two years. Those review periods were set to allow any problems with the code or the adjudicator to be identified and acted on swiftly.

However, the minister suggested that those review periods should be extended, and I agree that slightly longer periods would be beneficial. Amendment 3 will require the first period to be two years after 31 March in the year following that in which the adjudicator was appointed, and amendment 2 will require subsequent reviews every three years. I would have opposed the amendments in the group that propose longer periods or would have frustrated or altered the review process in other ways.

I turn to the minister's amendments in the group. Amendment 9 will allow for the imposition and the amount of the levy on pubcos to be appealed to the sheriff. The bill contains the ability to appeal a financial penalty and recover the cost of an investigation, but it does not provide for an appeal against the imposition of the levy. I am not aware that the similar legislation in England and Wales provides for such an appeal and I am not aware of any examples in similar legislation such as the

Groceries Code Adjudicator Act 2013. However, the minister has explained that the reason for lodging amendment 9 is that it is felt that it is necessary in order to ensure that the bill is fair, proportionate and robust.

The Convener: As no other member wishes to speak on the group, I ask the minister to wind up.

Jamie Hepburn: As Mr Bibby mentioned, the amendments that relate to the appeals process are designed to ensure that the bill is fair and proportionate, but also as robust as possible.

I could probably have made it clearer in my opening remarks that the two-year period for implementation is in effect a backstop, precisely as Mr Bibby laid out. If we can create the code and appoint an adjudicator sooner than that, we will of course do so.

I recognise the concerns of the tenants that Neil Bibby mentioned. Concerns have been raised with me about a longer timescale. Mr Bibby suggested that an amendment might be lodged at stage 3. We will, of course, give that consideration. Ultimately, however, it comes down to good, strong engagement with tenants and landlords alike. I am committed to that and to ensuring that they have strong engagement with each other on those concerns.

Amendment 9 agreed to.

Amendments 122 to 127, 129, 128, 131 and 130 not moved.

The Convener: Amendments 130A and 130B fall.

Amendments 132 to 141 not moved.

Schedule 2, as amended, agreed to.

Section 3—Duty to act consistently with regulatory principles

Amendment 142 not moved.

Amendments 10 and 11 moved—[Jamie Hepburn]—and agreed to.

Amendments 143 to 145 not moved.

Section 3, as amended, agreed to.

Section 4—Scottish Ministers' duty to seek to make code and appoint adjudicator

Amendment 146 not moved.

Amendment 1 moved—[Neil Bibby]—and agreed to.

Amendments 148 to 158 not moved.

Section 4, as amended, agreed to.

Section 5—Review of the code and adjudicator’s performance

Amendments 159 to 163 not moved.

Amendment 2 moved—[Neil Bibby]—and agreed to.

Amendments 164 to 168 not moved.

Amendment 3 moved—[Neil Bibby]—and agreed to.

Amendments 169 to 172 not moved.

Section 5, as amended, agreed to.

Section 6—Ministerial guidance to the adjudicator

Amendment 173 not moved.

Section 6 agreed to.

Section 7—Unenforceability of contract terms

The Convener: The next group is on unenforceability of contract terms. Amendment 174, in the name of Michelle Ballantyne, is grouped with amendment 175.

Amendments 174 and 175 not moved.

Section 7 agreed to.

Section 8—Power to investigate

The Convener: The next group is on investigation by the adjudicator.

Amendments 176 to 178 not moved.

Section 8 agreed to.

Section 9—Enforcement action

Amendments 179 to 185 not moved.

Section 9 agreed to.

Section 10—Financial penalties under section 9

Amendments 186 to 189 not moved.

The Convener: Amendment 189A falls.

Amendments 191, 190 and 192 to 194 not moved.

The Convener: I invite Neil Bibby to speak to amendment 12 and other amendments in the group.

Neil Bibby: First, I will speak to my seven amendments in the group. The bill provides for two rights of appeal. Sections 9 and 10 will allow the adjudicator to impose a financial penalty on a pub-owning business following an investigation of an alleged breach that is upheld. Section 12 will allow

the costs of an investigation to be recoverable from a pub-owning business if a code breach is found to have taken place.

The bill provides that appeals under sections 10 and 12 are to be made to the Sheriff Appeal Court. In evidence at stage 1, the Scottish Courts and Tribunals Service outlined its view that it would be more appropriate for such appeals to be made to the sheriff. I have since liaised with the SCTS and I am happy to be guided by it.

Amendment 12 provides that an appeal against a financial penalty is to be made to the sheriff rather than to the Sheriff Appeal Court. Amendment 13 will make the same provision for appeals against investigation costs. The amendments are purposely simple and they address the core concern that the SCTS expressed. I am satisfied that issues such as jurisdiction and procedure can be addressed satisfactorily via other legislation and the appropriate legal rules and guidance.

Amendments 225 to 227 relate to section 15, which deals with the submission of disputes to arbitration. As part of my discussions with the minister following stage 1, we discussed the arbitration process, which is open to both tenants and pub-owning businesses. It was noted that, although the bill sets out the circumstances in which a tenant may refer a dispute to arbitration—including that a referral may not be made until 21 days after the tenant notifies the pub-owning business of an alleged breach, or later than four months after the 21st day—it does not set a time limit within which a tenant must notify a pub-owning business of an alleged breach of the code.

It is therefore conceivable that, under the bill, an issue could be notified to a pub-owning business and then submitted for arbitration long after the alleged breach had occurred. That could lead to uncertainty for pub-owning businesses and difficulty in responding to potential disputes. Amendment 225 addresses that issue by providing for a six-month window for notification from the date of the failure to comply. Importantly, the clock will not start to run where a tied pub tenant was not aware of the failure.

Amendments 226 and 227 are consequential amendments that will ensure that the provisions that provide clarity on how the existing four-month periods will be calculated will also apply to the new six-month periods.

I move amendment 12.

The Convener: I invite the minister to speak on the amendments in the group.

Jamie Hepburn: In the interests of time and not detaining or delaying the committee, I simply note that Mr Bibby has articulated clearly the reasons

for his amendments in the group. I support them and urge the committee to do likewise.

The Convener: I invite Mr Bibby to wind up.

Neil Bibby: I thank the minister for his support for my amendments and his constructive engagement on them.

Amendment 12 agreed to.

08:45

The Convener: Amendment 195 has been pre-empted.

Amendment 196 not moved.

Section 10, as amended, agreed to.

After section 10

Amendment 197 not moved.

Section 11—Investigation report

Amendments 198 to 200 not moved.

Section 11 agreed to.

Section 12—Recovery of investigation costs

Amendments 202 to 210 not moved.

Amendment 13 moved—[Neil Bibby]—and agreed to.

The Convener: Amendment 211 is pre-empted by amendment 13.

Amendments 212 and 213 not moved.

Section 12, as amended, agreed to.

Section 13—Investigation policy

Amendments 4 and 214 moved—[Neil Bibby]—and agreed to.

Amendments 215 and 216 not moved.

Section 13, as amended, agreed to.

Section 14—Adjudicator's duty to arbitrate or appoint arbitrator

Amendments 218 to 223, 217 and 224 not moved.

Section 14 agreed to.

Section 15—Submission of dispute to adjudicator

Amendments 225 to 227 moved—[Neil Bibby]—and agreed to.

Amendments 228 and 229 not moved.

Section 15, as amended, agreed to.

Section 16—Fees and expenses payable by pub-owning business

The Convener: The next group is on fees and expenses that are payable. Amendment 230, in the name of Graham Simpson, is grouped with amendments 231 to 233, 14 and 235 to 246.

Amendment 243 pre-empts amendment 244. As such, if amendment 243 is agreed to, I will not be able to call amendment 244.

Amendments 230 to 233 not moved.

The Convener: As those amendments are not moved, I therefore invite the minister to move amendment 14 and speak to other amendments in the group.

Jamie Hepburn: It appears that no other amendments in the group will be moved, so I will confine my remarks to amendment 14.

Section 16(1) of the bill imposes liability on pub-owning companies to pay the fees and expenses of the arbitrator. Amendment 14 allows the adjudicator some discretion to depart from the general rule where necessary for reasons of fairness.

I consider that the adjudicator requires flexibility to depart from or tailor that general position, where, for example, it would be unfair for the pub-owning business to be liable to pay all the fees and expenses if there has been no failure to comply with the code. Amendment 14 will allow a pub-owning business to ask the adjudicator to decide whether any of the liability of the pub-owning business to pay fees and expenses should be relieved, and if so, whether any or some of that liability should be borne by the tenant. On that basis, I ask members to support amendment 14.

I move amendment 14.

The Convener: As Richard Lyle, Rachael Hamilton, Maurice Golden and Jeremy Balfour have indicated that they do not wish to move the amendments in their name in this group, I invite Neil Bibby to comment on amendment 14.

Neil Bibby: The minister has clearly set out the reasons for amendment 14 and I am happy to support it.

The Convener: I invite the minister to wind up.

Jamie Hepburn: It would seem unreasonable and unnecessary to add anything further, convener.

Amendment 14 agreed to.

Amendment 234 not moved.

Section 16, as amended, agreed to.

Section 17—Fees and expenses payable by tied-pub tenant

Amendments 235 to 247 not moved.

Section 17 agreed to.

Section 18—Information about arbitration

Amendments 248 to 250 not moved.

Section 18 agreed to.

Section 19—Reports on avoidance

The Convener: The next group is on reports on avoidance. Amendment 251 is grouped with amendments 252 to 258.

Amendments 251 to 259 not moved.

Section 19 agreed to.

Section 20—Tied pub

The Convener: We now come to the grouping of amendments on interpretation. Amendment 260 is grouped with amendments 260A, 261 to 272, 272A, 272B, 272C, 272D and 273 to 277. Amendment 263 pre-empts amendment 264. Amendments 272A, 272B, 272C and 272D are direct alternatives and amendment 273 pre-empts amendment 274. Maurice Golden, Richard Lyle, Rachael Hamilton, Jeremy Balfour, Michelle Ballantyne, Graham Simpson and Alexander Stewart have indicated that they do not wish to move the amendments in their names.

Amendment 260 not moved.

The Convener: Amendment 260A falls.

Amendments 261 to 271 not moved.

Section 20 agreed to.

Section 21—Pub-owning business and tied-pub tenant

Amendment 272 not moved.

The Convener: Amendments 272A, 272B, 272C and 272D fall.

Amendments 273 and 274 not moved.

Section 21 agreed to.

Section 22—Other expressions

Amendments 275 to 277 not moved.

Section 22 agreed to.

Section 23—Ancillary provision

The Convener: The next group of amendments is on regulation-making powers. Amendment 278, in the name of Michelle Ballantyne, is grouped with amendments 279 to 281.

Amendment 278 not moved.

Section 23 agreed to.

Section 24—Regulation-making powers

Amendments 279 to 281 not moved.

Section 24 agreed to.

Section 25—Commencement

The Convener: The next group of amendments is on commencement. Amendment 282, in the name of Richard Lyle, is grouped with amendment 283.

Amendments 282 and 283 not moved.

Section 25 agreed to.

After section 25

The Convener: The next group of amendments is on the expiry of the act. Amendment 284, in the name of Maurice Golden, is grouped with amendments 284A, 284B and 285. Amendments 284A and 284B are alternatives.

Amendment 284 not moved.

The Convener: Amendments 284A and 284B fall.

Amendment 285 not moved.

Section 26 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. The clerks tell me that we have not missed any amendments, which is always positive for a committee. I thank the minister and Neil Bibby for attending the committee to complete stage 2 proceedings.

08:57

Meeting continued in private until 09:07.

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