



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 6 October 2020

Session 5



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ECONOMY, ENERGY AND FAIR WORK COMMITTEE

31st Meeting 2020, Session 5

CONVENER

*Gordon Lindhurst (Lothian) (Con)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

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

*Maurice Golden (West Scotland) (Con)

*Rhoda Grant (Highlands and Islands) (Lab)

*Alison Harris (Central Scotland) (Con)

*Richard Lyle (Uddingston and Bellshill) (SNP)

Gordon MacDonald (Edinburgh Pentlands) (SNP)

*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

James Hemphill (Scottish Government)

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

Urszula Kasperek (Scottish Government)

Norman MacLeod (Scottish Government)

John Mason (Glasgow Shettleston) (SNP) (Committee Substitute)

Paul Wheelhouse (Minister for Energy, Connectivity and the Islands)

CLERK TO THE COMMITTEE

Alison Walker

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Economy, Energy and Fair Work Committee

Tuesday 6 October 2020

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Gordon Lindhurst): Good morning and welcome to the 31st meeting in 2020 of the Economy, Energy and Fair Work Committee. Apologies have been received from Gordon MacDonald; I welcome John Mason, who is attending as a committee substitute.

Agenda item 1 is a decision on whether to take in private items 4 to 6 and consideration of those items at future meetings. Do we agree to do that?

Members indicated agreement.

Pre-Budget Scrutiny 2021-22

The Convener: Agenda item 2 is pre-budget scrutiny 2021-22, including the impact of Covid-19 on businesses, workers and the economy. We have with us in the committee room Jamie Hepburn, the Minister for Business, Fair Work and Skills, and Gavin Gray, who is deputy director of the young person guarantee. Online, we have Colin Robertson, who is head of the skills development unit, and Norman MacLeod, who is senior principal—my apologies, I jumped ahead to the wrong sheet. That was my mistake. We have Amy Stuart of the employability division.

I welcome you all and invite the minister to make a brief opening statement.

The Minister for Business, Fair Work and Skills (Jamie Hepburn): Thank you for inviting me to attend today. I am sure that we all know that the global pandemic has created unprecedented challenges for businesses and individuals throughout Scotland. We acted quickly and put in place a comprehensive package of measures worth more than £2.3 billion to help to sustain businesses. We are acutely aware of the disproportionate impact that the pandemic could have on key priority groups, which is why our response has a key focus on supporting young people and those who face unemployment.

We have a strong infrastructure already in place, including our developing the young workforce network, and a range of programmes already delivering for people who need it most. It is on those foundations that we must build as we steer our way through the difficult times to come.

We have already commissioned an additional £100 million for employment support and training. Of that, £60 million has been committed to the young person guarantee, delivering the recommendations set out by Sandy Begbie in September, and £10 million has been invested in apprenticeships, to help modern and graduate apprentices who are facing redundancy to get back into work. We will increase support through our partnership action for continuing employment scheme and we will create a £25 million national transition training fund, launching in autumn, to provide rapid, high-quality and targeted support to those people facing redundancy or unemployment in the sectors and regions that are most exposed to the current economic downturn. We will also increase funding for the flexible workforce development fund, from £10 million to £20 million for the coming academic year, to help apprenticeship levy training employers to upskill and reskill their existing workforce. We continue to provide support for those who are unemployed or in work on incomes of £20,000 or less to access

new skills, focused on labour market progression, through individual training accounts.

I am sure that all committee members appreciate the scale of the challenge that we face. We are keen to work collaboratively with all parties and partners in our response to the pandemic. That will be important, if we are to ultimately build back our economy in a fairer, greener and more sustainable way.

With that, I am happy to field any questions that the committee may have.

The Convener: Thank you. If you wish to bring in either of your officials who are online—Amy Stuart and Colin Robertson—please name them, to let broadcasting staff bring them in. It would perhaps be easier to bring in your other official, who is in the room, as might be required.

We now go to the deputy convener, Willie Coffey, who is online.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning. A good place to start might be to talk about youth employment and unemployment in Scotland, which is of interest to the whole committee.

After the previous comparable shock to the economy—the 2008 recession—it took several years for youth unemployment to drop to pre-recession levels. Given that the United Kingdom Government does not have a budget this year with any specific methods to tackle youth unemployment, is there a danger that the same thing could happen again and we might see a peak in youth unemployment levels in Scotland?

Jamie Hepburn: The first thing that I would reflect on is that it is inevitable that—as in any economic downturn—the effects might be felt for some time to come. That was particularly the case after the previous economic downturn, which came about as a result of the crisis in the banks, the availability of capital for businesses to draw upon and the business uncertainty that arose from that. We do not know whether the economic response will be quite the same in this circumstance because a very different factor is driving it; this time it is the global pandemic.

In 2008-09 we had to create much of the infrastructure to respond to that economic crisis. Skills Development Scotland was just forming, we created the developing the young workforce initiative and we put in a raft of different types of training and employability provisions, such as the employability fund. The good place that we are in this time, in comparison, is that that infrastructure already exists. Therefore, I go back to the point that I made in my opening remarks about us building on what we have now. That places us in a stronger position.

Undoubtedly, the UK Government's decision to delay its budget once again poses a not-insignificant challenge for the Government in pulling together its budget proposition and a not-insignificant challenge for the Parliament to then consider that budget proposition. However, that is the position that we are in, unfortunately, and we need to cope with it. Through the UK Government's budget, we are looking for significant investment through an economic stimulus to support people through this time.

In speaking about our approach, it is important to go back to the point that I made about building on what we have in place. We seek to learn from the past, and that is why we undertook a full review of our employability services in 2018. That has informed our approach to the no one left behind agenda.

We have asked Education Scotland to review the experiences of young people who are undertaking foundation apprenticeships, which are one of the other comparatively new elements of our system.

We also seek to be informed by the practical experience of what went before so that we can continue to finesse and improve it. However, my estimation is that we are in a better place to respond than we were in 2008-09. I am hopeful that it will not take the same intervening period of time to get back to where we want to be.

Willie Coffey: Youth unemployment in Scotland has been consistently lower than in the rest of the UK and Europe. Do you put that down to some of the interventions that you mentioned, and looking ahead do you see us continuing with those types of intervention? What new measures do you foresee being required to assist to offer more opportunities, particularly for those in the 16-to-24 age group?

Jamie Hepburn: I refer to my point about building on what is in place. The prism through which we want to do that is the young person guarantee. Our commitment to the guarantee was made in response to the report of the advisory group on economic recovery and was informed by the report of the enterprise and skills strategic board sub-group, which considered the skills and employability interventions that we might need in the current and coming period.

The young person guarantee will ensure that every young person aged between 16 and 24 is guaranteed the opportunity of work, education or training. Yes, we will certainly use the services and programmes that are in place, but we need to enhance that provision, which is why we have leveraged in some £60 million of investment, specifically for the guarantee, which will be delivered through our partners.

Of that investment, £30 million will go to local authorities, to support the existing local partnerships that deliver employability support, £10 million will go to colleges and £10 million will support pre-apprenticeship activity, to try to support young people into apprenticeships.

The critical element, in the context of Sandy Begbie's involvement in the report on developing the young workforce, is the £10 million to try to better embed developing the young workforce activity in the school environment, through the provision of school co-ordinators. That is a significant investment.

We are also working with other provision, of course. The UK Government has put in place its kickstart scheme. It would have been better if we had had some involvement before the scheme was announced, so that it could have been more aligned and co-ordinated with what we are doing in Scotland. Nevertheless, the UK Government has put the scheme in place and it is important that we recognise it and try to factor it into the equation, albeit through the prism of our ambitions for fair work and seeing people paid the real living wage—the kickstart scheme does not envisage that, so we must think about how we enhance provision in that regard.

Willie Coffey: Thank you.

Maurice Golden (West Scotland) (Con): Willie Coffey suggested that the UK Government has no schemes that focus on youth unemployment, but, as the minister just said, the kickstart scheme will create job placements for 16 to 24-year-olds. Has the Scottish Government conducted analysis of the impact of the scheme on young people in Scotland?

Jamie Hepburn: We have no analysis at this stage, but although the kickstart scheme does not look quite like it would look if it was in our hands, it is a reality and we will seek to ensure that it is as aligned and integrated as it can be—given that it is not our scheme—with the youth guarantee that we have established, as I said.

That is an important point. The young person guarantee covers a range of activity, including the developing the young workforce activity, apprenticeships activity, other employability interventions, college and university activity and the kickstart scheme. The kickstart scheme is not our scheme, as I said, but it is there and we will need to work with it. We are engaged with the Department for Work and Pensions to make sure that it is aligned as much as possible with our wider young person guarantee, so that employers engage with it and all the activity that we want to be taken forward through the prism of the guarantee.

Richard Lyle (Uddingston and Bellshill) (SNP): We all know the stress of finding our first job after leaving school, college or university. Have the Scottish Government's statisticians produced any estimates of how many 16 to 24-year-olds could be unemployed by the end of this year? If so, do the statistics show how different areas and sectors in Scotland are being impacted? Is there more that we could be doing to help, on top of what we are doing, or are we doing enough?

09:15

Jamie Hepburn: We are already starting to see the impact of youth unemployment in Scotland. The most recent labour market statistics showed that that was around 4 per cent higher than at the same time last year.

We have had a range of estimates of where that figure might end up and of the likely impact on overall employment levels. The most recent published analysis that I saw—which came from the office of the chief economic advisor—suggested that unemployment could be in the realms of 8 per cent by the end of the year, which is not in line with the worst initial estimate of around 13 per cent. That figure is for the whole labour market and all age groups, but we know that young people are disproportionately impacted whenever there is an economic downturn.

The estimate that we have suggests that an additional 60,000 young people may be unemployed. It behoves us to intervene, which is why we have responded and put in place the young person guarantee that I have already discussed.

We have also acted quickly through our developing the young workforce groups. There has been a range of targeted activity for this year's cohort of summer leavers. We had to respond immediately to engage with those young people who were leaving school this summer. They undertook a range of activities. We have information from the SDS data hub that helps us to track those who have left school and to see where 16 to 19-year-olds are with their employability, education and training. We can then intervene through the young person guarantee to assist those young people who require direct assistance.

Richard Lyle: How confident are you that young people who left education during the summer are now in work or training? Are there any gaps? Have we left anyone behind?

Jamie Hepburn: I have already made the point that youth unemployment, according to the most recent labour market statistics, is now 4 per cent higher than it was at the equivalent point last year. That is a consequence of the economic difficulties

that we face because of the pandemic. That is why we have to intervene quickly. That is why we have put the youth guarantee—the young person guarantee, as it is now called—in place. We will make more information about that available soon. It will be built on the strong foundations that we have already.

Richard Lyle: Are we predicting how many young people could be unemployed in the next six months? Are we sure that the money that we have committed and all the good projects that you have announced today and previously will reduce youth unemployment?

Jamie Hepburn: I go back to the point that I made about the estimated numbers of young people who might be unemployed.

When we look at the quantum that we are investing through the young person guarantee, it is important not to think of that as a budget allocation per young person who might be unemployed. It is designed to grease the wheels of the system that we have already. It is designed to try to ensure that employers are properly engaged with the system that we have in place and to ensure that we maximise private sector investment.

I go back to the point that I made earlier. We are in an economic downturn that is very different from the one that we were in last time. We face economic uncertainty, but there are still employers with a raft of investment plans that they want to take forward, and we are trying to engage with them through the young person guarantee to ensure that young people can benefit from those opportunities.

The quantum of funding that we have allocated to the young person guarantee is not, of course, the sum total of what will be invested in young people. There is already our investment through the tertiary education system, Skills Development Scotland and the developing the young workforce strategy, albeit that we are seeking to enhance all those things in different ways. We also want to work with the private sector to ensure that it is investing in young people, too.

The positive thing to report back is that, despite the difficulties that we face right now, there are many employers across all sectors—the private, public and third sectors—that are really up for responding to that challenge and want to make a positive contribution to ensuring that young people can get into and get ahead in the labour market.

The Convener: On your last point, you talked about many businesses. Can you give us an idea of the numbers; the scale of that; the number of young people who have come into the workforce since March, when the current situation began in earnest; and how things have been working out in employment and training?

Jamie Hepburn: We know that young people are still entering the labour market, but I go back to the point that there is no escaping the fact that we are seeing a higher level of youth unemployment just now. We would need to look back and see whether we can get an assessment of some of the specific information that you are seeking through the information that Skills Development Scotland has. I am happy to commit to doing that and providing that to the committee, if we can.

The Convener: So you are not in a position to give the committee a rough indication of the figures today.

Jamie Hepburn: On young people who have entered the labour market over the past period?

The Convener: Can you say how the numbers coming into the workforce, the number of those who may have ceased to be employed, the number of those who have gone into training and so on all fit together? I appreciate that you will have to come back to us on exact numbers, but I wondered whether you could give us any—

Jamie Hepburn: I would rather come back with exact and precise figures, convener. I am happy to commit to doing that.

The Convener: All right. We look forward to receiving those.

John Mason (Glasgow Shettleston) (SNP): It has been suggested to us that young people are having difficulties getting work experience. Work experience can happen in different ways—through part-time work or voluntary work, for example. Do you think that there is a problem with young people getting work experience? If so, can you suggest anything to address that?

Jamie Hepburn: Historically, that has been a challenge, and the challenge may well be exacerbated in the current period. We have had concerns about the provision of good-quality and meaningful work-based learning and work experience for young people who are still in the school environment or who are not long out of that environment. That is what the developing the young workforce strategy has been about in many ways. We task our developing the young workforce regional groups with continuing to build their partnerships with employers in their local areas to ensure that they provide opportunities for young people.

I have been fortunate—not so much in the recent period but over the past years—to be able to get out and about and meet many employers who have provided young people with such opportunities. We want to enhance the ability of the developing the young workforce infrastructure and our schools to engage with employers. That is

why we have responded positively to the suggestion that we provide DYW school co-ordinators in every secondary school in Scotland to build on the experience of having such an approach piloted in Glasgow and Fife and better embed that experience.

Over the past period, that will inevitably have become somewhat disrupted. Businesses in the immediate period have, of course, had to turn their attention to their sustainability. By virtue of the restrictions that have had to be put in place on a raft of economic and social activity, with which we are still having to grapple, an employer's ability to give a young person work experience has probably been somewhat limited compared with their ability to do so in ordinary times. As we move forward, we want to ensure that we work with employers so that they can continue to provide such opportunities.

John Mason: You have mentioned school co-ordinators. How does the funding for those work? Are the co-ordinators additional to schools' existing staff? Do schools have to find some of the funding for them?

As I have understood it, traditionally, in secondary 4 or at some other point, young people get a week out of school to get work experience. We have taken young people in my office, and I know that other MSPs have done the same. Is that enough? I feel that a week is quite short.

Jamie Hepburn: I agree. There is still a place for that, but what you have said reflects my point about the substantial nature of a young person's experience of work experience. To be candid, I do not think that a week of work experience is as meaningful as we could otherwise make it. It is about engaging with employers to get them to commit to providing something more meaningful over a longer period. Many employers have committed to doing that through the developing the young workforce programme.

A lot of employers engage on the basis that they want to give something back and to provide young people with the opportunity, because they recognise that it is important to do so. However, the positive thing is that, in many cases, through the provision of work experience, young people have impressed the business and the business has gone on to offer them paid employment. I have met a raft of businesses and young people for whom that has been the case. We can enhance the raft of opportunities by having dedicated resource within our school environment to ensure that such connections are better embedded.

The initial idea behind the developing the young workforce programme was very much that each school would dedicate resource from existing staff

to co-ordinate some of the activity. That has happened and made a difference, but we have concluded that we have to try to take it to the next level. We have been informed by the experience in Glasgow and Fife. Bob Garmory, who is the chair of the DYW board in Fife, has raved about, and pressed me on the necessity of, the step that we are taking in having school co-ordinators in our school environment. To answer the initial part of Mr Mason's question, we are providing additional and dedicated resource for that purpose.

John Mason: We have seen evidence that, even before Covid, employers were taking fewer young people directly from education, presumably because they also want experience. Are you concerned about that? Is that inevitable, or can we tackle that issue?

Jamie Hepburn: That is more of a concern in the current period. If I recall correctly—I could be corrected on this—the last progress report on developing the young workforce set out that the level of recruitment directly from education has remained broadly stable at the 2014 baseline.

My concern is more about the current period and whether, without any intervention, that position might weaken. That is why we have put in place our response through the youth guarantee, and it is why the developing the young workforce activity remains important. Those who work on the DYW programme have been active over the recent period. Over the summer, the DYW skills academy programme ran for five weeks to provide inside skills and knowledge in order to help young people build their industry readiness. The first-ever virtual parents events were held—we know that having informed parents or carers is critical in making sure that young people are informed about their options. DYW Up2U also took place, which was a virtual careers week involving employers and young people, to let them know about the range of opportunities that are available.

09:30

Those events would normally happen on the ground and, ordinarily, a raft of impressive activity happens in each area led by the DYW groups. However, the groups have continued their work, even in these difficult times and in more constrained circumstances, which have inhibited their ability to do things in the usual fashion.

We have responded with the youth guarantee. We are responding by ensuring that there is investment to create pathways into apprenticeships for young people and to try to retain existing apprenticeships and the people who give their time through developing the young workforce. Incidentally, most of them volunteer their time, and I am eternally grateful that they give

that time. Those people involved in DYW are also undertaking activity as an immediate response to Covid-19.

The Convener: Colin Beattie joins us remotely.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I want to focus a little bit on modern apprenticeships. We have seen a fairly dramatic drop of about 80 per cent in the number of people starting apprenticeships during the past seven months. What is the Scottish Government doing to impact directly on that worrying figure?

Jamie Hepburn: First, I think that we would all be worried about the quarter 1 figures, when there was a dramatic decline in the number of new apprenticeship starts. That goes back to the point that I just made to John Mason. Just as it would be difficult for employers to facilitate work experience in the work environment, there was the challenge of facilitating formal work-based learning through apprenticeships. In addition, we should not forget that an apprentice is an employee and it is a paid position. In the immediate period, businesses' priorities shifted and they were recruiting fewer people into apprenticeships, which the figures clearly demonstrate.

That is the position on the quarter 1 figure. We will get a clearer picture when the quarter 2 statistics are published, which will be next month. I will be candid: I am expecting the figure to improve, but I am not expecting it to match where we were at quarter 2 last year. If I was to make that claim, I do not think anyone would believe me, so I will not do so. There is significant disruption to apprenticeships and apprenticeship starts at this time.

We have asked Skills Development Scotland to undertake detailed modelling on what we can expect. It is obviously difficult for it to do that, because apprenticeships are a demand-led programme that requires employers to want to employ apprentices. That is not to say that we sit back and are passive. Through SDS and our network of training providers, we are promoting the benefits of apprenticeships, and I have already referred to some of the activity that we are undertaking to support better pathways into apprenticeships.

Apprenticeships remain an important part of our offer, but there is no doubting that we have seen disruption to the number of starts that we might have expected if we had not faced a global pandemic. That is disappointing.

Since 2007, the Government has delivered or supported through public funding more than 300,000 apprenticeships. Since I took on policy responsibility for this area, we have met our target each and every year. We set ourselves a target of 29,000 apprenticeship starts last year. We

surpassed that target. This year, we set ourselves a target of 30,000. We are doing everything that we can to get as close to that as possible, but it is safe to say that, in the current situation, it will be difficult to achieve it. I have every confidence that, if we had not been in this situation, we would have done it, just as we did it last year, the year before that, the year before that and the year before that.

Colin Beattie: You have touched on targets for modern apprenticeships, but I take it from what you say that, at this point, there is no revised target for modern apprenticeship starts.

Jamie Hepburn: That is correct—we have not revised our target. I am being candid and open with the committee, given the disruption that we saw in quarter 1. As I say, we will have a clearer picture on where we are when the quarter 2 figures are published next month. To be candid and open with the committee, the achievement of 30,000 this year is unlikely. However, we have not revised our target at this stage. I cannot say whether we will set a formal revision of any target, but we have asked SDS to undertake work on what might be a more realistic proposition for this year.

I do not want the committee to get the sense that apprenticeships do not remain of fundamental importance to the Scottish Government and SDS—they absolutely do, and we are making every effort to continue to promote their benefits to employers and to encourage as many employers as possible to take on as many apprentices as possible. However, to be realistic, given the interruption that we had in quarter 1, there is no pretending that we will not face challenges.

Colin Beattie: Some current apprentices might have concerns about the future of their apprenticeships. Can you give them any reassurance that those apprenticeships will not suddenly be terminated in the middle of the process?

Jamie Hepburn: We already have an effective system in place for that through our adopt an apprentice scheme. Even before the current period, it was not unknown for apprentices to be made redundant by an individual employer, although, thankfully, that was not usual. In that situation, through the interaction of that apprentice's training provider with SDS, the adopt an apprentice programme is triggered. The scheme provides a one-off financial incentive to another employer and is designed to ensure that the apprentice can complete their apprenticeship. The last thing that we want or anyone wants is a person having to give up their apprenticeship halfway through the period of training because they have lost their employment.

We have that system in place. Incidentally, we have extended that scheme to graduate apprentices from February of this year, so they are eligible alongside modern apprentices. However, in the current period, we recognise that we need to do more, so we have leveraged in and repurposed some funding that was in SDS to ensure that we make every effort to work with employers so that they see the benefits of retaining the apprentices that are employed with them. If that cannot happen, the adopt an apprentice scheme kicks in, which involves doing everything possible to ensure that the apprentice is placed with an alternative employer and can finish their apprenticeship. That scheme has a high success rate. If the committee wants, we can provide figures to demonstrate that.

Colin Beattie: It would be interesting to see those figures. Obviously, there is a great concern as to the number of modern apprentices who might have lost the opportunity to complete their apprenticeship with their current employer. Are there enough resources to be able to pick up those people and ensure that they get through to the end of what is an important part of their training?

Jamie Hepburn: On the latter point, yes there is. I hope that I have demonstrated that and we are leveraging in more. In response to the convener I committed to seeing what specific information we can provide on the impact on young people and I will make sure that we do that. I do not have the figure to hand, but we can probably more readily establish how many apprentices have been made redundant in the current period.

From my engagement with employers, my estimation is that, more often than not, they seek to protect their apprentices, not least because they take them on as part of their succession planning. Employers recognise that a cohort of their workforce will leave at some stage and they must have a new pipeline of talent for future years. Therefore, they make every effort to protect apprentices. Again, we can provide figures if that will be helpful to the committee.

The Convener: It would be helpful to have those figures. People will also be interested to know what you would say is the key thing that you are doing in this area, in light of the drastic measures that have been imposed as a result of Covid regulations and their effects on businesses and apprenticeships.

Jamie Hepburn: That goes back to the point that I have just made. We have leveraged in significant additional resource for Skills Development Scotland to work with employers to make sure that apprentices who are currently employed remain in employment. For any apprentices who are impacted by redundancy, for

whatever reason, the adopt an apprentice scheme kicks in. Action on recruitment more generally will be a core part of the youth guarantee. It is the process of engaging with employers to work out what their plans are for recruitment and ensuring that apprenticeships are embedded as part of that.

That activity is a key focus of the youth guarantee and it continues to be taken forward through the various elements that I have spoken about—developing the young workforce, SDS's core activity and the variety of means of engagement that we have with employers. For example, Scottish Enterprise has a role to play. When it is interacting with individual account-managed companies, it will also talk about the range of opportunities that may be available through the public purse to support the training of people in the workplace including apprentices. A whole-system approach is in place and we are seeking to enhance that through the additional resource that we have deployed.

Alison Harris (Central Scotland) (Con): Good morning. I want to look at the modern apprenticeship programme. Due to the 80 per cent drop in starts, less money is being spent on the training element. Where will that budget be allocated—where will it move to?

Jamie Hepburn: That goes back to our work with Skills Development Scotland to respond to the current circumstances. In effect, it has been deployed in the adopt an apprentice transition programme for redundant apprentices. I have mentioned the pathways to apprenticeships programme, which works with specific sectors. We have been working with the construction sector and with other sectors including business services, engineering, childcare, and information technology—including digital software and hardware. If the core question is whether the money will stay in the realms of apprenticeships and training provision, the short answer is yes, that is what we are seeking to do.

It has to be responsive to the circumstances that we are in. If there are fewer opportunities in the labour market for people to be taken on as apprentices, we have to ask what alternative we have to utilise the expertise of Skills Development Scotland to work with our training providers and educational institutions to support people in a different way. That is a core part of the youth guarantee.

09:45

There are other things that we have not touched on yet, such as the national transition training fund, which is designed for those who are aged 25 and over, who might be affected by the difficulties in the labour market, to support them back into

employment as quickly as possible through meaningful and purposeful skills and training interventions.

We are looking at where we are and responding accordingly. That is what we have sought to do through the work that has been undertaken by the advisory group on economic recovery and by the enterprise and skills strategic board sub-group, which considered skills and employability and made a raft of recommendations that we are now articulating in practical action. The youth guarantee and the national transition training fund are two examples of that. Much of that is predicated on considering that we have budgeted for certain types of activity—for example, through Skills Development Scotland—and, given that much of that activity cannot be realised, asking how we can use that resource differently and more flexibly. We are committed to doing that.

Alison Harris: Will an expansion of college capacity be a priority for the forthcoming budget?

Jamie Hepburn: Through the prism of my area of responsibility, I mentioned the increase to the flexible workforce development fund. That has already led to additional resource for the college sector, which has demonstrated that it has responded to the challenge of supporting those who pay the UK Government's apprenticeship levy to ensure that the current workforce can get some form of training that suits their requirements. We are also thinking through how we might build on the success of that programme and make it more flexible still.

I also go back to the young person guarantee. Some £10 million of that money will be directed towards colleges. We will be working closely with the Scottish Funding Council and the colleges on how they might utilise that money to respond to the current challenges.

On the question in the round, in the context of the budget, we will be looking carefully at what our college system can do in response to the coming period, and we will allocate resource accordingly.

The Convener: Minister, we heard from businesses that some of them are not in a position to take on new people this year. Are you factoring that in? I appreciate that the situation regarding the rules and regulations that we all face is changing, but do you have any comment on that particular point? Businesses are saying that, given the way things look at the minute, they do not have the facilities, ability, need or option to take on new apprentices in addition to those that are already employed.

Jamie Hepburn: As I said, we are deploying resource and engaging to incentivise and support employers to take on young people and give them opportunities in work. We are looking at a variety

of things that we can do in that respect. One recommendation was for a specific recruitment incentive for employers. We are considering carefully how that might be deployed.

That approach is not entirely new. Support has previously been provided through Scotland's employer recruitment incentive, which is now part of the no one left behind strategy. Many local authorities still operate a financial incentive for employers to recruit young people. There is also a similar incentive through the community jobs Scotland programme, which is continuing. We are looking more widely at how we could potentially adopt that approach for the recruitment of apprentices. That was recommended by the advisory group on economic recovery, and Sandy Begbie looked at it through his activity on framing what a young person guarantee might look like. We are discussing with Skills Development Scotland precisely what such an approach might look like.

We need to be careful, because we do not want any such approach to replace recruitment that might have happened anyway. Recruitment is still happening; there are still opportunities out there. As I mentioned earlier, we need to engage with employers to ensure that, where they are taking people on, they are actively considering that some of those opportunities could be provided through apprenticeships.

In general, I engage with businesses regularly and I have an open dialogue about some of the challenges that they might be facing. I am always willing to listen to them on what we can do differently and how we can be creative in working with them to ensure that they provide more opportunities for young people. We have a weekly call with business organisations—it usually involves Scottish Government officials, but I take part in it regularly—so that we can discuss those matters. Sandy Begbie has spoken to that group.

As the committee would expect, given that I am the minister for business, I speak with business organisations regularly. Over the past weeks and months, I have been engaging directly with individual chambers of commerce, members of the Institute of Directors Scotland and members of the Federation of Small Businesses Scotland to discuss a raft of matters, and the area that the convener mentioned falls within that territory.

Maurice Golden: Can you highlight some of the learning from the previous transition training fund?

Jamie Hepburn: As I said, we have not yet properly discussed the national transition training fund that we are currently seeking to put in place. It is important that we learn from the previous transition training fund, which was specific to the oil and gas sector. Approximately 4,000

applications were approved for that fund, and the overwhelming majority of those who took part reported that the support that they received had helped them to get a job and had improved their job security.

We can learn a lot of positive things from that fund. It enabled people to transition to other sectors such as skilled trades and the renewables sector—as the committee might expect, a lot of people transitioned to that sector. However, there were also elements that did not work quite as well as we had hoped. We face an on-going challenge in logistics, which I have discussed with hauliers and the Road Haulage Association—a specific element of the previous transition fund was designed to recruit people to that sector, but it did not work so well. We need to be prepared to learn from what has not worked so well.

We are informed by the previous experience, although what we are seeking to do with the new fund is in many ways much wider than the approach that we took to the downturn in oil and gas—it could not be anything but that, given that we know that the current crisis will impact a much wider range of sectors across a much wider geography.

We are therefore leveraging more resource into the training fund, and we are thinking about the specific types of sector that should be supported, taking into account our ambitions for improved energy efficiency and looking through the prism of digital skills. The Cabinet Secretary for Finance commissioned Mark Logan to publish his report, a significant element of which concerned the skills base in the technology sector. We are also looking at nature and land-based jobs and skills. Tourism has, of course, been hard hit during the current period, and it is incumbent on us to think about how we can support people to transition from that sector—but also into the sector, looking ahead. Social care is an important area for us, too.

We are carefully considering where it is a key priority to get people into certain types of sectors. That is an important point to make, not just regarding the transition training fund but more generally in relation to our employability and skills system. We had already set our task to that, through the future skills action plan, trying to ensure that, where any person interacts with the employability and skills system, that interaction is very much directed to the outcome of a form of skills intervention that will put them in a good position to get ahead in the labour market when they come out the other end. There is no use in providing people with a skills set that has no relevance to the future economy—I think we would all agree with that: our efforts should be fixed on our future society and economy. That is what we are trying to achieve through the national transition

training fund that we have established, and it is very much informed by the previous transition training fund.

Maurice Golden: Thinking about the greener recovery more generally, how much of an issue is the hollowing out of the labour market?

Jamie Hepburn: It is a challenge. Whenever anyone falls out of the labour market and remains out of it for a significant period, it can be more difficult to get them back into employment. That is a general point. We are committed to having a green recovery, and, as I have said, we have a clear focus on that as an element of activity through the national transition training fund. We need to get people back into employment as quickly as possible.

It is, of course, a concern, so we are seeking to respond quickly, putting in place initiatives that are designed to get people back into employment as quickly as possible while focusing on our needs. The activity of the just transition commission has had a significant focus on the labour market and the provision of the types of skills that will be required.

We have also committed to publishing a skills action plan that is focused on climate change, in which I will be involved. I should say candidly that, as with so much Government activity, that work has been disrupted by our responding to the current situation, but the action plan will be an important part of my focus.

Maurice Golden: Thanks for that answer, but I was focusing mainly on the potential hollowing out of the labour market. You have articulated some points about getting people into work more generally, but I am concerned about the hollowing out of the labour market going into the future, with increased digitisation. How much of a concern is that, and what might you be doing to address it?

Jamie Hepburn: What we are doing to address that is the raft of provision that I have laid out. Candidly, I think that my answer to the previous question is, in effect, the answer to the question that you have just asked. If you think there is something missing, please feel free to be more specific, and I will do my best to respond.

Maurice Golden: I am thinking more specifically about middle-management jobs, for want of a better way of putting it. The issue around the labour market is a global one. We have been discussing how people can get into the labour market at entry level, but I was looking for more about how much of an issue you feel it is for the Scottish economy.

10:00

Jamie Hepburn: It is an issue for the Scottish economy. As Maurice Golden rightly points out, it is an issue across all developed economies. Perhaps I have not been clear enough: when I refer to people transitioning to other sectors, that would not necessarily be at entry level. People might have an established skill set, and it is about ensuring that those transferable elements can be deployed. If someone has a good managerial skill set in one sector, it may be applicable in another sector; they would just have to acquire some of the understanding and knowledge around that particular area.

The activity that we are seeking to take forward is not all about entry-level jobs—particularly the new national transition training fund, which will be for people aged 25 and over. We have not mentioned them so far, but our individual training accounts are designed for a similar purpose in that they are about progression in the labour market, albeit that there is a much smaller quantum of funding for them. The overwhelming majority of people who take part in those are aged 35 or over. Those people are established in the labour market and have reached a certain level in an organisation. If they then find themselves displaced and out of employment, we want to engage with them quickly and make sure that they can access a short, sharp skills intervention without forgetting all the skills, talents and attributes that they have built up throughout their working lives. Increasingly, the term—which I do not particularly like, but which is getting banded about—for the transferable skill set around adaptability and applied learning in the workplace is “metaskills”. People take those skills with them into their new workplace.

I am not saying that we can guarantee that every person will be able to get an equivalent managerial-level role in another organisation. However, if someone has been a manager in one organisation, they should be able to take their skill set and apply it in a new workplace, supplementing it with sector-specific skills through the provision of new training. That is my ambition.

The Convener: The next questions are from Rhoda Grant, who joins us remotely.

Rhoda Grant (Highlands and Islands) (Lab): Thank you, convener. What engagement has the minister had with businesses, local government and the third sector on how the youth guarantee scheme will be delivered? What is the timeframe for that, and has he decided who will deliver it?

Jamie Hepburn: Could Ms Grant repeat the last few words? I did not hear the last part of her sentence.

Rhoda Grant: Did you hear the bit about discussions with local government, the third sector and business?

Jamie Hepburn: Yes.

Rhoda Grant: What discussions have you had with them? Have you decided who will deliver the youth guarantee scheme and when it will be delivered? What is the timeframe?

Jamie Hepburn: I did not hear the part about who will deliver it. I have already made the point that my engagement with business is extensive. We discuss a number of matters, but, of late, as you can imagine, the young person guarantee has been the priority. I have discussed it collectively and on a one-to-one basis with business organisations. I have also discussed it with businesses at a local level through the network of chambers of commerce.

I also engage regularly with the Scottish Council for Voluntary Organisations, which is a critical partner in engaging with young people who might already feel disenfranchised in the labour market, to get them into employment. I have spoken with Anna Fowlie, SCVO's chief executive, on more than one occasion about the implications of the young person guarantee and, more widely, our no one left behind agenda. I also meet Councillor Kelly Parry, who is the Convention of Scottish Local Authorities spokesperson for that area of activity, to discuss that agenda.

Sandy Begbie, who has been instrumental in developing the concept of the young person guarantee and what it might look like, has engaged with a host of different partners, including every political party that is represented in the Scottish Parliament. He has engaged with those—I will come to delivery partners in a moment, which was the last element of Ms Grant's question—who deliver the elements of the young person guarantee, and he has engaged with employers and unions; he has had wide engagement on those matters.

In relation to who will deliver the young person guarantee, I hope that I was clear at the outset, in response to some of the earlier questioning, that the youth guarantee effectively encompasses and builds on the wide range of activity that already exists, while seeking to enhance that activity and act as a portal for people into existing provision. A range of different parties are involved: local government, our college sector, our developing the young workforce network and Skills Development Scotland have clear roles, and we are working with our network of training providers, all of whom have to engage with employers to make sure that we are actively engaged with those who will provide the opportunities.

Although the kickstart scheme is not a creature of our creation, and although it might not look exactly as it might have done if we had been involved earlier or if it was our programme, we are seeking to make sure that that scheme can interact appropriately and effectively with our ambitions for the young person guarantee.

Rhoda Grant: I will push you on that slightly. The way you were speaking makes me think that the youth guarantee will be an extension of current schemes rather than a new scheme in its own right. Is that right? If so, given that we have heard that the number of apprenticeships and current schemes is falling, how do you get businesses involved? We have heard from businesses that they need financial incentives and schemes that last long enough to be worth their while. If the youth guarantee is simply an extension of current schemes, does it need a name of its own at all?

Jamie Hepburn: I disagree with the last point, because I frequently hear from employers that the landscape of provision can be quite complex, so having something that is obviously branded as the young person guarantee can go a long way in helping in that regard.

I would describe our approach as accentuating and building on the system that we have, under the badge of the young person guarantee. We are actively considering some of the points that the business committee has raised as areas of concern or opportunities, as I indicated. Ms Grant mentioned the idea of incentives to recruit young people; we are looking at that right now. A young person guarantee is important because that additional resource will enable us to be in a better place to realise some of those ambitions.

Rhoda Grant: You are saying that there is no new scheme, but the youth guarantee looks at incentivising current schemes, to try to increase the take-up that has dropped off.

Jamie Hepburn: To an extent, that is correct. The landscape that we are in has changed drastically, so schemes will have to operate flexibly and be responsive to our circumstances.

Some elements are new. As I said earlier, kickstart is now in place. That is a new scheme—okay, it is not ours, but it is there, and we had better make sure that it pulls in the same direction as the rest of the provision that we have on the ground.

To an extent, I concur with the points that you are making, Ms Grant. However, we are putting in additional resource so that we can build on what we have, accentuate it, and drive participation in the programmes that are in place.

For example, it should not be a surprise that apprenticeships are part of the young person

guarantee. Apprenticeships are not new, and we are not creating an entirely new system for their delivery, but they are nonetheless wrapped up in, and part of, the young person guarantee. That is core.

The purpose of the young person guarantee is to do exactly what it says—to guarantee a young person experience of employment, education or training. That requires us not to create an entire new system but to think about how we maximise the benefit of our existing system. I think that approaching it through the prism of its being designed and badged as a young person guarantee is an important step.

Andy Wightman (Lothian) (Green): I follow on a little from what Rhoda Grant was saying. As you might be aware, the committee has been engaging with young people on how they see their future in the context of the pandemic. They have told us, for example, that they want to see student accommodation being made cheaper, they want national programmes for gaining practical skills, and they want debt relief for students who are out of work over the summer—quite a lot of stuff. What struck us was the extent to which young people are interested and engaged in how to shape their futures.

How much engagement are you having with young people on the design of the scheme? As you said, it is a guarantee, and existing programmes are being wrapped up in it. However, there is a lot more to what young people have said about their economic prospects than just education, work or training.

I note that Sandy Begbie said, in his report, “Youth Guarantee—No-one Left Behind”, that, among the “next steps”, it is important to

“Continue to engage and re-engage with key stakeholders to test the recommendations.”

However, the stakeholders that he talks about in appendix 1 are just a lot of institutions. What is the Government doing to maintain an on-going engagement with young people, in order to maximise the chances of success for the guarantee and for the Government’s other work?

Jamie Hepburn: That is of the utmost importance. The approach is not new to us. In taking forward the development of the young workforce initiative, we have continued to articulate the importance of each regional group directly involving young people. In the learner journey review, we have worked with a range of young people, to hear directly from them what their experience of the education system has been. In taking forward the young person guarantee, Sandy Begbie and Fiona Hyslop met directly a panel of young people to hear from them

what their experience had been and what they would expect from any young person guarantee.

That continues to be important, so we have provided funding to Young Scot—which, in my estimation and, I think, in that of most people, is very effective and good at ensuring that we engage with a wide range of young people from a host of different backgrounds—to work with young people so that they can directly inform the development of the young person guarantee.

10:15

There have also been a number of questions about our hearing the voice of business, which, of course, is of paramount importance, as businesses will provide the opportunities. We have to hear about the practical implications for them and what practical support we can put in place for them. Equally, we have to hear from young people about what they think would be helpful. A number of suggestions have arisen out of conversations with young people, and we will always take those away to consider. The purpose of the funding to Young Scot is to have that type of meaningful engagement, so that young people's voices can be at the core of what we do.

It is not just Young Scot that we have engaged with; the Prince's Trust and Barnardo's have equally been able to facilitate engagement with young people, including those who might be thought to have experienced a range of challenges in their lives that we must consider if we are to ensure that every young person benefits from our approach.

Andy Wightman: Are you saying that the main route for engaging young people is through those intermediaries? I do not doubt that that is a valuable approach, but I am seeking reassurance that you are satisfied and doing all that you can to ensure that the approaches that they adopt are capturing the whole range of experiences—you mentioned, for example, care-experienced young people, which is a very important group—which is needed to ensure that the job guarantee continues to be designed, on an on-going basis, in a way that reflects young people's priorities.

Jamie Hepburn: That is the eternal challenge that all policymakers face—to reach out to as wide a range of people as possible. I think that, inevitably, we have to work with the intermediaries and organisations who have the most direct contact with the people who we want to speak with—in this case, young people, including specific cohorts of young people. In so far as I can be, I am satisfied that we are talking to the right intermediaries.

Will we reach every single young person or a representative of every cohort of young person? It

would be remiss of me to guarantee that we will. That is the eternal challenge in taking forward any area of policy. Who are we not speaking to? Sometimes it can be difficult to know. However, the ambition is to engage with as wide a range of young people as possible.

Andy Wightman: Thanks.

The Convener: As there are no further questions from committee members, I thank the minister and his team for coming in today.

10:17

Meeting suspended.

10:30

On resuming—

Heat Networks (Scotland) Bill: Stage 1

The Convener: Welcome back. We are now on item 3 on the agenda. We welcome Paul Wheelhouse, Minister for Energy, Connectivity and the Islands, and James Hemphill, heat networks team leader. We are joined remotely by Gareth Fenney, head of heat strategy, Urszula Kasperek, senior policy advisor and Norman MacLeod, senior principal legal officer at the Scottish Government.

The minister will make a brief opening statement.

The Minister for Energy, Connectivity and the Islands (Paul Wheelhouse): Thank you for the opportunity to reiterate the Government's thinking on the bill and to begin to respond to the issues that have arisen in recent written and oral evidence to the committee.

The primary purpose of the bill—notwithstanding the limits on our powers—is to accelerate the development of heat networks in Scotland in order to help drive down emissions and to tackle fuel poverty while providing some protection to users of those networks.

The bill seeks to do that by creating a new licensing regime to ensure that operators are solvent and are fit and proper persons. It establishes a new process for consenting, zoning and permitting to ensure that networks are developed where they will have most benefit and are tailored to the needs of an area as well as providing certainty for long-term investment. The bill levels the playing field with other utilities by creating new infrastructure rights for heat network developers and operators. Finally, it puts in place arrangements to protect network users by enabling a transfer of operational rights to occur to ensure a sustained supply.

The bill as introduced was informed by extensive consultation, by the recommendations of an expert working group of stakeholders and by engagement with communities, including those on Scotland's islands. I am keen to maintain that collaborative approach with stakeholders as the bill progresses through Parliament. I look forward to working with the committee to secure passage of the bill: it is one that I hope that the committee will agree is important for Scotland's future.

The bill also responds to a recommendation by the Competition and Markets Authority that regulation is now required. As the committee has already recognised, there are limits on what we can do in Scotland, particularly with respect to

consumer protection, which remains reserved to the United Kingdom Government. As I have said, the bill already provides some safeguards. As I have set out in the accompanying documents, I am working with the UK Government to secure the powers needed to implement comprehensive consumer standards in Scotland.

With that in mind, I can confirm that I have today written to Kwasi Kwarteng, Minister for Business, Energy and Clean Growth at the Department for Business, Energy and Industrial Strategy, with a proposed solution.

We have listened to the calls for more explicit requirements on fuel poverty and on the role of local authorities in consenting to new heat networks. I can confirm that, in advance of stage 2, I will look seriously at those issues and will consider how we can ensure a more explicit focus on fuel poverty, as well as ensuring that we strike the right balance for local authorities so that they have the right powers to drive forward heat network developments in their areas.

The bill will transform the Scottish heat networks market, but it is only one piece of the puzzle. Other actions are required to grow our heat networks sector. Those include strengthening wider policy frameworks and ensuring that financial and project support is available to help get schemes over the line. To do that successfully, while ensuring that the bill is delivered safely and on time, I am happy to work with committee members to consider non-legislative solutions to those wider issues so that we can put in place strong foundations on which the sector can build.

I am sure that the committee will have many questions, which I will endeavour to answer in what I hope you will find to be a helpful manner. Please let me know at any point if supplementary written evidence would be useful. I look forward to working with you all as the bill progresses and to answering your questions today.

The Convener: I have asked a number of committee witnesses, who have all agreed that the definition of heat networks in the bill is an adequate one, both for current technologies and for future ones. I presume that you will agree with that. Will you explain, with reference to the provisions of the bill, why that is the case?

Paul Wheelhouse: Certainly, convener. It is important that any definition is clear about who the regulation will apply to, but it is also important that it has the capacity to capture both existing and emerging technology and infrastructure, as you indicated.

We believe that the definition in the bill as introduced does that. I note that of the 23 responses to the committee's call for evidence that commented on the definition, 16 indicated that

they broadly agreed with the current definition, although I recognise that there are some caveats within those responses. Of course, the bill is not the only place where heat networks are defined in law; a definition is also provided in the Heat Network (Metering and Billing) Regulations 2014. The definition proposed in the bill aligns with that definition in order to avoid confusion for operators about what legislation applies to them and to provide for a clear regulatory framework.

On keeping up to date with technology as it develops, I recognise that the definition does not explicitly reference ambient or shared ground loop systems, which I know have come up in evidence to the committee. We anticipate that there will be more of those networks in the future, but the bill as drafted allows for that. We believe that section 1(7) provides for any need for the definition to be amended in the future.

I note that the Law Society of Scotland said:

“We agree that the definition of a heat network should be sufficiently neutral to cover as many types of heat networks as possible.”

We have tried to take our approach forward in that spirit. I hope that that is helpful to the committee.

The Convener: Section 1(7) gives the power to modify definitions by regulation, but there is no provision in that section for consultation prior to such regulations. What is the Scottish Government’s position on that? Would there be consultation on future amendment of definitions? Where do we find a commitment to that?

Paul Wheelhouse: I agree that a change in a definition would require consultation with stakeholders to ensure that it was drafted appropriately. I will bring in Mr Hemphill to address what consultation mechanism we would use to undertake that action.

James Hemphill (Scottish Government): Any changes would be subject to regulation, and we envisage being required to undertake public consultation on that. We have made a commitment to the heat networks working group that we will work with it on the development of the regulations. The group consists of a broad range of existing network providers, local government and others who can inform how those regulations will work.

The Convener: You said that you would be required to consult. Where is the commitment to that if it is not in the bill? Is it a commitment to this committee or the Parliament?

Paul Wheelhouse: We can certainly look at giving a commitment in an appropriate way to reassure you, colleagues on the committee and,

indeed, the wider Parliament, if that would be helpful.

The Convener: Thank you. Section 1(1) defines a “heat network” as a “district heat network” or a “communal heating system”. We know that, as you indicated, there are other types of systems. I appreciate that, as you set out, the definition is meant to be inclusive rather than narrow, because how the systems operate will change and develop in the future and there will be new systems. However, why does the bill not have, in addition to the general definition, a list of specific systems? Is there a list that could be included?

Paul Wheelhouse: I will bring in my Government colleagues on that point in a second. However, having a list would fall into the territory of being potentially overprescriptive. If such a list was enshrined in the bill, the primary legislation would have to be amended to include in the list any changes in technologies. That is my understanding of why the bill is drafted as it is. We are looking to take account of technological change that happens over time and the bill is trying to replicate the complex legislative framework for electricity and gas supply.

In this case, we are trying to create an appropriate licensing and regulatory regime for heat networks in Scotland from scratch and we would not want to have to keep amending primary legislation if a list were present in the bill.

The Convener: I was suggesting a list by way of example as opposed to by way of definition, which we sometimes have in an act. If you were to come back to the committee, it might be interesting—

Paul Wheelhouse: We can absolutely come back with our knowledge of the existing systems in play and ones that we understand are under development, if that would be helpful. I have referenced the ambient or shared-loop systems—already referenced in evidence to the committee—as two examples of potentially new systems.

Colin Beattie: Looking to regulatory issues, can you give us an update on what dialogue has taken place between the Scottish Government and the UK Government on the development of a single UK regulatory system?

Paul Wheelhouse: Mr Beattie raises an important point, which has clearly exercised a number of witnesses around areas such as consumer protection. As I indicated in my opening remarks, we are in a position wherein we have had good dialogue with BEIS officials, UK minister Kwasi Kwarteng and predecessors such as Claire Perry O’Neill on the potential for some degree of either devolution or administrative devolution of consumer protection to the Scottish Parliament and to Scottish ministers.

A number of options were put to us. We have written back to Mr Kwarteng to indicate that we would welcome a Great-Britain-wide framework, which would apply to consumer protection and provide some certainty—we understand that UK ministers might introduce such a framework in a bill early next year. We seek from UK ministers the ability for Scottish ministers to appoint a licensing authority to oversee the implementation of those consumer protection powers in Scotland. We understand that the solution that we have sought is one that BEIS favours, but we will wait for a response from Mr Kwarteng.

That response should allow us to go forward with the ability to appoint a body such as the Office of Gas and Electricity Markets. If UK ministers were to appoint Ofgem to undertake that activity in England, we could equally apply for it to be the appropriate body in Scotland.

Section 4 enables Scottish ministers to

“by regulations designate ... the licensing authority”

whose main function will be to administer the licensing system. UK-wide legislation established Ofgem as a statutory body so it is not within devolved competence to appoint it as our licensing authority at present, which is why the measures that Mr Kwarteng might be willing to take would be enormously helpful.

We are aware of the risk that two organisations—Ofgem and the licensing authority that the Scottish bill would create—could operate under two separate pieces of legislation, so we want to avoid any confusion that that might cause for consumers and the industry. We also want to deploy public money in as efficient a manner as possible.

We have written to Mr Kwarteng with a suggested solution and we are optimistic that an agreement will be in place in the near future during the passage of the bill. We are keen to keep the committee informed of that.

I stress that it is sensible in the meantime for the bill to retain flexibility for either Scottish ministers or a body in our gift to execute the important functions of the licensing authority, in the event that UK legislation does not come forward in that area. At present, we expect the UK Parliament to introduce such a bill, but should that not happen, the flexibility in this bill gives us a fall-back position from which we can ensure the bill's compliance with legislative competence. I hope that that clarifies the matter for Mr Beattie, but he can fire back to me if I have not addressed what he was looking for.

Colin Beattie: While we await the outcome of your proposals, and given where you stand at the moment, how do you see the proposed Scottish

regulatory regime differing from the wider UK one? What differences would you like to feed in there, and what effect would a divergent licensing regime—if it came about—have on investment and consumers?

10:45

Paul Wheelhouse: Both those points are important. You asked about the essential differences between our approach and that of UK ministers. They take a different approach by proposing an authorisation mechanism, whereas our approach is more in line with what the Competition and Markets Authority's report recommended. It is probably no surprise to hear that we fed a significant amount into the CMA's exercise and had engaged throughout with stakeholders before the CMA undertook its investigation. The CMA's recommendations align well with our proposals.

The UK Government's authorisation approach is valid, but our proposals will give the industry more investor certainty and will put in place a robust and proportionate system. I am confident that what we are doing is right for Scotland—for our proposed use of heat networks and for our stakeholders—given our extensive engagement with stakeholders in the run-up to producing the bill.

UK ministers decided to take a different approach, which is valid but is not what we chose. Our approach will provide more investor certainty. We have learned a lot from how our colleagues in Norway and Denmark have developed heat networks, and our approach is more consistent with what has been done elsewhere in Europe.

With the convener's permission, I ask Mr Hemphill to add any points about our understanding of the UK's proposals.

James Hemphill: I echo what the minister said. It is important to remember that the market has gone unregulated for so long, so the licensing approach will allow us to make the fit-and-proper checks on, for example, the solvency of existing operators and to establish with the sector dialogue, which is not quite as we would like it at the moment. That is an advantage of a more proactive licensing system.

Colin Beattie: We await with interest the results of the UK Government's consideration of the proposals.

Will the requirement for a licence apply to existing, as well as new, heat networks? How will existing heat networks and their operators be assimilated into the licensing system?

Paul Wheelhouse: The point is important. Between 800 and 1,000 heat networks are estimated to be up and running in Scotland, so

you raise a pertinent point. We understand that concern might be felt about new technical standards being introduced that might apply to existing networks. I assure Mr Beattie and the committee that, in that event, we will work with all the existing networks to understand the implications for their operations and to identify appropriate solutions, which might be exemptions from such requirements or a special set of technical standards for existing networks. To avoid disproportionate impacts on such networks, we will not introduce requirements to replace apparatus that is in good working condition.

We are working with the Department for Business, Energy and Industrial Strategy to develop a common technical standard for Great Britain. We will be happy to provide the committee and other MSPs with further information about that in due course, so that we have as much visibility as possible for the work on technical standards that might have an impact on existing networks. We are avoiding being overly prescriptive in the bill and trying to retain scope for innovation.

I hope that that addresses much of what Mr Beattie was looking for on the impact on existing networks.

Colin Beattie: Thank you—you have answered a question that I was going to ask on technical standards.

What standard conditions on important issues such as consumer protection, service quality and access to an ombudsman might be included in a licence? Will such issues be incorporated in the licensing process?

Paul Wheelhouse: I apologise for not addressing that in my previous response. We are following closely the approach that the CMA set out on the regulatory needs for existing heat networks. Consumer detriment has most commonly been found in smaller networks, particularly those that are privately owned. We have therefore tried to avoid being overly prescriptive, as I said.

On existing schemes, we are trying to ensure that the bill enables exemptions. Obviously, we are in the early stages of developing the regulations, but there are a range of factors in that regard. For example, the ownership structure could be considered in exempting networks. Exemptions might also be time limited to allow certain schemes to meet regulatory requirements if necessary. Section 6(5) enables the licensing authority to exclude or modify any of the standard licence conditions that it considers appropriate in the circumstances of a case. That provision could be used to enable existing networks to gradually adapt to any regulatory requirements, as needed over time.

We have noted the suggestion from committee members that the requirement to hold a licence should not apply to networks that serve only the owner's buildings or premises. We agree that that would be sensible.

On the conditions, which Mr Beattie was trying to probe, I will bring in Mr Hemphill.

James Hemphill: I will perhaps defer to my legal colleague Norman MacLeod on the consumer licence conditions but, as the minister touched on, we certainly anticipate that GB-wide consumer standards will be introduced in the not-too-distant future. It looks as if we are working towards a solution to implement those fairly coherently in Scotland in a way that would see the consumer standards body for GB and Scotland's licensing authority being one and the same.

In the event that that GB-wide legislation does not come forward, we will continue to work with the Heat Trust, which is a consumer standards scheme to which many of the larger operators in the UK are signed up and which includes things such as transparency, quality of service and responses to outages. We are confident that the GB-wide legislation will materialise but, if it does not, there are other routes that we can take that are within our competence.

However, I will defer to Norman MacLeod on that point.

Norman MacLeod (Scottish Government): I would observe only that, as many witnesses have said, consumer protection is of course a reserved matter, so any licence conditions, standard or otherwise, that are imposed will have to be introduced under the powers in the legislation and therefore will clearly be constrained by the limits of the current legislative competence of the Scottish Parliament. None of that is news to the committee. As far as possible, I am sure that the licensing conditions will look to build in protections for consumers or businesses but, ultimately, the bill will set the power for those conditions to be imposed rather than set out the substance of the conditions.

Paul Wheelhouse: As a general principle, we have tried to avoid putting the conditions in the bill. The bill has been drafted to allow the conditions to be set out in more detail in secondary legislation, which we propose to bring forward through affirmative instruments, I believe, which will allow for appropriate consultation with Parliament and stakeholders on the nature of the conditions as they emerge.

I hope that that gives the committee confidence in the context. I realise that it is a technical bill and that you are being asked to look at a lot of detail. We know that there are a substantial number of delegated powers to be dealt with if the bill

receives royal assent. However, to give the convener and other committee members confidence, such matters will be brought forward in secondary legislation under the affirmative procedure, which will give the Parliament the chance to scrutinise the provisions.

Colin Beattie: Thank you for that comprehensive response. You have brought me neatly on to my last questions, which relate to discussions between the Scottish and UK Governments on the devolution of consumer protection. Do you have any update on that?

Paul Wheelhouse: I addressed much of that in my earlier remarks. I confirm that we have formally written to Kwasi Kwarteng to set out our view on the options that have been presented to us. If a GB-wide consumer protection framework is to be delivered through legislation that the UK Government introduces for its own heat networks bill early next year, we would welcome the proposed option that seeks to give the Scottish ministers the ability to appoint the licensing authority. As I have explained, and as Norman MacLeod indicated, the current reservation of powers places constraints on our ability to appoint Ofgem as our licensing authority. We would need the UK Government ministers to take measures to allow us to do that.

We have kept flexibility in the bill in case the UK Government does not introduce the legislation in the timescale that its ministers have suggested. However, our preference, which would avoid confusion, is for us to have that power to allow us to appoint Ofgem, for example. We have had discussions with Ofgem in principle about appointing it as the licensing authority for Scotland. As we understand it, it would be the licensing authority in England, too. That would create simplicity in the system. Having common technical standards being applied across both jurisdictions would create a propitious market opportunity for the development of the supply chain, too. Those are all factors in our thinking. I hope that that is helpful to Colin Beattie and to the committee.

Colin Beattie: Yes, that is helpful. How will the Scottish Government encourage existing and potential developers and operators to move away from gas in favour of renewable sources?

Paul Wheelhouse: That is a hugely important question. We have learned a lot from other jurisdictions, particularly Denmark. We have collaborated closely with the Danish Government. The country has achieved high levels of heat network utilisation through, initially, creating heat networks with fossil fuel engines in the 1970s, which was in response to the oil and gas price crisis in the early 1970s. We are in a different situation. We are trying to develop heat networks

in the context of the climate emergency and avoid the step of going through a phase of building networks that are dependent on fossil fuels. We have exciting opportunities, with the potential for the deployment of hydrogen.

All those aspects are in our thinking. We are looking at how we can utilise renewable energy where possible to ensure that that is in our scope.

We have, obviously, kept the definition of heat networks sufficiently broad so that, as I said in response to the convener, they can adapt over time as new technology emerges. I am happy to give more detail on that, if that would be helpful to Mr Beattie and to the committee.

Colin Beattie: This is my last question. Will you require, or perhaps encourage, heat networks to publish their tariffs, so that consumers can compare what they are paying, as other gas and electricity consumers can? I hope that any comparison would be better than that for gas and electricity supplies.

Paul Wheelhouse: One of the big advantages of introducing the legislation is that heat networks have huge potential to address fuel poverty. In our modelling for the bill, we believe that, by 2050, the networks could save £80 million a year for consumers. We appreciate that heat networks, operating effectively and efficiently, can save up to 36 per cent on consumer bills. Mr Beattie is right: we need to ensure as much visibility about the benefits of heat networks. We also need to monitor and evaluate the performance of heat networks as they are constructed. Appropriate monitoring and evaluation data from heat networks that are established under the legislation will inform that.

We will have to see how the UK Government's legislation on consumer protection lands in terms of the requirements for reporting on the pricing of the networks, for example.

However, the Scottish Government and UK Government ministers are conscious of the need to ensure that where heat networks go on is identified through local heat and energy efficiency strategies and heat zoning. We are seeking to ensure that they are developed in the optimal locations where they can impact on fuel poverty and make a substantial impact on socioeconomic benefits for communities. That can then flow through into, I hope, good results, with data that affirms the positive reasons why people join the heat network and encourages others to join the network.

11:00

Colin Beattie: Thank you, minister. Back to you, convener.

The Convener: I thought that we were already back with me, but I thank Mr Beattie for the clarification.

Minister, you talk about the Danish system, for example. First, what discussion has the Scottish Government had or is it having with other countries that have successful heat networks about public information on these matters, including responsible use of the system? We tend not to be familiar with shared systems in Scotland, apart from in one or two places. I am not referring to some people needing to keep their homes warmer than others because of health issues or for whatever reason; I am referring to responsible use of the system so that there is not wastage.

Secondly, how can it be ensured that such systems are 100 per cent reliable so that everyone can be certain that, if the system goes down, it will immediately be made to operate again or there is a back-up system?

Those two points are crucial for the success of any system or public acceptance of any system in Scotland.

Paul Wheelhouse: You have hit on a couple of very important points. Obviously, with our desire to develop heat networks as a contributor to tackling climate change and addressing fuel poverty, we want to ensure that we have a robust system that protects the consumer and gives the consumer confidence that, in joining a heat network, they are not setting themselves up for a fall. Therefore, it is essential to learn from Norway and Denmark—particularly Denmark, with which we have had a lot of engagement on a Government-to-Government level in developing our earlier thinking about heat networks—about how their success has benefited people.

Unlike boilers in domestic properties, which people have all the disadvantages of having to maintain themselves—they have potential fire and carbon monoxide risks—heat networks have a number of direct consumer benefits in not involving those responsibilities. With the wet systems that tend to be created by heat networks, those risks are all taken away from people. However, people will be concerned about what will happen if the system fails. Heat networks tend to have back-up systems in place. At present, someone might have an entirely renewable system that has a gas or other form of back-up engine to kick in should it fail. Obviously, we need to give individuals confidence about what will happen if a developer falls into financial trouble.

We and the UK Government are taking slightly different approaches. The UK Government is pursuing step-in powers, but we have set powers relating to transfers in the bill to enable an alternative operator to take over an established

heat network if a developer gets into financial difficulty or decides to dispose of the network for whatever reason.

The bill provides legislative certainty in those areas. However, if you want to probe specific points, convener, I am happy to try to address them.

The Convener: A key point is about public awareness of responsible use of heating. The minister may want to come back to the committee in writing on that and set out what steps have been taken to see how other countries work that into their approach.

Paul Wheelhouse: I take the point, convener. We will certainly come back to you in more detail on the thinking about that.

I appreciate that we are talking about a new market and that it will perhaps take a lot to educate consumers about what is involved in a heat network, the benefits to them of participating in a heat network, and the importance of tackling the emissions that are created by heat.

As committee members will know, over half of the energy that we consume in Scotland is in the form of heat. It is clear that, if we are to be serious about tackling the climate emergency, we need to make far greater progress in that area. I am very proud of what we as a country have done on the electricity supply, but I am less proud of where we are on heat. However, that is a common problem across most of northern Europe, which is still very dependent on fossil fuel systems. Eighty-one per cent of premises in Scotland are still dependent on gas central heating as their primary source of heat.

This will be a big transformation in the way in which we undertake our heating. It will not apply to every premises, because of heat zoning, and the LHEES process will identify those areas of Scotland where it is most appropriate—in many communities, it will not be an appropriate approach or an economically viable alternative. However, where it is happening, it will be done through a system that leads to networks developing where they are most appropriate to support communities. That should give confidence to communities that it will only happen where it will be an efficient technology to provide them with their heat.

That said, I take the point. We will come back to the committee with some more information about communication and what we can do to build the market in terms of engagement with communities.

The Convener: The next question is from Rhoda Grant, who joins us remotely.

Rhoda Grant: I welcome what the minister said in his opening statement about fuel poverty. What

form does he think that the consideration of fuel poverty will take in his amendment at stage 2?

Paul Wheelhouse: I thank Rhoda Grant for raising an important point. We are aware of concerns that have been raised by committee members and witnesses that the bill should be strengthened with regard to fuel poverty. I hope that we can provide assurances today that contributing to the eradication of fuel poverty has been an absolute priority for the Scottish Government as we have developed the bill. That was reflected in the evidence of witnesses such as Energy Action Scotland, which said:

“We are encouraged to note the focus on fuel poverty ... This appears to be an encouraging commitment to co-design this policy alongside the Scottish Government’s commitment stated in its fuel poverty Act.”

Heat networks have an important role to play in tackling fuel poverty. The CMA noted that the vast majority of heat network customers face costs that are similar to or lower than gas, and the business and regulatory impact assessment that accompanies the bill estimates that, in the right circumstances, heat networks can provide savings of up to 36 per cent for households compared with gas heating. We are keen to put that beyond all doubt and to respond to the concerns that have been raised, so, over the coming months, my officials and I will be happy to work with the committee, as well as with individual members of the committee such as Ms Grant and also with the fuel poverty partnership forum, to put those reassurances in the bill. I am happy to engage with Ms Grant and others who have an interest in the area.

Rhoda Grant: I also welcome that local government will be involved in consenting. What form will that take and will it impact on deemed consent?

Paul Wheelhouse: We are certainly keen to ensure that, as Ms Grant indicates, there is appropriate involvement of local government. I know that that has come up in a number of evidence sessions to date. Obviously, we are engaging with members of local government around the development of LHEES and the heat zoning mechanisms that are being taken forward by Zero Waste Scotland, which is handling engagement with stakeholders. We are trying to maintain as much flexibility as possible in the system that we have put forward in the bill around the licensing activities and the consenting process.

We are aware that a number of local authorities might have relatively little heat network activity in practice, and we are trying to keep things in proportion. However, we are keen to engage with local government colleagues around the development of the consenting powers in the bill.

On the engagement with local authority members, Mr Hemphill can say more about how we propose to take that forward with COSLA and individual local authorities.

James Hemphill: As the minister mentioned, we have commissioned colleagues at Zero Waste Scotland, which has the necessary technical expertise, to give us a first draft of a process for identifying heat networks. We expect that that first draft will be completed towards the end of the year or in early 2021. With the minister’s agreement, I am sure that we would be happy to share that with the committee.

On how we would bring that forward, we will develop that further in the working group that I referred to earlier, which has energy officers from three local authorities on it. In the longer term, we would envisage consulting publicly on that, and we would work with COSLA in particular on it, as the minister said.

It is possible that we might do that in conjunction with the planned introduction of local heat and energy efficiency strategies. We expect that the process for identifying a heat network zone would be captured in the development and preparation of a local strategy.

Paul Wheelhouse: I will add one further point for clarity’s sake and to assist Ms Grant. With regard to heat network zones, both James Hemphill and I have referred to section 40 of the bill. That section is not intended to enable Scottish ministers to overrule local authorities—some sensitivities in that regard have arisen in evidence to the committee—or to disregard local views in any way. However, we must remember that we are living through a global climate emergency, and we need to be confident that we are fully able to identify all potential heat network opportunities in order to address that.

As I mentioned earlier, where a local authority is unable to do that, or where we have evidence that particularly good opportunities may have gone unidentified, there needs to be an opportunity for Scottish ministers to carry out that function. I reassure Ms Grant that that would of course be subject to consultation with the local authority and with other relevant persons, including the public locally, prior to the implementation of a zone.

We urgently need to stimulate our economy in the context of the green recovery. Heat networks, for which the bill provides a legislative framework, very much fit the profile of the type of project that can make a near-term contribution to the green recovery, given that they are large-scale infrastructure projects with high up-front capital costs. Local authority colleagues to whom I have spoken very much welcome that approach, and they recognise the local economic impact that

there may be from those projects. Once the networks are constructed, they will be long-lived assets that we hope will create long-term jobs in those communities.

That is a positive reason why the legislation is framed in the way that it is—in order to allow for circumstances in which a local authority needs support to take forward heat network zones.

Rhoda Grant: I would like some clarity on that. Local government will be involved in zoning, and you said—I think that I heard you right—that communities will have a role in that but not in consenting to individual development applications. Is that correct?

Paul Wheelhouse: We are aware of the demands that have been put on the committee as a result of the evidence sessions that have taken place so far. With regard to the consenting process, we have tried to put in as much flexibility as possible to allow for circumstances in which a local authority—perhaps a smaller local authority—may not wish to take on that responsibility itself. If projects are only occasionally appropriate for its area, it may not want to have to staff up and tool up for a function that is only rarely required.

We can come back on the issue around responsibility that has been raised in evidence to the committee. Larger local authorities may be keen to take forward consenting; I know that there has been some debate around the thresholds at which that would potentially kick in. I do not know whether James Hemphill wants to add anything further on that.

James Hemphill: I would simply echo what the minister has said.

Rhoda Grant: I want to ask about the appeals system for developers. There is no right of appeal in the bill. What is the thinking behind that? Will that position change?

Paul Wheelhouse: The situation at present is complex, given the way in which legislation is currently drafted in respect of the identification of the licensing authority, and I recognise why Ms Grant is asking about it. We are getting into a position in which we will—we hope—be able to provide more clarity on the potential options for the licensing authority.

However, we recognise that there are situations in which an appeal would be necessary if a business was unhappy with the outcome of a licensing decision. The legislation currently provides for that role to sit with Scottish ministers. Normally, there might be another body that would appeal up to the Scottish ministers to receive clarity on a position. Section 11(5) makes clear the provision for licence holders to

“make representations ... to the licensing authority”

if a licence is to be revoked.

It is important to remember that, in exercising functions under the bill, including those that relate to licence revocations and other appeals, the licensing authority must act lawfully. If it does not, it would be open to challenge in the courts.

I am interested in the committee's views on to which body, over and above the licensing authority, appeals could be brought, given that the bill currently designates Scottish ministers as the licensing authority in the first instance. We would like to be in a position where Ofgem, or another body as recommended by Parliament, would be the licensing authority and could therefore appeal to Scottish ministers in that scenario. It is important that appeal mechanisms are clear. We will work with the committee and take forward any recommendations that it has on the drafting of the bill.

11:15

The Convener: Do you have anything to add to that, Mr MacLeod?

Norman MacLeod: I would reiterate what the minister said: there are various processes in the bill that require licences or consent and, to a large extent, those have mechanisms built in—some in the bill and some by regulation—whereby a developer or someone making an application for a licence would have an opportunity to make representations to the Scottish ministers as to the determination of those decisions. The question is, once the decision is made—at the moment, in the bill it would be made by ministers—what form of appeal there might be. Appeals could either be an administrative appeal where someone gets to make the decision again but can alter the decision that ministers have already made on the substance of the issue, or, as the minister said, an appeal on the legality of the process and whether ministers have properly considered all the matters that they were due to consider. Such an appeal would go to the courts, and that route is available under the bill as it is drafted.

Paul Wheelhouse: We recognise that judicial review is not a cheap process for any party. If the licensing authority were the Scottish ministers and the UK legislation was not enacted in the timescale that we estimate, we would have that fallback whereby Scottish ministers would effectively be the enforcement authority. However, we are clear that if we were able to designate another body as the enforcement authority under section 32(2), which enables appeals to be made to a third party, which in those circumstances might be the Scottish ministers themselves, in practice, it would be likely to be administered by

the Scottish Government's energy consents unit in the form of recommendations to ministers. I hope that that answer is helpful to Ms Grant.

The Convener: You refer to judicial review, minister. Is that the ultimate court form of review that is contemplated in relation to the bill?

Paul Wheelhouse: We would want to avoid that if we could get the clarity that we seek in relation to the role of the licensing authority and enforcement authority functions. Ultimately, judicial review is the course that will be available in circumstances where Scottish ministers found themselves to be the enforcement authority and there needed to be an appeal because there was nobody above to appeal to, other than the courts. That would be the fallback in that scenario.

The Convener: Why is there not a statutory right of appeal set up in the bill, which could be exercised in the sheriff court, for example, rather than having to use judicial review in the Court of Session, which is more expensive and more difficult for individuals and organisations?

Paul Wheelhouse: I will bring in Norman MacLeod to give us the legal perspective on the question of the respective courts.

Norman MacLeod: Those choices are open under the bill. It is worth noting that appeals of enforcement notices in planning legislation would be made to the Court of Session and not the sheriff court, so it would be the equivalent of those types of enforcement provisions.

The Convener: Are you able to shed light on why section 32 says that

“Scottish Ministers may by regulations make provision for or about appeals”,

meaning that the provision is not specified in the bill? It would make things clearer if it was specified in the bill, as has been the case historically and often still is.

Norman MacLeod: The minister has already alluded to the fact that section 28 sets out the “enforcement authority” as

“(a) the Scottish Ministers, or

(b) such other person as ... Ministers”

may

“by regulations designate”.

The regulation provisions are included to enable appeals to be put in place where the enforcement authority is not ministers.

Paul Wheelhouse: I do not know whether this will help—it may confuse things further. We will come back to the committee in writing if it would be helpful, but there is an important point to be made. As Norman MacLeod indicated, under

section 28 the enforcement authority may be the Scottish ministers or they may designate another body. In either case, assuming that the decisions made by that enforcement authority were reasonable and lawful, the appeal would have to go to a body or person of greater authority. That is why, if the decision was lawful, the appeal would potentially have to go to the courts to be overturned.

The Convener: So, basically, the scheme is trying to align with or is modelled on planning legislation in terms of rights of appeal.

Paul Wheelhouse: I can see the similarities, but I will ask Norman MacLeod to confirm whether that is the case, given that I am not an expert on planning law.

Norman MacLeod: Essentially, that is correct. There is equivalence between the planning systems. They both regulate and help consents to be enforced. There is merit in the two systems being broadly equivalent.

Maurice Golden: I am interested in the transfer schemes and how the Scottish Government will address the risk that existing heat network operators may not obtain a licence for their network, potentially leaving customers without heat.

Paul Wheelhouse: Mr Golden raises an important point about the transfer schemes. It is essential to give consumers the confidence to embrace heat networks as an option—not just individual consumers but business consumers, who have to factor risks into their on-going business activities. We are taking a subtly different approach to the arrangements around transfer schemes from that taken by UK ministers. As I understand it, they are proposing step-in rights; that is how they have determined it.

It is important to provide for scenarios in which heat networks are no longer able to operate with the original developer for a number of reasons, which could include insolvency of the operator. There are circumstances in which the Scottish ministers could potentially take responsibility for the operation of the scheme until such time as an alternative provider was identified. We want to make sure that the process is as smooth as possible for the consumers and that there is as much certainty as is possible. We believe that the approach that has been taken is appropriate. However, we will have to wait until we have further clarity about the GB-wide consumer protection standards that may apply in terms of understanding the wider framework in which we would be taking it forward. Mr Hemphill can set out the technical aspects of the transfer scheme.

James Hemphill: In the bill as drafted, the transfer schemes would apply to new networks on

the basis that the transfer would be agreed at the same time as the heat network consent is granted or considered. That is probably useful, because it is helpful for all parties to understand what transfers and changes would occur, in the worst-case scenario, to ensure that the supply of the heat continued. We understand that provisions that relate to the supplier of last resort and the step-in rights to which the minister referred were included in the original UK Government consultation on a market framework for Great Britain, so consumer standards in that regard would apply GB wide.

Norman MacLeod can comment on the relevance of compulsory purchase rights and how they might be used for existing schemes, should that be needed to ensure continued supply.

Norman MacLeod: I am not really sure where to start. Compulsory purchase is an option in the bill, but it is not a quick process. Protection for existing schemes is not directly covered by the bill; as James Hemphill said, the part 7 provisions on transfer schemes apply to networks that will be obtaining consent for either new or modified schemes after the legislation is in place.

Paul Wheelhouse: Let me add a point that might help committee members and indeed a wider audience to understand the difference between what is proposed in the bill and the supplier-of-last-resort arrangements for gas and electricity markets. We view the provisions in the bill as being more akin to asking what would happen in the event that gas or electricity asset owners failed or lost their rights to operate—I am thinking about Scottish Gas Networks, Scottish and Southern Electricity Networks or Scottish Power Energy Networks, for example, as infrastructure owners. Assets are owned by a small number of companies, but in future there will potentially be a large number of owners of heat networks in Scotland.

The approach is different, in that the gas and electricity supply markets system is about replacing a company that is responsible only for purchasing energy and then selling it to consumers through its customer-facing functions, whereas heat networks have infrastructure assets, as well—there is the service, and there is the infrastructure. That is why the approach that we have taken in the bill is modelled more on what would happen—and we hope that this would never happen—in the event that SGN, SSEN or SPEN had difficulties.

Professor Paisley, who is chair of Scots law at the University of Aberdeen, very much welcomed the approach that we took in the bill—I will not read out his submission in full.

Maurice Golden: Thank you, minister. For clarification, is it the case that the 800-plus existing heat networks are not directly addressed in the bill? Should they be?

Paul Wheelhouse: Let me just clarify that point with James Hemphill. Are the existing networks addressed?

James Hemphill: No. The bill applies to new schemes. We understand that there are 800 to 1,100 schemes out there at the moment, which is a big number, but it is worth saying that, in practice, that equates to about 1 per cent of Scotland's heat demand. Therefore, if the bill meets its objective of the percentage of heat demand being met by heat networks getting into a projected range of 7 per cent to the high teens, the vast majority of schemes in future will be captured by the transfer provisions, with the safeguard of GB-wide standards and step-in rights to support the existing schemes.

Paul Wheelhouse: The point about step-in rights probably requires us to understand and take account of the interaction between what the UK Government will bring forward next year—we hope to see it during the passage of the bill—and section 7 of the bill. James Hemphill makes an important point about the fallback of the GB-wide consumer protection framework, which I hope will have a role in appointing the licensing authority that oversees the process, to ensure that consumer protection is delivered in Scotland.

11:30

Maurice Golden: I just want to clarify this. You are confident and comfortable that existing customers of the existing heat network would be able—either through secondary legislation or by some other means—to ensure that they are still provided with that heat, one way or another.

Paul Wheelhouse: Every indication that we have is that UK ministers will introduce a bill applying GB-wide consumer protection standards that would give some protection to consumers on existing heat networks. We have no reason to doubt UK ministers' willingness to do that.

With Covid-19 and other factors, there is a possibility that the UK bill will be delayed, but I hope not. We have certainly not had any indication so far, through engagement with officials, that there is any intention to delay the bill. The proposed UK measures would hopefully provide a safety net for those on existing networks, and our legislation would deal with the new networks, as Mr Hemphill has outlined.

Maurice Golden: I have a final question on the overall regulation of the localised monopolies of heat networks. Do you see a potential conflict

between ensuring the lowest possible price for the customer and ensuring the best rate of return, and therefore the most attractive investment market, for companies and others to run heat networks?

Paul Wheelhouse: With your background, you will have a strong interest in regulatory matters, and you will understand the nature of creating natural monopolies in this situation. That is something that we have been very mindful of, and we have tried to ensure—both in the presence of any GB-wide consumer protection framework and in the steps that we are taking on LHEES, zoning and applications for consents—that the consenting process takes account of the underpinning of the case for the heat network, with the benefits that can potentially be provided locally.

We are also considering the impact on fuel poverty and the contribution that the network will make to tackling fuel poverty in the community as a part of the process that will be taken into account and that will hopefully be formalised, bringing us an understanding of how the natural monopoly will contribute to the achievement of our fuel poverty goals and targets.

We have made provision for the natural monopoly to last only as long as the payback of the infrastructure investment. Thereafter, other operators could potentially take over the operation of the network should there be a potentially more attractive proposition. We would welcome the committee's views on that aspect and on the approach that we are taking to avoid higher costs for consumers.

In practice, most heat networks have demonstrated an ability to be at least competitive with gas—and, ideally, cheaper than gas. If they are well designed and situated in the right place—hopefully LHEES and heat zoning will ensure that—they could potentially contribute to reducing bills by up to 36 per cent. I hope that it will be extremely rare for there to be any suggestion that the natural monopoly was leading to higher costs for consumers. I hope that, in practice, there would be either small or big decreases in cost, depending on how well the heat network is run and designed. I hope that, with the approach that we are taking, we will enshrine those principles right from the start of the process.

Maurice Golden: Has any analysis been conducted on consumer confidence issues around people not having a boiler in their homes and moving to a district heat network? I know that there are some existing heat networks in place. Is that consideration a barrier, or is it not something to be concerned about?

Paul Wheelhouse: Anything that represents a significant change in someone's day-to-day life will probably make people pause for thought, and they

might be nervous before they commit. However, to address the convener's request for us to come back to the committee with more information on public engagement and on how we would build the case for heat networks—which is an important point—we can hopefully come forward with a way in which the benefits of the heat network can be communicated to the consumer in an explicit, transparent and understandable way, so that they can make informed choices about whether to join the network.

As you know, we are not proposing to compel consumers to join networks, for a number of reasons, including issues around the European convention on human rights. However, it would be in the interests of everyone, including the investor and the licensing authority, to ensure that we have clarity about the benefits to the consumer of a heat network, so that people are able to make an informed choice that we hope will help the environment as well as their bottom line. A key part of providing that clarity will be information about the costs of the network—whole-life costs and the costs that consumers will have to pay.

The Convener: I am conscious of the time. We are grateful for everyone's enthusiasm on the topic, but I would like to get to all committee members.

Minister, a point was raised with you about existing heat networks and the requirement for heat network consent, which I think are covered in sections 17 and 18 of the bill. Under section 18, the Scottish Government will presumably be looking simply to issue either exemptions or licences to existing heat operators, subject to their maintaining certain standards. I do not want an answer now, but perhaps you could clarify that point in writing to the committee.

Paul Wheelhouse: I am happy to do that, convener. I appreciate that it is a technical point, and we can come back to you with the in-depth answer that you require for the report.

Richard Lyle: We might be under time pressure, but there are many questions to be asked and many answers to be given. How much of a game changer will the bill be, minister?

Paul Wheelhouse: As I alluded to earlier, and as Mr Lyle is right to identify, more than half of the energy that we consume as a country is in the form of heat, which is not unusual for countries in northern Europe. In recent years, heat has accounted for between 51 per cent and 54 per cent of our energy consumption. If we are serious about tackling climate change, we absolutely must hit our goals in that respect. Tackling fuel poverty is a statutory obligation for the Government, and we have statutory fuel poverty targets. We are all aware of the rising energy costs for consumers,

and there will be opportunities to provide people, and particularly those who are dependent on electric heating alone, with lower cost heat supplies through heat networks. We also need to decarbonise by finding alternatives to our gas networks over time.

The estimates that we have are that, by 2050, heat networks in Scotland will provide 9.7 terawatt hours of heat annually, which is about 12 per cent of what we need—that is in the middle of the range of 7 per cent to 17 per cent that Mr Hemphill referred to earlier. That would reduce energy bills by about £18 million a year by 2050, saving about 0.3 megatonnes of CO₂ equivalent in annual emissions. That would be a significant, though not definitive, contribution to meeting our climate targets. That 0.3 megatonnes might offset something more difficult for society to contemplate in reducing our emissions.

There are also consumer benefits to take into account, including removing the risk, almost at a stroke, of carbon monoxide poisoning, the hassle of replacing a boiler every 10 or 15 years, boiler maintenance and the potential to be left without any heat at all. Heat networks have a back-up supply, so there would always be a means of providing an alternative heat supply to consumers. That is not to say that the system could not break if there was a leak—if it was a wet system—but, in most circumstances, there would be a fallback arrangement so that, if the principal heat engine of the network went down, there would be a back-up supply. There are multiple benefits, but primarily it is about tackling fuel poverty. In the best networks, we can save up to 36 per cent of someone's heating costs, which will be a huge benefit to a family that is struggling to make a living, allowing them to have a warmer home, which we know helps with health and education. There is a range of associated benefits from that investment.

Richard Lyle: I totally agree. We hear the comment that some people have to choose between heating and eating, so heat networks could be good for consumers and for the climate.

Is there a risk that the duty on local authorities to consider undertaking the designation of zones will lead to

“a lot of studies but very little action.”—[*Official Report, Economy, Energy and Fair Work Committee*, 23 June 2020; c 6.]?

That is my concern. What action will the Scottish Government take to ensure that zones are designated and networks are built, and that we really mean what we say in the bill?

Paul Wheelhouse: We do mean what we say. Earlier questions alluded to powers in the bill for Scottish ministers to undertake heat network zoning if that was not being delivered properly or if

an opportunity had been identified but had not been captured in the local heat and energy efficiency strategy. We want to work very closely with local government colleagues. Smaller local authorities, or even larger local authorities, might decide that they do not want to take on that responsibility, so Scottish ministers would perhaps have a more direct role in ensuring that that information was provided.

There is a big economic prize to be won in the development of heat networks in terms of investment and the potential for local employment opportunities. The local authorities that I have spoken to are keen for heat networks to be developed in their areas and, because of the nature of the projects, they see the potential for long-term sustained jobs in their communities. There are a number of reasons to believe that local partners will be very enthusiastic about heat networks.

Smaller local authorities, or local partners for whom this is a new area, may need support, and we have made commitments to resource some of the costs that would come with developing the LHEES and the heat zoning. We want to work with individual local authorities, if they are struggling to deliver those functions, to ensure that they get the support that they need.

Richard Lyle: Could an obligation to require local authorities to state whether they intend to issue zone permits or publish a commercialisation plan help to provide further certainty? In what circumstances does the Scottish Government expect to designate a heat network zone under section 40, and does it expect that that will be a regular occurrence?

Paul Wheelhouse: I would hope that it would not be a regular occurrence. As I said earlier, it is our intention to avoid overruling local authorities or disregarding local views, which would cause ill feeling. Insensitivity to local views would not be helpful.

Mr Lyle referred to section 50. If a local authority was unable to perform the function, or if we have evidence that particularly good opportunities have gone unidentified—an error of omission rather than a deliberate objection to something being in the zoning—the Scottish ministers would need to carry out that function. With reference to Ms Grant's remarks, I emphasise that that would take place in consultation with the local authority. If we had to step in in that way, under section 40, we would not ignore the local authority in performing that function; indeed, we would also consult other relevant local persons, such as the local community, prior to the implementation of the zone.

In practice, though, I think that it would probably be very rare that we would have to do that. Local authorities seem to be genuinely enthusiastic about the local employment opportunities and how heat networks integrate with their local development planning process.

Richard Lyle: Lastly, does the timing of the bill, before the local heat and energy efficiency strategies become statutory, allow for adequate planning and preparation? Should statutory provisions for LHEES have come first? What role will communities and local authorities have in relation to the planning and dissemination of heat networks outside the local heat and energy efficiency strategies? As you know only too well, minister, it all comes down to how local communities and local authorities ensure that they get what they want.

Paul Wheelhouse: Mr Lyle, you are absolutely right. We need heat networks to happen in the right places, according to properly evidenced LHEES. All 32 Scottish local authorities have been engaged in piloting LHEES in their local area, and we are learning a lot from that about the resourcing that local authorities have, their ability to deliver LHEES, and the technical aspects of delivering LHEES at a local level. We are hopeful that the final nine that are piloting will report back in early 2021. In theory, all 32 local authorities will feed back to us any challenges that they face in delivering LHEES, which they are mostly piloting on a sub-area basis, to see how they work.

11:45

Our proposal is to introduce a statutory duty to underpin LHEES. That will be largely to provide further investor certainty and give some standing to the LHEES to inform investor decisions. As they will be on a statutory footing, things will be done in a consistent way across all 32 local authorities. That will form an important piece of evidence to underpin their business case for putting together a heat network and going to finance to get the funding. It will give a bit of confidence to investors.

Our aim is to try to achieve what has been done in Denmark and Norway, where LHEES are seen as low-risk investments in those markets. Therefore, they can attract finance at a low cost of debt and allow the sector to grow.

We propose to put that statutory duty in place through secondary legislation under the Climate Change (Scotland) Act 2009. Obviously, that would be subject to approval of Parliament.

John Mason: You have previously said that you did not want to use compulsion or an obligation to connect to a network. Can you explain your thinking on that? If I replace my boiler, that is an individual decision that does not affect anyone

else, but a heat network, by its very definition, is a community asset—a community thing—so is there not an argument for a bit of compulsion and a bit of an obligation to connect?

Paul Wheelhouse: From the outset, in the expert working group and the heat networks group, which we established more recently, there has been some debate about the degree to which we can mandate connections to a network. That has featured in the evidence to the committee.

We are taking forward the discussion about the obligation to connect in the context of the fairly complex legal landscape that we have, not only with reserved powers but with the European convention on human rights and other considerations that we have to take into account.

I appreciate that time is tight, convener, but it might be helpful if I set out a bit of detail, because this will be an important area of debate as the bill is considered. I cannot disclose legal advice—I hope that the committee will appreciate that—but I will try to outline some of the legal issues that arise in relation to mandatory connection to heat networks.

With mandatory connection, the reduction of demand risk is likely to involve more than just the power of a heat network operator to carry out works when they install equipment in order to connect a building to a heat network, their ability to keep that equipment in place and their right of access to maintain, replace and renew the equipment. It is more fundamentally a requirement on the owner or occupier of the building to use and, indeed, pay for the heat from that network. That would also appear to require obligations on a heat network operator to supply heat.

The power to carry out works to alter another person's property without their permission and, indeed, in the face of objection, which is a situation that might arise, clearly involves an interference with that person's property rights. Therefore, it has the potential to engage the provisions of the European convention on human rights. A requirement to use heat from a heat network is also likely to engage the provisions of the ECHR, as there would be an on-going interference with property rights, in relation to not just maintenance of equipment but the compulsory imposition of obligations by the terms and conditions of the arrangements for supply of heat.

I know that that is a bit legalese, but the convener will be very comfortable with that. We are trying to work within a very complex legislative landscape. The engagement of ECHR provisions is not, of itself, a bar to mandatory connection. It is possible to both interfere with property rights and comply with the ECHR, provided that it can be shown that interference is fair, proportionate and

justifiable when balancing the impact on the individual against the public interest.

Indeed, part 6 of the bill already includes provision for the imposition of mandatory “network wayleave rights” by means of “necessary wayleave”. Those rights are framed in sufficiently broad terms to enable installation of

“heat network apparatus on, under or over any land”,

which would include buildings.

We have tried to put as much in the bill as we can to enable the efficient delivery of the infrastructure, in order to keep the capital costs to a minimum. We have also tried to allow for the possibility that, even if the original occupier of the building that is being connected is not interested in being part of the heat network, it will be as low cost as possible for the next occupier or owner of the building to say, “Yes, please, I would like to be connected to the network.” We are trying to be as proportionate and balanced in our approach as possible.

I apologise for taking so long with that answer, convener, but I thought that it would be helpful to set out to the committee the concerns that we have around ECHR.

John Mason: I appreciate your answer. I will let the legal brains that are greater than mine go through it in detail.

On the practical side, I accept that there are legal impediments—and yet. It is different in a new area. In the Commonwealth games village, which is in my constituency, everybody is on the network. That is fine, but I presume that we are focusing on existing buildings. In a lot of networks, some kind of anchor tenant, user or load is wanted.

If we cannot go down the route of a network being openly mandatory, are there other options, such as a carrot-and-stick approach? For example, in Denmark, there is a standing charge for people who are in a building in which they could connect but they choose not to. I wonder whether we could use the rates system or something like it to penalise people who choose not to join for no good reason. We cannot tell them to join, but we could tell them that they will have to pay more if they do not.

Paul Wheelhouse: I might invite colleagues to come on to the issue that you raise in that example from Denmark.

We recognise the point about anchor tenants. We have looked at, for example, requiring potential public sector anchor tenants to undertake building assessment reports. For example, Fife Council is playing an important role in the delivery of the project in Glenrothes, which originated with

Fife house and some other key premises where Fife Council operates, including a leisure centre and a care home, being connected to the network. That has provided investor certainty and a demand load on the network, and we hope that it will grow from there into residential areas and other business premises.

The point that you make about anchor tenants is critical to making a viable case for a network investment at a local level. We are looking at how we can work with the public sector, initially by seeing how building assessment reports can inform the decision as to whether it would be sensible to connect a building to a heat network.

When it comes to individual consumers, there are the ECHR aspects as well as the issue of reserved powers. The most likely landing point is that there will be a GB-wide consumer protection framework, under which we will have a role in appointing a licensing authority to oversee in Scotland and to take on that responsibility. There will be some interactions with reserved legislation as well, which makes it difficult in terms of the points around standing charges and other issues that you mentioned. I invite James Hemphill and his colleagues to comment on that.

James Hemphill: That has been the major issue that we have grappled with internally, as well as with our working group and other stakeholders. I hasten to add that it is not just the developers that have advocated for that; there has also been support from public sector organisations, and it is worth mentioning that for balance.

That said, the working group that we ran last year could not come to a consensus on exactly how we should deal with the issue of demand risk and create the demand needed to make the business case stack up. I will give a few examples that we heard. The range of suggestions included heat networks having the sole right to operate a network within a certain zone; Scottish planning policy more strongly encouraging connection to heat networks for new buildings; and the public sector considering the total life-cycle costs of heating systems to support the commercial case for heating networks when it considers how it will heat its buildings in future. It seems that a range of opinions exist on the matter. The bill has delivered on at least one of the working group’s asks in part 4 of the bill, with regard to permits.

As the minister has said, part 6 of the bill also provides network wayleave rights, which could be useful in practice and provide an opportunity, if one can establish that connection, when a change of tenure happens or when a heating system needs to be replaced. The heat network provider could properly engage with the building owner and come to some sort of commercial agreement for the heat offtake.

My colleague Urszula Kasperek can talk more about the European aspects of the matter. I point to the fact that national planning framework 4 is coming up, that we have our existing commitments to non-domestic rates relief until 2032 and that new powers under the Non-Domestic Rates (Scotland) Act 2020 could be employed, so we can hopefully keep considering the issue both in and out of the bill in a lot of potential ways.

Urszula Kasperek (Scottish Government): We have considered different European examples of the mandatory connection. We were told that the Danish model had worked over the years, so we examined it quite closely. It works on the basis of a compulsory standing charge—one needs to pay a standing charge to contribute to the communal infrastructure even if one is not using a heat network. We considered that option, but it poses a lot of different complex questions, such as whether that additional charge is fair when we already talk a lot about fuel poverty here, and how we can manage that challenge when we do not have the consumer protections that we can now provide through the bill.

In some of the German municipalities, there was a mandatory connection but no consumer protection, which led to some significant challenges for consumers. We wanted to avoid a situation wherein we would mandate someone to connect while being unable to sufficiently protect them. Another example is—I believe—Norway, where the planning system was used. As James Hemphill has previously mentioned, that system could be set up outside of the bill through the existing legislation.

Different options exist, but none of them was a perfect match for us and, as was previously outlined, all of them carry some risks.

Alison Harris: I would like to explore the question of multiple parties. How will projects where there are multiple parties—Scottish Water in Stirling, for example—be regulated? Will there be a degree of flexibility in the consents and regulatory frameworks to accommodate projects of that nature?

Paul Wheelhouse: I can perhaps duck all the difficult questions and get James Hemphill to address Ms Harris's point.

James Hemphill: I might defer in turn to my colleague Urszula Kasperek. Our starting point is that the regulation applies to the licensed party. We would subsequently expect those obligations to apply to any subcontractor and the licence holder to be held accountable for the subcontractor's actions and the need for the latter to meet those obligations. Urszula might be the best person to comment on that.

12:00

Urszula Kasperek: In the example from Stirling that was given in one of the evidence sessions, Scottish Water Horizons operates the energy centre and Stirling Council is responsible for the supply of heat to the properties. That is quite a common model. One party is responsible for heat generation and another party is responsible for moving the water around and monitoring the business, for example.

As James Hemphill outlined, we would license one major party and, as set out in the bill, it would be the one that is responsible for the supply of heat. We would then need to ensure that any subsequent parties that were involved in the heat network complied with the conditions in the licence. It would be the responsibility of the licensee to oversee that.

We do not want to hinder any business models, because they are evolving. As we said, it is an emerging market and there will be different models, some of which involve a heat network that is fully vertically integrated, even with the production of the fuel. That might happen with a biomass boiler, for example. We do not want to hinder that if it is the most efficient way of delivering heat. However, we recognise that, if there are multiple parties, one of them has to be the responsible one. It will have to subsequently be bound by the conditions, and all the contractors will have to be bound by those conditions as well.

I hope that that answers the question.

Alison Harris: How can the interests of the consumer be best represented and enforced in projects where there is no single responsible party?

Paul Wheelhouse: The example from Stirling has been outlined. As James Hemphill alluded to, with a single licence holder and subcontractors, they will be bound by the conditions of the licence and, if they were failing to deliver on those conditions, including that of acting responsibly in relation to consumers, that would potentially be territory in which the licensing authority would have to take action. If there was a failure to protect the interests of consumers, the potential ultimate sanction would be revocation of the licence, subject to appeal, of course.

Obviously, we are slightly in the dark on consumer protection. We know the general direction that the UK Government is going with regard to the consumer protection framework that will apply across GB, and we are comfortable with the general thrust of what is being proposed, although, as with any legislation, the devil is in the detail. I hope that the consumer protection framework will provide a sound underpinning. We will also have the role of the licensing authority

and enforcement authority in ensuring that licence conditions are met.

I do not know whether that, in a single bullet, addresses Ms Harris's point, but I hope that it gives confidence that, as James Hemphill outlined, where multiple parties are involved in a single licence, ultimately, the top tier of the project will be responsible for those working underneath, and there will be protection in that regard.

I do not know whether James wants to add anything to that.

James Hemphill: It might be worth mentioning that, when we come to deal with specific sites, obligations could be attached to the heat network consent and, if there was a change in the consent holder or the person with primary responsibility for the site, that consent would transfer to the subsequent person, as would the obligations attached to it.

It might also be worth mentioning that we could use the consumer advocacy powers that were devolved to us in 2016 to dig into the issue a little more if more schemes started to move away from the vertically integrated model and it became a little less clear for consumers exactly who they were speaking to or how they could have their voices heard. We could look at that.

Willie Coffey: I want to ask the minister about one of the more exciting parts of the bill: building assessment reports. Part 5 is about local authorities assessing the viability of connecting their existing buildings to heat networks. Does that mean that only public buildings will be covered? Will privately owned or community-owned buildings be within the scope of the bill?

Paul Wheelhouse: I have not heard that part described as exciting before; that is very positive.

We place a duty on public sector owners of buildings to assess the viability of connecting their buildings to a heat network. The aim is to ensure that sufficient and reliable data is available to identify and sustain robust heat networks and network zones.

There are two reasons why the initial focus is on public sector buildings rather than private and community buildings. First, there are many public sector buildings: we estimate that there are about 20,000 in Scotland. The approach will not only create a substantial data source but help public sector building owners to identify whether connection to a low-carbon heat network is an option to help them to comply with their duties under the Climate Change (Scotland) Act 2009.

Secondly, public sector buildings are considered to be optimal buildings around which to anchor heat networks. I referred to that earlier in an answer to John Mason. That is because they

usually have secure, long-term owners or tenants and they often have a substantial and predictable demand for heat, which helps with modelling for the heat network. That gives greater confidence that heat will be used and about when that will happen, enabling the efficient design of networks.

The bill provides for the duty to be extended to other non-domestic buildings, should heat networks find it challenging to identify other suitable anchor loads through commercial negotiations. At present, if we are focusing on building assessment reports only for public buildings, there would be a need for negotiation between heat network developers and local, non-domestic, commercial building owners.

There is the power to extend the duty, but, given the economic and financial challenges that Scottish businesses currently face, our view is that care must be taken not to add to that burden now. There is scope to do so in future, should that prove necessary. Currently, under the Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016, owners of larger non-domestic buildings—those over 1,000m²—are required to undertake an assessment of energy performance when the property is sold or rented to a new tenant. That assessment contains much of the information that would be required, should building assessment reports be extended to such buildings. I hope that it would not be too onerous for owners of such buildings to take on that responsibility, should we choose to extend it to them in future.

Willie Coffey: That was very thorough.

Energy performance certificates have been in place for a number of years—indeed, since 2007. What will be in a building assessment report that is not already in an energy performance certificate report? Surely we already have something pretty similar.

Paul Wheelhouse: With your permission, convener, I will ask James Hemphill and Urszula Kasperek to address that question about the differences in content between the EPC and the building assessment report.

James Hemphill: Energy performance certificates have come up a few times in the evidence that the committee has heard. It is worth clarifying that nothing in the bill or the policy memorandum says that we will be using or relying on EPCs as part of the methodology for the building assessment report.

Our colleagues at Zero Waste Scotland are currently developing the methodology for how to undertake a building assessment report. With the minister's agreement, we will be happy to provide that to the committee in due course.

We do not expect preparing an assessment report to be a resource-intensive exercise. We envisage it as something that can be done by a building manager or a facilities manager. It will contain information that is readily available to those people, such as the heating bill or anything that is part of their climate change reporting duties, such as their annual energy consumption, or whether the building uses a wet system with radiators. Those are important things for the developer to know so that they can understand how efficiently a building can be retrofitted and how much that would cost.

Willie Coffey: I have a final question for the minister. I think that you said that about 81 per cent of residential premises depend on gas central heating systems at the moment. I have not had the chance to read all the report that we have received from Denmark, but it suggests that two thirds of Denmark's households are connected to district heating systems, so Scotland is on quite a catch-up journey. Are you confident that we can close that gap? How soon might we do that?

Paul Wheelhouse: That is a very good point. Based on our discussions with colleagues in Denmark and the evidence of what they have achieved, I think that a large part of the surge in the establishment of heat networks across Denmark happened from the mid-1970s onwards. As I mentioned, Denmark used natural gas to create heat networks at a very low cost, in effect removing the need for someone to have an individual boiler in their premises. That is probably a big reason why Denmark has rocketed ahead in relation to the percentage of premises that are covered by heat networks. It then migrated those systems over to renewable fuels such as biomass and other sources, over time.

We will have to do that in a different way, in a different era and without the advantage of having a very cheap source of fuel—natural gas—to do so. That will be a challenge for us. James Hemphill and I have referred to various estimates ranging between 7 and 17 per cent, which does not sound very high in comparison to Denmark, but that reflects our rurality and the nature of the communities in which it is felt that local heat networks might provide a viable and competitive alternative heating system.

I hope that, in practice, we might be able to overachieve on those figures. If we were to identify through local heat and energy efficiency strategies that there was a viable and attractive opportunity to use heat networks with, ideally, a renewable heat source in a larger share of Scotland's communities, I would be enthusiastic about pursuing that, as I am sure that my successors would be. We are trying to be realistic in the range that we have provided. We have provided costings

and benefits based on the mid-point of that range—about 12 per cent—but I hope that, in practice, we will be able to overachieve on that.

As Mr Coffey rightly says, Denmark's achievements are extremely impressive, but the country benefited from using fossil fuels to help to make the networks cost competitive to start with. In the context of the climate emergency, we are not able to do that. Who knows where we will be able to go? Hydrogen might be a useful fuel in the future, so that might provide us with an attractive opportunity. In the context of our wider work on heat decarbonisation, we will look at the role of hydrogen and other biogases in providing alternatives. I hope that that answer is helpful to Mr Coffey.

Willie Coffey: It certainly is. Thank you.

Andy Wightman: I have some questions about governance. The Delegated Powers and Law Reform Committee's report says that the Government has 45 regulation-making powers in the bill. In total, the bill contains somewhere in the region of 60 to 70 ministerial powers, which include important ministerial powers relating to licensing and consenting. In contrast, local authorities have five such powers.

There has been quite a bit of discussion about Denmark. Denmark has 98 municipalities, which are the heat planning authorities. Why is there such a contrast between Denmark and Scotland in relation to the degree of decentralisation that is proposed?

Paul Wheelhouse: I should say from the outset that we have not aimed to take a radically different approach from that taken in Denmark in that respect. Based on the work of the heat networks regulation working group, we have landed where we have done in relation to the consensus around the powers that are needed and their distribution.

Mr Wightman is right to identify that we will rely heavily on delegated powers. We expect that there will potentially be a couple of years' worth of work through the Delegated Powers and Law Reform Committee to address the fact that the bill is regulating a market from scratch. We are trying to create, as simply as possible, the appropriate framework for developing a regulated market.

12:15

We looked at other markets, in particular in utilities such as gas, electricity and water. Those regulatory systems have developed over a number of years through multiple pieces of legislation, but we do not have that luxury in this case—as I said, we are starting from scratch. We are dealing with a complex technology—or rather, technologies—and our view is that flexibility is needed to adapt

the regulatory regime over time as the market in technology matures in Scotland.

That can be achieved only through the creation of powers in primary legislation through the bill, with detailed regulations being determined through secondary legislation. As I understand it, the DPLR Committee, in its response, raised only one question with us on the use of delegated powers in the bill, and overall it seemed to be comfortable with that approach.

We are happy to see and engage with the committee's recommendations on the balance of responsibilities between the Scottish ministers and local authorities. I recognise Mr Wightman's point—I have not totted up the numbers in the way that he mentions, but I recognise that he is probably right in his assessment of where the balance lies.

In response to questions from Ms Grant and other members, we have tried to set out how we want to engage with local authorities and local communities. We are trying to create a consistent approach across Scotland. It is possible that heat networks will cross local authority boundaries; there are a number of different permutations in urban settlements and suburban areas in particular. We have struck a balance, but if the committee feels that the balance is wrong, we would be keen to hear about that.

James Hemphill might want to comment on comparisons with what has been taken forward elsewhere, including in the countries that Mr Wightman mentioned.

James Hemphill: Norway is another example that we have looked at. It started, at least initially, with a more Government-led, or centrally led, approach but gradually, over time, responsibility for the system has devolved to local authorities. The bill allows for regulations to change the enforcement authority from the Scottish ministers to another person, so the door is not closed to that option in the long term.

Andy Wightman: In Denmark, the heat distribution networks are owned predominantly by municipalities and consumer co-operatives. There is also a legal not-for-profit requirement in operating a network.

The model that we are discussing looks very centralised, with ministers consenting and large multinational corporates coming in. Was any consideration given to imposing a not-for-profit rule on the operation of heat networks?

Paul Wheelhouse: I will ask James Hemphill to comment on that and say whether it was looked at by the working group. However, I stress that I would not necessarily agree with Mr Wightman's characterisation of potential investors. Yes, there

may well be larger investors—I would be surprised, given the environment that we are creating, if there was no interest even from outside Scotland, with larger corporates wanting to come in. However, we have also created the space to enable community-led projects to be taken forward, and we have considered ways in which we could potentially support such projects. For example, it would be at ministers' discretion to decide not to impose on community projects a requirement that certain costs, such as licensing and application costs, must be offset.

We are looking at how we can encourage diversity of ownership, and we are aware that in Scotland there will potentially be a larger number of small networks. We would clearly want those networks to be properly regulated, but in our engagement with UK ministers we are keen to ensure that any consumer protection framework reflects the nature of the smaller—potentially even island—projects that might have to be delivered in Scotland. We would want to ensure that the regulations and frameworks are proportionate and do not apply the same rules to a large corporate and to a smaller locally led project that is struggling to be viable.

We are trying to get the balance right, and I would certainly welcome the committee's thoughts on those aspects of the bill. Nonetheless, I emphasise that we are certainly not going at it purely from the point of view of attracting large multinational-type investors, which was part of the thrust of Mr Wightman's question—

Andy Wightman: My point was that in Denmark, heat networks are operated almost exclusively by municipalities and consumer co-ops.

Paul Wheelhouse: It has obvious potential. I would hope that some local authorities might be interested in running their own heat networks. In those circumstances, the powers for Scottish ministers to be the consenting authority could be helpful, because that would enable such a project to be brought forward on an objective basis, without any conflict of interest.

I would certainly be enthusiastic about local authorities that want to bring forward projects. I agree with Mr Wightman in that respect. However, we have not ruled out larger investors, which I think may be the point that Mr Wightman is looking for.

Andy Wightman: On part 6 of the bill, which deals with compulsory purchase and wayleave rights, did I catch you correctly earlier when I think I heard you say that Professor Paisley had welcomed the approach that had been taken in part 6?

Paul Wheelhouse: I was referencing specifically the transfer scheme, when I mentioned that Professor Paisley—

Andy Wightman: We have had evidence from Professor Paisley, which you have no doubt seen, in which, for example, he criticises section 58 as being “oddly drafted”, in that it does not confer the primary right to transfer thermal energy. He is critical of the fact that there are no powers of positive prescription in the bill. He is critical that wayleaves are not being created as real rights in law, bringing everything that a real right would. He considers that section 60, in particular, is poorly drafted, for example in its reference to

“parties bound by the wayleave right as the ‘owner’ and ‘occupier”.

He says that that is “English inspired nonsense”.

Will you assure us that you are going to take seriously those observations from Scotland’s pre-eminent expert on the law of wayleaves and servitudes? When a lot of pipes are being put underground, all sorts of legal complexity could arise, and it is really important to know who has what rights. Central to Professor Paisley’s criticism seems to be the fact that the bill creates a novel framework for doing that, when in fact the existing system of servitudes, real rights and positive prescription is well tested and well understood, and gives far greater certainty.

Paul Wheelhouse: I am very aware of the value of Professor Paisley’s evidence to the committee. I know that he has outlined, as Mr Wightman has said, a number of areas involving the creation of real rights, as he put it, so that they run with the land—I think that that was the term he used—and bind successive landowners, given the long-term nature of those heat networks, which may take anything between 15 and 40 years to recover the investment costs. They are unusually long-term investments, in that respect, and not unlike large-scale wind sites or other major energy investments.

The provisions in part 6 largely follow those that are contained in electricity legislation, and provide equivalent rights to those that are available to other utilities. One difference is that network wayleave rights would bind any subsequent owners of and tenants on the land.

As I have said, I am aware of the evidence that Professor Paisley has provided. We are open to discussions on the matter, if the committee recommends it as an area that needs to be tightened up, especially if proposed changes would ensure that the bill does not repeat any issues that are occurring at the moment in the utilities sector. I am aware, when it comes to broadband, electricity and other investments, that there are occasionally real difficulties in delivering

services to consumers, when landowners put their feet down and do not allow that to happen.

Following the introduction of the bill, we have also become aware of the potential to augment part 6 to ensure that the rights are recorded transparently and are accessible, as Professor Paisley alluded to in his evidence. We would be happy to consider, alongside the committee, how that can best be done. We are open to suggestions from the committee on that point. I hope that that is helpful.

Andy Wightman: Thank you; it is.

I want to follow up with a few detailed questions that have arisen from comments that have been made. First, a question has arisen from a response that Ms Kasperek gave a minute ago, in relation to the Stirling project with Scottish Water Horizons. Section 2(1) of the bill says that

“A person must not supply thermal energy by means of a heat network unless the person holds a heat networks licence”,

and that it is an offence to do otherwise. From that language, my understanding is that the person who is “supplying” is the person who is delivering it to the householder. Is that not the case?

Urszula Kasperek: Yes, that is the case. It is the organisation that is responsible for transferring the heat.

Scottish Water Horizons is operating the heat generation; it is making sure that the water is warmed up. However, as far as I am aware, when it comes to legal responsibilities, Stirling Council is legally responsible for the delivery of the thermal energy. The pumps may be in the energy centre, but the legal responsibility for delivery will lie with Stirling Council, although—[*Inaudible.*]

Andy Wightman: We seem to have lost Ms Kasperek there. A question arises, in any case. We have Mr MacLeod with us—I do not know if he wants to say anything.

Norman MacLeod: Only to observe that each individual set-up will have its own managerial or company structure. I am not sure that it is possible to delve into those matters in such a level of detail. The general proposition that Mr Wightman is making is correct: that the legal entity is responsible for supply, it must be licensed, and the person operating the network must have consent. Who that person is in an individual case would have to be based on consideration of the management and legal structure of the particular heat network.

Andy Wightman: I understand that, but I am concerned that we are clear about what section 2(1) actually means: that I, as a householder in receipt of heat from a heat network, will pay

someone for that heat, and they are the supplier who requires the licence. If that is clear in the minds of government and there is no ambiguity in that, that is absolutely fine.

Returning to our earlier discussion about appeals, section 24 and, I think, some provisions around section 70 or so, cover appeal rights that could be created by regulation. However, that is in relation to enforcement. There are no appeal rights in relation to section 11, which is about licence revocation—that seems to rest wholly with the licence giver. Presumably, revocations would be based on a clear breach of the legal terms of the licence.

Paul Wheelhouse: I think I may have been referencing appeals around the revocation of licences earlier on, in passing. I can come back to Mr Wightman on the detail if that was not clear at the time. The complexity that I was presenting, which may be the source of any confusion, concerned the position under the current drafting, and in advance of knowing exactly what is in UK consumer protection legislation. We have created space for Scottish ministers potentially to be the enforcement authority, or alternatively to appoint some other body to be the enforcement authority. I appreciate that there is a little bit of confusion about the appeals mechanism, so we can go on to a discussion of the role of the Court of Session and the sheriff courts in that context. In an instance where there was a revocation of a licence and a subsequent appeal, who would that go to?

We can come back to the committee, if that would be helpful, to make clear our exact expectations on revocation of licences and the appeal mechanism, and on how that might be different if we get the clarity that we are seeking from UK ministers on the appointment of a licensing authority and other measures.

Andy Wightman: Thanks—I was just a bit confused.

On transfers of assets and transfer schemes under section 74, what happens if no one is willing to take on an asset? As a sort of sub-question of that, what about the decommissioning of schemes?

I would ask you first to address the question of what happens if no one is willing to take on an asset owned by an entity that has gone bust or that cannot operate for other reasons.

Paul Wheelhouse: I will check with James Hemphill in a second to see if my interpretation is correct, but ministers ultimately have powers to step in and take on responsibility for a heat network in that situation. We would hope that, if we have gone through the process properly and new networks have been established under the LHEES and the zoning for heat networks, we will

have identified that a competitive technology in the locality concerned is providing a good outcome, with appropriate use of the technology in the area under a well-designed scheme, so there should clearly be a strong market underpinning for that network, which would allow someone else to take on responsibility for it.

To answer Mr Wightman, I ask James Hemphill to confirm that Scottish ministers could, if there is no commercial interest in that site, ultimately step in to take on responsibility for it until such time as an alternative provider could take it on.

James Hemphill: That is correct.

12:30

Andy Wightman: I do not see that in section 74. The minister talked earlier about a contrast with the UK approach, where there are step-in powers, and here, where there will not be step-in powers, so I am a bit confused.

Paul Wheelhouse: [*Inaudible.*]—and the relative interaction between the two pieces of legislation. I hope that I have not misled Mr Wightman in that respect. We set out our transfer schemes in part 7 of the bill, which potentially could have Scottish ministers stepping in to take over responsibility of a network should there be no commercial interest in it.

Andy Wightman: Convener, I am not sure if the broadcasting team were broadcasting the early part of that answer and, therefore, the *Official Report* will not have captured it. Would it be appropriate to ask the minister to repeat it briefly?

The Convener: Which part precisely?

Andy Wightman: The minister had earlier said that the UK was taking an approach on step-in powers whereby ministers and Government would step in as a last resort whereas the Scottish Government was not taking that approach, and I was querying the fact that, in answering my question about who would ultimately own those assets if there was not anyone willing to take them on, the minister had said that the Scottish Government was not going to take a step-in power.

Paul Wheelhouse: I will repeat the point. I hope that I have not caused any confusion and I apologise to Mr Wightman if I have. We are aware that the UK Government is proposing to take forward legislation in the early part of next year that would set out its step-in powers, which would certainly include, in response to Mr Golden's point earlier, the ability to provide for a situation where an existing network failed. We just need to understand how that interacts with part 7 of our bill, where we set out transfer schemes that could include Scottish ministers taking over

responsibility for a heat network in a similar situation—for example, for a new network. We need to understand the interaction between the two pieces of legislation; it is not a fundamentally different approach that the UK minister is taking, but it is different legislation and, therefore, we need to understand the interaction between the two.

Andy Wightman: Given that, if it passes at stage 1, the bill will be enacted before the UK Government's bill, am I right to presume that, therefore, the regulations under section 74(5) will enable you to make those necessary adjustments and adaptations to anything that arises at a UK level?

Paul Wheelhouse: I will check on that point with James Hemphill, if I may, convener. Certainly, in relation to the timing of the bill, I hope that we will have sufficient foresight, in collaboration with BEIS ministers and their officials, about what they are proposing to put in the bill. It could of course be amended as it passes through the House of Commons—I appreciate that point—but we will do as much as we can to try to design out any risks that could undermine our legislation. On the section 74 point, I will hand over to James.

James Hemphill: That is correct. The powers there have been left relatively broad to enable us to, as the minister said, understand how the bill will interact with what the UK Government intends to do.

I will get back to the committee to clarify the earlier point in relation to the obligation on Scottish ministers to step in. I will clarify where that is set out. It is set out in the bill but—I apologise—I do not have the section number to hand.

Andy Wightman: Thank you.

The Convener: I thank the minister and his team for coming in today. We now move straight into private session.

12:33

Meeting continued in private until 12:50.

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