



OFFICIAL REPORT
AITHISG OIFIGEIL

Net Zero, Energy and Transport Committee

Tuesday 29 October 2024

Session 6



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Pàrlamaid na h-Alba

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NET ZERO, ENERGY AND TRANSPORT COMMITTEE
31st Meeting 2024, Session 6

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Michael Matheson (Falkirk West) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

*Jackie Dunbar (Aberdeen Donside) (SNP)

*Monica Lennon (Central Scotland) (Lab)

*Douglas Lumsden (North East Scotland) (Con)

*Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sarah Boyack (Lothian) (Lab)

Bridget Bryden (Scottish Government)

Jim Fairlie (Minister for Agriculture and Connectivity)

Maurice Golden (North East Scotland) (Con)

Patrick Harvie (Glasgow) (Green)

Gillian Martin (Acting Cabinet Secretary for Net Zero and Energy)

Graham Simpson (Central Scotland) (Con)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 29 October 2024

[The Convener opened the meeting at 09:01]

Subordinate Legislation

Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024 (SSI 2024/229)

The Convener (Edward Mountain): Good morning, and welcome to the 31st meeting in 2024 of the Net Zero, Energy and Transport Committee. The first agenda item for consideration is evidence on the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024. The instrument is subject to the negative procedure, which means that it will become law unless it is annulled.

We first considered the instrument on 8 October, when we noted concerns that had been raised about bus franchising panels and we agreed to seek further evidence. Because of the limited time, we wrote to five organisations and individuals, including the Scottish Government, and I thank them all for writing back. Their responses are included in the papers.

Douglas Lumsden has lodged a motion to annul the instrument. Before we have the formal debate on the motion, we will have an evidence session with the minister and his officials that will give us an opportunity to ask questions or seek clarification on the basis of the evidence that we have received. For the record, given the interest in the item and in our provision of local bus services, I state that I had already asked the Scottish Government to give evidence before Douglas Lumsden lodged his motion.

I welcome Jim Fairlie, the Minister for Agriculture and Connectivity; Sharon Wood, bus policy manager for Transport Scotland; Kevin Gibson, a lawyer for the Scottish Government; and Bridget Bryden, bus regulatory policy team leader for Transport Scotland—that is a snappy title. Thank you very much for joining us. I will give the minister a few minutes to make a brief opening statement.

The Minister for Agriculture and Connectivity (Jim Fairlie): Good morning. Thank you for inviting me to discuss the regulations. As we know, franchising is an important tool for local transport authorities to improve services in their

area. However, it is also a significant intervention in the local bus market. The franchising provisions in the Transport (Scotland) Act 2019 set out a new franchising model that seeks to deliver greater scrutiny and transparency in the franchising process. A key aspect of that is the inclusion of a final approval stage that is external to the authority, which assesses the proposals before the franchise can take effect. The act provides that safeguard to ensure that local authority transport authorities' franchising proposals have been carefully considered.

Rather than providing for the decision to be made by the Scottish ministers, the 2019 act provides for an independent panel to be appointed by the traffic commissioner, with the intention of depoliticising the final decision-making process. Those measures were included in the Transport (Scotland) Bill at its introduction, they remained throughout the bill stages and they were agreed to by Parliament. Parliament also agreed that detail about the operation of the panels would be set out in regulations. The regulations that we are considering set out that detail and are fundamental to the operation of the franchise process in Scotland, not least because they will give local transport authorities certainty about how their franchising proposals will be considered.

The regulations make provision on a range of administrative and procedural matters in order to provide clarity and legal certainty on how panels should operate, and they include eligibility criteria that preclude the appointment to a panel of anybody who might be employed by operators that are affected by franchising proposals or who could otherwise not act impartially in deciding whether to approve a franchising framework. The approach is designed to secure the independence of the panel's decision making. The regulations and the 2019 act provide guidance to panels on what they must consider when assessing a local transport authority's franchising proposals and provide further clarity on what is and is not relevant to the panel's decision making.

We have engaged closely on the development of the regulations with key stakeholders, including local transport authorities and the traffic commissioner's office, and their involvement has been crucial in creating procedures that will ensure that the approval process is transparent and impartial. There is a keen appetite among a range of parties and stakeholders—including MSPs, some of whom are sitting here today—for franchising to be available to local transport authorities.

Calling for amendments to legislation or failing to pass the regulations will result in Scotland falling further behind in delivering franchising to improve services for passengers, as any proposal

that would seek to significantly amend the panel process as set out in the 2019 act would require primary legislation. As committee members know, policy development of that sort can be significant and would not be completed before the end of this parliamentary session. As I have said, the regulations make important provision on the operation of panels as envisaged by Parliament when it passed the 2019 act, and annulling them could result in local transport authorities deciding to delay any franchising proposals, because of legislative uncertainty.

I am happy to answer any questions that members might have.

The Convener: When I was welcoming people to the committee, I should also have welcomed Graham Simpson, who has joined us today. He will get to ask questions at the end of the evidence session.

I thank the minister for his opening statement. It is interesting that we have a committee member who sat through the passage of what became the 2019 act as a member of the Rural Economy and Connectivity Committee and who therefore looked at that legislation in some detail. We also have an ex-cabinet secretary for transport who was responsible for the legislation, so we have some knowledge of it.

I do not think that the relevant section of the 2019 act was highlighted as a problem when it came before the REC Committee, but it is being highlighted now, as the system in question will be used in Scotland and nowhere else. Does that justify our using it in Scotland and sticking with something that the Parliament was perhaps not made aware of when it voted on the legislation?

Jim Fairlie: I was not even sitting in the Parliament in 2019, so I cannot answer for the decision-making process at the time, but I trust the parliamentary procedure, and I trust that the people who look at regulations or acts as they are going forward do their due diligence. Therefore, we are where we are.

As for whether we should continue with this, we face a stark choice—either we do not continue with it or we do. If we do continue with the regulations, franchising will happen more quickly. If we do not continue with them, we will have to change primary legislation, which, as you know, is not the simplest thing to do and will require a great deal of time and energy.

The Convener: There were a lot of amendments to the 2019 act—I seem to remember sitting in the committee and dealing with more than 100 amendments on the workplace parking levy alone—so the fact that this was a failed system might have gone slightly under the radar. How long would it take the Government, if it

were so minded, to bring forward primary legislation to change this very minor part of the 2019 act? I think that we are talking about section 38.

Jim Fairlie: We would not be minded to change just this provision. We would have to change the act, which would take us beyond 2026.

The Convener: Why would you have to change the whole act, if this is just a part of it?

Jim Fairlie: Because it is set in primary legislation. It is part of the 2019 act, so we would have to go back to the beginning and start again.

The Convener: Can you not change a section of an act through primary legislation? It looks as if Bridget Bryden wants to help me out—I might have got this confused.

Bridget Bryden (Scottish Government): It would be possible to make such a change, but we would have to look at the whole Scottish franchising model. The provision has been built in as a safeguard, and we would have to look at whether an alternative safeguard might be needed.

The Convener: Committee members have a lot of questions. I will bring in Mark Ruskell first, to be followed by Douglas Lumsden and Monica Lennon.

Mark Ruskell (Mid Scotland and Fife) (Green): Good morning. Minister, will you explain why a franchising scheme that is approved by a panel is less likely to be subject to legal challenge than one that is approved by a transport authority? That seems to be a key reason why the Government at the time decided to go down this route.

Jim Fairlie: Such a scheme could still be challenged legally but, if it has gone through a panel, that panel will have looked at the requirement for a franchise to be established, the financial model and the business case, as well as consulting other local authorities. It is about crossing every t and dotting every i and making sure that all the processes that we agree with the traffic commissioner are in place and have been fulfilled, so that the case for a franchise is as robust as possible. A scheme could still be legally challenged.

Mark Ruskell: In relation to the risk, you will understand that there is concern about the panel model, and there is not good evidence that that kind of system has worked well across the United Kingdom. However, your key argument is that going down the panel route reduces the risk of legal challenge. What evidence do you see for that?

Jim Fairlie: Under that approach, a scheme is robustly scrutinised by an independent body that has no political input and is separate from the organisations and the authorisers who want to put the franchise in place.

Mark Ruskell: Is there evidence that panels reduce the risk?

Jim Fairlie: Clearly, this is the first one that we have done, so we do not have evidence. As I said, a scheme could still be legally challenged, but this is a safeguard to ensure that everything has been scrutinised to the fullest extent and therefore that any cause for a legal challenge would be lessened. It means that everything that is required to be done in order to provide the services that we are looking to be supplied has been scrutinised at every level.

Mark Ruskell: You said that we are where we are with the legislation, but 2019 was some time ago, and a lot of water has flowed under the bridge with progress on bus franchising around the UK, so there is now a lot more experience. If you were to revisit the provision through a transport act, would you go down the same route? Given what we know about Wales, is this the best route to go down to secure franchising?

Jim Fairlie: Would I personally do that? I would not answer that question right now; I would go back and have a much broader look at everything right back to 2019. I have to be absolutely honest and say that I have not gone back and looked at the debates or the amendments or anything that was done leading up to the 2019 act. However, I reiterate that we are where we are today. Either we pass the regulations or we do not. On what will happen after that, we will just have to see where we go.

Mark Ruskell: My final question is about the guidance that could come on the back of this Scottish statutory instrument. You understand the concerns that have been raised in the petition to Parliament and I am sure that you have read the evidence and know of the experience elsewhere in the UK. What is your response to that? Strathclyde Partnership for Transport and others have a real stake and an interest in seeing this happen. What is your answer to them? How can you deliver reassurance right now through guidance or interpretation of the SSI?

I am trying to help you to find out what the solution is, because I want to see a solution, too. I want franchising to happen as quickly as possible. We are on the same page, but I am struggling to see what the fix is. I am frustrated for you, because a motion has been lodged to annul the regulations.

Jim Fairlie: We will have a memorandum of understanding, and the guidance is under

development. I suspect that somebody will ask whether franchising could go ahead whether or not the regulations are annulled. It could, and the traffic commissioner would still establish a panel but, without the regulations, there would be no conversation with officials or the Scottish Government about what the panel would look like, what its make-up would be or what its parameters were. The guidance that is under development will be part of the legislation, which will allow us to have full input into what the commissioner will do when they set up a panel.

My understanding is that, in 2019, we wanted to ensure that there was no political interference in something that is so big and so important and that it would be done independently. The process has to be gone through. It is not that simple to cut the corners. We can put it into the memorandum of understanding that the guidance that is under development will provide the parameters that the traffic commissioner will work to. If the regulations were annulled and if we continued with franchising, the traffic commissioner would make the decisions and we would have no input whatsoever.

09:15

The Convener: Douglas Lumsden has some questions.

Douglas Lumsden (North East Scotland) (Con): I will pick up on that point first. Minister, you seem to be saying that, if the instrument is annulled, the panels will continue anyway.

Jim Fairlie: Yes—that is in primary legislation.

Douglas Lumsden: If the instrument was annulled, what would the Government's response be? What would its next step be?

Jim Fairlie: If the regulations are to be annulled, I assure you that the rest of my day will be scrapped—let me put it that way. We will go away and have a long and detailed conversation about what will happen next. If the instrument was annulled, the panels would still be implemented and they would then be decided on entirely by the traffic commissioner, without any input from us. That would be the net result.

We would then have to consider whether that was a road that we were prepared to go down or whether we had to stop the approach in its entirety. That is why I am saying that we would be going back to square 1.

Douglas Lumsden: You say that that could happen. Would it happen, or would there be changes? I am slightly confused because such a system was tried in England, but it did not work and it has been scrapped there. Wales is doing something completely different. I am confused

about why we as a committee and a Parliament would approve what we see as a failed process.

Jim Fairlie: The process that you talk about being used down south is the Nexus process, which was different from this one. That looked at financial aspects; we are looking at the entire effect of franchising.

I will give you an example from my area. There are cross-border issues with bus provision in my constituency, and I give this as a purely random example of a possibility. If we decided in my area to go down a franchising route, we would be required to talk to all the other areas in our locality, so that there was joined-up thinking.

The process that was used down south failed the scheme on finances. My understanding is that the business case was not robust enough, so the proposal was then rejected.

One of the beauties of what we are proposing to put in place is that anyone who wants to go down the franchising route—it will be entirely their choice whether to do so—will have to be absolutely clear in their mind that they have put forward the strongest business case, that they have consulted everyone who has a stake and a vested interest in what the franchise looks like and that they have spoken to their neighbours, because everyone knows that if you want to plant a hedge, that will affect your neighbour, and this is a similar kind of thing. Those involved will have to ensure that they have taken the biggest possible picture that they can in deciding that they want to do this and that they are going to go down this route.

Douglas Lumsden: Yes, but after speaking to your neighbours, you would think that you would learn some lessons. From your evidence at question 6, it seems that the Government has no plans to revisit the 2019 act, so I guess that you are not really going to be changing anything.

Jim Fairlie: We could revisit the act if people wanted us to do that, but we would have to forget about franchising between now and 2026, because we would have to go back to stage 1.

Douglas Lumsden: Will there be any franchising between now and 2026?

Jim Fairlie: We are in the process of working towards getting stuff done now. We are a long way down the road. I was not in the Parliament when the act was passed, so I do not know why it has taken us so long to get to this point from 2019, but we are where we are and work is being done right now. Conversations are being had about allowing the memorandums of understanding to be established so that we know what the guidance looks like.

If the regulations are passed, we will proceed at pace to get the work done as quickly as we can. I ask Sharon Wood or Bridget Bryden to speak about the timescale for progress. If we get the regulations through today, what will be the timescale for the next stage? Where would we go from here?

Bridget Bryden: After this set of regulations, we require to bring forward one more on franchising. We had hoped to make those regulations before Christmas but, realistically, they will now be produced after Christmas. They concern the process of transitioning into and out of a franchise.

As the minister mentioned, guidance is being developed to support local authorities. We have been engaging with local transport authorities on the draft of that and we will be looking to publish that in the new year. At that point, all the legislative processes will have been completed, so any local authorities that are starting franchising will know exactly what the expectations are as they go through the system.

Douglas Lumsden: There is a criticism that the panel could potentially delay franchising. Do you accept that?

Jim Fairlie: No. The panel will be required to make its decision within a six-month period, although it will be up to whoever is presenting the franchising proposal to ensure that they have done all the work that they need to do for it to be progressed.

We are taking a belt-and-braces approach. Anyone who cuts corners will get stopped, so why start in the first place? It is a matter of having certainty that someone else is taking another look—and they might say, “You didn’t do that bit.” Those who are making a proposal should therefore do it right in the first place.

Douglas Lumsden: I completely agree with that. However, we should be learning lessons from England and Wales, where people have tried to do the same thing. The approach has not worked there, but we are carrying on with it.

Jim Fairlie: The approach that was taken there was based on the financial model alone; it did not take the whole picture into account. That is the fundamental difference. The proposal there was rejected on the basis of a financial model.

Clearly, the financial model is a really important aspect. We want to ensure that the business case has been made to the fullest extent, and it will include everything else. We are not comparing apples with apples here; we are comparing two different things.

Douglas Lumsden: Would our panels not consider the financials, too?

Jim Fairlie: Of course they would. They would be looking at everything; that is the point that I am making.

Douglas Lumsden: So—

The Convener: I am sorry, Douglas—I have given you quite a lot of time on that, and other committee members wish to come in. I will bring you back in afterwards, but I would like to widen the discussion, rather than hear just from you and the minister. I will bring in Monica Lennon, and we will then see who is next.

Monica Lennon (Central Scotland) (Lab): Thank you, convener, and good morning to you, minister, and to your officials.

We all want to get this right; that is not in doubt. Mark Ruskell is correct to say that we are on the same page and that we want to get it right.

I will follow on from Douglas Lumsden's questions. The committee has asked a number of experts to give us their views, and we are grateful for the responses that we have received. It is important that we try to learn from practice elsewhere. You can correct me if I am getting any of this wrong.

One of our witnesses, Jonathan Bray, a transport expert who advises the Welsh Government, said in his submission to the committee, referring to the English quality contract scheme, that the proposal for Scotland

“proposes powers that go beyond the English ‘QCS board’. The ‘QCS board’ was only required to make a recommendation, with the transport authority making the final decision on whether to proceed. However, the proposed panel in the draft legislation is given the duty to make the approval for a franchising scheme. This will put great weight on the decision of the panel and may leave the panel at risk of judicial review from incumbent monopoly bus operators. Again risking the panel leaning towards the safer option of rejection.”

I would be interested to hear your response to that, minister. If expert voices from elsewhere are saying that we should not follow that discredited route, would you not agree that this is a good time to pause and reflect? We want to get this right.

Jim Fairlie: Absolutely—we want to get it right. However, I go back to a point that I made previously. If we stop and we do not proceed with the measures that are before us, we will potentially go back to square 1.

On the evidence that you heard from Mr Bray and the proposals that were rejected, there had been a recommendation, as opposed to a final decision. We could turn that round the other way: if a transport authority knows that the final decision could be taken out of its hands, then—going back to the point that I made to Mr Lumsden—it will make damn sure that it gets it right in the first place. It will therefore do all the work and the due

diligence that it needs to do to ensure that, when it presents its proposal to the panel, it has done absolutely everything within its power.

Monica Lennon: I know that we do not have all the time in the world today, but let us consider the submissions from Get Glasgow Moving and other organisations that have a lot of expertise, in which the strong view was expressed that the panel approach would not be the right one for Scotland to take. I hear your point about the fact that, if we do not approve the SSI and we cannot give guidance to the traffic commissioner for Scotland, they will go ahead and appoint a panel anyway. However, surely we—Parliament and Government together—have an opportunity to say today that we will have to take a different approach, having reflected and looked at the evidence and at practice elsewhere.

My concern is about whether, irrespective of whether they are given lots of guidance, the traffic commissioner for Scotland is the right individual to appoint the panel. Without getting into a big constitutional discussion, I see that the point is made in the submissions that this would undermine devolution. The Scottish Government is seeking to give the final decision to the traffic commissioner for Scotland, who is appointed by the UK Government. I know that you have said that annulling the instrument would take us back to square 1, but maybe it would not be a bad thing to use the time to get it right. Is that not an attractive opportunity for you?

Jim Fairlie: I could turn that round and ask, “If it is not the traffic commissioner, then who?” Who would be the decision maker? Do you want the decision to come back to ministers? That would bring the matter back into the political sphere. It was decided in 2019 that it would be taken out of the politicians' hands, and that is where we are.

I am sorry, but what was the second part of your question, Monica? I did not write it down. I apologise.

Monica Lennon: You are comfortable that it would be the traffic commissioner regardless of—

Jim Fairlie: I am comfortable that it would be the traffic commissioner for Scotland, on the basis that we will be allowed to create a memorandum of understanding and guidance.

I remember the second part of your question now. The Secretary of State for Transport appoints the traffic commissioner for Scotland based on the fact that there are both devolved and reserved matters in traffic legislation in Scotland. I voted to come out of the UK in 2014. The result of staying in the UK is that, in 2024, we still have tie-ups with another Parliament. Therefore, we live within the bounds of what we voted for in 2014.

The proposal is not about taking powers away from the Scottish Government or from the Scottish Parliament. This is about the reality of the position that we are in: the traffic commissioner looks at reserved and devolved matters, so it is the UK Government's right to say that the traffic commissioner for Scotland will be appointed by the secretary of state. One of my officials sits on the panel that will go through the process of employing someone in that role. Ultimately, it is a UK Government decision, because we voted to stay in the UK in 2014.

Monica Lennon: Okay—I do not want us to get too distracted from the issue at hand today. As a Parliament, we have decisions to make and we want to get the best possible system for franchising, because that is what we want to happen. The issue comes down to the question of time and delay. Although I am sympathetic to the principle behind the motion to annul and what it is trying to achieve, when I saw it, my concern was that it could lead to delays and get in the way of franchising. However, no franchising proposal is sitting on the table right now. Therefore, I am interested to know when the Government expects the first proposal for franchising to reach approval stage. I am trying to understand how much time we have to play with.

Jim Fairlie: A consultation is on-going at the moment with—

Bridget Bryden: They will be consulting shortly.

Jim Fairlie: Sorry—my apologies. Let me correct the record. They will be consulting shortly on whether they are going to go for the franchising model.

Monica Lennon: Just to be clear, who is consulting?

Jim Fairlie: Strathclyde Partnership for Transport.

Monica Lennon: You expect there to be a consultation. How long will that last?

Jim Fairlie: I will let Bridget Bryden answer that.

Bridget Bryden: SPT is currently working on its regional bus strategy. It has expressed a preference to franchise in its area, but it has not yet committed to that. I think that it has said that it will make a final decision in the spring.

Monica Lennon: Is that the spring of 2025?

Bridget Bryden: Spring 2025. I am sorry for not having briefed the minister sufficiently on that point. I am not sure, but I think that a further consultation would be required.

09:30

Monica Lennon: Right, so it sounds as though there is a bit of time to play with, in that nothing is happening quickly. If we were to agree to the motion to annul the instrument, we would not be getting in the way of the SPT process, which has not started yet. I just wanted to get that on the record.

Jim Fairlie: Yes, there is time in hand.

Monica Lennon: Realistically, if the consultation gets under way in the spring of next year, when is the earliest that the strategy could reach the approval stage?

Bridget Bryden: I cannot speak for SPT or about the level of work that it has done to date. It has not yet started the official process that the act requires. I do not know whether it would be willing to do that without the legal certainty of all the requirements that it would have to meet. If it were to do so, I think that it said that it would take it five years to go through the full process from getting a franchise to having the first buses on the ground.

Monica Lennon: This will be my final question, because I know that convener is keen to let others in. I am just trying to understand the position. You raised the question of possible delay if we were to vote to annul the instrument. If the consultation ended some time next year, do you expect that the final approval stage would happen in 2025, or could it go into 2026?

Bridget Bryden: Again, it depends on the outcomes of the consultation. If SPT makes a final decision to go ahead with franchising, we would expect to hear something next year. It will then have to go through all the processes that are set out in the act. At the moment, it is consulting on its regional bus strategy. It has not developed its franchising proposals, or consulted on those, and it has not gone through the process for an order.

Monica Lennon: So the process is still at an early stage. That is helpful.

The Convener: Before I come to our deputy convener, I would like to clarify a simple point. If the instrument is agreed to, and the next legislation is passed, when is the first year that we could expect to see buses moving into the new process that you suggest could happen?

Bridget Bryden: Based on the legislation alone, if we assume that a local authority has already done all the work in the background, but—

The Convener: No—that is an assumption that you cannot make; we must start from where we are at the moment.

Bridget Bryden: If we start from where we are at the moment, let us assume that the authority has done all the research that it needs to back up

its business case and is just waiting for the legislation to be in place before it starts the formal processes under the act. By the time that it has gone through all the consultations and has drawn up a full document, it would take perhaps a couple of years to get to the point of approaching the panel.

The Convener: Before approaching the panel?

Bridget Bryden: Yes. Then it is a six-month period for the panel decision.

The Convener: So we are talking about 2026 as a minimum—possibly 2027, if there is not a fair wind and not everything has been done. I just want to get that into my brain so that I understand it.

We come to questions from our deputy convener.

Michael Matheson (Falkirk West) (SNP): The committee has received only limited evidence on the matter. Only one individual and two organisations have so far provided evidence, because the committee has had little time to pursue the issue. In the latter part of the evidence that we received from Get Glasgow Moving it referred to SPT's own timeline for the Strathclyde regional bus strategy process, which is part of its review of the franchising model. It set out that

"its franchising proposals will not be ready for the full independent financial audit (to be followed by the statutory public consultation) until the end of 2025."

It went on to say:

"This means that they will not be ready for final approval until later in 2026."

It then explained:

"This gives a window of at least a year for the necessary legislative changes to be made".

Does that timeline for SPT seeking to take the matter to a panel sound right, given the evidence that we have received?

Bridget Bryden: I think that that estimated timeline has been taken from SPT. It published a number of documents last year, and that estimate was in one of those.

Michael Matheson: I believe so. From the check that I have made, it published documents in 2023. That is its own timeline. On the basis of that timeline, and that evidence, that would mean that a decision on whether to go to a panel would have to be in place by the end of 2026. Is that correct?

Bridget Bryden: SPT is the first authority in Scotland to provide a timeline for developing franchising, and that is the timeline that it has given. We are not aware that anyone would want to come in ahead of it.

Michael Matheson: I am questioning that because of what Get Glasgow Moving said about what would happen if the panel issue was not resolved. To be fair to it, I am paraphrasing what it said and it might want to challenge this, but it said that, if the requirement for a panel cannot be removed within that timeframe, the SSI should be passed as an interim measure only, with a view to doing something more appropriate in the future. With regard to the timeline that SPT has set out, is it likely that primary legislation will be brought forward between now and the end of 2026—or at least later in 2026—to remove the requirement for a panel to consider any franchising proposal?

Bridget Bryden: We have not made any preparations for legislation and I am not aware of any suitable legislative vehicles.

Michael Matheson: Therefore, your answer to that question is no.

Bridget Bryden: Realistically, the answer is no.

Michael Matheson: Therefore, if SPT took something forward later in 2026 and the SSI had been annulled, we would be in the situation that ministers have set out, namely that the traffic commissioner would have established a panel but that we would have no control over how the panel operated because of the existing arrangements in primary legislation. Is that correct?

Bridget Bryden: Yes.

Michael Matheson: Get Glasgow Moving is saying that, even if you oppose the idea of a panel, given the timelines that SPT has set out, it would be better to take the SSI forward as an interim arrangement to allow it to make progress on the matter but with a view to the Government considering whether, in the future, there might be a more appropriate mechanism than the panel system set out in the legislation. Would the Government consider that, given the concerns about the panel?

Jim Fairlie: I would need to consider that.

Michael Matheson: I am conscious that that matter is not necessarily entirely within your portfolio responsibilities. However, like any good Government, you would always want to learn lessons from experience and build on those. I have no doubt that, if the Government felt that there was a more appropriate mechanism in the future, it would want to introduce that.

Jim Fairlie: Yes.

Michael Matheson: However, that legislative change would not happen before the end of 2026.

Jim Fairlie: That approach would allow the process to continue just now to allow anyone who is looking at franchising to work on the basis that we are where we are and that we are moving in

the direction that we are moving in. However, I am very aware of the concerns that have been raised by committee members. I have read the evidence, so I am very aware of those concerns. I cannot give any guarantees, because, ultimately, the cabinet secretary will make the decision. All that I can say is that I am now acutely aware of some of the concerns that have been raised.

Michael Matheson: You also cannot bind any post-2026 Government anyway. I am conscious that, even after an election, legislation tends to get pushed back as committees are established and priorities are set. That is helpful, thank you.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Will the guidance that will be implemented learn the lessons of the Nexus experience in 2015? There will be cognisance of the fact that the UK Government changed its position through the Bus Services Act 2017, but I also note that the act that we are fully implementing today was passed in 2019. I suspect that everything that we have heard about today, when we have spoken about the need to learn the lessons from what happened elsewhere, was already known when that primary legislation was passed in 2019.

I note that the Welsh experience is still fluid with regard to a national franchising system, and that that system is completely different from what would happen in Scotland. Therefore, will the guidance take into account the experiences in England and Wales in order to ensure that the situation is balanced, proportionate and fair to SPT and others, so that there is a reasonable expectation that a strong and robust case will be approved by an independent panel?

Jim Fairlie: I ask Bridget Bryden to answer that, because she is working through the regulations, at the moment.

Bridget Bryden: We have engaged with the Welsh and UK Governments and with some of the mayoral authorities in England that are developing franchises, or which have franchises in place, to learn from their experience. That is informing the work that is going into the guidance document.

Bob Doris: Is that a very concise way of saying that the Scottish Government will take into account people elsewhere's experiences of raising issues with independent panels that are not necessarily—albeit that I do not want to use this word—competent? I suppose that some of the narrative around this would be that, if you are dissatisfied with an outcome, you do not like the panel. Is the Scottish Government confident that lessons that need to be learned will be learned during development of the guidance?

Bridget Bryden: The independent panel model was tried only once in England. We are looking at

drawing from experience that is wider than just experience of the panel model. The Scottish model that went through Parliament takes a different approach to the franchise model that operated in England at the time when the panel sat. One key thing that the minister mentioned is that there is an audit of the financial situation—the business case—before we even get to a consultation, so some issues should be addressed far earlier in the process than was the case when the Nexus case was considered.

Bob Doris: I am mindful that SPT has been mentioned a few times, convener. Although I am sure that it will be well aware that the statutory instrument exists, it has not proactively contacted the committee about it. Has SPT proactively contacted the Government about it, minister? Will it be a key partner in consultation on guidance that might flow from the statutory instrument?

Bridget Bryden: A working group of local authorities has been feeding in to the work on all the legislation that is coming through the Transport (Scotland) Act 2019. SPT sits on that group. We also engage with it separately on individual concerns. It has engaged with us. I do not think that it has written to us about panels, but it speaks to us regularly and has written to us about various points.

Bob Doris: So, leaving aside various points on which the SPT and others would want a statutory instrument or guidance to reflect what they think is the best design and structure of the arrangements, can you confirm that you are not aware of any overarching or underlying issue for SPT? Can you also confirm that it will, as a matter of course, be consulted on the drafting of guidance?

Bridget Bryden: SPT has not reached out to us in relation to the regulations. As I said, it was consulted when we were developing the panel model. We will definitely consult it on the guidance. As I said, it sits on the working group. It has already made valuable contributions to the draft guidance.

Bob Doris: All roads lead back to the guidance, convener.

If the pathway to franchising does not include passing this statutory instrument, will there be no guidance for a panel to look at? Will it, if you like, create its own guidance and decide its priorities for itself? In other words, decisions would still be made by a panel, but it would be less likely to base those decisions on guidance, which would be in the public interest. Is that your understanding?

Jim Fairlie: The traffic commissioner would have the authority to decide all the parameters for the panel. The panel will still be established if we continue on the same route.

Bob Doris: Okay.

Get Glasgow Moving has a live petition, which is not with the committee as yet, although I suspect that it might end up with us. I thank it for its briefing and dialogue ahead of today's meeting. It asks for two things that appear to be contradictory: it wants to fully enact the franchising provisions of the 2019 act, which the instrument seeks to do today, but it also wants a speedier, more streamlined and easier system to secure franchising.

I am not speaking for Get Glasgow Moving—it will be watching the meeting carefully and will speak for itself—but, similar to what Michael Matheson said, if we complete the powers of the 2019 act, will the Scottish Government continue to monitor what is happening elsewhere, learn lessons from that and, if required, reflect and change course? In other words, it will not be a myopic Scottish Government that passes the instrument and says, "Job done", but will continue to review what is happening elsewhere.

Jim Fairlie: With regard to the asks of Get Glasgow Moving, I had a quick discussion and debate with Ellie Harrison of the group before we came to the meeting, and a lot of those points were raised. She made a strong argument and is very good at what she does. She is asking for streamlining, but our position is that we want to get franchising done, and we want it to work. The panels are part of the 2019 act. If the committee does not pass the SSI, we will still have the panels and the Government would then have to decide how we will take that model forward.

09:45

With regard to our scrutiny of what happens as we move forward, we will absolutely keep a close eye on how the model develops, what the guidance will look like and how that will all be implemented.

Bob Doris: I have one final question. I highlight that the third bullet point of the petition from Get Glasgow Moving relates to cash—the finance and money to make all this work. Points 1 and 2 are moot if there is no cash in the system to do these things.

If a future Government were to decide to unpick the provisions of the 2019 act, that would—as we have heard—involve another full review of the franchising system, which could take quite some time.

Mr Lumsden will, during the debate, tell us his motivations for wanting to annul the instrument. It is for him to speak for himself in that regard; however, some politicians simply do not agree

with franchising and will use any tool in the toolbox to wreck the proposals.

Would you be concerned that, without anything to replace the pathway to franchising, there is a risk that what replaces it in a future session of Parliament might not be as robust as what we currently have?

Jim Fairlie: There might well be such a risk, but my focus right now is on where we are and how we take the proposals to the next stage in order to ensure that franchising actually has the opportunity to go ahead.

The Convener: I call Douglas Lumsden, to be followed by Monica Lennon.

Douglas Lumsden: Thank you for allowing me back in, convener.

I want to pick up on one point, minister. You said that the panels will still be created if the SSI is not approved today. However, with regard to the timescales for creating panels, it sounds as though SPT is furthest on in terms of franchising, although that is still many years away. Surely that gives you time to look again at the legislation and the franchising models, and to ensure that the panels are actually in place. Is that not correct?

Jim Fairlie: It is, but I go back to the point that Mr Matheson made. We have a timescale in which to get things done, so I would much prefer that we get the SSI passed now to allow us to progress the work on franchising and to ensure that we continue making progress such as we have already made.

Douglas Lumsden: If the SSI is not passed, that will not really change the timescale. We have heard that SPT is the furthest on, but it is still continuing its work and completion is still a long way off. It would surely be better, therefore, to correct the legislation—as I would put it—as opposed to pushing on regardless and missing this opportunity to get it correct.

Jim Fairlie: You talk about correction, but what does that mean? It means that we would go back to the primary legislation, and I can only see that creating a much longer delay, going into the next session of Parliament.

The Convener: Mr Lumsden, you said that you had a question, but you have asked two, at the last count.

Douglas Lumsden: I will leave it there, convener.

The Convener: We will continue the discussion under the next agenda item, so I am sure that you will have a chance to return to your questions if you get to speak in that debate. That will be up to you.

I call Monica Lennon.

Monica Lennon: You have said that the decision on what will happen next is ultimately for the Cabinet Secretary for Transport. Ahead of today's meeting, have you discussed the matter with the transport secretary, or do you know her view on it?

Jim Fairlie: No. I envisage—and very much hope—that what will happen next is that the committee will pass the SSI today, which will allow us to continue to move forward with franchising. If that is not the case, I will have to go away and we will have to have some discussions.

Monica Lennon: To be clear, then, in preparing for today's committee session, the Government has not thought through the scenario in which the SSI could be annulled today, and you are in front of the committee without a plan B. We are looking for as much certainty as possible on what the Government would do next.

Jim Fairlie: I did not speak to the transport secretary when I learned that the motion to annul was being lodged. I looked at the concerns and at why this was becoming an issue. I take on board the issues, but I go back to the primary point that I made, which is that if the committee does not pass the SSI, that will set us back considerably.

Monica Lennon: Just to be clear, in preparation for this morning's committee session, views have not been sought from the cabinet secretary, and you and your officials have not reached out to SPT or to any other regional transport partnership for their views.

Jim Fairlie: No, that is not the case. Strathclyde Partnership for Transport is part of the on-going process that the officials—

Monica Lennon: Have you spoken to SPT about the SSI?

Jim Fairlie: We have not spoken specifically about the SSI.

Monica Lennon: I am talking about the SSI: that is the matter that is in front of us right now.

Jim Fairlie: SPT is aware that the SSI is on-going. My expectation would be that, if it was concerned, it would reach out and make its issues known.

I think that you are alluding to due diligence not having been done by the Government. I do not think that that is the case. We learned late on Friday that there was a motion to annul, so we are now sitting here on Tuesday morning. I spent my time speaking with officials and asking what the issues and problems are, how we could get around them and what the implications will be. Let us assume that we will get this SSI done and we can continue, but if we do not, we will have to go

away and give it further consideration. I would not do that over one weekend; I would ensure that we give it proper consideration.

Monica Lennon: I was not trying to trick you about due diligence. I am trying to establish what happens next, because that is what interests me, as someone who has to vote on the SSI today. I was hoping to hear a bit more certainty about the Government's position. The Government understands that the committee might not vote as it wants it to vote today, so we want to know what will happen next.

Just so that we are clear, you have not discussed the issue with the cabinet secretary and it has not been discussed with key partners, including SPT. The committee would therefore have to have faith that you are going to go and talk to people, but we do not know what that conversation would be like. That is all; I will leave it there.

The Convener: We now come to questions from Graham Simpson.

Graham Simpson (Central Scotland) (Con): Thank you very much, convener. It has been a very full and interesting discussion so far.

Minister, the key question, which has been raised already, is basically what will happen if the regulation is annulled today. From what I have heard, given the timescale and where SPT is at, at the moment, it seems that there is time to introduce fairly minor primary legislation to change the system while SPT carries on with its consideration of franchising. Is that correct?

Jim Fairlie: No, I do not think that that is correct: we would have to change the 2019 act. That could not be done in a short timescale. I keep reiterating that we either pass the regulations or we do not, and we have already debated the consequences of that.

Graham Simpson: I understand that. It is a negative instrument. We either pass it or do not pass it—we accept it or reject it. If it is rejected, there is nothing to stop SPT continuing with its work.

Jim Fairlie: Yes—SPT can continue with its work.

Graham Simpson: You would then consider your legislative options, in the meantime. Is that correct?

Jim Fairlie: Yes. When we consider the legislative options, I would take that back to the cabinet secretary.

Graham Simpson: Given what we have heard already, whatever happens, it will be at least 2026 before anything happens, so there is time to do that.

Jim Fairlie: Yes, there is.

Graham Simpson: Okay, I will leave it there.

The Convener: There appear to be no more questions. We will move on to our next agenda item, which is consideration of motion S6M-15035, to recommend that the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024 be annulled. Douglas Lumsden, do you intend to move the motion?

Douglas Lumsden: Yes, I intend to move it.

The Convener: Thank you.

Therefore, I remind everyone that Scottish Government officials cannot take part in the formal debate. I invite Douglas Lumsden to speak to and move the motion. After that, other members may contribute, followed by the minister, then Douglas will wind up the debate and press or seek to withdraw his motion. Obviously, brief interventions can be taken at the discretion of whoever is speaking.

Douglas Lumsden: Bob Doris asked me about my motives for the annulment motion. I want to set out straight away that it is not about trying to derail franchising; it is about trying to ensure that we get it right. When I lodged the motion to annul, I did not think that I would move it. My idea was to listen to the minister's answers, then decide. From the answers that have been given, it is clear that annulling would not really delay franchising. We heard that in the answer to a question from Graham Simpson.

Bob Doris: Will the member take an intervention?

Douglas Lumsden: Of course.

Bob Doris: Can I get a bit more clarity about your position? If we do not implement the provision, do you envisage that we should still have a check and balance in the system beyond simply removing the role of the traffic commissioner? In other words, would we bring in a new provision that the Conservatives think would be appropriate or, as others have suggested, would we just not have the check and balance in the system?

Douglas Lumsden: We need to have legislation that is correct and which works. It is up to the Government to review what is in place and then to bring forward changes that will actually do what we want to do. We have seen evidence on the experience in other parts of the UK, where the approach has not really worked. Wales is doing something completely different. I understand that that is not comparing apples with apples, but it is right that we learn lessons and try to improve the legislation.

It would be wrong for us just to say, "This is what was decided back in 2019 and we need to move forward with it regardless." That would be daft, and we would potentially end up in a worse situation. I was concerned that annulling the SSI would delay things. However, from what we have heard today, I gather that SPT will continue with its work. We already seem to be stuck in the slow lane with franchising, and annulling the SSI would give us a little bit of time to make sure that we get the legislation correct and can then move forward with a franchising model that will work for us all.

I move,

That the Net Zero, Energy and Transport Committee recommends that the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024 (SSI 2024/229) be annulled.

The Convener: I am looking for members to contribute. I have Mark Ruskell first, followed by Bob Doris.

Mark Ruskell: I welcome the fact that Douglas Lumsden has moved the motion to annul, because it has enabled us to have a full debate, discussion and exploration of all the issues, which I felt were lacking at our previous meeting. It is good that we now have the opportunity to do that.

I believe that there is a strong consensus in the committee and in Government and that we want bus franchising to work in this country, but I cannot ignore the evidence that has been presented. We need to have a fair and robust decision on franchising—that is absolutely critical. It seems that we have two options. If the SSI is annulled there will still be a panel, although it will be a decision-making panel that will be appointed by the traffic commissioner. If the SSI goes through, there will still be a panel that is appointed by the traffic commissioner, but there will be additional guidance from the Scottish Government.

Douglas Lumsden: Will Mark Ruskell take an intervention?

Mark Ruskell: Yes—briefly.

Douglas Lumsden: Does the member share my view that a panel will not be created imminently and that, once the Government gets things corrected and has a system that we can all agree on, we can potentially have a panel, or something else, at that stage? The transport commissioner is not going to create a panel at this time.

10:00

Mark Ruskell: It has been useful to understand the timescale for the appointment of the panel. However, regardless of whether we annul, we will still have a panel in place, and I am not convinced that having guidance for the appointment of that

panel will change the fundamentally flawed system that was put in place by the 2019 act. I do not think that the guidance will make much difference. We have heard today that it will not make a difference to the timescale that SPT is using in working out its proposal.

The Government keeps trying to bang a square peg into a round hole. I appreciate that the issues of the complexity, difficulty and risk of having a panel were not foreseen when the bill was going through Parliament some time ago, but the Government should now rapidly reflect on those concerns and bring forward a system that offers genuine certainty while being fair and robust.

We heard evidence from an adviser to the Welsh Government, who suggested that Scotland might become a backward-facing outlier because of its commitment to the panel system. I do not think any of us want to go there. That was not foreseen during the passage of the bill in 2019, but that is where we are now. We must look at experiences elsewhere in these islands, and across Europe, to see what works in getting franchising over the line, reducing the risk to transport authorities and getting a fair decision. I struggle to see how having a panel, with or without guidance, will achieve that, because it will not fundamentally change the system that we have.

It is regrettable that we are where we are today, and that should give the Government pause for thought. I fear that we will go down a route that will not get franchising over the line and, because of that, I am prepared to support Mr Lumsden's motion to annul.

Bob Doris: Hindsight is a wonderful thing. My issue with the 2019 act is that using a negative instrument is not the best way to make these regulations, which have "affirmative instrument" written all over them. We should give this a bit more time.

Having said that, I agree that we should take the path towards franchising, as was envisaged on a cross-party basis in 2019. The analysis of the possible issues with having an independent panel draws on the 2015 experience and the 2017 legislative changes, but we passed the act in 2019. Those experiences would have been considered at that time by Parliament and by the committee, which I was not on in 2019.

The one difference that I have with Mr Ruskell is that I think that guidance is key. We are close in many ways, because we want to see a franchising model that will benefit travellers, commuters and communities by taking a partnership approach. Guidance is key and will make a huge difference, so I would like to hear a little more from the minister about how that guidance will be pulled together.

Mark Ruskell: Would it not have been better for the Government to have come to the committee today with a far clearer articulation of what will be in the guidance? I know that preparing it would have put a lot of pressure on the minister and officials, but it would have been better to see the guidance. Then we could have made a judgment about whether it offered some reassurance on the integrity of the panel.

Bob Doris: I am not sure about that. I am sympathetic and am tempted to agree, but the regulations and the guidance will be what was intended by the 2019 act. There is nothing untoward in having guidance follow the passing of a statutory instrument.

However, if the regulations are not annulled, there is nothing to prevent the minister spending a bit more time with the committee before any guidance comes into force. That would be helpful to the committee and the democratic process.

If the regulations are annulled, we will still be left with a franchising system, but one that will be significantly inferior to what we will have if they pass.

The guidance will be an underpinning assurance that public interest is at the heart of the matter, and that the independent panel will make decisions in a prudent, proportionate and appropriate manner. It is really important that the guidance is put in place and that franchising comes into existence—which I suppose it is already. Not having guidance would weaken our franchising system, irrespective of what people would prefer an alternative franchising system to look like.

Douglas Lumsden: You said that we would end up with an inferior process if the regulations are annulled, but surely that will happen only if the Government does not make changes to get it right going forward.

Bob Doris: I appreciate that intervention from Mr Lumsden, because it gives me an opportunity to say that I do not believe that the process is inferior. The regulations will help to bring franchising into existence and enable the powers that are outlined in the 2019 act to be used. The debate that we are having is about whether there could be another way to do that.

I asked the minister whether the Scottish Government would continue to monitor what is happening elsewhere in the UK and beyond and whether, if the Government came to a view that there could be another way to do things, it would be myopic or open minded. His response was that the Government would be open minded. On the basis that the process will be inferior if the regulations are annulled, I will not support their annulment.

I would ask Mr Lumsden what his policy position would be if the regulations do not pass. Would it be to replace them with different checks and balances in the system, or would he want to remove the checks and balances? That goes to the heart of what we are talking about, because that was not articulated by the member when he proposed the annulment—he was silent on that issue. I am happy to take another intervention if Mr Lumsden can clarify what his preference would be—at the moment, we just do not know.

It is a worry for me if we start to change the goalposts on franchising without knowing what other people are intending. We could come out of a new legislative process with a weaker, rather than a stronger, commitment to franchising. I think that we have to let the regulations pass into law and retain the strongest possible franchising system that we can. If others want to look at a different system, we have elections in 2026 and I suspect that franchising will be an issue then.

Irrespective of whether the Government supports the motion, realistically, we all know that there will be draft legislation to review franchising in autumn 2026. Given that SPT could be ready to put something to a panel in winter 2026, I would not want to take the risk of annulling the regulations.

The Convener: Monica Lennon is the only other person who indicated that they wish to speak. I will go to her, then I will make a comment before we come to the minister.

Monica Lennon: I agree that is important that we are having the debate, and I thank Douglas Lumsden for lodging the motion to annul the regulations in order to allow us to have a fuller debate. To be clear, like others who have spoken in the meeting and organisations such as Get Glasgow Moving that have given their views to committee members, I want to see a fully integrated, affordable and accessible public transport network that better connects to the public. In the face of a climate and nature emergency and cost of living pressures, that has never been more important.

Before the committee went into public session, I was feeling a bit conflicted. I do not want there to be a further delay because we have not made enough progress, but I also do not want to double down on the bad practice that we have seen elsewhere.

We have had the benefit of time to reflect on the legislation, to look at what has happened elsewhere, and to listen carefully to the experts and campaigners who have taken the time to respond to the committee—I am grateful to all of them for doing that. It is clear that they are telling us that the model that we are looking at—which is

similar, although not identical, to others that have been used—has been discredited in other parts of the UK. The minister is shaking his head, but the committee has received what I think are credible statements saying, “Don’t do this—it would be a mistake.” I have not heard a response from the Government today that would make me want to put all that aside.

Do we go ahead, taking the chance that we are doubling down on bad practice that does not serve the people of Scotland well, or do we pause and use the time properly in order to make sure that we have the best possible system?

A few of us questioned the minister on the point about delaying. I do not think that by annulling today we are risking any timetable. We have heard that SPT is furthest ahead, but our actions today will not get in the way of the work that it has under way and, as a Parliament, we have time to work on this. For those reasons, and because of the evidence that I have heard today, I will support Douglas Lumsden’s motion.

It is regrettable that, in anticipation of these very legitimate concerns, the Scottish Government has not come to the table and told us clearly what its view is. It is concerning to hear from the Government that it expects bodies such as SPT and other regional transport bodies to come to it. The Government should be much more proactive in reaching out. The submissions are available on the Parliament website and I know that the Government pays attention to them. I would have felt more reassured if it had taken the time to reach out to key stakeholders. It is disappointing that it did not.

The Convener: Before I go to the minister, I would like to make a couple of comments. I started off this morning probably in the same position as Monica, not sure that a motion to annul would be the correct way forward. I have listened to the comprehensive evidence that we have taken this morning, which is quite interesting. I lived and breathed as convener of the REC Committee through the passage of the Transport (Scotland) Bill in 2019. I could probably quote some of the amendments and I saw where some of the issues were. The issue that we are discussing today was never flagged up then—it is not something that we saw—and the committee and the Parliament subsequently supported the franchising system.

Today’s meeting has demonstrated the Parliament when it is at its best, which is when we are doing something called post-legislative scrutiny. We are looking at something and saying to ourselves, “We’re not sure about this. We’re not sure if this is the right decision.” That is where we are at. Just because somebody is doing something elsewhere, following them and doing it in Scotland is not necessarily the right way to go.

I am not convinced by any of the arguments today that a motion to annul would delay the franchising system. In fact, I think that it will strengthen it. I think that it will make it better because everyone will buy into it and support it.

I do not want to put words into your mouth, minister, but you said that you were acutely aware of the feelings of the committee and that you would consider them afterwards. However, it will be up to the Cabinet, as a Cabinet Government, to decide whether changes can be made if the statutory instrument goes through. There is no guarantee to the committee that changes will be made if we allow it to go through. Things change—politics change—and therefore we cannot be sure of that.

For those reasons, and because I have very large concerns that what we are doing might not be the right way to go, I will support those members who said that passing a motion to annul is the right thing to do. I put on record that it is a testament to this committee that the process of post-legislative scrutiny of the Transport (Scotland) Act 2019, which is effectively what we have done, has been effective.

I now pass to the minister before I ask Mr Lumsden to sum up.

Jim Fairlie: Okay. It is quite clear where we are in the committee. I will make one or two observations.

Douglas Lumsden said that there will be no delays because we have the timescale. However, we have no idea whether SPT will continue with the process if it now has uncertainty about how things will go. I am not saying that there will be a delay, but there is definitely a risk of delay to the process that SPT is in. That is my first point.

Mr Lumsden also said that there will be no panel if we do not pass this legislation, but there will be a panel. The point has been made on a number of occasions that that panel will be put in place by the traffic commissioner without any scrutiny or input from the Government at any point.

Monica Lennon: I would like to get some clarification. You are suggesting to the committee that there is now a risk in terms of what SPT might or might not do. However, you have been quite clear to the committee today that you have not asked SPT what its position on that is. How can you be confident that annulling the regulations will increase risk?

10:15

Jim Fairlie: I did not say that I am confident about that; I said that it is a possibility. SPT is putting huge amounts of time and resource into the process of looking at its financial model and

everything else that it will have to do. The current position means that we are going to stall the progress of the legislation that would allow SPT to set up a franchise. If the regulations do not pass, SPT will have to decide whether it wants to continue putting the time and resource into that effort when it is not sure what the direction of travel will be.

Douglas Lumsden: You have mentioned SPT. What discussions have you had with it on the issue?

Jim Fairlie: I have not had any discussions with SPT. I am merely making the point that a huge amount of time and resource goes into the work that it is having to do around the process. If the instrument stalls today, I anticipate there being a risk that SPT could say that, until there is clarity on and certainty about what the legislation will do, it will pause spending money and putting resource into the process. I am merely making the point that that is a risk.

Graham Simpson: Every committee member who has spoken today is in favour of franchising—and it is in the 2019 act. The message to SPT from the Parliament would be that the Parliament is in favour of franchising. The only thing that has been debated today is an element of that, which is about the existence of a panel.

Jim Fairlie: If we carry on with the legislation as it is, there will be a panel, regardless. That goes back to the point that Mr Lumsden made. *[Interruption.]* I will let you finish your point. I apologise; that was rude.

Graham Simpson: No, that is okay. There does not have to be a panel.

Jim Fairlie: There does. It is in primary legislation.

The Convener: With respect to both of you—I know that you are arguing and it is always great to have an informed discussion—I would like the discussion to be through me, rather than being head to head, because I struggle to hear both people talking at once.

Jim Fairlie: I will restrain myself, convener.

Graham Simpson: It is quite all right; it is good to see the minister being passionate about the issue. It just seems to me that, if the motion to annul is passed and the SSI is annulled, the minister has to go away and rethink things. He has the opportunity not to have a panel, if he so chooses.

Jim Fairlie: I disagree with Graham Simpson's point. If the regulations are not approved and we continue the process of creating or finalising legislation to allow franchising to go ahead, the panel will be set up, because it is in the 2019

primary legislation. The panel will be established by the traffic commissioner, who will do that entirely separately and without any involvement of the Scottish Government, ministers or anybody else. It will be entirely up to the traffic commissioner. That point needs to be clarified before the committee votes. If we do not approve the SSI, there will still be a panel, but it will have no input at all from Government or officials. *[Interruption.]* We have clearly set something going.

The Convener: Yes. It is up to you whose intervention you take, but Bob Doris was first, followed by Monica Lennon, if that helps.

Jim Fairlie: I will take Bob Doris.

Bob Doris: Thank you, minister. I appreciate that there have been lots of interventions during your contribution.

If the panel is still to be set up, because that is in primary legislation, and no one can assume what primary legislation will or will not pass in this parliamentary session or after the 2026 election, would the current Scottish Government still seek to produce—or is it possible to have—non-statutory guidance that the Government would ask the traffic commissioner and the independent panel to take cognisance of, although they would have no need to do that whatsoever? My view would be that, if you can do that, I would rather have that guidance on a statutory footing rather than having a pick-and-mix, take-it-or-leave-it approach from the independent panel.

Jim Fairlie: The assurance that I can give the committee is that, if we approve the instrument, I will come back to the committee with the guidance as it develops. The committee can then scrutinise that guidance before it goes into the traffic commissioner's remit. However, once it becomes part of the traffic commissioner's remit, it is his or hers, because the whole purpose of the regulations is to cut the umbilical cord between the political side of things and deliver a process that the people of Scotland want. I am more than happy to come back to the committee to talk about the guidance and to try to get that agreed as we go forward. I can give that commitment.

There were other interventions. Was it Douglas Lumsden?

Douglas Lumsden: I think that Monica Lennon was going to come in next.

Monica Lennon: I am grateful—

The Convener: Let me clarify. It is up to the minister to say who he will take an intervention from. However, I note the extremely polite behaviour of all committee members and I encourage that at all times.

Jim Fairlie: Monica, you go first; my apologies.

Monica Lennon: Thank you. Everyone has been very nice on the committee today.

I accept that you have said that there will be a panel, but I want to go back a bit. You said that if the motion to annul was agreed to, you would be clearing your diary and you and your officials would spend the rest of the day considering what happens next. If we end up with an annulment, could you make a commitment that you would endeavour not just to liaise with the committee but to make a statement to Parliament?

Jim Fairlie: I am sorry; could you repeat that?

Monica Lennon: If we agree to the motion to annul the instrument today, in addition to coming back to the committee, would you also endeavour to make a statement to the Parliament so that we can consider the Government's position on the next steps? We are getting into the realms of amending the primary legislation, and the Government will have options.

Jim Fairlie: I will not give any commitment about what I will do if the instrument is annulled. The only commitment that I can give you is that, if it is not annulled, I will certainly bring the guidance back to the committee so that you can scrutinise it. Other than that, I cannot give any other commitment.

The Convener: I notice that members are trying to intervene. Before we started this discussion, I promised that I would not look at the clock, but it is inappropriate not to look at the clock occasionally. Members and the minister can infer from that what they wish. Minister, it is up to you to take any interventions that you feel are appropriate.

Jim Fairlie: I will go to Douglas Lumsden first and then come back to Mark Ruskell.

Douglas Lumsden: Thank you, minister. My point is about panels being created. Thinking about the trajectory that SPT is on, when would you envisage the panel being created, whether the SSI is approved or not? Would it be in 2026, 2027 or 2028?

Jim Fairlie: I do not know whether it is appropriate for me to check the dates or ask Bridget Bryden to take part.

The Convener: Your officials can slide you a bit of paper with the dates on it if you want.

Jim Fairlie: They can slide me a bit of paper with the current timelines. I am sorry, Mr Lumsden; ask me the question again.

Douglas Lumsden: Looking at the SPT's trajectory, when would you anticipate a panel being created, whether the SSI is approved or not?

Jim Fairlie: You are asking when the panel is to be created?

Douglas Lumsden: Yes.

Jim Fairlie: It will be sometime in 2026-27.

Douglas Lumsden: Thank you.

Mark Ruskell: I appreciate the minister giving way. It has been a very challenging session.

Jim Fairlie: It has been fine. There's been nae problems.

Mark Ruskell: You are rolling with it; that is great. I have just one point for clarification. Your official mentioned in the earlier discussion that one more piece of legislation is required to bring in the provisions for franchising. I would like to hear a commitment that that work will continue.

I welcome you saying that, even if you do not need to supply the guidance if the SSI is annulled, you will still work on the guidance and it will still be available for the traffic commissioner.

Some of the concerns that are being raised today come down to the independence of the traffic commissioner and their appointment. The minister will remember that the previous commissioner did an interview that appeared to be quite prejudicial towards franchising. That has really riled people, who want franchising to happen because that is in the public interest. What assurances can you give that the incoming traffic commissioner clearly understands their responsibilities and clearly understands that the policy priority of Government and this Parliament is for franchising to work successfully in Scotland, as is the case in Wales, where there has been a strong public commitment to that?

Jim Fairlie: I will defer to the convener.

The Convener: As you briefly answer that question, minister, I encourage you to come to the end of your winding up.

Jim Fairlie: Okay. I will clarify one point. Let me be absolutely clear that I said that I will come back to the committee with the guidance as we develop it if the motion to annul is not passed.

You asked about—I am trying to think carefully about the words that I use here—the integrity of the commissioner and their ability to make that decision independently. That goes to the heart of whether we trust people whom we give jobs to. We need to bear in mind that it will not be the Scottish Government who appoints a traffic commissioner but the Secretary of State for Transport. We might have someone sitting on the panel who will be part of that process, but the process of deciphering who the traffic commissioner will be is up to the secretary of state. We then have to accept the fact that that

decision is made and that that is the traffic commissioner with whom we will work.

I will make one final point. Monica Lennon talked about there being slight differences between the models. They were not identical at all. The system that did not pass in England looked only at the financial model. The model that we are looking at goes much wider than that.

I will wind up by saying that I would very much like the committee to rethink, given some of the things that we have said. Some members have said that they are minded to vote in favour of a motion to annul. The regulations will give us the certainty to continue with the work that we have already been doing for the past number of years.

We have had the debate, so I will leave it at that.

The Convener: I will ask Douglas Lumsden to briefly wind up.

Douglas Lumsden: I will briefly wind up. Like others, I did not come to the meeting today convinced that a motion to annul was the right way forward, but that was before I listened to the minister's answers. There seemed to be no real commitment to the process changing, so I think that a motion to annul is our only option. I do not think that we will be doing our scrutiny function any justice were we to continue to use the model, given the evidence that we have taken.

Jim Fairlie: What part of the process does the member want to change? We either have a panel or we do not have a panel. If we do not, that would require changes to be made to primary legislation. Does he want us to go through the primary legislation process in order to remove the panel, which would take us into 2026-27 or beyond, depending on what the political structures look like? What certainty would that give any organisation that is looking to establish a franchising system right now? If I were the chief executive of such an organisation and did not have a clue what the next Government, whatever shape or form it takes, would do on franchising, I would stop everything.

Douglas Lumsden: We have heard that there are no voices against franchising in the room; we just want to make sure that it is done in the correct way. You may pull a face about that if you want, but we have seen so much bad legislation—

Jim Fairlie: Will the member take an intervention?

Douglas Lumsden: Yes.

Jim Fairlie: Sitting in this room is one thing. We are on the cusp of giving local authorities or transport authorities all the powers that they need to do the thing that we want to happen. There is

no guarantee that the policy will continue in the next session of Parliament, and there is no guarantee that the primary legislative process will occur. We are where we are, and I understand the committee's concerns about the panel. I have given commitments on how we can give surety that the guidance with regard to the panel's remit is robust and fair. However, if we stop the measure going ahead, we will potentially place a huge delay on the processes that SPT, or anyone else, wants to continue with, because they would not have certainty.

10:30

The Convener: I clarify that the purpose of interventions is to ask questions. Everyone has had a chance to make statements. Once again, I invite Mr Lumsden—briefly—to wind up.

Jim Fairlie: I am sorry, convener. My question is: what would the alternative be?

The Convener: It is up to Mr Lumsden whether he takes a question or continues to wind up.

Douglas Lumsden: I will continue to wind up.

We have seen that primary legislation can come to this Parliament very quickly—that is evident from our next agenda item. If the Government wants to move forward with franchising and to have it in place before the next election, it can do so if the political will for that exists. I encourage the minister to talk to the cabinet secretary, to ensure that the political will is there and to get primary legislation before us as quickly as possible, so that we can move forward with franchising.

The Convener: I say, with respect, to Bob Doris, Monica Lennon and Jackie Dunbar, that we have come to the end of this part of proceedings. Rather than anyone else making comments, this is the point at which I will put the question.

The question is, that motion S6M-15035, in the name of Douglas Lumsden, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Matheson, Michael (Falkirk West) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Motion agreed to,

That the Net Zero, Energy and Transport Committee recommends that the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024 (SSI 2024/229) be annulled.

The Convener: Given that the committee must produce a report on the instrument and that the deadline for producing that report is extremely tight, it will have to be a very short and factual report. Is the committee content to delegate to me the responsibility for clearing the clerk's draft for publication later today? That is the timescale.

Members indicated agreement.

The Convener: Thank you. I thank the minister and his officials for attending.

I suspend the meeting for 10 minutes to allow for a changeover of witnesses before we move on to the next item.

10:32

Meeting suspended.

10:43

On resuming—

Climate Change (Emissions Reduction Targets) (Scotland) Bill: Stage 2

The Convener: We resume with agenda item 3. I welcome everyone to our stage 2 proceedings on the Climate Change (Emissions Reduction Targets) (Scotland) Bill, including the non-members of the committee who are here for this item.

The deadline for completion of stage 2 is today. The committee has permission to continue the meeting for as long as it takes to complete our consideration.

I remind members of the procedure. Our main working documents for today are the bill, the marshalled list and the groupings. I say to anyone who is observing our proceedings that those documents are available on the Scottish Parliament's bill page. I will call each amendment individually in the order shown on the marshalled list. The member who lodged the amendment should either move it or say "Not moved" when it is called. If that member does not move it, any other member who is present may do so.

The groupings document sets out the amendments in the order in which they will be debated. There will be one debate on each group of amendments. The member who lodged the first amendment in the group will be called to speak to and move that amendment and to speak to any other amendments in that group. I will then call other members with amendments in the group to speak to—but not to move—their amendments, and to speak to other amendments in the group if they so wish. I will then call other members who wish to speak in the debate—if you wish to speak, you should try to catch my eye or indicate to the clerk. I will then call the Acting Cabinet Secretary for Net Zero and Energy, if she has not spoken already in the debate, and finally I will call the member who moved the lead amendment in the group to wind up and say whether they wish to press or withdraw that amendment.

10:45

If a member wishes to withdraw an amendment after it has been moved and debated, I will ask whether any member present objects. If there is an objection, I will have to put the question on the amendment. Later amendments in the group are not debated again when we reach them in the marshalled list. If they are moved, I will put the question on them straight away.

Only committee members may vote, and voting is done by a show of hands. I ask committee members to please keep their hands raised for long enough that the clerk can see them, so that the individual votes can be recorded. I will also put formally the question on each section of, and schedule to, the bill as we come to them.

I hope that that brief run-through was helpful. I know that most—in fact, all—members of the committee have taken part in stage 2 consideration before, but a description is often helpful for people who are watching online.

We move to the marshalled list. The clerks have suggested that I read out the preamble. At introduction, the Presiding Officer determined that a financial resolution was not required for this bill. Under rule 9.12.6C, the Presiding Officer has determined that the costs associated with amendment 19 would in themselves exceed the current threshold for a bill to require a financial resolution. Therefore, in terms of stage 2 proceedings, amendment 19 may be moved and debated but may not be agreed to in the absence of a financial resolution.

Section 1—Scottish carbon budgets

The Convener: Amendment 1, in the name of Graham Simpson, is grouped with amendments 3, 28 to 30, 46, 32, 6, 7, 53 and 9.

Graham Simpson: First, I assure the committee that I will keep my remarks as brief as possible. I know that we are up against the clock, but that should not preclude a proper debate. Nevertheless, I will try to truncate what I was going to say.

Amendment 1 states:

"A budget for a period must set out the proportion of the budget that is to be attributed to emissions from each of the following sectors"

and lists transport, energy consumption, land use, aviation and shipping as those sectors.

The committee took evidence on that when it produced its excellent stage 1 report on the bill, so I do not need to rehearse the arguments for it. The amendment is pretty straightforward; I do not need to explain it any further.

On my amendment 3, there may be differing views. It proposes full alignment with United Kingdom carbon budgets as set out in the Climate Change Act 2008. There was debate around that at stage 1—I remember that there were some very healthy contributions. There will be different views in the committee. My view—indeed, it was the view of the majority of respondents to the committee's call for evidence—is that there should be alignment.

Amendment 53 came about as a result of some very good collaborative working with the cabinet secretary and her officials, which I found refreshing. Under the current provisions in the bill, ministers will be required to make a statement to Parliament setting out the extent to which each of the proposed carbon budgets takes into account the target-setting criteria and whether each budget is consistent with the latest advice from the UK Climate Change Committee. Following discussion at committee and during the stage 1 debate about the further information that Parliament might require to conduct scrutiny on the budgets, the amendment adds to the information that must be included in that statement.

Amendment 53 would also require ministers to share an indication of the policies and proposals that would likely be included in the next climate change plan, should regulations be approved. As I said, I have discussed it with the Government and, having had that discussion, I understand that it will be possible to publish that information only in “broadly indicative” terms. Members will have seen that that phrase appears in the amendment and they might think, “Why is Graham Simpson including such a woolly phrase in one of his amendments? That’s not his style.” It is not. However, I am accepting the wording in the spirit of compromise.

Mark Ruskell: I am mindful of the time, but will you take an intervention?

Graham Simpson: Absolutely.

Mark Ruskell: Reflecting on that phrase “broadly indicative”, do you not think that we need more detail when we are setting the budgets about how Government will meet those targets and carbon reductions, and that there is a danger that what you propose in amendment 53 could be very loose? It could be as loose as a broad pathway that the UK Climate Change Committee is proposing and it will not really enable the committee to get into the guts of whether the targets or the budgets that are being set are the right ones.

Graham Simpson: That is a useful intervention. I do not like woolly wording, as Mr Ruskell knows. I definitely do not like loose wording in legislation, and there is a risk that the suggested wording could be seen as being that. However, in the spirit of compromise with which I have approached the process thus far, I have accepted that, at that stage, it will not be possible for the Government to set out in definitive terms the proposals and policies that will be in the next climate change plan, given that they need to be finalised once the carbon budgets are set.

I note that, during the stage 1 debate, Ms Martin made the point that it would not be advisable to

publish, in her words, a “draft of a draft” of the climate change plan. Amendment 53 represents a balance between ensuring the availability of the information that the Parliament needs to conduct scrutiny and the Scottish Government’s need to finalise the policies to meet carbon budgets once they have been set.

If the committee is minded to support amendment 53, I invite it to take the view that Mark Ruskell’s amendments 6 and 7 are not required.

Finally, amendment 9 seeks to align carbon budgets with those of the rest of the UK for the reasons that I have set out. I will wait to hear from Ms Lennon. Mr Whittle is not with us, but I understand that Mr Lumsden is speaking for him today, so I will also wait to hear his contributions.

I move amendment 1.

Monica Lennon: I have four amendments in the group. I thank Stop Climate Chaos Scotland for its briefing and for its advice and support on these matters. Colleagues will be aware that Stop Climate Chaos Scotland has previously called for budgets to be set in accordance with the advice from the Climate Change Committee, unless there are exceptional circumstances. However, as drafted, the bill only requires the Scottish ministers to “have regard to” the latest CCC advice in preparing the draft budget-setting regulations. The amendments that I have lodged try to strengthen the provisions in the bill.

I know that the Scottish Government is not currently minded to support these amendments, but I hope that it will reconsider, because the current “have regard to” duty should be strengthened to require the carbon budget that is proposed to be consistent with CCC advice, unless there are “exceptional” circumstances to justify any variance. Stop Climate Chaos Scotland strongly supports amendments 28 to 30 and amendment 32 in my name.

Douglas Lumsden: Normally, I am in favour of strengthening the wording in legislation. However, is there a danger in this case that policy would almost be enforced on the Parliament by the Climate Change Committee, as opposed to the Scottish Government putting in place policies to meet the carbon budgets?

Monica Lennon: No—I do not agree with that. I think that the bill as it is currently drafted, in using the term “have regard to”, is weaker than many of us would like it to be; the evidence that we heard at stage 1 reflects that.

My amendments would strengthen the requirement to act in accordance with CCC advice, but they would provide for a departure where there are “exceptional” circumstances. In

my view, that would be a better balance than what is currently in the bill.

Douglas Lumsden: I am just trying to understand what the “exceptional” circumstances might be. Have you any idea?

Monica Lennon: When we discussed the matter at stage 1, some examples were given—for example, if another pandemic like Covid-19 was to happen, or if an unusual event took place. I have not attempted to be prescriptive, but I think that the member will know the types of situations that I am talking about.

Members will have to take a view on whether they think that the “have regard to” duty is good enough and robust enough. In my view, it is pretty weak. I am offering a way to make the bill a little bit stronger, while still allowing space, if there are exceptional circumstances, for the Government to set out its reasons for departing from CCC advice.

In the interests of time, convener, I will not add to my remarks on my own amendments. I am not sure whether Brian Whittle’s amendment will be moved. I have listened to what Graham Simpson has said and, with regard to his amendment 1, I will say only that I do not disagree with the intention behind it, but I think that that aspect would be better placed in the climate change plan rather than in the budget.

The Convener: A couple of members have referred to speaking briefly in the interests of time, but we must give the bill proper consideration, so I am not trying to stop members debating it. I would just like to have that on the record. This is a valuable opportunity for the committee to consider the bill at stage 2, so if any member wants to make an intervention, they should not feel restricted by time. If we get to the stage where we are restricted by time, trust me—I will let you know. At the moment, however, we are not there.

With regard to the various amendments in Brian Whittle’s name that have been discussed so far, unfortunately, due to a clash with another committee that he sits on, he is unable to be at this meeting, which I know that he regrets. He has asked Douglas Lumsden to speak to his amendments, so I call Douglas to speak to amendment 46 and other amendments in the group.

Douglas Lumsden: Thank you, convener—I am sure that Mr Whittle is full of regret for not being here today.

I will speak only to amendment 46, which is intended to bring the wording of the bill more into line with the UK legislation. It would put issues that the carbon budgets must “have regard to” in the text of the bill, which would give the Government a clear direction and—one would hope—the ability

to think across portfolios in respect of the climate change plan.

The need for the Government to create climate change plans in a more holistic way was outlined in the CCC’s evidence to the committee. For example, if the Government had given regard to social, economic and fiscal circumstances in creating a heat pump target, that target may have been achievable.

11:00

Mark Ruskell: My amendment 6 is similar in many ways to Graham Simpson’s amendment 1. It is about ensuring that there is real transparency in the budget. If we are going to pass a carbon budget, we need to know what the contribution will be from different sectors. When we have set climate targets in the past, that has not been clear, and we need to provide transparency. Amendment 6 would pin the process directly to the Climate Change (Scotland) Act 2009, so I gently ask Mr Simpson to withdraw amendment 1 to allow me to move amendment 6, as it is a tighter fit with existing legislation.

On amendment 7, there was a huge sense of loss in Scotland and in the environmental movement when it was decided that it was no longer credible for us to meet the target of a 75 per cent reduction in emissions by 2030, because that target represented the hugely important need for action in this decade to tackle climate change and to get on top of the issue. The fact that that target is now not credible and can no longer be met by 2030 is really concerning. It begs the question of when we will get to 75 per cent. People are asking when we will get three quarters of the way to net zero. If we are off track, people need to know by how much we are off track and when we will meet that important milestone.

At stage 1, we had discussions with the cabinet secretary about how the budgets can be interpreted to ensure that the target of 75 per cent can remain and be transparent, so that people can still see the date by which we will meet the target. My amendment 7 would ensure that the aspiration behind the targets of 75 per cent and 90 per cent are still reflected and transparent in the carbon budgets when they are published.

On the other amendments in the group, we have had a big discussion in the committee and the chamber about whether the budget should be aligned to the UK budget or whether it should be a stand-alone Scottish budget. On balance, what is in the bill is the right approach, so I will not support amendment 9. It has almost a ratcheting effect when devolved Administrations bring forward policy innovation. When that is reflected in the climate change plans and set out at the beginning

of the parliamentary sessions in Wales and Scotland, it can then be linked into the future development of climate change plans across the UK. I am convinced that that is the right way to go, but I appreciate that there might be different views on that.

I support what Monica Lennon wants to achieve with amendments 28 to 30 and amendment 32. The UK Climate Change Committee publishes advice, which sets out broad pathways, so it is appropriate to act in accordance with that.

I am still not entirely sure what amendment 46 is trying to achieve—I am not sure that Mr Lumsden is either—but I will listen to the cabinet secretary's views on that.

We will have a debate later about whether a draft plan should be presented at the time of the budget, slightly after the budget or several months after the budget, and amendment 53 is relevant to that issue. Therefore, I ask Mr Simpson to consider not moving amendment 53. However, given that he already has support from the Government, I think that he might move it anyway. We really need to tighten up the woolliness around this matter. I am already thinking about how, if that amendment is passed, we can make the presentation of that information ahead of a budget meaningful. We might need to come back to that at stage 3, because it is far too woolly at the moment, and Mr Simpson knows that.

The Convener: That did not provoke a response.

Sarah Boyack (Lothian) (Lab): Convener, I welcome the fact that you have told us not to edit our comments to be too succinct. That is a key issue—we need to make sure that we scrutinise the legislation, because it has happened so quickly. Also, I agree with Graham Simpson—which is most unusual for me—that the committee report is excellent; it has helped us to focus on which amendments to support.

I particularly support Monica Lennon's amendments in the group. This is our chance to scrutinise and strengthen the bill and, on occasion, to get more clarity from the Scottish Government, and Monica's amendments would strengthen the commitment to adhere to the CCC's recommendations. That actually encapsulates a lot of what the other amendments in the group would do. It is about strengthening the carbon budgeting process so that it is robust and informed by expertise, with as much transparency and accountability to the Scottish Parliament as possible.

Graham Simpson's principle of having a statement is important, as it would mean that the whole Parliament was involved. Monica Lennon's amendments 29 and 32 would require the Scottish

Government to "act in accordance" with existing guidance and not just to be "consistent" with it, to make sure that any action that is taken is informed and impactful. That is really important, and I want to engage in the discussion on that.

In addition to thanking the committee, I thank Stop Climate Chaos Scotland. The timescale has been tight, and it is really important to get its perspective on the amendments. I prefer Monica Lennon's amendments, although I know that there are alternatives in front of the committee. Brian Whittle's amendment 46, for example, is too prescriptive, because the scheme has to span a variety of budgets—four budgets over 20 years—and so needs to be sufficiently flexible while providing accountability to Parliament.

I just have those few comments at this point, convener.

The Convener: I thank the cabinet secretary for engaging with committee members and with the parties. I believe that quite a lot of engagement has gone on, which, given the short timescale of the bill, has been helpful.

Turning specifically to amendments 3 and 9, I have always held the view, like the majority of witnesses who came to the committee, that alignment with the rest of the United Kingdom is in everyone's interests. I still believe that—despite Mark Ruskell saying in the stage 1 debate and this morning that he does not agree—because, if Governments across the United Kingdom pull together and work together, that gives businesses the confidence to pull together and work together to gear up across the whole of the United Kingdom.

Gearing up together means that, when businesses produce technology, which we are definitely going to need if we are to reach our targets, we will be relying on technology that is proven rather than unproven—which could be the case if we tried to go at a faster speed than the rest of the United Kingdom. That is why I believe that alignment is important, and I always have done.

As there are no other comments, I will turn to the cabinet secretary.

The Acting Cabinet Secretary for Net Zero and Energy (Gillian Martin): We have worked with Graham Simpson on amendment 53 and we support it, but I am afraid that I cannot support the other amendments in the group. I will go through them in turn.

I will take together amendments 1, 6 and 53. The legal effect of Graham Simpson's amendment 1 is unclear to me. My strong view is that it would not be appropriate to mandate sector-level emissions targets, because it is important to keep

the balance of effort of each sector under regular review.

We know from experience that there will be significant change in our exact decarbonisation pathway over the long term. New technologies will come online, the cost of measuring different sectors will change over time, and we will need flexibility to take account of possible job and just transition impacts. That is one reason why we all support the bill's proposals to move to carbon budgets. We need to retain the flexibility to decarbonise in the right way and at the right time and to adjust and adapt our approach in line with a just transition. That is why the CCC has not advised adopting sector-level legal targets.

To the extent that Graham Simpson's concerns are about having more of an indication of the implications of our proposed budget at the time of considering proposals, I am pleased that we have been able to work together on amendment 53. I have spoken with a number of members about the types of information on the various pathway options that we would be happy to give to the committee and in a statement ahead of deliberating secondary legislation.

Amendment 53 requires an indicative statement on those implications to be set out in the statement that accompanies the draft regulations. That is the right way to provide Parliament with the information that it needs and it will vastly improve scrutiny of the secondary legislation. I am happy to have worked with Graham Simpson on that amendment.

Because amendment 1 seeks to encode sectoral targets in law, I ask Graham Simpson not to press it. On the basis that I support Mr Simpson's amendment 53, I do not support Mark Ruskell's amendment 6, which covers much of the same ground.

On the alignment of the timing of the carbon budgets, I ask the committee not to support Mr Simpson's amendments 3 and 9. I have considered the option of aligning with UK carbon budgets, but I remain of the view that the approach in the bill as introduced is preferable, for the reasons that I stated in my response at stage 1. I will not go over that ground. Mark Ruskell's contribution was helpful; we have elections at different times, and he made a good point about setting out intentions at the start of a parliamentary session.

Having different time envelopes for carbon budgets does not mean that the Governments across the United Kingdom will not work together. We have always had a four-nations approach to climate change—just two weeks ago, I had a four-nations meeting with all my counterparts across the other Governments.

I turn to Monica Lennon's amendments 28, 29, 30 and 32. The bill already requires the Scottish Government to receive the CCC's advice before introducing regulations to set carbon budgets. As drafted, the bill also requires that, when the Government decides not to follow the CCC's advice to the letter, it must explain the reasons why. The Scottish Government and the Scottish Parliament receive informed and well-judged advice from experts across several policy areas, but that advice rightly informs—not dictates—what Parliament does and the judgments that it makes. My interpretation—and that of my officials—is that Monica Lennon's amendments would cut to the quick of Parliament's essential role in making decisions when the Government had set out whether it had accepted the advice, which I do not necessarily think is her intention.

Monica Lennon: I am grateful to the cabinet secretary for setting out the Government's position. I think that the notion of dictating is a bit strong, and that is certainly not the intention of my amendments. However, the advice from the CCC is very important; we have heard that it is broad, expert advice that is based on science. Does the cabinet secretary agree that it would be better to have a presumption in favour of accepting the CCC's advice, rather than to "have regard to" that advice, which is quite weak wording?

My amendments are not about tying the Government's hands. That is why they set out that there could be a departure from the CCC's advice in exceptional circumstances, but reasons would have to be given for that.

Gillian Martin: I have two issues with that position. The phrase "in accordance" in effect means that the Government must follow the advice—it is binding.

My other issue is that the exceptional circumstances have not been defined, so we do not know what they are. Douglas Lumsden's intervention hinted at the point that we cannot define what exceptional circumstances are.

As I said, the bill as drafted already requires us to give an explanation when we do not follow CCC advice. The CCC is free to design its approach to its advice, and we will pay close regard to its advice, as the bill sets out.

The CCC's advice is rightly focused on its assessment of cost-effective and technically feasible emissions reduction pathways. The CCC has been clear that its advice does not and should not take account of other factors, whether they relate to the financial budget that is available to the Government, to policy or to political aspects, such as the type of Government that is in office. The Government's assessment of the CCC's

advice will depend on the basis on which that Government has been elected.

It is vital to bring our country towards net zero in a way that reflects our commitment to just transition principles. That is Parliament's responsibility. Although the CCC's advice is a critical component, it should not be the whole view of how we set our carbon budgets, but I am afraid that that is what Monica Lennon's amendments would lead to. It would not be appropriate for Parliament to be legally bound to follow the CCC's advice other than when the law recognised that there were exceptional circumstances. As I said, those circumstances have not been set out. The approach would also cut out Parliament's role in weighing up the full range of considerations when setting carbon budgets and scrutinising plans.

In relation to the information that Graham Simpson wants the Government to provide, if we were already bound to accept the Climate Change Committee's advice, what good would all that information be in informing the Parliament's agreement to the setting of carbon budgets?

11:15

Douglas Lumsden: I can perhaps understand some of the reasons for not accepting the proposal but, for the sake of compromise, is there other wording that might be acceptable to strengthen the bill without tying the Government's hands?

Gillian Martin: That depends on how the vote goes today. If Ms Lennon's amendments with the phrase "in accordance with" are agreed to, we will have to lodge an amendment to change that wording, because it is so strong and binding. Moreover, it misses out the particularly important scrutiny and decision-making function of not only the Government but the Parliament, to which we report when setting carbon budgets. I hope that every member of the committee will take that into account.

We must preserve the Parliament's freedom to set carbon budgets at the levels that it considers to be the best for Scotland. Parliament must take account of the CCC's advice, but we must not allow our judgment to be bound by it—indeed, this committee will play a critical role in deciding the outcome of secondary legislation on carbon budgets.

I will leave it there, convener—I think that I have made my point. I am not at all comfortable with the use of the phrase "in accordance with", so I cannot support Monica Lennon's amendments.

I do not have much to say on Brian Whittle's amendment 46, which duplicates some existing target-setting criteria and modifies others. I find it

confusing, because we are already doing quite a lot of what he is asking us to do. He is not here to take questions, but I do not understand what his amendment is trying to achieve, and I hope that the committee will reject it.

I cannot support amendment 7, in the name of Mark Ruskell, which would require the Scottish Government to highlight whether an emissions reduction of 70 per cent or 90 per cent from the baseline was to be achieved over a budget period when draft regulations that set the budget were introduced. That would defeat the bill's purpose and our decision to move from annual and interim targets to a carbon budget system, as our counterparts across the UK have done.

Amendment 7 would also risk creating confusion about the real targets, so it would not provide the clarity that is needed for the journey to net zero. Its drafting is technically deficient, because it is not clear in respect of what period the reductions that it describes are to be looked for. Baseline figures are annual, but budget periods are not. For those reasons, I urge the committee not to support amendment 7.

That is me, convener.

Mark Ruskell: Will the minister take an intervention?

Gillian Martin: I have come to the end of my remarks, but it is up to the convener.

The Convener: The cabinet secretary has come to an end, so I ask Graham Simpson to wind up and indicate whether he wishes to press or withdraw amendment 1.

Graham Simpson: I will be brief. We have had a useful discussion. I have to agree with those who have commented on Brian Whittle's amendment 46; I, too, am a bit confused by it, and perhaps Mr Lumsden might be minded not to press it. Mr Whittle can come back with something at stage 3.

I find it disappointing that, in the group of amendments, the cabinet secretary appears to be supporting only the amendment—which, granted, is in my name—that she had a hand in. It is disappointing that she is supporting nothing else, and I think that she could have worked with other members; perhaps she has.

Amendment 1, in my name, is similar to Mark Ruskell's amendment 6. However, I have already invited members to reject amendment 6, so I ask members to accept amendment 1.

I will leave it there, convener.

The Convener: I am sure that Mr Whittle will take into account the comments about his amendment 46 in due course.

The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)

Abstentions

Ruskell, Mark (Mid Scotland and Fife) (Green)

The Convener: The result of the division is: For 2, Against 4, Abstentions 1.

Amendment 1 disagreed to.

The Convener: Amendment 2, in the name of Maurice Golden, is grouped with amendment 10.

Maurice Golden (North East Scotland) (Con): Amendments 2 and 10 state that the bill should not permit any carry-forward mechanism. The bill has no explicit provision to permit such a mechanism, and the Scottish Government has previously indicated that it has no intention of seeking to undertake any carry-forwards, but the bill does not explicitly prohibit them, so it could be possible for a future Government to change that practice and, in fact, utilise carry-forwards. My amendments would codify existing Scottish Government practices, and I look forward to the committee's support on that basis.

I move amendment 2.

Gillian Martin: I understand what Maurice Golden is trying to achieve with his amendments, but I will set out why they are unnecessary and could lead to confusing legislation. Amendment 2 is about preventing an unused carbon budget for one period from being carried over to the next period, but the bill already does not allow for that. Budgets will be set by regulations on the basis of expert advice following close parliamentary scrutiny, and it will be possible to increase them only by making new regulations—again, on the basis of expert advice following close parliamentary scrutiny.

There is, very deliberately, no equivalent to section 17 of the UK Climate Change Act 2008, which allows the UK Government to choose to carry over part of the budget. We have done that on purpose, for the reasons that Maurice Golden and I agree on. I therefore do not think that amendment 2 would achieve anything, except perhaps creating an avenue for litigation over whether expert advice or the Parliament's decision to increase a budget was somehow tainted by

consideration of whether a previous budget would be met.

Similarly, amendment 10 tries to address an issue that does not exist in Scottish climate change legislation. The concern seems to be that regulations under section 13 of the Climate Change (Scotland) Act 2009 could somehow allow carbon credits—units that are purchased on the international carbon exchange—to be used to reduce the net Scottish emissions account in more than one period. However, sections 13 and 13A are very clear that regulations can provide for units to be credited only in respect of a specific period, so amendment 10 is also unnecessary. It is not at all clear what “period” and “next period” mean.

Therefore, with respect, I urge Maurice Golden not to press amendment 2 or move amendment 10, and I ask the committee not to support those amendments if they are pressed.

Maurice Golden: I think that any technical changes could be incorporated at stage 3 so, on that basis, I will press amendment 2.

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 2 disagreed to.

Amendment 3 moved—[Graham Simpson].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 3 disagreed to.

Amendment 28 moved—[Monica Lennon].

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

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Matheson, Michael (Falkirk West) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 28 agreed to.

Amendment 29 moved—[Monica Lennon].

The Convener: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Matheson, Michael (Falkirk West) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 29 agreed to.

The Convener: I am being told to slow it down, so I shall do that.

Amendment 30 moved—[Monica Lennon].

The Convener: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Matheson, Michael (Falkirk West) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 30 agreed to.

Amendment 46 not moved.

The Convener: Amendment 52, in the name of Monica Lennon, is grouped with amendments 5, 59, 54, 37 and 45.

Monica Lennon: I will speak to amendments 52, 54 and 37. I put on record my thanks to the acting cabinet secretary and her officials for their time and willingness, it is fair to say, to work with all members who have an interest in the bill. I am pleased to say that we have worked together on a couple of the amendments that I am about to speak to.

As briefly as I can, perhaps not because of the clock but in the interests of my voice—I have some throat lozenges at the ready—I will explain amendment 52. Amendment 52 will change the timing for the ministerial statement to accompany the laying in Parliament of draft regulations setting carbon budget levels. Ministers must publish a statement to set out how the regulations take account of the target-setting criteria that were established in the 2009 act and the most up-to-date advice that is received from the Climate Change Committee.

The amendment will ensure that ministers must publish the statement

“On the same day as”

the regulations are laid, rather than

“As soon as reasonably practicable after”.

As I said, I have worked with the Government to develop the amendment, and I hope that members support its aims and vote for it. I add that we have had a briefing from Stop Climate Chaos Scotland in support of amendment 52. The briefing states:

“It seems inexplicable that this statement could be laid later than the regulations, potentially as little as a day before (or even after!) Parliament is asked to approve the regulations that the statement supports and explains.”

That speaks in favour of amendment 52.

I have also worked with the Scottish Government on amendment 54. The amendment ensures that draft regulations to set carbon budgets will be subject to pre-laying scrutiny by invoking the procedure that is described in section 97 of the 2009 act. The amendment provides an exemption from the pre-laying procedure for the first such draft regulations. That is in recognition of the need for Parliament to have sufficient time for scrutiny of these important regulations and of the need for urgency at the current juncture, as we all agree on the need for a new climate change plan

to be in place as soon as possible. I hope that colleagues support amendment 54.

11:30

Amendment 37 is another that deals with timescales. The amendment would require that carbon budget regulations be brought forward within 90 days of royal assent. I hope that that is self-explanatory, but it is important to provide some clarity on that.

I will not speak to the other amendments in the group, but I am happy to listen to colleagues. I note that amendment 5, in the name of Mark Ruskell, appears to be a minor amendment, but it provides for further detail on the statement laid by ministers regarding carbon budgets. I would be minded to support that, but I am happy to listen.

I move amendment 52.

Mark Ruskell: I will speak to amendments 5 and 59, and offer some comments on the amendments that have already been discussed. First, I thank Stop Climate Chaos Scotland for its detailed engagement with the bill and its discussion of how it can be improved.

Reflecting on the evidence that we took at stage 1, I think that setting a carbon budget is a very important step. In removing the interim targets and moving over to that process, the Parliament is taking a significant step. I appreciate the timescale issues around the setting of the first carbon budget, but I feel that a super-affirmative instrument is the best way forward for committees to scrutinise budgets, to take evidence from those who are going to deliver carbon reductions, to get the granularity of the discussion about the contributions of sectors, which we have already discussed this morning, and to come to a judgment about whether the carbon budget is adequate or not.

As I said, I recognise the situation that we are in with the first carbon budget and the need to expedite that quickly. Therefore, amendments 5 and 59 do not apply to that first budget, but in future we need to have adequate scrutiny. The kind of situation that we could be in, where the carbon budget is passed through an affirmative instrument and a committee could, in theory, just discuss it in a morning, would be ridiculous. The evidence points to the need for a more thorough super-affirmative process, which is what amendments 5 and 59 put forward. I put that to the committee for a decision today.

It makes sense that the Government should publish how the target-setting criteria are being taken into account, so I welcome what Monica Lennon has put forward in amendment 52.

I will be interested to hear from the cabinet secretary on amendments 37 and 45, both of which would establish a timescale for the introduction of the first carbon budget. Will it be 90 days or three months after the CCC's advice? My impression is that the Scottish Government already has a lot of advice. It already has advice from the CCC. What will come in the spring next year will be more about the second and third carbon budgets. I am interested in the cabinet secretary's thoughts on that and in what she considers to be practicable right now, given the advice that the Government already has and how quickly it can bring forward that first carbon budget.

Graham Simpson: Amendment 45 would require the Scottish ministers to lay draft regulations to set carbon budgets within three months of receiving advice on Scottish carbon budget levels from the CCC. The amendment speaks to a recommendation in the committee's stage 1 report, in which the committee highlighted the need

"to specify a maximum"

amount of time that could

"elapse between receipt of the advice"

from the relevant body

"and the laying of draft regulations to set"

the first carbon

"budgets."

This is another amendment on which I have worked with the Government. I originally said that the maximum time should be two months, but we settled on three months. I do not think that that four-week difference is worth quibbling about. I am happy with the amendment and the compromise, and I ask the committee to support it.

In relation to Mark Ruskell's amendments 5 and 59, I am fully supportive of any extra scrutiny that the use of the super-affirmative procedure would provide. That is important, so I urge the committee to support amendments 5 and 59.

The Convener: As no other member wishes to contribute, I invite the cabinet secretary to comment.

Gillian Martin: I appreciate the need to balance the requirement for urgency with the need to provide for sufficient parliamentary scrutiny, which is why I was pleased to work with Monica Lennon and Graham Simpson on amendments 52, 54 and 45. However, I urge the committee not to support amendments 5, 59 and 37.

Amendment 52 responds directly to the recommendation in the stage 1 report that the statement accompanying the draft carbon budget

regulations should be published on the day on which those regulations are laid before Parliament.

Mark Ruskell's amendments 5 and 59 and Monica Lennon's amendment 54 concern the parliamentary scrutiny of regulations that set carbon budgets other than the first set of such regulations. Amendment 54 adopts an extended scrutiny procedure that is already found in the 2009 act. As that represents a more balanced and proportionate approach than that for which Mark Ruskell's amendments provide, I urge members to support amendment 54 in preference to amendments 5 and 59. I would have understood the need for extended parliamentary scrutiny, but given that we have just agreed to act in accordance with the Climate Change Committee's advice, regardless of that scrutiny, it is a bit confusing to provide for extended scrutiny in the way that Mark Ruskell seeks to do.

Monica Lennon's amendment 37 and Graham Simpson's amendment 45 set a timescale for producing the first draft regulations to set carbon budgets. I cannot support amendment 37, because the period for which it provides starts on the day of royal assent, which fails to take into account the fact that, legally, the Government cannot go ahead with budget proposals without having received the CCC's advice. Amendment 45 recognises that by setting a three-month deadline for the laying of regulations. As that period starts with the receipt of the CCC's advice, the provision is competent and definitive.

I urge the committee to support amendment 45 and to reject amendment 37.

The Convener: I invite Monica Lennon to wind up and to press or withdraw amendment 52.

Monica Lennon: I will not withdraw amendment 52, but I have listened to what the cabinet secretary has said and will not move amendment 37. I support Graham Simpson's amendment 45.

I am grateful to the cabinet secretary for working with me on amendments 52 and 54. I am also grateful to Mark Ruskell for lodging amendments 5 and 59, and I support what he was trying to do. However, I agree with the cabinet secretary that amendments 5 and 59 represent alternatives to my amendments 52 and 54. Therefore, I ask the committee to support my amendments. As I said, I do not intend to move amendment 37.

Amendment 52 agreed to.

Amendment 32 moved—[Monica Lennon].

The Convener: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lennon, Monica (Central Scotland) (Lab)
Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Matheson, Michael (Falkirk West) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 32 agreed to.

Amendment 5 moved—[Mark Ruskell].

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

Members: No.

The Convener: There will be a division.

For

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Matheson, Michael (Falkirk West) (SNP)

Abstentions

Lennon, Monica (Central Scotland) (Lab)

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

We are in that situation in which I, as the convener, have the casting vote. In the past eight years for which I have been a convener, I have always made it abundantly clear that I will cast my vote in the way that I originally voted, and that is the way that I will use my vote now. The amendment goes through on my casting vote—it is as simple as that.

Amendment 5 agreed to.

Amendment 6 moved—[Mark Ruskell].

The Convener: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Lumsden, Douglas (North East Scotland) (Con)
Matheson, Michael (Falkirk West) (SNP)
Mountain, Edward (Highlands and Islands) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 6 disagreed to.

Amendment 7 not moved.

*Amendment 53 moved—[Graham Simpson]—
and agreed to.*

Amendment 59 moved—[Mark Ruskell].

The Convener: The question is, that amendment 59 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 59 disagreed to.

Amendment 9 not moved.

Amendment 54 moved—[Monica Lennon].

The Convener: The question is, that amendment 54 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Lumsden, Douglas (North East Scotland) (Con)
Matheson, Michael (Falkirk West) (SNP)
Mountain, Edward (Highlands and Islands) (Con)

Abstentions

Ruskell, Mark (Mid Scotland and Fife) (Green)

The Convener: The result of the division is: For 6, Against 0, Abstentions 1.

Amendment 54 agreed to.

Section 1, as amended, agreed to.

Section 2—Replacement of annual and interim targets with budget targets

Amendment 10 not moved.

The Convener: Amendment 60, in the name of Patrick Harvie, is grouped with amendments 61 and 63.

Patrick Harvie (Glasgow) (Green): Good morning. As a non-member of the committee, I will speak to my own amendment and leave members of the committee to comment on the other amendments in the group.

Amendment 60 is not grouped with amendment 17, which will come up later, but it touches on a similar issue, and in some ways the amendments should be seen together. They relate to how we examine the carbon impact, or the climate impact, of major capital projects.

Amendment 17 relates to the climate change plan, and amendment 60 raises the same issue in relation to the report that the Government will publish on carbon budgets. Obviously, some major capital projects for pieces of infrastructure that the Government is proposing will be contentious, while others will not be. That will be true regardless of whether those are high-carbon or low-carbon pieces of infrastructure. However, that judgment must be made on the basis of a full, proper assessment of the likely impact of capital projects.

For some projects that the Government continues to support, it has agreed that there need to be carbon assessments. For example, Government policy on the A96 has committed to a carbon assessment and climate compatibility assessment.

11:45

Regardless of whether anyone supports or opposes particular projects, we should reach those decisions and judgments on the basis of proper assessments. I think that it is unreasonable that we are still in a position in which we do not have a clear legislative basis for requiring those assessments. I suggest that even the Government recognises that the status quo is not ideal, and I understand that it is working on how it would regard the application of a net zero test for such decisions.

My amendments 60 and 17 seek to find a way for the Parliament to be able to reach a view on infrastructure and capital projects on the basis of a full assessment of the impacts that they would have on carbon budgets or the ability to deliver a climate change plan. I look forward to hearing the Government's response and to finding out whether it would be open to the amendments that I have proposed, or whether it has an alternative approach to how the issues can be addressed in the legislation before we reach stage 3.

I move amendment 60.

The Convener: I call Douglas Lumsden to speak to amendment 61 and other amendments in the group.

Douglas Lumsden: Amendments 61 and 63 put timescales in place for when reports would be published. Reports would have to be available to the committee to be considered within 30 days of laying, and debated in the Parliament within 60 days. The amendments also include timescales for

reports to be laid 140 days before the end of any parliamentary session, to ensure that the Parliament has the necessary time to scrutinise any report before it is dissolved. My amendments 61 and 63 both perform those functions.

The Convener: As no other member wishes to speak, I go to the cabinet secretary.

Gillian Martin: The Scottish Government cannot support the amendments in the group. On Patrick Harvie's amendment 60, I am mindful of the need to avoid too many requirements for the assessment of major capital projects, especially when it would provide limited value output. Patrick Harvie's amendment 17, which is in group 9, also deals with emissions in relation to major capital projects. I will come to it, but that group seems to be the better place for such a requirement and I am happy to work with him on that. I ask him not to press amendment 60 and to work with me ahead of stage 3 on refining amendment 17, so that we can support the proposal.

I cannot support amendments 61 and 63, mainly because I do not think that it is appropriate for the legal system to police how the Parliament undertakes scrutiny. I do not think that this is his intention, but Douglas Lumsden's proposed amendments would create duties on the Parliament and mandate what it is required to do in relation to reports from the Government under sections 33, 34A and 35B of the Climate Change (Scotland) Act 2009. That would mean that parliamentary procedure may be subject to review by the courts if, for any reason, the Parliament was unable to fulfil the duties that are proposed by the amendments. I warn members against supporting amendments 61 and 63 for those reasons. Both amendments would require a committee of the Parliament to report on Government reports within a fixed timescale, and the law would be broken if those timescales were not complied with.

When the Government lays a report before the Parliament that is shared with relevant committees and made available to all MSPs, it should be for the lead committee to decide when and for how long it wants to scrutinise and respond to any such report—that should not be set out in law.

I am also concerned that it would be impossible for ministers to comply with what is set out in amendment 61. It would impose a deadline for a report to be laid more than four months prior to the end of a parliamentary session, whereas greenhouse gas statistics are published in June each year. For the amendment to be workable, the timing of the reports under sections 33 and 34A of the 2009 act would also need to be amended. Amendment 63 has similar timescale challenges. I urge the committee to reject amendments 61 and 63 for those reasons.

The Convener: I ask Patrick Harvie to wind up and to press or withdraw amendment 60.

Patrick Harvie: I will comment on the specific issues that were raised in relation to amendment 17 when we reach group 9, but they are connected to amendment 60. When framing the amendments, I was seeking to explore the relevance either to the report on carbon budgets or to the climate change plan. Given the cabinet secretary's comments, I am happy to explore whether there is an alternative that can gain agreement before stage 3. I hope that that discussion will be fruitful; if not, I reserve the option to return with an amendment at stage 3. For the time being, I ask to withdraw amendment 60.

Amendment 60, by agreement, withdrawn.

The Convener: Amendment 38, in the name of Douglas Lumsden, is grouped with amendments 39, 40, 13, 23, 48 and 57.

Douglas Lumsden: I will not press amendment 38 or move amendments 39 and 40, but I will move amendment 38 so that we can debate the amendments in the group.

I will support amendment 48, because it covers what I was aiming to do with amendments 38, 39 and 40. Amendment 48 lacks timescales and a requirement for a statement to Parliament, so if Maurice Golden's amendment 48 is agreed to today, I will try to come back with something at stage 3 to improve it further.

I am more than happy to support amendment 13, which would add a timescale.

Amendment 23, in the name of Graham Simpson, on a monitoring plan, seems sensible, as most things from him do. It is about identifying risks so it is the right way forward.

I am happy to support Monica Lennon's amendment 57, which, again, would add timescales and a deadline to the whole process, which I feel would improve the bill.

I move amendment 38.

The Convener: Thank you. I call Mark Ruskell to speak to amendment 13 and the other amendments in the group.

Mark Ruskell: I am happy to do so. Amendment 13 is about improving the section 36 process for catch-up reports. The committee took evidence on how inadequate the two most recent catch-up reports were. They were late, very thin on detail and often just reflected existing policy and the existing ambition of the Scottish Government. We took evidence from Environmental Standards Scotland about the poor quality of those section 36 reports.

Therefore, I think that it is important to put into the bill a framework that ensures that, when we miss a target and there is a need for a catch-up report, the report comes back within six months and is meaningful and not just a restatement of existing policies that are required under section 35 as part of the climate change plan. The report should correct course and show how the Government will get back on track with targets.

I urge members to consider voting for amendment 13, because it involves a stronger approach. If there is consensus between the Government and Mr Golden on amendment 48, I would be concerned about whether Mr Golden's proposed provisions would just lead to a restatement of existing policies and whether catch-up reports on the back of that would be meaningful.

Monica Lennon's amendment 57 emphasises the six-month issue, but I think that that is better wrapped up into what I propose in amendment 13.

On Douglas Lumsden's amendments 38, 39 and 40, it is appropriate that annual reports trigger some form of corrective action, which I am happy to support. I am also happy to support Graham Simpson's amendment 23, which is about forecasting and looking ahead to circumstances in which a target might be missed. That seems sensible.

We cannot have catch-up reports of inadequate quality, from wherever in legislation they originate, come to Parliament in the way that the most recent reports did. There needs to be more of a framework around the process. If amendment 48 is agreed to, I will be looking to put more conditions in the process at stage 3 so that what we get back is meaningful and enables Parliament to consider a proper plan for course correction in the event of a missed target.

Graham Simpson: I was minded not to move amendment 23, but, having heard the comments so far, I think that I will when we get to it. I was not going to press it because I thought that there was some overlap with Mr Golden's amendment 48, which would require ministers to take additional measures if they are off track in meeting a carbon budget, similar to Douglas Lumsden's amendments 38, 39 and 40. However, having heard Mr Ruskell speak, I am minded to move my amendment 23, which is about monitoring and evaluation. If there is an issue with it, that could be dealt with at stage 3.

Maurice Golden: My amendment 48 would require ministers to assess, when preparing the report, whether it is more likely than not that the carbon budget will be met for the given period. If the target is more likely not to be met, the amendment would require ministers to explain why

that is the case and what they intend to do to ensure that it is met. The amendment would provide another layer of reporting on and monitoring of annual progress towards carbon budget targets through a strengthening of the provision in section 35B of the 2009 act.

Mark Ruskell: How is that different from what we have at the moment?

Maurice Golden: It is a step in the right direction. I am pleased to have worked with the Scottish Government on strengthening reporting and monitoring. I hope that the committee believes that that should be done, and I ask the committee to support the amendment.

Monica Lennon: I am pleased to have worked with the Scottish Government on amendment 57. The amendment would require the Scottish Government to lay a section 36 report within six months of a target being reported as missed. The amendment would replace the current requirement for such a report to be laid

"As soon as reasonably practical"

after the report that indicated that the target had been missed. Ministers would continue to be required to set out proposals and policies to compensate in future years for excess emissions resulting from any missed target.

I heard what Mark Ruskell said about his amendment 13. I gently suggest to members that, given that I have worked closely with the Government on the issue following stage 1 evidence, they should support my amendment 57 as the alternative.

I do not intend to speak to all the other amendments. I was looking for clarification from Douglas Lumsden in relation to his amendments 39 and 40, because I thought that they were alternatives to each other. I understand the intent behind Graham Simpson's amendment 23, but I am concerned that it would be too impractical or place too much demand on the Scottish Government, given that we have amendment 48, which would provide a mechanism for ministers to monitor whether the Government is on track to meet a carbon budget and take remedial action when it is off track.

I have no further comments to add.

12:00

Sarah Boyack: There are important amendments in this group. I particularly want to support amendment 57 from Monica Lennon, which she just outlined. It is about the principles of scrutiny and transparency, and we have to learn the lessons on how we got here. There is an issue about the Government monitoring and identifying

where failure has happened in nine of the last few targets. It is important that in future we do not avoid scrutinising where failure is coming down the track, so that we get action, strengthen the responses and get a dynamic response to future challenges. Amendments 38, 39, 48 and 57 in this group are really important for strengthening the legislation.

The Convener: No other members wish to speak, so over to you, cabinet secretary.

Gillian Martin: Amendments 38, 39 and 40 from Douglas Lumsden and amendment 48 in the name of Maurice Golden are all concerned with requiring the Scottish Government to report to Parliament when it has become clear that emissions are not on track to stay within a carbon budget. I agree that there should be a specific trigger for ministers to report to Parliament should it become clear that the Government is off track. However, I have said previously that I do not think that that trigger should be linked to annual emissions reporting. That is for a very good reason, which is that annual emissions reporting would have a two-year time lag. A “dynamic response”—Sarah Boyack’s words, which I wish that I had used—would be better if it had real-time data. That is why I have worked with members on the amendments to ensure that there is a better alternative to a section 36 report.

The requirement would be far more effective if it was linked to annual progress plans under section 35B. Linking that requirement to those reports makes more sense because they contain the most up-to-date information on progress in decarbonisation and policy actions, not data from two years previous. That is what amendment 48 in the name of Maurice Golden does. I was glad to work with him on the amendment and explain the rationale for that. I urge members to support it and to reject amendments 38, 39 and 40. Amendment 48 does what they would require, but better. “Dynamic” is the word that I will continue to use in relation to that.

With regard to amendment 13, I accept that a more specific time frame for the laying of a section 36 report in Parliament would be reasonable, but I have concerns about the other elements of the amendment. There is a certain amount of ambiguity relating to the requirement for additional policies and proposals to be included in the report. The Scottish Government’s existing position is that policies and proposals introduced through the section 36 report are additional to those in the climate change plan, whether they are new, strengthened or enhanced policies. Therefore, I cannot support the amendment because of the ambiguity that would be put in by that requirement.

I have said that I am content with a more specific timescale being set for section 36 reports,

so I am pleased that I have been able to work with Monica Lennon on amendment 57. It sets the deadline for laying a section 36 report at six months from the date when the corresponding section 33 report is laid. I urge Mark Ruskell not to press amendment 13 and instead to support amendment 57.

Amendment 23 is from Graham Simpson. I say to him that his original view on amendment 48 was right: it is a better amendment. It provides better action compared with the alternatives. There is already a monitoring framework for climate change plans, which includes monitoring risks to delivery. Therefore, with the other provisions in the bill, there would be three annual reports on Scotland’s decarbonisation progress. There would be annual reports on greenhouse gas emissions, annual climate change plan monitoring reports, which would include an assessment of policy implementation, and annual requests to the CCC for a Scottish progress report. That is three monitoring and evaluation points and associated reports.

As we have discussed, Maurice Golden’s amendment 48 requires that if, when preparing a section 35B report, ministers assess that the progress is off track, they must explain why that is the case and what they intend to do to ensure that the target is met. Therefore, I think that what has been proposed in amendment 48 covers the bases.

Graham Simpson: This is just to assist me as I deliberate over my amendment 23. I agree that Maurice Golden’s amendment 48 is very good, so does the cabinet secretary think that my amendment 23 introduces an element of duplication?

Gillian Martin: Yes. My final point is that, if it were to be agreed to, there would be a duplication of the information that is already in the three reports that I mentioned.

Graham Simpson: Thank you.

Gillian Martin: I have pretty much come to the end. I urge Graham Simpson not to press amendment 23 and instead to support amendment 48—

Mark Ruskell: Sorry to interrupt—

Gillian Martin: You got in at the last second there. It is like a power game.

Mark Ruskell: Could the cabinet secretary reflect a bit on the evidence that we had from Environment Standards Scotland that there is deep concern about the quality and depth of information in the catch-up reports that came on the back of section 36? Beyond what Mr Golden has put forward as a new framework, what is the Government doing to reflect on that and improve

the reports? Many people were quite shocked by how thin those reports were and by the fact that they did not really bring new action to the table.

Gillian Martin: The proposal that we have worked on with Maurice Golden is already strengthening the action that the Government must take to introduce catch-up policy interventions if targets look like they are being missed. Again, there would be robust in-time data—not data that is two years old—to react to.

I will certainly reflect on the criticism that Mark Ruskell and others have put forward about the material in those reports and I will speak to my colleagues about how we can have more comprehensive reports. However, the section 35B-type report would have that critical in-time data rather than out-of-date data from two years ago—that in the section 36 report—which means that it would be a more useful report than some of the other proposals.

The Convener: I am not sure whether that was another hesitation or whether you have finished.

Gillian Martin: I have finished.

The Convener: Thank you.

I call Douglas Lumsden to wind up and press or withdraw amendment 38.

Douglas Lumsden: I have nothing further to say, and I will not press amendment 38.

Amendment 38, by agreement, withdrawn.

Amendments 39 and 40 not moved.

Amendment 61 moved—[Douglas Lumsden].

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

Members: No.

The Convener: There will be a division.

For

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Matheson, Michael (Falkirk West) (SNP)

Abstentions

Lennon, Monica (Central Scotland) (Lab)

The Convener: The result of the division on amendment 61 is: For 3, Against 3, Abstentions 1.

The vote is tied, so I will use my casting vote as I did previously.

Amendment 61 agreed to.

The Convener: The question is, that section 62 be agreed to—sorry. There are not 62 sections in the bill, for those people who are paying attention. [*Laughter.*] The question is, that section 2 be agreed to.

Section 2, as amended, agreed to.

After section 2

The Convener: I call amendment 51—sorry, amendment 15. I am getting all the numbers muddled up. Amendment 15, in the name of Maurice Golden, is grouped with amendment 16. I call him to move amendment 15 and speak to both amendments in the group.

Maurice Golden: The amendments in the group are similar but could be considered differently. Ultimately, the Scottish Government has accepted the principle of having targets—notably, the net zero target for 2045—so my rationale is that interim targets would be helpful. I accept that carbon budgets are a more useful methodology than annual targets, but key interim targets on the road to net zero fit well alongside that.

Amendment 15 includes the 68 per cent target, which was not devised by me. I was not involved at all in the configuration of that target—in fact, it is the Scottish Government's target for 2030. It is based on the Scottish Government's assessment five years ago, and it should still be applicable now, unless the rationale in 2019 was flawed or the progress since 2019 has been poor—or both. Any member of the Scottish National Party must support amendment 15 or they are voting against themselves—it is very simple.

I accept that the 2040 target is a more interesting one, but the balance between having carbon budgets and having a target is very useful.

I move amendment 15.

Gillian Martin: We will not support amendments 15 and 16, because they would set annual targets for 2030 and 2040. The Climate Change Committee has already made it clear that carbon budgets are preferable to a system of single-year targets. That is the approach that all other Governments across the UK take. I cannot support the amendments, because retaining single-year targets alongside carbon budgets would do the opposite of providing the clarity that is needed at this important juncture.

Maurice Golden: I am really interested. Obviously, a previous cabinet secretary is on record as saying that the 68 per cent target is easy but ambitious and possible to achieve. Amendment 15 would just codify the Scottish Government's policy—it should be really easy to support.

Gillian Martin: I do not remember Roseanna Cunningham ever saying the word “easy” in relation to meeting such targets, but the UK Government has set a nationally determined contribution target of 68 per cent for 2030. We work with the UK Government when it sets the NDC as to whether we agree with that. In effect, we would still have an NDC for 68 per cent if we were in line with the UK Government on that.

On alignment, one of the reasons why we are moving to a carbon budgeting system is to have the same process as other Governments across the UK have. The Climate Change Committee’s advice is that the carbon budgeting system is the best way forward.

Having single-year targets would not give the clarity that is needed when setting out our carbon budget envelope on the basis that we would be setting targets after we had received up-to-date CCC advice. I urge members to reject the amendments.

I am happy to take an intervention from Monica Lennon.

Monica Lennon: I have just a question, which you have started to answer already. I am sympathetic to what Maurice Golden is trying to achieve, but I am trying to understand the practical difficulties of having the targets that amendments 15 and 16 would bring in alongside having a carbon budget. It feels as if we are going in different directions here. What would the practical difficulties be?

Gillian Martin: I agree with your assessment. We are setting out a five-year carbon budget for the reason that we have given, which is that it takes into account fluctuations across the five-year process. Having single-year targets would completely take away from that approach and the nuances around it, which the CCC has given the advice on.

NDCs are set by the UK Government, and there is still the notional 68 per cent for the whole UK with regard to emissions. Therefore, amendments 15 and 16 would cloud the clarity that a five-year carbon budget provides. In effect, they would mean having two different systems at the same time.

12:15

Mark Ruskell: Will the cabinet secretary take an intervention?

The Convener: It is up to you, cabinet secretary, whether you want to take it.

Gillian Martin: I was looking at you, convener, to see whether you would let me.

Mark Ruskell: I appreciate your taking the intervention, cabinet secretary. I do not think that you have acknowledged this yet but, when I spoke to amendment 7, I said that many people had seen the target of a 75 per cent reduction by 2030 as hugely important in signifying the early action that we need to take to tackle climate change. How will that sort of thing work with the carbon budget? How easy will it be for somebody to look at where Scotland is and say whether we are on or off track to meet the 2045 date? Is there a way to articulate the budget in terms of the important milestones that people campaigned for on the streets and which this Parliament delivered? All of that is about the changing date for when we might actually meet the targets.

Gillian Martin: We have just had a group of amendments on the monitoring and evaluation reports that will be required if we slip back. Our first carbon budget, if it is set next year, will take us to 2030, which means that you will have a report at the end of that carbon budget by 2030.

Convener, I am happy to hand back to you.

The Convener: That is perfect. I call Maurice Golden to wind up and indicate whether he wishes to press or withdraw amendment 15.

Maurice Golden: This group of amendments presents the committee—and, indeed, Parliament—with a significant challenge with regard to monitoring and reporting under the bill. Five years ago to the day, the Scottish Government and SNP committee members, excluding Jackie Dunbar, voted for what is set out in amendment 15. As we configure the carbon budgets, how on earth do we ensure that, in five years’ time, the Scottish Government does not look back and say, “Actually, do we want to change the methodology again? What we said five years ago does not apply any more”? If that happens, we will not achieve net zero. The closer we get to 2045, the more significant that challenge becomes.

Essentially, amendment 15 is a challenge to members who were in Parliament in the previous session either to stick to the principles that were applied five years ago or to ditch them. If they ditch those principles, that presents a challenge for Parliament in how we ensure scrutiny of the bill.

The Convener: Will you confirm that you are pressing amendment 15?

Maurice Golden: Yes.

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

Members: No.

The Convener: There will be a division.

For

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Abstentions

Lennon, Monica (Central Scotland) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 1.

Amendment 15 disagreed to.

Maurice Golden: Amendment not moved, convener.

The Convener: I am sorry, but we have not got to the “not moved” part yet, Mr Golden. [*Laughter.*] Perhaps that will help you to remember that conversations that are loud enough for me to hear distract me. I certainly cannot do more than one thing at once.

Amendments 16 and 13 not moved.

The Convener: Amendment 62, in the name of Mark Ruskell, is grouped with amendments 64, 49 and 50.

Mark Ruskell: I am happy to speak to amendment 62. The climate change legislation relies heavily on the advisory body, the UK Climate Change Committee, which we all recognise provides really invaluable formal advice as well as really invaluable informal advice to Government and this committee. It is fair to say that, over the years that the CCC has been in operation and since the Parliament and Government have engaged with it, there have been issues relating to its capacity and resources and, because of that, with how responsive it has been in providing the advice that is needed at the right time, given changing circumstances.

If we think back to 2023, when the climate change plan was delayed, Chris Stark was vocal in saying that the delay had thrown out the CCC’s work programme as well as the window that was available to it to provide advice for the Scottish Parliament on our emissions reduction progress. In effect, we have been in a position in which the level of advice that the Parliament was expecting has not been available, because of the CCC’s capacity and its work programme.

We were in a similar position with the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, in that the CCC was unable to provide formal advice on the 2030 target because it was still completing its work on the peatland inventory. When we set the targets for 2030 under the 2019 act, we did not have full advice from the CCC.

That was not the CCC’s fault; it was to do with its capacity and work programme.

I lodged amendment 62 because the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 provides that, whenever Environmental Standards Scotland produces its annual report, it must communicate a statement to the Parliament on whether it has adequate resources to discharge its responsibilities. We cannot require something similar from the UKCCC because of how it is set up, although I think that it would be preferable if it could publicly talk about any capacity or resources issues that it has. My amendment is competent in that it requires the Scottish Government to report on whether there are capacity issues and to consult the CCC in doing that.

Monica Lennon: I am going to blame this question on my fuzzy head, but I want to understand your point. When I first read amendment 62, I thought that it referred to resourcing the CCC. Am I right that you mean Environmental Standards Scotland?

Mark Ruskell: No, I am making the point that there is precedent in law for another body—Environmental Standards Scotland—to have to say in its annual reporting whether it has enough resources to discharge its responsibilities. To my mind, it would be useful if we had a requirement for the UK Climate Change Committee to present similar information. At the moment, we do not know whether it has adequate resources to enable it to discharge its responsibilities, so a similar provision would be useful.

I will finish by saying that climate change is complex. The CCC is doing great work, but there is always new and emerging stuff for it to look at, such as blue carbon. It is important for it to be a body that can keep track of the Scottish context. In the past, there have been discussions about whether there should be a separate Scottish CCC, whether it should have an office in Scotland and whether it should be focused on the particular challenges that we are all aware of. That brings in a question of resourcing, which should involve an open discussion because, if our ability to scrutinise is limited by the CCC’s capacity, that is a problem.

I will listen to the intention behind amendments 64, 49 and 50.

I move amendment 62.

The Convener: Douglas Lumsden will speak to amendment 64, in the name of Brian Whittle, and other amendments in the group.

Douglas Lumsden: Amendments 64, 49 and 50 are basically all the same. The Climate Change Committee is named in UK legislation but not in the Scottish legislation. Amendment 64 would

specifically name the Climate Change Committee or any successor organisations as the relevant body from which ministers must take advice. We all agree that, in order to be non-partisan, advice on climate change plans and budgets should come from an independent source. The amendments would simply name the Climate Change Committee in the bill.

Gillian Martin: I appreciate the intention behind amendment 62, which Mark Ruskell lodged, on the broader point of ensuring that the Climate Change Committee is resourced. That was raised in the committee's stage 1 report. Of course, the CCC is a vital partner and the Government is committed to ensuring that it has the resources and information that it needs.

However, I must emphasise that the Climate Change Committee is jointly funded by the four nations of the UK, and there are funding arrangements and mechanisms in place that make that work. Amendment 62 would make only the Scottish Government legally responsible for plugging any shortfall—however that arose—in relation to one aspect of the committee's functions. Making one partner legally responsible for funding a narrow aspect of a body's work is not how the arrangement works, and nor is it how it should work. I urge the committee to reject amendment 62, because the funding and capacity of the Climate Change Committee are a matter of joint deliberation between the four Governments across the UK.

Amendments 64, 49 and 50, in the name of Brian Whittle, seek to prevent the Scottish Government and this Parliament from deciding that various functions under the Climate Change (Scotland) Act 2009 should be carried out by a body other than the UK Climate Change Committee or a successor body set up by the UK Government. The Scottish Government has no intention of anyone other than the UK Climate Change Committee carrying out such functions. However, when it passed the bill that became the Climate Change (Scotland) Act 2009, Parliament decided to provide a mechanism for another body to be appointed, should it ever be deemed appropriate. That included allowing for a specific Scottish climate change committee to be set up, and Parliament reaffirmed that decision in the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019.

There was no discussion at stage 1 of this bill about reversing those decisions of the Parliament, and I see no reason why the committee should be called to do that today. That question was not posed in the committee's evidence-taking process.

Monica Lennon: I have a question on amendment 62, which is in Mark Ruskell's name. It was helpful that you set out your position,

cabinet secretary, but I am sympathetic to his points about ensuring that the UKCCC is adequately resourced and has the correct capacity. I also recognise the need for a four-nations approach.

I do not think that it is Mark Ruskell's intention that the Scottish Government would do all the heavy lifting in funding terms, but has the Scottish Government had recent discussions with the UK Government and others about resources and capacity? Will you reassure the committee that that will be looked at on an on-going basis, to ensure that there are sufficient resources for the busy work programme?

Gillian Martin: The four nations are represented at the interministerial group, where the Climate Change Committee's capacity, the funding arrangements and the advice that all four nations need to move forward to net zero are discussed regularly. The IMG's most recent meeting was two weeks ago, when that particular issue did not come up.

The CCC has a new chief executive officer, whom I have not yet met. Capacity issues are the sort of thing that she will bring to all four nations as we have those deliberations. I stress that that discussion takes place between all four Governments; each plays its part and each commits to funding its appropriate part. I am not saying that the Scottish Government is doing all the heavy lifting. All four nations do the heavy lifting by taking their equal responsibility for funding the CCC.

The Convener: As you are finished, cabinet secretary, I ask Mark Ruskell to wind up and to press or withdraw amendment 62.

Mark Ruskell: I listened carefully to what the cabinet secretary said. I do not think that amendment 62 contains anything that would require the Scottish Government to fully fund the Climate Change Committee. The amendment relates very much to the work that that committee does in relation to Scottish carbon budgets. It is important that the issue is continually raised. If that is done through interministerial forums, so be it. An understanding of our needs, of the issues that are emerging from deliberation on our climate change plan and the budget and of the CCC's capacity to deliver on that need to be part of an active conversation.

I will consider whether it is worth revisiting amendment 62 ahead of stage 3, but I do not intend to press it at this point. I appreciate that the cabinet secretary has, I think, acknowledged that this is an issue. I think that she has acknowledged that—I am not sure. [*Interruption.*] She has—right, okay.

Gillian Martin: I am sorry—what did I just agree to there? [*Laughter.*]

Mark Ruskell: No—that is fine. [*Laughter.*]

The Convener: In bearer bonds.

Gillian Martin: If Mark Ruskell was asking a question, I am happy to answer.

The Convener: Mark, because the cabinet secretary nodded and that cannot be put in the *Official Report*, will you ask her how much you were actually asking for, or what you were asking for, and which she was agreeing to?

Mark Ruskell: It is not for me to write the financial budget for the Climate Change Committee, but I think that the cabinet secretary was acknowledging the issues around capacity and the need to take that work forward.

Gillian Martin: Yes, and I am happy to write to the committee about any conversations that I have on that at the IMG or directly with the Climate Change Committee.

12:30

The Convener: We are in the position that Mark Ruskell seeks to withdraw amendment 62.

Amendment 62, by agreement, withdrawn.

Section 3—Next climate change plan to follow setting of budgets

The Convener: Amendment 55, in the name of Sarah Boyack, is grouped with amendments 19, 20, 58, 22, 25 and 26. I remind members that, under rule 9.12.6C of standing orders, the Presiding Officer has determined that the costs that are associated with amendment 19 would be significant. Therefore, amendment 19 may be moved and debated, but the question on it may not be put, in the absence of a financial resolution. This obviously relates to what was asked about money.

I ask Sarah Boyack to speak to and move amendment 55 and to speak to the other amendments in the group.

Sarah Boyack: The aim of my amendment 55 is simple: it is to place a timescale of two months on publication of a draft climate change plan and all future plans. I want the change to be made as a way of stopping this Government, or any future Governments, from kicking the plan into the long grass.

I have said from the start of the process that the priority should be action, but it does not feel like we have had enough of that so far. Two months is a reasonable timeframe for a draft plan to come before Parliament, and it allows flexibility for when

the UK Climate Change Committee will publish its guidance.

Due to the swift process and timescale for submitting the amendments, amendment 55—should colleagues support it today—will need to be amended at stage 3, because it is vital that the timescale applies only to the draft climate change plan. I have discussed the issue with the cabinet secretary. I am grateful to her for her assurances that she will lodge an appropriate amendment at stage 3, so that we achieve and realise in practice the intention behind the amendment, as it is currently drafted. I say in advance that Scottish Labour will support that amendment when the cabinet secretary lodges it.

My amendment is preferable to Maurice Golden's amendment 21. His amendment is restricted to the first climate change plan, and it is important that we have a longer-term approach rather than one that deals just with the first plan. I hope that the Scottish Government will honour its commitment to publish the next plan quickly.

My amendment 55 is also preferable to the timescale that is set out in Mark Ruskell's amendment 18. Although that would work for 2025, we must have a long-term approach and require all Governments to implement it.

As to Mark Ruskell's requirement and suggestion for an interim plan, a ministerial statement would be a preferable approach, which would be enabled under amendment 53, in the name of Graham Simpson. I am inclined to support that, but I am interested to hear what Mark Ruskell says.

Mark Ruskell's other amendments consider all the different forms of consultation that would feed into the publication of the plan. We are supportive of public consultation, but I note the convener's comments about the financial implications of amendment 19. I very much support the ambition of the deliberative democratic process of bringing people with Parliament in tackling our climate ambitions. That has to be important. Some of Mark Ruskell's amendments are a bit too prescriptive for inclusion in the bill, but the issues are important to discuss.

I very much support Monica Lennon's amendment 55, which is important because it would give us greater parliamentary scrutiny of the climate change plan, thereby addressing the core concerns about inadequate action and lack of transparency on what we have had previously.

I appreciate the overall thrust of the amendments in the group, and I have been very supportive of the cabinet secretary's willingness to engage not just with me but with other colleagues on the committee. It has been important to have that discussion, given the tight schedule.

We need to get on with tackling the climate emergency. We have had delayed plans, which has led to slow or non-existent action. That has held us back as a country, and it will impact on our constituents, our environment and our economy. The bill is an opportunity for all of us round the table to ensure that that does not happen again.

I move amendment 55.

The Convener: I ask Mark Ruskell to speak to amendment 19 and other amendments in the group.

Mark Ruskell: I will briefly mention amendment 20 before coming on to amendment 19. I thank the cabinet secretary for the engagement on amendment 20. To follow on from our discussion about the capacity and function of the CCC, it is important that the Scottish Government can take advice from other bodies. We heard in evidence that that is reflected in the Northern Irish legislation. I am grateful for the discussion with the Government on that.

I will speak to amendment 19, although I cannot press it to a vote, because the Presiding Officer's view is that it would trigger the need for a financial resolution to the bill. That is disappointing, because clearly the Government has a budget for public engagement. It is also, I hope, committed to consultation on climate change plans and is continuing to reflect on the importance of participative democratic processes and the work of the climate assembly, which came on the back of the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019. That assembly was very valuable in bringing forward thinking on diet, travel and how we heat our homes, and I am sure that it was valuable for the Government in considering how to develop policy. Of course, citizens assemblies are only one way of doing that. Our committee commissioned a people's panel on the public engagement aspects of the Climate Change (Scotland) Act 2009, which was also very valuable.

I do not want to be prescriptive. It is for the Government to reflect on the importance of involving the public and people who are outside politics but who nevertheless will have a view on the big behaviour changes that we need to make as a society to tackle climate change. That is important to drive forward a social licence for some of the huge changes that we will need in our society if we are to get anywhere close to meeting our climate targets. I ask the cabinet secretary to follow up on this conversation between now and stage 3 to see how we can bake into the bill an important role for public engagement to ensure that future Governments are really committed to that kind of work.

I briefly turn to amendments 25 and 26 and other options in this space. As Sarah Boyack said, we have already talked about the statement that will come alongside the budgets and the effect of Graham Simpson's amendment 53 in that regard. We need more certainty about how the Government intends to meet the climate budget and what is required across society to get the emissions reductions. My amendment 26 seeks to have an interim plan six months after the bill is introduced, but I do not feel that that is necessary right now, so I will not move it. However, I will press amendment 25 to the vote. There is an interplay between setting a carbon budget and setting a plan. In an ideal world, we would have a clear climate plan at the same time as the budget so that the Government is open, transparent and honest about the kinds of changes that will be needed to meet the targets.

We heard in evidence that the approach needs to go beyond the broad pathways that the Climate Change Committee will bring forward. There needs to be a marrying up of the carbon budget with the action that is needed to tackle climate change. When we are scrutinising the carbon budgets, it is important that we get as much certainty as possible about what will have to be done to meet those budgets.

However, I am not convinced that what we approved through Graham Simpson's amendment 53 really does that. To go back to our initial discussion, I note that it is still quite woolly. We will need more detail next spring when the carbon budgets come forward. We need to have a clear analysis of what is needed to meet the budgets and of whether the Government is preparing and planning and has the finance in place to achieve that.

I will move amendment 25. In an ideal world, we should be moving a plan forward at the same time as we move a budget forward. I will not move amendment 26. I will hold on to amendment 19, but I will move amendment 20.

Monica Lennon: I will move amendment 58. Sarah Boyack may have misspoken—she said that she would support my amendment 55. I am checking that I have the numbers correct. Sarah's amendment is 55 and mine is 58. We have that in the *Official Report* now. It has been a long morning. I agree with my colleague Sarah Boyack's comments, and I will not bother to repeat those points.

I am pleased to say that I have worked closely with the Scottish Government on amendment 58. It would require that ministers respond to parliamentary scrutiny on the draft climate change plan within three months of any committee report or parliamentary resolution related to the draft plan. I apologise for having the sniffles.

Colleagues will know that section 35A of the 2009 act makes provisions for parliamentary scrutiny of the draft climate change plan, and ministers respond to that scrutiny. However, there is currently no specific timeframe in the 2009 act within which ministers must respond to that parliamentary scrutiny, other than the deadline by which the climate change plan must be finalised. Ministers' response to parliamentary scrutiny could be included in the statement that accompanies the finalised climate change plan when it is laid in Parliament, or earlier if ministers are taking longer than three months to finalise the plan. Again, I am pleased to have worked with the Government on amendment 58, and I hope that colleagues support it.

I have made it clear that I support amendment 55 in Sarah Boyack's name. Having listened to Mark Ruskell on his amendment 25, it strikes me that amendment 55 is a better option, as it will give the Scottish Government or the Scottish ministers a bit more space and headroom to produce the climate change plan.

The Convener: I call Graham Simpson to speak to amendment 22 in the absence of Maurice Golden, who has had to go to another meeting.

Graham Simpson: Amendment 22 specifies a date for publication of the draft climate change plan. However, it would cut across amendment 55 in the name of Sarah Boyack, and we prefer amendment 55, so I will not move amendment 22.

The Convener: That was very succinct. No other members wish to contribute. Cabinet secretary—over to you.

Gillian Martin: I recognise that amendment 19 cannot be voted on today. The Scottish Government supports amendments 20 and 58, but cannot support amendments 22, 25 and 26. I am pleased to have worked with Sarah Boyack on amendment 55, and she has my commitment to lodge a small stage 3 amendment to tighten it up. I appreciate her co-operation with me on that, which has been great.

Amendments 55 and 22 would set different deadlines in relation to the first climate change plan. We have had a bit of debate on that, and amendment 55 is coming out as the preferred option, which I am very pleased about.

To continue on amendments that are linked to when a climate change plan would be produced, I cannot support Mark Ruskell's amendments 25 and 26, as they would require a preliminary version of the draft climate change plan. My phrase "draft of a draft" has been used quite often. To produce them only to those timetables would sow confusion.

I am very conscious that, while we are engaged in the detail of the work, wider civic Scotland would not want to see an endless stream of drafts and interim plans. The options that have been discussed with Sarah Boyack and Monica Lennon are far preferable. The information that I have said I will produce in relation to amendment 53, which Graham Simpson moved earlier and which was voted on, will help that process.

12:45

Amendment 19 calls for "public consultation to inform ... a climate change plan".

The Government does and would do that anyway, but I have absolutely no objection at all to that being formalised. I know that we cannot vote on that amendment today, but I would have supported it if its subsection 2 had not been in it—I think that that subsection would require a financial memorandum. I say to Mark Ruskell that we could work with him on something ahead of stage 3.

I have absolutely no difficulty with amendment 20, which will formalise wider engagement on climate change plans with particular groups that the Government is already meeting and collaborating with in the regular course of business. I am very happy to support that amendment. There is a minor technical issue with the way that it refers to section 9 of the 2009 act, so I might come back to amend that at stage 3, but I can discuss that with Mr Ruskell, as we go forward.

Finally, I welcome amendment 58 from Monica Lennon, which would set the timescale for the Government to respond to parliamentary views on the draft climate change plan.

The Convener: I call Sarah Boyack to briefly wind up and to press or seek to withdraw amendment 55.

Sarah Boyack: Thank you, cabinet secretary—I am sorry, I mean convener.

The Convener: I would love to be the cabinet secretary but I am not. I will take "convener".

Sarah Boyack: I have just corrected myself, convener.

I thank Monica Lennon for setting the record straight on amendments 55 and 58. I amended my draft notes incorrectly. The amendments are about trying to improve the legislation. We have talked about that again and again.

It is very important for us that there is discussion with colleagues after today, in advance of next week's stage 3 debate. Getting the cabinet secretary's commitment on Mark Ruskell's amendment 20 is really important, because we

want to maximise consultation and certainty, and to improve the legislation. We want to be able to talk to third sector organisations, businesses, environmental experts and our constituents so that we do not fail to meet future climate targets. I welcome the fact that Graham Simpson supported my amendment 55 and the work that I have done with the acting cabinet secretary to ensure that we get this.

Amendment 55 agreed to.

Section 3, as amended, agreed to.

The Convener: This seems to be an appropriate moment for us to pause to have something to eat before we go on to the next section and, cabinet secretary, for your officials to recover from the shock of finding out that I was the cabinet secretary, albeit briefly. The looks on their faces say that they need a moment to compose themselves.

We will break briefly now until 1.20. Thank you very much, everyone.

12:48

Meeting suspended.

13:20

On resuming—

After section 3

The Convener: Welcome back. We continue our stage 2 consideration of the Climate Change (Emissions Reduction Targets) (Scotland) Bill. Amendment 17, in the name of Patrick Harvie, is grouped with amendments 18, 21 and 56.

Patrick Harvie: Like my amendment 60, amendment 17 addresses the carbon impact of major capital projects. As I indicated earlier, there are two places where a reference to that could be added to the bill, and amendment 17 seeks to add it in one of them.

Given that the cabinet secretary has said that she is willing to work with me to produce an alternative, I do not have much to say about amendment 17 at this point, but I will move it so that the rest of the amendments in the group can be debated. If the cabinet secretary wants to say anything further about any alternative approaches that she has in mind or issues that she wants to explore, I will be happy to discuss them, either now or later.

I move amendment 17.

The Convener: It looks as though that will be discussed later, Mr Harvie.

I invite Mark Ruskell to speak to amendment 18 and other amendments in the group.

Mark Ruskell: Amendment 18 seeks to ensure that the climate change plan will state the expected emissions reductions for each policy. We recognise that that is good practice, and the UKCCC has been recommending it. My amendment seeks to ensure that climate change plans will include that detail. I do not think that we have ever had that detail up to now, as the Government has said, "This is too difficult to do—it's too difficult to work it out and we can't make it that transparent." Going forward, we absolutely need that transparency, because it could be that some policies deliver unexpectedly large reductions in emissions while others may result in less of a reduction. Amendment 18 seeks to improve scrutiny and transparency, which is important.

The Convener: I invite Graham Simpson to speak to amendment 21, in the name of Maurice Golden, and other amendments in the group.

Graham Simpson: Amendment 21 will require that the climate change plan's costs and benefits assessment is

"broken down by reference to the period covered by a Scottish carbon budget in which those costs and benefits are expected to arise".

The Scottish Government's best practice approach already achieves the sentiment of amendment 21, but it has not been codified and it is not a requirement for future Governments. We appreciate the technical challenges in meeting the duty in an efficient way as, for example, some policies may straddle two carbon budget periods, but we think that it is possible to disaggregate that between carbon budget periods.

The Convener: I invite Sarah Boyack to speak to amendment 56 and other amendments in the group.

Sarah Boyack: Amendment 56 is vital to ensuring that the next climate change plan is robust. It will place a requirement on the Scottish Government to quantify its anticipated emissions reductions "in measurable terms" and it will put distinct, tangible outcomes into the climate change plan.

I thank the cabinet secretary for her support in relation to wording the amendment to ensure that the outcomes will be measured in terms of groups of policies rather than anticipated emissions per policy. That will enable a crossover between policies where multiple proposals will work together to reduce emissions. The effect will remain the same: in the climate change plan, we should see real actions that we can measure each year to track the impact of each policy so that we get more dynamic and impactful adjustments

when the Scottish Government of the day is falling short. The key part of the amendment is the phrase “in measurable terms”, which ties the Scottish Government into making the outcomes more than just hopes and dreams, with things that can be scrutinised each year for efficiency and effectiveness.

I believe that my amendment represents a more effective version of what Mark Ruskell is trying to deliver through his amendment 18. That amendment’s emphasis on making the climate change plan more robust and helpful is right, but I think that, given its measurability aspect, my amendment is better. Moreover, Mr Ruskell’s amendment does not contain the flexibility that we need, which is included in my amendment through the groupings approach.

I very much agree with the sentiment behind Patrick Harvie’s amendment 17. The impact on the climate needs to be considered in major capital projects. Actually, that should be the case for all capital projects, because we should be thinking about the accumulation of impacts, and we can also learn something about best practice from different projects. That said, I would not put that sort of thing in the bill; instead, I hope that we will come back to it when we scrutinise the climate change plan next year. That is a better place to tackle those issues.

I urge the committee to support my amendment 56 so that we write into the bill a requirement to go further than the Scottish Government has previously gone in committing to measurable and impactful actions.

The Convener: As no one else wants to contribute to the debate, I call the cabinet secretary.

Gillian Martin: The Government supports amendments 56 and 21, but it cannot support amendment 18. I have already said that I want to work with Patrick Harvie on the substance of amendment 17, and I am pleased that he is willing not to press it. I recognise the point that he has made and I support the idea that we set out our approach to assessing the emissions that are associated with capital projects, but the amendment as written does not sufficiently define what a “major capital project” is. I think that we can work together ahead of stage 3—indeed, I hope that we can do so—and get something that everyone is comfortable with by that time.

Mark Ruskell’s amendment 18 and Sarah Boyack’s amendment 56 cover similar ground with regard to the breakdown of climate change plans. Sarah Boyack came to me to set out her intention and the approach that she wanted to take, and she worked with the Government to get the wording of her amendment to a place where we

are happy to support it. Before I finish my remarks on amendment 56, I note that it better reflects the intentions of quite a few members who came and told me what they wanted to see in the bill. I urge members to support it over amendment 18, because I agree with Sarah Boyack’s approach.

On amendment 21, which relates to the best-practice approach—

Mark Ruskell: Will the cabinet secretary take an intervention?

Gillian Martin: I will.

Mark Ruskell: Can you explain very simply what the groupings of policies would look like? My concern is that, depending on how things are grouped, such an approach could mask transparency with regard to what policies in certain areas would achieve. As you recognise, that has been the problem with the climate plans the whole time—it has been very difficult to see what individual policies have achieved.

Gillian Martin: It is perhaps for Ms Boyack to speak to her amendment, but what we like about it is that it accepts the principle of your amendment while allowing for policies to be grouped where necessary, which will provide more transparency. The intention is very similar to that of your amendment, Mr Ruskell, but we like the idea of the groupings, which is why we have worked with Sarah Boyack on that. I am sure that she would want to explain why she has taken that approach, but I hope that Mr Ruskell can see that, by voting for Sarah Boyack’s amendment, he will really get what he wants in the bill.

I have come to the end of my remarks, convener. I am happy to support amendment 21.

The Convener: I invite Patrick Harvie to wind up and indicate whether he wishes to press or withdraw amendment 17.

Patrick Harvie: I do not have anything further to add, convener. I am happy to work with the minister on an alternative, and I therefore seek permission to withdraw amendment 17.

Amendment 17, by agreement, withdrawn.

13:30

The Convener: We will now go through a series of decisions on amendments. I will do it slowly in the hope that we will all get it right, having been recharged at lunch.

Amendment 18 not moved.

Amendment 21 moved—[Graham Simpson]—and agreed to.

Amendment 56 moved—[Sarah Boyack]—and agreed to.

The Convener: Amendment 19, in the name of Mark Ruskell, was debated with amendment 55. As previously advised, although amendment 19 can be moved, the question on it cannot be put. I call on Mark Ruskell to move or not move the amendment.

Mark Ruskell: Can't move, won't move. [*Laughter.*]

The Convener: I am sure that there is a song in there somewhere.

Amendment 19 not moved.

Amendment 20 moved—[Mark Ruskell]—and agreed to.

Amendment 58 moved—[Monica Lennon]—and agreed to.

Amendments 22 and 23 not moved.

Amendment 48 moved—[Graham Simpson].

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Lumsden, Douglas (North East Scotland) (Con)
Matheson, Michael (Falkirk West) (SNP)
Mountain, Edward (Highlands and Islands) (Con)

Abstentions

Ruskell, Mark (Mid Scotland and Fife) (Green)

The Convener: The result of the division is: For 6, Against 0, Abstentions 1.

Amendment 48 agreed to.

Amendment 57 moved—[Monica Lennon]—and agreed to.

Amendment 63 moved—[Douglas Lumsden].

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

Members: No.

The Convener: There will be a division.

For

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Matheson, Michael (Falkirk West) (SNP)

Abstentions

Lennon, Monica (Central Scotland) (Lab)

The Convener: The result of the division is: For 3, Against 3, Abstentions 1. I use my casting vote to vote for the amendment.

Amendment 63 agreed to.

Amendment 64 not moved.

Section 4—Further provision about setting first budgets

Amendment 37 not moved.

Amendment 45 moved—[Graham Simpson]—and agreed to.

Amendments 49 and 50 not moved.

Section 4, as amended, agreed to.

After section 4

Amendment 25 moved—[Mark Ruskell].

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Lumsden, Douglas (North East Scotland) (Con)
Matheson, Michael (Falkirk West) (SNP)
Mountain, Edward (Highlands and Islands) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 25 disagreed to.

Amendment 26 not moved.

The Convener: Amendment 27, in the name of Patrick Harvie, is in a group on its own.

Patrick Harvie: We are coming to the end of stage 2, so I promise not to keep the committee very long, but I would like to go back to the debates in 2009 on the first climate change legislation. As it happens, the amendment sessions took place in this room and I was sitting where you are, convener.

One of the arguments that I made in relation to that legislation was that there needed to be a clear connection between climate targets, as we were framing them then—we would now call them carbon budgets—and the Scottish Government's financial budget that we pass every year in relation to the money that is spent on investments and public services. Members agreed with that argument, which led to an amendment that became section 94 of the Climate Change

(Scotland) Act 2009. It was acknowledged then, including by the Government, that that was a first stab at a methodology for connecting climate targets with the Government's spending plans.

I do not think that the methodology has ever been perfect. I am not suggesting that it has not been refined and improved to some extent, but it has always placed a bit too much emphasis on the most direct connections relating to the emissions that are generated by the spending of money, rather than on the effect that spending has on the economy and the emissions that will be generated as a result.

I am seeking to expand section 94 of the 2009 act as it will now apply to the carbon budgets instead of the climate targets that existed previously. Amendment 27 seeks to retain the requirement for a statement that sets out

“the direct and indirect impact on greenhouse gas emissions of the activities to be funded by virtue of the proposals”—

in other words, the financial budget. However, the amendment would add two elements. One is about

“the financial resources being made available ... to ensure that the Scottish carbon budget target for”

a particular period

“will be met.”

What would be needed is not just an assessment of the budget but a specific statement on how the measures to meet the carbon budget would be funded.

The other change, which is probably the more significant one, would be the requirement for some independent scrutiny of the statement about the connection between the carbon budget and the financial budget. I am not casting aspersions on the current Government or any Government since 2009, but it is reasonable for the Parliament to expect that the Government's assessment of the connection between spending and emissions will be independently scrutinised. The body that the Government identifies for that role might be, for example, the Scottish Fiscal Commission or another existing body; I am not suggesting the creation of something new. However, a politically independent body should be given the responsibility of scrutinising what the Government is saying about a really important question: if the Government is setting carbon budgets and laying out a climate change plan, is the action that is necessary to meet those budgets and is the action that is set out in the plan going to be funded? We need to scrutinise that for every year's financial budget.

Monica Lennon: Patrick Harvie sets out the reasonable position that we want to ensure that

adequate funding is available for the measures that will make the difference, but does he recognise that not all the financial resources will flow from Government and that we will need investment from the private sector, for example? Will he say something about that? I have a concern that amendment 27 does not fully reflect the reality that not all the finance is Government finance. How does his amendment sit with that?

Patrick Harvie: That is a perfectly fair comment. Indeed, it is not only about the private sector, as we also require the contribution of local government, the UK Government and our entire economy. The point that I am making relates to the annual political process of setting a budget for the Scottish Government as we debate it in Parliament every year. That budget has a substantial impact on our ability to deliver the Scottish Government's policies and proposals in the climate change plan and thereby its ability to make the greatest contribution that it can to achieving those carbon budgets. Therefore, the finance budget needs to be scrutinised in that way by Parliament, and that scrutiny by Parliament will be most effective and best informed if there has been an independent assessment of what the Government sets out.

Graham Simpson: Will the member take an intervention?

Patrick Harvie: Yes—in a moment.

I do not honestly know what the Government's reaction to the proposal will be and whether it will be open to it, but I genuinely urge the committee, when the Government tells us what it thinks of the argument, to consider the value of applying some independent scrutiny at that stage.

Graham Simpson: I want to clarify the last provision in the amendment, which says:

“Ministers must take steps to ensure that the document laid ... has been independently reviewed by a person with appropriate financial expertise.”

Is it Patrick Harvie's intention that that should be just one individual, or does he mean that it should be a body? If it is a person—an individual—how would we assess what is meant by “appropriate financial expertise”?

Patrick Harvie: That form of words was suggested by parliamentary draftspeople. My understanding and intention, as I expressed it to them, was that the phrase would apply to a body such as the Scottish Fiscal Commission. I understand that that would be captured by the proposed form of words.

The Convener: I wonder how, if the Parliament does not have a chance to scrutinise whether there is sufficient money available, we are ever going to reach the targets. Surely money will drive

whether we can reach the targets. Is that what you are driving at? If it is, I wonder how the Government will look at that. I am interested in your views.

Patrick Harvie: As Monica Lennon suggested, the spending proposals in each year's finance budget are not the only factor, but they are a very major factor in whether the Scottish Government's intended policy priorities, which are designed to deliver on a carbon budget, will be met. If we set out those policies and then fail to fund them, we can have no confidence at all that we are giving ourselves even a reasonable chance of meeting what is set out in the carbon budget.

The principle is to give Parliament the greatest level of independently informed analysis of what the Government is asking us to approve every year when we pass a finance budget. Will it be able to adequately fund the climate change policies that have been set out? Will it give us a chance of meeting the carbon budget?

Bob Doris: I fully appreciate what Mr Harvie is trying to achieve with amendment 27, but there are a lot of moving parts in the finances that are required to meet climate targets, as Monica Lennon outlined. There is UK Government direct funding; there are Barnett consequentials from the UK Government; there are the unexpected in-year revisions that can happen to the Scottish budget as a result of UK Government changes; there are the Scottish Government's policy decisions; there are local authorities; there is the private sector; and there are consumers and the public, who might have to pay more, directly or indirectly. There is an idea that we can land on a precise total or quantum that would be the Scottish Government's contribution, but that might be a moveable feast. Would you reflect on that, Mr Harvie? How can we reconcile that with the amendments that have been proposed?

13:45

Patrick Harvie: We can make a comparison with other aspects of budget scrutiny. For example, the Government produces equality impact assessments in relation to the budget. No one would suggest that the achievement of equality in our society is solely determined by Scottish Government policies and that it is unaffected by the private sector, the UK Government or other factors, but it is a perfectly reasonable expectation that Parliament should place on the Government that its spending plans are scrutinised in relation to their likely impact on equality. The comparison in this case is simply to require the Government to produce a document that sets out the financial resources that are being made available by virtue of the budget to ensure that the Scottish carbon budget target for the

particular period will be met, and to require that that document be independently scrutinised.

I genuinely struggle to accept any suggestion that Parliament's scrutiny of the finance budget would be weaker for the provision of that document and its independent scrutiny.

I move amendment 27.

Gillian Martin: Amendment 27 has two aspects—namely, information on the expenditure that is being directed at carbon budgets in annual financial budgets, and an independent review of such information.

I completely understand why Patrick Harvie has lodged an amendment that requires greater information on the emissions that are associated with spend—I understand the arguments for that. However, the climate change plan is already required to provide cost estimates for the policies that are included in that plan, and the Government publishes a statutory carbon assessment of the budget—I think that Patrick Harvie mentioned that—which is required by section 94 of the 2009 act.

Subsequent to that happening, I will outline some of the things that the Government is doing to give more information in this space. The joint budget review by the Scottish Government and the Scottish Parliament is improving transparency on the budget and climate change funding, with a new taxonomy on climate change spending.

The Scottish Government, separately, is just about to complete our pilot of the net zero assessment, with a view to rolling out that approach in 2025 across all new significant Scottish Government spending decisions. That will provide greater visibility of the areas that contribute to emissions and it will aid the decision-making process.

The joint budget review and the net zero assessment are already providing significant improvements but, in particular, by the time we get to the end of the pilot, which will be rolled out in 2025, that will have made all the difference.

Patrick Harvie: Could the cabinet secretary indicate whether it is the Government's intention and commitment that the work that she is talking about, which is under development, will be subject to independent scrutiny by a body other than the Government, in order to ensure that Parliament's assessment of it is well informed?

Gillian Martin: I will not answer on that particular point, because I do not know for sure what that scrutiny is. I would need to get back to the committee. We can have a discussion about that—maybe that is an area in which we can improve.

I want to talk about the practicalities of the independent review and what Mr Harvie is suggesting. The tight timescales for publishing the budget would not allow time for an independent review. Obviously, there is a window between the UK budget being announced and the Scottish budget being finalised. In practicality, the current carbon assessment work that is associated with the budget would be finalised only about 48 hours before the budget is announced in Parliament and published. That is the timescale that we are working with. I do not see where we would have time for an independent review of that work. Even if the information could be shared with Parliament, when would that independent review take place?

As I said at the outset, I understand the sentiment behind requiring more information, and I would like to work with Mr Harvie on how we can strengthen that.

Sarah Boyack: The timescale for the introduction of a budget is tight. Presumably, there would be opportunity for parliamentary scrutiny of that budget to include the wider environmental and climate impacts.

Gillian Martin: Yes. We need to discuss whether the information that is provided as part of the joint budget review and the information that will be in the roll-out of the approach that is taken to Scottish Government spending generally would be sufficient for Parliament to carry out enhanced scrutiny.

There is room for manoeuvre on amendment 27 but, as it stands, the biggest issue is the practicality of delivering on what is in the amendment, as it is almost impossible to achieve. I am happy to discuss the amendment with Patrick Harvie ahead of stage 3.

Douglas Lumsden: The financial budget also includes the capital budget. How would that work with this? I imagine that a lot more work would have to be done to work out the carbon impact of a capital project or programme. That could mean budgets having to come back maybe months later because the carbon side of things does not match up. I am just trying to think of the practicalities of how it would or could work.

Gillian Martin: Given that Mr Harvie has said that it is not only about the emissions impact of, say, the construction of something but about the long-term impact, that obviously gets a little bit more complicated.

I understand the intention of the amendment, because Parliament would like a deeper analysis of the carbon impact of Government spend. I have set out how the Government has moved in these areas, and I am hopeful that the pilot that is about to complete will provide a lot more of that information. I need to have a discussion with Mr

Harvie about what more he would want that can practically be delivered. That is my main point.

The Convener: When Mr Harvie was a minister, one of his policies was that local housing would reach energy performance certificate band C standard by 2032. That would be built into the heat in buildings strategy, which would have implications on the budget that was given to councils. Highland Council has indicated that the cost of that would be £360 million, which is quite a big proportion of its annual budget—roughly half. When carbon budgets and policies are set, how can the Parliament follow that money to see whether it is being made available to local government, and how will local government have confidence in that? Surely the amendment goes some way to follow that through, but perhaps I have got the wrong end of what Mr Harvie is trying to achieve.

Gillian Martin: I do not want to get into detail on the example that you have given but, in effect, you have underlined what Monica Lennon said. There are a lot of moving parts in how something is financed. A project as large as the one that you discussed would probably not be solely financed by central Government or local government, as private investment and housing associations might also be involved. What you have outlined shows some of the difficulties with this.

It has been useful to have the debate, but I cannot support the amendment at the moment. I urge the committee not to support it; its aims are not achievable, because of the way in which the amendment is set out. Also, quite a lot of work has been done and is about to be completed, and it is possible that the committee will be content when it sees that that work has made the difference to the information that is available.

The Convener: Sorry, cabinet secretary, are you looking at me because you have answered my question and have now finished?

Gillian Martin: Yes.

The Convener: I wondered whether that was just hesitation but, obviously, it was not.

I call Patrick Harvie to wind up and to press or withdraw amendment 27.

Patrick Harvie: I thank the cabinet secretary for her response and other members for their contributions to the discussion. I am tempted to press amendment 27, partly to gauge the level of support for it on the committee. I may not have done enough to persuade people on this precise amendment, but I would like to get a sense of whether I have. If I have not, I will perhaps explore lodging something else at stage 3.

However, if the committee is convinced that an amendment is needed to place additional requirements in the bill at this point, if it were to agree to the amendment, the onus would be on the Government, if it wanted to refine the provision, to convince the majority of Parliament of the need for a change. I would prefer to at least put the question to the committee now, so I press amendment 27.

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

Members: No.

The Convener: There will be a division.

For

Ruskell, Mark (Mid Scotland and Fife) (Green)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)

Dunbar, Jackie (Aberdeen Donside) (SNP)

Lennon, Monica (Central Scotland) (Lab)

Matheson, Michael (Falkirk West) (SNP)

Abstentions

Lumsden, Douglas (North East Scotland) (Con)

Mountain, Edward (Highlands and Islands) (Con)

The Convener: The result of the division is: For 1, Against 4, Abstentions 2.

Amendment 27 disagreed to.

Section 5—Ancillary provision

The Convener: Amendment 51, in the name of Brian Whittle, is in a group on its own. As Brian Whittle is not here, Graham Simpson will speak to and move the amendment for him.

Graham Simpson: I will not, but I understand the amendment. Mr Lumsden will speak to it.

The Convener: I apologise—it has obviously been a long day.

I call Mr Lumsden to speak to amendment 51.

Douglas Lumsden: This last amendment is quite brief. It simply involves making all the regulations under the bill subject to the affirmative procedure. The bill proposes that some regulations be subject to the affirmative and some to the negative procedure. We all agree that climate change is too important an issue not to give supplementary legislation full scrutiny. Making the regulations subject to the affirmative procedure would ensure that they get the scrutiny that they deserve.

I move amendment 51.

Gillian Martin: I am sorry to end on a negative note, but the Government cannot support amendment 21. Sorry, I mean amendment 51—it has been a long day.

Amendment 51 would make all ancillary regulations, no matter how minor, subject to the affirmative procedure. Even something as simple as swapping the words “Scottish carbon budget target” for “interim target” in an SSI would take up more parliamentary time, including in committee.

Section 5 follows the standard model that has been used for all ancillary powers for several years, with the affirmative procedure applying to regulations that modify primary legislation and the negative procedure applying to everything else. That long-settled approach respects the balance between the importance of parliamentary oversight and the proper use of parliamentary time. It is also the approach that the Delegated Powers and Law Reform Committee has endorsed generally, as well as specifically in relation to this bill, as that committee outlined in paragraph 47 of its stage 1 report.

I urge the committee not to support amendment 51.

The Convener: Thank you. I call Douglas Lumsden—I think that I have got it right this time—to wind up.

Douglas Lumsden: I have nothing more to add. I moved amendment 51 to try to have better scrutiny and I am happy to press it.

The Convener: The question is, that amendment 51 be agreed. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Lumsden, Douglas (North East Scotland) (Con)

Mountain, Edward (Highlands and Islands) (Con)

Against

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)

Dunbar, Jackie (Aberdeen Donside) (SNP)

Lennon, Monica (Central Scotland) (Lab)

Matheson, Michael (Falkirk West) (SNP)

Ruskell, Mark (Mid Scotland and Fife) (Green)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 51 disagreed to.

Section 5 agreed to.

Sections 6 and 7 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill.

The stage 3 debate will be held next week, and amendments for stage 3 must be lodged by Friday 1 November at noon.

I thank all the committee members for taking on the exceptional extra work required to get us to

where we are today at fairly short notice, on a short-notice bill. I also thank those who gave evidence to the committee to help us with our deliberation and those members of the Parliament who engaged and lodged amendments at stage 2.

Next week, we will continue to take evidence on the Land Reform (Scotland) Bill. We have outside visits this Thursday night and Friday night as part of that work.

That concludes our meeting.

Meeting closed at 14:01.

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

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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