OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Recovery Committee

Thursday 9 June 2022

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 9 June 2022

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COVID-19 RECOVERY COMMITTEE
16th Meeting 2022, Session 6

CONVENER

*Siobhian Brown (Ayr) (SNP)

DEPUTY CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

COMMITTEE MEMBERS

*Jim Fairlie (Perthshire South and Kinross-shire) (SNP)
*John Mason (Glasgow Shettleston) (SNP)
*Alex Rowley (Mid Scotland and Fife) (Lab)
*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Mark Griffin (Central Scotland) (Lab)
Stephen Kerr (Central Scotland) (Con)
Edward Mountain (Highlands and Islands) (Con)
Oliver Mundell (Dumfriesshire) (Con)
Graham Simpson (Central Scotland) (Con)
John Swinney (Deputy First Minister and Cabinet Secretary for Covid Recovery)
Mercedes Villalba (North East Scotland) (Lab)

CLERK TO THE COMMITTEE

Sigrid Robinson

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

COVID-19 Recovery Committee

Thursday 9 June 2022

[The Convener opened the meeting at 09:00]

Coronavirus (Recovery and Reform) (Scotland) Bill: Stage 2

The Convener (Siobhian Brown): Good morning and welcome to the 16th meeting in 2022 of the COVID-19 Recovery Committee.

The first and only item on our agenda is consideration of the Coronavirus (Recovery and Reform) (Scotland) Bill at stage 2.

I welcome to the meeting the Deputy First Minister and Cabinet Secretary for Covid Recovery, and his supporting officials. I also welcome Graham Simpson and Oliver Mundell.

I note that the officials who are seated at the table are here to support the Deputy First Minister, but are not able to speak in the debates on amendments, so members should direct their comments or questions for the Scottish Government to the Deputy First Minister.

Members should be aware that some officials who are supporting the Deputy First Minister are seated in the public gallery and will be swapping places, as required, with those who are seated at the table.

Parliament has agreed that stage 2 consideration of the bill will be split between this committee and the Criminal Justice Committee. The detail of how the bill has been split at stage 2 is set out in motion S6M-04477.

To summarise, I note that the Criminal Justice Committee met yesterday to consider the justice-related provisions in parts 3 and 5 and in the schedule to the bill. Today, this committee will consider the remaining provisions of the bill, including those in parts 1 to 4 and 6, as well as the long title.

Once we have made progress on the bill, if there is a good opportunity to take a short comfort break between groupings, I will allow that and briefly suspend the meeting.

I will allow the meeting to run until approximately 11.30 am. If we have not concluded stage 2 by that time, I will suspend the meeting and we will reconvene in this room at 5.30 pm. Decision time is currently scheduled to be at 5 pm, so that should allow time for members to get back to this room.

Before we begin, I will also briefly explain, for everyone who is watching, the procedure that we will follow this morning. The amendments that have been lodged have been grouped. There will be one debate on each group of amendments. I will call the member who has lodged the first amendment in each group to speak to and move that amendment, and to speak to all the other amendments in the group. I will then call other members who have lodged amendments in that group. Members who have not lodged amendments in the group, but who wish to speak, should try to catch my attention.

If he has not already spoken on the group, I will then invite the Deputy First Minister to contribute to the debate. The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to seek to withdraw it. If they wish to press ahead, I will put the question on the amendment.

If a member wishes to withdraw their amendment after it has been moved, they must seek the agreement of the other members to do so. If any member who is present objects, the committee will immediately move to a vote on the amendment.

If a member does not want to move their amendment when called to do so, they should say, “Not moved.” Please note that any other member who is present may move the amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting in a division is done by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will put a question on each section at the appropriate point.

Now that we have covered the housekeeping matters, we can start the substantive business.

Before we do so, because Oliver Mundell has not joined our committee before, I ask him to declare anything that is recorded on his entry in the register of members’ interests that might be relevant to this committee.

Oliver Mundell (Dumfriesshire) (Con): I have no relevant interests to declare.

Section 1—Public health protection measures

The Convener: The first grouping of amendments is entitled "Public health protection regulations: use of power and safeguards". Amendment 4, in the name of Brian Whittle, is grouped with amendments 5, 23, 1, 24, 10, 25, 26, 11, 6, 12, 27, 28 and 7 to 9. I remind members that if amendment 10 is agreed to, I cannot call amendments 25 and 26, as they will have been pre-empted.

I ask Brian Whittle to speak to and move amendment 4, and to speak to all the amendments in the group.

Brian Whittle (South Scotland) (Con): Good morning, everyone. I have only a couple of amendments in the group. The first one, amendment 4, is quite simple. I would like to understand who determines what constitutes "significant harm", under section 1 of the bill. It is important for all MSPs and the general public that we understand that it is a medical decision, so it seems logical to me that the decision about what "presents … significant harm" to public health should be made by the chief medical officer. All I am asking is that that be inserted in the bill and that the chief medical officer have that role.

My other amendment, which is amendment 5, relates to what happened when we introduced the coronavirus emergency legislation. Obviously, we were unable to determine that legislation's unintended consequences for other health issues. We are starting to understand a little better the other health issues that have happened because of lockdown and our need to focus on the coronavirus. Cancer is often discussed in that regard, and we also discuss the impact on elective surgery.

Through amendment 5, I am looking for a balance to be struck between taking decisions that I hope we never have to take and the impact on long-term health risks, because we now have a baseline that we understand. There is a balance to be struck between long-term health risks and taking action against an immediate health threat. I am asking that the Scottish ministers consider the health impacts in the round, rather than just the health risk at the time when they take their decisions.

I move amendment 4.

The Deputy First Minister and Cabinet Secretary for Covid Recovery (John Swinney): There is an extensive amount of material in the group of amendments, so I have quite a lot to say. I will try to minimise what I have to say on later amendments.

The overarching amendment in the group is amendment 23. Alongside amendments 38 and 39 in group 2, it will strengthen parliamentary safeguards in the bill by introducing the gateway vote mechanism that was announced in the stage 1 debate.

I will repeat the key points that I set out in that debate. There is a clear and compelling argument for ministers to have public health protection powers in the bill. Action by ministers must be grounded in evidence, and Parliament must be involved in decision making more effectively than was originally proposed in the bill.

Amendment 23 proposes adding new sections 86AA and 86AB to the Public Health etc (Scotland) Act 2008. That would mean that key aspects of the public health protection power could have effect only after a parliamentary vote on, and approval of, a formal Government declaration. To ensure that Government action is grounded in evidence, such a declaration would be informed by the advice of the chief medical officer or another designated person.

The key aspects of the power could be exercised only while the approved declaration remained in place. Conversely, were ministers to revoke the declaration, those same aspects could not be used without a further declaration. A public health declaration's coming into force would not require the Scottish ministers to make regulations; it would simply open up the potential for them to do so if the other tests for making regulations in the bill were met.

As I signalled in the stage 1 debate, provision is made for circumstances in which Parliament cannot meet to approve a declaration—for example, when it has been dissolved in a pre-election period. For clarity, I point out that weekends, public holidays and periods of recess would not ordinarily fall into that category. It would usually be practicable in those circumstances to seek a recall of Parliament in sufficient time for the necessary public health response to be put in place.

As I also signalled in the stage 1 debate, amendment 23 excludes standing preparedness measures that would be intended to strengthen the public health resilience framework. They would be subject to parliamentary safeguards and could not objectively be described as "emergency measures".

By agreeing to amendment 23, the committee would preserve the ability for swift and effective action to be taken to respond to a public health threat, balanced with proper parliamentary scrutiny. Parliament can enact the bill's public health protection powers with the confidence that, in the event of a future public health threat,

lockdown and other emergency response measures could be imposed only if Parliament approves a declaration.

In speaking to amendments 25, 26 and 27, I am mindful of the significant concerns regarding the ability for regulations that are made under the power in proposed new section 86A(1) to amend primary legislation—the so-called Henry VIII power—and of the recommendations that the committee made at stage 1. Amendments 25 to 27 are designed to strengthen parliamentary scrutiny. If the amendments are agreed to, regulations that are made under proposed new section 86A(1) that would modify primary legislation could be made only using the draft affirmative procedure. That means that primary legislation could not be amended by proposed new section 86A regulations that are made using the made affirmative procedure, and that Parliament would always have the fullest opportunity for scrutiny.

I hope that that reassures members that the Government has acted on the concerns about the scope of the power, and that Parliament's role in scrutinising regulations that would amend primary legislation has been secured.

I acknowledge that some members wish us to go further. Alex Rowley's amendment 1 would entirely remove the ability to amend enactments. I believe that it is necessary to include the provisions that I have set out in the restricted form that amendments 26 and 27 would deliver. First, I reiterate that it is intended that the power would be used only for existing legislation that, without modification, would cause confusion—for example, where provisions in public health regulations conflicted with other primary legislation or lessened the effectiveness of a public health response.

Secondly, the public health provisions in the bill are rightly informed by our experiences of the pandemic, which demonstrated that measures that will be needed are not always foreseeable and that speed can be vital. As an example, I point out that the 2008 act requires health boards to pay compensation to individuals who are asked to isolate. Earlier this year, expedited primary legislation was required to ensure that boards were not overwhelmed by that duty when isolation was related to coronavirus. Using primary legislation was practical at that time, but it might not always be. Although I hope that the power will never be used or needed, it is prudent to ensure that it is available if necessary.

Thirdly, as I outlined to the committee in April, the provision in proposed new section 86F(2)(d) of the 2008 act is part of the wider power in proposed new section 86A, which contains important safeguards and thresholds. Those have been extensively documented. In particular, the power could be used only as part of a response to a public health threat that

"presents or could present significant harm to human health".

Amendments 25 to 27 will also add the safeguard of parliamentary scrutiny before any changes to primary legislation can take effect.

My final point is that the power, although it is significant, is not without precedent.

The lessons of the pandemic have convinced us of the need to be able to amend other legislation, even though equivalent provision is not part of the English and Welsh model. I hope that the committee will acknowledge that our experience of the pandemic has led us to diverge from England and Wales in other areas, and that therefore the case is made on the matter.

In a later group, I will speak to amendment 67, which relates to commencement. However, for the present, I will set out why I do not support amendments 8 and 9. In general, my reason for opposing any delay to public health provisions is that the Covid pandemic clearly highlighted a gap in our legislative framework in respect of responding to significant public health threats. We had to rely on emergency United Kingdom legislation to provide Scottish ministers with powers to control the virus's spread.

It would be ill-advised to delay closing a gap that we have already identified. Recent experiences of unusual presentations of hepatitis in children and the monkeypox outbreak are irrefutable evidence that public health threats can emerge with very little warning. The Government would be rightly criticised were another threat to emerge and we had once again to resort to emergency legislation. Moreover, the powers will merely align us with England and Wales, which have had the powers for over a decade.

On the specific content of amendment 8, first, there has already been a 12-week consultation on the bill, in addition to the usual evidence gathering by committees. Appropriate impact assessments were also carried out in line with standard parliamentary process. Indeed, that is one of the strengths of having the powers on a permanent basis, rather than relying on emergency legislation for future threats.

Secondly, section 1 provides a general power to make regulations; it does not impose restrictions or requirements. Therefore, consultation would yield very little about the impact of the power that has not been found in the already extensive consultation period.

09:15

Thirdly, the groups that are set out for consultation mirror the groups that have been significantly affected by Covid restrictions, but those might not be the groups that would be most impacted by future responses. As the Government has stressed from the outset, one public health threat might be very different from another; so, too, might the measures that are needed in order to respond be different.

For those reasons, consultation should be determined by the content of regulations as and when they are laid. Section 122 of the 2008 act already specifies that, where practicable, consultation should be carried out with affected persons. That requirement would apply to any regulations that are made under proposed new section 86A.

With regard to amendment 9, there are lessons to be learned from the Covid response, and the inquiry is an important part of that process. Following its conclusion, there might be recommendations for other legislative changes but, as I have noted, we have already identified a clear gap and should move quickly to address it. Additionally, amendment 9 would go considerably further by delaying commencement of all the public health measures in the bill.

Although I recognise that section 1 has been a source of concern, other matters in part 1, such as monitoring provisions, provisions to ensure that the regime governing potential travelling restrictions is consistent, and provisions to expand the range of individuals who can deliver vaccines, have been well received or are uncontroversial.

With regard to amendment 4, I understand Mr Whittle's perspective. Before placing restrictions and requirements on people and business, gathering supporting evidence is crucial. However, there are very good reasons for the fact that we have not explicitly in the bill required chief medical officer advice in relation to making regulations under the public health protection powers.

The chief medical officer might not always be the person who is best placed to make a determination as to the threat and might, in exceptional circumstances, be unavailable to make such a determination. For example, in the event of a chemical agent attack, the most appropriate person could be the chief scientific adviser. Amendment 4 does not allow for substitutions.

On more substantive grounds, it is precisely because of the potentially significant impacts of public health regulations that, with advice from relevant authorities, ministers should take the decisions to lay regulations, and nothing should detract from that ultimate responsibility.

Brian Whittle: The point is that, especially around health, somebody has to gather and assess information and it should not be ministers who do that. You would rely, specifically, on your CMO to gather that information. Ultimately, when assessing a threat from, as you said, a multitude of potential inputs, surely it should be your CMO who advises you on the gathered evidence.

John Swinney: I would expect the CMO to be involved intimately in that process, but as I have just recounted, it will not always be the CMO who is best placed to do that.

Evidence is gathered for ministers from a multitude of sources. Ultimately, ministers make judgments based on the advice that they are given, because ministers are accountable. The CMO is not accountable for decisions. Decisions are, properly, for ministers to take. Independently, ministers must assess the evidence that is put in front of them and come to a judgment.

Graham Simpson (Central Scotland) (Con): In listening to what you have said about Mr Whittle's amendment 4, I wonder whether there is room to work with Mr Whittle to improve the amendment for stage 3. You have commented that you feel that it is too restrictive at the moment, but maybe it could be improved.

John Swinney: I am certainly willing to consider the issues that arise. Colleagues will make a number of points this morning and, perhaps, this evening. I am happy to reflect on those points and to have further discussions. Indeed, on certain amendments, I will offer to do so.

In relation to the current point, there will be times when decisions on whether to impose restrictions or requirements are made locally. For the reasons that have been set out already, those decisions should be made by the people who know communities best, but it would be disproportionate to suggest that, for example, an environmental health officer must always consult the chief medical officer before making a decision.

It is important to highlight how many safeguards are included in the public health protection provisions and that expert advice will be sought under each. By way of example, Scottish ministers are required to carry out a proportionality assessment when making regulations under new section 86A in the 2008 act, and clinical advice would necessarily inform that assessment.

Additionally, regulations can be made only in response to a threat that presents or could present a "significant" risk, and regulations that enable the imposition of a special restriction or requirement can be made only where the threat is "serious and imminent". Assessment of threat levels could be carried out only with advice from the CMO or other qualified advisers.

Finally in this respect, if the public health declaration amendment is accepted, it would require Scottish ministers to consult the chief medical officer or equivalent before proposing to make a public health declaration. I hope that that provides further assurances that appropriate advice and evidence will inform Government action.

I therefore cannot support amendment 4. I believe that it would impact the speed at which we could respond to a public health threat in an emergency situation, result in a disproportionate demand on the chief medical officer's time and expertise and, in reality, reduce accountability for decisions that could have profound consequences.

I am grateful for Mr Whittle's consideration of the matters raised in amendment 5, and I am willing to listen to arguments in favour of it. However, at present, I am not convinced of its value. My chief reason for that is that, as noted, all regulations must meet a proportionality test. In assessing that, the long-term health impacts, where relevant, would of course inform thinking. However, that may just be one of the many factors, and to mention only one in the bill may prejudice deliberations in its favour.

Additionally, the amendment does not distinguish between the regulations to which it would apply, unless it would apply to any that are made under new section 86A(1), regardless of their purpose. Concerns around the long-term impacts on public health as a result of Covid control measures are well documented. However, Covid should not be the template for consideration of all public health threats. Others may take different forms and require wholly different measures. Thus, a blanket requirement to consider long-term health impacts may not be appropriate. It would also be impossible to measure the long-term impacts of preparedness regulations, which would not impose restrictions directly and which might only impose obligations on the Scottish ministers or other bodies. A statement would therefore add nothing meaningful to scrutiny.

For all those reasons, I currently do not support amendment 5 but, as I said, I am open to arguments in its favour and will consider it further.

Amendment 24 is, I hope, uncontroversial. It would exempt regulations that are made on a "general" or "contingent" basis—that is, regulations empowering potential action if a significant public health threat emerged but which do not themselves impose any new restrictions or requirements—from the on-going three-weekly review process that is set out in new section 86G in the 2008 act.

Of course, amendment 24 has no impact on regulations that are made in response to a significant public health threat and which, if the Government's amendment 23 on a public health declaration is passed, could not be laid without such a declaration. The reason for amendment 24 is that it would be both unduly onerous and an unreasonable use of public resources to subject to review every three weeks regulations that are intended to sit on the statute book on an on-going basis and that do not impose any new restrictions or requirements.

I have considered the issues that were raised during stage 1 by this committee and the Delegated Powers and Law Reform Committee. Amendment 28 provides for an explanation of urgency if the made affirmative procedure needs to be used in urgent circumstances to make public health regulations. The bill already provides for the draft affirmative procedure to be the norm and the made affirmative procedure may be used only for reasons of urgency. Members are aware that the parliamentary authorities are working with Government officials on a protocol for an expedited draft affirmative procedure in appropriate cases.

Amendment 28 also provides for an expiry or sunset provision to be included in public health regulations where the made affirmative procedure is used, unless the regulations amend regulations that already include an expiry provision.

The alternative amendments 6, 10, 11 and 12 that have been lodged by Mr Fraser and Mr Simpson in relation to made affirmative regulations would either mean that the made affirmative procedure was not available or lead to delay. I consider that the Government's amendment 28 fully addresses the points that were made by the scrutiny committees at stage 1, and it should be preferred.

Amendment 7 would remove the public health regulation-making power entirely. I have already documented why these public health measures are so important, but the recent pandemic speaks more clearly on that point than I could. Therefore, I will not dwell on arguments against the amendment; I simply say that the amendments that the Government has lodged will add significant safeguards to the rules that were already included in the bill when it was introduced. I hope that that reassures members that their voices have been heard and that the bill will be better as a result.

For the reasons that I have given, I invite the committee to support my amendments in the group, and I ask other members not to press their amendments.

Alex Rowley (Mid Scotland and Fife) (Lab): Amendment 1 is the only amendment to the bill that I have lodged. As we have heard from many witnesses at our evidence sessions, the bill is wide ranging, and there is an argument to be made that we should focus better. Umpteen bits of legislation could have been introduced, such as the housing legislation that Scottish Labour very much supports. There is a question about the bill in general, but my amendment seeks specifically to remove the so-called Henry VIII powers.

I have argued, and will continue to make the case, for a significant transfer of powers to this Parliament, but the use of the Henry VIII powers basically removes powers from the Parliament, which is the legislature, and puts them into the hands of ministers, or the executive. That cannot be right, and it is why people are rightly using the term "power grab". I did not particularly support the use of that term at first but, when I looked at the evidence, it was clear that that usage was legitimate.

I will not go through all the evidence—there is plenty of it—but I highlight the evidence from Dr Tickell and Professor Britton from Glasgow Caledonian University. In their written response, they said:

> "While powers of this kind have been used by the UK government to adapt the statute book to the United Kingdom's departure from the European Union, Henry VIII powers are rightly controversial, as they infringe upon the separation of powers, give legislative functions to the executive, and can be imposed with modest opportunities for parliamentary scrutiny, particularly in circumstances when they are used on an emergency basis."

I therefore lodged amendment 1 on a point of principle. Despite the fact that my party supports many aspects of the bill—we think that it should have been done differently, but we support quite a lot of it—because of that point of principle, we could not vote for it. We cannot vote to take powers from the legislature and put them in the hands of the executive.

In the stage 1 debate, in my view, the best speaker on the Scottish National Party side of the chamber was John Mason. He made the point that, although he hoped that the Deputy First Minister and First Minister would have a long career in those positions, at some point another Government could be in place. It is the principle that is the point: whoever is in power should not have the powers that are set out in the bill.

John Swinney: I understand all the points that Mr Rowley makes, and the strength of his opinion on that point, and I would not question in any way his commendation of John Mason's debating skills. Nonetheless, I ask him to reflect on the amendments that I have lodged to the specific powers that Mr Rowley mentions. I have conceded—I did so in the stage 1 debate, and I have brought forward changes this morning—that any exercise of these powers would have to be approved by Parliament. A parliamentary regulation would have to be brought forward.

That cannot be undertaken under the made affirmative process; it has to be done under the draft affirmative process. Parliament would have to actively approve any changes before they were brought into effect, and that could happen only if the gateway mechanism had been gone through, because we were dealing with a public health emergency.

09:30

Since the bill was published, the Government has proposed two very substantial additional safeguards in its amendments, in response to the concerns that have been expressed by commentators. Some of the commentators that Mr Rowley cited have since reflected publicly on the points that I made in the stage 1 debate, and they welcome the steps that the Government has taken to revise the proposals accordingly in the light of the comments that I made during the stage 1 debate.

Alex Rowley: I acknowledge that the Deputy First Minister has attempted to address the concerns, but I have to say that—based on the evidence—the attempt does not go far enough. In the interest of democracy, of ensuring that the Parliament is the legislature and has the powers to legislate and of making sure that no executive should take powers away from the Parliament and to itself, the mechanism does not go far enough and concerns remain. Although I acknowledge that the gateway vote mechanism is an attempt to address the concerns, it does not go far enough, and I say that on a point of principle. If we allow this to happen, what happens in future when the next Government makes a decision?

I wondered where the phrase "Henry VIII powers" came from. Basically, in 1539, the then king wanted to make law without reference to the English Parliament, and that is when those powers came about. In 2022, when a Scottish Government—an SNP Government—wants to use similar powers to those that Henry VIII did in 1539, and take powers away from the legislature and this Parliament, that has to be a point of principle.

It is a shame, because having sat through evidence sessions and read the responses that we have had, there is a lot in the bill that can be supported, but we cannot support taking powers from the legislature and giving them to the executive. It is a point of principle.

John Mason (Glasgow Shettleston) (SNP): Would the member accept that, in effect,

Parliament has a veto? That means that a conscious decision would have to be made at the time.

Alex Rowley: I put that back to Mr Mason: would he accept that the best veto would be to not have the Henry VIII powers in the first place? If we ended up in a situation in which we had another pandemic of some sort—that threat is likely; we had the Spanish flu 100 years ago—our experience is that the Government would not have a problem in coming to Parliament and putting legislation through quickly. Not only have many of us been supportive of the Government, but we have stood shoulder to shoulder with it through the pandemic to support what it did under massively difficult circumstances. However, this is a principle too far.

John Swinney: In a sense, Mr Rowley has made my argument for me. We all accept the threat of another pandemic. Parliament had to legislate, in extremis, with primary legislation that was rushed through Parliament to try to address the situation. I am trying to learn early lessons from the pandemic and equip the statute book with the ability for us to respond, with necessary Parliamentary oversight, and to exercise the appropriate powers. Indeed, Fiona de Londras, whom Mr Rowley quoted, has welcomed the steps that I have taken to strengthen parliamentary oversight.

Mr Rowley is making comments that were relevant prior to and in the stage 1 debate but, in the light of the amendments that the Government proposes, I suggest that he is not adapting to the proposed changes in which parliamentary oversight is being given. As Mr Mason says, a veto is being given to Parliament on any changes that it does not believe to be appropriate. We are putting in place the means by which we can respond speedily in a situation that Parliament has thought about well in advance. That is what the 12-week consultation and the three-stage process of parliamentary scrutiny to make legislative change are all about.

Alex Rowley: I have welcomed the steps that the Government has taken. It was suggested that the Government has listened, but those steps do not go far enough. That is the point. There is a point of principle, which is that to take powers from the legislature into the executive is fundamentally—

John Swinney: That is not what is happening. It might have been a legitimate accusation in the stage 1 debate, but it is not a legitimate accusation now, because I have lodged an amendment that, in essence, says that Parliament must approve any changes that are exercised under the one line in the bill that Mr Rowley wants to remove.

Alex Rowley: I respectfully disagree. If the Government looked at the evidence and took it seriously, it would support my amendment, which is the only amendment that I am proposing, based on the principle that the Scottish Parliament is sovereign. It, not the executive, is the legislature.

On that basis, I hope that the Government will reconsider the matter. It is a point of principle and it is wrong for any Government, regardless of its political colours, to take powers from the Scottish Parliament and hoard them for itself. Murdo Fraser used the term "power grab". Sadly, having considered the evidence, I have concluded that that is a fair term to use.

I know that the Government will not support my amendment, but I urge it to think again and, at stage 3, support removing the Henry VIII powers. The Government does not need them and there is a fundamental point of principle that needs to be recognised.

Graham Simpson: Before the meeting, Mr Rowley and I made a pact that, if he was brief, I would be brief. I knew that he could not stick to his end of the bargain—but rightly so, because he had some really important points to make, which I agree with.

I sit on the Delegated Powers and Law Reform Committee. I am not representing it here, but, as this committee knows, the DPLR Committee produced a report, which this committee has seen, into the delegated powers in the bill, and we made some recommendations. I will take members through them before I speak briefly about my amendments in the group.

The first recommendation was

"that the Scottish Government"

should bring

"forward amendments on each power which can be exercised subject to the made affirmative provision".

Our main area of concern was the use of the made affirmative procedure, so we recommended

"that Scottish Ministers provide a written statement prior to the instrument coming into force providing an explanation and evidence as to why the Scottish Ministers consider the regulations need to be made urgently when using the made affirmative procedure".

We also recommended

"that Scottish Ministers include an assessment of the impact of the instrument on those affected by it"

and

"that statutory instruments made under the powers are subject to a sunset provision."

I lodged some amendments for yesterday's Criminal Justice Committee meeting that reflected

those recommendations, and I have done the same for this meeting.

If members read amendment 10, which is the first of my three amendments in the group, I am afraid that they will struggle to work out what it does. I have a long and technical explanation, which I will spare you. In essence, amendment 10 removes the ability of ministers to use the made affirmative procedure—it is quite blunt. If you agree with that, that is all well and good and the other amendments fall; if you do not agree with that, we have some alternatives.

The alternatives are amendments 11 and 12. Amendment 11 says that, if ministers think that the regulations should be made "urgently", they should explain to the Parliament why that is so—with evidence—and there should be a vote on the regulations. As the committee is well aware, using the made affirmative procedure does not allow for a vote—stuff just goes through without scrutiny. The amendment reflects the recommendations of the DPLR Committee.

Amendment 12 says that there should be a statement with evidence, an assessment of the impact of the regulations and a sunset clause period of a maximum of one year. Given that I am a very reflective sort and that I listen to arguments—I listened to those of Mr Swinney's colleague Keith Brown yesterday and to those of Mr Swinney today—I think that amendment 12 probably goes a bit too far in that it would impose the sunset clause for one year across the board. Having reflected on that point, I think that Mr Swinney's amendment 28 is probably better than amendment 12, so I will not press it. However, I will move amendments 10 and 11.

I will end there—I promised to be brief.

Murdo Fraser (Mid Scotland and Fife) (Con): As this is my first contribution, I should refer members to my entry in the register of members' interests. I am a member of the Law Society of Scotland and I derive some income from rental properties.

I will speak to four amendments in the group—amendments 6, 7, 8 and 9—and I will comment briefly on the Government's amendments and those of other members.

My amendment 7 seeks to remove section 1 of the bill in its entirety, which goes to the heart of our objections to the bill and asks whether it is necessary at all to legislate at the present time to make permanent what were emergency and extraordinary powers that were given to the Scottish ministers to deal with the public health crisis.

We explored those issues in detail during the stage 1 debate, so I will not rehearse all those arguments today. However, I believe that we still have to hear a credible justification as to why those public health measures need to be in the bill and why such matters cannot be dealt with in another way. The committee has heard from a range of stakeholders who share that view, and our public engagement showed, among those people who responded, a 90 per cent opposition to those measures being in the bill as proposed.

John Mason: Does the member accept that, as with anything in life, it is better to be prepared? One can never be prepared completely for what will come up, but we all have car insurance and a variety of things in life to be prepared for events. Is the principle here not that it is better to be better prepared than we were in March 2020?

Murdo Fraser: I thank Mr Mason for that intervention, but, as I set out in the stage 1 debate, there is an alternative approach, which was laid out to the committee by Professor Fiona de Londras, who said that it would be quite possible for all parties to agree draft legislation that could sit on the shelf, ready to be introduced as and when required—

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): Will the member give way?

09:45

Murdo Fraser: Let me just finish my sentence if I may, Mr Fairlie.

The Parliament has already demonstrated, as it did two years ago, that it can move very quickly in an emergency to pass legislation. The important point—this touches on the comments that Mr Rowley made a short time ago—is that progressing in that way allows Parliament at that point to amend legislation and Parliament as a whole to lodge amendments. That method of dealing with the law is not possible if we legislate in a way that passes to ministers the power to produce regulations that Parliament cannot amend. Although Parliament has the right to say yes or no to regulations—I welcome the cabinet secretary's amendments that will strengthen Parliament's power—it has no power to amend them. Making this a matter of primary legislation would put the power back into the hands of Parliament not just to vote yes or no, but to lodge amendments.

Jim Fairlie: Murdo Fraser mentioned Professor de Londras. As the conversation went on, during stage 1, I said to her:

"The bill simply means that, in a legislative sense, we are preparing ourselves for the future so that, in the event of another emergency, we have the legislative competence to enable us to deal with it in this Parliament. Is that a fair assessment?"

She said:

"Yes, that is exactly right."—[*Official Report, COVID-19 Recovery Committee*, 3 March 2022; c 11.]

We keep hearing about Professor de Londras being against the provision. I fully understand the position that Alex Rowley has taken, but the Government has stepped up and listened to what has been said. Surely nobody in the Parliament would suggest that we should not have the legislative competence to deal with any emergency that arises.

Murdo Fraser: We have legislative competence here; it is simply a matter of whether we decide to legislate now, putting the power in the hands of ministers to produce regulations that Parliament can only say yes or no to, or to retain power in the hands of Parliament, whose members can then lodge amendments to what has been proposed. There is simply a fundamental difference of view between me and Mr Fairlie on that particular issue.

Brian Whittle: Does Mr Fraser agree that the whole point of amending the proposed legislation is to allow for flexibility, as we do not know what is coming down the track and that, if the bill is passed and we cannot amend it, that will constrain our ability to approach whatever is coming down the track?

Murdo Fraser: Mr Whittle has made a very fair point.

That is the purpose of my amendment 7. If amendment 7 does not attract favour—it might not—I have a number of other amendments in the group that all seek to improve the measures in the bill.

My amendment 6 is very similar to amendment 11, in the name of my colleague Graham Simpson, but its reach is narrower. It requires a statement by ministers of reasons why the made affirmative procedure must be used. The committee recommended that at stage 1, following the evidence that we heard from a number of stakeholders. The amendment is very sensible and reasonable, and I commend it to colleagues.

My amendment 8 requires an assessment to be made of the impact of any regulations on impacted persons, including retail groups, industry organisations, trade bodies and any other relevant groups, before ministers introduce them. It requires ministers to consult such groups, "insofar as is practical", prior to the introduction of such regulations. That addresses a concern that has been raised over the past two years by a variety of stakeholders, particularly in the business community, about the very negative impact that regulations have had on businesses. They were not adequately consulted on those before they were introduced, and no proper assessment of the impact was conducted. A very good example of that is the vaccination passport scheme, which, as we know, was very controversial and was strenuously opposed by business. Businesses felt that they were not adequately consulted on that before it was introduced and that no proper assessment of its impact was done. Amendment 8 would require ministers to consider the impact that regulations would have before bringing them in and to consult—but only "insofar as is practical", because I understand the points that have been made about the need to act at speed in response to a public health emergency.

John Swinney: Will Mr Fraser set out what he would consider to be practicable in his consultation exercise? I would contend that there was extensive consultation with a myriad of organisations. What was difficult to secure was unanimity, which I think is the point that Mr Fraser is getting at.

Murdo Fraser: I am not expecting unanimity, nor am I proposing in amendment 8 any sort of right of veto for stakeholders against the actions of ministers. It is simply a requirement to consult. The qualification "insofar as is practical" is a recognition that, in a fast-moving public health situation, ministers may require to act very quickly. I do not want to tie the hands of ministers entirely. However, given the experience that we have had over the past two years and the quite serious concern among members of the business community about the negative impact of regulations that were imposed on them without adequate consultation, I think that we should place an obligation on ministers to consult, in so far as it is practical to do so.

Finally, my amendment 9 relates to the Covid inquiry. I think that the cabinet secretary will give a statement to update Parliament on that inquiry this afternoon. The inquiry has just been established, and we have not yet had any opportunity to hear any evidence that has been presented to the inquiry or to listen to the view of the inquiry in terms of recommendations and lessons to be learned. It seems to me rather strange that we are rushing to legislate for future pandemics before we have learned the lessons of this one. Therefore, my amendment 9 seeks to delay implementation of the bill until such time as the Covid inquiry has concluded, so that we can see what lessons might be learned.

I support my colleague Brian Whittle's amendments 4 and 5, and I think that he has made some fair points. I am very much in support of Alex Rowley's amendment 1. In fact, if Mr Rowley had not lodged amendment 1, I would have lodged an amendment in similar terms. Mr Rowley made an eloquent case as to why the Henry VIII powers should be removed, and he gave us a helpful history lesson in relation to the powers of monarchs in that respect. I reiterate the

point that I made in response to Mr Mason and Mr Fairlie. Although I welcome the Government amendments that restrict, to an extent, the operation of Henry VIII powers by the Government, the amendments do not remove those powers entirely. Again, this is an issue about putting power in the hands of ministers rather than in the hands of Parliament.

Regulations that are introduced by ministers—however qualified they are—can only be voted for or against by Parliament. There is no opportunity for Parliament to amend the regulations. That is why I believe that removing the Henry VIII powers is an essential move, so I will support amendment 1.

Although the Government amendments in the group do not go far enough for me, they are nevertheless an improvement on the bill as drafted, and I will be happy to support them.

Brian Whittle: I listened to the cabinet secretary with interest, and I appreciate his consideration of the amendments. I think that the person who decides what presents a significant and immediate health risk once evidence is gathered should be somebody with significant medical experience. All that we are trying to do with amendment 4 is ensure that the chief medical officer has a role in determining what presents a significant harm to public health. I cannot see why that would be an unreasonable ask.

With regard to amendment 5, the word "consideration" is important, because we are trying to ensure that there is a balance between the impact that the regulations could have on long-term health matters and the need to deal with a potential threat. One of the lessons that we have learned from Covid is that there are significant long-term health issues, and those should always be taken into account when making a decision. If we do not accept that consideration should be given to that aspect, we are saying, in essence, that the Government does not need to consider long-term health risks in addressing these issues. I hear that the cabinet secretary is prepared to explore the matter further, but I think that my amendments are entirely reasonable.

I will support Mr Rowley's amendment 1, given the extreme importance of the principle—to use his word—with which I concur. As Murdo Fraser said, the Government's amendments are a step forward and, although they do not go as far as we would like, we will support them. I will also support the amendments from Mr Fraser and from Mr Simpson, who made his points eloquently, although he will not press amendment 12.

The Convener: Thank you, Mr Whittle. Can you confirm whether you are pressing amendment 4?

Brian Whittle: I press amendment 4.

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order for the committee to reach a decision. I vote against the amendment.

Amendment 4 disagreed to.

Amendment 5 moved—[Brian Whittle].

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

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener so that the committee can reach a decision. I will vote against the amendment.

Amendment 5 disagreed to.

Amendment 23 moved—[John Swinney].

The Convener: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Mason, John (Glasgow Shettleston) (SNP)
Whittle, Brian (South Scotland) (Con)

Against

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

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 23 agreed to.

Amendment 1 moved—[Alex Rowley].

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

Members: No.

For
Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against
Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener so that the committee can reach a decision. I will vote against the amendment.

Amendment 1 disagreed to.

10:00

Amendment 24 moved—[John Swinney].

The Convener: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Mason, John (Glasgow Shettleston) (SNP)
Whittle, Brian (South Scotland) (Con)

Against
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 24 agreed to.

The Convener: Amendment 10, in the name of Graham Simpson, has already been debated with amendment 4. I remind members that if amendment 10 is agreed to, I cannot call amendments 25 and 26, as there is a pre-emption.

Amendment 10 moved—[Graham Simpson].

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against
Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener so that the committee can reach a decision. I will vote against the amendment.

Amendment 10 disagreed to.

Amendment 25 moved—[John Swinney].

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

Members: No.

The Convener: There will be a division.

For
Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Mason, John (Glasgow Shettleston) (SNP)
Whittle, Brian (South Scotland) (Con)

Against
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 25 agreed to.

Amendment 26 moved—[John Swinney].

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Mason, John (Glasgow Shettleston) (SNP)
Whittle, Brian (South Scotland) (Con)

Against
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 26 agreed to.

Amendment 11 moved—[Graham Simpson].

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against
Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener so that the committee can reach a decision. I will vote against the amendment.

Amendment 11 disagreed to.

Amendment 6 moved—[Murdo Fraser].

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

Members: No.

The Convener: There will be a division.

For
Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against
Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener so that the committee can reach a decision. I will vote against the amendment.

Amendment 6 disagreed to.

Amendment 12 not moved.

Amendment 27 moved—[John Swinney].

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

Members: No.

The Convener: There will be a division.

For
Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Mason, John (Glasgow Shettleston) (SNP)
Whittle, Brian (South Scotland) (Con)

Against
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 27 agreed to.

Amendment 28 moved—[John Swinney].

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

Members: No.

The Convener: There will be a division.

For
Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Mason, John (Glasgow Shettleston) (SNP)
Whittle, Brian (South Scotland) (Con)

Against
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 28 agreed to.

Amendment 7 moved—[Murdo Fraser].

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against
Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener to vote against the amendment.

Amendment 7 disagreed to.

The Convener: Section 1 is therefore agreed to.

Section 1, as amended, agreed to.

Sections 2 to 4 agreed to.

The Convener: As we are short of time, I ask members to keep their contributions a bit shorter—

John Swinney: On a point of order, convener. For the sake of clarity, Mr Fraser's amendment 7, which was disagreed to by the committee, sought to leave out section 1. I assume that, because of the result of that vote, you are not putting section 1 to the committee.

The Convener: That is correct. The section has been agreed to.

I welcome Stephen Kerr to the committee. As he is attending the committee for the first time, I invite him to declare anything in his entry in the register of members' interests that is relevant to the committee's remit.

Stephen Kerr (Central Scotland) (Con): I do not have any relevant interests to declare.

The Convener: Thank you and welcome to the committee.

Section 5—Interpretation of Chapter

The Convener: Group 2 is on education regulations: use of powers and safeguards.

Amendment 112, in the name of Oliver Mundell, is grouped with amendments 115, 117 to 126, 13, 14, 128, 15, 130 to 134, 16 to 18, 36, 37, 136, 38, 39, 137 to 143 and 145.

Oliver Mundell: Amendment 112, with amendments 115, 117, 118, 134, 136, 140 and 145, seeks to remove what Graham Simpson's amendments have left behind. That is my preference, as I think that those sections and provisions are not required at this time. In the interests of time, I will not rehearse the arguments that Murdo Fraser has made at stage 1 and again here today. More generally, the other amendments seek to raise the bar for using the provisions and introduce additional safeguards and reassurances.

We have already heard from the Deputy First Minister that we should be informed by the experience of the pandemic. A number of my amendments in this group speak to what went well during the pandemic in consultation with stakeholders. Consensus is one of the Deputy First Minister's watchwords for how he likes to proceed, so I hope that those amendments will be taken in the spirit in which they are lodged and that, should there be drafting errors or things that are not quite to the Government's taste, he will be willing to work with me to lodge at stage 3 revised amendments on which we can all agree.

There are other amendments in the group that speak to some of the Scottish Government's mistakes. We must learn from some of the mistakes that were made in education, which was one of the most difficult of the areas caught up in the Covid-19 pandemic. Yesterday, I was back at my old school and speaking with young people. We continue to see the devastating impact that educational disruption has had on them, and as a parent, I continue to worry and wonder whether the Government and Parliament got everything right and found the right balance.

I do not doubt anyone's sincerity in trying to find that balance, but there were certainly times when the Government overstepped the mark and continued to keep restrictions on young people in place far beyond the point at which they were necessary. We did not always get the right balance of the child's best interests, the wider interests and the public health risk. With my amendments, which I will talk through briefly, I am keen to ensure that we do not make those mistakes again.

Amendments 118 and 130 seek to provide for a report from the Children and Young People's Commissioner Scotland that addresses children's rights. The report would consider whether the proposed use of powers was "proportionate and necessary". Of course, under the bill, that decision would ultimately be for ministers but, when we have such a significant source of expertise at our disposal, it would be worth hearing from the commissioner's office, which does an excellent job of speaking up for young people. That would provide some reassurance.

John Mason: I am interested to know how the commissioner would be involved. If he had to judge whether the use of the powers was "proportionate and necessary", would he need to consider all the medical, scientific and other advice that the Government gets? Is that what you are arguing for?

Oliver Mundell: Yes. The commissioner would have to consider that advice, consider what ministers were saying and balance that evidence with his expertise in children's rights, welfare and wellbeing. He would have to balance up some of the difficult questions. I am not saying that the commissioner would have a veto; instead, I am saying that he would offer his views so that parliamentarians, the Government and the wider public would be more informed about where the balance lay.

During the pandemic, and particularly in the area of education, we have sometimes tipped towards a balance that considers public health narrowly without examining the wider health and wellbeing implications for young people. At several points during the pandemic, the Children and Young People's Commissioner drew our attention to concerns. The commissioner's involvement would be an additional safeguard that would help young people feel confident that the Government was taking their rights and interests into full consideration.

Amendment 120, which relates to local authority consent for closing schools, is a probing amendment. I am not saying that it is in its final form, but it raises a question for Parliament about the correct balance between ministerial powers and local authorities' statutory duties to educate our young people. It would promote consensus. It is hard to envisage a situation in which local authorities would oppose public health measures, but it is important to have such a provision in the bill to ensure that the role of local authorities is properly respected.

That brings us back to the John Mason principle, which cuts both ways. There is a fear

that the same people could make the same wrong decisions; equally, as hard as it is to imagine, something worse could arise in future. I would not want ministers to push ahead with school closures without being able to satisfy local authorities that it was the right decision.

10:15

John Mason: Are you arguing that the local authority, which I accept is democratically elected, should be able to overrule the nationally elected Government?

Oliver Mundell: In the system that we have in Scotland, local authorities are the providers of education in their areas. Of course, the Government has a role in working with them and directing national policy, but I do not want to have a situation in which we deny children their education and close education establishments without first getting agreement on that. Placing a duty on ministers to seek consent is the right approach.

Perhaps amendment 120, as currently worded, is too strong. I am willing to listen to what the Government says and to try to strike a better balance that secures consensus. As the bill stands, the balance is wrong. The bill puts too much power in ministers' hands and does not recognise the role that our local authorities play in the delivery of education.

John Swinney: In the context of the judgment that you are talking about, what role do you envisage for public health advice of the nature that the Government and all public authorities received? You did not address Mr Mason's point about the interface between the decision making of local authorities, as the bodies that are responsible for running education at local level in Scotland, and public health advice. Public health advice might lead to a conclusion with which a local authority was not comfortable, albeit that there was real danger to the public health of the local population.

Oliver Mundell: I guess that it comes down to who we believe is the right person to take the final decision. These are difficult questions of balance. At times during the pandemic, when it came to decisions about schools, we opted for a national approach, although there was significant local variation. At later points in the pandemic, such variations were taken into account in various regulations and measures.

I just think that when we are talking about something as significant as the closure of education establishments, there is a balance to be struck. The public health aspect is not the only consideration for decision makers, and it would not be the only consideration for the Scottish Government, which I know would want to strike a balance. I think that there is a role for the local authority in deciding when that point has been reached. Placing on the Scottish Government a duty to seek the agreement of authorities—or something similar—would promote partnership working and the type of culture that will help in the response to a future pandemic.

As I have said, I am willing to look at the wording of amendment 120 or consider another amendment that would put that principle into the bill. In a system in which local authorities are responsible for delivering education, I do not see how we can have Government ministers telling authorities—on narrow, public health grounds—that we have reached a point at which their establishments must close.

During the pandemic, we did not have a total closure of schools; we ended up with hubs and other things. We do not know what the exact circumstances would be in the future, but given that we have 32 local authorities with 32 different sets of circumstances, they would have a right to a significant say in any decision to close the educational establishments for which they are responsible.

Jim Fairlie: I ask this question purely out of curiosity. If ministers are required to get consent from local authorities when there is a national public health emergency, but a particular individual in a local authority says that they do not agree with the decision on the basis of education alone, who takes responsibility for the public health of that area? In other words, who takes final responsibility? We will have a public inquiry into what happened during the coronavirus pandemic, but if you take that decision-making power away from the Government and put it in the hands of local authorities, will we have to have public inquiries for every local authority that might have taken a different decision?

Oliver Mundell: The role of local authorities in the pandemic will certainly be considered, but Mr Fairlie's argument is, in effect, that we should not legislate at this time, that we should wait for the public inquiry and that we should wait until we know the shape of any future threat before putting very definite things on the statute book.

The problem is that what we are considering is putting wide-ranging and very loose powers in the hands of the Government. These amendments—and amendment 120 in particular—set out balancing provisions. If you want wide-ranging non-specific powers for an unknown future pandemic, you will have to accept that there might be limitations in that respect. That is why the better approach would have been, as has been set out at length, to have draft legislation ready and

agreed that could be continually reviewed and considered and then implemented quickly.

Alex Rowley: Do you agree that, in relation to local government, the clue is in its name—that is, "government"? They are elected bodies, and although in Scotland we have some of the weakest local government in Europe, with more and more of it being centralised, there is a clear role for local government—for elected and accountable politicians—to play and it needs to come together with the Scottish Government to determine what happened and learn the lessons from that. Do you believe that local government and democratically elected officials are being sidelined?

Oliver Mundell: In the interests of time, I will just say yes and move on to look at the educational advisory council that is covered in amendments 121 and 131.

Although that aspect of the pandemic response was, for me, not perfect, it worked relatively well, and I want to ensure that any future Government using those powers adopts a similar approach. Again, I am not tied to the wording in the amendments; they are my best attempt, alongside the legislation team, to come up with something workable. With the resources at the Government's disposal, I would be happy to work with the Government if changes were needed.

Amendment 122 proposes to introduce a delay of 48 hours before school closures, and amendment 133 would introduce a grace period before the enforcement of any of the regulations in those sections of the bill. It is important to give people time to plan and to recognise that, although there is often a need to act very quickly, trying to move too quickly creates far greater problems for the system as a whole. Again, I am willing to consider whether those amendments strike the right balance.

On amendment 122, it is important to remember that there are other means of closing schools. I do not believe that we have any local authorities or individual schools in which the relevant individuals or authorities would seek to keep a school open where they believed that there was a significant and serious threat to their young people.

Amendment 123 promotes educational continuity and seeks assurances from the Government that appropriate alternative provision would be put in place before schools were closed.

Amendment 124 seeks to promote best practice on communication between pupils, parents and carers and schools. Amendment 132 places on the Government what it calls a "Duty to seek agreement", which might fit in with amendment 120. There might be room for reasonableness there.

Amendment 137 seeks the early removal of regulations made under the provisions; in a sense, it is designed to promote reconsideration. I think that amendments 138 and 139, which provide a review mechanism in the event of a change in the minister who is responsible for making the regulations, bring us back to the delicate question of balance. Given the difficult judgment calls that are involved in these matters for those who have to implement any regulations, it is important that they know that the Government minister who is responsible continues to believe that the regulations are absolutely necessary.

Amendment 141, which provides for the exercise of professional judgment, is again designed to make the provisions in the bill more workable. It addresses one of the concerns that has arisen throughout the pandemic, which brings us back to Mr Rowley's point about who is best placed to make decisions and where responsibility sits. Sometimes those who are responsible for implementing decisions can see that, in individual circumstances and in relation to individual young people, implementing the provisions as intended by ministers might actually create a greater risk or cause greater disadvantage. There has to be some reassurance for those whom we would be asking to do something very difficult that they would be able to exercise their professional judgment and that, where they were acting in good faith and doing what they believed to be right, they would not face severe consequences.

On amendment 142, which is on readiness for remote learning, that was, again, one of the areas in which the SNP Government response was lacking during the pandemic. We were very slow to move on remote learning; we were underprepared; and our schools, which were already struggling and had been pushed to breaking point by reductions in teacher numbers, were not in a place where they felt confident, going into the pandemic, that they were well resourced to move learning online.

In a sense, amendment 142 complements Stephen Kerr's amendment 119, which I will leave him to speak to. The idea that, in future, we could close schools without having learned the lessons of this pandemic is, in my view, unthinkable. It is important that that is recognised in the bill, because if we are to hand the Government powers to close schools and deny young people their right to in-person education, that will necessitate a balancing provision requiring that we have done everything that we can and have pulled out all the stops to ensure that their needs are met.

Amendment 143 seeks to place on ministers a

"Duty to explore alternatives and mitigations"

and to report back on what was considered and why certain options were not pursued. Again, having that information is important in order to build confidence in any measures that are taken and to provide people with the reassurance that they need, because some of those decisions are decisions of last resort rather than things that are taken forward because they are the easiest solution for Government.

I move amendment 112.

10:30

The Convener: There are many amendments in the group, so I would appreciate it if members could be as brief as possible, in the interests of time.

Stephen Kerr: I am grateful to be here to speak to amendment 119, which seeks to ensure that, before making regulations to close schools, the Scottish ministers ensure that every child and young person is provided with a laptop and an internet connection. The committee and the cabinet secretary will not be surprised to hear that, in principle, I oppose the bill but, given that it is likely to become law, it is important that we try to improve it as much as possible. I am particularly passionate about the issue and therefore I seek to improve the bill in a way that will narrow the attainment gap, which we know is growing, and ensure that no child in Scotland, especially from the poorest families, is left behind in any way.

Until a couple of weeks ago, I was the convener of the Education, Children and Young People Committee, which heard evidence on the bill. Remote learning, which my colleague Oliver Mundell has mentioned, was one of the issues that were touched on in that evidence. The committee asked the cabinet secretary for specific assurances in relation to the provision of laptops and internet connection, particularly in circumstances in which the Government is making a decision to close schools.

It is a Scottish National Party election commitment to provide young people with devices and internet connections. The cabinet secretary may be surprised to hear me say this, but I am genuinely trying to be helpful in lodging the amendment, which brings to the fore the fulfilment of that SNP promise. I hope to be able to appeal to the Government, and to the Deputy First Minister in particular, by using his own words. Just over a year ago, John Swinney said:

> "We will end the digital divide between those who have access to the rich educational resources of the internet and open that electronic world to every child in Scotland ... we are determined to tear down the barriers to education that too many children face."

I agree with all that.

John Mason: I wonder whether the member has gone a little too far in the wording of amendment 119. I agree with much of what he has said: every child should have a laptop or something similar and an internet connection. However, if we took the amendment literally—when something is in law, we have to take it literally—it would mean that one child not having an internet connection would prevent a school, or possibly multiple schools, from closing. Does the member not feel that that is going a little too far?

Stephen Kerr: I am not hung up on a particular set of words; I am hung up on the idea that something has to be done to assure ministers that, when they make such drastic decisions, the provision exists for every child to access education and learning remotely. I know that John Mason shares my passion and commitment to ensuring that that happens.

There is great virtue in underscoring that commitment, which I hope we all share, by including it in the bill. I refer members again to the words of the Deputy First Minister when he talked about

> "the barriers to education that too many children face".

Those barriers became higher and larger—they grew in every dimension—during the pandemic. If the bill is to fulfil its purpose, as ministers have repeatedly stated, I hope that the Government will accept amendment 119. It seeks to ensure that, when schools are to be shut down for good reason, no child is left behind, and no young person's educational pathway will be disrupted even more than it would be as a result of the closure of a school.

It aims to ensure that children and young people will not be denied access to learning, education or teachers—to some kind of educational experience—nor will they be denied, to quote John Swinney,

> "access to the rich educational resources of the internet".

We should all aspire to that for every child in Scotland, which is why I am passionate in moving amendment 119.

The Convener: I ask Graham Simpson to speak to amendment 13 and other amendments in the group.

Graham Simpson: I am sure that alarm bells were ringing in the cabinet secretary's head when Mr Kerr said, "I am trying to be helpful," but in this case I think that he actually was trying to be helpful.

I have six amendments in the group: amendments 13 to 18. I will be extremely brief, because I know that the committee is up against

the clock—I suspect that you will be sitting long into the night on this one.

Amendments 13 to 15 seek to remove sections 8 to 10. I will come to amendments 16 to 18 in a moment.

Section 8 gives ministers the power to make

"regulations ... relating to the continuing operation of an educational establishment for a specified period."

Oliver Mundell has spoken extensively about that power, which will give ministers powers to close schools. It is a sweeping power with far-reaching consequences.

In my view, closing schools has, in some cases, been harmful. If we were ever to go down that route again, it should involve proper scrutiny. If we were to do that, we should use primary legislation, which can be taken through at pace but would allow for at least some of the severe implications to be explored. That is the route that we should go down, which is why I seek to remove that specific power from the bill altogether.

However, assuming that the committee will not agree to that, I am very much persuaded by the series of amendments from Oliver Mundell and Stephen Kerr, and I recommend them to the committee.

Section 9, which I also seek to remove, gives ministers the power to

"require a relevant manager of a school boarding establishment to take ... steps to restrict or prohibit access to the establishment for a specified period".

The same argument applies: that is a sweeping power, and the consequences could potentially be severe.

I said that I would be brief, and I am being brief. I move to section 10, which gives ministers powers over student accommodation that would enable them to "restrict ... access" to such accommodation or close it down. The same arguments apply to all three sections that I have highlighted, and I think that they should be removed from the bill.

Amendments 16 to 18 are very similar to amendments that the committee has already considered and, unfortunately, rejected. Those amendments were extremely reasonable and were based on the DPLR Committee's recommendations. I suspect that members such as Mr Mason would, in their heart of hearts, agree with those amendments but, given that we have already voted on them—[*Interruption*.]

I see that Mr Mason is itching to come in. Do you want to intervene?

John Mason: Well, if you want me to—

Graham Simpson: I do not particularly want you to, but—

John Mason: I agree with the DPLR Committee and your argument that the made affirmative procedure was perhaps used a bit too often. I am just wary of ruling it out too much. Do you agree that there is some place for that procedure, albeit that it should not be used every day?

Graham Simpson: The DPLR Committee said that the default position should be the affirmative procedure. It did not completely rule out the made affirmative procedure, but it recommended that certain things should be put in place if that procedure is to be used. That was the purpose of amendments in my name that you have voted against, Mr Mason, despite saying that you agree with me.

Given that the committee rejected those amendments, I will not move the amendments in my name in this group and force a vote. However, I am keen to work with the cabinet secretary—if he is up for it; it is up to him—to see whether we can improve things in the area. I make that offer.

The Convener: Thank you, Mr Simpson.

I just point out that we are on page 8 out of 65 and it is already 10.41.

I call the cabinet secretary to speak to amendment 36 and other amendments in the group.

John Swinney: Convener, I am afraid that I will detain the committee a little, because there is a large amount of material here on which committee members would expect me to comment. I must do so out of respect to members of Parliament. I have no plans for this evening. [*Laughter*.]

This is a large and important group of amendments. I will speak, first, to amendments 36 to 39 in my name. As with group 1, the key overarching amendments in the group are those that introduce the gateway vote mechanism, that is, amendments 38 and 39, which provide for the approach that the committee supported in the context of group 1; the amendments are substantively identical to amendment 23, which has just been agreed to, and the same rationale applies. They substantially address a number of concerns that members have about parliamentary scrutiny.

As I said in the debate on group 1, I have considered issues that the Delegated Powers and Law Reform Committee and this committee identified at stage 1, as we signalled in the Government response to the committees. Amendment 36 makes equivalent provision in part 2 of the bill, including by providing for an explanation of urgency if the made affirmative

procedure needs to be used in urgent circumstances.

Amendments 16 to 18, which Mr Simpson lodged, would either mean that the made affirmative procedure was not available for regulations under that part of the bill or lead to delay. There are significant safeguards in the bill, and the Government amendments that we consider today will add to those safeguards, to ensure that regulations are made urgently only when that is necessary to meet the public health emergency that is faced, and to ensure that such regulations are in force for as short a time as possible. The amendments in Mr Simpson's name would significantly undermine the provision that the bill puts in place with the intention of protecting people in the face of a future public health emergency.

I heard what Mr Simpson said, and I hope that he can, in good spirit, acknowledge that the Government has accepted a number of the arguments that the DPLR Committee advanced. I hope that he also accepts that I have said on the record that we should use the made affirmative procedure only where it is absolutely required.

I welcome the dialogue that is under way with that committee about a form of expedited draft affirmative procedure that would enable parliamentary scrutiny before the effect of regulations is in place. Fundamentally, as members will understand, much comes down to the definition of "expedited".

I do not want to avoid parliamentary scrutiny at any stage, but I want Government to be able to take action that is necessary to protect public health. It is the reconciliation of that balance that is critical on this question. I will be happy to have further dialogue—I see that Mr Simpson wants to intervene.

Graham Simpson: In saying that you are happy to have further dialogue, you have probably answered the question that I was going to ask. We can probably reach an accommodation between your desire to be able to act quickly and my desire to have more parliamentary scrutiny—we can meet somewhere in that regard. I am happy to take you up on your offer.

10:45

John Swinney: I think that we all understand and that, regardless of our reflections on the pandemic and on regulations and restrictions, no member of Parliament suggests that there was no need for any restrictions whatsoever; all members of Parliament accept that point, and that is welcome.

There are varying degrees to which the extent of the regulations was judged to be appropriate, or whether all of them or as many of them had to be introduced with quite the pace with which they were introduced. I accept that there is no black and white position in all that. We need to approach this with some principles, which are that we have to move fast, but we also have to maximise parliamentary scrutiny. If we try to address a position between those two principles, I suspect that we will get somewhere. That is what I was trying to do with my interaction with the Delegated Powers and Law Reform Committee to signal that.

Amendment 37 provides that urgent regulations under sections 8 to 10 that only revoke any part of existing regulations would be made by a laid no-procedure SSI. That would enable the swift removal of education regulations that are no longer necessary and proportionate. The option would be available only when the new urgency test in section 12, that is proposed in amendment 36, is met.

Amendment 137 in Mr Mundell's name is connected to those provisions in that it would provide that education regulations could be in place only when public health protection regulations are in place. It might not necessarily have that effect, as some regulations that are made under the public health provision might be permanent preparedness regulations, in which case amendment 137 would not achieve what it is trying to achieve. It is an unhelpful addition to the carefully crafted layers of safeguards that are in the bill to ensure that regulations are in place for no longer than necessary, as I have covered in amendments 38 and 39. Further, the amendment does not reflect that the nature of a public health emergency might lead to different considerations for health and education.

Oliver Mundell: I would be happy to bring back alternative wording at stage 3, but I hope to establish the principle that, if some regulations or individual parts of regulations are removed, those for education would be reconsidered. In the prioritisation that we used when we opened society back up, the order in which things were considered did not necessarily favour young people. They are difficult balances, but I do not think that regulations should be in place that close schools and place restrictions on young people while we are removing restrictions that were made for the same reasons. Those should have to be tested again. Do you agree?

John Swinney: I agree with Mr Mundell but, in my experience of handling the pandemic, that was not always what I heard from Mr Mundell's colleagues. I have had endless exchanges with members of the committee about the importance of reopening clubs, pubs and airports before

schools. Philosophically, I agree with Mr Mundell's point. I was the education secretary who took the decision to cancel exams and close schools. That was a difficult day in my life; I was walking up and down the floor wondering at what moment we would have to act and whether we had to act so abruptly and so early. I totally agree with Mr Mundell, but what he said is not what I heard at all times.

Oliver Mundell: If the Deputy First Minister agrees with me, and he thinks that that is the action that his Government should have taken, or that a future Government should take, surely he would want that protection in the bill to make sure that the debate is had properly at the time, and that the right to education is prioritised above other aspects of society.

John Swinney: Yes, and I think that the bill makes that provision, but Mr Mundell and his colleagues need to reflect on the lines of argument that were being advanced during the pandemic. I say that in the respectful position that we are in in this exchange.

As colleagues will have deduced, I cannot support amendment 137. However, I am happy to explore other questions that we might come on to in this group.

On the remainder of the group, amendments 112, 115, 117, 13 to 15, 134, 136, 140 and 145 leave out sections 5 to 13 of the bill. The powers in those sections are necessary and proportionate and had majority support in committee and the chamber, so I cannot support those amendments.

Amendment 118 and its more general alternative, amendment 130, propose a new role for the Children and Young People's Commissioner to consider and report on any proposed use of the education regulation-making powers. No timescale is provided for the commissioner's report and no exception is offered for urgent cases. Therefore, those amendments would seriously delay the Government in responding swiftly to a public health emergency.

Oliver Mundell: There is nothing in amendment 118 that would prevent the Government from acting. It would introduce a duty to seek and have regard to a report. It does not mean that the Government would have to stop if such a report was not forthcoming. The amendment is not designed as a delaying mechanism and I envisage that the report would likely follow action having been taken. It is not worded to be restrictive. I have been clear in drafting the amendment that that was what I sought to achieve. Does the Deputy First Minister accept that the report would be reasonable in principle provided that it did not delay ministers?

John Swinney: Amendment 118 does not provide for what Mr Mundell just outlined to me, so I cannot support it.

Oliver Mundell: I am interested to learn how the wording of the amendment would prevent ministers from taking action. The only duty that it places on them is to seek a report.

John Swinney: However, it then says that we must have regard to it.

Oliver Mundell: Yes, but if there is no report to have regard to, then you would have to have regard to it after the time.

John Swinney: The purpose of the discussion that we are having is to put in place precise wording for the law that we are making. Members of the Parliament will be very conscious of that. If amendment 118 is agreed to, ministers must "seek" and "have regard to" a report. I am afraid that, with that amendment, Mr Mundell is encouraging me to pass legislation that is far from clear. Therefore, on the basis of what is before us, it cannot be supported.

Ministers are committed to preparing and publishing a children's rights and wellbeing impact assessment for regulations that are made under section 8. I expect similar mechanisms to the four harms assessment process and Covid education recovery group arrangements to be used to ensure that the impact on children and young people is fully understood and taken into account.

Amendment 119 fails to take into account how the provision of digital infrastructure and devices is organised, or would be organised in the future, in the education system, as well as the role and functions of operators rather than the Scottish Government.

The wording of the amendment is flawed. Are laptops to be "provided" irrespective of whether an establishment is to close or whether a young person already has a device? The amendment also does not take into account the point that the most appropriate device might not always be a laptop and it is prescriptive in the use of that term. As Mr Mason said in his intervention on Mr Kerr, it would present an unreasonable barrier to acting swiftly to address a public health emergency.

The Government is committed to ensuring that every child has access to a device by the end of this parliamentary session. Indeed, during the pandemic, significant investment from central Government ensured that more than 72,000 devices and 14,000 connections were provided to our most disadvantaged children and young people. We must and will continue to enhance young people's access to technology, but introducing an open-ended requirement that must be fulfilled before ministers can take action that is

necessary and proportionate to protect public health is not workable and could put children at a significant risk in future.

Stephen Kerr: I understand what you are saying about the use of the word "laptop", but I am not sure that I follow the logic of what you say about amendment 119 not taking into account the means by which the devices are distributed to children in the first place. You have made a commitment to the pupils of Scotland that they will have devices, Deputy First Minister. Irrespective of the route of distribution for the devices or the internet connections, that is a Scottish Government commitment. I have spoken in the chamber before about it and asked the First Minister questions about it. Will you explain the logic behind your objection?

John Swinney: I have made a number of points in that regard. Mr Kerr encourages me to ignore the routes by which such things must happen. We have to work with local authorities and schools on the delivery of that proposition. Mr Mundell has just rehearsed the fact that we have 32 local authorities that do things in different ways. Not all local authorities deliver electronic access to education in exactly the same way; they have different means and methods of doing so and utilise different technologies. The point that I am making is that the amendment does not take that into account.

Brian Whittle: Will the Deputy First Minister take an intervention?

John Swinney: I will, but I am anxious to make more progress.

Brian Whittle: I am slightly concerned about your argument. God forbid that we have to go through the same thing again, but we must ensure that we do not leave any child behind in their education. We have been through the pandemic, so we understand the pitfalls and the issues. Surely agreeing to Stephen Kerr's amendment would encourage the Government to work with local authorities to ensure that there are routes by which such devices get into the hands of those who require them.

John Swinney: The Government does not need any legislative encouragement to do that—we are getting on with doing it, and we have already accomplished a significant amount, as I have indicated.

I have slightly more sympathy for the proposal in amendment 142 regarding reporting on readiness for remote learning. However, it assumes that responsibility for implementing remote learning lies with the Scottish ministers. Education authorities have the relevant statutory functions in relation to provision of education, including on contingency planning. I am also concerned that an annual information-gathering exercise would create an additional bureaucratic burden on the education system, distracting operators from their core responsibilities.

As part of the continued recovery from the Covid pandemic, I would be happy to consider an approach that would review the education system's readiness for future remote learning should that be required. If members are willing to reject amendment 142 today, I will look into that further and return with more detail ahead of stage 3. I would be happy to engage with Mr Mundell on that point.

Amendment 120 would effectively give local authorities a veto over closure of the wide range of educational establishments that are located in their area, including universities, colleges and independent schools. Whether that is the intended effect, the proposal is undesirable in terms of managing a future public health emergency that may require a co-ordinated, national response to protect those in educational establishments or the wider public.

Oliver Mundell: I accept the drafting issues. However, on the principle of school-based education being provided by local authorities in line with their statutory duties, what role do you see local authorities having? You said that the amendment would give them a veto, but you are effectively giving yourself the power through the bill to prevent them from carrying out their responsibilities. Do you accept that there must be a balance?

John Swinney: A balance is struck through existing legislation, which gives a local authority the ability to close a school when there is an immediate local public health issue. [*Interruption*.] If Mr Mundell will let me complete my answers, that might help us make some progress.

A director of public health can provide a report to a local authority about a public health situation that requires to be addressed. That is the existing law; nobody is challenging that. The purpose of the bill is to ensure that we as a country are equipped to handle wider threats. We have just gone through a pandemic, which is a much wider threat than, for example, a localised norovirus outbreak.

Oliver Mundell: That is not really the point. You are taking away local authorities' power to choose to keep a school open. You are removing their say in that and therefore preventing them from fulfilling their statutory duty, albeit possibly on good grounds. Is it not right to give them, rather than a veto, a greater say or role in reaching that decision in their locality with the young people and schools that they know best?

John Swinney: There may well be an argument for further dialogue. However, one of the points that Mr Whittle made to me earlier is the importance of knowing where clear decision making can be undertaken so that we all know where we stand. My view—this is also my experience of the past couple of years—is that that is critical, particularly in a public health emergency.

11:00

Amendment 121 and its more general alternative amendment 131 require ministers to establish an educational advisory council after making regulations and to seek its views. I have sympathy with the intent behind the amendments to secure in statute a consultative mechanism for education stakeholders for the duration of a public health emergency.

I respect the role and responsibilities of local government in these matters, which it has highlighted to the committee in its support for amendment 121. As the committee knows, the Government worked very closely throughout the pandemic with the Covid-19 education recovery group and would expect to use similar arrangements in future. I do not think that the composition of the amendments is appropriate today, but I would be willing to explore the issue further with a view to lodging an amendment at stage 3 that delivers a consultative mechanism in a more practicable way.

Amendments 122 and 133 would prevent regulations from swiftly addressing a public health emergency, and would result in a 48-hour delay between regulations requiring school closures being made and coming into force, or a seven-day delay before compliance with regulations could be enforced.

Amendment 123 requires that all regulations are accompanied by a statement on ministers' policy for continuity of educational provision. That is unnecessary, because any regulations would be expected to include provision relating to ensuring continuity of educational provision and to be accompanied by guidance that would explain their purpose and how they support the continuity of education.

Amendment 124 places a requirement on ministers to direct that weekly contact between children and young people and the educational establishment that they normally attend be facilitated during a period of closure. It is not clear who ministers would direct and what the consequences of non-compliance with such a direction would be. The amendment also does not differentiate between the stages of education that children or young people are in, and is not limited to term time. It would be better to make clear in guidance or in regulations that such contact should be facilitated and give operators appropriate flexibility for different stages of education or needs and to cover all users—for example, students.

Amendments 125 and 126—[*Interruption*.] I am sorry; I will make progress, convener.

Amendments 125 and 126 would provide discretion despite regulations closing an educational establishment for an operator to conclude that a young person would be best supported by opening the establishment or for a parent to request that their child attend the establishment in person. Apart from the lack of clarity on which age groups of child or young person each provision would apply to, and whether they would apply to all types of educational establishments, the amendments would appear to undermine a national approach to restrictions on establishments where those were necessary and proportionate, according to the tests in the bill.

In practice, it is likely that limited continued in-person provision might continue during a general restriction—for example, to support vulnerable children or the children of key workers, or for students and boarding school pupils who are unable to return home for good reason. An operator's legal duties towards their learners, pupils and students would continue alongside any requirements that are made in regulations. It is not helpful to provide further discretion to deviate from restrictions that have been put in place following all the tests established in the bill, and would undermine tackling the public health emergency. I therefore encourage the committee not to support amendments 125 and 126.

Amendment 128 is, in my view, unworkable. It is for the Scottish ministers to make regulations in relation to student accommodation that they consider necessary and proportionate in view of CMO advice. That cannot be wholly contingent on the actions or views of relevant managers of student accommodation who will be required to comply with such regulations. However, the regulations themselves can make provision to ensure that students are to be provided with necessary support.

Throughout the Covid pandemic, we worked in partnership with stakeholders including colleges, universities and student representatives to provide guidance for the safe operation of student accommodation and support of students staying in student accommodation. That would be our preferred approach in any future public health emergency. The Government will also work with stakeholders to explore what possible guidance

would look like in advance of any future public health emergency.

Amendment 132 would put in statute a requirement on ministers to seek voluntary arrangements with education providers before making any regulations under sections 8, 9 or 10, and would be unworkable. It would significantly delay bringing forward any regulations, and would be undeliverable if even a small number of operators were unwilling to observe a voluntary arrangement.

Where appropriate, ministers would expect to use voluntary arrangements. During the Covid pandemic, it was on that basis that advice and guidance, rather than directions, were given to all operators other than education authorities. However, a requirement to agree that with all operators before using the powers would not be workable. In some circumstances, statutory arrangements will remain the only and most appropriate option to provide legal certainty.

Amendments 138 and 139 would add an additional requirement to review any regulations within seven days of a new member of the Scottish Government or junior minister assuming responsibility for the regulations. Such an approach does not properly reflect the principle of collective responsibility that is enshrined in the Scotland Act 1998 and reflected in the Scottish ministerial code, so I cannot support those amendments.

The proposed approach also seems unnecessary, given that regulations under part 2 will be made for a specific period and ministers will be required to review them every 21 days. An earlier review and, if appropriate, urgent revocation of regulations, as is provided for in amendment 37, will be possible at any time.

Amendment 141, on relevant authorities using their professional judgment, is drafted in unclear terms that would, unhelpfully, add doubt about duties under the bill. It could be read as giving relevant authorities significant scope to make different decisions from their establishments, despite national advice, guidance or regulations. There is already scope for deviation from guidance and advice where necessary. For example, a relevant authority will continue to have other legal responsibilities and will be expected to balance its different duties.

I accept the spirit behind amendment 141, which is that central Government should respect the professional judgment and knowledge of the people who are responsible for education establishments. Nothing in this bill is intended to undermine that. Government's actions must be reasonable at all times. However, amendment 141 would not add clarity for operators on the action that they needed to take and would hinder the bill's purpose of providing the basis for swift and decisive national action to tackle a public health emergency.

Oliver Mundell: Given that you support that principle, do you recognise the value of putting it into the bill, maybe through a more tightly worded amendment, so that the position is a bit clearer and reassures the people who have to do the more difficult bit? I know that it is difficult to make the big decision, but it is more difficult to carry it out on the ground.

John Swinney: The principle that I would put in place is that any approach in relation to dialogue cannot undermine the clarity of decision making that we require in a pandemic. I am happy to explore the matter, but that is the principle that I would bring to the conversation.

Amendment 143 would place another unacceptable delay on ministers' ability effectively to respond to an emergency with regulations by placing on ministers a duty to explore alternatives and mitigations and then to report on their consideration through a statement to the Parliament that would accompany the regulations.

Therefore, I cannot support amendments 141 and 143.

I invite the committee to support amendments 36 to 39. I invite Oliver Mundell not to press amendment 112 and I invite him and other members not to press the other amendments in the group.

The Convener: Mr Mundell, there has been plenty of opportunity for interventions, so I ask you to wind up as succinctly as possible.

Oliver Mundell: I intend to press amendment 112 and move all the amendments in my name. Even when there is an offer to work on matters later, I always think that if those matters are in the bill at the end of stage 2, it is easier to secure concessions at stage 3. The cabinet secretary said several times that some of the things that I am seeking could be done through regulation; we also heard about the Scottish Government's preferred approach. Time and again, it comes back to the John Mason principle: the current Government might not be here, and it might be better to have things in the bill, to ensure that they are done for certain. If there are drafting issues, there is always a chance to fix them; that is how the process works.

The Convener: The question is, that amendment 112 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the outcome of the division is tied, I will use my casting vote as convener so that the committee reaches a decision. I vote against amendment 112.

Amendment 112 disagreed to.

Section 5 agreed to.

Section 6—Duty to have regard to public health advice

The Convener: Group 3 is on "Education regulations: advice from Chief Medical Officer". Amendment 113, in the name of Oliver Mundell, is grouped with amendments 114, 116 and 30 to 35.

Oliver Mundell: I will speak briefly because this comes back to the point about balance, which we have already covered at length. I am interested to hear the Government's response to my amendment. I do not think that there is a great deal more for me to say.

I move amendment 113.

John Swinney: With regard to the Government amendments in the group, amendments 30 to 35 replace the cross-references in sections 8 to 10 to section 6, which relate to the duty on relevant authorities to have regard to any advice of the chief medical officer, with the term "about protecting public health". The effect of the amendments is to make clearer the subject matter of the advice from the CMO that ministers must have regard to before they make any regulations under sections 8 to 10.

The current approach may have implied that the only advice to which ministers must have regard before making regulations under sections 8 to 10 was advice given under section 6. The more specific reference to advice "about protecting public health" will mean that a wider range of advice from the CMO may be considered before any regulations are made, including advice that relates specifically to the measures to be used in such regulations.

The amendments will ensure that there is clarity about the nature of the advice that the CMO will provide to ministers to inform their decision to use the regulation-making powers. The amendments will further strengthen those important provisions and help to ensure that the powers are fully and appropriately informed by advice from the CMO. As was debated under groups 1 and 2, CMO advice is also built into the gateway vote mechanism that will apply before any educational continuity regulations are made.

I turn to the other amendments in the group. Amendment 113 seeks to add to the requirements in section 6. Under section 6(1), a relevant authority must properly consider the advice of the CMO with an open mind and take it into account when carrying out their functions. CMO advice will be an important consideration alongside the rights and interests of the people whom a relevant authority serves, such as pupils or students; other advice, including legal advice; advice on health and safety matters; and advice on pedagogical issues and other matters.

The potential effect of amendment 113 would be to set out in law the specific actions that relevant authorities must take when exercising their existing functions in relation to the duty to have regard to CMO advice. The same argument applies in relation to amendment 116 and the changes that it proposes in relation to statutory guidance that is issued by ministers under section 7.

Those measures would place a significant additional burden on relevant authorities and, via the ability to delay implementation for up to 28 days, would negatively affect how swiftly mitigating actions that are advised by the CMO can be introduced. They could also lead to significant divergence in the actions that are taken by relevant authorities, allowing some, but not others, to act swiftly in accordance with the advice of the CMO and guidance from ministers.

The measures would also place an additional burden on operators of educational establishments ranging from local authorities to childminders and universities by requiring them to conduct consultation exercises in the midst of a public health crisis. I urge the committee not to support those amendments.

For the reasons that I have given, I invite the committee to support my amendments in the group, and I ask Oliver Mundell not to press amendment 113 or move his other amendments.

The Convener: I ask Oliver Mundell to wind up.

Oliver Mundell: I do not have a great deal to add. This comes down to balance and who knows young people best. Even in a national response to a pandemic, there must be recognition that those on the ground who make the day-to-day decisions are often best placed to make those difficult balancing judgments. There is no one else to make them; there is no one else who can consider the individual circumstances of a young person to that level. The idea that the Government is best

placed to take all those decisions on its own is one of the fundamental problems with the bill as drafted. In fact, that was not the experience during the pandemic. The provisions that I propose, or something similar, need to be in the bill.

I press amendment 113.

11:15

The Convener: The question is, that amendment 113 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the outcome of the division is tied, to enable the committee to reach a decision, I use my casting vote as convener to vote against amendment 113.

Amendment 113 disagreed to.

Amendment 114 not moved.

Amendment 115 moved—[Oliver Mundell].

The Convener: The question is, that amendment 115 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the outcome of the division is tied, to enable the committee to reach a decision, I use my casting vote as convener to vote against amendment 115.

Amendment 115 disagreed to.

Section 6 agreed to.

Section 7—Guidance on public health measures

Amendment 116 not moved.

Amendment 117 moved—[Oliver Mundell].

The Convener: The question is, that amendment 117 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the outcome of the division is tied, to enable the committee to reach a decision, I use my casting vote as convener to vote against amendment 117.

Amendment 117 disagreed to.

Section 7 agreed to.

The Convener: That brings us to the end of group 3. Given the break in the groupings, I will suspend consideration of the bill to allow members to attend general question time in the chamber.

We are currently seeking approval from the Parliamentary Bureau to meet at the same time as the Parliament this evening, because members' business will go on until 6 o'clock. The bureau will make a decision on that at 2.30. I hope that it will agree to that approach. If so, we will reconvene in committee room 6 at 5.30, after decision time. Please return to the committee room at 5.30 so that we can conclude our consideration of the bill without delay.

11:18

Meeting suspended.

17:30

On resuming—

The Convener: Good evening. We reconvene at the start of group 4.

I remind members that we have 14 groupings of amendments in total. We intend to conclude stage 2 proceedings this evening, and I am keen that we achieve that aim. I am mindful that there are on-going travel disruptions and that members who have lodged amendments in groups that appear

towards the end of the list of groupings should be given a fair hearing. I therefore ask members to keep their interventions and responses concise. If I feel that an intervention is going on for too long, I will interrupt to ensure that we continue to make progress on the bill.

If a member has the first amendment in a group, they should bear in mind that they will be given the opportunity to respond to points that are made by other members when I invite them to wind up.

Section 8—Regulations on continuing operation of educational establishments

The Convener: Group 4 is on education regulations: exemptions for non-educational functions of further education and higher education institutions. Amendment 29, in the name of the cabinet secretary, is the only amendment in the group.

John Swinney: Amendment 29 exempts the non-educational functions of further and higher education institutions from the regulation-making powers in section 8. The effect of the amendment is that the power of ministers, under section 8, to make regulations in relation to the continuing operation of an educational establishment will continue to apply in relation to further education and higher education institutions but with the express limitation that any regulations that are made under section 8

"may not make provision relating to"

an institution's

"non-educational functions".

That will prevent any regulations having an effect on functions of further and higher education institutions that are not connected to the continuing operation of education.

In my response to the committee at stage 1, I committed to

"considering the scope of the regulation making powers"

for further and higher education institutions and to continuing our dialogue with stakeholders. I am grateful to Universities Scotland and Colleges Scotland for their engagement with ministers and officials on the bill, which has allowed us to make progress in that regard.

Throughout the Covid pandemic, we worked in partnership with the sectors and with student accommodation providers, trade unions and student representatives to ensure that appropriate guidance was in place to enable the safe operation of colleges, universities and student accommodation. I can confirm to the committee that, in the event of a future public health emergency, the Government's preferred approach will be to continue that partnership approach, working with the college and university sectors and other stakeholders, as appropriate, to ensure that effective guidance is in place. We expect that the regulation-making powers in part 2, in so far as they relate to further and higher education institutions and student accommodation providers, would be used only should that partnership approach identify a need for regulatory certainty.

I hope that the amendment reassures members, and the college and university sectors, of our commitment to working in partnership with both sectors in the event of a future public health emergency. On that basis, I encourage the committee to support it.

I move amendment 29.

Amendment 29 agreed to.

Amendments 30 and 31 moved—[John Swinney]—and agreed to.

Amendment 118 moved—[Oliver Mundell].

The Convener: The question is, that amendment 118 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order for the committee to reach a decision. I vote against the amendment.

Amendment 118 disagreed to.

Amendment 119 moved—[Oliver Mundell].

The Convener: The question is, that amendment 119 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 119 disagreed to.

Amendment 120 moved—[Oliver Mundell].

The Convener: The question is, that amendment 120 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 120 disagreed to.

Amendment 121 moved—[Oliver Mundell].

The Convener: The question is, that amendment 121 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 121 disagreed to.

Amendment 122 moved—[Oliver Mundell].

The Convener: The question is, that amendment 122 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 122 disagreed to.

Amendment 123 moved—[Oliver Mundell].

The Convener: The question is, that amendment 123 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 123 disagreed to.

Amendment 124 moved—[Oliver Mundell].

The Convener: The question is, that amendment 124 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 124 disagreed to.

Amendment 125 moved—[Oliver Mundell].

The Convener: The question is, that amendment 125 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 125 disagreed to.

Amendment 126 moved—[Oliver Mundell].

The Convener: The question is, that amendment 126 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 126 disagreed to.

Amendment 13 moved—[Brian Whittle].

The Convener: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 13 disagreed to.

Section 8, as amended, agreed to.

After section 8

The Convener: Group 5 is on education regulations: issues consequential to making regulations. Amendment 127, in the name of Oliver Mundell, is grouped with amendments 129, 135 and 144.

Oliver Mundell: These are further amendments that seek to put in place additional protections and address some of the shortcomings that we saw in the Government response during the pandemic. The principles behind them are fairly straightforward, but I accept that there may be questions relating to the way in which they are drafted or worded. Again, I am happy to work with the Government and/or anyone else to find a form of words that takes the principles forward, particularly around educational assessment and examinations, because I think that our young people want to see that lessons have been learned. There is a great deal of anger and concern in that regard, and I feel that some recognition that things must be fair in the future is important if these powers are to rest with ministers. In addition, there are often significant financial impacts on students as a result of the use of these powers, and, again, I think that young people would want to know that their interests would be protected.

Amendment 135 would create a right

"to repeat a school year".

Many young people feel that they have missed out to the point that they have been significantly disadvantaged.

Amendment 144 would introduce a right to seek "an education catch-up plan", which, again, would give young people the chance to catch up on lost learning.

That is probably enough of an explanation for now regarding the idea behind the amendments. I am interested to hear what the Government has to say.

I move amendment 127.

17:45

John Swinney: I will address each of the amendments in the group in turn.

The measures that are set out in amendment 127 are not, in the Government's view, workable, as the Scottish Qualifications Authority has, since

2000, in line with its statutory obligations, been responsible for delivering the national diet of examinations in Scotland. During the Covid pandemic, the SQA has worked closely with partners through the national qualifications 2021 group to ensure that young people are able to achieve fair and credible grades in spite of experiencing the most challenging of school years. That has included informing decisions on the timing of the return to an examination diet, with appropriate notice of such decisions, taking into account public health advice at the time.

The SQA and partners have made it clear that the awarding of qualifications must be based on demonstrated attainment. A range of measures, including adapted appeals processes that give learners a free and direct right of appeal, have been put in place to ensure that all our young people have the best chance to demonstrate their potential in order to receive the grades that they deserve.

Amendment 127 would introduce detailed statutory regulation of some aspects of examination and assessment—which are otherwise within the scope of broad functions that are, in general, exercised independently of the Scottish Government—in a way that is at odds with the existing legal framework. By taking a collaborative approach rather than the statutory approach that is proposed in the amendment, we can ensure that any assessment approach to the awarding of qualifications is appropriate to the circumstances at the time and does not pre-empt future legislation for the SQA's successor or any outcomes of Professor Louise Hayward's review of the future qualifications system for Scotland.

Amendment 129 would require ministers to set out plans for providing additional financial support to students if any regulations that are made in relation to the continued operation of educational establishments or student accommodation

"will, or are likely to, have a detrimental financial impact on students".

During the Covid pandemic, we have provided substantial support to students, including more than £96 million through hardship funding, digital access support, mental health support and funding for student associations. We have also worked with the sectors and with student accommodation providers and student representatives to ensure the continued welfare and safety of students. That has included our on-going commitment to providing more than 80 additional counsellors in colleges and universities, which we have achieved.

In the event of a future public health emergency, we would set out any additional support for students, financial or otherwise, that we considered to be necessary, just as we would set out additional support for any other groups that we believed required support. We would do so in the context of the situation at the time and through consultation with stakeholders, including student representatives. By taking that broader, non-legislative approach, we can ensure that any additional support for students is appropriate to the circumstances at the time and that it includes non-financial support where appropriate. The Government cannot, therefore, support amendment 129.

With regard to amendment 135, there is already flexibility for individual applications to be made to an education authority for a pupil to repeat a year, and those applications are assessed on their individual merits. With regard to pupils who have additional support needs, the need for an extra year sometimes arises as the result of a deferral at an earlier point in their learning. A better approach would be for the young person to be considered under the Education (Additional Support for Learning) (Scotland) Act 2004 as having an additional support need, which may arise for whatever reason, and for appropriate catch-up support to be provided. During the years in which pupils take their formal exams, there is significant flexibility for young people to take qualifications when they reach a certain level, rather than in a single year. Finally, I note that amendment 135 is ambiguous in the terms that it uses and in relation to which types of educational institution it would apply to. As it is currently drafted, it would not deliver legal certainty.

Amendment 144 does not specify who may make a request or to whom a request for an education catch-up plan should be made, or whether there is any obligation on the institution to which the request is made to agree to it. In addition, the amendment gives no definition of content with regard to what such a plan should include. Again, that would not offer legal certainty.

I cannot support any of the amendments in the group, and I invite Mr Mundell not to press amendment 127 and not to move the other amendments.

Oliver Mundell: I have to say that I am unsurprised that the Deputy First Minister is unable to support any of the amendments in the group, because they all speak to errors or a failure to provide support relating to his input to education during the pandemic. To be frank, with regard to the SQA, to hear that ministers were somehow not involved in some of those mistakes is a bit—

John Mason: Will the member give way?

Oliver Mundell: Certainly.

John Mason: Does the member accept that there were different opinions on some of those

things and that it is a question not of an error or a mistake, but of one choice being made against another choice?

Oliver Mundell: I say politely to the member that I think that the use of historical data at a school level in a way that impacts the grades of other young people is wrong. In addition, when grades were changed on the basis of an algorithm, and when ministers were aware of the information and chose not to act, those were mistakes—that is why changes were made later. Young people deserve a guarantee that such things will not happen again.

I go back to Mr Mason's point in relation to some of the other amendments, which relate to areas such as the financial impact. Again, we hear that the Government would not, in a future pandemic, do this or that, but we do not know who the Government or the ministerial office holders are going to be at that point. Putting some of these things in the text of the bill, rather than relying on guidance or regulation, therefore offers much stronger protection to those who may be impacted.

I could go on for some time, but I know that members have travel plans.

The Convener: Do you intend to press amendment 127?

Oliver Mundell: Yes.

The Convener: The question is, that amendment 127 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 127 disagreed to.

Section 9—Regulations on school boarding accommodation

Amendments 32 and 33 moved—[John Swinney]—and agreed to.

Amendment 14 moved—[Brian Whittle].

The Convener: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 14 disagreed to.

Section 9, as amended, agreed to.

Section 10—Regulations on student accommodation

Amendments 34 and 35 moved—[John Swinney]—and agreed to.

Amendment 128 moved—[Oliver Mundell].

The Convener: The question is, that amendment 128 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 128 disagreed to.

Amendment 15 moved—[Brian Whittle].

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

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 15 disagreed to.

Section 10, as amended, agreed to.

After section 10

Amendment 129 moved—[Oliver Mundell].

The Convener: The question is, that amendment 129 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 129 disagreed to.

Amendments 130 and 131 not moved.

Amendment 132 moved—[Oliver Mundell].

The Convener: The question is, that amendment 132 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 132 disagreed to.

Section 11—Compliance and enforcement

Amendment 133 moved—[Oliver Mundell].

The Convener: The question is, that amendment 133 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 133 disagreed to.

Amendment 134 moved—[Oliver Mundell].

The Convener: The question is, that amendment 134 be agreed to. Are we agreed to?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 134 disagreed to.

Section 11 agreed to.

18:00

After section 11

Amendment 135 moved—[Oliver Mundell].

The Convener: The question is, that amendment 135 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I will vote against the amendment.

Amendment 135 disagreed to.

Section 12—Procedure for regulations

Amendments 16 to 18 not moved.

Amendment 36 moved—[John Swinney].

The Convener: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Mason, John (Glasgow Shettleston) (SNP)
Whittle, Brian (South Scotland) (Con)

Against

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

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 36 agreed to.

Amendment 37 moved—[John Swinney]—and agreed to.

Amendment 136 moved—[Oliver Mundell].

The Convener: The question is, that amendment 136 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 136 disagreed to.

Section 12, as amended, agreed to.

After section 12

Amendment 38 moved—[John Swinney].

The Convener: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Mason, John (Glasgow Shettleston) (SNP)
Whittle, Brian (South Scotland) (Con)

Against

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

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 38 agreed to.

Amendment 39 moved—[John Swinney].

The Convener: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Mason, John (Glasgow Shettleston) (SNP)
Whittle, Brian (South Scotland) (Con)

Against

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

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

Amendment 39 agreed to.

Amendment 137 moved—[Oliver Mundell].

The Convener: The question is, that amendment 137 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 137 disagreed to.

Section 13—Review of regulations

Amendment 138 moved—[Oliver Mundell].

The Convener: The question is, that amendment 138 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 138 disagreed to.

Amendment 139 not moved.

Amendment 140 moved—[Oliver Mundell].

The Convener: The question is, that amendment 140 be agreed to. Are we agreed to?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 140 disagreed to.

Section 13 agreed to.

After section 13

Amendment 141 moved—[Oliver Mundell].

The Convener: The question is, that amendment 141 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 141 disagreed to.

Amendment 142 moved—[Oliver Mundell].

The Convener: The question is, that amendment 142 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 142 disagreed to.

Amendment 143 moved—[Oliver Mundell].

The Convener: The question is, that amendment 143 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the outcome of the division is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 143 disagreed to.

Amendment 144 moved—[Oliver Mundell].

The Convener: The question is, that in 144 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the outcome of the division is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 144 disagreed to.

Section 14—School consultations: meetings and documents

Amendment 145 moved—[Oliver Mundell].

The Convener: The question is, that amendment 145 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the outcome of the division is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I vote against the amendment.

Amendment 145 disagreed to.

Section 14 agreed to.

Section 15—Bankruptcy: service of documents

The Convener: The sixth group is on transitional and saving provision and commencement. Amendment 40, in the name of the cabinet secretary, is grouped with amendments 41 to 43, 64, 65, 67 and 67A. I remind members that, if amendment 67 is agreed to, cannot call amendment 68 in the group that is headed "Tenancies: emergency rent freeze plan" because it will have been pre-empted.

John Swinney: The principal amendment in the group is amendment 67, which seeks to codify most aspects of commencement policy on the bill to ensure a seamless transfer from the existing temporary provisions, which will expire in September 2022, and to eliminate the need for commencement regulations immediately after summer recess.

The Government considers that, generally, where temporary provisions transition to replacement provisions under the bill on the dates that are given, no transitional or savings provisions are required.

I will speak to amendments for cases for which the Government considers that appropriate transitional and saving provisions are required in order to enable a smooth legislative transition. Amendments 64 and 65 will ensure that appropriate transitional and savings arrangements are in place in relation to part 4 of the bill, which is on tenancies.

Discretionary grounds of eviction and pre-action requirements were introduced via the emergency coronavirus legislation and mean that all eviction notices that were served on or after 7 April 2020, and all proceedings raised in relation to those notices, are subject to discretionary grounds of eviction and, for rent arrears cases, the pre-action requirements.

The new law in the bill will apply to all post-commencement eviction notices and all eviction proceedings that are raised in relation to those notices. In addition, for those post-commencement eviction notices and connected eviction proceedings, the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 will be deemed to have been made under the powers in the bill in relation to the pre-action protocol.

18:15

The effect of amendments 64 and 65 will be that, where an eviction notice has been served on a tenant prior to 1 October 2022, the law, as framed by the Scottish coronavirus acts and the relevant regulations, will continue despite the

expiry of the relevant provisions in those acts and regulations. If an eviction notice is served on or after 1 October 2022, the new law, as framed by the bill, will apply and the relevant regulations will continue in effect as if they were made under the new pre-action protocol powers that are created by the bill.

Those technical amendments are crucial to ensure a seamless transition from the emergency legislation that will end on 30 September to the proposed new law coming into force on 1 October 2022. They will ensure that the law remains stable for anyone who has already begun an eviction process, and they take account of the fact that there might not be enough time before 1 October 2022 to pass new regulations for the pre-action protocol. The seamless continuation of that important protection for renters will avoid any confusion or uncertainty for landlords and tenants, which would be caused if there was a short gap between the expiry of the emergency legislation and the making of new regulations under the bill.

Amendments 40 and 42, which are on bankruptcy provisions, are technical amendments to provide clarity on the specific subsections that are referred to in sections 15 and 16 of the bill, respectively.

Amendment 41 provides that amendments that are made by section 15 of the bill, which is on service of documents, apply in relation to documents that are sent or transmitted on or after 1 October 2022.

Amendment 43 provides a saving provision for the provision in section 16 of the bill. Section 16 sets at £5,000, on a permanent basis, the minimum debt level that a creditor must be owed in order to petition the court for bankruptcy of the debtor. Amendment 43 will ensure that any creditor petition for bankruptcy that is presented before 1 October 2022 is not impacted by the change to the creditor petition level.

Amendment 67A would bring into effect, on 1 November 2022, proposed changes to the protected minimum balance that is applied when someone is subject to a bank arrestment. That amendment is consequential to amendment 69, which was lodged by John Mason, and it will be considered more fully when we consider group 7. The Government supports those amendments, which together will introduce the change at an early opportunity in order to allow debtors to benefit from the revised figure.

I move amendment 40.

John Mason: My amendment 67A is consequential to amendment 69, which is in the next group that we will debate. I will say more about that amendment at that point.

Amendment 67A would, in effect, amend Government amendment 67 so that my proposed changes to the protected minimum balance that is applied when someone is subject to a bank arrestment would come into force on 1 November 2022. As the Deputy First Minister said, that would introduce the change at an early opportunity.

The Convener: As no other member wishes to contribute, I ask the cabinet secretary to wind up.

John Swinney: I have no closing comments, convener.

Amendment 40 agreed to.

Amendment 41 moved—[John Swinney]—and agreed to.

Section 15, as amended, agreed to.

Section 16—Bankruptcy: meaning of "qualified creditor" and "qualified creditors"

Amendments 42 and 43 moved—[John Swinney]—and agreed to.

Section 16, as amended, agreed to.

Section 17 agreed to.

After section 17

The Convener: We move on to group 7, which is on diligence: bank arrestments. Amendment 69, in the name of John Mason, is the only amendment in the group.

John Mason: The Government responded rapidly to the Covid pandemic and introduced some welcome changes to the insolvency process. Unfortunately, the emerging cost of living crisis is putting further pressure on household budgets, which will regrettably lead to further instances of unsustainable debt, as has been underlined by StepChange and other charities.

I am aware of the advice sector's concerns about the current bank arrestment process, which it thinks could be improved, taking into account the unique pressures that are faced by households. I understand that the issue has been raised recently during evidence to the Social Justice and Social Security Committee as part of its inquiry into low income and debt problems.

The current arrangements protect the sum of £566.51 through provision in the Debtors (Scotland) Act 1987. Those arrangements are linked to the arrangements for a wage arrestment in that that sum is the maximum monthly salary that is required before any wage arrestment can be enacted. I believe that it is right to decouple those arrangements and to fix the protected balance for bankruptcy separately by providing new powers to vary that by regulations that are subject to the negative procedure. That is the

parliamentary procedure that is used for regulations to vary the wage arrestment threshold, which, in turn, amends the protected minimum balance.

I believe that the sum of £1,000 would offer a better level of protection than the current sum of £566.51. It would afford greater flexibility and financial resilience while being consistent with the level of funds that an individual can retain while pursuing debt relief through minimal asset process bankruptcy. As I mentioned during the debate on group 6, my amendment 67A in that group would make the new provision come into force on 1 November 2022.

I encourage the committee to support my amendment.

I move amendment 69.

Murdo Fraser: I read Mr Mason's amendment with interest. I was a member of two committees that dealt with bankruptcy legislation in previous sessions of Parliament, so I am well aware of the issues around diligence and arrestment, and how difficult it is to balance the rights of creditors and debtors. When such issues have been raised in the past, creditors such as credit unions have expressed concerns about their inability to recover funds and the position that that might put them in.

My concern about amendment 69 is that the issue that it addresses is not one that we have taken any evidence on. The representation that I have seen from the Society of Messengers-at-Arms and Sheriff Officers expresses concern about the proposed increase in the level to what appears to be the arbitrary figure of £1,000. I find it difficult to agree to amendment 69 given the absence of substantial evidence in support of it.

John Swinney: The Government is happy to support amendment 69, which seeks to increase the funds that can be retained in a bank account that has been subject to a bank arrestment. The Government also supports the creation of a power to amend the figure through regulations.

The Government is aware that the issue emerged during the stage 1 scrutiny of the bill. We are acutely aware that the cost of living pressures have compounded the financial uncertainty that arose during the coronavirus pandemic. Amendment 69 will provide some respite for people and households that are experiencing issues of problem debt, and it will improve financial resilience.

I understand that provisions already exist for bank arrestments to be challenged on hardship grounds, but I am aware that they can be quite arduous to effect and that they do not provide an immediate resolution for many when what they need is urgent and early help to better manage their situation.

I also understand that bank arrestments are used predominately by local authorities to recover unpaid debt, and I acknowledge that Mr Mason's amendment will reduce the amount of funds that local authorities and other creditors can recover using such diligence. However, in the current climate in particular, the Scottish Government considers that the proposed reform achieves the right balance and that the revised arrangements to fix the protected sums will provide greater flexibility to respond to economic factors in the future.

We accept the need to do something immediately to protect individuals from unnecessary hardship. In the coming year, we will carry out further consultation to look at both the process and the thresholds and consider what longer-term improvements can be made to bank arrestments. Some of that might address the legitimate points that Murdo Fraser raised. However, for now, the Government agrees that amendment 69 is a necessary stopgap, and I welcome the fact that John Mason has lodged it. The Government encourages members to support it.

John Mason: I thank members for their comments. I take Murdo Fraser's point that we did not spend much time on the issue, but the committee looked at a range of measures around bankruptcy and related matters and, generally, the theme was to round figures up and make them a bit higher. Amendment 69 is fully consistent with that. Although £1,000 is a round figure and Mr Fraser might call it arbitrary, £566.51 is a very odd figure, and I have to say that I dislike that kind of level of detail. With the current inflation level, £566.51 is clearly not very much to live on. I therefore encourage members to support the figure of £1,000.

I press amendment 69.

The Convener: The question is, that amendment 69 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

Against

Fraser, Murdo (Mid Scotland and Fife) (Con)
Whittle, Brian (South Scotland) (Con)

The Convener: The result of the division is: For 4, Against 2, Abstentions 0.

Amendment 69 agreed to.

The Convener: The next group is on diligence: period of moratorium. Amendment 44, in the name of the cabinet secretary, is grouped with amendment 45.

John Swinney: The Scottish Government has acted quickly and decisively in response to the coronavirus pandemic, recognising the unparalleled economic uncertainty that financially impacts on households. A range of measures were introduced through the Scottish coronavirus acts to mitigate the impact of that uncertainty. Among those was an extension to the moratorium period on diligence to provide a longer period of breathing space for those facing issues of unsustainable debt to fully consider their options.

A commitment was made to consider at stage 2 of the bill what would be appropriate for a permanent provision for the moratorium period. As with most provisions in the bill, consultation was undertaken on the issue and a number of options were considered, including reverting to the six-week period that is provided for in bankruptcy legislation, a 12-week moratorium period or retaining the longer protection period of six months.

The Scottish Government is acutely aware that the turmoil resulting from the pandemic has been quickly followed by the onset of additional extreme pressures on the cost of living. We also acknowledge that the committee recommended a moratorium period of 12 weeks at a minimum. Given those very real pressures, we believe that it is justified at present to make provision that continues the existing protection period of six months. All the main debt advice organisations have called for that. Amendments 44 and 45 also provide for a new specific power to revise the period of moratorium against diligence through regulations, subject to the affirmative procedure. That is considered appropriate for changes of that significance.

We have listened to the evidence that the committee heard, and there is little doubt that the current cost of living crisis will see an influx of demand on our excellent but already hard-pressed advice sector. It is very likely that many households that have previously been able to manage their budgets will come under increased pressure, resulting in their debt potentially becoming unsustainable. That is why we have retained the existing enhanced protection, but it comes with a commitment to review and introduce an amended timeframe when the current risks subside, as we hope they will. The regulation-making powers will enable flexible and rapid responses to changing economic circumstances.

For those reasons, I invite the committee to support the amendments in the group.

I move amendment 44.

Amendment 44 agreed to.

Amendment 45 moved—[John Swinney]—and agreed to.

Section 18—Giving information of particulars of birth remotely

18:30

The Convener: Group 9 is on registration of births and deaths. Amendment 46, in the name of the cabinet secretary, is grouped with amendments 47 to 59.

John Swinney: The amendments in this group relate to remote registration of births and deaths and to a project named calling in the register pages, which is aimed at ensuring that the registers of births, deaths, marriages and civil partnerships can be held electronically rather than on paper. It also aims to remove requirements for signatures on the registers to be traditional wet signatures, in order to help with the move towards electronic registers. Amendments in the group emphasise the choice that is available to the informant and contain provisions to enable the registers to become electronic. The text that asserts the informant's right to choose has to refer to the options that can be chosen.

Amendments 46 and 54 relate to remote registration of births and deaths. As the bill stands, informants may provide information about a birth in person at the registration office, or remotely if the local authority district registrar has issued a direction enabling remote registration in their area or the registrar general has issued an all-Scotland direction. Amendments 46 and 54 enable the birth and death registration forms to be attested—signed—in a way other than with a traditional wet signature. That paves the way towards making the registers electronic.

The amendments also make it clear that, when remote registration is available to an informant, the option of in-person registration remains even though the informant can choose remote registration if they so wish. That responds directly to points that were made in the stage 1 report on potential digital exclusion and the need to ensure that in-person services remain available. We always intended to preserve in-person service provision under the bill, and there is no compulsion to use the telephone or video call option. The amendments clarify the position and remove any doubt: in-person services must be maintained.

Amendments 47 and 55 relate to late registrations of births and deaths. There are legal obligations to register births and deaths, and if an informant fails to do so, local authority registrars have long-standing powers to require information to be provided. That involves requiring the informant to attend the registration office in person. Amendments 47 and 55 make remote registration possible in late cases when the district registrar has issued a direction enabling remote registration in the area or the registrar general has issued an all-Scotland direction. However, the amendments also provide that, when the option of remote registration or having the registration form attested remotely is available in late cases, the informant has the choice of doing it in that way or attending the registration office in person. Again, we are responding to the stage 1 report in that regard.

Amendments 47 and 55 also provide that one option for attesting a birth or death registration form that is provided late is for the registrar to do so on behalf of the informant. Again, that will pave the way for the registers to become electronic.

Amendments 48 and 56 are consequential amendments. Local authority registrars are under an obligation to register births and deaths when the required information has been provided. Amendments 48 and 56 reflect that that information may be given remotely in future.

Amendments 49 and 51 are further consequential amendments. They relate to birth registration by a father who is not married to or in a civil partnership with the child's mother, and to birth registration by second female parents. They provide that, when attesting a birth registration form on behalf of such a father or second female parent, a registrar may ask for information generally and not just about the person's usual signature. That might be useful when, for example, registrars ask fathers and second female parents exactly how they are to be referred to, such as by their first name and surname, by their middle name or by using initials. Proceeding in that way is another step towards helping the registers to become electronic.

Amendments 50 and 52 again relate to birth registration by a father who is not married to or in a civil partnership with the child's mother, and birth registration by second female parents. They provide that, if the father or second female parent can attest a birth registration form in a way that does not require them to be in the presence of the registrar, it is for that person to choose whether to attest the form in that way. That reflects the point in the stage 1 report that some informants will wish to use in-person services rather than remote ones.

Amendments 53 and 57 provide new definitions of the birth registration form and the death registration form. The forms will be prescribed by the registrar general in regulations.

Amendment 58 ensures that regulations that are made by the registrar general under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 may make different provision for different cases or circumstances. That is already the case for the marriage register. The ability to make different provision for different cases or circumstances will help to future proof the legislation. In the future, there may need to be different formats for birth registration forms and death registration forms, depending on whether the forms are electronic or are manually signed and scanned into the electronic register.

Amendment 59 provides that a civil partnership register may, if the registrar general so determines, be electronic rather than paper based. There is existing provision that registers of births, deaths, stillbirths and marriages and the register of corrections et cetera may, if the registrar general so determines, be electronic rather than paper based. Amendment 59 extends that provision to the civil partnership register.

I move amendment 46.

Amendment 46 agreed to.

Amendments 47 to 53 moved—[John Swinney]—and agreed to.

Section 18, as amended, agreed to.

Section 19 agreed to.

Section 20—Giving information of particulars of death remotely

Amendments 54 to 57 moved—[John Swinney]—and agreed to.

Section 20, as amended, agreed to.

After section 20

Amendments 58 and 59 moved—[John Swinney]—and agreed to.

Section 21—Civic licensing: how hearings may be held

The Convener: Group 10 is on alcohol and civic licensing: format of hearings and meetings. Amendment 60, in the name of the cabinet secretary, is grouped with amendments 61 to 63.

John Swinney: The purpose of amendments 60 to 63 is to ensure that any views that participants at a licensing hearing or meeting may offer with regard to the appropriate format for the hearing or meeting must be taken into account by a licensing board or licensing authority, prior to finalising its decision on the format. That applies to anyone who notifies the authority of their intention

to participate, such as the licence holder or an objector.

Alex Rowley: The requirement that an authority

"must take account of any views"

seems a bit weak. How would it demonstrate that it has taken account of any representations?

John Swinney: The licensing board is subject to statutory requirements but is in control of its own proceedings. As a consequence of the provisions that are proposed in the amendments, licensing boards or authorities must consider any representations made to them but are not obliged to accept them. Mr Rowley will be familiar with legislative terms; language matters, which is a point that I have made in the course of today's proceedings. Expressions such as "must take into account" or "must have regard to" are different from "must accept". The licensing board or authority is required to consider the opinions and views expressed by participants, but is not obliged to accept those views.

Should the amendments be accepted, Mr Rowley would be free to return to the provisions at a later stage in proceedings, if there was a desire to strengthen them. I am willing to engage in dialogue on that question.

The amendments respond directly to the recommendation in the committee's stage 1 report that amendments should make it explicit that those entitled to participate in licensing hearings and meetings are able to be involved in the process of decision making on the format of meetings. Following the stage 1 report, we have undertaken engagement with licensing stakeholders in relation to the decision-making process around the format of licensing hearings and meetings. The policy contained in the amendments reflects that engagement and codifies current good practice

The amendments ensure that licensing boards and licensing authorities retain flexibility and discretion to decide the format of licensing hearings and meetings as part of their overall responsibilities, but must ensure that any views expressed by participants are taken into account.

Ensuring that the licensing board or licensing authority retains overall discretion is important for two key reasons. First, licensing boards and licensing authorities have to ensure that licensing hearings and meetings are fair for all parties involved, not just one party; failure to do so may result in licensing decisions being appealed. Secondly, licensing boards and licensing authorities have to be mindful of the statutory timescales for determining a licence application. Because some larger licensing boards may hear 25 or more cases at a meeting, ensuring that the decision to be made on meeting or hearing format sits with the licensing board or licensing authority is important in allowing for the effective operation of the licensing system.

The amendments that I have lodged are a pragmatic and proportionate response to the committee's recommendation and balance the goal of public participation alongside the need to be mindful of the responsibilities of licensing boards and authorities.

Members will recall that the preceding group included amendments that were intended to minimise digital exclusion risks. I acknowledge that the committee's stage 1 report posited wider cross-cutting amendments requiring public authorities to preserve the option of in-person or paper-based services. As the Government committed to do in the stage 1 response, we have considered whether any further amendments to other aspects of the bill might be brought forward and I can confirm that we have concluded that none is needed beyond those in this and the preceding group. We are satisfied that, across the bill as it is now proposed to be amended, the potential for digital exclusion has been minimised.

I invite the committee to support the amendments on the licensing context.

I move amendment 60.

The Convener: As no members wish to comment, I invite the cabinet secretary to wind up.

John Swinney: I have no comments to add.

Amendment 60 agreed to.

Amendment 61 moved—[John Swinney]—and agreed to.

Section 21, as amended, agreed to.

Section 22 agreed to.

Section 23—Alcohol licensing: how hearings may be held

18:45

Amendments 62 and 63 moved—[John Swinney]—and agreed to.

Section 23, as amended, agreed to.

Sections 24, 25 and 27 agreed to.

Section 28—Mental health: removal of need for witnessing of signature of nominated person

The Convener: Group 11 is on mental health: named person. Amendment 3, in the name of Murdo Fraser, is grouped with amendment 2.

Murdo Fraser: I have two amendments in the group, which address an issue on which the

committee took evidence at stage 1. Indeed, we made a unanimous recommendation on it in our report.

The background is that the Mental Health (Care and Treatment) (Scotland) Act 2003 provides for a named person to be appointed to support someone who is subject to compulsory powers—for example, where they may be detained in hospital or are subject to a compulsory treatment order. As the law stands, the signature of the named person accepting the appointment must be witnessed by a suitably qualified professional, with the intention that the responsibilities of being a named person should be explained to the person.

Section 28 of the bill removes that requirement. That is an understandable change and it has been supported by stakeholders and people from whom we took evidence. However, we also heard in evidence a concern that a named person could be appointed under the new procedure without a full understanding of the role and the responsibilities that it involves. When we took evidence, Dr Arun Chopra of the Mental Welfare Commission for Scotland and Dr Roger Smyth from the Royal College of Psychiatrists in Scotland agreed that a named person should have to declare that they understand their role. The point of my amendment 3 is to require that there should be a declaration from the named person that they understand the role, duties, rights and responsibilities of being a named person.

Amendment 2 is a complementary amendment that requires the Scottish ministers to issue guidance to named persons so that they are aware of their responsibilities. The fact that there will not be a person witnessing a named person's signature leaves a lacuna. That is why it is important that the matter be addressed.

As I said, convener, we discussed the matter in the committee and there is a unanimous recommendation on it in our report. I hope that the amendments will have members' support.

I move amendment 3.

John Swinney: Although I understand Mr Fraser's motivation in lodging them, the Scottish Government does not consider that amendments 2 and 3 are necessary for a number of reasons, which I will set out.

Amendment 2 would require the Scottish ministers to publish guidance on named persons. However, such guidance is already available through our website. We propose to revise the content to take account of changes to legislation, and we will do that in partnership with key stakeholders, including the Mental Welfare Commission. The revised documents will make it clear that, in addition to the published guidance, there should be on-going engagement through clinical teams and that that should always be the default position.

The Mental Health (Care and Treatment) (Scotland) Act 2003 already places specific duties on mental health officers when it comes to the role of named persons. Those duties direct them to seek out and talk to a named person before certain orders and applications are made or, in some cases, as soon as practicable after an order is made. Therefore, the potential for a person not to understand the role is extremely minimal.

In addition, the statutory code of practice that accompanies the 2003 act is clear that

"it would be best practice for the"

mental health officer or any other practitioner discussing the matter with the nominee

"to ensure that they are provided with information about the role in a form which is helpful to them."

That role will not change.

The legislation as it stands only places a duty on a prescribed person to act as a witness to the nominee's signature. The process of checking understanding is separate to the requirement for the nominated person's signature to be witnessed and can be undertaken by a range of professionals, not just mental health officers.

Amendment 3 proposes that a nominee should declare that they understand the role and responsibilities that are associated with becoming a named person, but the legislation does not provide specific duties for named persons, because they will vary in each case. The named person and the patient are each entitled to act independently of the other. Unlike, for example, a welfare guardian—depending on their powers—a named person does not step into the shoes of the patient.

Although the proposals would extend the reach of that provision, they would also be difficult to verify, because we are unclear how one would evidence that a nominee has been provided with guidance on their role, rights and responsibilities before they accept their nomination. There is no statutory form to complete at present, although there is a suggested template, and we are aware that some local authorities have their own versions.

Our aim is to reduce bureaucracy and encourage more people to accept the role of named person, which this committee agrees is a vital safeguard in the patient's care and treatment. The change that amendment 3 proposes would be difficult to verify and offers no new safeguard, because there is already an established practice, which should ensure that nominated persons are provided with relevant guidance in a form that is

helpful to them before they accept their nomination.

Given the position that I have just set out, these suggested stage 2 amendments are, in my view, not required. They potentially and unhelpfully introduce more procedure before the role of supporting a patient takes effect.

The intention behind the reform is to remove a requirement that is currently experienced as disproportionately bureaucratic and might even be a disincentive to taking up the role. I believe that amendments 2 and 3 would not assist in the efforts that we are trying to make in that respect, and I invite Murdo Fraser not to press them.

The Convener: I ask Murdo Fraser to wind up and press or withdraw amendment 3.

Murdo Fraser: I listened with great interest to the comments that the cabinet secretary made and I will respond briefly.

I do not regard asking someone simply to sign a declaration—to say that they understand the role and responsibilities of being a named person—as a major bureaucratic burden. I go back to the fact that we took evidence on that from stakeholders, who were clear in their view that it would be a positive step to incorporate that particular measure. It was a unanimous recommendation of the committee in its stage 1 report and, on that basis, I press amendment 3.

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

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the outcome of the division is a tie, I will use my casting vote as convener in order that the committee can reach a decision. I will vote against the amendment.

Amendment 3 disagreed to.

Amendment 2 not moved.

Sections 28 and 29 agreed to.

The Convener: Before we move on to the next section, I will suspend the meeting briefly for a comfort break.

18:53

Meeting suspended.

19:00

On resuming—

Section 33—Private residential tenancies: discretionary eviction grounds

The Convener: Group 12 is on "Tenancies: eviction grounds and pre-action protocol".

I welcome to the meeting Edward Mountain, who joins us virtually. Good evening, Mr Mountain. As this is your first time at a meeting of the committee, I invite you to declare anything that is recorded in your entry in the members' register of interests that might be relevant to the committee's remit.

Edward Mountain (Highlands and Islands) (Con): Thank you, convener. Having not been to the committee before, I do want to make a declaration of my interests, which have already, of course, been declared to the Parliament.

My farming business includes six rental properties. The rental income from those properties is critical to the security of the core agricultural business. I also remind the committee that I am a qualified rural surveyor with more than 20 years of professional experience, including the letting of properties for clients who are on holiday, and short and long-term lets. That experience has allowed me to develop a good understanding of the three housing acts that will be amended by the bill. I am not practising in the surveyors market at the moment, and have not done since I was elected.

The Convener: Amendment 70, in the name of Edward Mountain, is grouped with amendments 71 to 82, 146, 147 and 84 to 108.

I ask Edward Mountain to speak to and move amendment 70, and to speak to all the amendments in the group.

Edward Mountain: There are amendments in the group that cover the three acts, so I propose to give a description of what I see as the problem with them and then to concentrate on the Private Housing Tenancies (Scotland) Act 2016. I will not speak to the other amendments, which, convener, I am sure that you will be delighted about, as will be the rest of the committee.

Over the past years, we have seen a move towards the protection of tenants, which I believe should be welcomed. The difficulty has been finding the balance between landlord and tenant and ensuring that the legislation is equitable. The 2016 act was regarded as a tectonic shift in that regard. Tenants' rights have become more defined

and their position has become more protected. However, it is clear that not all private landlords have welcomed the changes. Those who did, did so on the basis that the act contained some of the mandatory and discretionary grounds for ending a tenancy that we had seen previously.

That will change under the bill. Worrying research that was recently published by Propertymark says that there has been a 50 per cent reduction in the number of rented properties between 2019 and 2022. That climate has been directly attributed to the 2016 act. Fewer landlords mean fewer properties, and that results in increased rent and increased pressure on social housing. We all should be concerned.

During the pandemic, everyone adapted to working and living in what was, after all, a very hostile environment and to the need to limit the spread of what was, before vaccinations, a virus that could and did pose a threat to life. It was simple and very right to make the mandatory grounds for eviction discretionary. No one could support the eviction of tenants when the virus was as virulent as it was. The additional compensatory loans that were made available by the Government to tenants and landlords to help tenants to pay their rent was welcomed by both tenants and landlords. That is not the position that they are in now.

Before we consider the bill, I want to look very briefly at the provision of housing in Scotland. We all agree that there is a chronic shortage of all types of housing. We need more housing, and there will not be an MSP in this meeting who does not support greater provision. The private sector has a role in providing that: there are about 360,000 privately rented houses in Scotland, which is about 14 per cent of the total housing stock. It is impossible to define who owns those houses. It is a complete mixture and includes buy-to-let landlords; families that have relocated due to work; companies and employers that provide accommodation as part of their employment contracts, such as farmers and churches; and people who have invested in their future retirement home. I could go on forever and still not produce an exhaustive list.

It is clear that the takeaway message is that Scotland needs private housing to fill in the gaps in housing provision. To ensure that we continue to have that invaluable resource, we must ensure that the rights of tenants and landlords balance. If we favour one over the other, I am afraid that we will distort the provision of use and the provision of housing.

From my background knowledge of the market, and from having spoken recently to landlords, their agents and tenants, I believe that part 4 of the bill, which makes all mandatory grounds for eviction discretionary, tips the balance too much in favour of the tenant. Although that approach was acceptable and right during the pandemic, which was a public health emergency, I do not believe that continuing with it beyond then is justified.

I want to make some general comments on the mandatory grounds for eviction in the three housing acts that part 4 of the bill amends. The majority of those grounds exist to ensure that a property can be reclaimed by the landlord promptly when there has been a serious and clear breach of the tenancy, or the property is required for another reason. Making every ground for eviction discretionary will slow down the process and ensure that every case goes to the First-tier Tribunal for Scotland. “So what?”, you might ask. Well, prior to the pandemic, some landlords were having to wait up to eight months for a tribunal hearing. Making every eviction ground discretionary will add to delays and further increase the backlog.

In the past, the Government has made much of listening and consulting, but the changes in question have not been examined, and if they had been, they would have been best addressed in a housing bill, which I would also favour. That would have allowed them to have been more fully scrutinised and market tested, which they have not been. I believe that that is fundamental.

The bill makes changes to the Private Housing (Tenancies) (Scotland) Act 2016. Before I turn to my amendments that relate specifically to that act, I have sought to address fundamental problems with the bill through the following amendments: amendment 82 seeks to remove section 33, which relates to the 2016 act; amendment 93 seeks to remove section 34, which makes changes to the Housing (Scotland) Act 1988; and amendment 106 seeks to remove all changes to the Rent (Scotland) Act 1984. It would be my preference for those amendments to be agreed to. However, I have also lodged amendment 111, which is a stand-alone amendment that would not affect the changes that are proposed in the bill. Amendment 111 would introduce a sunset provision in relation to sections 33, 34 and 35. I will talk about that briefly later on.

I turn to my amendments that address the changes that the bill makes to the Private Housing (Tenancies) (Scotland) Act 2016. Amendments 70 and 71 would allow the landlord and the lender, respectively, to sell the property with vacant possession. If you were to sell a property with vacant possession, you would get full market value. Without vacant possession, you would not get full market value. If the position is maintained that possession cannot be given in such circumstances, we will be promoting a buy-to-let arrangement, and first-time buyers who might

want to live in the house will be put off, because they will not be able to get in.

Amendment 72 would allow the landlord to take possession to refurbish his property when it is empty. If a landlord cannot get vacant possession of a property to refurbish it, I sincerely doubt that the Government will be able to make all properties energy performance certificate compliant within the desired timeframe. I remind members that, for an older house to achieve an EPC, it will probably be necessary to strip out all the walls and floors and to remove areas of the roof in order to provide lagging. That cannot be done room by room.

Amendment 73 would allow the landlord to take possession to live in their own property. I cannot believe that anyone would want to deny a landlord their right to live in their own house. That cannot be anything but a right. Where will the landlord live if he cannot live in his own house and has to wait for the First-tier Tribunal to give him that right? Council housing will not be available to people who own their own houses. Section 33 of the bill creates a further problem in that respect.

Amendment 74 would allow a change of use of the property. Such a change of use would have to receive planning permission. That process would be the filter—in other words, the local authority would not grant planning permission if there was pressure on housing. I believe that that should remain a mandatory ground for eviction.

Amendment 75 would allow properties to continue to be required for religious purposes. It is quite a niche reason; it covers church houses. If manses are not available, especially in rural areas, I suspect that churches and local congregations will suffer, because they will not be able to have a minister.

Amendment 76 would introduce a new discretionary ground for situations in which the landlord requires a property for an employee. That is important in rural areas, where housing is in short supply—employers have housing that they need for an employee but cannot get.

Amendment 77 would allow any houses that have been offered as part of a contract to be given vacant possession should that contract terminate. That is important. NHS Highland is looking at that, as far as its staff is concerned, to try to attract people to the Highlands, but if it cannot get possession of the houses, it will not be able to do that.

Amendment 78 is interesting, because it would allow a property to be got back by the landlord if it is empty. If a property is empty, why would anyone want to remove that as a mandatory ground for eviction? It is not good for a property to remain empty, especially if that is complicated by going to a First-tier Tribunal, which could take up to a year. Neither is that good for local taxation.

I lodged amendment 79, which concerns rent arrears for three or more consecutive months, because, given that it takes so long to go through at a First-tier Tribunal, those could rack up for more than a year.

Amendment 80 would allow possession of a property if the tenant has been engaged in criminal behaviour, given that, for example, a landlord might not be able to get their house back if it has been used for criminal activities that attract a non-custodial sentence. Relevant examples in rural areas are of houses having been turned into cannabis farms.

Amendment 81 would mean that antisocial behaviour is not treated as a discretionary ground.

Those are all the amendments that I want to talk to specifically, convener, although I could talk to all the amendments on the Housing (Scotland) Act 1988 and the Rent (Scotland) Act 1984. Incidentally, the 1984 act is interesting and quite niche; the youngest of the tenancies that were generated under the act would be 32 years old, and I am not sure that there are many of those. However, as we have not done any research on it, we do not know.

Before I close, I will talk briefly on amendments 107 and 108, which are probing amendments. I agree with the Scottish Property Federation that there are merits in introducing pre-action protocols. They have great advantages in creating a supportive process for tenants, and we should encourage that, to continue to get them back on track. However, those merits are lost should the grounds for eviction become discretionary. If the landlord not only has to do the pre-action protocols but proceeds to a secondary, discretionary process through a tribunal, that could create a very drawn-out process. I have therefore lodged amendments 107 and 108 not because I want to stop the provisions but because I want to hear how the Government will address the problems that I perceive.

I move amendment 70.

Murdo Fraser: I will not rehearse all the arguments that have been put forward by Edward Mountain. I have a lot of sympathy for the points that he made, and the submission to the committee from Scottish Land & Estates, NFU Scotland, the Scottish Association of Landlords and the National Trust for Scotland makes strong points about the unintended consequences of the proposed legislation.

Scotland needs to have a vibrant private rented sector. People depend on the provision of private rented accommodation—often, they are young;

often, they are in transient employment and want to move from place to place. There is a concern about a reduction in the supply of private rented properties, and that is likely to be exacerbated if we continue down the route that is proposed in the bill. Mr Mountain is correct to bring some of those issues to the committee.

19:15

Amendment 147 is similar to Mr Mountain's amendment 146, but it is narrower in scope and intended to deal with a specific issue in relation to rural communities. We know that housing in rural communities is often in short supply, and it is important that rural businesses have access to suitable accommodation for those whom they employ.

The purpose of amendment 147 is to make sure that there is a mandatory eviction ground for a landlord who owns property in a rural business, such as a farming or forestry business, who wishes to recover possession of that property to provide accommodation for an employee who might struggle to find somewhere to stay. If accommodation is not offered with employment in rural areas, particularly remote rural areas, it is simply not practical for people to take up the offer because they cannot find anywhere to stay. Amendment 147 would therefore protect a rural business or employer who wants to create employment and provide accommodation to go along with it.

My concern is that, if we do not put such a provision in the bill, the unintended consequences will be that rural landlords, who are looking ahead and might be in a position in which they can take on a new employee, might just decide to leave a property empty rather than offering it up for a long-term let, or they might decide to let it in the short term rather than make it a residential let, and that is probably not in the interests of wider public policy.

Amendment 147 is supported by the NFUS and Scottish Land & Estates. It provides a sensible balance in protecting the interests of rural communities.

John Swinney: First, it is welcome to see Mr Mountain and I wish him well.

The amendments in this group seek: to significantly alter the provisions in part 4 of the bill that remove mandatory grounds of eviction; to remove the private landlord pre-action protocol provision; and to propose new eviction grounds relating to employees.

The Government's view, as endorsed by the Local Government, Housing and Planning Committee, is that the position under the coronavirus acts should be continued so that all grounds of eviction remain discretionary. In a sense, that is one of the key points about this series of amendments and the consideration that has to be applied to them. I have had this thought about some of the other provisions in the bill that we have wrestled with today. The purpose of this piece of proposed legislation is to look at the arrangements and circumstances for which we have had to legislate as a consequence of the pandemic, and to put in place longer-term arrangements arising out of the pandemic. It is entirely legitimate to raise the issues that have been raised in this series of amendments, as we have seen in other amendments that we have looked at today, but they are not driven by the circumstances of the pandemic on its own. When the Local Government, Housing and Planning Committee looked at the question in relation to the coronavirus acts, it came to the same conclusion as the Government: all grounds of eviction should remain discretionary.

A tribunal is the correct place to balance the rights of tenants and landlords when deciding whether an eviction is reasonable, and the tribunal cannot arrive at a decision that is incompatible with the convention rights of either party in determining whether an eviction order should be granted. Moving permanently to discretionary grounds is not a bar to eviction; it simply allows the tribunal to consider all the facts and do what is reasonable in the particular circumstances of each case. I consider that the amendments seek to remove provisions that allow the full circumstances of both tenants and landlords to be taken into account by a tribunal. For that reason, I cannot support them.

The private landlord pre-action protocol is, again, not a bar to eviction, but we hope that, in many cases, the support that is provided to a tenant by things such as being signposted to information under the protocol will enable rent arrears to be addressed and the tenancy to continue. That is in the interests of both parties, as it costs a landlord to find a new tenant and it costs a tenant to move.

In addition, if all rent arrears grounds of eviction continue to be discretionary, the removal of the protocol would disadvantage landlords by removing a means by which they can demonstrate that eviction is reasonable in the circumstances. For those reasons, I oppose amendments 107 and 108.

Both Mr Fraser and Mr Mountain also seek to create a further ground of eviction where a landlord seeks to recover possession of a property in order to rent it to an employee of the landlord. I do not consider that any of those proposed new grounds of eviction is appropriate. There are

already existing grounds to enable a landlord to evict a tenant from a property that is occupied for the purposes of employment, where the tenant is no longer an employee.

When we introduced the Private Housing (Tenancies) (Scotland) Act 2016, we committed to a review of all the grounds for repossession after five years, and that period ends in December this year. I am happy to reconfirm that commitment and to ensure that key stakeholders are consulted in the development of that work.

Murdo Fraser: Mr Swinney will recall that a number of members who spoke in the stage 1 debate, including me, raised the issue of manses and other church properties, which often lie vacant for a year or more while the church seeks a new minister. Rather than allow the property to lie empty, the church will seek to let it on a private residential basis. The Church of Scotland, among others, expressed concern that, without a mandatory ground to allow it to recover possession, that would be too risky.

As Mr Swinney says, the matter could go to a tribunal, but there would be no guarantee that the property could be recovered when it is required for a new minister taking up office. I think that Mr Swinney said during the stage 1 debate that he would reflect on that. Does he have any more thoughts as to how that issue could be addressed? I fear that the unintended consequence could be that churches will just leave such properties lying empty, when they could be used to house families, even on a short-term basis.

John Swinney: I understand the dilemma, and I know that the Church of Scotland has made representations to the Government about that point. There are further discussions to be had with it on those particular arrangements. I understand the context that the Church of Scotland sets out, but options for resolving those questions are available to aid churches.

I accept that those options are not guaranteed, because a tribunal has the ability to come to a judgment. Earlier, I made the point that a tribunal considers all the facts and must do what is reasonable in the particular circumstances of each case. I do not wish to draft the outcome of a tribunal judgment, but I would think that a church appointing a minister after a period of vacancy and therefore requiring the accommodation to house that minister is a reasonable set of circumstances to put to a tribunal, should that be required. The overwhelming majority of eviction cases do not go anywhere near a tribunal; they are resolved outwith the precincts of a tribunal.

Murdo Fraser: I am grateful to the cabinet secretary for that explanation. My concern, which I think has been expressed by the Church of Scotland, is that, although that might well be the case, there is no guarantee that a tribunal would reach that outcome. Therefore, the unintended consequence is likely to be that churches will just not take the risk of renting out such properties.

John Swinney: Obviously, there are matters for a church to weigh up as a landlord in those circumstances. We are happy to explore the matter with the Church of Scotland in due course, but I contend that there are strong grounds and foundations for churches to be optimistic in assessing the possibility of securing access to manse properties. That is, first, because most eviction cases do not end up anywhere near a tribunal and, secondly, because a tribunal has to do what is reasonable in the particular circumstances of the case.

However, I am not dismissing the issues. I am very happy for ministers and officials to engage further with the Church of Scotland. I give that assurance.

Edward Mountain: I understand your points about amendments 107 and 108. Regarding your other points, it is critical that the First-tier Tribunal is correctly resourced. Given that you support keeping the act as it is, can you give some indication of the additional resources that will be made available to the First-tier Tribunal? For how long would it be reasonable for tribunals to wait before hearing a case?

John Swinney: It is difficult to give a definitive prescription about timescales, because tribunals, by their nature, exercise their judgments independently. I dare say that I would get into hot water if I were to start setting out the timescales for tribunals.

My second point is about resourcing. We make the best judgments that we can about resourcing so that decisions can be made, the private rental sector can operate smoothly and the issues that Mr Mountain puts to me can be properly resolved through the tribunal process, if they need to go there. I return to the point that I made to Mr Fraser, which is that the overwhelming majority of such cases do not go anywhere near a tribunal.

I return to the point that I was making about the Private Housing (Tenancies) (Scotland) Act 2016 before I accepted Mr Fraser's intervention. I reconfirm the Government's commitment to review all grounds for repossession after five years. That period ends at the end of 2022, and it is right for us to fully consider all the grounds for eviction together. I hope that that gives Mr Fraser and Mr Mountain some reassurance.

On the basis of those points, I urge Mr Fraser and Mr Mountain not to move amendments 76, 146 and 147, so that all grounds for eviction can

be reviewed together. Any necessary legislative changes could be introduced following that review.

For all the reasons that I have provided, I invite the committee to reject all the amendments in the group.

Murdo Fraser: On a point of order, convener. I have an interest to declare. I should have put on the record that I am a member of the Church of Scotland.

The Convener: Thank you.

I invite Edward Mountain to wind up and to press or withdraw amendment 70.

Edward Mountain: You gave me sufficient time at the beginning to make my case. I have listened to what the Deputy First Minister has said. Before stage 3, I would like to explore with him and with the Scottish Government how we can resolve any perceived backlogs that are realistically felt to be affecting the First-tier Tribunal. By looking at that issue, we might be able to give some confidence if the changes are to go ahead.

I fear that Mr Fraser is right about unintended consequences. I think that churches, for a whole heap of reasons, would rather not risk going through a tribunal and would think that it would be easier to let premises lie empty. I think that that goes for many landlords who wish to house their employees.

I press amendment 70. I am sure that we can look at each amendment in turn.

The Convener: The question is, that amendment 70 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 70 disagreed to.

The Convener: Amendment 71, in the name of Edward Mountain, has already been debated with amendment 70. I ask Edward Mountain to move or not move amendment 71.

Edward Mountain: I would move amendment 71, but I might be able to help you. I do not know whether this is impertinent, but I think that the voting might continue in a certain way. Therefore, I would be happy to move amendments 71 to 82 and 146 en bloc, if that suits the committee and you, convener. I do not wish to pre-empt your position, but I am trying to save you some time.

19:30

The Convener: That is appreciated. Please hold on for one moment.

Unfortunately, those amendments relate to more than one section. Therefore, at the moment, you could move amendments 71 to 81 en bloc, if you are happy with that, Mr Mountain.

Edward Mountain: I am very happy to move amendments 71 to 81 en bloc.

The Convener: Cabinet secretary, do you want to come in?

John Swinney: Oh, no. I think that that would be called interfering, convener.

Amendments 71 to 81 moved—[Edward Mountain].

The Convener: The question is, that amendments 71 to 81 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendments 71 to 81 disagreed to.

Amendment 82 moved—[Edward Mountain].

The Convener: The question is, that amendment 82 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 82 disagreed to.

Section 33 agreed to.

After section 33

Amendment 146 moved—[Edward Mountain].

The Convener: The question is, that amendment 146 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 146 disagreed to.

Amendment 147 moved—[Murdo Fraser].

The Convener: The question is, that amendment 147 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 147 disagreed to.

Section 34—Assured tenancies: discretionary eviction grounds

The Convener: Amendment 84, in the name of Edward Mountain, has already been debated with amendment 70. I ask Mr Mountain to move or not move amendment 84.

Edward Mountain: At the risk of "interfering"—I do not know whether that was directed at me, Mr Swinney, but I am trying to help—I am prepared to not move amendments 84 to 106 to allow us to move on. I am also prepared to not move amendments 107 and 108 in the hope that the Scottish Government will be prepared to discuss with me how to resource the First-tier Tribunal to ensure that delays are reduced. There has been no undertaking from the Government; I just hope that it will discuss that with me.

I am prepared to not move any of the remaining amendments in my name in this section.

The Convener: I am sorry for the delay, Mr Mountain. I am taking advice from the clerks. You are not going to move amendment 84. Is that correct?

Edward Mountain: I do not want to move amendments 84 to 108.

The Convener: Thank you for your help, but, unfortunately, we have to go through them individually.

Amendments 84 to 93 not moved.

Section 34 agreed to.

Section 35—Tenancies under the Rent (Scotland) Act 1984: discretionary eviction grounds

Amendments 94 to 106 not moved.

Section 35 agreed to.

Section 36—Private residential tenancies: pre-action protocol

The Convener: Amendment 107, in the name of Edward Mountain, was debated with amendment 70. I ask Mr Mountain whether he wishes to move or not move the amendment.

Edward Mountain: I will not move the amendment. I hope that I can discuss the matter further with the Scottish Government.

Amendment 107 not moved.

Section 36 agreed to.

Section 37—Assured tenancies: pre-action protocol

The Convener: Amendment 108, in the name of Edward Mountain, was debated with amendment 70. I ask Mr Mountain whether he wishes to move or not move the amendment.

Edward Mountain: I will not move the amendment. I hope that I can discuss the matter with the Scottish Government.

Amendment 108 not moved.

Section 37 agreed to.

After section 37

Amendments 64 and 65 moved—[John Swinney]—and agreed to.

The Convener: Group 13 is on tenancies: emergency rent freeze plan. I welcome Mercedes Villalba and Mark Griffin. You have not been to the

committee before, so I invite you to declare anything that is recorded in your entry in the register of interests that might be relevant to the committee's remit.

Mercedes Villalba (North East Scotland) (Lab): I am a member of tenants unions Acorn and Living Rent.

Mark Griffin (Central Scotland) (Lab): I am the owner of a private rented property in the North Lanarkshire Council area.

19:45

The Convener: Amendment 66, in the name of Mercedes Villalba, is grouped with amendment 68. I remind members that amendment 68 can be pre-empted by amendment 67, which is in the group on transitional and saving provision and commencement. If amendment 67 is agreed to, I cannot call amendment 68. I ask Mercedes Villalba to speak to and move amendment 66 and to speak to both amendments in the group.

Mercedes Villalba: I thank the committee members for their work on the bill so far, and I thank the convener for giving me the opportunity to speak to amendments 66 and 68.

We all recognise that the private rented sector is continuing to grow in Scotland; it now encompasses more than 15 per cent of all households. Those households are now under increasing financial pressure due to above-inflation rent rises. In the past year alone, average monthly rents in Scotland have increased by more than 8 per cent, and that was before the current cost of living crisis and double-digit inflation hit.

As members know from contact from their constituents, the impact of rent costs, coupled with the other financial pressures that are caused by the cost of living crisis, is taking its toll on tenants.

Scotland's tenants union, Living Rent, has been gathering testimony from tenants about how rent increases are impacting on them, and I will share some of those testimonies with the committee. The first quotation is:

"My landlord increased my rent by £300 with no reason given. We can't afford to stay and will have to move out."

Another testimony reads:

"The landlord increased the rent by £100 a month. He said he looked at the average rents for the street and decided he could raise it to £900. It's had a very big impact on my financial situation, but I feel I cannot afford to move."

The final testimony that I will share with the committee today reads:

"Our landlord increased our rent by £150 to £850. To explain, he said that he 'could not be expected to stand still while the market moves on.' We had to move to a place that doesn't suit our requirements, as my wife is pregnant and the new flat is very old, has dirty and nicotine-saturated carpets, and is on the top floor."

That is just a small sample of the testimonies that were submitted to Living Rent. I have more submissions here, if any member would like a copy.

I want to take what the Scottish Government says in good faith. By its own admission, rent pressure zones have not been successful in tackling rip-off rent hikes. I am pleased that, thanks to campaigning by Living Rent members, the Scottish Government has committed to introducing rent controls by 2026. That is welcome progress, but allowing a lead time of up to four years is causing a short-term incentive for landlords to increase their rents prior to rent controls being introduced.

Tenants cannot afford another four years of hikes. That is why I have repeatedly raised in Parliament the proposal that there be an emergency rent freeze. Although the First Minister said that, as a matter of good faith, she will undertake to explore any suggestion that is made in the chamber, the subsequent response that I received from the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights did not even address the idea of an emergency rent freeze.

I have lodged amendments 66 and 68 at stage 2 of the Coronavirus (Recovery and Reform) (Scotland) Bill because rents are rising right now, and renters need urgent action right now.

Amendments 66 and 68 would require Scottish ministers to produce, within three months of the bill receiving royal assent, a plan to introduce an emergency rent freeze for all tenancies in Scotland. The rent freeze would have to remain in place until Scottish ministers bring forward their promised legislation in relation to rent control measures.

I hope that the cabinet secretary will engage constructively with amendments 66 and 68, and recognise the importance of standing up for tenants as part of our Covid-19 recovery, because we cannot allow four more years of rent hikes. I also hope that members of the committee will put their constituents first by supporting amendments 66 and 68.

Today, we have the power to legislate in the interests of tenants, and there is no excuse not to do so. Amendments 66 and 68 enjoy the support of tenants, through Scotland's tenants union, Living Rent, and of workers in every sector, through the Scottish Trades Union Congress.

Let us show people which side we are on and in whose interests we are working by introducing the rent freeze that we so desperately need.

I move amendment 66.

Murdo Fraser: I thank Mercedes Villalba for lodging her amendments, because she raises some important issues. I have a great deal of sympathy with the case studies that she identified. However, what she proposes would potentially have unintended consequences.

We heard earlier about concerns that the supply of private rented property is already in decline. There is a danger that, by bringing in such a measure at this point, we would constrain further the supply of private rented property. That would not be in the interests of people who are seeking accommodation in the private rented sector. Such accommodation might suit young people or those who move around often with their jobs, for whom being in the private rented sector is very helpful.

There is a broader debate to be had around the issue, but the correct context for that would be a housing bill, which I understand the Scottish Government is considering, rather than this bill. Although I have some sympathy with the point that Mercedes Villalba makes, I do not think that the bill is the appropriate avenue for bringing in the particular measure that she proposes.

John Swinney: First, let me say that I and the Government share Mercedes Villalba's concerns regarding high rents. That is why the Government has set out the action that we will take. Our upcoming housing bill will seek to put in place a framework for a new set of rent controls, and will improve rent adjudication further by limiting the increase in rents that tenants might face in the adjudication process.

The whole issue of rent controls is important, but we have to recognise that its consideration cannot be rushed, despite the difficulties that individuals are facing. I do not in any way question that they are having those difficulties, but there are complex issues to address and there is, quite simply, no quick-fix solution that can be implemented. All the international evidence shows that the systems that are robust and provide lasting benefit are those that are developed over time.

With the bill—the same argument that I deployed in relation to issues that were previously raised by Edward Mountain applies here—there has been no opportunity for Parliament to take evidence from a range of stakeholders on the pros and cons of a rent freeze. That means that there has been no opportunity to assess the likely impact of the proposal in a range of situations, or to consider how the rent freeze is to interact with a broader discussion of rent controls, as set out in our consultation "A New Deal for Tenants—Draft Strategy Consultation Paper". In my view, therefore, taking such action through the bill would, at this stage, be premature.

Alex Rowley: Given the examples that have been highlighted today, and the fact that there are people out there who own properties and are trying to cash in, which is causing massive problems, is there anything that the Government should be looking to do in the short term?

John Swinney: Obviously, the Government will seek to take whatever action we can in the short term. I do not, in any way, doubt the testimony that has been put on the record today, and I acknowledge the challenges that individuals face. However, a range of substantial and complex issues have to be wrestled with in relation to the question of rent controls. Regardless of whether the issues are addressed on an emergency basis or over the longer term, their significance remains the same.

I will set out a few points in relation to particular challenges that the amendments raise. There are three problems with amendment 66. First, it states that the rent freeze should apply to "all tenancies in Scotland", but it does not specify whether those are residential, commercial or agricultural tenancies and would therefore apply to all three.

Secondly, the proposed rent freeze is to be in place until rent control legislation is introduced, yet there is no clarity about the nature of the legislation that would be required. Amendment 66 does not take into account the fact that rent control measures are already in place in some form, with limitations on landlords regarding the number of rent increases that can be applied in a year. We also have in place, via the Private Housing (Tenancies) (Scotland) Act 2016, rent adjudication, which allows tenants to challenge unfair rent increases. That addresses, in part, the issue that Alex Rowley put to me.

It is not clear what further measures would count as the bringing forward of rent control measures so, as drafted, amendment 66 would not give any clarity as to the duration of the proposed rent freeze.

Thirdly, the amendment would oblige the Scottish Government to produce a plan to impose a rent freeze, but the Scottish Government has no power to implement a rent freeze. Amendment 66 would not confer such a power on the Government.

It is not clear how the proposed rent freeze would take account of the individual circumstances of the tenant, the landlord or the property. That would include giving due consideration to the impact of high rents in certain areas and the impact of the cost of living crisis.

The difficulties that I have highlighted with amendment 66 demonstrate why it is necessary to do detailed work to create a system of rent control that is effective, sustainable and robust against challenge, and which will stand the test of time. Proper consultation is a central part of that work.

Although the amendments in the group have been lodged with the best of intentions, I ask the committee to reject amendments 66 and 68 on the understanding that the Government is currently going through the required consideration of the implementation of rent controls and will consult all stakeholders fully on the issues.

Mercedes Villalba: I understand from the cabinet secretary's comments that the Government supports the principle of controlling rents in Scotland. I am grateful to him for outlining the ways in which amendment 66 could be improved. On that basis, I am happy to seek to withdraw it and to discuss the matter with his office to improve it and bring an amendment back at stage 3.

Amendment 66, by agreement, withdrawn.

The Convener: We move on to group 14. Amendment 109, in the name of Mark Griffin, is grouped with amendments 110 and 111.

Mark Griffin: Amendments 109 and 110 seek to improve the information, evaluation and reporting of the operation and effect of the provisions in part 4 and their precursors, which is substantially lacking at the moment.

It is clear to anyone with an interest in the private rented sector that there is a lack of hard and fast data to give an understanding of that sector, particularly when it comes to the length of tenancies, rent levels and the make-up of the sector. Amendments 109 and 110 seek to address that in a small way through the collection of more data, which would put us in a much more informed position ahead of the forthcoming housing bill and in assessing how the provisions have worked and continue to work.

Amendment 109 would require an evaluation of the operation and effect of part 4 and that tenants, landlords and the Scottish Courts and Tribunals Service be consulted. It would also require that the impact on those groups be assessed one year after royal assent and in time for the housing bill.

Members will know that the provisions in part 4 maintain the pre-action protocols and the requirement for all eviction grounds to be discretionary. Those measures are already active in the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No 2) Act 2020, so amendment 109 would require the evaluation to cover three years of continued operation.

Amendment 110 would require the Scottish Courts and Tribunals Service to publish quarterly statistics relating to the operation of the provisions in part 4. Anyone who has tried to retrieve statistical information from the service will know that that is difficult. It is a transparent body and publishes its individual judgments clearly, but it has been difficult to find overall aggregated statistical information on the work of the First-tier Tribunal.

We want tenants' rights to be protected so that people are not evicted from their homes as a result of hardship faced during the pandemic and subsequent cost of living crisis. However, we recognise concerns that the measures in the existing coronavirus legislation are not supported by information or evidenced reporting on their effectiveness.

At the moment, the extent of the debate has essentially been two sides—the tenant side and the landlord side—saying that they do or do not agree with the measures, but without there being any underlying evidence for their positions. The reporting requirement would fill that gap.

20:00

The Scottish Association of Landlords has questioned the effectiveness of the move to discretionary grounds, having published its analysis of tribunal cases. That fairly lengthy piece of work showed that only one eviction had been prevented on the grounds of reasonableness.

I am pleased that Shelter Scotland supports my amendments. At stage 1, it recommended evaluation and monitoring of the pre-action protocols so

"that they are working in practice, with the Tribunal ensuring that they are upheld."

Legislation without robust evidence of the impact of the policies was far from best practice, albeit that it was done with the best motivations in mind. It would be entirely unacceptable to remove tenants' rights in the absence of any compelling information to do so. I believe that the amendments strike a balance in setting a requirement for post-legislative evaluation to assess the effects of the decision to legislate two years ago.

I move amendment 109.

Edward Mountain: I have lodged amendment 111 to give a time limit to the proposed changes to the mandatory and discretionary eviction grounds under sections 33 to 35 of the bill, which will amend the housing legislation that we have been discussing. The amendment would require the Government to introduce its new housing bill by 31 July 2024, thereby allowing it to respond to the

effects that the changes that it is bringing in will have on the lettings market.

I know that the Government will find it hard to accept putting a time limit on that, but it is suggesting a fundamental and retrospective change to existing law. To my mind, it is doing so without full consultation, without really speaking to all those whom it should speak to and without listening to people on both sides—that is, landlords and tenants—in relation to the changes.

I am sure that the way in which committee members will vote on the amendment will be driven by their wish to make good and watertight law. Therefore, to my mind, a sunset clause should find their favour. After all, that would ensure that a proportionate response to the pandemic is not allowed to be carried forward beyond the pandemic.

Before I finish, I highlight that Mark Griffin's amendment 110 has merit. I would go further than it proposes—I would like it to be amended to include a note of all types of tenanted properties over the period. The Government will say that it is not possible to collect that information but, of course, it is possible—you need only speak to councils, which must have a register of landlords and their properties. You can easily find out how that changes on a yearly basis. As Mr Swinney will know, landlords pay a fee to councils to be on that register. Therefore, checking and keeping on top of that should be simple. We would then be able to see the effect of the changes.

John Swinney: Amendment 109 would introduce what I consider to be unnecessary reporting arrangements. As significant reporting duties are already included in the Coronavirus (Scotland) Act 2020 and Coronavirus (Scotland) (No 2) Act 2020, including two-monthly reports to Parliament on the operation of the tenancy provisions, the preparation of a further report on the operation of those acts is unnecessary.

In addition, we have committed to carrying out a review of all repossession grounds. That will include the consideration of the impact of part 4 of the bill and is a more appropriate vehicle for assessing and reporting on the impact of the changes. It is far more meaningful to assess the impact of the statutory framework for private tenancies as a whole, of which those changes are a part.

On amendment 110, obliging the First-tier Tribunal to collect, prepare and publish statistical information on its roles and responsibilities in relation to part 4, to contribute to the Scottish ministers' reporting duties, is both problematic and unnecessary. It is problematic because it is not clear what information would be required, and because the tribunal does not have any roles and responsibilities in relation to part 4, as its powers and duties are contained in the Rent (Scotland) Act 1984, the Housing (Scotland) Act 1988 and the Private Housing (Tenancies) (Scotland) Act 2016. It is unnecessary because the First-tier Tribunal already provides a range of statistical information to the Government on a monthly basis.

Amendment 111 seeks to oblige the Scottish ministers to introduce primary legislation to reform the law on residential tenancies, without specifying what aspects should be reformed. The Government has already committed to introducing legislation to reform residential tenancies, which will deliver a new deal for tenants. Therefore, amendment 111 is unnecessary.

I urge members not to support amendments 109, 110 and 111. However, if it would be helpful, the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights, who will lead on the upcoming housing bill, will be happy to meet Mr Griffin to explore how some of his thinking in relation to the improvement of data on the private rented sector could be reflected in that work. I am sure that he would also be happy to meet Mr Mountain to discuss the issues that he is concerned about.

The Convener: I ask Mark Griffin to wind up and to say whether he wishes to press or withdraw amendment 109.

Mark Griffin: In relation to amendment 111, we were sympathetic to the idea of a sunset clause, but one that was linked to the introduction of the housing bill. However, I understand that there are difficulties with that in legislative terms. I do not support amendment 111. It seeks to introduce a hard date for the relevant provisions to expire, which could result in the protections that the bill introduces for tenants simply expiring if the housing bill was not introduced by the specified date.

Amendment 109 is unique in the sense that representatives of landlords and of the tenants lobby are equally supportive of using the proposed provisions to fill a particular data gap and to fill a gap in assessing the Government's performance against the measures in that part of the bill. However, I take on board what the cabinet secretary has said and the offer that he has made for Mr Harvie to meet me to discuss the matter. Therefore, I seek permission to withdraw amendment 109.

Amendment 109, by agreement, withdrawn.

Amendment 110 not moved.

Amendment 111 moved—[Edward Mountain].

The Convener: The question is, that amendment 111 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 111 disagreed to.

Section 45 agreed to.

Section 46—Commencement

The Convener: Amendment 67, in the name of the cabinet secretary, has already been debated with amendment 40. I remind members that, if amendment 67 is agreed to, I will not be able to call amendment 68, because of pre-emption.

Amendment 67 moved—[John Swinney].

Amendment 67A moved—[John Mason]—and agreed to.

Amendment 67, as amended, agreed to.

Amendment 8 moved—[Murdo Fraser].

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)

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

As the result is a tie, I will use my casting vote as convener in order for the committee to reach a decision. I vote against the amendment.

Amendment 8 disagreed to.

Amendment 9 moved—[Murdo Fraser].

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fraser, Murdo (Mid Scotland and Fife) (Con)
Whittle, Brian (South Scotland) (Con)

Against

Brown, Siobhian (Ayr) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 9 disagreed to.

Section 46, as amended, agreed to.

Section 47 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the Deputy First Minister and his supporting officials for their attendance this morning and this evening.

The committee's next meeting will be on 23 June, when we will continue to take evidence as part of our inquiry on the communication of public health information on Covid-19.

Meeting closed at 20:12.

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