TRANSPORT, INFRASTRUCTURE AND CLIMATE CHANGE COMMITTEE

Tuesday 9 June 2009

Session 3

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TRANSPORT, INFRASTRUCTURE AND CLIMATE CHANGE COMMITTEE
16th Meeting 2009, Session 3

CONVENER

*Patrick Harvie (Glasgow) (Green)

DEPUTY CONVENER

*Cathy Peattie (Falkirk East) (Lab)

COMMITTEE MEMBERS

*Rob Gibson (Highlands and Islands) (SNP)
*Charlie Gordon (Glasgow Cathcart) (Lab)
*Alex Johnstone (North East Scotland) (Con)
*Alison McInnes (North East Scotland) (LD)
*Des McNulty (Clydebank and Milngavie) (Lab)
*Shirley-Anne Somerville (Lothians) (SNP)

COMMITTEE SUBSTITUTES

Alasdair Allan (Western Isles) (SNP)
Gavin Brown (Lothians) (Con)
David Stewart (Highlands and Islands) (Lab)
Jim Tolson (Dunfermline West) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Sarah Boyack (Edinburgh Central) (Lab)
Lewis Macdonald (Aberdeen Central) (Lab)
Liam McArthur (Orkney) (LD)
Elaine Murray (Dumfries) (Lab)
Iain Smith (North East Fife) (LD)
Stewart Stevenson (Minister for Transport, Infrastructure and Climate Change)
Maureen Watt (North East Scotland) (SNP)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Clare O'Neill

LOCATION

Committee Room 1

Scottish Parliament

Transport, Infrastructure and Climate Change Committee

Tuesday 9 June 2009

[THE CONVENER *opened the meeting at 13:33*]

Climate Change (Scotland) Bill: Stage 2

The Convener (Patrick Harvie): Good afternoon and welcome to the 16th meeting this year of the Transport, Infrastructure and Climate Change Committee. I remind members and everyone else that all mobile devices should be switched off. We have no apologies to record. I welcome Iain Smith, Sarah Boyack and Lewis Macdonald, and we expect to see Liam McArthur at some point during the meeting. We also welcome to the committee a representative of the Ugandan official report.

The only item on today's agenda is our continuing stage 2 consideration of amendments to the Climate Change (Scotland) Bill. I welcome once again the Minister for Transport, Infrastructure and Climate Change, Stewart Stevenson, and his officials. They are Fiona Page, who is the Climate Change (Scotland) Bill team leader; Ian Young, who is a depute parliamentary counsel; Norman Macleod and Louise Miller, who are solicitors; Sally Moxham, who is head of the energy efficiency team; and Gavin Peart who is from building standards. Kevin Philpott, the waste regulation team leader, will join us later.

I gather that the minister would like to make one or two brief remarks before we resume consideration of amendments.

The Minister for Transport, Infrastructure and Climate Change (Stewart Stevenson): Thank you very much, convener.

I am sure that members will appreciate the complicated nature of the bill's provisions on the "relevant body" and the "advisory body". I would like to take the opportunity to clarify the statement that I made on the matter last week, which might have left some members confused. In all honesty, once I read it in the *Official Report*, I was among them.

The relevant body is, indeed, recognised in the bill—it is defined in section 5. It is the UK Committee on Climate Change, unless another body is designated under section 19(1) of the bill, in which case the relevant body will be that other body. The other body is the advisory body. "Why," you ask, "does the bill provide for two bodies to give us advice?" The answer is that, technically, it does not. We will only ever get advice from one body. As we made clear when we introduced the bill, we want initially to get our advice from the UK Committee on Climate Change, but we want to have the facility to use instead an existing Scottish public body, or to set up and use a Scottish committee on climate change. Initially, at any rate, we will request and get advice from the UK Committee on Climate Change—the relevant body. If we subsequently set up a Scottish committee on climate change, we will request and get advice from that body—the advisory body.

I trust that that clarifies the matter. I thank members for their patience, and I thank the convener for allowing me the opportunity to set the record straight.

The Convener: Thank you. Now that that is on the record, we will proceed with our consideration of amendments. Members will be familiar with the process. I repeat what I have said before about occasions on which a casting vote is necessary: my intention will be to vote for the status quo, which is the bill as it stands. At the beginning of each group, the first amendment in the group should be moved. Subsequent amendments will be moved later. Members who do not wish to move their amendments should simply say, "Not moved."

Section 48—Duty of Scottish Ministers to promote energy efficiency

The Convener: Amendment 222, in the name of Iain Smith, is grouped with amendments 223, 252 and 232.

Iain Smith (North East Fife) (LD): I am pleased to open day 3 of the committee's stage 2 proceedings. I start by saying that in speaking to most of the amendments in my name this afternoon, I will be speaking on behalf of the Economy, Energy and Tourism Committee, which agreed unanimously to their being lodged at one of its meetings. The amendments in question arose from the stage 1 report that we published on the sections of the bill to do with energy efficiency and renewable heat.

Amendments 222, 223 and 232 relate to the duty on ministers to promote energy efficiency, which the Economy, Energy and Tourism Committee feels would weaken the current legislative position, especially as regards the energy efficiency of living accommodation. The Housing (Scotland) Act 2006 requires ministers to improve the energy efficiency of living accommodation; as it stands, the bill would reduce the requirement to improve the energy efficiency of living accommodation to that of promoting it.

When the Economy, Energy and Tourism Committee took evidence on the matter at stage 1, there was discussion about legislative competence: in my view, if it was within Parliament's legislative competence in 2006 to provide for improvement in the energy efficiency of living accommodation, that remains the case. There might be an issue to do with the wider promotion of energy efficiency, but there is certainly no case for weakening the current provision on the energy efficiency of living accommodation. The primary purpose of amendment 222 is to make it clear that the requirement to improve the energy efficiency of living accommodation will remain a statutory obligation.

Amendment 223 proposes a requirement to set annual energy efficiency targets and says that the plan for the promotion of energy efficiency in Scotland must

"describe how those targets are to be reported on."

Its purpose is to ensure that Scottish ministers spell out in their energy efficiency plan their goals in relation to energy efficiency and reducing energy consumption. Without clear targets or objectives, it will be hard to assess progress. The committee considered proposing an energy efficiency target in the bill, but it has settled for having that target and the detail of how it will be achieved as part of energy efficiency plans. Ministers have produced no energy efficiency plan, although they have produced an outline plan after lobbying by the Economy, Energy and Tourism Committee.

Amendment 223 is supported by, among others, Elizabeth Leighton of WWF Scotland, who recommended that the action plan

"include targets for energy efficiency and that progress is reported, either in the annual report or as part of an emissions reduction plan addressing demand reduction, energy efficiency and renewables."—[*Official Report*, *Economy, Energy and Tourism Committee*, 4 February 2009; c 1561.]

Finally, amendment 232, in my name and on the Economy, Energy and Tourism Committee's behalf, would remove the provision to repeal section 179 of the Housing (Scotland) Act 2006, which places a duty on Scottish ministers to prepare a strategy for improving the energy efficiency of living accommodation. That repeal is unnecessary and could, as I have said, weaken the legislative position on improving the energy efficiency of living accommodation.

With those comments, I move amendment 222.

The Convener: I welcome the amendments from Iain Smith and the Economy, Energy and Tourism Committee. The emphasis on energy efficiency in recent years has increased slowly but steadily to the point at which broad agreement has been reached—as it was in the Transport, Infrastructure and Climate Change Committee—that a commitment needs to be made to more specific action. The committee has agreed that energy efficiency is a key area for achieving improvements in Scotland's carbon emissions. We have called for more specific action from the Government, as has the Economy, Energy and Tourism Committee.

Amendment 252 in my name is supported by the Association for the Conservation of Energy, and would specify some energy efficiency targets for the first 10 years or so of the bill's operation. It would also give ministers the power to define the terms "low carbon" and "zero carbon", which could be used in the bill.

If the minister were minded to accept the amendments from the Economy, Energy and Tourism Committee, it would help us to have an indication of the targets that he would expect to set and of whether the targets in amendment 252 seem reasonable to the Government. If the Government accepts the principle that there should be targets, that will probably command strong support from throughout the Transport, Infrastructure and Climate Change Committee.

Do other committee members wish to comment?

Des McNulty (Clydebank and Milngavie) (Lab): The committee is in a wee bit of difficulty, because it argued explicitly in its stage 1 report against targets for sectors and said that "indications" should be given for each sector. Notwithstanding that, a case can be made for amendments 222 and 232 from the Economy, Energy and Tourism Committee. I have no problem with those amendments.

Amendment 223 refers to targets. Should we have annual targets, or would it be better to link targets with the periodic review of the energy efficiency plan? We have waited some time for that plan, but I presume that ministers intend to renew it regularly. I have no particular view on whether that should fit in with a profile of annual targets or whether two-year or three-year targets should be set.

Labour members are in favour of amendments 222 and 232. Amendment 252 is perhaps too specific and it is questionable whether the numbers are right. However, I support the convener's request to the minister to say what energy efficiency improvement targets he expects to set, although I would not want the bill to set out percentages in that regard.

13:45

Stewart Stevenson: I am content to support amendments 222 and 223. Amendment 222 would require the Scottish ministers to publish a plan that included provision for

"improving the energy efficiency of living accommodation".

The Scottish ministers are happy to support that principle. Amendment 223 would require the energy efficiency action plan to include annual energy efficiency targets and to describe how the targets should be reported on. The approach is in line with our plans, so I am pleased to support it. Of course, the committee must reach its own conclusions on the matter.

The convener asked where we would get our energy efficiency targets. In previous debates I have said that we would always want our targets to be driven by expert advice. We would not take a different approach to energy efficiency targets. There is no question of the Government producing figures yet. However, I make clear our commitment to accept amendments 222 and 223.

Amendment 252, in the convener's name, would require the energy efficiency action plan to include a broad range of targets for energy efficiency, microgeneration installations and the reduction of greenhouse gas emissions from new and existing domestic and non-domestic buildings. It is probably too early to set meaningful targets for microgeneration and greenhouse gas reduction in buildings. I expect to have the evidence base to set such targets in the future, but currently there is no solid evidential base on which to set targets in primary legislation. That brings me back to my point about the need for expert advice.

Three of the targets that are proposed in amendment 252 are significantly more demanding than the approach that was recommended by the expert panel that produced the Sullivan report, "A Low Carbon Building Standards Strategy for Scotland", which recommended that from 2016 all new buildings should be net zero-carbon buildings. Due to building warrant duration, amendment 252 would bring in such a target three years earlier than is envisaged in the Sullivan report.

The Sullivan report's recommendations on the interim emissions reduction targets for non-domestic buildings—to deliver CO_2 savings of 50 per cent and 75 per cent more than current standards in 2010 and 2013 respectively—would apply not only to new buildings, as Sullivan envisaged, but to the entire existing building stock, if amendment 252 were agreed to. Therefore, I cannot support amendment 252.

Amendment 232, to which Iain Smith spoke on behalf of the Economy, Energy and Tourism Committee, would prevent the repeal of section 179 of the Housing (Scotland) Act 2006. We have accepted amendment 222, which would confer on the Scottish ministers a duty to prepare and publish an action plan on

"improving the energy efficiency of living accommodation".

If amendment 222 is agreed to, section 48 of the bill will also cover the matter that is covered by section 179 of the 2006 act. It would be unnecessary to retain section 179 of the 2006 act if the same duty were to be incorporated into the Climate Change (Scotland) Bill and there could be confusion if we were to have legislated for the same purpose in two acts. Furthermore, the Government would potentially be required to produce two action plans on the same topic, because there would be separate duties to do so in two acts. Therefore, the repeal of section 179 remains necessary and I am unable to support amendment 232.

Iain Smith: I welcome the minister's support of amendments 222 and 223. I also listened with care to his comments on amendment 232, which is, it is fair to say, a backstop amendment. If the other amendments are agreed to, my intention is not to move amendment 232.

I will press amendment 222.

Amendment 222 agreed to.

Amendment 223 moved—[Iain Smith]—and agreed to.

The Convener: Amendment 251, in the name of Sarah Boyack, is grouped with amendments 271 and 272.

Sarah Boyack (Edinburgh Central) (Lab): The provisions in amendment 251 form part of the member's bill on which I have been working since 2005. At the outset of speaking to the amendments, I record my thanks to the advocate Morag Ross, who helped me to draft them, and to the steering group. I also thank colleagues, some of whom are here and others of whom are elsewhere in the Parliament, for their fantastic support over the past few years.

The amendments address a key part of the bill. As the committee knows from its evidence taking over the past few months, our buildings are a crucial part of the solution to tackling climate change and reducing our CO_2 emissions. The amendments in the group recognise that. Other countries are ahead of us in making that recognition, but we have a lot of expertise in this field. Scottish community and householder renewables initiative grants have enabled a lot of technology to be tested around the country. However, despite many years of debate and exhortation, we still have no mass application of these technologies in our buildings and they have not yet become mainstream.

In essence, what I have put on the table for discussion today is a development of the position of two years ago in Scottish planning policy 6, in which we introduced our version of the Merton rule. SPP 6 requires developers of major developments of more than 500m^2 to incorporate planned reductions of CO_2 emissions, calculated on the basis of the predicted CO_2 emissions, to be provided for through renewable energy generated on site. The aim was to reduce CO_2 emissions and to stimulate decentralised energy production and to do the two things together. It could be combined heat and power or ground-source heating in some sort of communal provision, or a specific building-related renewables system, which could be solar or air-source heating in individual units.

SPP 6 has been in place for a couple of years and we have had SCHRI grants for several years, but we have not seen the rapid progress that was hoped for at the time. The critical issue is how to move forward. SPP 6 was drafted in such a way that developers can gain the benefit. If they design a low-carbon development, they can produce slightly less renewable energy to power it and heat it. However, some of that initial objective was lost in the translation into the new planning guidelines.

Crucially, this is not about tying in the requirement to existing building standards, which move over time—they have to be a given for any new development. This is about putting pressure on developers to achieve the lowest carbon emissions for their site and to meet a proportion of the power that is needed for the development on site in a way that reduces carbon emissions.

The amendments can operate whatever the level of building standards that ministers set, so they are not tied to where we are now; ministers can change things. They are also not technology specific; it is left to the judgment of the developer to decide what is most important.

Amendment 251 would require ministers to include a report on how the objectives in their energy efficiency plan will be delivered, which ties the provision into their other work. I hope that that enables clarity. It also highlights the leadership of the Scottish Government on the matter.

I have not specified the level of emissions that will be required. When we first debated SPP 6, we had a long discussion about whether the level should be 15 or 20 per cent. At the time, our expectation was that we would start at a lower level and move higher. That was the approach that the City of Edinburgh Council and Midlothian Council took in setting similar policies. It allows more pressure to be put on every single planning decision that we take.

Research into the amendment of development plans since the introduction of SPP 6 shows the incredibly slow uptake. Although some authorities such as Edinburgh and Midlothian are ahead of the game, most councils have not really engaged. There is a bit of uncertainty in terms of expertise. There is also the sheer fact that it takes ages to review development plans.

Amendment 271 would amend the Town and Country Planning (Scotland) Act 1997. It would be a step forward in that it would provide clarity for all local authorities and require them to review their development plans rather than simply encourage them to do so.

Amendment 272 would require ministers to produce an annual update on the operation of the policy. I have not said that that requirement should be for all time but suggested that it should be for the first four years after the provision comes into force. That ties in well to the Sullivan report's timescale of 2016. I have not included a sunset clause, so the provision would not fall after four years, but ministers would be required to review its effectiveness.

The key problem that we have had in the past two years is that, although SPP 6 exists, it has not been widely adopted. From talking to ministers over the past few years, I have the impression that they are committed to it, so I have made my proposals to help to move us forward. The planning profession is aware of the challenge and developers are beginning to engage in addressing emissions. Architects, surveyors and building professionals are all beginning to deliver, as we can see in new developments in Edinburgh. I accept that new build is not the whole story, but it is crucial if we are to get mass installations of low and zero-carbon generating technologies to stimulate the market and increase the amount of decentralised energy that is available.

My proposals are not technology specific but would leave the judgment on technology to developers and would help to move us on from where we think we are to a better place. They would also remove the current threshold to ensure that we have a more widespread application of this approach.

I move amendment 251.

Stewart Stevenson: I will consider all the amendments in the group, starting with amendment 271. I will then speak to amendment 272, after which I will come to amendment 251. It may be useful to indicate at the outset that, although I will speak to some of the difficulties in amendment 251, we are willing to address them through a stage 3 amendment. I will discuss that further.

Amendments 271 and 272 aim to introduce new legislative requirements to increase the role of development plans and the planning system

generally in securing the installation of low and zero-carbon technologies in all new buildings. That is a perfectly reasonable objective, but we have difficulties with the structure of the amendments. I will run through some of those difficulties in relation to amendment 271.

I understand the intention of the amendment's first lines. Strategic development plans are expected to operate at a broad-brush level in the four main city regions, which cover 20 of our 32 councils, and would be an inappropriate place for the level of detail that the amendment seeks on specific requirements for new buildings. If anything, the local development plans within those areas would have a role to play. However, section 3E of the Town and Country Planning (Scotland) Act 1997—inserted by the Planning (Scotland) Act 2006—already places a statutory duty on planning authorities to exercise their functions under that act

"with the objective of contributing to sustainable development."

The Scottish ministers' intention is to supplement that legislative requirement with planning guidance to ensure that development plans facilitate sustainable economic growth.

Amendment 271 is not clear about what "relevant developments" means. The meaning of

"specified and rising proportion of … emissions"

also remains unclear and raises many questions that would require to be clarified for planning authorities. Moreover, I am advised that it is not possible to predict a building's "operational greenhouse gas emissions". Once they are occupied, buildings are subject to the behaviour of residents and domestic or commercial tenants, and the condition of the building will vary hugely.

We have already introduced permitted development rights for many forms of low and zero-carbon generating technologies. Development plans should certainly support the provision of on-site low-carbon and renewable sources of energy in new developments, but seeking to prescribe in legislation how that should be done risks stifling initiative and innovation. In addition, a legislative requirement would become progressively unnecessary as we ramped up efforts to decarbonise electricity and heat.

14:00

Our approach is proportionate. Planning is undergoing significant change at the moment; we want to ensure that the system is simplified and quicker and that it truly focuses on supporting increasing sustainable economic growth. The amendments would not add to the mix; rather, they would simply add further layers of unnecessary and overprescriptive bureaucracy to a planning system that we are trying to streamline so that we can get things moving faster. However, I assure Miss Boyack that the Scottish Government will take the issue seriously in dealing with the new development planning arrangements. For all of those reasons, the reporting arrangements that are proposed in amendment 272 are unnecessary.

Amendment 251 would require that the energy efficiency action plan

"must include details of how the Scottish Ministers intend to update planning and building regulations to ensure that all new buildings"

demonstrate how

"their projected operational greenhouse gas emissions"

could be reduced

"through the installation and operation of low and zero-carbon generating technologies."

Again, there is a lack of clarity in expression in the amendment, which would create difficulties. It is important for local authorities to develop opportunities for renewable energy and low-energy delivery, including heat, of course. However, as I have explained, I expect the planning system to play a full yet proportionate role in that field. We support what is proposed in amendment 251 but think that it will be necessary for us to consider lodging an amendment at stage 3 that is cast in a different way to deliver the objectives that Ms Boyack seeks.

Sarah Boyack: If amendment 251 is agreed to, do you intend to lodge an amendment to change some of its terms, although you are happy with its spirit?

Stewart Stevenson: I do not require that the amendment be passed today to lodge an amendment at stage 3. I am in the committee's hands. However, I make the general comment that it is certainly easier to lodge a new amendment. Of course, we will have to lodge our amendment in advance of members lodging an amendment. If, on viewing the amendment that we have lodged at stage 3, the member thinks that it does not address the relevant issues, she will still, of course, have the opportunity to lodge further amendments to what we propose. Indeed, I am happy to engage with her at the earliest possible moment to enable her to see what we propose. We have not quite formulated an amendment yet.

Sarah Boyack: My difficulty is that I was in with the bricks with the Scottish Government's original policy, so I have tried to word all my amendments on the basis of our original policy objectives in 2007. We considered projected greenhouse gas emissions, and I understand that we had a

formulation at the time that worked, which SPP 6 was introduced to deliver.

Stewart Stevenson: The word that is causing us difficulty is "operational". I wonder whether the member is confident that previous work addressed that issue in a robust legal way. That is primarily where our difficulty hangs.

Sarah Boyack: That is useful.

My main problem with not pressing the matter is that we have not made the progress on planning aspects in the past two years that ministers were looking for in 2007. There is certainly a commitment in the building industry to working on the issues, but things are not happening. That is why I lodged amendment 251 and why I have wanted to amend the planning legislation.

Amendment 271 refers to strategic development planning authorities and local development plans because they may change in the future, as they have done in the past few years when local government and planning arrangements have been reorganised. My proposals cover both the strategic and the local development plan levels. I would expect to see the policies in depth at the local development plan level, but it would be entirely consistent with how the planning system works for them to be mentioned at the strategic level and followed through in detail at the local level. Therefore, I do not see the argument against my proposals in that regard.

Having sustainable development as an objective is not the same as the requirement to reduce carbon emissions in developments. There is a world of difference between a general desire to deliver sustainable development and the practical policies that will deliver that on the ground, which is why amendments 271 and 272 have been put together in this way.

I am more than happy to talk to the minister about the phrase

"projected operational greenhouse gas emissions",

which, I should point out, is from SPP 6. I am concerned that if we draw back from the planning policy suite that the Government has inherited, we will reduce the amount of planning policy guidance that local authorities receive and that, in moving from SPP 6, which was not applied widely, to a much smaller suite of planning policy, we will simply cause the issue to disappear. The term "sustainable development" alone will not cover all the issues or ensure that all new developments have some form of decentralised energy built in from the start.

Although I am happy to discuss in detail any amendments that the minister might wish to lodge afterwards, I would much prefer to press my amendments now. I believe that the technical issues that the minister has raised can be bottomed out, and I do not think that he has made a strong case for not taking the approach set out in the amendments.

The Convener: The question is, that amendment 251 be agreed to. Are members agreed?

Members: No.

The Convener: There will be a division.

FOR

Gordon, Charlie (Glasgow Cathcart) (Lab)
Harvie, Patrick (Glasgow) (Green)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)
McInnes, Alison (North East Scotland) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0. Because, as I indicated earlier, the casting vote is for the status quo, which is the bill as it stands, amendment 251 falls.

Amendment 251 disagreed to.

Amendment 252 not moved.

The Convener: Amendment 154, in the name of the minister, is grouped with amendments 155, 155A, 156, 254, 239, 240, 161 and 270.

Stewart Stevenson: Amendments 154, 155, 156 and 161 seek to strengthen the bill by introducing a new obligation to produce and update an action plan on renewable heat. At around 1.4 per cent of demand, current renewable heat use in Scotland is minimal and needs to increase significantly if we are to meet our target of producing 20 per cent of Scotland's total energy consumption from renewable sources by 2020.

We are well aware of the challenge of increasing the uptake of renewable heat in Scotland. However, we are prepared to face up to it and the renewable heat action plan will provide a focus for our various actions to develop, grow and promote the sector. By strengthening the bill in this way, we will ensure that the policy remains under scrutiny during the important period of early growth leading to the expansion that is necessary to meet European 2020 renewable energy targets and to play a part in reducing carbon emissions.

Turning to Mr Gibson's amendments, I am content to support amendment 155A, which seeks to introduce a requirement for the renewable heat action plan to set targets and to describe how those targets will be reported on. Amendment 254 seeks to require Scottish ministers to make a statement on the renewable heat action plan when

it is laid before the Parliament. As that is in line with other provisions in the bill, I am content to support it.

Amendments 239 and 240, which have been lodged by Iain Smith on behalf of the Economy, Energy and Tourism Committee, seek to require ministers to prepare a plan about the promotion of renewable heat. I agree that the best way to do that is to put a duty on Scottish ministers to prepare and publish an action plan for the promotion of renewable heat. However, given that our amendments 154, 155, 156 and 161 seek to achieve the same outcome but articulate things in greater detail by, for example, creating stronger links between the energy efficiency and renewable heat action plans, I hope that Mr Smith will recognise that amendments 239 and 240 are probably unnecessary and agree not to move them.

Amendment 270, in the name of Ms Boyack, seeks to require Scottish ministers to introduce renewable heat targets. The targets are defined in the amendment as

"the number of renewable heat systems installed in Scotland"

at a specified date. Subsection (3) of the new section that the amendment would insert requires that Scottish ministers take steps to meet the targets,

"including by requiring local authorities to set objectives for promoting renewable heat in their areas."

Under the Scottish Government's concordat with local government, it is for local authorities to determine how the money that is made available to them is spent to fulfil their statutory duties and to deliver the agreed outcomes in their single outcome agreements. By focusing on outcomes and removing substantial bureaucracy, that approach simplifies the delivery of government for the benefit of people and communities in Scotland. Amendment 270 runs counter to that by taking a prescriptive approach to local authorities, so I cannot support it.

Ministers agree that a renewable heat target is needed, but we do not agree that it should be set in respect of the number of renewable heat systems that are installed by a specified date. It is better to designate a target share for the contribution of renewable heat to energy consumption from renewables by 2020 than to specify the number of systems that must be installed. That is in line with the European Commission's commitment to increase the share of renewable energy to 20 per cent of final European Union energy consumption by 2020.

Although we are broadly supportive of what Sarah Boyack seeks to achieve through amendment 270, we believe that amendments 155A and 254, in the name of Rob Gibson, already cover the need for targets and reporting, and that they do so in a way that does not cut across the concordat with local government and local government's responsibilities. For the reasons that I have set out, I cannot recommend support for amendment 270.

I move amendment 154.

Rob Gibson (Highlands and Islands) (SNP): Amendment 155A, in my name, seeks to increase the clarity of the renewable heat action plan and the scrutiny to which it is subject. The percentage of heat to be produced from renewables must be worked out at some point, when we have a clear idea of what is possible. The level of the target should not appear in the bill; ministers should have discretion to decide it in the action plan. The target could be amended by subsequent modification of the plan.

Amendment 254 allows for greater parliamentary scrutiny and is in line with our preferred approach to the energy efficiency process. There will be regular reports, statements and scrutiny. The organisation that is most involved in delivering renewable heat schemes—Scottish Renewables—is keen that we adopt that approach and supports both the minister's amendment and my amendments. The amendments will strengthen the bill's clear goal that there should be a renewable heat action plan and provide Parliament with better opportunities to scrutinise progress. I am happy to support that combination of measures.

Iain Smith: I have lodged amendments 239 and 240 with the unanimous support of the Economy, Energy and Tourism Committee. The minister was right to point out that the proposals in the amendments are largely covered by amendment 155 in his name. We have lodged the amendments as a backstop, in case the Government's amendments are not agreed to. It is important that it is more than just a possibility that the Government will produce a renewable heat action plan—it is essential that there is a duty on ministers to do so. Heat makes up 50 per cent of Scotland's energy use; at present, renewable heat sources make up a tiny proportion of that. If we are to meet any of our future targets on climate change and increasing the use of renewables, the Scottish Government and others must make significant progress on the use of renewable heat as a primary source of heating. It is therefore vital that the Government produces a renewable heat action plan, and I agree—as I am sure that the Economy, Energy and Tourism Committee does—with the general principle that that plan should include targets.

I am happy to support the amendments in the name of the minister. If they are agreed to, I will not move the amendments in my name.

14:15

Sarah Boyack: Like Iain Smith, I am glad that the minister has moved amendment 154 on renewable heat, and I support the amendments in Rob Gibson's name, which take a comprehensive approach. I do not intend to move my amendment, because the minister has now put on the table an amendment that meets the objectives that I was seeking. However, he almost lost my support when he extolled the concordat, which I do not think is a particularly good model with regard to renewable heat.

I will make two points. I understand why there might be a reluctance to focus on the number of renewable heat installations, but I would still like that to be recorded in the minister's work, and I wonder whether he would agree to do that. It is crucial that we have not only large heat plants but decentralised and local energy at community and household level.

I ask the minister whether he is prepared to examine the role of local authorities, because it is not enough to say that it is not up to ministers to set targets for authorities. Amendment 270 is constructed in such a way that authorities would be required to set their own targets—rather than the minister being centralist and telling authorities what to do. I ask the minister to reflect on that point.

That approach is appropriate, because each local authority will have its own different opportunities in relation to renewable heat. Some local authorities may use community systems, while stand-alone developments would be more appropriate in other authorities. I am prepared not to move my amendment, but I would like the minister to address those two specific points.

Stewart Stevenson: We have had a helpful debate on the subject, and it is clear that we all seek to point in the same direction. I was glad to hear Iain Smith confirm that, as I thought, amendments 239 and 240 are backstops, and I hope that the committee will agree to the amendments in my name.

In response to Sarah Boyack's comments, I say that the number of installations plays to the agenda of engaging as many people as possible, as well as the localisation of delivery and the ability to take advantage of different opportunities. I associate myself with her remarks about each local authority having different opportunities—that is spot on. It is clear that a rural authority that has local access to significant supplies of wood will have one particular opportunity, while an urban local authority may be able to divert some of its waste into heat and power generation and will therefore have a different set of objectives. It is proper that local authorities have different objectives.

I reassure Ms Boyack that we regularly discuss that subject and a wide range of others with local authorities, and we will continue to do so. There is good faith among local authorities in moving forward on that agenda, and we will certainly help them to do so in a spirit of partnership.

Amendment 154 agreed to.

The Convener: Amendment 253, in the name of Iain Smith, is grouped with amendment 265.

Iain Smith: Amendment 253 is the only amendment in my name that we will consider today that was not lodged on behalf of the Economy, Energy and Tourism Committee. That is because it relates to an issue that the committee did not consider. I should not speak for the committee in this context, but I think that it would probably support amendment 253, given our work on our inquiry on determining and delivering Scotland's energy future, the report on which will be published later this month.

Heat accounts for 50 per cent of our energy use, but we do not consider how much heat is wasted in the production of energy. Around 60 per cent of heat in the generation process just goes up the chimney or is pumped into the sea or the river Forth as part of the cooling process. That considerable waste of energy and fossil fuels has a considerable impact on the climate, because we burn more fossil fuel than we need for energy use.

I lodged amendment 253 because I was concerned that waste heat does not fall neatly into a particular aspect of the bill and might therefore be missed. The issue does not belong in section 51, "Renewable heat", because unless the electricity generation is from a renewable source such as biomass, a district heating scheme or combined heat and power scheme will not come under that section. Nor does the issue fit clearly into the sections on energy efficiency, although it is the clearest example of an area in which energy efficiency is needed.

Amendment 253 would make it clear that, in the context of energy efficiency, consideration would be given to how to make best use of surplus heat from electricity generation—and other industrial processes, given that, for example, oil refineries and even whisky distilleries produce a substantial amount of spare heat.

District heating schemes are widely used throughout the continent. The approach is particularly well developed in Denmark, where the Economy, Energy and Tourism Committee visited

a scheme. We do not use district heating to any extent in Scotland and the United Kingdom; nor do we much use combined heat and power schemes. We should be considering such schemes much more carefully. The purpose of amendment 253 is to encourage the Government to ensure that surplus heat is addressed as part of its energy efficiency plan and other plans under the bill.

I move amendment 253.

Lewis Macdonald (Aberdeen Central) (Lab): I support what Iain Smith said about amendment 253, which reflects findings of the Economy, Energy and Tourism Committee's inquiry on determining and delivering Scotland's energy future. In March, the committee visited one of Aberdeen's combined heat and power schemes, at Seaton in my constituency. Local residents told us about the benefits that the scheme had brought. For tenants of local authority sheltered housing such as Seaview House there were immediate benefits. Bills were reduced and homes and common areas of the high-rise buildings were warmer. Such things matter a great deal to retired people who have modest incomes.

There are wider benefits of CHP schemes. There is reduced demand for electricity from the grid and carbon emissions are reduced. I think that there is a policy consensus in Scotland that we should find ways to enable more such schemes to be developed. However, that is not happening. Aberdeen Heat and Power Company was set up in 2002 by Aberdeen City Council and has connected 850 homes in high-rise buildings, half of which are sheltered accommodation, and two public buildings in the same parts of the city. The company aspires to grow its network. Why have other councils not been able to follow that good example?

Amendment 265 would address a specific obstacle in that regard, which is a difference in the practice of valuation in authorities in different parts of the UK. CHP schemes in Scotland pay business rates on the pipes and risers that carry heat and water to the doors of residents' flats, including equipment that is inside a high-rise building but outwith the individual property. Similar schemes in England do not pay business rates in that way. Amendment 265 would require ministers to put that right.

What would that mean in practice? In Aberdeen, 850 tenants share the burden of the £40,000 that is paid in business rates on domestic heating equipment. Removing that burden would save each of those residents £47 a year—£1 a week, which is a significant sum for people on low incomes. More widely, it would remove one of the obstacles to other public authorities developing similar schemes and would achieve the magic combination of tackling carbon emissions and, at the same time, tackling fuel poverty. That is the basis of amendment 265.

Stewart Stevenson: I will start with Iain Smith's personal amendment, amendment 253, which I am content to support. It requires the new energy efficiency action plan that will be prepared under section 48 of the bill to cover

"surplus heat from electricity generation or other industrial processes for district heating or other purposes".

Although currently the bill does not mention the use of heat for district heating or other purposes, it has always been the Government's intention to include that in the energy efficiency action plan. I am happy for that to be made explicit in the bill. I am, therefore, pleased to support amendment 253.

I know about Mr Macdonald's long-term engagement with and constituency interest in the issue to which amendment 265 relates. I am glad to hear that the residents of Seaview House are so pleased with the outcome of the combined heat and power scheme that has been put in place there. However, if combined heat and power can be developed in Aberdeen, it is not entirely clear to me that legal valuation barriers are stopping that happening elsewhere. In any event, we have specific difficulties with the amendment.

It is not as clear to us as it is to Mr Macdonald that the basis of valuation in Scotland is sufficiently different from that in England to make the kind of differences that he suggests will matter. The advice that I have currently suggests that, if the amendment were agreed to, we could fall foul of European state aid rules, because of the way in which the amendment is constructed. I do not say at the moment that we would fall foul of those rules, as we have not consulted on the matter.

We already exempt much of the plant and machinery that is associated with combined heat and power plants from valuation for rating purposes in Scotland. It is not entirely clear to me what difference the amendment would make, but there is a real difficulty associated with it. If there were financial implications for local government—or central Government, for that matter—we would need to understand those. If local government were deprived of money, the amendment could precipitate reductions in services elsewhere and increases in council tax and non-domestic rates precisely at a time when those are undesirable.

For a range of reasons, I do not recommend that the committee agrees to amendment 265. I ask Lewis Macdonald not to move the amendment.

Iain Smith: In principle, I support the policy intention behind amendment 265, in the name of Lewis Macdonald. There seems to be some difference between how certain parts of the plant

and equipment for combined heat and power are treated in Scotland and how they are treated in the rest of the United Kingdom. We may want to reflect on that point between now and stage 3.

Stewart Stevenson: Will the member care to be specific, so that we can examine the issue?

Iain Smith: We can provide the detailed information that we received during our visit. I do not have it in front of me at the moment, but I can ensure that it is given to the minister in early course. I think that the issue relates to pipework and connections.

I thank the minister for his support for amendment 253. It is important that we make it clear that district heating and CHP are part of the energy efficiency programme.

The Convener: I remind members that if they wish to intervene they should ask the member speaking to give way.

Amendment 253 agreed to.

Section 48, as amended, agreed to.

After section 48

14:30

Amendment 155 moved—[Stewart Stevenson].

Amendment 155A moved—[Rob Gibson]—and agreed to.

Amendment 155, as amended, agreed to.

Section 49—Laying of plans and reports

Amendment 156 moved—[Stewart Stevenson]—and agreed to.

Amendment 254 moved—[Rob Gibson]—and agreed to.

Section 49, as amended, agreed to.

After section 49

The Convener: Amendment 255, in the name of Liam McArthur, is in a group on its own.

All members should be aware that time is moving on and that we have a large number of groups of amendments to get through. Speeches should therefore be reasonably direct and to the point. I am sure that Liam McArthur will be the very spirit of that approach.

Liam McArthur (Orkney) (LD): You have not said anything that my colleagues have not already said to me, convener.

I return to an issue that was covered to some extent last week in considering amendment 136 and the requirement to report on the emissions intensity of electricity generation and new generation plants as part of annual reporting. Amendment 255 aims to ensure that decisions that are made about new plants reflect the goals of the bill over the course of the entire period up to 2050.

New or refurbished unabated or even carbon-capture-ready coal-fired power plants exemplify why the cumulative amount of greenhouse gases that are emitted is what matters. Most of the legislative powers that relate to such plants are, of course, reserved to Westminster, but the Scottish ministers currently have administrative responsibility for granting or refusing consents for such plants and establishing guidelines and guidance that set out the conditions under which such decisions are taken. Amendment 255 would require ministers to use those existing powers to set guidance for consents for new and extended plants, including a limit on emissions per megawatt hour of energy generated. It would leave the detail of the levels and scheduling of such a standard to the guidance process, but would ensure that the guidance addressed how heat recovery was accounted for and would allow for different standards for different technologies at different times. That addresses a point that the minister made last week about other amendments. To ensure that the guidance links in with the bill, ministers will be required to take advice from the advisory body before setting it. If they take a different approach than that which is recommended, they must explain why.

The minister will be aware that, as well as being supported by a wide range of non-governmental organisations that work closely in the climate change field, such an approach has recently been proposed in a private member's bill at Westminster that my Liberal Democrat colleagues and the minister's Scottish National Party colleagues have supported. The approach has also received support from some Labour MSPs and Lib Dem MSPs and is already in operation in other parts of the world—in California, for example, where it has demonstrated its effectiveness in bearing down on emissions as well as in improving energy security through enhancing investment certainty.

I am conscious of the convener's remarks and am pleased to move the amendment.

I move amendment 255.

Stewart Stevenson: I acknowledge, as Liam McArthur has, that the SNP supports such an approach, as is evidenced by actions that have been taken elsewhere. To give Mr McArthur hope, I can tell him that it is likely that I will commend to the committee his next amendment, which is in another group.

I say that because amendment 255 has difficulties, which I will deal with. We have made it clear that we want to decarbonise the electricity generation sector by 2030. That is consistent with the UK Committee on Climate Change and the overall 80 per cent target in the bill. Our first and most important concern is that the amendment carries the serious risk of being outside the Parliament's legislative competence—I will say a bit more about that in a moment. Secondly, the amendment could prejudge the outcome of the consultation that the UK Government will undertake this summer on an emissions performance standard.

The amendment would introduce a requirement in relation to how consent is to be granted for the generation of electricity. Members will know that the generation of electricity is a reserved matter under the Scotland Act 1998. The Scottish ministers can exercise the function of granting consent for the construction of electricity generating stations under section 36 of the Electricity Act 1989, but that function was conferred by a transfer of functions order under the 1998 act. That order in no sense increased the Scottish Parliament's legislative competence; it purely gave us scope to exercise the functions that were given to us.

The requirement that the amendment would impose relates to the generation of electricity per se, which is still reserved. If we agree to the amendment, the danger is that we will risk causing legal debate and referral to the Privy Council, which could delay the bill's obtaining royal assent, and that we will face other challenges.

I agree that the policy intention to create an emissions performance standard could be consistent with our decarbonisation objective. However, other routes to decarbonising the power sector exist. Members will know of the recent progress that the UK Government made on the matter as part of its budget announcement in April, on which Liam McArthur has previously commented.

If carbon capture and storage is to apply fully in the 2020s, it must be demonstrated in the 2010s. That requires a clear commitment to funding demonstration, which is why the UK budget announcement that funding for up to four demonstrators would be provided through a carbon capture and storage levy is welcome.

Until the UK consultation is concluded later this year, whether the emissions performance standard is the most effective route for progress will not be clear. Given that the electricity market is UK wide, a strong view is in favour of a consistent consenting framework throughout the UK.

The competence issue is complex, but we are pretty confident that the amendment would be outwith our competence and could cause difficulties later that none of us would wish to have. On another occasion, we could always seek additional powers, but that is a wider debate for another time.

Liam McArthur: After letting me down gently with a promise of future success, the minister spoiled it all with his final remarks.

The argument that my amendment falls outside the Parliament's legislative competence is at the heart of the matter. The minister might not accept a countermand from me, but I understand that advice from a senior Queen's counsel suggests that the Scottish ministers do enjoy powers that would enable the amendment to be agreed to. I do not expect the minister to change his mind now, but perhaps he will reflect on the legal advice and reconsider his position before stage 3.

I will press the amendment.

The Convener: The question is, that amendment 255 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gordon, Charlie (Glasgow Cathcart) (Lab)
Harvie, Patrick (Glasgow) (Green)
McInnes, Alison (North East Scotland) (LD)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 255 agreed to.

The Convener: Amendment 256, in my name, is in a group on its own. It is intended to require ministers to establish a scheme for providing or arranging the provision of financial assistance to householders in relation to energy efficiency.

In a discussion on an earlier group, Sarah Boyack said that other countries are ahead of Scotland and the UK in several areas, and that is certainly the case with the provision of loans. The German Government invests some €2.6 billion a year in the area and its scheme is estimated to have saved about 1 million tonnes of CO_2 in the first year of operation alone. A country the size of Scotland might not achieve anything on that scale, but that example shows that there are opportunities to provide financial assistance to householders to enable them to improve the energy performance of their homes.

That is happening not only in Germany but at local authority level in the UK. Kirklees Council's scheme has attracted interest and attention from across the political spectrum. In addition to the free, universal provision of low-cost measures such as loft and cavity wall insulation, a loan scheme based on an equity release model is available to householders for more expensive measures, and the council can recycle the funds that come in from the repayment of those loans to ensure that more householders benefit.

Earlier this year, the Scottish Government indicated its intention to do something along those lines. The Cabinet Secretary for Finance and Sustainable Growth said:

"The Government will … produce proposals for a significant loan mechanism to improve hard-to-treat properties that do not have lofts or cavity walls that can be insulated."—[*Official Report*, 28 January 2009; c 14407.]

He went on to say that the initiative would create valuable employment in every part of the country. That has certainly been the experience in Kirklees, where both economic and environmental benefits have been achieved, including job creation and reduced bills to householders.

As it is nearly half a year since the Government made that commitment, I hope that the minister will give us any details that he can spell out about the operation of the loan scheme that the Government intends to introduce. Amendment 256 would not interfere with that commitment but would reinforce it and give ministers an opportunity to specify by regulations other forms of financial assistance to householders in respect of energy efficiency. I hope that the minister will consider the amendment in a constructive spirit and respond accordingly.

I move amendment 256.

Alison McInnes (North East Scotland) (LD): Amendment 256 has much merit. It would be particularly useful to constituents in my area, which contains many hard-to-heat homes. I wait with interest to hear what the minister says about it.

Stewart Stevenson: Others have suggested that if we treated 80 per cent of Scotland's homes, that would deliver a total saving of 0.4 million tonnes of CO_2. I do not know whether that helps to inform the committee. I would not put my personal reputation behind that estimate, but the figure seems about right.

I acknowledge the spirit in which amendment 226 was lodged. The convener acknowledged that, as part of our budget, we announced in January that we would make proposals for a significant loan mechanism to help householders who wish to undertake more expensive energy efficiency measures such as solid wall insulation and the installation of renewables technologies. We are undertaking development work for a loan scheme and we will make an announcement about it later in the year. To legislate before the development work has been done would be premature and could be unhelpful.

Ministers already have powers in the Housing (Scotland) Act 2006 to provide financial assistance to persons in connection with the improvement of a house. Works that improve the energy performance of a house would be regarded as improvements for that purpose. I am therefore confident that we have a legislative vehicle. I believe that it is more important for Scottish ministers to focus their energies on developing a scheme for funding the best energy efficiency and renewable energy mechanisms in the most effective way.

14:45

Amendment 256 has one or two problems. For example, it does not restrict itself to home owners. The amendment is also not clear about the difference between standard and subsidised loans. In not providing any detail of the scheme about which it seeks to legislate, the amendment creates a number of risks. By comparison, section 71 of the 2006 act, which gives ministers a power to provide financial assistance for housing improvements, contains detailed definitions of key terms and deals with all the practical components to make the system work. Amendment 256 leaves all that until later.

The lodging of amendment 256 sets it up in competition with section 71 of the 2006 act, and it could create duplication and conflict, which may make progress difficult with the work that we are undertaking. We will bring forward that work over the course of this year.

I therefore ask the convener to accept my assurances on behalf of the Government that we are making good progress on this issue. We will present details later this year, and the appropriate—

The Convener: Will the minister take an intervention?

Stewart Stevenson: Yes, of course.

The Convener: The minister used the phrase "later this year", but can he be more specific?

Stewart Stevenson: I will say, later this calendar year.

The Convener: I will take that as a no.

Stewart Stevenson: One moment, convener. I am now being told by my officials that the answer is October—but I will not be bid any further.

The Convener: Did you want to say anything else on amendment 256?

Stewart Stevenson: No, that is it. Thank you.

The Convener: The objections that the minister raises seem to me to be slightly confused. On the one hand, he argues that there are restrictions in the amendment; on the other hand, he argues that there are no restrictions and no details.

Amendment 256 deliberately places a requirement on ministers to establish a scheme. It does not enable ministers to do that, but it places a requirement on them. However, the amendment then leaves it open to ministers to determine the details of the availability of the scheme, the conditions that may be attached, the terms of loans or grants, and so on.

If the committee were to agree to amendment 256, it would not interfere with the work that the Government is committed to—in October or at any other time. However, the amendment would place a clear expectation on Government—I see that the minister is about to ask to intervene.

Stewart Stevenson: Yes, please. I am looking at subsection (5) of the new section that amendment 256 seeks to introduce. It provides a list of what regulations may do. Does the convener agree that such a list could create difficulty, because it may exclude things that ministers may wish to include in the scheme? Agreeing to the amendment may lead to restrictions in the scope of what we will bring forward in October.

The Convener: My response to that is—as I was about to say—to press amendment 256 and to encourage the minister to address at stage 3 any tweaks to the amendment that he feels are necessary.

Stewart Stevenson: May I comment, convener?

The Convener: Very briefly, minister.

Stewart Stevenson: I will not be in a position to identify, in time for stage 3, what would have to be in a list, were one to be included in the bill.

The Convener: That is noted.

I have one final point, on the objection to legislating in advance of work being done. That objection could be raised to this entire bill. The bill is about placing requirements on the statute book to prompt Government and others to take the climate change agenda more seriously. I therefore press amendment 256.

The question is, that amendment 256 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)
McInnes, Alison (North East Scotland) (LD)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Johnstone, Alex (North East Scotland) (Con)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Somerville, Shirley-Anne (Lothians) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 256 disagreed to.

Section 50—Non-domestic buildings: assessment of energy performance and emissions

The Convener: Amendment 224, in the name of Liam McArthur, is grouped with amendments 157, 225, 158 to 160, 160A, 226 and 229.

Liam McArthur: The minister has taken some of the suspense out of this group with his earlier remarks. He indicated some figures on which he would not like his reputation to hang, but I will give him a figure to which it is already firmly wedded: 17 per cent of annual United Kingdom CO_2 emissions can be attributed to non-domestic building stock. That simply illustrates the importance of addressing that concern.

Last summer, the Scottish Government consulted on how best to tackle emissions from non-domestic buildings. The findings of that consultation were interesting: 80 per cent of respondents agreed that current policies and support would not deliver significant carbon reductions. There are probably a number of reasons for that. Building regulations address new build in particular and, therefore, are most effective with only about 1 per cent of the building stock in any given year. Although some of the financial support mechanisms such as the central energy efficiency fund and the energy saving Scotland small business loan scheme have undoubtedly made some mark, they are undermined slightly by the split incentive whereby the people who pay the fuel bills have a great incentive to improve energy efficiency but are seldom the ones who make the investment decisions about installations and adaptations.

The Scottish Government's amendments 158 and 160 would introduce the power to require building owners to take up energy improvements that were specified in their energy performance certificates, which is welcome. In fact, they helpfully exceed amendments 225 and 160A in my name. Those amendments were not backstops, but that illustrates the risk of acting before one

sees the whites of a minister's eyes. Therefore, I will not move amendments 225 and 160A.

Amendments 224 and 226 pick up the industry's needs for certainty about planning, investment and the best way to ensure that the supply of material and product can fulfil what we hope will be a rising demand. Amendment 226 would provide clarity by setting a clear timetable for ministers to use the powers that they are taking.

I move amendment 224.

Stewart Stevenson: I am perfectly happy to accept amendment 224 in Liam McArthur's name and, indeed, amendment 229 in Iain Smith's name.

On amendments 157 to 160 in my name, we recognise the divergence of views on mandatory versus discretionary improvements to buildings in the responses to the public consultation. Therefore, we have agreed to take forward the implementation of cost-effective energy improvement recommendations to non-domestic buildings on a voluntary basis initially.

We wish to continue to work with business and industry to maximise emissions reductions by allowing voluntary implementation, particularly in the current economic climate. However, we need to make provision in primary legislation to enable improvements to be required through secondary legislation at a future date if voluntary action is not sufficient to make the necessary cuts in greenhouse gas emissions.

Amendments 157 and 158 will allow the Scottish ministers to require the implementation of recommendations that arise from the assessment of buildings. Amendment 160 will enable regulations to include provision about the form of recommendations, the manner of complying with them and the periods allowed to comply with them. It will also enable the setting up of a register for certificates and the disclosure of information in that register. Amendment 159 is a technical amendment that makes it clear that the activities that are referred to are only those carried out in buildings.

In summary, the amendments will make provision in section 50 for the Scottish ministers to require, through secondary legislation, the implementation of improvements to non-domestic buildings arising from the assessments of energy performance and emissions of greenhouse gases.

I turn to amendments 226, 225 and 160A. Amendment 226 aims to place a duty on the Scottish ministers to publish a report, within 12 months of royal assent, on measures that are to be taken to reduce non-domestic building emissions and when provision will be made. I welcome amendment 226, which will allow ministers to demonstrate progress on the implementation of section 50. However, there is a technical flaw as it refers to the date on which royal assent is given to "this Act". Royal assent is the means by which a bill becomes an act, so the amendment should refer to the date on which the bill for the act receives royal assent. I therefore invite Liam McArthur not to move amendment 226. I offer to lodge an amendment in exactly those terms at stage 3. We are in the member's hands on that.

Amendment 225 seeks to make it mandatory for the Scottish ministers to introduce regulations on cost-effective improvements to existing non-domestic buildings. Under such a provision, building owners would not have discretion to implement alternative improvements that could provide a greater improvement in energy performance and reductions in emissions. We absolutely recognise the spirit in which the amendment was lodged, but it would unnecessarily restrict improvements to buildings to those that were cost effective. Respondees to the consultation proposed that there should be flexibility regarding the type of improvements that are implemented. That applies particularly to historic and traditional buildings, for which the application of the term "cost effective" might present a real challenge and restrict opportunities to make changes. Owners, as part of a maintenance programme, might intend to carry out other improvements that could produce greater energy performance and emissions improvements. I therefore invite Mr McArthur not to move amendment 225.

Similarly, amendment 160A would restrict the recommendations that could be included in certificates on the energy performance of buildings and reduction of emissions to those that were cost effective. Again, the Scottish ministers recognise the spirit of the amendment but, for the same reasons, I invite Mr McArthur not to move it.

Iain Smith: I speak on behalf of the Economy, Energy and Tourism Committee. Amendment 229 is fairly straightforward. In our stage 1 report, we recommended that

"all the relevant secondary legislation proposed under sections 48-51 is subject, if they are not already, to affirmative resolution".

Amendment 229 would ensure that regulations under sections 50(1) and 50(4) would require affirmative resolution. I hope that, as the minister has indicated, he will support that amendment.

I welcome the amendments in the group from the minister and Liam McArthur. The Economy, Energy and Tourism Committee was concerned about the lack of clarity on the policy intent behind the assessments of energy performance of non-domestic properties and on how we will assess

whether the system is working and doing what it is intended to do. The amendments will, I hope, address some of those concerns.

Liam McArthur: I welcome the minister's acceptance of my amendment 224. Initially, I thought that he had raised unfairly my expectations that he was about to accept amendment 226, but I accept the reason why he cannot do so and I welcome the fact that he will lodge a reworded amendment at stage 3. I reiterate what I said earlier on amendments 225 and 160A. If I had had the opportunity to remove them prior to today, I would have done so, but I certainly will not move them.

Amendment 224 agreed to.

Amendment 157 moved—[Stewart Stevenson]—and agreed to.

Amendment 225 not moved.

Amendments 158 and 159 moved—[Stewart Stevenson]—and agreed to.

Amendment 160 moved—[Stewart Stevenson].

Amendment 160A not moved.

Amendment 160 agreed to.

Amendment 226 not moved.

Section 50, as amended, agreed to.

The Convener: I am tempted to have a short comfort break. If we are to conclude our business by a reasonable time, it will have to be a short break and perhaps the only one, so make the most of it. Five minutes, please.

15:01

Meeting suspended.

15:06

On resuming—

After section 50

The Convener: Amendment 227, in the name of Iain Smith, is grouped with amendments 227A and 227B.

Iain Smith: I lodged amendment 227 on behalf of the Economy, Energy and Tourism Committee. In our stage 1 report, we noted the calls in evidence for the provisions in section 50 to be extended to the domestic sector. Indeed, amendment 227 has the support of bodies such as the Association for the Conservation of Energy, WWF Scotland and others. Our aim is to apply the assessment of energy performance and emissions for non-domestic buildings under section 50 also to living accommodation. Essentially, the amendment is an enabling provision: if ministers want to do such assessment at some future date, they can do so.

Current efforts to achieve greater energy efficiency in the domestic sector are not well represented in the bill and yet the sector is a crucial part of our economy and society. The Economy, Energy and Tourism Committee's view is that it must be included. Amendment 227 seeks to ensure that we have a better idea of energy efficiency and performance in the domestic sector and of the greenhouse gas emissions that can be attributed to the sector.

It is important to note that we are gradually improving building standards for new-build domestic accommodation. However, for many years to come, most people will continue to live in existing housing stock. Indeed, it has been estimated that, by 2050, around 85 per cent of people will still be living in houses that were built before the existing building regulations came into force. The timescale for the turnover of housing is such that we need to take action to ensure that existing living accommodation is improved. Opportunities to improve the quality of a property should be taken when there is a change of tenancy in the rented sector or a property sale in the owner-occupier sector. Also, when people make a significant improvement to their homes, we should ensure that they build in energy efficiency measures.

As I said, amendment 227 is an enabling provision. We see it as part of the climate change toolkit that the bill provides to ministers. As such, we hope that the committee will accept the amendment. It is a sensible provision to add to the bill.

I move amendment 227.

The Convener: Amendments 227A and 227B are in my name.

The two amendments to amendment 227 are relatively minor. Amendment 227A simply expands the scope of amendment 227, so that the regulations that Scottish ministers may make under the proposed powers relate not only to the assessment of energy performance and greenhouse gas emissions but to improvements in relation to those two issues. Amendment 227A slightly broadens the scope of the regulations, and I hope that that is seen as helpful.

Amendment 227B simply removes the final element in the list of what the proposed regulations provide for, which is:

"offences in relation to failures to comply with requirements of the regulations."

I am certainly not arguing that we should not contemplate creating offences; I just have a wee feeling that specifying offences by way of

regulation might be a little bit much, and that it is better to introduce offences through primary legislation, so that they can be subjected to parliamentary scrutiny. I lodged amendment 227B simply to provide the committee with the opportunity to consider that question.

I move amendment 227A.

Stewart Stevenson: In the interests of time, I will simply say that we are content to accept amendments 227 and 227A. I take some issue, however, with the suggestion that amendment 227B is comparatively minor. To remove from the bill the ability of ministers to create offences in this area is quite significant.

When secondary legislation is brought to the Parliament, there is of course a scrutiny process, and there is a period during which the Government undertakes consultation before secondary legislation is laid. I hope that the committee will feel that, in pursuing the objectives of the Climate Change (Scotland) Bill, it is important for ministers to have the necessary powers to hand, to ensure that, over the years, we make the necessary progress. Therefore, we will not respond to the invitation to delete the power to create criminal offences.

Iain Smith: I am at a loss for words, as I do not think that I have ever been in a situation in which an SNP minister has been so generous to me.

Alison McInnes: Make the most of it.

Iain Smith: I will.

I thank the minister for accepting the principle behind amendment 227. I have no difficulty with amendment 227A in principle. Amendment 227 was phrased to mirror section 50, before amendment. As a result of the amendments that have now been made to that section, it may be that further amendments to the provisions that are contained in amendment 227 will be required at stage 3.

Stewart Stevenson: We are conscious that there might be some tidying up to be done at stage 3, and our loins are girded so to do.

Iain Smith: I thank the minister for that assurance

My main point is that subsection (2)(m) of the new section that amendment 227 would insert, on offences, which amendment 227B seeks to delete, is lifted from the existing provision in the bill, which has not been deleted from section 50 by any amendment. It would seem strange to have that provision in one section but not in the other. I leave it up to the committee's wise judgment whether it accepts amendment 227B; I intend to press amendment 227 when the time comes.

The Convener: I think that the official reporters will have to be particularly careful in this part of the debate.

I welcome the general sense that amendment 227A offers a helpful suggestion, and I take a reasonable amount of comfort from the comments that the minister made on amendment 227B, in which he indicated that due parliamentary consideration of offences that are created will be provided for.

Amendment 227A agreed to.

Amendment 227B not moved.

Amendment 227, as amended, agreed to.

15:15

The Convener: Amendment 257, in the name of Lewis Macdonald, is in a group on its own.

Lewis Macdonald: Members will know that around half Scotland's carbon emissions are associated with buildings and that only about 1 per cent of buildings are replaced a year. Therefore, members will agree that intervening in relation to the 2 or 3 per cent a year that are subject to extension or other works is an opportune way to attempt to deal with those emissions and that that approach will deal with them more quickly than simply relying on regulations that affect new buildings. If we want building regulations to make a real difference with regard to climate change, we need to consider how that can be done at the point at which owners are considering investing in and improving their buildings.

Two years ago, the Sullivan report recognised the need for action in this area. It also recognised that any change would have to be carefully framed in order not to create a perverse incentive to operate outwith the law or, indeed, not to improve properties in the first place.

The amendment is designed to bring about amendments to housing regulations to ensure that a proportion of the budget for any improvements or extensions would have to be spent on measures to improve the energy efficiency of the building. The precise requirement is something on which ministers would, no doubt, wish to consult, but the principle of taking action seems clear.

UK ministers have already consulted on similar measures that may well lead to new building regulations in England next year. Amendment 257 gives Scottish ministers the opportunity to take action here as well, and I hope that the minister will tell us today that that is their intention.

I move amendment 257.

Stewart Stevenson: I am absolutely happy to support the principles behind amendment 257.

However, the detail of the amendment presents a couple of challenges.

The amendment would require Scottish ministers to make regulations to encourage compliance with guidance that is voluntary, and offers no powers to compel compliance. It is not entirely clear what, apart from encouraging compliance with guidance, the regulation-making power could do that could not be done more effectively under building regulations. The powers that are proposed by the amendment already exist in the Building (Scotland) Act 2003.

However, we are making progress with a series of building regulation amendments, and we certainly want to address in that process the matters that amendment 257 is concerned with. If Lewis Macdonald were to consider that an inadequate response, I am sure that we could see our way to making some sort of suitable amendment at stage 3. However, I am sure that that would be unnecessary. It is certainly our intention to proceed on the same basis as laid out in the amendment. I hope that that reassures him.

Lewis Macdonald: Does the minister intend to consult on such energy efficiency measures in the forthcoming consultation on building regulations?

Stewart Stevenson: Yes, we shall do so.

Lewis Macdonald: The minister's assurance clearly meets the aim of the amendment, so I am happy to seek leave to withdraw it.

Amendment 257, by agreement, withdrawn.

The Convener: Amendment 238, in the name of Alex Johnstone, is grouped with amendments 258 to 264.

Alex Johnstone (North East Scotland) (Con): The commitment that I gave during stage 1 to lodge amendments that would allow the introduction of so-called green council tax rebates has manifested itself in amendment 238, which would introduce a section headed, "Council tax and non-domestic rates: discounts for energy efficiency etc." I want to put the matter before the committee and the minister for discussion.

I am well aware that the minister, and other ministers in this Government, have previously set themselves against the concept of council tax discounts. The main reason for that is the Government's desire to remove council tax from Scotland entirely. However, given that the Government has apparently conceded that that is unlikely to happen in the foreseeable future, the opportunity exists for us to take action, whether or not we approve of the council tax, to use the mechanism that the tax provides to give people an incentive to move towards greater energy efficiency in the domestic setting. The amendment seeks to extend that approach to non-domestic rates as well.

I commend to the minister the argument that lies behind amendment 238, and look forward to hearing his views on it.

Amendment 258 does something slightly different. According to correspondence that I have received, particularly from Scottish Gas, it appears that, although carbon emissions reduction target money can be used extensively in local authority areas south of the border to provide support for energy efficiency measures and rebates on council tax, enabling legislation would have to be changed in order for that to happen in Scotland.

Scottish Gas writes:

"We urge changes to be made to allow energy companies to play their part in encouraging better take-up of microgeneration."

From the correspondence that I have received, it appears that there is some legislative barrier that prevents utility companies from participating with local authorities in Scotland in schemes that are similar to those in which they participate south of the border. Amendment 258 attempts to remove that legislative block, should it exist. I am interested to hear the minister's opinion on whether legislation needs to be changed in order to implement the proposal in Scotland. I look forward to hearing his comments on whether amendment 258 would achieve that objective.

I move amendment 238.

Sarah Boyack: As Alex Johnstone has said, there is an issue about whether Scottish councils can give council tax rebates. Following parliamentary questions to Scottish ministers, I have received the clear answer that, under the current system, councils cannot do that.

I have lodged a series of amendments that concern the proposals that I have been campaigning on for the past five years. I have separated my amendments on council tax from my amendments on business rates for the key reason that, having spoken to members from various parties, I know that people have differing views about those two issues. Separating the two issues will allow them to be debated separately.

Amendment 259 would enable a one-off council tax reduction and would enable people to make energy efficiency improvements and use microgeneration technologies. Crucially, it would also give people the ability to link to district heating systems or co-generation systems. As more sustainable developments take place, the ability to connect to a district heating system will become more important.

The Energy Saving Trust has carried out lots of research that shows that people's awareness of the council tax is such that council tax rebates would lead to people getting energy efficiency or microgeneration measures. We are all aware of making our council tax payments.

Alex Johnstone summarised the obvious reasons why some people around the table might have been less than keen to support the proposal, but I would say that, over the past few months, the parliamentary mood has shifted. The awareness-raising potential of the proposal cannot be overestimated. If we are trying to reduce people's overall CO_2 emissions, getting them to focus on their own houses is a key way of doing that quickly.

Some 23 per cent of our households in Scotland are now in fuel poverty, as domestic fuel bills have doubled in the past five years. Crucially, many of those people will not be eligible for the new energy efficiency scheme introduced by the Scottish Government and supported by us in the budget earlier this year. The proposal in my amendments would expand the number of people who are able to implement energy efficiency measures.

In England and Wales, 68 local authorities now implement such schemes, and there are established partnerships with utility companies. Scottish Gas is keen to be allowed to do in Scotland what it is allowed to do down south, and Scottish and Southern Energy thinks that we should amend the bill to enable it to take part in such projects. South of the border, British Gas certifies the work, so local authorities do not have to pay to do that. The same would happen here—the scheme would be relatively straightforward for local authorities to administer.

Amendment 261 sets out the size of the council tax reductions that I propose. I have looked into the issue in great depth and have consulted not just environmental organisations, which are keen to support the proposals, but, crucially, the energy efficiency companies and sector, which are involved in delivering existing programmes. I have set two levels. Installation of technologies costing between £250 and £1,000 would qualify someone for a discount of £100; installation of technologies costing more than £1,000 would qualify them for a discount of £250. Those levels reflect the fact that, although many relatively straightforward measures fall within the £250 to £400 range, there are other, much more expensive measures. A discount of £100 would not incentivise people to pursue those.

The amendment recognises the differing costs of the different measures that can be taken. It is appropriate that there should be a one-off council tax discount. I have crafted the amendment in such a way that it does not exclude people from coming back for more, if that is justified. The energy efficiency requirement will apply to those who want to install microgen, as it would be crazy to put microgen on top of an energy-inefficient house that could be improved. The amendment takes into account the need to pursue both microgeneration and energy efficiency.

The amendment would enable council tax reductions to be made. We are still nowhere near having a mass market for microgeneration. The Energy Saving Trust estimates that 2,000 to 3,000 microgen systems have been installed in Scotland, which does not make a mass market—we need to go way beyond that. The Renewables Advisory Board has provided estimates of the amount of microgeneration that it expects to be installed in the UK. If Scotland's share of the figures is set at 10 per cent, we should be installing 6,000 to 8,000 photovoltaic cell systems, 130,000 solar water heating systems and 150,000 air-source heat pumps. We all know that we will not get them with the current system of grants—we need to add something that complements that.

Amendment 263 is not crucial, but it sets out the process for a review. The Government of the day would examine the levels of council tax and discounts and would report on whether the promotion policy was working.

I have lodged two amendments on business rates, to extend similar provisions to businesses. The vast majority of our businesses are in relatively small premises, of the order of households. They should be encouraged and enabled to take forward both energy efficiency and microgen measures. I hope that colleagues will consider supporting both amendments and will accept that a huge amount of thought has been put into working out the detail of the requirements that they include.

Amendment 264, in the name of Iain Smith, is helpful, because it is along the same track. I accept that there are various ways in which the matter can be pursued and welcome the fact that Alex Johnstone has lodged an amendment on the issue. However, given the amount of work and consultation that has gone into my amendments, I hope that colleagues will consider supporting them.

Iain Smith: Again I speak on behalf of the Economy, Energy and Tourism Committee, which agreed unanimously to lodge an amendment along the lines of amendment 264. The purpose of the amendment is to give ministers the power to consider introducing by regulation the powers to enable local authorities to reduce council tax bills or business rates for anyone who invests in microgeneration or renewable energy. Some parties, including the Liberal Democrats, wish to see an end to the council tax. We were advised, when framing the amendment, that if there were to

be a successor to the council tax the updated provisions that would be necessary could be dealt with in the primary legislation that would be required to replace the council tax.

The amendment was heavily supported by many of the organisations that gave evidence to committees, most of which pointed to the success of similar regimes in other jurisdictions in the United Kingdom. For example, Scottish and Southern Energy said in its submission to Transport, Infrastructure and Climate Change Committee:

"All avenues should be explored, such as using local and national tax incentives to reward energy efficiency or microgeneration."

Similarly, Elaine Waterson of the Energy Saving Trust told the Economy, Energy and Tourism Committee:

"council tax incentives have, in theory, a big role to play in encouraging consumers to take action."—[*Official Report*, *Economy, Energy and Tourism Committee*, 4 February 2009; c 1571.]

15:30

It is for members of this committee to determine which of the three options that have been proposed it should support. In its stage 1 report, the Economy, Energy and Tourism Committee said:

"The Committee recommends that the Scottish Government investigates and reports back to the Committee, if possible before stage 2, on whether some form of rebate through local taxation systems … should be introduced".

The Government responded:

"councils in Scotland do not have the same level of discretionary powers to offer council tax discounts as councils in England. To give Scottish councils similar powers would require primary legislation."

Amendment 264 would remove that barrier, by giving the Scottish ministers the power to establish a scheme. The amendment does not specify the details of the scheme, which would be subject to further consultation. Members might want the bill to specify what scheme would be implemented, in the way that is envisaged in the amendments in Sarah Boyack's name and Alex Johnstone's name. My purpose in lodging amendment 264 on behalf of the Economy, Energy and Tourism Committee was to ensure that the bill is an enabling bill and is part of the climate change toolkit that is available to ministers.

Rob Gibson: I think that I am right in saying that Sarah Boyack's proposed rebates for energy efficiency would be gauged at current council tax levels, which are frozen. Would the proposed increase in council tax, of which we hear news from the Labour Opposition, negate the rebates? Can she give us an assurance that the proposed increases that her party is said to want will allow for the proposed rebate for energy efficiency to remain attractive?

Des McNulty: Will you read that last bit again? [*Laughter.*]

Rob Gibson: Can the member give us an assurance that the proposed increases that her party suggests for council tax will allow for the proposed rebate for energy efficiency to remain an attractive proposition?

The Convener: It is nice to know that we have that word for word. I give Sarah Boyack an opportunity to respond to Rob Gibson.

Sarah Boyack: Thank you. I am not aware of a Labour Party proposal to increase council tax. The amendments in my name would provide for a review mechanism, so ministers would be able to review the levels at which rebates were set. That is the right approach. The key point is that a person would get a discount regardless of what their council tax was.

Stewart Stevenson: I acknowledge the work that Sarah Boyack has done over the past few years to keep the issue of incentivising the uptake of energy efficiency and microgeneration measures to the fore of the debate on practical ways to reduce greenhouse gas emissions. If it were not for her work, I doubt that all parties would be debating the amendments in this group so vigorously.

The chief executive of Scottish and Southern Energy, Ian Marchant, wrote to the Cabinet Secretary for Finance and Sustainable Growth on 16 April, in relation to ideas to which members have referred. In his response of 28 April, the cabinet secretary assured Mr Marchant that

"we will, however, consider your proposal further"—

the "however" was there because my party, like Iain Smith's party, wants a fairer system. However, we are where we are, and we have considered the matter further. We have certainly looked at the amendments, to which I will turn in a second.

Before I do so, I should respond to the question whether legislation needs to be changed to allow CERT payments. The answer is no. However, legislation needs to be changed to allow council tax rebates. Although the point might have been clear in members' minds, it might not have been expressed in those terms.

We have been working on an amendment that, depending on how things go, we will lodge at stage 3. Basically, we want the CERT money that is available from energy generators to leverage in private money for public good. In that respect, our intentions are similar to Alex Johnstone's

approach in amendment 258, in that we would seek to transpose the English and Welsh provisions into Scots law. We are in the final stages of completing our amendment, but the drafting needs to be tightened up.

Moreover, the Government supports the principles underpinning amendment 259, in the name of Sarah Boyack, and amendment 264, in the name of Iain Smith, so I think that there is a very broad consensus in the room on this matter. That said, the drafting of Sarah Boyack's amendment in particular poses a number of risks. Although it would be something of a minority sport, I think that if we followed her proposal and provided opportunities for people to come back for more, we would give them almost a perverse incentive to break their improvements down into segments spanning a number of financial years in order to get a number of successive awards. I am sure that she did not seek to introduce such a technical defect, but we feel that the amendment needs to be tightened up.

It should also be made clear that the person who pays the council tax gets the benefit. With the sale of a house, for example, there is almost a perverse incentive for the seller not to make improvements in certain circumstances, given that it will be the buyer who will derive the benefit. I accept that the house price might well be adjusted to reflect such matters, but I think that there are some difficulties to address in that regard.

On amendment 264, the Scottish Government has already acted on microgeneration in relation to non-domestic rates and we believe that we also have the power to act on energy efficiency. As a result, we are not clear that the amendment adds anything to the statutory framework that is available to ministers. In fact, it is likely to be less substantial than the stage 3 amendment that the Scottish Government will lodge—depending, of course, on what happens today.

We are pointing broadly in the same direction, but we have to take care and ensure that we understand all the financial implications. That is a matter for another day, but I point out that, if things were implemented in the wrong way, any such implications could be quite significant. We also have to examine a number of state-aid issues in relation to non-domestic rates to ensure that we are not creating real difficulties for ourselves.

Nevertheless, what has been proposed is useful and helpful, and I think that we have arrived at some kind of consensus. I commend to the committee the amendment that we will lodge; as I said in speaking to a previous group of amendments, we will be required to disclose it at stage 3 while members still have a chance to amend the bill or to resubmit any amendments either in their present form or in a new form. My preference is for the committee not to proceed with the amendments in this group and to allow the Government to lodge its amendment.

Des McNulty: I seek clarification on two points. First, will the costings that are associated with your proposed amendment be incorporated in a revised financial memorandum? Secondly, will your amendment be closer to Alex Johnstone's proposal, Sarah Boyack's proposal or Iain Smith's proposal? I presume that you know what you intend to propose. Will you give us at least some indication of which of the three models, if any, you are most likely to follow?

Stewart Stevenson: We will certainly seek to ensure that the financial memorandum reflects as far as possible the significant changes that are made.

Mr McNulty's second question is a rather difficult one, and I will inevitably have to give a pretty subjective answer. In essence, with our amendment, which we have not yet signed off internally, we will seek to transpose the provisions that exist in English and Welsh law, which probably align most closely with Alex Johnstone's proposal.

We will take the sense of today's debate in coming to our final conclusion, but we picked up the English and Welsh model to ensure that we can leverage private money from the utility companies. We note the approach that has been adopted in England and Wales. Sarah Boyack mentioned that 68 local authorities in England and Wales are using CERT money, and that is the approach that we want to take. However, we will take the sense of everything that has been said and all the amendments that have been lodged at stage 2.

Sarah Boyack: I deliberately did not propose that we should have the same provisions as England and Wales because I wanted us to have more options. The scheme there is great as far as it goes, but we have the opportunity to do more on energy efficiency and, potentially, microgeneration.

The minister hinted that there might be an endless number of applications, because people would split up their applications, but my idea in giving the Scottish ministers the power to produce regulations was that such anomalies would be sorted out there. My amendments would not make it impossible for somebody to receive free energy efficiency measures under other schemes, but if they did so, they would not qualify for a grant. We would expect things to be tidied up in regulations. My amendments do not include specific measures; instead, they set out general principles.

The Convener: If you could finish fairly promptly, minister.

Stewart Stevenson: Clearly, I am in the hands of the committee on the matter. However, I make the point that, as drafted, Ms Boyack's amendments would create in primary legislation an opportunity for people to break down their improvements into segments. I do not believe that the majority of people would seek to do that, but I would not be able to remove their ability to do so through secondary legislation. However, as I said, it is important that we take the sense of all that has been said—in good faith, on everybody's part—at stage 2.

Alex Johnstone: My objective in lodging amendment 238 was to ensure that the matter was discussed and to seek the views of the minister and the Government. Although I will not ask the minister any further questions, I will make some sweeping statements, and if he wishes to defer to my judgment, he can simply allow that to happen.

The Government appears to have accepted the principle that underlies my amendment. The minister has undertaken to lodge an amendment at stage 3 that will give effect to the objective that has been expressed by the committee. In doing so, the minister can take advantage of the greater human resources that are available to him. Most members who draft and lodge amendments at stage 2 have to rely on a limited pool of expertise that is vastly overworked at such times, and we are lucky to have that assistance.

In contrast, Sarah Boyack's amendments are extremely detailed, which is as one would expect from a member who has been preparing proposals for a long time. However, my concern is that they are too detailed, to the extent that some might describe them as prescriptive. When the bill is finally passed, I wish it to contain measures that allow flexibility and give ministers the power at some point in the future to use the legislation to introduce flexible and effective schemes to achieve our objectives. Initially, such measures might resemble closely the proposals introduced by Sarah Boyack, but I am reluctant to see such prescriptive measures in the bill.

If the minister concedes the principle behind amendment 238 and is preparing a stage 3 amendment to give effect to my proposals, I ask leave of the committee to withdraw amendment 238.

15:45

Amendment 238, by agreement, withdrawn.

Amendment 258 not moved.

Amendment 259 moved—[Sarah Boyack].

The Convener: The question is, that amendment 259 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gordon, Charlie (Glasgow Cathcart) (Lab)
Harvie, Patrick (Glasgow) (Green)
McInnes, Alison (North East Scotland) (LD)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 259 agreed to.

Amendment 260 not moved.

Amendment 261 moved—[Sarah Boyack].

The Convener: The question is, that amendment 261 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gordon, Charlie (Glasgow Cathcart) (Lab)
Harvie, Patrick (Glasgow) (Green)
McInnes, Alison (North East Scotland) (LD)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 261 agreed to.

Amendment 262 not moved.

Amendment 263 moved—[Sarah Boyack].

The Convener: The question is, that amendment 263 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gordon, Charlie (Glasgow Cathcart) (Lab)
Harvie, Patrick (Glasgow) (Green)
McInnes, Alison (North East Scotland) (LD)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 263 agreed to.

The Convener: Does Iain Smith intend to move amendment 264?

Iain Smith: On the ground of quitting while I am ahead, I will not move amendment 264.

Amendment 264 not moved.

The Convener: Does Lewis Macdonald intend to move amendment 265?

Lewis Macdonald: The minister expressed uncertainty about the position in England. I can tell him that the Lands Tribunal appeal cases that his officials should look at are RA/60-69/2005 and RA/71-72/2005, between the valuation officer and Mansfield District Council and Bassetlaw District Council. I hope that the minister will do that and consider the evidence before stage 3. He is nodding in assent, so on that basis I will not move amendment 265.

The Convener: That is on the record.

Stewart Stevenson: It could not be more on the record, convener.

Amendment 265 not moved.

The Convener: Amendment 266, in the name of Sarah Boyack, is in a group on its own.

Sarah Boyack: Amendment 266 comes from people in the field looking at how we make the most of our buildings and our assets in relation to climate change objectives. It recognises that large quantities of land and the built environment are owned by the public sector and emit greenhouse gases, and seeks to introduce a new burden, to be called the climate change burden, which would be applicable under the Title Conditions (Scotland) Act 2003. The burden would enable public bodies, at their discretion, to add heightened mitigation or adaptation performance standards to the title deeds of built and land assets that they wish to sell and which could be developed in the future by a purchaser. Those standards would be applied in advance, before land was put up for sale, so it would not be possible to flog a piece of land for a very high price and then say to the developer, "By the way, you will have to do X, Y and Z before you develop this land."

Amendment 266 seeks to create a further category of personal real burdens that relate to the objectives of the bill. Imposing such burdens would not be mandatory; the amendment seeks to introduce an enabling mechanism that a public body could use if it wished to do so. The mechanism would be available to any public body or agency in Scotland, such as local authorities, the Scottish Environment Protection Agency or Scottish Water. It would enable local authorities to exercise leadership and send a clear signal about expectations to people who want to develop land or buildings.

We are talking, potentially, about a great deal of land. Public bodies have a keen interest in selling their land, and they often negotiate and set conditions when they do so. The provisions in the amendment would allow for a much more up-front approach: the burdens would be specified in advance before somebody indicated that they were interested in buying the land, and developers would be able to assess the cost when negotiating for the land with the public body. A local authority or public body would want to use the burdens only when it clearly fitted its objectives.

The provisions build on the current legal framework in the Title Conditions (Scotland) Act 2003. The act contains several references to "real burdens" and states:

"A real burden is enforceable by any person who has both title and interest to enforce it"

and

"An affirmative burden is enforceable against the owner of the burdened property."

It also states:

"The holder of a personal real burden is presumed to have an interest to enforce the burden."

A climate change burden would build on the existing burdens. It would be a new type of burden. The closest comparator is section 45 of the 2003 act, on economic development burdens, which states that it is possible for a public authority

"to create a real burden in favour of a local authority, or of the Scottish Ministers, for the purpose of promoting economic development".

The new burden would be wider in terms of who could exercise it, and would be exercised in relation to climate change.

I move amendment 266.

Stewart Stevenson: I am content with the principle behind amendment 266, and with many of the arguments that Sarah Boyack has deployed, but some drafting issues need to be addressed. In particular, the insertion of the new section into the Title Conditions (Scotland) Act 2003 would not be effective without other consequential changes to that act, for example to the list of personal real burdens in section 1(3).

Holding back amendment 266 until stage 3 would offer an opportunity to examine the definitions of some of its terms—for example, there are particular difficulties with the phrase "advertised for sale" in proposed section 46A(3)—but we support the principle behind the amendment, and it could in certain circumstances be a useful piece of armour in the lockers of ministers and public bodies.

Sarah Boyack: I am grateful to the minister for his technical knowledge, which is not my area of expertise as I am not a property lawyer. As the minister says that he entirely supports the spirit of amendment 266, I am happy to withdraw it in the hope that we can come back at stage 3 with something that is fit for purpose.

Amendment 266, by agreement, withdrawn.

The Convener: Amendment 267, in the name of Lewis Macdonald, is grouped with amendments 268 and 269.

Lewis Macdonald: It is almost 25 years since I carried out a number of feasibility studies in disadvantaged areas of Aberdeen, on behalf of the energy advice and insulation agency SCARF. It is striking that many of the things that we found then are still true today.

It is still the case that the private rented sector has a particular burden of energy inefficient homes: almost four times as many homes in that sector are rated as poor in energy efficiency terms. The people who live in that sector are still more than twice as likely as those who live in council housing to suffer from fuel poverty. However, the Scottish housing quality standard, which applies to social rented housing, does not apply in the private rented sector, so landlords need not make the improvements that are required to achieve comparable energy efficiency.

I hope that the minister will recognise the merit in amendment 267, which would apply the standard to the private rented sector. Proposed section 13(7) of the Housing (Scotland) Act 2006 would apply the standard in line with the guidance that is issued in relation to living accommodation. As the Scottish housing quality standard requires council housing and social rented housing to reach a rating of five out of 10 by 2015, the same requirement would be imposed on the private rented sector. That would give landlords—who have access to tax breaks and small business loans—the opportunity to meet the appropriate standard in good time.

Amendment 269 relates to the tenement management scheme. Tenements account for many homes in my area and for many homes in the private rented sector. Whatever the tenure and whatever the sector, tenements are a significant part of the housing stock in our towns and cities. The Tenements (Scotland) Act 2004 allows measures to be taken to improve homes even when one owner or occupier does not wish to participate, because the Parliament recognised the greater public interest in ensuring that such works are done. The amendment would extend that principle to energy efficiency and insulation works and therefore simply recognises the climate change and carbon emissions aspect of our common interest in higher-quality tenement housing, whether in the rented or owner-occupied sectors. I hope that the minister will support the principle behind the amendment.

I move amendment 267.

Cathy Peattie (Falkirk East) (Lab): Amendment 268 is a short probing amendment. The Housing (Scotland) Act 2006 amended the tolerable standard that all homes must meet to include a requirement on thermal insulation. Amendment 268 would include cavity wall insulation in the tolerable standard, but it would not require people whose walls are unsuitable for cavity wall insulation to install costly solid wall insulation. The 2006 act allows the Scottish Government to offer guidance on what constitutes satisfactory wall insulation, which would allow the Government to exclude solid-wall properties from the requirement.

It is important to find ways to make progress and to make it easier for people to install cavity wall insulation. I also support Lewis Macdonald's amendments.

Stewart Stevenson: The Scottish ministers are comfortable with amendment 269. We align with the principles behind it and we are happy to recommend that the committee support it.

I will talk about amendment 267 in a little more detail. We accept that Lewis Macdonald raises a real issue, but there are some difficulties with the amendment and it does not necessarily provide the way to deal with the issue.

In our recently published review of the private rented sector, we committed to consulting further on measures to reduce emissions from houses, including those in the private rented sector. That consultation should clarify the impact that the proposal in the amendment would be likely to have on the private rented sector and its ability to support housing supply arrangements.

As Lewis Macdonald knows, tenants can experience difficulty in exercising existing powers. That is one reason why I am reluctant to place too much reliance on the difference that the amendment would make. We will have several opportunities later to consider other ways to deal with the matter.

Cathy Peattie helpfully described amendment 268 as a probing amendment. The difficulty with it is that its practical effect would be to narrow the primary legislation's scope, because the provision that would be amended refers to thermal insulation in general and not simply to roof and wall insulation.

16:00

The tolerable standard is applied by local authorities, which have the discretion to decide what is satisfactory. We are content to explore further the issue through the guidance that we will provide. That will ensure that we address the issues that the member has brought forward. As I said, the effect of amendment 268 is at odds with the member's stated aim.

In summary, we think that amendment 268 is misplaced, but we are happy to accept amendment 269. On amendment 267, we see an excellent opportunity in the proposed housing bill, which is currently out for consultation, to look at the issue more widely to ensure that we genuinely provide something that gives powers to tenants to get the results that we are looking for, given the real difficulties that they can experience in exercising the existing powers.

Lewis Macdonald: I listened carefully to what the minister said. He indicated an intention to consult on the matter and to include the outcome of the consultation in the proposed housing bill. However, I think that we need to hear more on the issue at stage 3. It is one thing to say that there is a problem, but it is quite another to outline the solution. The minister made one or two points, but—

Stewart Stevenson: I am happy to take further advice from my colleague the Minister for Housing and Communities to ensure that I can make appropriate comments at stage 3.

Lewis Macdonald: That is helpful. I share the minister's view that we do not want to overburden tenants. However, we need to protect them from the consequences of living in energy-inefficient homes. I hope that we will hear more on that at stage 3.

On that basis, I am content to withdraw amendment 267.

Amendment 267, by agreement, withdrawn.

Amendment 268 not moved.

Amendment 269 moved—[Lewis Macdonald]—and agreed to.

Section 51—Promotion of renewable heat

Amendments 239 and 240 not moved.

Amendment 161 moved—[Stewart Stevenson]—and agreed to.

After section 51

The Convener: Amendment 270, in the name of Sarah Boyack, has been debated with amendment 154.

Sarah Boyack: I will not move amendment 270. I will sweep up the issue in my conversation with the minister on an amendment in another group. On the same basis, I will not move amendments 271 and 272.

Amendments 270 to 272 not moved.

The Convener: Amendment 273, in the name of Sarah Boyack, is grouped with amendment 274.

Rob Gibson: On a point of order, convener, I am sorry to interrupt, but I think that we have passed over a section without agreeing to it.

The Convener: I think we are in order. The committee agreed to amendment 161, which means that we are okay. I thank Rob Gibson for his point; it is important to keep me on my toes.

I call Sarah Boyack to speak to and move amendment 273.

Sarah Boyack: The new section that is proposed in amendment 273 was one of the original sections in my first attempt to present a bill to Parliament. I withdrew the proposal in 2007 because I had been reassured by, I think, three ministers that they would deal with permitted development rights. Two of those reassurances were in writing. I therefore dropped the section from my bill. However, when I saw the draft statutory instrument, I was deeply disappointed, because it included a rather bizarre requirement that people could obtain permitted development rights only if they were at least 100m away from the next house. Technology offers a way of sorting the problem: we can consider the certified performance of equipment rather than the geography.

The final version of the statutory instrument was really not acceptable. Air-source heat pumps and micro wind turbines were both removed and kicked into touch. Nobody in the industry understands why air-source heat pumps disappeared from the agenda. Noise issues arose to do with micro wind turbines, but such issues can be resolved by certification.

Amendment 273 seeks to put pressure on ministers as to when they should come back to Parliament with answers. I have not specified what ministers must put in the statutory instrument, but I have specified a timescale, because people in the renewables industry and householders who are desperately keen to install such technology are now disadvantaged.

Not having permitted development rights does not mean that people cannot seek planning permission, but there would certainly be a lot of red tape. The interpretation of planning authorities is that both air-source heat pumps and micro wind turbines are problematic because they did not go through the statutory instrument. Amendment 273

would require Scottish ministers to amend an amendment order in respect of town and country planning legislation on permitted development rights in relation to these two types of technology. I have not said exactly what ministers must do, but I have said that they must get on with it.

Subsection (4) of the proposed new section is unusual. The organisations that are mentioned are not the only people whom ministers would have to consult, but paragraphs (a), (b) and (c) in the subsection mention industries that were aggrieved at the outcome of the previous statutory instrument, and felt that their views had not been properly listened to. I hope that there will be better dialogue before the next statutory instrument comes out.

I will keep my comments brief, convener, because I know that we are short of time.

I move amendment 273.

Liam McArthur: I echo what Sarah Boyack said about her amendment 273.

Earlier, I quoted the minister in highlighting the impact of emissions from non-domestic buildings, in order to make the case for more timetabled action in relation to energy efficiency. However, non-domestic buildings can also contribute to microgeneration development.

In a written answer to a parliamentary question from Sarah Boyack, the Cabinet Secretary for Finance and Sustainable Growth said:

"Research published in early 2007 recommended that permitted development rights distinguish between domestic and non-domestic buildings … The research recommended that the same rights apply to all non-domestic buildings."—[*Official Report*, *Written Answers*, 20 March 2009; S3W-21781.]

I certainly accept that there are differences between the categories, and that complexities arise in relation to non-domestic buildings. The Government has made it clear that it wants to prioritise action in relation to permitted developments on domestic buildings.

Sarah Boyack has suggested that there was a failure to stimulate the mass market, which is what SCHRI and other initiatives were attempting to achieve. The value of permitted development rights in relation to promoting take-up and reducing costs, and thereby providing further incentives, is pretty well established and accepted. The benefits to the microgeneration industry are not difficult to see: it could build on robust domestic demand and create the green-collar jobs that we all want to see. Ministers have set their own targets for that.

Amendment 274 provides a degree of flexibility, but the Scottish Government must now consult on a new order, and then bring that forward, building on the research that was commissioned and published by the previous Executive. The research has been accepted by the current cabinet secretary, and the case has been made for proceeding in relation to non-domestic buildings as well.

Des McNulty: I have no issues at all with air-source heat pumps having permitted development rights, but there are one or two caveats relating to micro wind turbines that one might want to highlight. I refer to the definition of the word "micro". I am a former planning minister, and was involved in planning in local authorities before I was a minister. It seems to me that if there are unfettered permitted development rights, there could be problems with installed turbines' visual obtrusiveness and noise. Such things can be sorted out by regulation, but I would not want us to agree to what has been proposed in principle without highlighting the need for some sort of regulatory framework to protect people. Perhaps we also need to consider neighbour notification in the context of planning regulations. I know that Sarah Boyack and Liam McArthur will have thought of those issues, but people will have practical concerns about what others might do that will affect them by putting up certain types of installation. We need to be careful.

Rob Gibson: I am interested in Liam McArthur's amendment 274, on microgeneration. I am conscious of a case involving a larger wind turbine that has been proposed in Hatston, which is in his constituency. Does he think that our discussion of permitted development rights ought to be extended to include machines that are larger than micro machines, given what he has just said about the definition of the word "micro"?

Liam McArthur: That is an intriguing question, but it is not necessarily particularly pertinent to microgeneration. I accept the sentiments that Des McNulty articulated. The inappropriate siting of any microgeneration or large-scale device is likely to bring into disrepute what we are seeking to achieve. However, my amendment 274 has no relevance to what has been proposed for Hatston, as Rob Gibson well knows.

Iain Smith: I thank the convener for allowing me to contribute to the debate.

The issue has exercised the Economy, Energy and Tourism Committee on a number of occasions. In our stage 1 report, we recommended that

"subject to appropriate controls on noise etc., general permitted development rights are extended to micro-wind and air-source heat pumps for use in urban areas, as soon as possible."

The Government responded:

"Following competitive tender, the Government expects to appoint contractors to undertake research over the summer on whether permitted development rights should be extended to domestic wind turbines and air-source heat pumps."

My response to that was that, rather than spend £25,000 on a contractor, the Government could spend 25 quid to send the minister and an official to Uphall by train—the minister will be pleased that I said that—so that they can stick their ears next to the air-source heat pump at the Mitsubishi factory and find out whether they can hear it. Modern air-source heat pumps make virtually no noise. It is beyond belief that they do not yet have permitted development rights.

I have only one concern about amendment 273. I know how Government officials operate. Subsection (3) of that amendment states:

"An order making the amendment required under subsection (1) must be laid in the Scottish Parliament no later than six months after the day on which this section comes into force."

That means that, rather than get on with things, Government officials will delay things until the section comes into force, and it might take even longer to get permitted development rights for air-source heat pumps. I hope that the minister will give us more assurances in summing up.

The Convener: I have been to the factory that Iain Smith mentioned—by train—in recent weeks, and I endorse and underline the arguments that Sarah Boyack put forward. I am conscious of the improvement in air-source heat pump technology. The noise from such heat pumps is trivial compared with many other noises that people in residential settings happily put up with and barely notice. As well as the increased profile of microrenewables in the political agenda, the improved technology and the work that is being put into continuing its improvement should allow us to move forward with permitted development rights. I welcome Sarah Boyack's comments on that.

16:15

Stewart Stevenson: I am reminded that 25 years ago I invested £200 in an air-source heat pump company in West Lothian. I never got the money back and no dividend was ever paid. It was an idea that was ahead of its time: clearly, its time has come. I tak tent of members' references to the silence of the pump at the Mitsubishi factory at Uphall. However, that draws us immediately to the issue of ensuring that people are protected from unnecessary noise. Four miles from where I live, two 3MW wind turbines have just been opened. At the weekend, in a 20 knot wind, I stood immediately under the turbines and, with my eyes shut, I could not hear them at all. However, where I stay here in Edinburgh, I am a greater distance away from a very small wind turbine, but at that wind speed it makes a considerable noise. We should not discount and downplay the problem of noise.

This week, we have received the tender bids for the research. We will open the envelopes next week and decide who will get the work. I clarify that it is officials, not ministers, who do that. We are making the progress that we promised we would make. We should not proceed in the absence of an appropriate regime for certifying the noise limits that should be applied to urban installations. South of the border, difficulties in that regard have been experienced.

We are moving ahead and will receive recommendations through the work that we are undertaking. We should therefore not seek, through amendments 273 and 274, to pre-empt that work, but should instead allow that process to take its course, so the amendments should not be agreed to. We must reinforce the work that we are doing, as well as the work that is being undertaken in conjunction with the UK Government on issues such as feed-in tariffs, which is a more general issue for microgeneration capability. There are a range of issues that will be better progressed without the amendments.

Sarah Boyack: Des McNulty's questions and comments must be taken on board. He is right that there are issues that must be bottomed out properly. That is why the permitted development rights under amendment 273 would not allow people to put up mini wind turbines just anywhere. As is only right, there would be restrictions; for example, in relation to listed buildings, conservation areas and—dare I say it—world heritage sites. That would not automatically mean that people in such areas would not be allowed to use the technology, but it would mean that different requirements would be in place.

The key points are that pressure must be put on the industry to get the certification right, but the Government must also be required to get going with a statutory instrument on permitted development. I want to press amendment 273. It does not tell ministers how to do their job—it tells them to come back to us with a statutory instrument on the table, so that there is clarity and so that the industry can make progress with the right framework and limitations.

The Convener: The question is, that amendment 273 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gordon, Charlie (Glasgow Cathcart) (Lab)
Harvie, Patrick (Glasgow) (Green)
McInnes, Alison (North East Scotland) (LD)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)

The Convener: The result of the division is: For, 5, Against 3, Abstentions 0.

Amendment 273 agreed to.

Amendment 274 moved—[Liam McArthur].

The Convener: The question is, that amendment 274 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gordon, Charlie (Glasgow Cathcart) (Lab)
Harvie, Patrick (Glasgow) (Green)
McInnes, Alison (North East Scotland) (LD)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)

The Convener: The result of the division is: For, 5, Against 3, Abstentions 0.

Amendment 274 agreed to.

The Convener: Amendment 275, in the name of Shirley-Anne Somerville, is grouped with amendments 276 to 278.

Shirley-Anne Somerville (Lothians) (SNP): Amendments 275 to 277 are all about the Scottish Government showing leadership on the energy performance of buildings in the Scottish civil estate.

Amendment 275 would place on ministers a duty to ensure that the energy performance of newly constructed buildings falls within the top quartile of energy performance. Amendment 276 would require ministers to lay before Parliament a report that assessed progress towards improving the efficiency of buildings, and those buildings' contribution to sustainability. Both amendments would promote good practice and reduce wasted energy in public buildings. My understanding is that, if amendment 277 is agreed to, amendments 275 and 276 will cover not only the core central Government buildings but those of non-departmental public bodies and agencies. That was certainly my intention, but I ask the minister for reassurance that it is also his interpretation.

Amendment 278 is in the name of Cathy Peattie. We are trying to get to the same conclusion, but her amendment contains two competing measurements: the energy performance certificates for office buildings that amendment 278 mentions measure carbon dioxide emissions, not energy efficiency, as the amendment suggests. As my amendment 275 discusses energy performance, I suggest that it will deal better with the problem that Cathy Peattie and I are both trying to alleviate.

I move amendment 275.

Cathy Peattie: I agree with Shirley-Anne Somerville and agree with amendment 275. Amendment 278 seeks to widen the definition of public sector buildings for the purposes of the bill. I am aware that it contains a technical fault, so I will be interested to hear what the minister says on it.

Des McNulty: I presume that the annual report for which Shirley-Anne Somerville is calling would be an update report that would not require an assessment of the estate every year but would be more an indication of what had changed. I ask the minister to reassure me on that point.

Stewart Stevenson: I will not say much, as Shirley-Anne Somerville has made well the points on amendments 275 to 277. I confirm, as she asked me to, that they would cover NDPBs and agencies. To answer Des McNulty's question, it would be sensible and appropriate to provide a report that says what has changed. The proposals in amendment 276 appear to provide for that.

Cathy Peattie acknowledged that the building energy performance scale from A to G is quite different for buildings other than dwellings, as they are described in the heading on the bit of paper that is before me. Therefore, amendment 278 is inappropriate. Shirley-Anne Somerville's amendments 275 to 276 cover what is appropriate in the circumstances and I commend them to the committee.

Shirley-Anne Somerville: I have had the reassurance that I was looking for from the minister, so I am content to press amendment 275.

Amendment 275 agreed to.

Amendments 276 and 277 moved—[Shirley-Anne Somerville]—and agreed to.

Amendment 278 not moved.

Section 52—Waste prevention and management plans

The Convener: Amendment 241, in the name of Elaine Murray is grouped with amendments 243 and 244. I welcome Elaine Murray to the committee.

Stewart Stevenson: Before Elaine Murray speaks to her amendments, I indicate as a matter of courtesy that we are changing personnel at the top table. I hope that that is acceptable.

The Convener: Thank you. That is fine.

Elaine Murray (Dumfries) (Lab): I am grateful to Friends of the Earth Scotland and the committee clerks for their invaluable assistance in the preparation of the amendments.

The powers for which section 52 provides are welcome. The establishment and implementation of waste management plans for certain commercial and industrial facilities such as supermarkets and construction sites is a key measure to enable a reduction in commercial and industrial waste volumes. Amendment 241 ensures that those powers will be enacted promptly in order to provide certainty for businesses and to avoid the risk that companies that take voluntary steps to adopt such plans are disadvantaged in comparison with competitors that are making less effort to improve waste management.

The powers for which section 53 provides were widely welcomed. Discussions with witnesses during stage 1 revealed widespread concern about the lack of reliable data on waste and carbon accounting. There are gaps in information about waste, especially in respect of commercial wastes, which hamper effective waste management and waste reduction. Amendment 243 ensures that the powers for which section 53 provides will be enacted promptly, to provide certainty for business and to ensure that full and consistent information becomes available to policy makers, regulators and local authorities.

Amendment 244 is similar and refers to section 56, which is welcome. The limited development of markets for recycled materials has led to unnecessary transport of wastes for processing—even export to China, in some cases—and to Scotland's failing to capture the maximum economic and employment benefits from the development of recycling facilities, and to grasp an opportunity to create green jobs in Scotland. The amendment ensures that the powers for which section 56 provides will be enacted promptly and in a concerted fashion. The critical step towards capturing the economic benefits of recycling is the establishment of a critical mass, in which markets are at a scale that merits the establishment of local processing facilities. That can be achieved only by implementing the powers, not through a voluntary approach.

It is slightly unfortunate that amendment 250, which was proposed by the Rural Affairs and Environment Committee and to which my colleague Maureen Watt will speak later, will be debated later than this group, because amendment 250 seeks to make all the provisions subject to super-affirmative procedure. That will ensure enhanced scrutiny—by both the Transport, Infrastructure and Climate Change Committee and the Parliament—of any regulations that are introduced. I hope that that will be an additional reassurance for the committee.

I will listen carefully to what committee members and the minister have to say. The purpose of all three amendments is to ensure that the provisions in the bill, which were widely welcomed, become intentions, rather than just aspirations.

I move amendment 241.

Stewart Stevenson: I am happy to support amendment 243, in the name of Dr Murray. Information on waste is clearly a prerequisite for establishing effective regimes, so we wish to see such information gathered. I hasten to add that that is not a trivial undertaking, but a substantial one.

In accepting amendment 243, I draw the committee's attention to an error in its drafting. Like a previous amendment, amendment 243 refers to the "Act" receiving royal assent, when it is the bill that receives royal assent. However, that is a technical matter that can be dealt with without difficulty at stage 3, through a technical amendment. I do not offer the drafting error to the committee as a reason for not agreeing to the amendment.

I welcome the fact that Dr Murray has welcomed what we are trying to do in this regard. It is difficult to proceed with amendments 241 and 244 on a similar timescale, because before we can do so we require the information that we will gather through implementation, over a particular period, of amendment 243. On that basis, I ask the member not to press amendment 241 and not to move amendment 244.

Members have already referred to amendment 250 and its use of super-affirmative procedure. It might be useful to point out that introducing into the process such a procedure, about which I will speak at much greater length later, would add a minimum of seven months to delivery. Given that we are constantly being encouraged to act with greater speed in such matters, I see no clear benefit in the use of super-affirmative procedure. As I say, I will speak later on the issue at greater length but I thought, as it formed part of this debate, that it might be useful to make an early comment.

16:30

Elaine Murray: I am grateful to the minister for accepting amendment 243, but I wonder whether

he can indicate when he expects the provisions in sections 52 and 56 to be enacted. I accept that there might be a problem in bringing them forward without the data that are referred to section 53.

Stewart Stevenson: I am unable to give a specific response, but I am happy to confirm that we regard this part of the bill to be a very important part of the agenda. I think that I am, by accepting the time constraint in amendment 243, showing willing; we would certainly seek to move at best possible speed, although gathering the data is a necessary prerequisite to understanding the scale of the problem that we will have to engage with in the regulations that are set out in sections 52 and 56. I cannot give the absolute certainty that Elaine Murray seeks, but I hope that she accepts that good will is being shown and that there is the desire to proceed at reasonable speed. In accepting the time limit on data gathering, we are showing—to use a Jim Mather phrase—that we are willing to step up to the plate.

Elaine Murray: I thank the minister for his intervention. I will withdraw amendment 241, but move amendment 243.

The Convener: We will come to that in a moment.

Amendment 241, by agreement, withdrawn.

Section 52 agreed to.

After section 52

The Convener: Amendment 242, in the name of Elaine Murray, is grouped with amendment 242A.

Elaine Murray: I now realise that I was getting a little ahead of myself.

When I lodged these amendments, I was not aware that we would have the opportunity to discuss some of the issues in Parliament this week. However, it is still important to look at what is happening in other parts of Europe, and I know that the Government has reviewed international practice on waste disposal. If Scotland is to meet its European targets for the diversion of waste from landfill and fulfil the Government's aim of recycling 70 per cent of domestic waste by 2020 as part of a move towards zero waste, we need to look at what is done well elsewhere.

Flanders in Belgium has achieved 70 per cent recycling primarily through selective bans on the waste going to landfill and incineration, which are designed to stimulate the high-quality separated collection of waste for reuse, recycling and, where recycling is not possible, energy recovery. Achieving high levels of waste reduction and recycling is the best way of cutting the greenhouse gas emissions associated with waste disposal and the replacement of the materials in those products. As a result, Stop Climate Chaos Scotland, which represents 60 organisations as diverse as Friends of the Earth Scotland and Unison and whose membership totals 2 million people, fully supports amendment 242, which seeks to set out the framework for regulations to deliver in Scotland the approach taken in Flanders, complete with the same exemptions and derogations to ensure that the necessary facilities are in place before bans come fully into effect.

Ministers have previously indicated that they were exploring the introduction of landfill bans, but they have made no commitment to selective incineration bans. Such bans are an essential complement to landfill bans if we are to maximise the recovery of materials and energy through modern advanced technologies instead of encouraging conventional mass-burn incineration.

Amendment 242 deliberately seeks to embrace industrial and commercial wastes, as well as household waste, because they must be addressed urgently. As they are typically less mixed up to begin with, they have greater potential for effective segregation to maximise recovery. The amendment is drafted in an enabling fashion, and I hope that ministers will support and make use of the framework that it proposes.

Amendment 242A is similar to amendments 241, 243 and 244. It was designed to enable the committee to place a timescale on the introduction of regulations, but I later noted that amendment 242A, as it is written, would not be competent. I have said in amendment 242, "The Scottish Ministers may," which might make the measures more difficult to bring in, although I am not quite sure.

I will listen to what the minister has to say. I lodged the two amendments in this group in the hope that amendment 250, which we will discuss later, might be agreed to. I am aware that members might have a concern that the provisions were not discussed fully at stage 1 as they were not originally in the bill—as there was no opportunity to discuss the provisions, we have not taken evidence on them in the way that we did for the existing sections of the bill. I hoped that the adoption of the super-affirmative process would allow such a level of consultation, which would compensate for the inability to engage in that level of consultation at this stage of scrutiny of the bill.

I will move my amendment.

The Convener: Could you move both the amendments, please?

Elaine Murray: I will not move the second one, as I am slightly unsure as to whether the wording is correct.

The Convener: Can I ask you to move the amendment and the amendment to the amendment, please?

Elaine Murray: Sorry. I move amendment 242. Obviously, the amendment to it imposes a time restriction—I move amendment 242A.

The Convener: Okay.

Stewart Stevenson: We agree with Elaine Murray that that there are materials that should not be in landfill or incinerated. Fortunately, full powers to ban polluting materials from landfill and incineration already exist, in section 2 of the Pollution Prevention and Control Act 1999. Indeed, those powers have already been exercised, most recently in respect of industrial and automotive batteries, which are banned from landfill and incineration alike by the Waste Batteries (Scotland) Regulations 2009, which the Parliament approved last week.

Disposal by landfill and incineration are at the bottom of the waste hierarchy as set out in the revised waste framework directive, and we have powers under the European Communities Act 1972 to make legislation to prioritise forms of waste management further up that hierarchy.

We are co-operating with other UK Administrations on related work. A UK-wide packaging strategy is launched today, which could lead to the consideration of bans on landfill and incineration. Members may be interested to know that, in any case, we initiated a project, which other UK Administrations have now joined, to examine additional landfill bans. That work is on-going.

We have always anticipated making any necessary regulations under existing powers. Given that the relevant powers already exist, it is unnecessary to insert them into the bill. Indeed, having duplicate powers could create confusion, since the respective powers would be worded differently. Given all those circumstances, I invite Elaine Murray to withdraw amendments 242A and 242.

Elaine Murray: I welcome the minister's reference to the revised EU waste framework. It is important that any waste management strategy is developed in line with the waste hierarchy and that incineration, like landfill, is placed at the bottom of that hierarchy. Energy from waste is not—it is classified as recovery. I was pleased to hear the minister refer to the need to comply with the waste framework directive, which will have to be transposed into our law by the end of next year.

Given the minister's assurances that the powers already exist in legislation, and noting the detail that he has given of the regulations that may be applied, I will be happy to withdraw amendments 242A and 242. However, I will be interested to hear further—in the context of the national waste management plan, which is being consulted on—how some of the issues will be addressed. I hope sincerely that we use those existing powers to tackle waste management and reduce the amount of waste that we produce.

Amendments 242A and 242, by agreement, withdrawn.

The Convener: Amendment 279, also in the name of Elaine Murray, is in a group on its own.

Elaine Murray: Amendment 279 is another amendment intended to promote discussion in committee of some of the issues. It is concerned with waste reduction measures and the introduction of possible pilot schemes. Waste reduction measures are rightly included in the bill. Waste reduction cuts greenhouse gas emissions from waste management—most notably from methane from landfill and carbon dioxide from incineration—and from the processing and manufacture of new products that are avoided or substituted for by reuse or recycling.

Scotland has established an aspiration to move beyond European targets for waste diversion towards zero waste, setting a welcome target of 70 per cent recycling by 2020. The Belgian region of Flanders has already achieved such a target by the use of two principal tools: selective landfill and incineration bans, referred to in amendment 242, and waste charging. Although waste charging is an extremely controversial method, there are ways in which we can use either charging or council tax rebate to encourage behaviours that lead towards waste reduction.

The waste charging route was taken in Flanders, where charges average around €60 per household per year. Amendment 279 would allow waste charges to be established in the form of variable rebates from local taxation, and regulations could allow for the exemption of certain individuals from charges when there are acceptable reasons why more waste is being produced by, for example, certain families or people with medical conditions.

Local authorities are currently experimenting with a variety of methods of trying to encourage residents to cut down on their waste, many of which have been extremely unpopular—including some of those in Dumfries and Galloway. The regulations to establish the pilot include a requirement to establish standards of recycling services to be in place before the pilot is introduced, and the scheme would have to be reviewed after a certain period before decisions could be made about its roll-out.

We have been told that the Scottish Government believes that waste charging is too controversial to merit introducing provisions, and experience in

some areas indicates that the Government is not likely to introduce such provisions. However, the UK Government has introduced such provisions for England and Wales in the Climate Change Act 2008. Amendment 279 is modelled directly on those provisions, albeit leaving much of the detail to the consultation on the regulations.

Amendment 279 provides the Scottish ministers with the powers to establish waste reduction incentive pilot schemes based on Scottish conditions, rather than rely solely on learning from elsewhere.

I move amendment 279.

Cathy Peattie: I normally support Elaine Murray in all that she proposes because of the wisdom that she brings, but I am concerned about the proposal in amendment 279. There are issues around incentives and education to encourage people to handle their waste appropriately and around local authorities and others taking risks to achieve better waste management and waste reduction. The amendment is counterproductive. In my experience, where people are charged for not handling their waste properly, they dump their rubbish wherever. If the intention is to charge people for not using properly their wheelie bins or whatever, I am reluctant for the committee to pass the amendment.

Stewart Stevenson: I thank Elaine Murray for lodging amendment 279 and giving us the opportunity to discuss an important issue. Cathy Peattie's comment about the risks associated with charging is well made.

We have an ambitious target to achieve a recycling rate of 70 per cent of municipal waste by 2025. We take note of the high-performing parts of Europe, in particular the Government in Flanders, with which we worked recently on issues to do with ferries. The national waste management plan for Scotland will show how we intend to meet our targets. There will be more collections of material, better recycling centres, work on markets and education to raise awareness, in line with what Cathy Peattie said.

16:45

We note the powers that exist south of the border and that no council has yet volunteered to pilot waste charging. I should say in all fairness that it is early days, although I suspect that that is a difficult issue.

There are successes in recycling. In my capacity as minister, I opened the EU's biggest food recycling facility, which is in my constituency. The facility represents an exciting step forward.

There are practical difficulties to do with how the approach that is proposed in amendment 279 might interface with the council tax. We think that there could be implications for council tax benefit, but more work would be required on that.

If amendment 279 were agreed to, provision could be made for

"the means by which unpaid charges may be recovered."

However, the amendment would create no offence or power to create an offence of non-payment, so it would be potentially difficult to proceed with recovery.

The definitions in subsection (9) of the new section that amendment 279 would introduce would create difficulties. For example, "domestic premises" would include hotels, given that hotels are "living accommodation".

I hope that Elaine Murray will not press amendment 279. We can make progress through the national waste management plan for Scotland.

Elaine Murray: I lodged amendment 279 so that the committee could debate the matter on the record and learn of the Government's intentions in relation to the national waste management plan. I am concerned about the piecemeal approach that local authorities are taking. Some measures have been counterproductive, such as charging people a lot to use bin bags when their wheelie bins are too full, and charging for the removal of white goods from domestic premises, which has probably led to the dumping of things in lay-bys because people do not want to pay the high charge for disposal.

There might be merit in more systematic experimentation about how to use charges or rebates to encourage people to cut down on waste. I am not certain that amendment 279 offers the best approach, but many different methods of getting people to cut down on waste are currently being used, many of which are not particularly successful. Moreover, my local authority is introducing such measures at the same time as it is proposing to remove recycling points and stop blue bin waste paper collections, which seems counterproductive. I would like more scientific research into how to influence people's behaviour.

I sense that there is little enthusiasm for the approach that is proposed in amendment 279. I hope that we can continue to discuss the matter and consider how to collate data from throughout Scotland on methods of encouragement that alter people's behaviour.

Amendment 279, by agreement, withdrawn.

Section 53—Information on waste

Amendment 243 moved—[Elaine Murray]—and agreed to.

Section 53, as amended, agreed to.

Sections 54 and 55 agreed to.

Section 56—Procurement of recyclate

Amendment 244 not moved.

Section 56 agreed to.

Section 57 agreed to.

Section 58—Deposit and return schemes

The Convener: Amendment 162, in the name of the minister, is grouped with amendments 163 to 175, 245, 176 to 181, 185, 182 to 184 and 186. The minister is checking that I have read correctly all the amendments.

Stewart Stevenson: I would not wish to cross you in any dispute, convener.

Amendments 162 to 184 seek to ensure that powers are made available to set up effective deposit and return schemes by means of a clearing-house system. My colleague Richard Lochhead mentioned those schemes in evidence to the Rural Affairs and Environment Committee on 4 February. On 13 February, he wrote to the committee about them in more detail.

In contrast, amendments 185 and 186, in the name of Alex Johnstone, seek to ensure that ministers are given no powers to set up a deposit and return scheme—none at all.

Amendment 245 seeks to ensure that materials that are subject to a deposit and return scheme may be reused as well as recycled.

In the consultation paper on potential measures to implement zero waste, one deposit and return scheme option for which we canvassed consultee response was a clearing-house scheme on the Danish model. Denmark has been operating a successful scheme for some years now. A body, which in the amendments is called the "scheme administrator", may be required to help retailers and producers by carrying out clearing-house functions on their behalf. The amendments allow ministers to give those functions to either an existing body or a new body that is created for that purpose.

In either case, we need to ensure that the powers that the scheme administrator enjoys are sufficiently wide to operate a successful scheme. The amendments give any new body that ministers establish the power to do things that are necessary or expedient for it to do. They also enable ministers to set out such powers in greater detail in subordinate legislation and to adjust the functions of any existing body that might be selected to run a deposit and return scheme.

Specific mention is made of the powers of borrowing and charging, given that any scheme will have to operate in a quasi-commercial manner and cover its costs. The administrator will need to have access to Government financing, whether by grant or loan, and not only for start up—there may be need for Government financial intervention thereafter. One example is the need to smooth out financial cycles or gaps between costs that arise and income that is generated. Amendments 170, 173 and 181 to 184 deal with the scheme administrator.

On 4 February, the Rural Affairs and Environment Committee heard in evidence that packaging is not the only material that might be handled by a deposit and return scheme. It was pointed out that consumer articles might also usefully be included. The example suggested was that of low-energy light bulbs, which will be disposed of in increasing numbers as incandescent bulbs are phased out. Separate collection and appropriate recycling is desirable in their case because of the mercury that they contain. The Government accepts that that is a sensible change. Amendments 162 to 169, 171, 172, 174, 175 and 177 to 180 give it effect by extending powers in connection with setting up schemes to cover articles, packaging or both.

Amendment 176 empowers ministers to include provision in the regulations to provide for a non-returnable element in the sale price of articles. That element, which may be regarded as part of the deposit that is paid by the customer, would be used to defray the expenses that are involved in operating the scheme. It would be desirable to cover those expenses in a transparent way rather than leave it to producers to cover them through retail prices. Such a provision might also make consumers think about the environmental consequences of their consumption, which is in keeping with the polluter-pays principle. As the holder of the waste, the consumer is one of the polluters on whom, in terms of article 14(1) of the revised waste framework directive, the costs of waste treatment are to fall.

I turn to amendments 185 and 186, in the name of Mr Johnstone. Two petitions are currently before Parliament in support of deposit and return schemes, and supportive evidence was given at stage 1, but I acknowledge the strong representations from industry against such schemes. Some of those may be dealt with briefly. It is notable that one member of the British Soft Drinks Association, which opposes the measure, is A G Barr, which operates its own deposit and return scheme. It is simply not true to suggest that such schemes do not work, as they work not only in several European countries, such as Sweden and Denmark, but in individual states and provinces of the United States and Canada. Denmark's experience is particularly instructive, as it is a nation of five million that has a very porous

border with a much larger southern neighbour. Does that sound familiar?

It is simply unrealistic to suggest, as the BSDA does, that the detail of any such measure should be set out in primary legislation—the statutory instrument that sets out the Danish scheme runs to more than 50 pages—but the matter is not just about length and balance. Successful schemes relate to materials for which there is a market, and prices for recyclate can rise and fall fairly rapidly. It would not help the speed of our reactions to have to change primary legislation every time, which is why we need full powers to make the kind of secondary legislation that I outlined.

In any event, as with other waste provisions in the bill, we have indicated that we do not intend to move to regulation in the current economic circumstances. We will do so only if voluntary efforts fail to achieve the desired results. We are giving time for such efforts, and progress has already been made, such as the reverse vending machines that are in place at some Tesco stores in Scotland—Richard Lochhead opened the facilities at the Tesco store in Shettleston earlier this year. I acknowledge that Mr Johnstone is a strong supporter of the better use of resources, so I am sure that he would wish to encourage those efforts, as I do. However, should those efforts fail, we will need an armoury of measures to improve our resource efficiency and thus mitigate climate change. That is the background to everything that we seek to do through the bill, and the deposit and return provision is one of those measures.

There has been mention of alarming costs—in the BSDA's version, the costs would be hundreds of millions of pounds. That level was not reflected in our financial memorandum, which was built on the actual experience of the Danish and Norwegian schemes, but in response to a recommendation of the Rural Affairs and Environment Committee we have agreed to set out detailed costings for any scheme at the time of consultation on the new regulations. That committee and others will have plenty of time to discuss those costings. If they showed the levels of expense that the BSDA suggests, Parliament would be able to block the scheme, although I cannot imagine that we would proceed with it in the first place.

I completely agree with the purpose of amendment 245, which is to ensure that it is possible to reuse, as well as recycle, materials that are subject to such schemes, but the amendment is unnecessary as the term "recycling", as used in chapter 4 of part 5, is defined to include reuse under section 52(4). The amendment would therefore add nothing to the bill.

I invite Mr Johnstone not to move amendments 185 and 186, and I invite Dr Murray not to move amendment 245.

I move amendment 162.

The Convener: In the interests of time, I again ask members to keep their comments reasonably straightforward and brief.

Elaine Murray: Given the restrictions on time, I will speak mainly to amendment 245. The amendment would insert the term "or reuse" after "recycling" in section 58(6). In the revised European waste framework directive, to which the minister referred, reuse is higher up the hierarchy than recycling. We should promote reuse. Although, obviously, not everything can be reused, materials can be reused, particularly those that might be involved in deposit and return schemes. People can take containers back to be refilled with certain materials, and we should encourage that practice as well as recycling. My purpose in lodging amendment 245 is to tie the provisions into the revised EU directive.

17:00

Alex Johnstone: I will speak exclusively to amendment 185, in my name, which would strike section 58 entirely. I apologise to the minister and members for my amendment's heavy-handedness. My objective was to reflect the sudden and last-minute lobbying that I experienced in the build-up to stage 2 and particularly the work of the Scottish Beer and Pub Association and several of its constituent members—the papers that I am holding up represent today's correspondence alone.

The association is concerned about the impact of a deposit and return scheme on the businesses of pub owners—particularly those who find themselves in a marginal position. I ask the minister to justify the scheme's introduction—he did that effectively in his opening remarks—and to give the assurances that the pub trade will be fully consulted on the form of any such scheme, that the scheme will take into account the impact of potential additional costs on very marginal businesses in some of our marginal communities and that when the efficiency of energy use in the cycle of deposit and return is considered the full cycle's energy usage will be reflected in the balance of energy efficiency.

I do not oppose the creation of such schemes; in fact, I believe that they have much to contribute. My amendment was lodged to provoke discussion, and I give the minister the undertaking that I will not move it.

Charlie Gordon (Glasgow Cathcart) (Lab): I am prompted to break my 10-hour stage 2 silence.

The Convener: It had to happen.

Charlie Gordon: I was struck by the fact that the minister cited the soft drinks industry but Alex Johnstone cited the beer industry, with which he appears to have well-developed social contacts. If I go way back, we used to take back beer bottles under a deposit and return scheme in the way that we still return Irn-Bru bottles in the city of Glasgow. However, the beer industry and the pub industry withdrew from that approach quite a long time ago.

As a street urchin in Glasgow many years ago, I would have been after empty soft drink bottles—that is the term that I must use—and empty beer bottles. In the days when people were allowed to carry alcohol into football matches, a small army of small boys waited for people to come out of a big football match, so that they could pick up the empty beer bottles that football fans had discarded—the same applies to soft drink bottles.

Over the years, I have seen a cultural change. Children in Glasgow—and in other places, I presume—are now embarrassed to be seen gathering empty bottles and taking them back to the shop. The culture has changed so much that I have seen school playgrounds in which hundreds of 5p pieces have been left on the ground, because children regard picking them up as a badge of shame.

I am making a serious point. Deposit and return schemes for bottles must be driven not by people who are necessarily environmental activists but by those who are interested in getting the money back on the packaging—the bottles. However, a cultural change has occurred—we do not have the thousands of street urchins that we had a generation or two ago to help to keep such litter off the streets.

Alison McInnes: I am not sure whether I should admit that I am old enough to remember collecting ginger bottles—that is what we called them.

Charlie Gordon: That is the generic Glaswegian term.

Alison McInnes: That was a useful way of augmenting pocket money, but things have moved on.

In our stage 1 report, we expressed concern about the lack of detail on section 58. I support the principle, but significant issues need to be addressed. Members have spoken about the impacts and the costs on the drinks industry.

I am interested in hearing from the minister about the impact of such schemes on councils' well-established kerbside collection schemes. Councils have put significant resources of personnel and capital into those schemes and into creating the markets for them. I am a little concerned that some of the best-quality packaging will be extracted from kerbside collections and about the impact of that on the markets for such items.

Des McNulty: Alex Johnstone apologised for the brutality of his amendment, but he demonstrated that he is a pussycat by offering to withdraw it.

The fact that the minister lodged a substantial number of amendments at stage 2 suggests to me that the scheme was not as well worked as out as it might have been. I listened carefully to the minister's remarks, and it is clear that the issue is not just about bottles. Deposit and return schemes for other packaging are potentially envisaged in the bill but are not necessarily worked through.

Alex Johnstone has removed the possibility for me to vote down the proposal at stage 2, but we will want some reassurance from the minister before stage 3 about the circumstances in which a scheme might be introduced and the amount of consultation that there would be with the soft drinks industry, the Scottish Beer and Pub Association and other industries that might be subject to the introduction of deposit and return schemes. The last thing that we should do is push on to any of those industries a scheme that has not been properly worked out. However, that is not to say that a scheme could not be properly worked out and introduced.

I do not want to vote down the proposal, but I would like the minister to reassure me that all the wrinkles will be ironed out before a scheme is introduced and that there will be consensus not only that it is in the overall interests of dealing with climate change but that it is a business proposition that will not adversely affect the interests of the industries that are subject to it.

The Convener: Believe it or not, I, too, am old enough to remember collecting empty bottles for extra pocket money. Charlie Gordon might have been an environmental activist without knowing it.

Charlie Gordon: That is the only way I could have been one.

The Convener: The effect is what is important, rather than the motivation.

I reiterate the case for keeping the provisions. If objections were coming from an industry that had made dramatic moves of its own accord to reduce unnecessary packaging, it might be reasonable to take those objections seriously, but during the period of the culture change that Charlie Gordon mentioned, there has also been a dramatic increase in unnecessary packaging, and it is entirely reasonable to take steps to prevent that.

Earlier, we debated an amendment about public engagement. I argue that an approach to public

engagement should also focus on increasing participation in and acceptance of the proposed deposit and return schemes. [*Interruption.*] I am not sure what the noise pollution is, but I think that we will have to ignore it for the moment.

Rob Gibson: Do not bottle it now.

The Convener: I ask the minister to wind up on the group and indicate whether he wishes to press amendment 162.

Stewart Stevenson: Thank you, convener. I will press amendment 162.

In my concluding remarks on the group, I will address a number of the issues that members raised. It is deeply worrying that the group that engaged and animated the widest cross-section of the committee is the one that involves discussion about the subject of drink, but there we are. I just hope that that is not more widely commented upon outside the room in tomorrow's papers.

Convener, you made a point about public engagement and the change of behaviours. It is entirely proper for you to make that linkage and I take that point on board.

Charlie Gordon stole my best line when he referred to the intimate association between Mr Johnstone and the Scottish Beer and Pub Association. However, a good line is always worth repeating.

I was asked whether we will consult fully if we bring forward a scheme, and Des McNulty requested that at an early stage we describe the circumstances under which we would envisage doing so. The Government will write to the committee on the matter before stage 3—I hope that the committee is comfortable with that suggestion. I acknowledge that we have a limited window of time in which to do that, so I am not sure that the information will necessarily reach the committee, although we can certainly ensure that it reaches the committee clerks in time for members to receive it—I hope that members understand the formal distinction that I make in that regard.

Mr Johnstone referred to the bill's impact on the financial viability of marginal pubs, in particular in rural areas and in some urban areas. We want to take account of the matter and ensure that we do not impose onerous duties.

Alison McInnes said that the implementation of deposit and return schemes could disadvantage councils. If councils are operating good systems, it would be perverse of the Administration to require such systems to be supplanted. Any Administration would want actively to consider the existing infrastructure, and the amendments in the Government's name will allow that to happen.

Mr Johnstone mentioned full cycle energy usage. We want to take account of that.

Charlie Gordon talked about the recycling of beer bottles. I think that some bottles, such as bottles of certain brands of Belgian beer, are still recycled in Scotland. I am familiar with pilots who regularly fly to Brussels and buy beer that is so cheap that the bottle's recycling cost in Scotland exceeds its purchase price in Belgium. I do not encourage such behaviour as a climate-friendly approach, but at least it shows that beer-bottle recycling is still going on.

Amendment 162 agreed to.

Amendments 163 to 175 moved—[Stewart Stevenson]—and agreed to.

Amendment 245 moved—[Elaine Murray].

The Convener: The question is, that amendment 245 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Harvie, Patrick (Glasgow) (Green)
Johnstone, Alex (North East Scotland) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)

ABSTENTIONS

Gordon, Charlie (Glasgow Cathcart) (Lab)
McInnes, Alison (North East Scotland) (LD)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

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

Amendment 245 disagreed to.

Amendments 176 to 181 moved—[Stewart Stevenson]—and agreed to.

Amendment 185 not moved.

Section 58, as amended, agreed to.

After section 58

Amendments 182 to 184 moved—[Stewart Stevenson]—and agreed to.

The Convener: Amendment 246, in the name of Elaine Murray, is in a group on its own.

17:15

Elaine Murray: The intention behind amendment 246 is to float some ideas in the context of possible steps to reduce the use of single-use and disposable products.

I support Des McNulty's amendment 74, which would delete the proposals on carrier bags. Carrier bags have been erroneously singled out as single-

use products. In fact, they are often not single-use products—they are often used again as bags or for other purposes. Less public attention has been paid to a large number of other single-use products, such as plastic cups—the coolers in the Parliament and the coolers in my office have plastic cups, so people pour themselves a glass of water and throw the cup away. I am not sure why we have plastic spoons, forks and knives in the canteen, because we could use the other ones and wash them. Single-use razors and a plethora of other things, such as PVC advertising displays and so on, are used once and thrown away.

If we are to try to reduce the application of single-use and disposable products and to educate the public about the effect on the environment of using those types of disposable products, we must widen the debate a lot further than only plastic bags and we must address other single-use products. There has not been discussion about the issue, so it might be controversial to put the provision into the bill at this point, but I would like there to be consideration of how the education process might be effected and whether, in the future, regulations could be made to apply to, for example, takeaway food and drink shops to cut down the amount of disposable packaging or disposable materials and so on that are used in that context.

I am floating amendment 246 so that we can explore these ideas on the record and in the hope that the national waste plan will look at ways in which we can deter people from the excessive use of single-use and disposable products.

I move amendment 246.

Stewart Stevenson: Amendment 246 seeks to give very broad powers to require charges to be paid for a range of goods alongside whatever is the purchase price. Of course, the amendment's use of the word "disposable" raises a substantial issue as to what that means, since it is possible to argue that everything is, ultimately, disposable; it is very difficult to work out what products would be excluded from any reasonable definition of "disposable".

The amendment would also, in certain respects, drive against what we are trying to achieve. A banana skin or an orange peel is disposable, but we would wish people to put them on the heap and recycle them into the garden. We would not wish to charge people for them. I say that only to illustrate the genuine difficulties that the amendment would create.

We will find out what the committee's view is on Mr McNulty's amendment 74 to delete the proposal on carrier bags. Amendment 246 would, as currently written, reintroduce the carrier bags issue back into the bill. I would be interested to see whether that is something that Mr McNulty, in view of his clear position on carrier bags, would wish to support. The Government certainly encourages the committee not to proceed with amendment 246.

Elaine Murray: I wonder whether the minister recognises that there is a problem. I accept his arguments about the amendment, which is an attempt to bring the subject to people's attention and to explore some of the issues.

Stewart Stevenson: I am happy to recognise that there is a genuine problem. We certainly want to minimise the impact of things that are disposed of after light use, but we do not think that the approach outlined in the amendment is one that commends itself. It is an issue that will require further consideration.

Elaine Murray: On the basis of that assurance, I am happy to withdraw the amendment.

Amendment 246, by agreement, withdrawn.

Section 59—Charges for supply of carrier bags

The Convener: Amendment 74, in the name of Des McNulty, is in a group on its own.

Des McNulty: I know that time is pressing, convener, but I have three arguments to make. The first relates to the consistency of the parliamentary approach. In the previous session, a sustained consultation was undertaken on the Environmental Levy on Plastic Bags (Scotland) Bill, which was introduced by Mike Pringle. Rob Gibson was on the committee that considered the bill. Many committee members were sympathetic to the bill, but the committee rejected it for a range of reasons. The committee heard a substantial amount of evidence from a variety of sources, including witnesses from the packaging industry in Scotland, who would have been directly affected by the proposal. The committee found their arguments convincing. Given the legislative process that was undergone at that time, it seems unfortunate to say the least that the bill that is before us proposes to introduce a similar provision. It may not be exactly the same proposition—the measures in the bill are not confined to plastic bags—but it is substantially the same.

One reason why the committee moved away from Mike Pringle's approach was that other mechanisms, particularly those that supermarkets and other bodies can undertake voluntarily, may prove to be a more successful way in which to meet the objectives that were set out in the bill. Indeed, that has proved to be the case. Some measures have achieved some of the objectives that were set out at the time. We should not accept into a bill that is a climate change bill a measure that has been defeated in the

parliamentary process, particularly when that rejection was made on the basis of a substantial amount of evidence.

The second point is to highlight some of the issues that were flagged up in evidence. At the time, much was made of the Irish experience. Some committee members travelled to Ireland as part of the evidence taking—[*Interruption.*] Unfortunately, Rob Gibson was not part of the trip. The evidence from Ireland showed that the introduction of a tax on plastic bags led to people turning to other forms of packaging that are less climate friendly. The point that the industry made in that regard was telling. We heard that the weight of material in a quantity of plastic bags is about a thirtieth of the amount in the equivalent quantity of paper packaging. The point is that it is possible to do something for the best of reasons that has a worse set of consequences.

Recently, we all received information from Canada about hygiene issues associated with the reuse of plastic bags. I found it captivating. If the provision is to be introduced, it should be explored in greater depth than it is possible for us to do in the context of the bill.

There is also genuinely an issue of employment. A significant number of jobs in Glasgow are in the packaging industry and are associated with the manufacture of plastic bags and other packaging. Those jobs will be adversely affected by the measure. It will affect the Scottish industry's competitive position. That is something that we should not do lightly or without an appropriate degree of consultation.

The most pressing argument against the provision is that we are dealing with a climate change bill, and the test of any measure in that context is whether it contributes to a reduction in climate change emissions. Plastic bags can be recycled relatively quickly, the material costs of their production are not high and the material that goes into them is an otherwise not useful by-product of the oil industry. The alternatives, which are predominantly paper, have a significant impact on climate change, as chopping down trees has a direct effect on carbon dioxide levels in the atmosphere. We are being asked to support a measure that is perverse in relation to the objectives of the bill. I suggest that the simplest thing to do is delete section 59 from the legislation.

I apologise on behalf of Angela Constance, who has unfortunately had to attend a funeral this afternoon but would otherwise have been here to speak in support of my amendment. I hope that I can persuade members of the committee to strike out section 59, on the basis that the measure has not been properly thought through and is inappropriate in a climate change bill.

I move amendment 74.

The Convener: I will call other members who wish to speak in a moment, but for once I will abuse my position and be the first to speak.

I am speaking against the amendment. It seems that Des McNulty has, in several parts of his argument, mistaken the current proposal in the bill for the previous proposal in Mike Pringle's bill, which focused specifically on plastic bags. Des McNulty has mentioned several times the disadvantages of substituting paper bags for plastic bags, but the current proposal refers to carrier bags. We have the opportunity to consider other forms of packaging if non-bag packaging is being substituted through the provisions on deposit and return schemes, which can apply to other forms of packaging. The argument about consistency of approach does not hold: the proposal that we are currently considering is different from the one that we rejected, so the arguments that were used to reject that proposal do not apply in this case.

Des McNulty argued that plastic bags are easily recycled or reused. They are easily recycled if there is provision for that, but many people—certainly in my own city of Glasgow—collect a large bag full of bags somewhere in their house and eventually get so sick of the growing pile of bags that they throw them out. The bags must be taken back to a supermarket to be recycled, as the local authority collection does not accept plastic bags. The provision of recycling services throughout Scotland will hopefully improve, but while such provision does not exist, we should recognise that there is not always an opportunity to recycle.

Plastic bags can be reused, but that argument undermines one of Des McNulty's other arguments with regard to hygiene. I do not often use phrases such as "health and safety gone mad", but people are having a bit of a funny turn if they think that reusing a bag will lead to a public health epidemic. I reuse plastic bags occasionally, and I try to reuse cloth bags as often as I can. If there is a hygiene issue, it applies to the reuse of any other type of bag as much as to the reuse of plastic bags.

With regard to the relevance of the measure to climate change, there is a cultural factor that relates to public engagement, for which Des McNulty has argued on other occasions. Asking people to make a different choice on a daily basis, and not accepting unnecessary plastic bags, paper bags or any other type of packaging, is a mental trigger. It is very much part of the public engagement on climate change and resource use, which are deeply connected in many ways.

Finally, in response to the argument that voluntary measures have proved to be effective, we can all take a walk down many high streets or shopping streets and see some people—more than perhaps there were five years ago—using their own bags, such as bags for life or cloth bags, but we can also stand at a till in a supermarket and see hundreds of plastic bags being put out every minute of every hour.

It is not true to say that voluntary measures have solved the problem; we still see far too much use of packaging, including plastic and paper bags. The proposal is one way of reducing that, and it seems to me that we should not be prohibiting ministers from coming forward with regulations of this sort by removing section 59 from the bill.

17:30

Rob Gibson: The convener has made many of the arguments for rejecting amendment 74.

When evidence was being taken on Mike Pringle's bill, it was suggested that people would buy black bin bags and so on as a substitute for the supermarkets' plastic bags if they were banned. If we keep going down a route that involves people not changing their habits but instead trying to find other polluting means of carrying things around, we will have to take a stand at some point. That is not an argument against the people who make plastic bags, as many kinds of bags are being discussed in this context. Many of us on the greener wing of the debate have collections of cotton bags and other sorts of bags that are handed out freely by organisations to encourage us not to use plastic or paper ones. However, the point is that we need to have a climate change in how people carry their goods about.

In the countryside, we have barbed-wire fences festooned with plastic, and plastic bags are the main reasons for that. As plastic bags can escape and end up in our environment in that way, there must be some means of curbing their use. I do not believe that the voluntary approach works in that regard. I rarely use large supermarkets, but I see people routinely handing out plastic bags in small village shops. I refuse them all the time, if I can.

In the circumstances, we have to keep a provision in the bill that makes it possible for action to be taken. We need to assure people that we are not in any way trying to stop people doing jobs that are legitimate or from making the things that they do. However, we need to recognise that the way in which people must change their behaviour must be asserted in the bill.

Alison McInnes: I was not in the Parliament when Mike Pringle's bill was dealt with, but I have to say that my colleague was right to raise that debate at that time. I think that the situation has moved on significantly since then. The pace of change might not be as great as we would like it to be, but we have seen what voluntary effort can do.

It was clear at stage 1 of this bill that members have quite strong feelings about this issue, and I have been trying to weigh up the arguments.

It seems to me that there is some benefit to leaving section 59 in the bill, as it is only an enabling power. I am not yet persuaded by the arguments that have been put forward in favour of removing it.

Stewart Stevenson: I was interested that Des McNulty said that he was captivated by unhygienic bags. I would gently make the point that the study to which he referred was funded by the plastic bag industry, which means that one might wish to look again at its terms of reference and the independence of those who conducted it. I should, of course, say that I do not automatically conclude that an industry funding a study is necessarily at it, as it were.

I draw colleagues' attention to the fact that the UK Government included the power to introduce charges for single-use bags in its Climate Change Bill.

Alex Johnstone: Disgraceful.

Stewart Stevenson: As the member says, that was quite disgraceful. However, the principled argument that was put forward against a similar power being included in our bill is, perhaps, undermined by that.

I also note that my good personal friend—even if she is my political opponent—Jane Davidson, the Minister for the Environment, Sustainability and Housing in the Welsh Assembly Government, has announced that she is planning to implement a levy on plastic bags in Wales. I wish her every success in that.

The voluntary work by retailers that Alex Johnstone rightly praised at stage 1 has delivered some encouraging early results, but it is clear that we cannot rely solely on a voluntary approach to deliver the goods and, therefore, that we should retain the powers in section 59 to exercise them if and when they are required.

Des McNulty: The minister and other members have made much of being driven by the evidence, which inevitably relies on numbers. It seems to me that the evidence against section 59—the numerical argument against taking out plastic bags in particular and allowing their substitution by other materials—

Stewart Stevenson: I hope that Des McNulty will acknowledge that section 59 is not about plastic bags but about bags generally.

Des McNulty: I acknowledge that, but it is likely to be targeted at plastic bags. That is obviously the approach that the minister wants to take. Ministers will need to consider how to implement it, but the presumption behind it is the removal of plastic bags. The reality is that significant consequences are associated with replacing single-use plastic bags with heavier-duty bags that are often plastic coated and much less easily recyclable. It is important that we consider the consequences of substituting something that is relatively light and that can be reused or recycled with something that is intended for reuse but causes a significant amount of additional carbon in its production and is difficult to recycle.

It strikes me that there is a considerable debate to be had about packaging in Scotland and the rest of the UK. Supermarkets provide many goods pre-packaged. The packaging consists of lots and lots of cardboard and exists for the supermarkets' use, as it allows them to organise their shelves. If we want to tackle packaging, we should start by focusing on how the supermarkets organise themselves rather than on the bags that the consumer uses. That is an easy target for Governments and the industry and there is a considerable anti-consumer aspect to the matter.

There are good arguments against section 59. It is a bad principle to introduce enabling powers for a measure that the Government says it does not have the case for putting into effect. The minister has not made an adequate case for introducing it, especially in the context of previous consideration, and I hope that the committee will support my amendment and remove the section from the bill.

The Convener: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gordon, Charlie (Glasgow Cathcart) (Lab)
Johnstone, Alex (North East Scotland) (Con)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Harvie, Patrick (Glasgow) (Green)
McInnes, Alison (North East Scotland) (LD)
Somerville, Shirley-Anne (Lothians) (SNP)

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

The casting vote will be for the status quo.

Amendment 74 disagreed to.

Sections 60 and 61 agreed to.

After section 61

The Convener: Amendment 247, in the name of Elaine Murray, is in a group on its own.

Elaine Murray: This is a probing amendment, so I will be brief. I am interested to know whether the Government would be prepared to take civil penalties for waste offences further. At one time, I think, the Scottish Environment Protection Agency hoped to explore such issues.

The current statutory maximum on summary conviction is £10,000, which acts as little disincentive to supermarkets or major developers, but which might be a fairly severe penalty for small businesses such as small shops.

There are several ways in which the penalty could be made proportionate to the size of the business. I know that Bill Wilson's proposed member's bill deals with the imposition of equity fines on companies, including for environmental offences. Civil penalties could be used, as happens under certain transport provisions, such as those to do with road works and renewable fuels obligations. Competition law could be used, too, although that would probably fall within the UK Government's competence.

Amendment 247 suggests a framework for the application of variable civil penalties. The scale of such penalties would be a matter for subsequent regulations and would therefore be subject to consultation and parliamentary approval, but the amendment provides scope for the penalty to vary in relation to the financial turnover of the business concerned,

"or to the costs avoided, or income obtained … as a result of the commission of the offence."

It would enable effective and fair deterrents to be established by the relevant regulatory body.

I move amendment 247.

The Convener: As no members wish to comment, I invite the minister to respond.

Stewart Stevenson: I will be relatively brief. First, I make the technical point that although the maximum fine for such offences in summary proceedings is £10,000, there is no limit in cases of conviction on indictment, so it would be perfectly possible for substantially greater fines to be imposed on large institutions, albeit that that would probably be relatively uncommon.

The environmental crime directive, directive 2008/99/EC, which was agreed last year, restricts the scope of the use of civil penalties, as it requires a variety of environmental offences, including some that relate to waste management, to be subject to criminal penalties.

There are some practical difficulties with amendment 247, in that the penalties that it seeks to impose are not civil penalties in the strict sense. As the amendment is drafted, they would apply only in respect of what the bill establishes as criminal offences. As the new section that amendment 247 proposes is predicated on criminal offences having been committed, it would lead to the possibility that two forms of proceedings, involving very different standards of proof, would be available to deal with the same act—an act that was a criminal offence. The fact that there are issues of fairness at stake is compounded by the provision in subsection (2) of the proposed new section, under which penalties could be levied on persons who had not committed an offence. There might be European convention on human rights issues associated with that.

Subsection (3) of the proposed new section creates a number of difficulties. For example, prosecution in the courts should be prevented only if a penalty is paid, not merely if it "may" be imposed. As all the triggers for civil penalties are criminal offences, it is difficult to envisage that a situation in which any police investigation led to a charge should not, at least arguably, be the subject of criminal proceedings, but all criminal proceedings are to be banned if a civil penalty may be imposed. That, coupled with the fact that no penalty is stated and no maximum is imposed, means that the Government would have unusually broad powers. I am not wholly opposed to that, but I think that it is probably inappropriate and that it was not the intention behind the amendment, so I invite Dr Murray to withdraw it.

Elaine Murray: I invite the minister to indicate whether the opportunity to make the penalty in such cases proportionate to the offence that has been committed will be investigated at a later date.

Stewart Stevenson: I note that Dr Murray referred to Dr Wilson's proposed equity fines bill, the progress of which we will watch with interest—I have to put it that way, because I am not quite certain that the Government has yet expressed a position on it. It is clearly an interesting proposal and there are a number of opportunities for pursuing the matter in other areas.

Amendment 247, by agreement, withdrawn.

Before section 62

17:45

The Convener: Amendment 248, in the name of Alison McInnes, is in a group on its own.

Alison McInnes: I am grateful to Stop Climate Chaos Scotland for its support and advice in relation to amendment 248. We should all be keen to support access to justice. The amendment aims to ensure that ministers are fully accountable for the conduct of their duties under the bill. Parliamentary responsibility is established under the bill, although perhaps not as clearly as I would like. Given the 40-year lifespan of the bill, it is right to ensure that appropriate opportunity is established for the courts to be able to enforce its provisions. At stage 1, my colleague Ross Finnie criticised the bill because it did not contain such provisions.

Judicial review is the key process by which such enforcement can be delivered. As is normal, such a procedure does not overturn the decision making of the courts but enables them to quash decisions. The procedure follows the Aarhus convention, which has been ratified in the UK but not completely transposed into European law. The convention says that access to judicial review should be available to the "interested public" in environmental matters, such as those that arise from the bill.

In Scotland, unlike in England, there are uncertainties about the standing of environmental interests and no established provisions to limit the financial risks that are associated with taking a case. The English courts have established the use of protective costs orders. Further, judicial review cases do not typically consider the full range of aspects of substantive and procedural legality that are required by the convention.

Amendment 248 was drafted by a leading QC. It would ensure that, as a minimum—perhaps it would be best to say that a precedent would be set—cases arising under the bill meet the Aarhus standards for access to justice. The amendment deals with the three key issues of standing, affordability and the scope of challenges. As a result, it also provides a valuable backstop to existing accountability provisions in the bill and enhances incentives for all ministers to comply fully with the duties that are set out in the bill. The Aarhus convention was developed under the auspices of the United Nations. It sets out three strands: access to information, public participation and access to justice, which is the strand with which my amendment deals.

I have been heartened by the level of engagement of individual citizens and stakeholders during the bill's development. Stop Climate Chaos Scotland is a fine example of what should happen in a mature democracy and provides a counterargument to everybody who says that there is so much apathy around and that people are not interested in what is happening.

Amendment 248 acknowledges that proper access to judicial review is part of the toolkit that we should make available to active citizens. I hope that members will support it.

I move amendment 248.

Stewart Stevenson: I start by echoing what Alison McInnes said about Stop Climate Chaos Scotland. We have not found ourselves able to support every stage 2 amendment from that source, but the contribution made by that alliance of third sector bodies and the wider public has been important in setting much of the bill's agenda. It is important to recognise that.

There is a wide range of difficulties with amendment 248, which Ms McInnes has brought to the committee. Transposition of the Aarhus convention is already reflected in Scots law. Indeed, if that were not the case, we would expect the European Commission to review the situation, and I am not aware of any infraction proceedings. There is no question of Scots law not having been brought into line with the requirements of the convention on title and interest. Therefore, subsections (1) and (2) of the proposed new section that the amendment would insert are simply not necessary. If the concern is that the Court of Session would take a narrow approach, there is no past evidence of that happening.

Subsections (3) and (4) of the proposed new section would create a specific procedure for a party to follow when asking the court to impose a cap on their liability for another party's expenses. It has been recognised that the Court of Session may make such an order—a protective costs order, as it is described in England—and therefore I cannot see that those subsections would add anything to the court's existing power. I make the point strongly that court rules are generally set by the Lord President of the Court of Session. Albeit that the orders in question are put to Parliament, they are not made or laid by Scottish ministers. That is an important part of the separation of the Scottish legal system that should continue.

The Lord President is currently considering the issue of protective costs orders with a view to determining whether any changes to court rules are necessary.

Subsection (5) of the proposed new section would make provision regarding the scope of any judicial review. The question of what may or may not be competently looked at in a judicial review falls to be determined by reference to the case law of the Court of Session. I have not been made aware of any undesirable gaps in the court's approach.

All in all, I do not believe that amendment 248 is necessary, and I strongly recommend that the committee does not support it.

In any event, we will shortly receive the report of Lord Gill's wide-ranging review of the Scottish civil courts, which expressly considers issues of court procedure and the cost of litigation to parties. It would, at any rate, be wrong to make piecemeal changes in advance of that report, which might well bring forward more substantial and wide-ranging changes to court procedure.

Alison McInnes: The minister has referred to Lord Gill's review and seemed to accept the principles and the philosophy behind the amendment. Will he have a discussion with the Lord President to ensure that there are no gaps in this instance?

Stewart Stevenson: My apologies—I got distracted there. Could the member replay that for me, please?

Alison McInnes: Certainly. In the first instance, you seemed to support the philosophy behind amendment 248, and you suggested that the Aarhus convention was already enshrined in Scots law.

Stewart Stevenson: Yes, in essence. I am asserting—to summarise it very concisely—that the provisions are all there already.

Alison McInnes: I wish to ask for two things. Can the minister check before stage 3 that there are no gaps in here, and will he have a discussion with the Lord President about the wider impact?

Stewart Stevenson: Yes.

Alison McInnes: In light of that, I will not press the amendment.

Amendment 248, by agreement, withdrawn.

The Convener: Amendment 249, in the name of Des McNulty, is grouped with amendments 249B and 249A.

Des McNulty: Amendment 249 is intended to require the persons mentioned in it to behave in a way that contributes to the achievement of sustainable development. It continues the approach—which I think I initiated under the Water Industry (Scotland) Act 2002, as a member of the equivalent committee in the first session of the Parliament—of imposing a sustainable development duty. It seems entirely appropriate, in the context of climate change, to require ministers and the various public bodies that will be given duties to operate in a way that is consistent with the principles of sustainable development.

The amendment is also consistent with the approach to duties on public bodies that Cathy Peattie has introduced into the bill. I hope that there is coherence between where we will end up as regards those duties and the idea of a general duty of sustainable development.

I note the amendments to amendment 249, in the names of Alison McInnes and Shirley-Anne Somerville, and I will be interested to hear, and will then respond to, the points that those colleagues

make in speaking to their amendments. It is important, in the context of a climate change bill, to introduce a mechanism to ensure that people operate in a way that contributes to the achievement of sustainable development.

I move amendment 249.

Alison McInnes: I congratulate Des McNulty on bringing the issue of sustainable development into the framework of the bill. I absolutely support that approach. I welcome the wording of the whole of the proposed new section that Des McNulty's amendment would introduce, except for subsection (2)(b). My reason for lodging amendment 249B is linked to our agreeing, last week, to amendment 198, in the name of Cathy Peattie, which I supported. Amendment 198 set out climate change duties for public bodies and included a reference to acting sustainably. It will be essential that our public bodies make choices that are sustainable.

Given that we agreed to those duties on public bodies, the inclusion in the bill of a differently worded sustainable development duty on public bodies, as set out in amendment 249, could lead to confusion about which standard public bodies should apply in acting sustainably. We certainly do not want anything to cloud the issue and allow people to argue over how such a duty should be implemented.

It is essential that there is clarity on the fulfilment of duties in relation to climate change. I hope that Des McNulty accepts my amendment to his amendment in the spirit in which it is intended. The intention is to add clarity to his worthwhile amendment to ensure that the legislation is consistent and clear and that the sustainable development duty is workable. I also support Shirley-Anne Somerville's amendment to the amendment. I will listen to the debate, and if Des McNulty can persuade me that both approaches are necessary, I will not press my amendment.

I move amendment 249B.

Shirley-Anne Somerville: I welcome Des McNulty's amendment, which replicates a similar amendment that I had been working on with the RSPB and the Stop Climate Chaos Coalition for some time. I am pleased that it will—I hope—become part of the bill. I support Alison McInnes's amendment to his amendment because, regardless of how I voted on the duties on public bodies last week, I am concerned that we should have a working sustainable development amendment that does not lead to any potential clashes and problems. I am pleased that she has lodged that amendment to clarify the matter.

I have lodged a small amendment to Des McNulty's amendment to ensure that the advice that ministers receive from any advisory body has regard to sustainable development. It simply ensures that another body, which I do not think is included in Des McNulty's amendment, is included in the bill.

Stewart Stevenson: We are content for all three amendments in the group to be agreed to. Although we remain unconvinced on the subject of duties on public bodies, if the matter is to be included in the bill, it should be included in a proper and orderly fashion.

Des McNulty: I am not 100 per cent sure that there is a clash between the "relevant public body" aspect of my amendment and the amendment that was agreed to last week. It is clear that ministers will want to examine this suite of provisions and perhaps lodge further amendments to tidy it up. In that context, I am happy at present to accede to the amendments in the names of Alison McInnes and Shirley-Anne Somerville. I am sure that if it becomes necessary to put the "relevant public body" duty back in and tweak another part of the bill, we can consider amendments that are lodged by ministers at that time.

Amendment 249B agreed to.

Amendment 249A moved—[Shirley-Anne Somerville]—and agreed to.

Amendment 249, as amended, agreed to.

18:00

The Convener: There is light at the end of the tunnel—there are only a couple of groups to go. Amendment 280, in my name, is in a group on its own.

The amendment relates to the Government's carbon assessment tool, which is being developed with the intention of assessing the carbon impact of future Scottish Government budgets. We discussed the issue in our stage 1 inquiry, and in paragraph 56 of our report we noted the possibility that the carbon assessment process could form a statutory part of consideration of expenditure projects. The same argument applies to the budget as a whole.

When the Cabinet Secretary for Finance and Sustainable Growth was asked at a previous committee meeting whether he was open to that opportunity, he said that he was willing to consider it. I lodged amendment 280 to explore whether the Government is ready to make the carbon assessment tool a required part of the Scottish budget process. If the minister indicated open-mindedness to the principle but a disagreement with the proposed method, I would find it interesting. However, given that we are being told that the assessment tool will be ready to apply to the next Scottish budget, it would be a positive step to take to lock it in for the future and ensure

that future Scottish budgets are introduced alongside information that allows Parliament to assess carbon implications.

I move amendment 280.

Des McNulty: I am not unsympathetic to the purpose of the amendment, but I question whether it is an appropriate mechanism to put into climate change legislation or whether it should be part of a protocol of agreement between the Finance Committee and the Cabinet Secretary for Finance and Sustainable Growth. It is a question of the mechanisms involved in putting together the budget. Perhaps the minister will be able to cast some light on that.

Stewart Stevenson: We are content with the principle behind the amendment—members knew that because it is in line with the commitments made by the cabinet secretary. It would certainly add to the policy approval process and the hard actions that will result from our delivery plan that will assist in plotting the path to drive down emissions. Overall, we recognise absolutely the spirit in which the amendment was lodged.

There are several difficulties with the drafting of the amendment, which I will address before I respond to Des McNulty's point. The amendment refers to "expenditure" whereas budget bills use different terminology, which is "resources". The amendment also refers to the impact on greenhouse gas emissions, but expenditure does not impact on emissions; it is the activities that expenditure buys that impact on greenhouse gas emissions. Those two flaws in the drafting of the amendment prevent me from supporting its specific formulation today.

Des McNulty asked whether the matter would be best dealt with in a protocol between the cabinet secretary and the Finance Committee. I am not sure that I am in a position to comment on that at this stage, although I see clearly why it might be an alternative proposition.

The Convener: Does the minister accept that a protocol—essentially an agreement between the Government and the Parliament—could be subject to change by future Governments, finance secretaries or those carrying out that function on behalf of future Governments, whereas a legal requirement would bind future Governments?

Stewart Stevenson: Although that is manifestly true, the protocol would be a symmetric arrangement that could also be changed at the behest of the Finance Committee. I can see—albeit without having given the matter huge consideration—that there might be advantages for the two key players in the budget process in having the ability to negotiate, as required, what the protocol should be. A protocol would not be simply a get-out-of-jail-free card for the minister; it is a potentially powerful tool for the Finance Committee to insist on the way in which things are done. I do not wish to take a position on that subject now in front of the committee. If the committee wishes me to consult colleagues further, particularly the cabinet secretary, I will be happy to do so.

I return to the substantive issue before us, which is amendment 280 in the convener's name. I suggest that, in view of its flaws, it would be most appropriate if it were not pressed today.

The Convener: In light of the debate, I wish to consider further the detail of the options that are being explored. I hope that the minister will have a conversation with the cabinet secretary in advance of the stage 3 deadline so that, if a legislative mechanism is proposed and debated at stage 3, there is time for the Government to take a position on whether some variant of what I am proposing now is acceptable.

Amendment 280, by agreement, withdrawn.

Section 62—Equal opportunities

Amendment 228 not moved.

Section 62 agreed to.

Section 63 agreed to.

Section 64—Subordinate legislation

The Convener: I call amendment 229, in the name of Iain Smith, which was previously debated with amendment 224. Does Iain Smith wish to move the amendment?

Iain Smith: Yes—I am still here.

Amendment 229 moved—[Iain Smith]—and agreed to.

Amendment 186 not moved.

The Convener: Amendment 250 is in the name of Maureen Watt, who has been extremely patient—welcome to the committee, Maureen. The amendment is in a group on its own.

Maureen Watt (North East Scotland) (SNP): Thank you, convener. I am aware that you are at the end of a marathon session, so I will be as brief as possible.

Amendment 250 seeks to improve the scope of the parliamentary scrutiny of the secondary legislation that stems from the broad enabling powers of sections 52 to 59 on waste reduction and recycling. As the bill stands, such secondary legislation would be introduced under the affirmative procedure. The Rural Affairs and Environment Committee considers that a number of the policies in those sections are of such importance that, if they are introduced through

subordinate legislation, they could require close parliamentary scrutiny.

During the part of the afternoon that I have been here, members have been making the same point in relation to a number of other amendments, a prime example relating to section 59, which would allow the introduction of charges for carrier bags. When scrutinising those provisions, members considered that the relevant committees should be afforded the time to take evidence from stakeholders, to report on drafts of the legislation and then to recommend necessary changes to the drafting—as opposed to simply being able to vote for or against a motion under the affirmative procedure. The Rural Affairs and Environment Committee concluded that the secondary legislation that stems from such broad enabling powers should therefore be subject to the so-called super-affirmative procedure. Amendment 250 seeks to ensure that that recommendation is reflected in the bill.

The procedure that the amendment outlines would apply to all instruments made under sections 52 to 59, to which it is currently proposed to apply the affirmative procedure. The specific terms of the amendment are relatively clear, so I do not propose to talk through each feature in turn.

I move amendment 250.

Des McNulty: I agree that the amendment is required, especially in view of—I hesitate to say this—the slightly speculative aspects of the bill. Before any measures are introduced, whether under section 59, section 58 or even some of the earlier sections, it is important that there is an appropriate opportunity for people to be properly consulted. That does not just mean parliamentarians; industry is likely to be affected. I broadly support the proposal in the name of Maureen Watt from the Rural Affairs and Environment Committee.

Elaine Murray: I am a member of the Rural Affairs and Environment Committee. Amendment 250 received cross-party support because of the evidence that we received at stage 1.

I referred to amendment 250 in connection with earlier groups of amendments, and the minister expressed a concern that it might delay the introduction or passage of regulations by about seven months. The problem with the affirmative resolution procedure is that instruments must simply be accepted or rejected, and there is no possibility of amending them. If just one part of a set of regulations created a lot of concern, the Parliament's only option would be to reject the instrument completely and for the Government to bring in further regulations.

Super-affirmative procedure enables amendment and could speed up the process because, if only a part of a set of regulations was a cause for concern but the general principles were acceptable, it would be possible to amend them and produce an acceptable set of regulations. Is that not the case?

Stewart Stevenson: I should explain that seven months is the minimum likely delay; it could be as much as a year. We are being urged to speed and urgency on the bill and, in those circumstances, it would be inappropriate to have such a delay. We have to balance the need to exercise parliamentary scrutiny with market development, and the amendment covers a huge range of the bill. It might cover such issues as a change in prices for and market acceptability of recyclate and force super-affirmative process on to any secondary legislation that was associated with that. We might require to make emergency changes but be unable to do so because of that procedure. In those circumstances, the lead-in would be very painful and inhibit our ability to take necessary action.

I do not wish to turn away the substantive point that is being made, so we must ask what other alternatives are available to the Parliament. There is always a consultation period in advance of the production of any secondary legislation. It is not without precedent for committees, at that stage, to commission their own inquiries and feed into the consultation process. As the opinion of the Parliament is expressed through the subject committees, it would be perverse of any Government—particularly a minority one—to press on if it knew that the legislation would not be passed. That consultation would deliver the same benefit of enhanced scrutiny without restricting the ability of a Government of whatever complexion to respond rapidly and effectively. It would also not involve a 60-day period, which might be substantially longer in calendar terms—possibly as much as 100 days—depending on how a recess fell.

Amendment 250 is the wrong way to solve a problem that I acknowledge.

Des McNulty: I hear what the minister says about delay and I am sure that we would not want any. Nonetheless, does he accept that sections 58 and 59 represent a special case? They are framework proposals that should be subject to super-affirmative resolution. If the amendment were narrowed to those two sections, would he find it more acceptable than he finds the requirement on the whole run of sections, about which he expresses concern?

Stewart Stevenson: I would certainly find it less unacceptable. That change would respond to the generality and breadth of the proposals in amendment 250, but it would leave open the question of how we respond in circumstances in

which there is a degree of urgency. If we put super-affirmative procedure into primary legislation, the Government's hands would be tied, to be frank, even in circumstances in which the Parliament urged speed upon it. I come back to the point that the consultation period provides the opportunity for the kind of engagement that I think is being sought.

I encourage Maureen Watt, who is promoting the amendment, not to press it and to consider the point that I am making to the committee. At least, I ask her to restrict its scope so that it would not cover all the sections concerned.

Circumstances such as a collapse in the market for recyclates, which is one issue covered in section 58, could well require a degree of urgency of action. I think that we can get the benefits of enhanced scrutiny by another mechanism. I urge the committee not to put the proposed new provisions into the bill at this stage and to consider further the remarks that I have made.

18:15

Maureen Watt: Given what the minister has said about the need to refine amendment 250 so that it applies only to a couple of sections of the bill, I think that it would be in order for me to withdraw it. However, that is not to say that it will not reappear at stage 3 in another form.

The Convener: Maureen Watt wishes to withdraw amendment 250. Is there any objection to that?

Des McNulty: Yes.

The Convener: The question is, that amendment 250 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gordon, Charlie (Glasgow Cathcart) (Lab)
McInnes, Alison (North East Scotland) (LD)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)

ABSTENTIONS

Harvie, Patrick (Glasgow) (Green)

The Convener: The result of the division is: For 4, Against 3, Abstentions 1.

Amendment 250 agreed to.

Section 64, as amended, agreed to.

Section 65—Interpretation

Amendments 32 to 34 moved—[Stewart Stevenson]—and agreed to.

Amendment 230 moved—[Cathy Peattie].

The Convener: The question is, that amendment 230 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gordon, Charlie (Glasgow Cathcart) (Lab)
Harvie, Patrick (Glasgow) (Green)
McInnes, Alison (North East Scotland) (LD)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 230 agreed to.

Amendment 231 moved—[Cathy Peattie].

The Convener: The question is, that amendment 231 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gordon, Charlie (Glasgow Cathcart) (Lab)
Harvie, Patrick (Glasgow) (Green)
McInnes, Alison (North East Scotland) (LD)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 231 agreed to.

Section 65, as amended, agreed to.

Schedule 2

MINOR AND CONSEQUENTIAL MODIFICATIONS

The Convener: I call amendment 232, in the name of Iain Smith, which was previously debated with amendment 222. Are you moving or not moving the amendment, Mr Smith?

Iain Smith: In future, I must be careful not to lodge amendments to schedules on minor and consequential modifications, particularly when I am not moving them.

Amendment 232 not moved.

Schedule 2 agreed to.

Section 66 agreed to.

Section 67—Short title and commencement

Amendment 233 moved—[Rob Gibson]—and agreed to.

Amendment 234 moved—[Cathy Peattie].

The Convener: The question is, that amendment 234 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gordon, Charlie (Glasgow Cathcart) (Lab)
Harvie, Patrick (Glasgow) (Green)
McInnes, Alison (North East Scotland) (LD)
McNulty, Des (Clydebank and Milngavie) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

AGAINST

Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 234 agreed to.

Des McNulty: Can we redo amendment 234? I think there is some confusion.

The Convener: On amendment 234, there were five in favour, three against and no abstentions.

Des McNulty: Did you move it, Cathy? I got a bit confused.

Cathy Peattie: I did move it. I got confused between amendment 234 and amendment 228. I am sorry.

The Convener: Amendment 234 was moved and it has been agreed to.

Amendment 235 moved—[Rob Gibson]—and agreed to.

Section 67, as amended, agreed to.

Long title

Amendment 35 moved—[Stewart Stevenson]—and agreed to.

Amendment 236 not moved.

Long title, as amended, agreed to.

The Convener: That ends consideration of amendments at stage 2. I gather that the minister wants to make some brief remarks before we finish.

Stewart Stevenson: I just want to express thanks to the committee for its positive engagement during stage 2. The Government will consider the timetables and reporting, and I think that we are likely to conclude that we should try to consolidate and align some of the timelines, without seeking to subvert the intentions of the whole range. We have a bill with a wide range of separately described reporting and timelines, which are worthy of further consideration. I thought that it would be useful to give the committee early indication of our plans, which will probably require a substantial set of amendments. However, our intention is not to subvert the decisions that have been made.

The Convener: Thank you. That concludes our agenda for today.

Meeting closed at 18:21.

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