OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 26 January 2021

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 26 January 2021

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ECONOMY, ENERGY AND FAIR WORK COMMITTEE
3rd Meeting 2021, Session 5

CONVENER

*Gordon Lindhurst (Lothian) (Con)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Maurice Golden (West Scotland) (Con)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Alex Rowley (Mid Scotland and Fife) (Lab)
*Graham Simpson (Central Scotland) (Con)
Andy Wightman (Lothian) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alexander Burnett (Aberdeenshire West) (Con)
Liam McArthur (Orkney Islands) (LD)
Mark Ruskell (Mid Scotland and Fife) (Green)
Paul Wheelhouse (Minister for Energy, Connectivity and the Islands)

CLERK TO THE COMMITTEE

Alison Walker

LOCATION

Virtual Meeting

Scottish Parliament

Economy, Energy and Fair Work Committee

Tuesday 26 January 2021

[The Convener opened the meeting at 09:00]

Heat Networks (Scotland) Bill: Stage 2

The Convener (Gordon Lindhurst): Good morning, and welcome to the third meeting in 2021 of the Economy, Energy and Fair Work Committee. Agenda item 1 is consideration of the Heat Networks (Scotland) Bill at stage 2. We have with us the Minister for Energy, Connectivity and the Islands, Paul Wheelhouse, who will be assisted by his officials.

Section 1—Meaning of "heat network"

The Convener: Amendment 1, in the name of the minister, is in a group on its own.

The Minister for Energy, Connectivity and the Islands (Paul Wheelhouse): Good morning. Section 1(7) of the bill as introduced enables the Scottish ministers to

"modify the meaning ... of 'heat network', 'district heat network' or 'communal heating system'".

That is necessary so that any technological changes that occur in future can be taken account of without the need for primary legislation. The Law Society of Scotland appeared to agree with that view in its stage 1 evidence. It considered the definition to be "sufficiently neutral" to address a variety of heat networks, and it noted:

"Secondary legislation is probably the only way to retain the level of flexibility required to adapt quickly to future markets, given the constraints on parliamentary time".—[*Official Report, Economy, Energy and Fair Work Committee,* 1 September 2020; c 3.]

However, the committee heard evidence at stage 1 from witnesses who were concerned that so-called ambient, fifth-generation or shared-loop systems were not captured by the definitions in section 1 and were, therefore, not subject to regulation by the bill's provisions now or in the future.

I believe that it would be prudent to add "thermal energy" to the terms whose meanings may be modified by the regulations under section 1(7). That is what amendment 1 would do. That is necessary in order to maximise the flexibility that future Administrations will have to apply or, indeed, disapply the regulatory requirements that the bill creates, as might be appropriate in time. I trust that committee members will be sympathetic to future proofing the bill in that way.

Regulations that are made under section 1(7) are subject to the affirmative procedure, thereby ensuring that the Parliament will be able to carry out maximum scrutiny, should the power need to be used in the future.

I move amendment 1.

Amendment 1 agreed to.

Section 1, as amended, agreed to.

Sections 2 to 4 agreed to.

Section 5—Heat networks licence applications

The Convener: The next group is on fuel poverty: contributing to fuel poverty targets and consulting the Scottish fuel poverty advisory panel. Amendment 2, in the name of the minister, is grouped with amendments 3, 50, 64 to 66, 131 and 132.

Paul Wheelhouse: This group of amendments seeks to meet the recommendations in paragraphs 131 and 132 of the committee's stage 1 report, which invited me to

"reflect on the evidence, discuss further with the"

Scottish fuel poverty partnership forum, and

"bring forward a proposal for how best to address the policy imperative of fuel poverty within the ... legislation."

The report also asked me to consider where recognition of fuel poverty in the bill would create the most impact.

I have lodged several amendments that will embed consideration of fuel poverty throughout the bill, given the importance that the Scottish Government, the committee and, above all, those in fuel poverty have placed on tackling the issue.

Amendment 3 will amend section 5 so that the licensing authority, in assessing an application for a heat networks licence, must consider the applicant's ability to operate heat networks in a way that

"contributes to meeting the fuel poverty targets".

In that way, we will make it clear to the licensing authority and operators that fuel poverty is equally as important as reducing emissions, which is already specified as a consideration in section 5.

In practice, the requirement to operate a heat network in a way that contributes to meeting the fuel poverty targets could be evidenced in a number of ways that would address the four drivers of fuel poverty. For example, that might include a special tariff for those in fuel poverty; a

wider service to provide energy efficiency installations; or the provision of advice on the use of the system or on home energy use more broadly.

Amendment 2 makes a technical drafting change to accommodate amendment 3.

Amendments 50 and 66 require the Scottish ministers to consult the Scottish fuel poverty advisory panel in developing regulations that provide for making and determining applications relating to heat network consent, and on guidance relating to the designation and variation of heat network zones by local authorities. That is an acknowledgement that, although fuel poverty has been a priority of the utmost importance for the Scottish Government, and for members of the Scottish Parliament more widely, the panel exists in statute to bring the public, private and third sectors together to understand the issues that face those in fuel poverty in Scotland, and to advise on potential policy changes that may be required. I believe that, by involving the panel in the development of regulations and guidance, it can help to ensure that new heat networks in Scotland are designed with those in fuel poverty in mind from the outset.

Amendments 50 and 66 also require the Scottish ministers to consult local authorities in the development of the regulations under section 27, and guidance under section 45. I believe that that is right, given that the bill as introduced—and the amendments that have been lodged, which we will come to later—will create the potential for local authorities to have responsibility for designating heat network zones and determining heat network consents. It is important that local authorities are assured of their involvement in designing the functions for which they may become responsible.

Amendment 64 seeks to reflect the fuel poverty imperative in part 3 of the bill by providing that, in considering whether to designate a heat network zone, a local authority or the Scottish ministers must have regard to

"the potential for a heat network in the area to contribute to meeting ... fuel poverty targets".

Heat network zones will have the potential to carry real consequence, taken together with the provision for permits under part 4 of the bill, and with the potential for their delivery to be supported by obligations on non-domestic buildings owners under powers in the Climate Change (Scotland) Act 2009 and the Non-Domestic Rates (Scotland) Act 2020, on which we have committed to consult later this year as part of our climate change plan update. It is therefore important that the zones are underpinned by public consultation, for which section 39 of the bill already provides, and by extensive analysis.

Section 39 specifies a number of the matters that local authorities—and the Scottish ministers, under sections 40 and 44—must consider in determining whether to designate an area as a heat network zone. Those include the availability of waste heat or renewable generation sources; the presence of anchor buildings; and the information that is contained in any building assessment reports that are undertaken under section 54.

As the policy memorandum to the bill sets out,

"The Scottish Government is ... seeking to contribute to eradicating fuel poverty as part of the Bill by ensuring that new heat networks develop where evidence shows that they can reduce fuel costs for householders and businesses."

I had intended to deliver on that by specifying fuel poverty as a matter to be considered in the designation of heat network zones, under the regulation-making powers at section 39(1)(e). Indeed, our partners at Zero Waste Scotland are currently developing a first draft of the method that may be used to designate heat network zones, and fuel poverty is a major aspect of the criteria in evaluating projects under that method. However, on reflection, it would clearly provide greater reassurance if that requirement was specified in the bill. Amendment 65 therefore makes a consequential change as a result of amendment 66.

Amendments 132 and 133 are consequential on amendments 3, 50, 64 and 66, and insert necessary definitions of fuel poverty targets and the Scottish fuel poverty advisory panel in the interpretation section of the bill.

I urge members to support each of my amendments in this group.

I move amendment 2.

Graham Simpson (Central Scotland) (Con): I welcome the minister's comments. A lot of that sounded quite technical but, in essence, it is quite simple: we must have regard to fuel poverty and ensure that district heating networks deliver against fuel poverty targets. People might think, "That is obvious—of course that is what they do," but unless that is stated in law, there is a danger that that could slip. I welcome the minister's useful amendments. As someone who worked on the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019, I am pleased to see that the amendments also refer to the Scottish fuel poverty advisory panel—that is very important. These are positive amendments that I could support.

Alex Rowley (Mid Scotland and Fife) (Lab): As we sit here on a cold January morning, it is tragic that there are thousands of people all over Scotland who are cold and living in fuel poverty. The Government's fuel poverty act was not

ambitious enough, and I have argued that case with members of the Local Government and Communities Committee, including Mr Simpson, who, like me, is a former member of that committee. Nevertheless, we need to tackle fuel poverty, which is why these amendments are crucial. I am grateful that the minister has listened to the committee and to many others who want to see the eradication of fuel poverty in Scotland. I will support these amendments.

Richard Lyle (Uddingston and Bellshill) (SNP): I agree totally with my colleagues. We must all care about fuel poverty and take the time to resolve it. Perhaps the United Kingdom Government could look at why people living in some postcode areas get money to help with fuel poverty and people in other areas do not.

The Convener: I invite the minister to wind up.

Paul Wheelhouse: I thank members for their positive remarks. I also thank the committee and witnesses who gave evidence, because I hope that they have helped us to strengthen the bill by making the references to fuel poverty clear and explicit. From the outset, it was one of the underpinning priorities of the bill, but the committee has helped us to strengthen the bill, and I am grateful to its members and the witnesses who supported the work of the committee in preparing its report.

Amendment 2 agreed to.

Amendment 3 moved—[Paul Wheelhouse]—and agreed to.

The Convener: Amendment 145, in the name of Claudia Beamish, is grouped with amendments 149 and 152. Alex Rowley will move amendment 145 and speak to all the amendments in the group.

Alex Rowley: Convener, my understanding is that my colleague Claudia Beamish has had discussions with the minister and, as a result, the intention is to lodge an amendment at stage 3 on the just transition principles. Therefore, I do not intend to press amendment 145 in the name of Claudia Beamish.

I move amendment 145.

The Convener: Does any member object to amendment 145 being withdrawn?

Graham Simpson: On a point of clarification, is Alex Rowley withdrawing all three amendments?

09:15

The Convener: Mr Rowley, are you withdrawing all three amendments?

Alex Rowley: If that is the way to do it, yes.

The Convener: I am happy for it to be done that way; I think that that is fine. Does any member object to Mr Rowley withdrawing those three amendments?

As no member objects, amendment 145 is withdrawn.

Amendment 145, by agreement, withdrawn.

Section 5, as amended, agreed to.

Section 6—Heat networks licence standard conditions

The Convener: The next group is on heat networks licence standard conditions. Amendment 134, in the name of Alexander Burnett, is the only amendment in the group.

Alexander Burnett (Aberdeenshire West) (Con): Good morning. Before I speak to amendment 134, I refer members to my entry in the register of interests, particularly in relation to my involvement in developing one of Scotland's first district heating networks, which I began in 2004.

As I said at stage 1, I welcome the ability to deliberate the proposed legislation to advance heat networks in Scotland. I am pleased to see that the principle of the bill aims to encourage greater use of heat networks. I have concerns about whether some of the amendments will achieve that, and I will get to those points accordingly.

As to why amendment 134 is needed, when a regulatory body agreement is being set up, that agreement should include service standards that clearly establish communication protocols and decision-making timescales that will ensure that the regulatory process is conducted in a timely and transparent manner. The Scottish Government needs to fully determine how the bill is going to be regulated and what role the Office of Gas and Electricity Markets will play in that, such as whether it will be the licensing authority. Whatever body it is, it must be agile and responsive, and therefore clarity is needed in regulating that policy in the devolved Scottish context. That clarity would ensure that heat networks would be effectively deployed within the devolved powers of the Scottish Government. Doing all that will ensure that heat networks contribute to progress toward the Scottish Government's net zero target, which will ensure that Scotland's future heating needs are met by low-carbon energy.

With regard to how the provisions that are set out in amendment 134 would work, the clerks have interpreted them as a reference to the regulation body agreement and the licensing regime, in order to look at how heat networks are

regulated. The amendment aims at including certain provisions within the standard conditions for a heat networks licence, so the service standards, communication and decision-making protocols are clearly set out for all who are involved in the sector.

I am grateful to the minister for his discussion of all the amendments and all the bill throughout the bill process so far. It has been done in a most constructive manner at all stages. I was grateful for the conversation that we had regarding my amendment. Because of a couple of points that he made, I will not press amendment 134 at this stage; I will edit it and resubmit amendments at stage 3 to correct those issues, I hope with his support.

The first correction that we would like to see in working with the minister is to define "heat network operator", which is referred to in subparagraphs (i) and (ii) of the paragraph that amendment 134 would introduce. We used that term when drafting the amendment with the clerks, but it has been pointed out that there is no definition of that term in the bill, so it might cause some confusion. We would look to change that so that there is a definition that is understood in the rest of the legislation—it will be something along the lines of being the licence holder.

At stage 3, I will probably look to split the amendment, because subparagraph (iii), which relates to

"decision-making protocols to be agreed between the operator and the licensing authority",

may not be quite as clear as we intended. Following discussion with the minister, I appreciate that, if the licence had been issued but protocols were still to be agreed, there would be a dilemma regarding the impact and enforcement of the licence. The intention of that part of amendment 134 was that there should be timeous conversations about the licence, and I sought to address the timing of that to-ing and fro-ing between the operator and licensing authority through protocols. With the clerks, and in discussion with the minister, we will look to make that clearer at stage 3, when I will lodge another amendment to that effect. The minister's assistance with the amendment has been very welcome.

I move amendment 134.

Paul Wheelhouse: Alexander Burnett has summed up the situation well, and I was pleased to work with him. Hopefully, we will be able to continue to work together to address the drafting issues that he referenced. I agree with his assessment of the drafting difficulties, and I welcome his decision not to press the amendment. I put on record that my officials and I will seek to work with him to address the valid points that he makes about providing certainty about the timing and nature of exchanges between the heat network licence holder and the licensing authority. I am pleased to confirm to the committee that I will work with Mr Burnett to address the issues.

The Convener: Mr Burnett, do you wish to press or withdraw amendment 134?

Alexander Burnett: I will withdraw the amendment for the reasons stated, and I will look to resubmit it at stage 3.

Amendment 134, by agreement, withdrawn.

Section 6 agreed to.

Section 7—Heat networks licence standard conditions: supplementary

The Convener: Group 5 is on minor and technical amendments. Amendment 4, in the name of Paul Wheelhouse, is grouped with amendments 7, 8, 39, 52 to 60, 128 and 129.

Paul Wheelhouse: Largely, the amendments in this group relate to drafting changes following the review of the bill and consequences of the amendments that have been discussed in the remaining groups. I thank the Law Society of Scotland for pointing out matters relating to the heat network consents that required clarification, which are also addressed by the amendments in this group.

Amendment 4 will make technical changes to the word order of section 7(4)(b). The amendment has no substantial effect.

Amendment 7 corrects an omission to require a licensing authority, where one is designated under section 4 of the bill as an alternative to the Scottish ministers, to

"have regard to any guidance issued"

by the Scottish ministers under section 14. The guidance is important—for example, it can provide general direction with regard to setting out processes of assessing the heat network licence applications.

Amendment 8 is a technical change to the wording of section 17(1) to reflect that heat networks may be constructed or operated by another person on behalf of the consent holder.

I turn to amendments that were inspired by the feedback provided by the Law Society of Scotland in its written evidence in relation to the enforcement of heat network consents. We reflected on the feedback, and amendments 52 to 60 will amend sections 29 and 30 to recognise that a person may be exempt from the requirement to hold a heat network consent, and to clarify that

enforcement action cannot be taken in certain cases.

Lastly, amendments 128 and 129 aim to reflect the further regulation-making powers that are introduced by other stage 2 Government amendments relating to: appeals against revocation of heat networks licence; appeals against notice of revocation given by local authority; the call-in of heat network consent applications et cetera by the Scottish ministers; appeals regarding applications for heat network consent et cetera to local authorities; applications and decisions under part 2 where there is more than one appropriate consenting authority; section 32(1); appeals against revocation of heat network zone permit; and registration of network wayleave rights.

Those powers allow the modification of primary legislation, and amendments 128 and 129 will provide for the application of the affirmative procedure when regulations make textual modifications to primary legislation.

I ask members to support each amendment in the group and I move amendment 4.

Amendment 4 agreed to.

Section 7, as amended, agreed to.

Sections 8 to 10 agreed to.

Section 11—Revocation of heat networks licence

The Convener: The next group is on revocation and appeals against revocation of heat networks licences. Amendment 5, in the name of the minister, is grouped with amendment 6.

Paul Wheelhouse: The amendments that are in the group will address the recommendation that the committee made in paragraph 84 of its stage 1 report, in which it asked the Scottish Government to reflect on whether there was scope to introduce at stage 2 an appeals process for heat networks licences. I agree that we can address that today.

It is important for businesses to be treated fairly by the new regulatory system that the bill will create. Amendment 5 provides the Scottish ministers with powers to amplify or expand on the procedural protections that will apply before a licence can be revoked under section 11. That section makes provision about the revocation of a licence, to give licence holders a degree of certainty that licences cannot be revoked without good reason.

Without amendment 5, any revocation process would be limited to what section 11 provides for. It is necessary to have the flexibility to modify the revocations process, should that be required in the future. It may be, for example, that other persons should be informed of the licensing authority's intention to revoke a licence or that a process should be set out for considering representations. In any event, the powers will be there to ensure that any further procedural protections that are considered appropriate can be set out in legislation, rather than being simply administrative arrangements.

Amendment 6 creates a new power for the Scottish ministers to establish an appeals process against the revocation of heat networks licences. I appreciate that the power is broad, but subsection (2) of the proposed new section provides examples of the matters that could feature in regulations and therefore in the appeals process. They include: who may appeal; why an appeal may be brought; how appeals are to be lodged; the information that may be required; and how decisions are to be determined.

Such regulations would also specify who heard appeals. We intend to use the powers under section 4 to specify a body to act as the licensing authority under the bill, which means that the Scottish ministers will not be responsible for administering the licensing system. In turn, that creates the opportunity for regulations to be laid under the proposed new section in amendment 6 for the Scottish ministers to appropriately determine the merits of a decision that the licensing authority made to revoke a licence.

Given the broad consensus that Ofgem would be suited to the role of licensing authority, assurances are being sought from UK ministers, as the committee might be aware, about our request to the UK Government for powers to amend Ofgem's role and about the timescales for the necessary legislation. Those assurances would be welcome. I repeat that our intention is that the Scottish ministers would hear appeals about the revocation of heat networks licences by a third-party licensing authority, but I offer those comments for clarity on the need for subsection (3) of the proposed new section.

I urge members to support each amendment in the group.

I move amendment 5.

Alexander Burnett: I thank the minister for the set of amendments. They are in tandem with amendment 134, which I spoke about and did not press. The sector has looked for clarity about the process and procedures not just for applications but for revocations and appeals against revocations.

I am grateful that the minister has listened and addressed the situation by lodging amendments to improve the procedure and process for the people involved, so that they can see where they stand during a process. I welcome that and ask that,

when they come into play, those processes are taken in tandem with the process for applications, so that there is consistency not just when people are applying for and being granted a licence but when they are appealing against any revocation.

09:30

Paul Wheelhouse: I welcome Mr Burnett's comments. We will do all that we can to address his final point about trying to work the processes in tandem. I will bear that in mind as we progress the regulations around the bill. I thank Mr Burnett, whose experience as a developer of heat networks is welcome. It has been useful to have his insight into some of the issues and I look forward to working with him and other colleagues in developing the secondary legislation that will support the bill, should it pass.

Amendment 5 agreed to.

Section 11, as amended, agreed to.

After section 11

Amendment 6 moved—[Paul Wheelhouse]—and agreed to.

Sections 12 and 13 agreed to.

Section 14—Guidance for licensing authority

Amendment 7 moved—[Paul Wheelhouse]—and agreed to.

The Convener: The next group is on heat networks licences: existing heat networks. Amendment 146, in the name of Maurice Golden, is grouped with amendments 147 and 148.

Maurice Golden (West Scotland) (Con): Amendment 146 addresses the obvious need for the Government to deal with retrospective changes to existing heat networks. That is a particularly unclear area of discussion, given that there is no certainty on what retrospective changes will be applied to existing heat networks. Will those networks require licences? Will consent be required in order to continue operating?

As things stand, we simply do not know. At a practical level, that creates unnecessary confusion for network operators, not to mention the potential extra burden of balancing two sets of operating requirements. Nor does it help to solidify renewable heat at a time when we are not just looking at our mid and long-term net zero goals but seeking to kick-start and sustain a green recovery from the pandemic.

As Scottish Renewables has pointed out, in order to address the issue we need a clear statement of intent from the Scottish Government as to how existing heat networks will be integrated alongside new ones. Providing such certainty is the key to successfully integrating existing heat networks alongside new ones, making operations as smooth as possible and giving investors the incentive needed to involve themselves in the Scottish market over the long term. All that, in turn, drives forward the green recovery and the low-carbon job creation that we all want to see.

Amendments 147 and 148 are minor technical amendments that aim to facilitate amendment 146.

I move amendment 146.

Paul Wheelhouse: The subject of existing heat networks was discussed at length during the scrutiny of the bill at stage 1. In fact, I note that Mr Golden rightly raised it during my own evidence session.

Before I comment on amendment 146, I highlight that the licensing provisions in the bill as introduced did not differentiate between new and existing heat networks for a reason. The provisions in the bill respond to the Competition and Markets Authority's market study, which examined existing schemes and found that there were issues present that had to be addressed ahead of the expected growth of the sector. The bill therefore provides for a framework that is applicable to all new and existing schemes, albeit with powers to tailor the requirements appropriately as a regulatory system is fully developed in secondary legislation. It is through secondary legislation that we would look to create exemptions and protections for existing heat networks as necessary.

That approach also avoids pre-empting decisions by the UK Government, which has indicated its intention to introduce consumer protection legislation for heat networks; we expect that that will also apply to existing networks. We are still awaiting a response from the UK Government to our proposal on how best to address the consumer protection provisions, and it is therefore important that we maintain flexibility in the bill, so that, if passed, it is compatible with consumer protection legislation that is introduced by the UK Government.

That being said, I recognise that people who already operate a heat network in Scotland are looking for information on how the licensing regime might apply to them—I noted Mr Golden's references to Scottish Renewables' concerns about that. Amendments 146, 147 and 148 would provide just that, and for that reason I support the amendments in principle.

Regrettably, however, I have some concerns about the detail, specifically the references to retrospective applications and the definition of "existing heat network". That means that I cannot at this time recommend that committee members support the amendments. In respect of references

to retrospective applications, the bill will not apply retrospectively. We are aware of several projects that are under development but will not be operational before the bill obtains royal assent, assuming that it is passed. These types of project would not therefore be covered under the proposed definition, and I trust that that is not Mr Golden's intention.

As well as that, amendment 146 does not appear to recognise that heat network licences will be granted to organisations rather than specific projects. Therefore, reference to extensions of heat networks is not applicable in the context of the licensing system. That is why, if Mr Golden will consider not pressing amendment 146 at this time, I would be happy to work with him with a view to reintroducing his proposals at stage 3, to ensure that we take account of existing heat networks in the context of the licensing system.

Should Mr Golden press amendment 146 and move amendments 147 and 148, I urge members not to support them, for the reasons that I have given, even though I agree with their underlying principles.

The Convener: Mr Golden, you may wind up and indicate whether you wish to press or withdraw amendment 146.

Maurice Golden: I thank the minister for his comments and his agreement in principle that we need an efficient and effective regulatory regime for existing heat networks. I will take him up on his offer to work with me to ensure that, at stage 3, the broad principles contained in amendments 146 to 148 can be achieved at stage 3. On that basis, I am happy not to press amendment 146 and I will not move amendments 147 and 148.

Amendment 146, by agreement, withdrawn.

Amendment 147 not moved.

Section 14, as amended, agreed to.

Section 15 agreed to.

Section 16—Interpretation of Part 1

Amendment 148 not moved.

Section 16 agreed to.

Section 17—Requirement for heat network consent

Amendment 8 moved—[Paul Wheelhouse]—and agreed to.

The Convener: The next group is entitled "Local authority as heat network consent authority". Amendment 9, in the name of the minister, is grouped with amendments 10 to 30, 135, 136, 31, 33, 36 to 38, 137, 138, 41, 139, 140, 51, 61, 62, 150, 63, 124 to 126, 130, 133, 144 and 157.

Paul Wheelhouse: I apologise in advance, as this will probably be the lengthiest contribution that I will make in the debate.

The amendments in the group that are in my name are intended to meet the recommendation that the committee made in paragraph 136 of its report that, in respect of heat network consents, the bill should provide

"for the balance of powers between Ministers and local government to be modified over time".

I have been happy to meet that recommendation.

Members might be aware that, when the idea of heat network consents was initially proposed, we suggested that local authorities would be well placed to take on that function, given their existing role as planning authorities and given that heat networks are local assets by their nature. We moved away from that view following the findings of the independent analysis of the consultation, which found that some local authorities do not have the necessary resources to manage the consents process and noted that there were suggestions for a central body to issue and manage consents.

In its recommendations report of December 2019, the heat networks regulation working group, which supported the drafting of the bill, said that it

"felt that the consenting proposal should be reconsidered in order to reduce burden on ... local authorities … and to reduce the risk of Local Authorities effectively self-regulating."

I also note that, in my officials' engagement with Convention of Scottish Local Authorities counterparts prior to the introduction of the bill, no objections were raised to the balance of responsibilities in part 2 of the bill relating to heat network consent. However, the committee's recommendation and the amendments that I have lodged and will speak to represent a sensible position for us to reach. They would enable local authorities that wish to be empowered with that responsibility to become so while ensuring that the Scottish Government can carry out that function elsewhere in Scotland, where that is the will of the relevant local authority.

I must apologise, as I have quite a few amendments to speak to.

Amendments 10 and 11 would primarily give effect to the committee's recommendation by introducing the concept of a consent authority that is responsible for the award of heat network consents in its area and would replace the Scottish ministers' responsibility for that area.

Amendment 10 would create a power for the Scottish ministers to designate a local authority as the consent authority for its area. Subsection (3) specifies that, before doing so, the Scottish ministers must have consulted that local authority as well as any other persons "as they consider appropriate". We think that that is important.

Amendment 11 sets out the default position that the Scottish ministers will act as the consent authority in those areas where the local authority in question has not been designated as the consent authority for its area.

With those new powers available to local authorities that wish to have them, it is important that they are able to recover the costs that they incur in exercising those new functions. Accordingly, amendments 124 and 125 would amend section 77 of the bill so that the Scottish ministers may make regulations about the payment of fees to local authorities for carrying out their functions under part 2.

Amendment 126 is a consequential amendment to section 81 that provides that the new power to designate a local authority as a consent authority is subject to the affirmative procedure.

Amendment 130 is a consequential amendment that will add "appropriate consent authority" to the list of definitions in section 83.

Amendments 12 to 31, 33 and 41 are consequential amendments as a result of the power to designate a local authority as the consent authority for its area. They will replace references to "Scottish Ministers" with "appropriate consent authority" and make some grammatical changes as a result of that. Although they are consequential amendments, they are important, as they ensure that all the necessary powers under part 2 in relation to consent are exercisable by the appropriate consent authority rather than the Scottish ministers. The powers combine to enable local authorities to perform the function of a consenting authority competently.

Amendment 51 deals with the possibility of joint working between local authorities. It is a broad power for the Scottish ministers, by regulations, to determine how applications for heat network consent are to be made and determined, in the event that the proposed development crosses local authority boundaries or might expand to cross them.

The power is necessarily broad, as engagement with local authorities will inform agreements on how such applications might be handled, and as the likely frequency of such applications will not be known until the designation of heat network zones under part 3 of the bill is undertaken. Nevertheless, it is prudent to make such provision to future proof the bill in anticipation of large-scale heat network developments, which have the potential to span a number of areas. Without prejudgement of the outcome of the analysis and of public engagement, which will inform the designation of heat network zones, we might, for example, see a development that spans Rutherglen in South Lanarkshire and adjacent areas in Glasgow. Provision is already made for local authorities to work jointly on the designation of heat network zones under section 43.

09:45

A number of consequences will result from the enablement of local authorities to act as consenting authorities, which amendments 9, 36, 37, 38, 61, 62 and 133 deal with.

Amendment 36 will provide the Scottish ministers with the power to call in applications for heat network consent. That is similar to section 46 of the Town and Country Planning (Scotland) Act 1997, which allows the Scottish ministers to direct that a particular application, or class thereof, be referred to them for decision. That power is thought to be necessary to cover the potential that such a decision might affect matters of national importance.

So that the Scottish ministers can make effective use of that power, amendment 37 will provide them with powers to, for example, restrict local authorities from determining those applications for a period of time; direct local authorities to provide information on applications and include specified conditions when granting such applications.

The intention of those powers is to provide the Scottish ministers with the necessary time and information to determine whether to call in an application under the power that will be introduced by amendment 36. A further consequence of the designation of local authorities as consenting authorities is that it will allow the Scottish ministers to hear appeals against any decision by a local authority to decline an application for consent.

Amendment 38 will create powers for the Scottish ministers, by regulations, to establish an appeals process in respect of decisions that a local authority has made on heat network consent applications or modifications. The amendment is proposed in line with the evidence that was heard at stage 1 and noted in the committee's stage 1 report, that the Scottish Government should reflect on the appeals processes in the bill. Those recommendations were primarily in respect of the revocation of heat networks licences and consents, but I trust that the committee agrees that an opportunity should be provided to appeal regarding the initial decision to award a heat network consent when possible.

Amendments 61 and 62 are needed consequential changes, so that deemed planning permission under section 35 might be provided or amended if ministers award or modify heat network consent following a successful appeal. Amendments 9 and 133 are also consequential to amendment 38 and will adjust references to heat network consent through a recognition that it might be granted on appeal.

Amendment 63 will create a new power for the Scottish ministers to streamline the process for applications to a local authority when applications for both a heat network consent and planning permission would require to be made to the local authority. The purpose of that power is to simplify the administrative burden on local authorities and heat network operators and developers so that we can move new schemes to construction as quickly as possible—subject to appropriate scrutiny—in response to the global climate emergency.

I believe that those amendments combine to provide a pragmatic solution to the question of the role of local authorities, which has rightly been raised in the scrutiny of the bill.

I turn to Andy Wightman's alternative amendments 135, 136, 137, 150, 144 and 157, which, in summary, dictate that local authorities would become responsible for heat network consents in perpetuity within five years. I have sympathy with the principle of Andy Wightman's amendments. I agree that, as far as possible, local authorities should be empowered as the decision makers on local matters. However, in this specific case, I believe that the amendments that I have lodged and to which the committee's report led us are the most suitable approach. There are several reasons for that, not least a lack of clear indication from local authorities that they want the functions to be imposed on them.

First, at this point in time we simply do not know where, or the extent to which, heat network developments will take place across Scotland. Our view is that they will not take place uniformly. The viability of a heat network is dependent on having sufficient heat density and interested customers, and the designation of heat network zones will clarify where heat network developments are most likely to take place. That, in turn, is likely to weigh heavily in a local authority's view on whether it would wish to become a consent authority.

We are making progress in developing a method for designating heat network zones and, in our heat in buildings strategy, we will commit to producing a heat networks investment prospectus during 2021. That will include a first pass of heat network opportunities across Scotland that we and local authorities can subsequently build on. Ahead of that, I am reluctant to require local authorities to invest in developing a consenting function when there is the very real chance that evidence will show that, for some, that investment will be underutilised, as there will be few, if any, networks to consider.

Secondly, while we have worked to estimate the costs of heat network consent functions as part of the financial memorandum that accompanies the bill, I am aware that those costs will necessarily increase with the creation of up to 32 consent authorities. I am sure that members will agree that it will be important that we work with local authorities and the Convention of Scottish Local Authorities to come to a definitive view on the estimated costs, and to agree the resources that need to be put in place to enable local authorities to take on that important function.

The amendments that I have lodged would allow a period for those discussions to take place before any regulations are laid. I am concerned that amendments that would specify local authorities as consent authorities by default would put local authorities at risk of being made to fulfil that function without assurances about adequate support being in place.

Thirdly, I note that a 2020 Energy Saving Trust report found that, because heat networks are not a common technology in Scotland, there are gaps in skills in local authorities when it comes to district and communal heating. I would be keen to work with local authorities to build capacity in the lead-up to laying regulations that would make them consent authorities, so that those who wish to do so are well placed and the need for procured consultants, with associated costs, is minimised. If we do not do that, and we make local authorities the consent authorities by default, with skills in that area currently being scarce, costs may be further increased by local authorities competing to source appropriate staff.

Fourthly, I am aware that some local authorities are likely to be undecided about or unaware of the potential for them to become consent authorities, as there has not been consultation on that at present. It may be that those local authorities would wish for time in which to consider the possibility. If the function were to be undertaken by the Scottish Government's existing energy consents unit on behalf of those local authorities in the meantime, in a similar way to Norway's initial national approach, local authorities would have the opportunity to witness the function in action before coming to a more informed decision as to whether they wish to act as the consent authority for their area.

Finally, there are several technical and drafting issues with Mr Wightman's amendments in their current form. For example, there is no provision for the role of a consent authority to automatically transfer back to the Scottish ministers in future

should a local authority want to do that. What about heat networks that cross local authority boundaries? There appears to be no provision for local authorities to work together.

The amendments also make no provision for how part 7 is to operate in relation to the very important provision of transfer schemes if consent functions were to transfer to local authorities by default. I would also be very concerned about sections 19 to 24 and section 35 of the bill being commenced immediately upon royal assent, given that we and networks that are under development are not prepared for sudden implementation and that part 2 would not be commenced coherently.

The five-year period to which Mr Wightman's amendments refer could, however, help to overcome some of the issues that I have raised and would provide the opportunity for us, collectively, to anticipate and adequately plan for and resource the deployment of heat networks that we can expect. In light of that, I invite him not to move amendments 135 to 137, 144, 150 and 157 but to work with me, together with COSLA, to build on his amendments and mine by inserting a clear trigger point or opt-in provision at stage 3 so that local authorities are empowered to take on the function, should they wish to.

I am happy to offer my support to Mr Wightman's amendments 138 and 139, although I ask him not to move amendment 140, which duplicates the effect of part of amendment 50, which has already been agreed to. Amendment 50 requires the Scottish ministers to consult local authorities and the Scottish fuel poverty advisory panel, alongside other appropriate persons, in developing regulations under section 27.

If pressed, I urge members not to support amendments 135 to 137, 140, 144, 150 and 157 on the understanding that I have agreed that my officials and I will work with Mr Wightman to bring back an alternative amendment at stage 3. Instead, I urge members to support amendments 9 to 31, 33, 36 to 38, 41, 51, 61 to 63, 124 to 126, 130 and 133, as well as supporting amendments 138 and 139.

I move amendment 9.

The Convener: Graham Simpson will speak to amendment 135 in the name of Andy Wightman and other amendments in the group.

Graham Simpson: I am in the slightly unusual position of speaking to and moving amendments that are not in my name but are in Andy Wightman's name. Had they been my amendments, I would have been listening to the minister very carefully, which I did, and possibly responding to him on the basis that the amendments were mine.

I also find myself in the position of almost having to make an executive decision on amendments that are not mine. Let me first explain what the amendments do. Andy Wightman has nine amendments in the group, the main one being amendment 135.

We are told that the Danish experience was an inspiration for the bill. In written evidence to the committee, the Danish Energy Agency noted that Denmark's 98 municipalities are responsible for heat planning and approval of heat projects, and that two thirds of the pipe networks are owned by the municipalities.

In the minister's stage 1 evidence to the committee on 6 October 2020, he stated:

"we have not aimed to take a radically different approach from that taken in Denmark"—[*Official Report*, *Economy, Energy and Fair Work Committee*, 6 October 2020; c 58.]

However, the bill contains 60 or so ministerial powers and only five powers are left in the hands of local authorities. In contrast to the Danish experience, the bill takes a radically different approach by placing virtually all the powers in the hands of ministers and none in the hands of local authorities, where they substantially rest in Denmark.

The stage 1 report recommends that provisions should be introduced to the bill to allow for the balance of powers between ministers and councils to be modified over time, and I welcome the minister's amendment 10, which introduces a regulation-making power to transfer the consents process to local authorities. However, I believe that we should not rely on ministers using that power at some unspecified future date of their choosing. Instead, the bill should make explicit provision for the consenting powers in part 2 that currently sit with the Scottish ministers to transfer by automatic force of law five years from the date of royal assent. Local authorities would therefore have five years in which to decide how to administer the powers, which they could do by themselves, as part of a joint specialist unit or whatever. In short, that is what the amendments seek to achieve.

Amendment 135 is the substantive amendment. It would transfer all consenting powers under sections 19 to 23 to local authorities five years after the date of royal assent, which is quite a period of time. Amendment 136 is consequential.

Amendment 137 would provide the powers to revoke heat network consents to local authorities. Amendments 138 to 140 would provide that ministers must consult local authorities before making regulations about how applications for consent are to be determined and how compensation provisions on modification or revocation are framed.

10:00

Amendment 150 would disapply the deemed consent powers in section 35 after five years. Amendments 144 and 157 would amend section 84 on commencement and stipulate that all the previous amendments commence on the day of royal assent, giving effect to the trigger for the five-year period, after which consenting powers would transfer to local authorities.

Were he speaking today, Mr Wightman would invite the committee to support all those amendments to properly reflect ministers' intentions to not take a radically different approach from Denmark. I can see where he is coming from with that.

I will end there, convener. As I said at the start, I am having to make a decision for Andy Wightman and I did not hear anything from the minister to suggest that he has had any discussions with Mr Wightman. I feel that I should help Mr Wightman to get over the line on the issue and accept the minister's offer to work with him. I have no idea whether Mr Wightman will be happy with that but, knowing him, I feel that he probably will be.

I therefore take the minister up on his offer to support amendments 138 and 139, and I will not move the others in the group in Andy Wightman's name. I encourage the minister to pick up the phone to Mr Wightman as soon as he can.

Alex Rowley: Graham Simpson articulated Andy Wightman's intentions for his amendments very well. I am happy to go along with what Graham Simpson proposes, but it is important to signal to the minister that valid points have been made and that he needs to pick them up with Mr Wightman before stage 3.

Paul Wheelhouse: I certainly want to honour the spirit of the discussion that we have had with Mr Simpson and Mr Rowley. I appreciate that it is a difficult situation with Mr Wightman not being present for me to direct my points to him. I am grateful for the approach that Mr Simpson has taken. I want to reward the faith that he has put in me as minister, and I confirm that I will want to work with Mr Wightman to address the legitimate issues that he has raised.

We support the five-year period that Mr Wightman's amendments intend to create. It is a welcome development, but we believe that there is a better way and we will work with Mr Wightman to put that into effect.

The approach that Mr Simpson has signalled will protect the integrity of what we have sought to do in meeting the committee's request to work with local authorities to be the consenting authority, but to do so in a way that does not mean things happening immediately on royal assent, which could be problematic.

I will not go through all the points that I have made previously. I just confirm that my officials and I are keen to work with Mr Wightman. I know that he is a diligent member and we will work closely with him to make sure that we get agreed wording that will support Mr Wightman's intentions at stage 3. I thank Mr Simpson and Mr Rowley for their comments and reassure them that I will take the approach that they have suggested.

Amendment 9 agreed to.

Section 17, as amended, agreed to.

Section 18 agreed to.

After section 18

Amendments 10 and 11 moved—[Paul Wheelhouse]—and agreed to.

Section 19—Heat network consent applications

Amendment 12 moved—[Paul Wheelhouse]—and agreed to.

Section 19, as amended, agreed to.

Section 20—Determining heat network consent applications

Amendments 13 to 19 moved—[Paul Wheelhouse]—and agreed to.

Section 20, as amended, agreed to.

Section 21—Heat network consent conditions or limitations

Amendments 20 and 21 moved—[Paul Wheelhouse]—and agreed to.

Section 21, as amended, agreed to.

Section 22—Transfer of heat network consent

Amendments 22 to 24 moved—[Paul Wheelhouse]—and agreed to.

Section 22, as amended, agreed to.

Section 23—Modification of heat network consent

Amendments 25 to 30 moved—[Paul Wheelhouse]—and agreed to.

Section 23, as amended, agreed to.

After section 23

Amendment 135 not moved.

Section 24—Revocation of heat network consent

Amendment 136 not moved.

Amendment 31 moved—[Paul Wheelhouse]—and agreed to.

The Convener: Amendment 32, in the name of the minister, is grouped with amendments 34 and 35.

Paul Wheelhouse: These amendments are similar to those in group 6 relating to appeals against the revocation of heat networks licences. Members will recall that those amendments sought to address the committee's recommendation that we introduce an appeals process for licence holders in the event of a licence being revoked by the licensing authority. The committee noted that there might be scope to introduce a process for appeals against the revocation of a heat network consent and asked the Scottish Government to reflect further on whether that was something that could be addressed at stage 2.

In light of the group of amendments that we have just discussed in relation to local authorities as consenting authorities, I am happy to move amendments that would create an opportunity for appeals against the revocation of consents by a local authority. That would be achieved primarily by amendment 35, which would provide the opportunity for consent holders to appeal to the Scottish ministers against a proposed revocation where a local authority acting as a consenting authority gave notice of revocation of a consent.

Amendment 34 would amend section 24. Proposed new subsection (5)(b) would require a notice of revocation to specify a date when revocation would take effect. That delay would allow time for an appeal to be made, and proposed new subsection (2) would ensure that consent was not revoked until the appeal had been heard. Of course, if the appeal were successful, the consent would not be revoked. Proposed new subsection (4) specifies a number of matters that regulations that would create the appeals process might be expected to feature, and proposed new subsection (5) would enable those regulations to provide for inquiries or public hearings as part of the appeals process, should that be thought appropriate.

In light of the committee's views on appeals in relation to heat networks licences, I trust that members will welcome the proposed changes. I am sure that members will agree that having procedural protections in place before a decision to revoke a consent is taken would be right and efficient. These procedures would allow the holder of a heat networks consent to make their arguments, if faced with a proposal to revoke consent.

During stage 1 evidence, my officials and I spoke to the committee about section 24 of the bill as introduced, and we noted that its broad nature could allow for a wide range of provisions to be made regarding the process involved in revoking a consent. On reflection, and mindful of the significant investment that is often involved, I want to provide greater certainty to operators and developers by making clearer provision for the procedural protections that they could expect before their right to operate their investment would be revoked. Amendment 34 would do that by amending section 24 to require that notice be given to consent holders about the intention to revoke a consent, that the reasons for that decision be specified and that consent holders have an opportunity to make representations against such a decision. The ability of the Scottish ministers to make further provision about the process for revoking heat network consents is retained, to allow for any adaptations that might be needed in future. As well as increasing fairness in the regulatory system, the amendment would provide consistency with section 11 of the bill, on revocation of heat networks licences.

Amendment 32 is a consequential amendment, which removes the ability of the Scottish ministers to specify the manner in which heat networks consents may be revoked, given that amendment 34 would make provision for giving notice of proposed revocation and confer power for regulations to specify additional procedures. I ask members to support each of the amendments in the group.

I move amendment 32.

Amendment 32 agreed to.

Amendments 33 and 34 moved—[Paul Wheelhouse]—and agreed to.

Section 24, as amended, agreed to.

After section 24

Amendments 35 to 38 moved—[Paul Wheelhouse]—and agreed to.

Amendment 137 not moved.

Section 25—Compensation on modification or revocation of heat network consent

Amendment 39 moved—[Paul Wheelhouse]—and agreed to.

Amendment 138 moved—[Graham Simpson]—and agreed to.

Section 25, as amended, agreed to.

Section 26—Form and manner etc. of applications under Part 2

10:15

The Convener: Amendment 40, in the name of the minister, is grouped with amendments 42 to 49.

Paul Wheelhouse: The amendments that I have lodged in this group are concerned with the processes for applying for and determining consent.

Amendments 40, 42 and 43 will allow the Scottish ministers to introduce a clear pre-application requirement for developers to engage with local communities before they seek consent for a new development. Following compelling evidence from Citizens Advice Scotland about the value that greater community engagement could have had in avoiding the real consumer detriment that has emerged with a network in Glasgow, the committee asked me to reflect on its belief that community engagement

"should not just be about online consultations or seeking views at the start of the process; it must be a matter of social licence, securing public confidence, and putting the concerns of communities like the one in Glasgow at the very heart of the Bill."

I have been happy to accept that recommendation, and amendment 40 is the primary amendment which gives effect to it. It will enable the Scottish ministers to require developers to include a "community engagement report" as part of an application relating to a heat network consent. Scottish ministers will be able to determine the types of application to which the requirement would apply.

Where such a report is required, the developer will need to describe the community engagement that it has undertaken in relation to the proposed application and how it has taken account of any representations that were received by virtue of that engagement. By requiring such a condition, we can ensure that new networks are designed with their users in mind and are future proofed to avoid consumer detriment, because the circumstances of the local community will have been considered and developers will have had to make any mitigations that might be appropriate. Those provisions present an opportunity to pre-empt the sort of problem that Citizens Advice Scotland rightly highlighted in its stage 1 evidence, which I have been working with my colleague Bob Doris MSP, the local citizens advice bureaux and Home Energy Scotland to address.

We have discussed amendment 40 with Citizens Advice Scotland. It has indicated that it agrees that community engagement provisions are best placed in part 2 of the bill, given that they relate most directly to new schemes and schemes that are most likely to be developed. We also note that our amendment meets the suggestion of Citizens Advice Scotland, in its pre-stage 1 debate briefing for MSPs, that incorporation into the bill of community engagement could be done in various ways, including mandating that developers and suppliers provide evidence that they have sought the views of residents in the area and taken those views into consideration.

I draw to the committee's attention that amendment 40 does not make a community engagement report mandatory for all applications, as that will not always be appropriate. For example, if a proposed heat network is to service an industrial estate or a new build housing estate, there might not be a community with which to engage.

We will, of course, engage with Citizens Advice Scotland, developers and others before making a determination under section 26. However, the intention is that the engagement requirement will apply as widely as possible. That engagement is intended to be undertaken with the community at large, who might be affected, and not only with those to whom heat is, or will be, supplied.

Amendment 43 creates a new section, which will provide the Scottish ministers with a power to issue guidance in relation to the preparation of a community engagement report. The purpose of the section is to allow an opportunity to specify what constitutes "effective community engagement", including who must be consulted. Although proposed new subsection (2)(b) makes clear that engagement will include consultation, it is clear that that is not the only form of engagement that may be considered effective for the purposes of evidencing the local community's views.

I reaffirm the commitment that I gave during the stage 1 debate that the Scottish Government will work closely with Citizens Advice Scotland on the development of the guidance under this section in order to deliver on the committee's view, which I share, that it must be about more than consultation. I am aware of recent research that CAS has undertaken into community engagement for infrastructure projects, and I believe that we can build on that in the development of the guidance.

Amendment 42 will make a consequential change to section 26(4) so that the definition of "relevant application" applies to the new section to be inserted by amendment 43. Amendments 44 to 49 make a number of refinements to the bill's provisions that enable the Scottish ministers to make regulations relating to heat network consents. Amendment 45 provides that the Scottish ministers may by regulation make

provision about the procedure to be followed in deciding, on their own initiative, to modify existing heat network consents. That will improve transparency in relation to such decision making. Amendment 44 is a technical drafting change to accommodate amendment 45.

Amendment 46 provides that the Scottish ministers may by regulations make provision about the publication and notification of decisions to modify heat network consents on their own initiative. Amendment 47 is also a minor drafting change to reflect that Scottish ministers may make provision about determining applications.

Amendment 48 makes clear that any regulations making provision about the consideration of emissions reductions and fuel poverty may also apply in relation to decisions by the Scottish ministers to modify a heat network consent on their own initiative. Amendment 49 seeks to embed the bill's twin objectives of fuel poverty alleviation and emissions reductions in the determination of new heat networks in the consenting system by specifying that the regulations may, in particular, make provision about the consideration to be given to those matters in determining an application. I ask members to support each of the amendments in the group.

I move amendment 40.

The Convener: Thank you, minister. Graham Simpson wishes to come in at this point.

Graham Simpson: I listened with interest to the minister, and I think that this is an important set of amendments, because consultation is vital. However, I have just a word of caution for the minister, although I am sure that he knows this well. We have seen in the planning system that where consultation exists, it is often a box-ticking exercise. Applicants can organise events that hardly anyone turns up to, but they can say that they have held the event, so the box is ticked. We need to avoid that kind of thing happening for heat networks, but I think, from what the minister said, that he is alive to that risk.

I heard what the minister said about not needing to have consultation in all areas, which is sensible. For example, if a heat network is in an industrial estate, there will be nobody to consult. However, I caution him that when he introduces regulations, which are the right way to proceed, they must pin things down so that any consultation is meaningful.

The Convener: Minister, do you want to say anything further in response?

Paul Wheelhouse: I agree with Mr Simpson's sensible comments: we obviously want any consultation to be meaningful and I take his points on board. It is certainly our intention to ensure that the guidance that is issued makes the engagement and consultation with communities meaningful in order to achieve the ends that he suggested. I agree that we need to avoid the risk that he indicated.

Amendment 40 agreed to.

Amendment 41 moved—[Paul Wheelhouse]—and agreed to.

Amendment 139 moved—[Graham Simpson]—and agreed to.

Amendment 42 moved—[Paul Wheelhouse]—and agreed to.

Section 26, as amended, agreed to.

After section 26

Amendment 43 moved—[Paul Wheelhouse]—and agreed to.

Section 27—Regulations about determining applications under Part 2

Amendments 44 to 50 moved—[Paul Wheelhouse]—and agreed to.

Amendment 140 not moved.

Amendment 149 not moved.

Section 27, as amended, agreed to.

After section 27

Amendment 51 moved—[Paul Wheelhouse]—and agreed to.

Section 28 agreed to.

Section 29—Power to require information about activities on land

Amendments 52 to 54 moved—[Paul Wheelhouse]—and agreed to.

Section 29, as amended, agreed to.

Section 30—Enforcement notice

Amendments 55 to 59 moved—[Paul Wheelhouse]—and agreed to.

Section 30, as amended, agreed to.

Section 31 agreed to.

Section 32—Appeals against enforcement notice

Amendment 60 moved—[Paul Wheelhouse]—and agreed to.

Section 32, as amended, agreed to.

Sections 33 and 34 agreed to.

The Convener: As we have been proceeding for an hour and a half now, we will take a 10-minute break and reconvene at 10:40.

10:30

Meeting suspended.

10:40

On resuming—

The Convener: Welcome back. We continue our consideration of amendments to the Heat Networks (Scotland) Bill at stage 2.

Section 35—Deemed planning permission on granting or modifying heat network consent

Amendments 61 and 62 moved—[Paul Wheelhouse]—and agreed to.

Amendment 150 not moved.

Section 35, as amended, agreed to.

After section 35

Amendment 63 moved—[Paul Wheelhouse]—and agreed to.

Section 36 agreed to.

Section 37—Power to designate heat network zone

The Convener: The next group is on the designation of heat network zones by local authorities. Amendment 151, in the name of Mark Ruskell, is the only amendment in the group.

Mark Ruskell (Mid Scotland and Fife) (Green): It is pretty clear that the designation of heat network zones has to happen if we are to get at least a fifth of homes and half of non-domestic buildings connected up, as the bill aspires to do. However, often the priority for councils is, understandably, not what it would be nice to do but what they are legally required to do. Clearly, resourcing can be an issue here. It has already been brought up in the meeting, and I am sure that the committee will return to the issue later when it considers Graham Simpson's amendment 156.

However, the will of councils to consider zones with regard to the process under section 39 is not guaranteed under the bill as it stands. My concern is that there might come a point, perhaps in a few years' time, when the scale and pace of change that are required on climate action mean that we need to move a lot quicker. If, by that point, heat network zones have not been delivered, a vital piece of the jigsaw will be missing. That could be the case in relation to changing climate change plans that might come at the midpoint of this decade, especially if hydrogen does not materialise in the gas grid.

The intention of amendment 151 is to keep the door open so that ministers could require that a council must deliver a heat network zone under certain conditions, which could be specified by future regulation. Should the conditions specified in any regulation not arise, councils could continue

to consider establishing zones under the provisions in section 39. In essence, amendment 151 is about putting in place a backstop to require a rapid scale-up, if required.

I move amendment 151.

The Convener: Minister, do you wish to respond?

10:45

Paul Wheelhouse: Yes, but I will keep my comments brief. I understand that the underlying intention of amendment 151 is, as Mark Ruskell has set out, to maximise the instances in which heat network zones are designated, which will in turn help to grow the sector. I acknowledge that the amendment is well intentioned and entirely in line with the objectives of the bill, so I am happy to support it in principle.

However, the way in which amendment 151 is currently drafted is such that it is not easily reconciled with other sections in part 3. There is the specific issue of how the obligations on local authorities that it seeks to introduce would interact with the discretionary powers in section 38(3). In addition, there is the question of whether, and how, the duties in section 39 to consider certain matters would apply in the context of an obligation to designate an area because, as well as being required by amendment 151 to designate an area that they consider meets

"such conditions as the Scottish Ministers may by regulations specify",

local authorities would require to consider the matters set out in section 39.

The inconsistencies between the effect of amendment 151 and the existing provisions of part 3 of the bill would mean that, if it were to be agreed to, a number of amendments would be required at stage 3 to address that conflict or other unintended consequences. That said, I found Mr Ruskell's explanation of his intentions and of the conditions that would apply helpful.

I also note that amendment 151 would remove the degree of choice that part 3 of the bill provides to local authorities to reflect the extensive analysis and engagement that might be necessary to designate heat network zones, and the fact that many local authorities will already have an understanding of the potential for heat networks in their area.

I appreciate that the approach for which the bill currently provides introduces the risk that opportunities could go unidentified, which is why section 38 enables local authorities to request that the Scottish ministers undertake that function on their behalf. Section 44 of the bill provides a further safeguard.

Amendment 151 would help to further mitigate the risk of opportunities not being identified, but in the light of the significant inconsistencies between amendment 151 and the existing approach that is taken in part 3, I ask Mr Ruskell not to press it at this stage. My officials and I will work with him in advance of stage 3 with a view to him lodging a workable amendment then, to which the Scottish Government could lend support.

Should Mr Ruskell press amendment 151, I urge members not to support it at this time, but I make the point that we are keen to work with Mr Ruskell to ensure that we address the good intent that he has set out by stage 3.

Mark Ruskell: I welcome the fact that the minister backs the intention behind amendment 151 and am keen to enter into further discussions ahead of stage 3. On the basis of Mr Wheelhouse's comments about how the amendment would need to be more fully reconciled with part 3, I will not press it.

The Convener: I think that you need to withdraw the amendment.

Mark Ruskell: With the permission of the committee, I would like to withdraw amendment 151.

Amendment 151, by agreement, withdrawn.

Section 37 agreed to.

Section 38 agreed to.

Section 39—Designation of heat network zone by local authority

Amendment 64 moved—[Paul Wheelhouse]—and agreed to.

The Convener: The next group is on heat networks delivery plan and supply targets. Amendment 141, in the name of Mark Ruskell, is grouped with amendments 154, 142, 155 and 143.

Mark Ruskell: As MSPs, we have probably all lost count of the number of bills that have considered targets and action plans in various sessions of Parliament. Fundamentally, we all want to see some form of direction and ambition in bills. There is a recognition that, at least in some areas of policy, targets provide certainty, not least for investors, and they have been shown to work in the area of energy—the renewable electricity target is clearly a successful example of the application of such a target.

In an ideal world, I would like the bill to include a terawatt hours target, as is proposed in Maurice Golden's amendment 155. In reality, a more accurate target could be developed once the work on heat network zones has been done on the ground and there is a more granular

understanding of the heat resource that is out there waiting to be harnessed. That work might result in a more ambitious target that sends an even stronger market signal to the sector.

Amendment 142 is my target amendment. I believe that it puts in place the right framework for setting a bottom-up target, and I urge members to support it. However, I will be interested to hear from the minister and Mr Golden on two issues: the timescale for establishing targets in relation to the bill and the need for parliamentary scrutiny.

From my perspective, Mr Golden's amendment 154 on establishing a heat networks delivery plan appears to be very supportable. It seeks to deliver the kind of clarity that is needed and would fit nicely with the provision of a headline set of future targets under my amendment 142.

I move amendment 141.

Maurice Golden: I thank Mark Ruskell for his contribution and his commitment to reaching net zero. My amendment 154 would require ministers to set out a delivery plan to put the bill into action, which is an obvious but fundamentally important part of ensuring that the bill succeeds in its aim of developing low-carbon heat networks in Scotland.

The bill is an important step in driving forward renewable heat in Scotland, and I very much welcome it. However, it alone will not be sufficient to enable heat networks to reach the needed scale in Scotland. For that to happen, many different actors will need to come together—national Governments, local authorities, private investment, local energy policies and more. With so many moving pieces on the board, it is vital that we have a co-ordinated delivery plan to ensure that each is where it needs to be and that Government policy successfully co-ordinates and links up all the various actions.

A delivery plan would also provide the framework to deal with practical concerns, such as measuring outputs from heat networks, specific policy choices to drive uptake and use, and how those policies, and heat networks in general, will fit in with Scotland's overall climate goals. Importantly, ministers would keep the delivery plan under review to observe the evolution of low-carbon heat networks and how policy might have to adapt to changing circumstances.

Finally, much like the statement of intent on retrospective changes, a delivery plan would help to provide investor certainty. Knowing what the ground rules are and that there is a solid foundation for low-carbon heat networks over the long term is crucial in order to attract the investment that is needed to enable networks to expand at pace. Amendment 154 provides a straightforward means to provide that certainty.

Amendment 155 seeks to introduce clearly defined delivery targets in order to assess the success of the bill in developing low-carbon heat networks in Scotland. We know that decarbonising heat will be a big step in reaching net zero in Scotland, and one of the stated aims of the bill is to develop the low-carbon heat networks that are needed to do that. However, without delivery targets, we will have no way of assessing the pace or quality of the development that takes place.

That is why the targets that are cited in amendment 155 follow research from Scottish Renewables and are broadly in line with industry growth estimates. They represent a doubling of output from current levels by 2025, then an increase to 6 terawatt hours by 2030. I appreciate that some might have concerns about setting specific targets right now, even when those targets follow industry's lead. However, amendment 155 and Mark Ruskell's amendment 142 point to the same basic principle: targets, regardless of whether specific numbers are set right now, are important for the bill's aims to succeed. Targets will allow us to ensure that we are on track and that heat plays its part in reaching our 2045 net zero goal.

However, delivery targets are important in the here and now, too, because they sit alongside a delivery plan in providing the investor and operator certainty that I mentioned previously. While a delivery plan sets the rules, targets provide a clear space for operation, with the knowledge that the Government is behind them in order to reach the goal. That is not just for private investors; the setting of local policy and planning objectives will be more assured if public bodies know that the decisions that they take are within a clearly defined policy goal.

All of that creates opportunities for a green recovery, especially in terms of job creation and transferable skills for those in declining industries. Setting sensible targets now will provide consistent rewards across the lifetime of the bill's provisions.

Graham Simpson: I am comparing and contrasting amendments 142 and 155. Both deal with heat network supply targets, but Mr Golden's amendment 155 is more specific than Mr Ruskell's amendment 142. It seems to me that they cannot both be agreed to. Amendment 142 would allow ministers to make the regulations, but amendment 155 is far more specific and, arguably, more ambitious. We would expect nothing less of Mr Golden, would we not? [*Interruption*.] Members may well laugh, but that is what I would expect from Mr Golden.

Mr Ruskell and Mr Golden can consider my comments as an intervention on both of them. What do they think about what I have said? If Mr

Golden's amendment 155 were agreed to, Mr Ruskell's amendment 142 would not work—and vice versa. I would like to hear from both members on that.

The Convener: Before I bring the minister in, I am happy to go back to Mark Ruskell if he wants to respond to Graham Simpson and then go to Maurice Golden for his response.

Mark Ruskell: I could do so, but I would like to hear the minister's points as well and then make closing remarks if I get the opportunity.

The Convener: Maurice Golden is nodding his head in agreement with that suggested approach. We will go to the minister now and I will bring Mark Ruskell and Maurice Golden back in after that if they want to comment.

Paul Wheelhouse: In general terms, I welcome Mr Ruskell's and Mr Golden's amendments in this group. Indeed, their ambition for the growth of heat networks is welcome. In essence, they seek to make the Scottish ministers more accountable for the delivery of the bill's overall aim through the greater deployment of heat networks in Scotland as well, which is a laudable aim. Although I am one of the ministers who the amendments aspire to be held to that standard, I welcome such scrutiny because, ultimately, what is measured gets done.

The draft heat and building strategy that we will publish shortly includes a commitment to set a target for heat network deployment in the final version of the document, following consultation on the draft. That is so that the national comprehensive assessment of the potential for heat networks, which we are undertaking alongside the UK Government's Department for Business, Energy and Industrial Strategy, may be taken into account. That assessment will give us the evidence base to establish the potential demand for heat networks in Scotland and, indeed, across England and Wales for the UK Government.

We will also publish a heat network investment prospectus in the next financial year. It will include the first nationwide assessment of the potential for heat networks. It will be a first cut, if you like, and is intended to provide local authorities with evidence to build on as we move towards implementing part 3 of the bill. It will also be relevant to the setting of any target for heat networks.

11:00

I am happy, however, to embrace the challenge that a statutory target for heat network deployment will bring. Mr Ruskell's amendments 142 and 143 enable a target to be set by ministers and approved by the Parliament—it will enable the scrutiny that Mr Simpson was looking for—that is well informed by the evidence that I have just mentioned, as well as what might emerge when local authorities consider the potential for heat networks at a more local level, bringing in, for example, their understanding of local sentiment and other issues.

Prior to today's meeting, Mr Ruskell and I spoke about the need for well-evidenced target setting so that targets are meaningful and help to stretch delivery ambitions. I know that such an objective is also supported by others such as the Liberal Democrats, who are not present at the discussion today. Amendments 142 and 143 will enable that, as well as providing for the full scrutiny of Parliament in setting that target, which is why I am happy to support those amendments.

Should targets be in place, it is only right that the contribution that new heat networks might make should be considered. Amendment 141 will enable that to happen when heat network zones are being identified by local authorities, and again, I am happy to support that.

Turning to Mr Golden' s amendments, in light of what I said about the need for an evidence-led target being set in this space, I cannot support amendment 155. Although it sets specific targets that—I am sure—have come from a credible source, they simply have not been verified by the local knowledge and public engagement that Mr Ruskell's amendments would allow. I am also concerned that amendment 155 does not provide any scope for the target to be amended up or down as the evidence tells us might be appropriate in future. I therefore urge Mr Golden not to move amendment 155.

I am, however, happy to support amendment 154 on the preparation of a heat networks delivery plan by ministers. It is important that investors, supply chains and consumers alike are informed of, and have confidence in, the Government's plan, particularly when it comes to large and costly infrastructure projects such as heat networks. The setting of targets will help with that, but amendment 154 will ensure that those groups are sighted on exactly how the Scottish Government intends to ensure that our ambition, and, seemingly, that of the rest of Parliament, will be delivered. I also agree that it will be helpful with supply chain development.

The heat in buildings strategy to which I referred earlier will set some of that out but, in supporting amendment 154, I am happy to commit to ensuring that a fully comprehensive and dedicated heat networks delivery plan is published by April 2022.

I therefore urge members to support Mr Ruskell's amendments 141, 142 and 143, and Mr Golden's amendment 154, but I ask Mr Golden not to move amendment 155 for the reasons that I have given. If amendment 155 is moved, I urge members to resist it.

The Convener: Mr Ruskell, I do not think that you need to come back in light of the minister's comments. Mr Golden, do you wish come in?

Maurice Golden: I welcome the minister's comments and support for amendment 154.

If amendment 155 were passed today, I would seek to work with the Government to ensure that we have better evidence-based targets. The targets that I have outlined in amendment 155 are from industry and its evidence base, and they could help to provide the signal and ambition on which many of our other net zero targets rely. That is the thinking behind amendment 155.

The Convener: At this stage, I will go back to Mr Ruskell in any event to ask him to wind up and to say whether he wishes to press or withdraw amendment 141, so he can make any comments he wants to in response to the minister.

Mark Ruskell: I confirm that, on this issue, there is little difference in ambition between me and Mr Golden. I think that we both want to get to the same place; the issue is just about the process by which we get there.

It is good that there is consensus on the need for a strong plan, as incorporated in amendment 154. The minister's commitment to deliver the plan by April 2022 is critical in sending a strong signal to industry.

On whether an individual target should be in the bill, I note Mr Golden's comments that the figures in his amendment 155 are broadly in line with the growth estimates that are established by industry. However, what convinces me is the minister's comments about the detailed work that is happening at the moment on the potential for heat networks. Detailed work is being done on the ground and an evidence base is building. As I said in my initial comments, I hope that we can get a more ambitious target that is much more focused on the reality of the assets and the potential on the ground.

The only point that I will make is about whether there might be scope for further discussion ahead of stage 3 on a starting date for any target that could then align with the development of the plan and its launch by April 2022. If the minister and Mr Golden want to have further discussions ahead of stage 3, I would be more than happy to be part of those. In the meantime, I urge Mr Golden not to move amendment 155, and I will press amendment 141 in my name.

Amendment 141 agreed to.

Amendment 152 not moved.

Section 39, as amended, agreed to.

Section 40 agreed to.

After section 40

The Convener: Amendment 153, in the name of Mark Ruskell, is in a group on its own.

Mark Ruskell: Amendment 153 is potentially quite controversial, given where the bill has arrived at in trying to navigate the devolved and reserved competences, particularly on consumer protection. However, I want to raise the issue of demand risk, which the committee took evidence on at stage 1. That is the risk that owners of large anchor buildings with vast heat loads might be quite happy to continue to heat the sky without there ever being an obligation on them to harness the benefits of that waste heat for communities. In the past, I have shared frustrations in my community, where we tried to encourage a distillery to consider options for a heat network but that led to nothing happening at all. With the climate emergency, time is against us, so we need to do something quickly.

I admit that amendment 153 is stark. It would mean that councils would make the decision on which buildings would be suitable for connection and would have the power to make that happen. I point out that the intention is not to include individual domestic buildings. If there is a concern in that regard, amendment 153 could be refined to make that more explicit.

However, we cannot continue to have large public and private sector buildings waste heat in the middle of a climate emergency, particularly when we face unacceptable levels of fuel poverty and a need to build in energy security for the future.

Although the bill sets the right framework for things to happen where organisations want to and have the financial backing to do those things anyway, it does not demand progress. For example, the section 58 powers on wayleaves will help to push a network further where one is already being developed, but it will not shift a major anchor building owner to become the foundation stone of a brand new heat network.

To pre-empt what the minister's response might be, I will ask the question, if amendment 153 is not the solution, what is? I ask that he identifies the solution. Is it about ensuring that buildings under public procurement are the priority, as is the case in Liam McArthur's amendment 158? Will the answer be in the heat and building strategy? I would very much welcome the minister's thoughts on that.

I move amendment 153.

Graham Simpson: I hear where Mark Ruskell is coming from, but he has accepted that amendment 153 is controversial. When we are dealing with legislation—you know this, convener, as a lawyer—words matter. The amendment says:

"A local authority may require any suitable building within its area to connect to a heat network".

Despite what Mark Ruskell said, that could include domestic properties, because of how the amendment is worded.

Even if the amendment did not apply solely to domestic properties, we have the issue of a council in effect forcing any building owner to connect to a heat network, whether they want to or not. That could be at some cost to them.

I think that Mark Ruskell accepts that amendment 153 is perhaps not the best way to achieve what he wants. I simply invite him on that basis not to press amendment 153.

Paul Wheelhouse: I have a great deal of sympathy for Mr Ruskell's amendment on the basis that the more we can do to create demand for heat networks, within reason, the more likely we are to secure the growth that we are all seeking in this morning's discussion. However, I cannot suggest to committee members that the amendment is supported. There are two major reasons for that, which have been broadly touched on and which I will briefly cover.

First, amendment 153 is extraordinarily wide ranging—so much so that it is highly likely to be outwith legislative competence.

Although paragraphs (a) and (b) of subsection (1) of the amendment would act to provide limited constraints on the power conferred to require a building to connect to a heat network, it remains a wide power and there are several questions that remain unaddressed.

The fundamental question is, what would mandatory connection entail in practice? Would it require changes only to the fabric of the building, or is it envisaged that the owner of the building must also use the system? If the latter, on what terms? How are the terms of supply to be entered into and regulated? When should the mandatory connection take place? What rights might there be to alter or terminate the supply?

If it is intended to be just a duty to install the physical apparatus and infrastructure necessary for the building to be linked to a heat network, who would carry out such works and pay for them? What timescales are envisaged?

If the intention is that connection to a heat network would also require that the building use heat from the heat network, what could the local authority do in order to require that? Is it a requirement to enter into supply contracts with a heat network operator? Does the power extend to requiring heat network operators to supply heat to the building? If so, on what terms and conditions?

There is also no indication of what might make a building "suitable", or how that might be ascertained. The power would apply to all buildings, including domestic properties, as Mr Simpson has just outlined, in a heat network zone, if they are considered to be "suitable" buildings. However, suitability does not depend on there being a building assessment report for the building, so it is not clear how a building's suitability would be determined.

11:15

That might not have been the intention, given the reference to building assessment reports at subsection (2), but the powers that are set out in the amendment would apply to the domestic sector and to any other buildings that do not have a buildings assessment report.

I would have concerns about that not only due to the current lack of consumer protection, which we are unable to provide for in the Scottish Parliament, but due to the heat network sector having often told us that it does not want such powers to exist over residential buildings. That is because it considers that the connection of homes would have a marginal effect on the business case for a new heat network and it does not believe that that is conducive to a positive relationship with potential customers.

The amendment makes no provisions for building owners to make representations to inform or challenge the decision of a local authority. It would seem reasonable to me that building owners and businesses should be allowed to put forward their views on how their own building might be heated. For example, that might be to highlight that there is already a functional heating system in the building or that the building already uses renewable heating, which around 50 per cent of the non-domestic sector does, if we include the use of electric heating.

It is not clear from the amendment what is meant by "competitive cost", nor does it indicate how a local authority might ascertain what is a "competitive cost" for a building.

What is considered to be a "competitive cost" is subjective, too. It is likely that there would be disagreement between the owner of the building required to connect and the heat network operator. The local authority might also have a different view.

Furthermore, it is not clear whether the power to require connection would impose duties on heat network operators to extend their networks to suitable buildings and whether it would require heat network operators to supply heat at a "competitive cost".

I know that Mr Ruskell is looking for guidance on what the Government will do to tackle the issue. Notwithstanding the challenges that I have set out, we are committed, as set out in our climate change plan update, to consult this year on the use of existing powers to strongly encourage anchor building owners in heat network zones to connect to and use local schemes. That includes, for example, the potential use of section 15 of the Non-Domestic Rates (Scotland) Act 2020 to create reliefs for those buildings that connect, or supplements for those that do not. The latter might be similar to the non-connection charge that operates in Denmark, as the committee will be aware.

I appreciate that the commitment to consult later this year sits outwith the timescales of the bill, and comes after the Scottish Parliament elections in 2021, but I am sure that members will agree that the introduction of changes, such as the potential ones that I have suggested, warrant extensive consultation with building owners before such provisions are introduced.

Finally, I note that the bill already seeks to reduce investment risk and reduce overall costs by creating heat network zone permits, which will provide a chance to compete to develop and operate a system in a prime area with information and confidence about the customer base in it, as well as enabling the pipework costs to be repaid in line with their long-lived use; and by providing new rights to licence holders under part 6, which will quicken the construction of networks and reduce the significant civil engineering costs that are faced.

It is important that we strike the right balance between supporting and enabling heat network development and consumer protection. I regret that I am not sure that Mr Ruskell's amendment strikes that balance at this time.

Although I am sympathetic towards the intention behind Mr Ruskell's amendment, I do not believe that it offers a workable or legally robust solution to the issue of demand risk. In a sense, in seeking perfection, it potentially puts at risk, and gets in the way of, achieving a good outcome; it puts that in jeopardy.

I strongly urge members not to support Mr Ruskell's well-intentioned amendment 153 in the interests of the passage of the bill as a whole.

The Convener: I call Mark Ruskell to wind up, and to press or withdraw amendment 153.

Mark Ruskell: Amendment 153 is a classic probing amendment, and some of the contributions are welcome. There is a debate about what a "suitable building" is. I think that it is quite clear that there will be anchor buildings—this applies to the owners of anchor buildings, too—that are suitable, that are wasting heat and that need to be connected to the heat network. How we address and encourage that—in some cases, strongly encourage—those building owners to connect in is critical.

There are different ways to do that. The minister reiterated the possibility of using rates relief as a driver to nudge building operators towards playing ball and connecting with a heat network—or at least considering it. Consideration is needed of what the industry requires to de-risk investment. If there are long-term concerns about whether anchor building operators are going to play ball and be part of the consideration of heat network zones, that creates uncertainty, which could impact on the bankability of projects with investors. With that in mind, I am sure that there will be more to come from the Scottish Government, and the issue could be considered in the heat action plan as well. On that basis, I will not press amendment 153.

Amendment 153, by agreement, withdrawn.

Sections 41 to 44 agreed to.

Section 45—Guidance

Amendments 65 and 66 moved—[Paul Wheelhouse]—and agreed to.

Section 45, as amended, agreed to.

Sections 46 to 49 agreed to.

Section 50—Heat network zone permit: revocation

The Convener: The next group of amendments is entitled "Revocation of heat network zone permits: process and appeals". Amendment 67, in the name of the minister, is grouped with amendments 68 to 72 and 127.

Paul Wheelhouse: The amendments in the group are similar to my amendments in groups 6 and 9 on appeals against revocation of heat networks licences and heat network consents, respectively. Members will recall that the amendments sought to address the committee's recommendation to introduce the opportunity for licence holders to appeal in the event of their licence being revoked by the licensing authority. The committee's recommendation did not extend to revocation of heat network zone permits.

Section 46 of the bill allows for a person other than the Scottish ministers to be designated as the

permit authority. In the light of that, and for consistency throughout the bill, it is right to amend the bill so that regulations can be made to allow for appeals in the event of the permitting authority's revoking a zone permit.

That would be achieved primarily by amendment 71, which will create for the Scottish ministers a new power to create an appeals process for revocation of heat network zone permits. It is a broad power, but the proposed new subsection (2) clarifies a number of matters that such regulations and, therefore, such an appeals process, would feature. Those include: who may appeal; why an appeal may be brought; how appeals are to be lodged, and the information that will be required; and how decisions are to be determined. Those regulations would also be able to specify who would hear appeals.

Section 46 makes it clear that the Scottish ministers would act as the permitting authority for the purposes of part 4 of the bill, unless they were to designate, by regulations, another person to take on that function. We have not yet formed a view on whether another body should take on that role, and we plan to consult on that as part of our consultation on the secondary legislation later this year, subject to the passage of the bill.

However, given that the possibility exists that the Scottish ministers would not, or would not always, take on that function, as with heat networks licences, it seems to be appropriate that powers exist so that appeals against revocations may be heard by the Scottish ministers. I trust that members welcome the proposal, in the light of the committee's views about there being a deficit in terms of an appeals process in relation to heat networks licences.

Amendment 72 would enable regulations to be made in respect of compensation in consequence of revocation of a heat network zone permit in certain circumstances. Proposed new subsection (2) specifies a range of matters that the regulations may include, such as

"the circumstances in which compensation is payable, ... the calculation of compensation, ... the procedure"

for

"claiming compensation"

and

"the review"

and appeal of

"decisions made under the regulations."

Amendment 72 would not only introduce the opportunity for compensation to be paid to those who have had their zone permit and, in turn, their right to operate a heat network in the relevant zone removed, it would also ensure consistency with section 25, which enables compensation to be paid to heat network operators or developers that have had a heat network consent revoked.

Amendment 127 would amend section 81 of the bill so that the regulations that may be made about

"Compensation on revocation of heat network zone permit"

are added to the list of delegated powers under the bill that are subject to affirmative procedure. That is in keeping with the procedure that is to be used for other regulation-making powers in relation to compensation within the bill, at sections 25, 63, 67 and 75.

Section 50 currently provides that a heat network zone permit may be revoked in the event of a heat networks licence or a heat network consent being revoked. Amendment 69 would enable the circumstances in which a zone permit may be revoked to be extended by regulations. That is felt to be necessary as a precaution to cover certain situations—for example, when the basis on which an application for a permit was granted later turns out to have been inaccurately represented.

Section 50 also ensures that there is a rigorous process in place before a zone permit may be revoked. It ensures that the permitting authority must notify the permit holder of its intention to revoke, and that permit holders have the chance to make representations against revocation before a final decision is made.

Amendments 67 and 68 would make minor drafting changes in consequence of amendment 69.

Finally, amendment 70 would allow the Scottish ministers to expand in regulations on

"the procedure to be followed in connection with the revocation of a ... zone permit".

For example, it may be that other persons should be informed of the permitting authority's intention to revoke a zone permit, or that a process should be set out for how representations are to be considered. In any event, the powers are to ensure that any further procedural protections that are considered to be appropriate can be set out in legislation, rather than simply being administrative arrangements.

I ask members to support all the amendments in the group.

I move amendment 67.

Graham Simpson: I support the amendments, but I have a question for the minister to answer in his summing up. He says that the people who hear the appeals may not be Scottish ministers; it could be somebody else. I am guessing that he is not suggesting that a new body should be set up to

hear the appeals. I do not think that we will be inundated with appeals of this nature. It is not like the planning system, in which there is a steady stream of appeals; I imagine that there would be a handful in a year. If we are not talking about setting up a new body, will the minister clarify what he is thinking of? Will it be an existing body, if it is not to be ministers?

The Convener: I ask the minister to wind up and respond to that point.

Paul Wheelhouse: Mr Simpson's understanding of the situation is correct. We are not, at this point, planning to establish another body. The proposal merely gives us a space to consider what are the proper arrangements to put in place for that. I hope that that reassures Mr Simpson, but I will be happy to discuss the matter with him between stage 2 and stage 3, if he has more concerns.

The Convener: Thank you.

Amendment 67 agreed to.

Amendments 68 to 70 moved—[Paul Wheelhouse]—and agreed to.

Section 50, as amended, agreed to.

After section 50

Amendments 71 and 72 moved—[Paul Wheelhouse]—and agreed to.

Section 51 agreed to.

Before section 52

11:30

The Convener: The next group is on the supply of thermal energy by means of a heat network to state-funded educational buildings. Amendment 158, in the name of Liam McArthur, is grouped with amendment 159.

Liam McArthur (Orkney Islands) (LD): Amendments 158 and 159 are, arguably, alternate amendments. Their purpose is to add emphasis and focus to the job of decarbonising Scotland's learning estate. They do that by clearly setting out new duties as we consider how to connect schools to green heat networks as part of a bid to drive decarbonisation of the school estate. The amendments would embolden parts of the bill that already exist.

The proposals have been championed by Teach the Future, which campaigns to put the climate emergency at the centre of education in Scotland and to arm the next generation with the facts and tools that they need in order to combat the climate crisis. As part of that campaign, students are saying that all new state-funded Scottish educational buildings should be net zero from 2022, and that all existing state-funded Scottish educational buildings should be retrofitted to be net zero by 2030.

The group states:

> "If our education system is to teach students about sustainability, the buildings they learn within must be sustainable".

Indeed, many school buildings are ideally situated to work with heat network technology. The proposed approach is one that the Parliament and Scottish Liberal Democrats have taken before, recognising the public sector's duty and responsibility to promote and show confidence in green technologies. When we were debating the Climate Change (Emissions Reduction Targets) (Scotland) Bill, I successfully made the same argument on public procurement of electric vehicles. Amendments 158 and 159 would apply similar logic.

The public sector has significant influence over green technology uptake. Not only does it hold the key in choosing environmentally friendly options for its infrastructure, but showing confidence in those options helps to normalise such ideas.

Amendment 158 goes further than amendment 159, in that it would directly import the targets of the Teach the Future campaign. 2022 is the date that has been settled on by the campaign, based on its reflections and research. The choice of 2030 reflects the interim target that was set by the most recent climate change legislation—the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019—and it is the date by which much of the work will need to have been done, if Scotland is to have any hope of meeting its commitment to net zero by 2045.

Amendment 159 simply makes it clear that the obligations in part 5 of the bill have particular relevance to the learning estate. It would strengthen existing ambitions for very little additional burden.

Beyond the obvious support from Teach the Future, WWF and the National Union of Students Scotland have also welcomed the proposed changes.

As I said at stage 1, I acknowledge and welcome the collaborative and consultative approach that has been taken by the minister in relation to the bill to date. I know that he has reservations about the proposals, but I remain happy to work with him and, indeed, with colleagues on the committee, to adjust and refine the details, where necessary. In the meantime, I look forward to hearing colleagues' comments.

I move amendment 158.

Graham Simpson: I thank Liam McArthur for lodging his amendments. I think that they are important because they send out a signal that we are ambitious to deliver a low-carbon economy. One of the ways that we can do that is by getting our state buildings—in this case, schools—connected to heat networks.

Liam McArthur is right that his two amendments are slightly at odds with each other. Amendment 158 goes much further than amendment 159, so when he is summing up, it would be useful if he could indicate which approach he prefers.

Amendment 158 says that, from next year, all new state-funded educational institutions should be connected to a heat network, and that by April 2030, which is not that far away, all existing state-funded educational institutions should be connected to a heat network. I think that it would be possible to achieve the former. In the area that I represent, many new schools have their own renewable energy sources or are connected to a network. The ambition is not unachievable.

However, amendment 158 also says that all existing buildings should be connected. Let us have a think about that. Some schools and colleges are quite old, and some are, for example, in city centres; there is such a school just up the road from where the convener is sitting right now in Parliament. I imagine that it would be quite difficult to connect some existing buildings to a heat network. The practicalities of that ambition would present some problems.

I would like to hear what the minister and Mr McArthur have to say about that. I can see that there would be issues with amendment 158, but not with amendment 159.

Paul Wheelhouse: I appreciate the comments that have been made by my colleagues. I should say at the outset that, from what Mr McArthur has said and Mr Simpson's sympathies, I understand the rationale for lodging the amendments. They have certainly stimulated debate.

In many respects, my views on Mr McArthur's amendments are similar to those that I expressed when we debated Mr Ruskell's amendment in group 13. Mr McArthur might not have heard that debate, however, because he was appearing at the Justice Committee.

I note for Mr McArthur that we will, through the work that we committed to in the climate change plan update on consulting this year on use of existing powers, seek to strongly encourage anchor building owners, which might include educational buildings and communities within heat networks, to connect to and use local schemes. We have also set out a number of provisions on how we might incentivise potential connection for non-public buildings.

I will not rehearse my concerns about the group 13 amendments, although I briefly note that proposed new subsection (1) in amendment 158 raises concerns about what the Scottish ministers are to require of those buildings, and how they can make it happen. I have some questions on which it might be useful to have Mr McArthur give some feedback.

Would ministers have to require that the necessary equipment, apparatus and so on be installed within the building, or would they need to require actual use of the system? If it were the former, there is the risk that significant sums would be spent on installation of kit that goes unused, which would be unhelpful to the local authority. I must again ask how the relationship between the building owner and the heat network operator would be regulated, if the latter were to be the case.

In the interests of moving the debate forward, I will not linger on those issues. Rather, I will raise some practical concerns about amendment 158. It would place a duty on the Scottish ministers to ensure that educational buildings connect to heat networks. It is unclear how that would be achieved, and whether it would be required if there is no local heat network available to connect to, or if the costs of creating a new network for the sole purpose of serving an educational building were to be obstructively high.

I also question why the Scottish ministers would be responsible for ensuring that all educational buildings would be connected to heat networks, given that local authorities and others within the public sector are primarily responsible for our educational buildings.

I will also highlight some technical issues in the amendments. There is no definition of "state-funded educational buildings", which means that amendment 158 could have the unintended consequence of going beyond schools, colleges and universities. There are also questions about whether the requirements of subsection (1) of amendment 158 would apply to, for example, community centres where adult evening classes take place or other facilities where state-funded or partially state-funded education takes place. Would grant-aided schools be captured, for example?

On the face of it, amendment 159 is less concerning, given that its general effect would be to make further provision on building assessment reports that are conducted for "state-funded educational buildings". The public sector should certainly lead by example in decarbonising its building stock, including the Scottish Government's estate. As I outlined at the beginning of the meeting, we are keen to take forward such work through the climate change

plan update, in a way that would extend not just to public buildings but to other anchor buildings.

However, my overriding concern with the amendments in group 16 is that I cannot see a compelling reason for treating the learning estate as a subsector that is somehow different from other public sector buildings. I take on board Mr McArthur's well-intentioned comments on the educational aspects, but there is no convincing reason to create a subset of requirements for educational buildings.

I accept the well-intentioned point that schools could make good anchor loads for heat networks, in particular if they have a swimming pool attached, as some have. However, the same could be said of hospitals, leisure centres, prisons, other government buildings, local authority headquarters and so on. For that reason—in addition to my previous concerns in respect of group 13, which, I appreciate, Mr McArthur might not have heard in full—I ask him not to press amendment 158 and not to move amendment 159. I ask members not to support either amendment, if they are taken to a vote.

I would be keen to work with Mr McArthur prior to stage 3 to see whether there is a means of finding a way through the issue; at this point, I do not have a defined view of how we could achieve the outcome that he seeks. I simply reiterate that we will undertake significant work through the consultation that will follow the climate change plan update, in which I hope we could pick up the important issue that he and Mr Simpson have raised.

Liam McArthur: I thank Graham Simpson and the minister for their constructive comments. Graham Simpson referred to the importance of signalling our ambition, and the minister rightly acknowledged the need for the public sector to lead by example.

I hear, and understand, the concerns that have been expressed about amendment 158, which I accept is more challenging, and amendment 159. I apologise to you, convener, and your committee colleagues that as a result of my commitment to vote on the Defamation and Malicious Publication (Scotland) Bill in the Justice Committee, I was not able—as the minister mentioned—to listen in to the exchanges on group 13, including Mark Ruskell's amendment.

I would be happy to be involved in discussions with the minister, Mark Ruskell and any other colleague—possibly Graham Simpson—about how we might move the matter forward. I recognise that there is a case for the public sector as a whole to take the lead, but I think that there is an expectation among the younger generation that we will kick-start our ambitions on heat networks, and there is no better place than the learning estate in which to exemplify that, although I do not seek to hold back progress in other areas.

For the time being, I am happy not to press amendment 158 and not to move amendment 159. I will be happy to take part in discussions, as I mentioned.

Amendment 158, by agreement, withdrawn.

Section 52—Building assessment reports

Amendment 159 not moved.

Section 52 agreed to.

Sections 53 to 57 agreed to.

Section 58—Network wayleave right

The Convener: Group 16 is on network wayleave rights. Amendment 73, in the name of the minister, is grouped with amendments 74 to 84, 86 to 120, 122 and 123.

11:45

Paul Wheelhouse: Such is the length of this group that I have been caught out in trying to find my speaking note. I have now found it.

The subject of network wayleave rights was discussed at length at stage 1 following the evidence that was provided by Professor Roderick Paisley, solicitor and chair of Scots law at the University of Aberdeen, and by Mr Scott Wortley, solicitor and lecturer in commercial law at the University of Edinburgh.

As discussed during my appearance in front of the committee at stage 1 and during the stage 1 debate, we have reflected on the critique that was made of the provisions on network wayleave rights, and the amendments in this group seek to deal with many of the issues that have been raised.

Amendment 81 provides that a network wayleave right constitutes a real right. Amendment 99 will remove provision about persons who are bound by network wayleave rights that is no longer necessary as a result.

Amendments 73, 74 and 76 will make refinements to the description of the right that is being conferred. Amendment 73 provides that the primary right is a right for a licence holder

"to convey steam or liquids in land for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder."

Amendment 74 provides that the rights that are currently listed in sections 58(1)(a) and 58(1)(b) become rights ancillary to the primary right, and amendment 76 will insert a new paragraph to avoid having a closed list of ancillary rights, which

will allow the licence holder to carry out any necessary or incidental works.

We have also reflected on the evidence that was given about the possible ways in which network wayleave rights can be created. Amendment 77 provides that, in addition to a network wayleave right being created by agreement between the owner of the land and the licence holder, it may be created by unilateral grant of the owner.

Amendments 86, 90, 92, 93, 94, 97, 98, 100 and 122 are consequential to changes that will be made by amendment 77, to reflect that a network wayleave right could also be conferred on a licence unilaterally.

Amendment 86 includes a definition of "owner", and consequential amendment 122 will adjust the interpretation provisions in the bill as a result.

Amendment 78 refers to the possibility of a network wayleave right being created by positive prescription. That is as a result of amendment 80, which applies section 3(2) of the Prescription and Limitation (Scotland) Act 1973 with the necessary modifications. That follows recommendations from Professor Paisley in his written evidence to the committee.

Amendments 79 and 88 have been lodged to enable development conditions to be imposed as part of the creation of a network wayleave right. Amendment 79 will ensure that that applies to voluntary network wayleave rights that are created by a wayleave document, and amendment 88 provides that a necessary wayleave may also include such a condition. A development condition is a condition that would restrict or regulate the development or use of the land, as may be required to prevent interference with the exercise of the network wayleave right, particularly to prevent damage to apparatus or disruption to service.

Amendment 82 provides that the installation of apparatus over property does not confer ownership of the heat network apparatus on the owner of the land. That will avoid the possibility of a licence holder losing ownership of apparatus as a result of placing it in or on the land.

I turn to the subject of notices that are associated with necessary wayleaves. Before applying to the Scottish ministers for a necessary wayleave, the licence holder is first to seek a network wayleave right from the owner. The normal position is that the licence holder is required to give notice to the owner of the land setting out the licence holder's request to acquire a network wayleave right. However, there might be cases in which the licence holder cannot ascertain the name or address of the owner of the land after reasonable inquiry. Amendment 91 provides that, in such cases, the licence holder is to give notice in such form and manner as may be specified by the Scottish ministers by regulations. Amendment 89 is a technical drafting change to accommodate amendment 91.

Amendment 95 will make a consequential change that is needed as a result of amendments 77 and 91. Amendment 96 will also make a consequential change that is needed as a result of amendment 91.

The registration of wayleave rights is one of the key issues that was discussed during the committee evidence sessions. Professor Paisley recommended in his evidence that wayleaves should be registered in the land register of Scotland to make them real, principally for the purpose of transparency. However, Mr Wortley highlighted that not registering in the land register would be consistent with the general approach to wayleaves in other contexts, and he noted that requiring network wayleave rights to be registered might raise issues. For instance, there could be issues in relation to who would be required to bear the costs of registration.

I considered that matter in the context of the aim of the bill, which is to help to stimulate deployment of heat networks across Scotland and meet our ambitious emission reduction and fuel poverty targets. Amendment 104 will provide the Scottish ministers with a power to make provision by regulations

"about the registration of network wayleave rights."

In particular, the regulations may make provision about

"how a network wayleave right is to be registered",

"who is required to establish and maintain the register"

and

"any fees payable in connection with the registration".

That will provide flexibility and allow time to consult the industry about the best solution. I trust that that approach is satisfactory and that it offers the best way forward to meet the aims of the bill, as well as addressing the comments that were made at stage 1, notably by Professor Paisley and Mr Wortley.

Amendment 101 makes provision for the variation of network wayleave rights. It provides that a network wayleave right may be varied only by agreement between the parties or by the Scottish ministers following an application by the licence holder or the owner of the land.

Variation of a network wayleave right might have consequences for an owner or occupier of land, and amendment 102 will therefore insert a new section that provides that compensation may be recovered from the licence holder in respect of

the variation. That would occur where the Scottish ministers grant a variation of a network wayleave right following an application by a licence holder

"so as to place or increase a burden"

on the owner or occupier.

Amendment 103 provides that a network wayleave right

"may only be discharged by the licence holder entitled to the benefit of the network wayleave right, either—

(a) by agreement with the owner of the land, or

(b) unilaterally."

It also provides that

"A licence holder must discharge a network wayleave right"

if it relates to

"apparatus that has ceased to be used for the purposes of a heat network."

Amendment 105 relates to the requirement to remove apparatus when notified. It will require a person who has the right to remove all or part of a heat network apparatus to give notice to the licence holder if they wish to enforce the removal. That is most likely to occur because there is no valid network wayleave right in respect of the installation of the apparatus. Removal of apparatus that is still in operation clearly has potential to disrupt or interrupt the supply of thermal energy by the heat network. The existing provisions of sections 62(6) to 62(8) are unaffected; they will enable the licence holder to apply

"for the grant of a necessary wayleave"

or submit

"a compulsory purchase order"

to establish a right to retain the apparatus in place.

I have lodged a number of technical amendments that are largely consequential to the changes that I have outlined. Amendments 75, 87, 110 and 111 are technical drafting changes to clarify what is meant by references in the bill to the placement of apparatus in land. Amendments 83 and 84 adjust the definition of heat network apparatus to make it clear that it

"includes any structure for housing, or for providing access to, such apparatus".

Lastly, amendments 106 to 109, 112 to 120 and 123 remove unnecessary references to persons acting on behalf of licence holders and make necessary consequential changes.

I ask members to support all the amendments in the group.

I move amendment 73.

The Convener: Thank you, minister. There are no questions from other members, but I have a question. Are you convinced that the amendments that you have just gone through will fulfil their purpose of simplifying and clarifying the particular aspect of wayleaves in the bill? I am sure that you will be able to respond to that without having to repeat everything that you have said. I ask you to respond to that and wind up on the group.

Paul Wheelhouse: We believe that we have provided suitable clarity but, equally, I will welcome engagement with members after stage 2 if they believe that there are matters that require further clarity.

Amendment 73 agreed to.

Amendments 74 to 84 moved—[Paul Wheelhouse]—and agreed to.

The Convener: The next group is on road works powers of certain holders of heat network licences. Amendment 85, in the name of the minister, is grouped with amendment 121.

Paul Wheelhouse: The amendments that I have lodged in this group relate to the additional rights that certain licence holders will be granted to carry out road works.

Amendment 121, which I committed to lodging at the introduction of the bill to the Scottish Parliament, will serve the important purpose of placing certain licence holders on the same level footing as other statutory undertakers by granting them road works rights.

As is set out in our policy memorandum, research by the Energy Technologies Institute found that civil engineering, such as the digging of trenches and the laying of pipes, accounts for roughly 40 per cent of a network's capital costs. Those costs can be reduced through granting greater utility rights to heat network developers, and that in turn can reduce costs for consumers and facilitate investment in projects.

To develop amendment 121, we worked closely with colleagues at Transport Scotland and the Scottish Road Works Commissioner, and we consulted the wider road works policy development group, which includes organisations such as the Society of Chief Officers of Transportation in Scotland, representatives of major utility companies, selected roads authorities and trade bodies such as Street Works UK. That work was essential to ensure that any new statutory undertaker rights were aligned with existing practices of the road works community.

Amendment 121 will insert a new section into the bill that provides that those licence holders with road works rights may carry out road works. That will include works that involve opening or breaking up a road; opening or breaking up a

sewer, drain or tunnel under a road; or tunnelling or boring under a road. It will also include works that involve removing or using all earth and materials in or under a road for the purposes of installing heat network apparatus in a road; inspecting, maintaining, adjusting, repairing, altering or renewing heat network apparatus that is installed in a road; changing the position of heat network apparatus in a road; removing heat network apparatus from a road; and other works that might require such works.

The meaning of "road works" is consistent with that in part 4 of the New Roads and Street Works Act 1991, meaning that a licence holder with those powers will be a statutory undertaker for the purposes of that part, and licence holders will have to comply with the obligations under that part in relation to the carrying out of the road works. That includes the giving of notice, inclusion of the works in the road works register, and the application of the Scottish Road Works Commissioner's guidance.

Amendment 121 also includes provisions for the placing of any structures for housing any other heat network apparatus on, over or along a road. Additionally, it clarifies the procedure for opening or breaking up roads that are not public roads. The provision is modelled on the current practices of electricity utilities and it requires consent from a road works authority unless the works are emergency works.

I draw the committee's attention to the fact that powers to carry out road works will be awarded only to certain licence holders who pass relevant additional checks to ensure that they meet the statutory undertaker obligations such as being able to reinstate roads to their previous condition. All remaining licence holders will be able to carry out road works by obtaining permission under section 109 of the New Roads and Street Works Act 1991.

Amendment 121 addresses concerns that were raised during the consultation, but also in responses to the committee. SCOTS noted:

"whilst statutory powers function well for large utility companies, they have been less successful for smaller operators. For example, they are granted to all holders of electricity generator licences but small wind farm operators are generally not set up to exercise these powers as they would only normally install apparatus once and are better suited to applying for permission from the roads authority under section 109 of the New Roads and Street Works Act."

In effect, the amendment will limit the number of licence holders that are granted road works powers as it requires that those rights will have to be specified in their licences. We will work with the prospective licensing authority and the Scottish Road Works Commissioner to develop the scrutiny that is necessary to award such rights via licences to those who wish to obtain them. That will be necessary to ensure that companies have sufficient financial capacity and knowledge to comply with the existing practices of other statutory undertakers in Scotland.

I also draw the committee's attention to the issues of placement of pipework and decommissioning of heat network apparatus in public roads. We have considered those concerns and agreed that they can best be dealt with through subsequent guidance and secondary legislation.

Amendment 85 is a consequential amendment to clarify the definition of land in the context of the network wayleave rights in section 58 and confirm that, in this instance, the land does not include the roads. That is deemed necessary in the light of amendment 121. I urge members to support both of my amendments in the group.

I move amendment 85.

12:00

The Convener: Thank you. It appears that the only question will be from me. Has consideration been given to the issue of roads being opened multiple times by various companies? Will there be something, perhaps in guidance, that looks to minimise that in order to minimise both environmental waste of resources and disruption for people who use the roads and pavements?

Paul Wheelhouse: That is an important point, convener. We all recognise that frustrating situations occur in that regard. I understand that the matter is covered in the Scottish Road Works Commissioner's guidance, but we can certainly ensure that it is reflected in any guidance that is issued in relation to its application in respect of heat networks. We will ensure that that important point is emphasised in order to reflect the committee's views.

The Convener: Thank you. Do you need to wind up on the group?

Paul Wheelhouse: I am happy to leave it there.

Amendment 85 agreed to.

Amendments 86 and 87 moved—[Paul Wheelhouse]—and agreed to.

Section 58, as amended, agreed to.

Section 59—Acquisition of necessary wayleave

Amendments 88 to 98 moved—[Paul Wheelhouse]—and agreed to.

Section 59, as amended, agreed to.

Section 60—Persons bound by network wayleave rights

Amendment 99 moved—[Paul Wheelhouse]—and agreed to.

Section 60, as amended, agreed to.

Section 61—Assignation of network wayleave rights

Amendment 100 moved—[Paul Wheelhouse]—and agreed to.

Section 61, as amended, agreed to.

After section 61

Amendments 101 to 104 moved—[Paul Wheelhouse]—and agreed to.

Section 62—Requirement to move apparatus when notified

Amendment 105 moved—[Paul Wheelhouse]—and agreed to.

Section 62, as amended, agreed to.

Section 63—Compensation in connection with network wayleave rights

Amendment 106 moved—[Paul Wheelhouse]—and agreed to.

Section 63, as amended, agreed to.

Section 64—Power to carry out survey

Amendments 107 and 108 moved—[Paul Wheelhouse]—and agreed to.

Section 64, as amended, agreed to.

Section 65—Power to enter land to replace or repair apparatus

Amendments 109 to 118 moved—[Paul Wheelhouse]—and agreed to.

Section 65, as amended, agreed to.

Section 66—Restrictions on powers of licence holders

Amendment 119 moved—[Paul Wheelhouse]—and agreed to.

Section 66, as amended, agreed to.

Section 67—Compensation for damage or disturbance

Amendment 120 moved—[Paul Wheelhouse]—and agreed to.

Section 67, as amended, agreed to.

After section 67

Amendment 121 moved—[Paul Wheelhouse]—and agreed to.

Section 68—Interpretation of Part 6

Amendments 122 and 123 moved—[Paul Wheelhouse]—and agreed to.

Section 68, as amended, agreed to.

Sections 69 to 76 agreed to.

After section 76

Amendment 154 moved—[Maurice Golden]—and agreed to.

Before section 77

Amendment 142 moved—[Mark Ruskell]—and agreed to.

Amendment 155 moved—[Maurice Golden].

The Convener: The question is, that amendment 155 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Simpson, Graham (Central Scotland) (Con)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0. I exercise my casting vote in favour of the amendment.

Amendment 155 agreed to.

Section 77—Fees for applications etc

Amendments 124 and 125 moved—[Paul Wheelhouse]—and agreed to.

Section 77, as amended, agreed to.

After section 77

The Convener: We turn to the final grouping. Amendment 156, in the name of Graham Simpson, is the only amendment in the group.

Graham Simpson: I shall be brief, because amendment 156 is itself brief and straightforward.

When we pass legislation, we often impose costs on other bodies. In this case, councils would be affected. Amendment 156 says, very simply, that

"The Scottish Ministers must prepare a strategy setting out the costs to local authorities in relation to their duties under this Act."

I do not think that anyone could possibly disagree with that. It also says that they

"must set out the approach"

that they

"intend to take to fund"

councils

"to fulfil their duties under this Act."

It is entirely right that councils should be given help if costs are imposed on them by our passing legislation. I see nothing controversial in amendment 156, so I intend to press it.

I move amendment 156.

The Convener: No member has indicated that they wish to speak on amendment 156. I invite the minister to do so.

Paul Wheelhouse: Resourcing of local authorities is an important topic, which we discussed at stage 1.

The financial memorandum sets out estimated costs for the regulatory measures that the bill seeks to introduce. Some of the amendments that we have discussed today, such as those in relation to heat network consents, will place additional duties on local authorities. After stage 2 the Scottish Government will update the financial memorandum to take account of any relevant amendments that have been agreed to.

The financial memorandum also sets out the Scottish Government's proposed strategy for resourcing local government. It makes clear our commitment to funding local government in areas such as heat network zoning, noting that

"these costs will be covered by the Scottish Ministers and therefore it is not expected to bring an additional burden to local authorities".

I acknowledge that the costs that have been set out are estimates and that the exact level of funding and the mechanism for distributing it have not yet been determined. Those matters will be subject to discussion with local government colleagues as we develop the regulations to give effect to the new regulatory regime. I remain very much committed to ensuring that appropriate funding is in place.

12:15

Graham Simpson's amendment 156 is no doubt well intentioned, but I remind him that the Scottish Government has a strong partnership arrangement with local government. Developing and maintaining a close and constructive partnership between central and local government has always been a Scottish Government priority, so that we can respond quickly and positively to the needs of councils and their communities. That partnership also enables us to jointly determine the costs of any new duties and how they will be distributed fairly.

The strategy setting out the costs and funding arrangements that Graham Simpson's amendment proposes would not only duplicate that agreement but it would dictate how local government should spend the funding that the Scottish Government provides, which runs entirely counter to the spirit of our current partnership.

I appreciate the reasoning behind amendment 156. I recognise that it is well intentioned and that the member is concerned about the resourcing of the new duties that the bill will create. I agree that we need to have a dialogue and ensure that we get that right. I am happy to put on the record my commitment to working with local government partners to ensure that local authorities are appropriately resourced to deliver the new functions that we are asking them to undertake. However, I do not believe that that needs to be put into statute, because it would cut across existing agreements between the Scottish Government and the Convention of Scottish Local Authorities and bind the hands of a future Administration, which should be free to determine and work collaboratively with local government on how funding is allocated.

To further reassure the member, I note the Scottish Government's support for the general principles of Andy Wightman's member's bill, the European Charter of Local Self-Government (Incorporation) (Scotland) Bill. If passed, that will introduce a duty on the Scottish ministers to act compatibly with the charter articles. One of those articles—article 9(2)—states:

"Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law."

All that points towards amendment 156 not being required. As I have set out, in line with the resourcing strategy that is outlined in the financial memorandum, the Scottish Government remains committed to working with local government to ensure that adequate resourcing is in place. The amendment is not required because it will create unnecessary duplication, is not in line with the existing arrangement between the Scottish Government and local government, and will bind the hands of a future Administration.

I am sorry that I cannot be more supportive, but I ask Graham Simpson not to press amendment 156. If he presses it, I urge members not to support it, for the reasons that I have given.

The Convener: I call Graham Simpson to wind up the debate and to say whether he wishes to press or withdraw amendment 156.

Graham Simpson: The minister, having been so collaborative up to this point, departs from that approach and has not come up with a single argument against my suggestion. He talks about existing agreements, but there is some dispute about that. Every single year, COSLA and the Scottish Government butt heads over the amount of funding that goes to councils.

The minister talks about Andy Wightman's bill, but that has not yet become law. That is not an argument against amendment 156. If that bill was law, the minister might have a point, but it is not law and it has not been passed. It might well be passed—I hope that it is—but it has not yet gone through.

My amendment 156 is sensible. It merely says that, if we are to impose costs on councils, we should set out the strategy for that and say how we intend to fund them. There is nothing controversial about that. The minister has not even offered to work with me on the issue, which is unusual, as he has offered to work with members in relation to other amendments throughout stage 2. As far as I can see, he has not come up with a single argument against amendment 156, so I will press it.

The Convener: Let us see whether the amendment is controversial or not. The question is, that amendment 156 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Simpson, Graham (Central Scotland) (Con)

Against

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0. I exercise my casting vote in favour of the amendment.

Amendment 156 agreed to.

Sections 78 to 80 agreed to.

Section 81—Regulations

Amendments 126 and 127 moved—[Paul Wheelhouse]—and agreed to.

Amendment 143 moved—[Mark Ruskell]—and agreed to.

Amendments 128 and 129 moved—[Paul Wheelhouse]—and agreed to.

Section 81, as amended, agreed to.

Section 82 agreed to.

Section 83—General interpretation

Amendments 130 to 133 moved—[Paul Wheelhouse]—and agreed to.

Section 83, as amended, agreed to.

Section 84—Commencement

Amendments 144 and 157 not moved.

Section 84 agreed to.

Section 85 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. The bill will now be reprinted as amended at stage 2, and the amended bill will be published on the Parliament's website at 8.30 am tomorrow.

The Parliament has not yet determined when stage 3 will be held. Members will be informed of that in due course, along with the deadline for lodging stage 3 amendments. In the meantime, stage 3 amendments may be lodged with the clerks in the legislation team.

The committee will now move into private session.

12:25

Meeting continued in private until 12:40.

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