



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Finance and Constitution Committee

**Wednesday 17 May 2017**

**Session 5**



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**FINANCE AND CONSTITUTION COMMITTEE**

**15<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Bruce Crawford (Stirling) (SNP)

**DEPUTY CONVENER**

\*Adam Tomkins (Glasgow) (Con)

**COMMITTEE MEMBERS**

- \*Neil Bibby (West Scotland) (Lab)
- \*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
- \*Ash Denham (Edinburgh Eastern) (SNP)
- \*Murdo Fraser (Mid Scotland and Fife) (Con)
- \*Patrick Harvie (Glasgow) (Green)
- \*James Kelly (Glasgow) (Lab)
- \*Liam Kerr (North East Scotland) (Con)
- \*Ivan McKee (Glasgow Provan) (SNP)
- \*Maree Todd (Highlands and Islands) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Derek Mackay (Cabinet Secretary for Finance and the Constitution)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Finance and Constitution Committee

Wednesday 17 May 2017

*[The Convener opened the meeting at 10:00]*

### Air Departure Tax (Scotland) Bill: Stage 2

**The Convener (Bruce Crawford):** Good morning, colleagues, and welcome to the 15th meeting of the Finance and Constitution Committee in 2017. I remind everyone to put their mobile phones on silent.

The first agenda item is stage 2 of the Air Departure Tax (Scotland) Bill. We are joined by the Cabinet Secretary for Finance and Constitution, and by Scottish Government officials. Mike Stewart is the bill manager, John St Clair is senior principal legal officer and Fiona Lincoln is from the parliamentary counsel office. I welcome the cabinet secretary and his officials to the meeting. Members should note that officials cannot speak on the record at stage 2, so all questions should be directed to the cabinet secretary.

Members should have copies of the marshalled list of amendments and the groupings of amendments. We will take each amendment on the marshalled list in turn.

*Section 1 agreed to.*

#### Section 2—Meaning of chargeable passenger

**The Convener:** Amendment 1, in the name of the cabinet secretary, is grouped with amendments 2 to 6, 10 to 13, 51, 52, 56 to 58 and 60 to 65.

**The Cabinet Secretary for Finance and the Constitution (Derek Mackay):** As I committed to doing in my response to the committee's stage 1 report, I have lodged the amendments in the group to provide for passenger exemptions under the air departure tax, and to make minor consequential changes resulting from the exemptions. All the exemptions command strong stakeholder support and replicate those that are currently in place for United Kingdom air passenger duty.

However, two of the UK APD passenger exemptions have not been included in the group of amendments. First, as I set out in my response to the committee's stage 1 report, the Scottish Government strongly supports an ADT exemption

for Highlands and Islands flights. However, after careful consideration, the Government has concluded that the exemption must be notified to and assessed by the European Commission under state-aid rules before it is implemented, in compliance with European Union law. The Scottish Government is working closely with the UK Government to resolve that issue; I will ensure that Parliament and stakeholders are regularly updated on the matter. If notification to the European Commission is successful, the exemption will, subject to Parliament's approval, be introduced in secondary legislation under powers in section 8.

Secondly, the Scottish Government is not minded to introduce an ADT exemption for passengers on flights that last less than 60 minutes and that depart from and arrive back at the same airport. It appears that that exemption would be to the singular benefit of airlines that operate fear-of-flying courses. As airlines already levy charges for those courses, it is not clear that the viability of such services would be impacted by an ADT charge. The courses also have no impact on the Scottish Government's overall connectivity and sustainable economic growth objectives. Therefore, the Government considers it to be fair that the aircraft operators who run such courses should be liable to pay ADT on the flights. It is important to note that short pleasure flights, such as those that are often run at air shows, will remain exempt under the existing chargeable aircraft conditions, which are set out in section 3.

I move amendment 1.

**Patrick Harvie (Glasgow) (Green):** Good morning, cabinet secretary. I understand the idea of broadly following the exemptions that are in the current tax regime. However, deciding what level or nature of exemptions ought to be applied surely demands that first we know what the purpose of the tax is. That seems to have been an open question throughout stage 1. We understand that the purpose of the bill is to levy the tax, but I do not think that the Government is at all clear on what the purpose of taxing aviation is. The only Government policy objectives that the cabinet secretary mentioned in his opening remarks concerned economic growth and connectivity, which would be best served if the Government did not promote the bill at all and exempted aviation from taxation altogether. Clearly, I would oppose that, but I ask the cabinet secretary to tell us what he believes the purpose of taxing aviation is, so that we can decide what the appropriate level of exemptions is.

**Murdo Fraser (Mid Scotland and Fife) (Con):** I welcome the amendments in general, which reflect what the committee resolved in its stage 1 report, when it recommended that the exemptions be in

the bill. It is helpful that the amendments have been lodged.

I seek clarity on one issue. Section 8, which will be amended by amendment 12, will enable the Scottish ministers to amend or remove exemptions by regulation. What will be the process if a decision is made to exercise that power?

**Adam Tomkins (Glasgow) (Con):** I echo what Murdo Fraser said about the exemptions being made by amendment to the primary legislation rather than by secondary legislation thereafter. It is not appropriate to introduce bills that fail to define the scope of taxable activity or behaviour.

What do you understand to be the timetable for notification to the European Commission? Is there any prospect of the notification process being completed in time to include the relevant exemption in the bill at stage 3, rather than its being dealt with subsequently by secondary legislation?

**The Convener:** The cabinet secretary has been asked questions by three members in a row and I want him to be able to deal with them properly. Two other members also want to ask questions.

**Derek Mackay:** On Mr Harvie's question about the purpose of the tax, it could be argued that it was introduced by a previous United Kingdom Government as a green tax. We could argue about whether it achieved its purpose. It has contributed to state revenues and, following the dialogue, discussion and processes that led to the tax being devolved to Scotland, it forms part of our budget. The Scottish Government has aspirations around connectivity and supporting the economy. The Scottish Parliament has power in relation to the tax, which not only generates revenue but can be deployed in a way that supports our strategy on connectivity and general economic growth, as I said.

Mr Fraser asked about the process for amending the exemptions. The order would be subject to affirmative procedure, which means that amending exemptions would require both proactive engagement with Parliament, and Parliament's approval.

On Mr Tomkins's question, when there is resolution of the issue of the exemption for the Highlands and Islands, we want to have the power to act through secondary legislation rather than having to go through a bill process. It is about how we use the powers in the bill to effect change, in accordance with parliamentary procedure.

Mr Tomkins also asked about the details of notification. Because the UK is the member state, it will be for the UK Government to progress the matter. From the engagement that I have had with the Financial Secretary to the Treasury, I

understand that there will be a UK Government process in which we will engage, with the UK Government. I also want us to engage directly with Europe. I do not have a timescale for that. To say that the process could be concluded by stage 3 would be incredibly ambitious. We aspire to work as hard as possible to have the process concluded before the tax is levied in Scotland in the next financial year, but that is in the hands of the UK Government because the UK is the member state. We will certainly work as hard as we can to achieve it, but completion by stage 3 feels very unlikely, given my engagement with the UK Government.

**Neil Bibby (West Scotland) (Lab):** As members know, the belief that exemptions to air departure tax should be set out in the bill—and at the earliest opportunity—was a recurring theme in the evidence that the committee heard. A significant body of expert opinion, including the Institute of Chartered Accountants in Scotland and the Chartered Institute of Taxation, called for exemptions to be in the bill in order to reduce uncertainty, as opposed to their being provided for through regulation at a later date.

Our colleagues in the Delegated Powers and Law Reform Committee also made it clear that delegated powers should not be used as a substitute for proper policy development. I therefore welcome the Scottish Government's decision to set out the proposed exemptions in the bill, through the amendments in the group.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Are the proposed exemptions consistent with practice in the other nations of the United Kingdom? Are they reciprocated in other jurisdictions in Europe and elsewhere?

**The Convener:** If there are no other questions, I ask the cabinet secretary to wind up the debate and deal with Willie Coffey's question.

**Derek Mackay:** I have no further points to make on the substance of the amendments. I confirm that the exemptions, apart from the two that I have mentioned, mirror the UK exemptions.

*Amendment 1 agreed to.*

*Section 2, as amended, agreed to.*

#### After section 2

*Amendments 2 to 6 moved—[Derek Mackay]—and agreed to.*

#### Section 3—Meaning of chargeable aircraft

**The Convener:** Amendment 7, in the name of Derek Mackay, is grouped with amendments 8, 9 and 53.

**Derek Mackay:** As I committed to doing in my response to the committee's stage 1 report, the amendments provide for aircraft exemptions under ADT and will make minor consequential changes resulting from the exemptions. All the exemptions command strong stakeholder support and replicate those that are currently in place for the UK air passenger duty.

I move amendment 7.

*Amendment 7 agreed to.*

*Section 3, as amended, agreed to.*

### After section 3

*Amendments 8 and 9 moved—[Derek Mackay]—and agreed to.*

*Section 4 agreed to.*

### Section 5—Meaning of carriage and agreement for carriage

*Amendments 10 and 11 moved—[Derek Mackay]—and agreed to.*

*Section 5, as amended, agreed to.*

*Sections 6 and 7 agreed to.*

### Section 8—Key concepts may be modified by regulations

*Amendment 12 moved—[Derek Mackay]—and agreed to.*

*Section 8, as amended, agreed to.*

### Section 9—Tax structure

*Amendment 13 moved—[Derek Mackay]—and agreed to.*

*Section 9, as amended, agreed to.*

*Schedule 1 agreed to.*

### Section 10—Tax bands and rate amounts to be set by regulations

**The Convener:** Amendment 66, in the name of Patrick Harvie, is grouped with amendments 70 and 71.

**Patrick Harvie:** The amendments in this group are the only substantial policy proposal that I am making, so I hope that it is all right if I spend a few minutes setting out the rationale for them. I have written far too much, but I promise to try to skip through some of it to save time.

As I observed at stage 1, this is the first time that I can recall any Government asking Parliament to pass legislation to create a tax that the Government itself seems to think ought not to exist. It is a peculiar situation and it is therefore unsurprising to me that the Government seems

unclear about the purpose of the tax. However, it is not only the Government that has been unclear; I cannot think of many stage 1 inquiries in which so little evidence has been put forward by so many for so long on a policy change.

On the environmental impact of aviation, I also find it extraordinary that the Government is so completely convinced that actions in other parts of the economy will be able to achieve the additional emissions reductions that will be necessary if aviation levels increase, yet it cannot say by how much it is willing to see those aviation emissions go up. It is just not possible to have confidence in the claim of additional emissions cuts elsewhere if there is no clarity about the scale of the task that is being created by the decision to give airlines a free pass.

10:15

These amendments aim to put some purpose into the bill. They would require ministers, in exercising the power to propose bands and rates for the new tax, to be clear about what they intend to achieve. Amendment 70 would require the Government, before the first exercise of the power, to consult on and adopt an aviation emissions policy. In deciding how prescriptive to be in framing amendment 70, I looked at the positions of those representing the airlines and the Scottish Government's chosen adviser on climate change, the United Kingdom Committee on Climate Change, which previously offered advice to both Governments on the capping of aviation emissions at 2005 levels by 2050. As far back as 2009, that was an active discussion between the Committee on Climate Change and the UK Government.

Meanwhile, in the same year, the aviation industry adopted a set of targets to mitigate CO<sub>2</sub> emissions from air transport. Those included an average improvement in fuel efficiency of 1.5 per cent per year from 2009 to 2020, a cap on the net aviation CO<sub>2</sub> emissions from 2020 onwards—so-called carbon-neutral growth—and a reduction in net aviation emissions of 50 per cent by 2050, relative to the 2005 levels. When Tim Alderslade of Airlines UK gave evidence to the committee at stage 1, he restated those commitments. He said:

"I can give you the assurance that that is still the commitment."

He went on:

"as a global industry, those are the commitments that we have made. We have made them ... for a number of years, and we are on target to hit them."—[*Official Report, Finance and Constitution Committee*, 1 February 2017; c 55,56.]

The Scottish Government's adviser thinks that aviation emissions can be capped at 2005 levels

by 2050 and the industry thinks that it can go much further and get a 50 per cent cut against that baseline. I am sceptical about the industry's commitments, but amendment 70 requires only that the Government commits to some target for aviation emissions in 2050, expressed as a percentage below 100 per cent of the 2005 levels. Anyone who takes seriously the industry's commitments must clearly accept that that is easily achievable in its terms. That needs to be set in combination with evidence-based use of the powers in section 16(3) of the Climate Change (Scotland) Act 2009, given the additional climate impact of emissions at altitude.

Amendment 70 would work with amendment 66 to ensure that, in setting rates and bands, the minister acts in the way "best calculated" to help to meet the target that is set in the aviation emissions policy. Clearly, that is not the only measure that needs to be taken if we are to achieve such an aviation emissions policy, but it has to be one of them and it has to be used.

The final amendment in the group, amendment 71, is a response to the paucity of evidence offered for the Government's stated tax policy of a 50 per cent reduction in ADT take. The minister agreed to come forward with various forms of evidence at a later stage, and I was slightly surprised not to see an amendment along those lines from the Government. If the committee is to achieve agreement on the nature of the evidence that we seek, we should define that in the bill by placing a requirement on ministers. My proposal is for an assessment that covers the fiscal, economic, environmental and social impacts.

The fiscal impacts of course include the revenue that is raised or foregone, as well as indirect impacts. I would be interested to see whether the surprising claims from the Scottish Tourism Alliance of decreased welfare spend and increased income tax generated have any rational basis. An assessment of economic impacts would end the guesswork that seems to have been going on about the number of jobs that would be created by the Government's policy. On environmental impacts, I have included the impact on greenhouse gas emissions and on local air and noise pollution in the vicinity of Scottish airports.

In social terms, amendment 71 would require an assessment of the share of the increase or decrease in ADT that would be paid by each income decile group. That information is easy to collate from information that is available from the Office for National Statistics. For example, my party recently published figures based on an assumption of a 50 per cent reduction in ADT take, which showed that the richest 10 per cent of society would enjoy four times the financial gain that those in the lowest income decile would

receive. If our figures are wrong, the Government is welcome to correct them and publish an accurate assessment. In either case, that assessment would require to be conducted before the Government exercised its power to set rates and bands.

It is clear that, in order to continue to levy a tax on aviation, Parliament needs to pass a bill. However, it does not need to set that power into a policy vacuum. If the Government is unwilling to be clear about the positive purpose of taxing aviation, Parliament should pass legislation that places those requirements on ministers.

I do not have much expectation that the cabinet secretary will agree with my arguments. If he wants to argue against the detail instead of the principle, it is possible that we might agree on adjustments before stage 3. However, the intention of my amendments is to make the bill itself supportable. To pass it without any such constraints on the impacts that the tax power would have would be irresponsible.

I move amendment 66.

**Neil Bibby:** As committee members will know, many of those who contributed to the Scottish Government's consultation and the committee's own evidence taking on the bill expressed substantial concerns about the impact that a cut in aviation tax could have on both the environment and the public finances of Scotland. Indeed, a majority of those who participated in the Government's consultation opposed the course of action that the Government proposes to take.

We heard from campaigners such as Transform Scotland that the aviation industry is already one of the most lightly taxed industries in the country and that tax reductions would increase aviation emissions. The Government nonetheless proposes to target the industry for a tax cut. We heard that the tax cut that is proposed would reduce Government revenue by over £150 million a year at a time when public services are under pressure. We also heard that frequent flyers and those on higher incomes would benefit disproportionately, as Patrick Harvie has just outlined.

A considerable degree of doubt was expressed about whether a tax cut would boost or benefit the economy in any meaningful way. No credible or convincing evidence has been presented to the committee to suggest that the growth in passenger numbers in Ireland had anything to do with the abolition of its air passenger duty.

In Scotland, airports are reporting record growth in passenger numbers—figures that were released just last week highlighted record passenger numbers at Scottish airports under the existing air passenger tax regime. Domestic and international



traffic has gone up in Aberdeen, over a million people passed through Edinburgh airport last month and Glasgow airport reported its 50th consecutive month of growth. That is all with the existing levels of air passenger duty.

The case for the proposed tax cut does not stack up. It therefore seems prudent and reasonable to require the Government to set out exactly what the impact of its plans will be before it proceeds with any changes to rates or bands. We believe that the Government should be required to set out its policy intentions on aviation and to conduct an impact assessment before it sets the new tax levels. It is essential that the Scottish ministers provide details of the evidence and information that they are using to justify the tax cut, and amendment 71, in particular, places a reasonable and clear duty on ministers to keep the Parliament informed about their plans.

**Maree Todd (Highlands and Islands) (SNP):** I propose that we reject amendment 66, as a statutory target for aviation emissions would be inconsistent with the approach that is being taken under Scotland's climate change legislation—in particular, the setting of emissions reduction targets across the economy as a whole, not for specific sectors. The calculation is that the tax would lead to a 3 per cent increase in aviation emissions, which is only 0.1 per cent of the total. That is perfectly manageable and could be managed within the whole economy rather than within the aviation sector.

The impact assessments that are required under amendment 71 would be undertaken anyway, and some of the impacts would be difficult to estimate because they refer to taxation powers that are not within the remit of the Parliament. Before the regulations are laid before the Parliament, we will see a strategic environmental assessment, an updated greenhouse gas emissions assessment, a noise assessment and an independent economic assessment. I think that that is sufficient impact assessment for the policy.

**Murdo Fraser:** From Mr Harvie's point of view, these are perfectly reasonable amendments to lodge. My concern is that they are very prescriptive in the detail that they would put in the bill. When we took evidence from the cabinet secretary on these issues at stage 1, he made it clear that, when the Scottish Government lays regulations before Parliament to amend the tax rates and bands, it will present evidence on that. The Parliament will have the opportunity to assess that evidence and either support or reject the Scottish Government's proposals at that stage. I am not sure that it is necessary to put the proposed detail in the bill, because the Parliament will get an opportunity to consider these matters

subsequently. However, before we vote on the amendments, it would be helpful if the cabinet secretary could explain in more detail exactly what evidence will be presented to Parliament at the point when it will be asked to consider the setting of rates and bands.

**James Kelly (Glasgow) (Lab):** I support Patrick Harvie's amendments. It is crucial that the cabinet secretary provides proper impact assessments and that the policy is backed by an evidence base. There is broad agreement about the need for the bill as it will allow the rates to be set. However, given that the Government's clear policy intention is to reduce the level of ADT, it is incumbent on it to outline the evidence to back up that policy.

There are two strands to this. Patrick Harvie referred to the level of carbon emissions being capped at 2005 levels by 2050. We heard evidence from the airport operators that the reduction of the tax would result in an increased number of air travellers and increased economic activity but, logically speaking, that is at odds with the Scottish Government's policy of reducing carbon emissions. I do not accept Maree Todd's argument that we can exempt the airline industry from that policy; it clearly has to be part of the policy. The Government must explain how a policy that will result in more people travelling and, therefore, increased emissions squares with its policy of reducing carbon emissions.

The second strand is the fiscal impact. Reducing ADT by 50 per cent would have an adverse effect on the Scottish Government's budget of around £189 million. The Government needs to show how that money would be replaced. It also has to address the arguments that Patrick Harvie made about who would benefit. We heard evidence that those in the top earning groups, as opposed to those in lower earning groups, would benefit from a reduction in the tax. There is an argument about fairness and about the impact on the Scottish budget.

For those reasons, I support the amendments in the name of Patrick Harvie.

**Ivan McKee (Glasgow Provan) (SNP):** I think that everyone agrees that there should be an economic assessment and an environmental assessment of the policy. The question is how best to give effect to those. I understand that the Government is about to launch the economic assessment, which I look forward to reading to see how the numbers stack up. That will be set in the context of the proposed rates and bands and will give us the opportunity to understand them in detail.

The environmental impact is important, so we want to see the data on it. I understand that the Government has already undertaken a strategic

environmental assessment, but that needs to be understood in the context of the whole-economy approach and the TIMES model, which considers the most effective way of driving carbon reduction to meet the targets to which the Government has committed, taking into account everything that is happening across all aspects of the economy and all sectors.

We talk about aviation but, as we highlighted, aviation emissions are a very small percentage of total greenhouse gas emissions. It is important that we look at the whole economy. To put something in the bill that constrains what happens in aviation does not stack up with the way in which we approach policy across the rest of the economy, which accounts for 97 per cent of the environmental impact.

For consistency, it does not make sense to include the provision in the bill. The Government has a process on economic and environmental impacts, and we will see the data on that before we debate and agree to the tax bands and rates later this year.

10:30

**Willie Coffey:** We heard evidence at stage 1 about the positive effect in Ireland of the removal of the tax, not just for Dublin airport but for the regional airports. The chief executive of Ryanair is on the record as saying that removing air passenger duty could have a hugely beneficial effect for airports such as Prestwick airport in Ayrshire, which is near my constituency. Enough evidence has been heard at stage 1 to suggest that this kind of measure has a positive effect. Does the cabinet secretary share that view?

**Derek Mackay:** The Scottish Government does not support the amendments in the group. Amendment 70 and amendment 66, which depends on amendment 70, would set a statutory target for aviation emissions, which would be inconsistent with the approach that is taken under Scotland's climate change legislation.

Under the Climate Change (Scotland) Act 2009, statutory emissions reduction targets are set at the level of the whole economy, rather than for specific sectors. The whole-economy approach, which has been supported by the Committee on Climate Change, allows for the delivery of overall emissions reductions in flexible and cost-effective ways. The draft climate change plan, which Parliament recently scrutinised, sets out how we propose to meet targets up to 2032 on that statutory basis. Setting a specific target for aviation emissions, as amendment 70 proposes, would establish a precedent for less flexible sectoral emission reduction targets and challenge the basis of the whole-economy approach that is

established in Scotland's climate change legislation. The Scottish Government has noted the committee's support for an aviation emissions strategy in the climate change plan, and in due course it will respond to Parliament on that.

In relation to amendment 71, the Scottish Government has already committed to publishing a series of impact assessments on its ADT band and rate amount proposals before it lays secondary legislation before Parliament. First, the Government has commissioned an independent economic assessment of our overall 50 per cent ADT reduction plan. A contractor has been appointed, and the report will be published in the autumn. Secondly, a strategic environmental assessment is under way, and the next step of the SEA will be the Government consulting publicly over the summer on our overall 50 per cent reduction plan, as well as publishing an environmental report that outlines the findings of the assessment of the plan on a wide range of environmental topics such as climate factors, air quality, material assets and biodiversity. Thirdly, the Scottish Government is undertaking quantitative assessment of the likely greenhouse gas emissions and noise impacts of the overall 50 per cent reduction plan. The noise assessment will be published in the autumn, and the emissions assessment will be published next month, as supporting information to the SEA consultation.

The Scottish Government fully supports and recognises the importance of robust analysis of policies after implementation. Therefore, in addition to analysis that is being carried out, the Scottish Government has asked the contractor that is undertaking the independent economic assessment to consider the best way to design a robust monitoring and evaluation framework that can be put in place for assessing the socioeconomic and environmental impacts of ADT.

The Scottish Government is carrying out a range of impact assessments that will be published before Parliament is asked to consider our secondary legislation that sets out the plans for tax bands and tax rate amounts. The Scottish Government also considers that requiring the Scottish ministers to undertake a series of detailed and potentially time-consuming impact assessments every time they wish to propose changes to tax bands and tax rate amounts would restrict the flexibility to respond at short notice to economic shocks. Parliament did not consider such assessments necessary for the other devolved taxes—land and buildings transaction tax and Scottish landfill tax.

It is important to note that arrangements already exist for some of the assessments that are listed in Mr Harvie's amendments. For example, the

Scottish Fiscal Commission will assume responsibility for producing independent forecasts of receipts from ADT to inform the Scottish Government's draft budget for 2018-19 and the budget bill, and those forecasts will reflect the Scottish Government's policy on ADT.

In addition, if the Government proposes any further changes to ADT beyond its plans for a 50 per cent reduction in the overall tax burden by the end of the current session of Parliament, and if those further changes are considered likely to have a significant environmental effect, the Environmental Assessment (Scotland) Act 2005 will require an SEA to be carried out before those plans can be legislated for or implemented. The Scottish Government does not believe that it is necessary or desirable to duplicate such provision in the bill by requiring an environmental assessment to be undertaken. I therefore invite Patrick Harvie to withdraw amendment 66 and not to move amendments 70 and 71.

To reflect on members' contributions, I think that Mr Fraser is right to say that we do not want to be overly prescriptive. However, further discussion with Mr Harvie on wording that could be proposed at stage 3, further work to explore the burdens on ministers and what we should consider, and further reflection on the bringing together of the various reports that I have outlined are worthy of further exploration. We do not want to be overly prescriptive or create unnecessary burdens in the bill, but I am happy to consider the matter further.

**The Convener:** I call Patrick Harvie to wind up and say whether he wishes to press or withdraw amendment 66.

**Patrick Harvie:** Not for the first time, my favourite quote from the discussion came from Murdo Fraser, who said:

"From Mr Harvie's point of view, these are perfectly reasonable amendments".

If I have ever been damned with faint praise, I think that that was it.

I think that the implicit suggestion is that we should reject my amendments 66, 70 and 71 purely on the basis that the Government has offered to come forward with some evidence base in the future, so the Parliament will then have the opportunity to support or reject the proposed rates and bands. However, the point is that Parliament will have the ability only to support or reject them.

I am asking for us to place duties on ministers about what they have to consider in developing their proposals. Determining the duties in the bill is our only opportunity to affect the process that ministers go through in developing their proposals, which the Parliament then has to accept or reject wholesale, without the possibility of amendment. I

restate the case for placing requirements in the bill in respect of those factors.

The cabinet secretary mentioned that the UK Government originally introduced the tax partly as an environmental tax. If that was the purpose of the tax, I certainly agree that it could be improved. It could be a much better environmental tax than it is. However, that does not seem to be the Scottish Government's purpose. Its only purpose—or, certainly, the only one that the cabinet secretary mentioned in discussing why he introduced this bill to create a new, replacement tax—seems to be revenue raising, yet the Government seems not to want to keep raising that revenue in the long term.

If my amendments fall, I will be willing to discuss with the Scottish Government what else it intends to do, but I am afraid that I will have to do that with a wee dose of cynicism.

There has been discussion of the evidence that has come forward. Parliamentary committees tend to refer to everything that we receive in oral and written submissions as evidence. However, in normal language, there is a big difference between evidence and claims. Many of the claims that have been made for the Government's policy are without serious evidence.

I do not claim that there will be no economic impact from the Government's policy; rather, I am saying that it needs to be set in the context of other impacts and that we need to understand the different kinds of economic impact that might be achieved.

The Government says that it will consult not only on the evidence that it intends to produce but on its overall plan for a 50 per cent reduction in ADT. I would be curious to know whether the cabinet secretary is going to consult on what the overall ADT plan ought to be or whether he will merely present the plan and say, "This is what we are going to do; you can tell us what you think." Consultation can be open or closed.

That does not undermine the argument that I made several times during the stage 1 inquiry that evidence ought to come before a policy is adopted. However, the cabinet secretary continues to restate that a 50 per cent cut in ADT is his policy, before we have any of the evidence that would be required rationally to decide what the policy ought to be.

The cabinet secretary and a couple of other members argued that my approach is somehow inconsistent with the Climate Change (Scotland) Act 2009 and the idea that emissions targets should apply across the whole economy. That is exactly the problem with the 2009 act—and I say that as the member who had the privilege of chairing the committee that led the scrutiny of that legislation, much of which took place in this room.

All the political parties agreed to set the ambitious targets and yet we agreed nothing about how to get there—we all agreed on the destination, but not on the actions. We patted each other on the back for our ambition. To simply repeat the same process and, years after the fact, not begin to differentiate the levels of emissions that we think are acceptable from different parts of the economy and to decide on the necessary actions to reach our objective would be a mistake.

It was suggested that aviation emissions can be managed within the whole economy. Maybe they can be, but only if we know what they will be and how high we expect them to rise. That information is necessary if we are to be confident that other actions in the rest of the economy will be adequate to overcome the additional emission increase.

All that my amendments propose is that we should know what we are dealing with—what level of damage we will allow the aviation industry to inflict on the climate and the level of action that it will be necessary to take to counteract that damage.

I intend to press amendment 66 and I will move amendments 70 and 71. If those amendments fall, I will consider what other possible routes are available to discuss the issues at stage 3.

**The Convener:** The question is, that amendment 66 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Bibby, Neil (West Scotland) (Lab)  
Harvie, Patrick (Glasgow) (Green)  
Kelly, James (Glasgow) (Lab)

#### Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Crawford, Bruce (Stirling) (SNP)  
Denham, Ash (Edinburgh Eastern) (SNP)  
Fraser, Murdo (Mid Scotland and Fife) (Con)  
Kerr, Liam (North East Scotland) (Con)  
McKee, Ivan (Glasgow Provan) (SNP)  
Todd, Maree (Highlands and Islands) (SNP)  
Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 3, Against 8, Abstentions 0.

*Amendment 66 disagreed to.*

**The Convener:** Amendment 66 was not agreed to, as is obvious from the numbers that I just read out.

**Patrick Harvie:** It would have been nice if that had not been said.

**The Convener:** Amendment 67, in the name of Patrick Harvie, is grouped with amendments 68 and 69.

**Patrick Harvie:** This group of amendments might be a bit less controversial; I am open to hearing what the cabinet secretary has to say about it. I have lodged amendments 67, 68 and 69 only because the Delegated Powers and Law Reform Committee made a recommendation following its consideration of the bill, which the Finance and Constitution Committee agreed with in its stage 1 report.

Section 10 of the bill contains provisions that will enable the Scottish ministers to set the tax rates and bands. The Delegated Powers and Law Reform Committee sought clarification from the Government on the scope of the power. In correspondence with the committee, the Government stated that the provision was intended to provide the Government with

“sufficient legislative flexibility to change provisions about tax rates and determination of a chargeable passenger’s final destination with regard to three main criteria.”

The DPLR Committee accepted that in principle but considered that section 10(2) appeared to have been drafted

“more widely than necessary to give effect to the Government’s stated policy intention.”

Accordingly, the committee recommended that the Government should lodge an appropriate amendment

“to more closely align the power in section 10(2) with its stated policy intention”.

This committee agreed with the DPLR Committee’s recommendation, so I discussed with the legislation team what amendments might be necessary to give effect to it. I am interested to hear what the cabinet secretary has to say in response.

I move amendment 67.

10:45

**The Convener:** As no other member wishes to contribute at this stage, I invite the cabinet secretary to respond.

**Derek Mackay:** The Scottish Government does not support the amendments in this group and considers that amendments 67 and 68 are either unnecessary or too wide, depending on what is intended. If they are intended to clarify that section 10(2) of the bill does not duplicate the power that is already provided by section 10(1), we think that the amendments are unnecessary. When section 10(2) is read in context with sections 10(1) and 10(3), it is clear that its use of the word “other” provides the power to do only what cannot be done under section 10(1); in other words, section 10(2) already excludes the power to set tax bands and tax rate amounts. However, the wording of amendment 68 suggests that Mr Harvie wishes to

narrow the scope of section 10(2) by ruling out any provision that relates to tax bands and tax rate amounts. The purpose of the power in section 10(2) is to revise the structure of the tax when necessary. Because the structure of the tax currently comprises bands and rates, it is difficult to imagine what section 10(2) could in practice be used for if amendments 67 and 68 were accepted.

The Scottish Government has a similar concern about amendment 69, which could be read as restricting the Scottish ministers' power to amend section 9. If amendments 67, 68 and 69 were accepted, section 10(2) would be so restricted as to provide no power at all. The amendments would rule out any provision being made that amended section 9 or that related to tax bands or tax rate amounts. The Scottish Government needs to retain the flexibility to adjust the structure of the tax in whatever way it considers appropriate, which could include, for example, redefining the tax rate categories that are currently set out in section 9 or changing definitions of terms that are used in section 9.

The current wording of section 10(2) provides the necessary flexibility. The power does not need to be constrained in the way that Mr Harvie proposes; it is already constrained by the tight wording in section 80L of the Scotland Act 1998, which devolves power only on

"A tax charged on the carriage of passengers by air from airports in Scotland".

The nature of the tax may not be changed in any way and any change that is proposed would require an affirmative vote of the Scottish Parliament. I therefore invite Patrick Harvie to withdraw amendment 67 and not to move amendments 68 and 69.

**The Convener:** One member would like to ask you a question, cabinet secretary. I know that it is not normal to do that at this stage, but Adam Tomkins has an issue that he wants to raise with you.

**Adam Tomkins:** Thank you, convener. I am not sure that I fully understand something, so my question is designed to enable me to do so. Section 10(2) talks about the structure of the tax and section 10(1) talks about bands and rates. I am not sure whether I understand what is encapsulated within the structure that is not encapsulated within the bands and rates. What will section 10(2) allow you to do that you will not be able to do under section 10(1)?

**Derek Mackay:** I know that the provision is one that feels quite technical. Essentially, there is clarity on what the Government is required to do if it makes a substantive change. Such a change will be mainly about rates and bands; any other amendments might be around terminology or the

understanding of that terminology in relation to the tax. Section 10(2) gives us flexibility there, but its use will not change in any substantial way the nature of the tax or how it is levied through the rates and bands.

**The Convener:** I ask Patrick Harvie to wind up and to indicate whether he wants to press amendment 67.

**Patrick Harvie:** I still think that the situation is a little unclear, and I am not entirely convinced by the cabinet secretary's comments. However, I seek leave to withdraw amendment 67. I will consider how the issue that it relates to might be addressed, if necessary, at stage 3 in light of the cabinet secretary's remarks.

*Amendment 67, by agreement, withdrawn.*

*Amendments 68 and 69 not moved.*

*Section 10 agreed to.*

#### After section 10

*Amendment 70 moved—[Patrick Harvie].*

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

**Members:** No.

**The Convener:** There will be a division.

#### For

Bibby, Neil (West Scotland) (Lab)  
Harvie, Patrick (Glasgow) (Green)  
Kelly, James (Glasgow) (Lab)

#### Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Crawford, Bruce (Stirling) (SNP)  
Denham, Ash (Edinburgh Eastern) (SNP)  
Fraser, Murdo (Mid Scotland and Fife) (Con)  
Kerr, Liam (North East Scotland) (Con)  
McKee, Ivan (Glasgow Provan) (SNP)  
Todd, Maree (Highlands and Islands) (SNP)  
Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 3, Against 8, Abstentions 0

*Amendment 70 disagreed to.*

*Amendment 71 moved—[Patrick Harvie].*

**The Convener:** The question is, that amendment 71 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Bibby, Neil (West Scotland) (Lab)  
Harvie, Patrick (Glasgow) (Green)  
Kelly, James (Glasgow) (Lab)

#### Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Crawford, Bruce (Stirling) (SNP)

Denham, Ash (Edinburgh Eastern) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Kerr, Liam (North East Scotland) (Con)  
 McKee, Ivan (Glasgow Provan) (SNP)  
 Todd, Maree (Highlands and Islands) (SNP)  
 Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 3, Against 8, Abstentions 0

*Amendment 71 disagreed to.*

*Sections 11 to 13 agreed to.*

#### **Section 14—Duty to register for tax**

**The Convener:** Amendment 14, in the name of the cabinet secretary, is grouped with amendments 15 to 22, 28, 47 and 54.

**Derek Mackay:** These amendments deal with the requirement to apply to Revenue Scotland to register and deregister for ADT. The bill as introduced requires any aircraft operator who either is, or will become, a taxable person to apply to Revenue Scotland to register for ADT. The bill also requires a registered aircraft operator who is making quarterly tax returns to apply to Revenue Scotland to deregister for ADT if they cease to be a taxable person.

Further engagement by Revenue Scotland with stakeholders has demonstrated that it would not be practical to register occasional aircraft operators, who by their nature make infrequent or one-off flights from Scottish airports with, in most cases, only a few people on board.

This group of amendments provides that only aircraft operators who are, or will become, liable to make quarterly tax returns under section 17 must apply to Revenue Scotland to register for ADT. The requirement to apply to register for ADT will not apply to aircraft operators making occasional returns under section 18.

I move amendment 14.

*Amendment 14 agreed to.*

*Amendments 15 to 18 moved—[Derek Mackay]—and agreed to.*

*Section 14, as amended, agreed to.*

#### **Section 15—Duty to deregister for tax**

*Amendments 19 to 22 moved—[Derek Mackay]—and agreed to.*

**The Convener:** Amendment 23, in the name of the cabinet secretary, is grouped with amendments 32, 35, 37, 40, 43, 44, 46, 49, 50, 55 and 59.

**Derek Mackay:** Some of the amendments in this group have been brought forward as a result of the written evidence submitted to the committee during stage 1. They are all minor technical

amendments that either help to provide clarity and consistency in the provisions in the bill as introduced or are considered necessary for the efficient collection and management of ADT.

I move amendment 23.

*Amendment 23 agreed to.*

*Section 15, as amended, agreed to.*

*Sections 16 and 17 agreed to.*

#### **Section 18—Occasional returns**

**The Convener:** Amendment 24, in the name of the cabinet secretary, is grouped with amendments 25 to 27.

**Derek Mackay:** I will speak to amendment 24 and the other amendments in the group together. The amendments deal with the eligibility criteria enabling aircraft operators, should they wish, to make occasional, rather than quarterly, tax returns to Revenue Scotland.

Following further engagement by Revenue Scotland with stakeholders, it is considered necessary, in order to ensure the efficient collection and management of ADT, to amend section 18 by changing the eligibility criteria for making occasional returns in two areas.

The first is to provide a more precise number of flights condition, such that an aircraft operator who intends to carry out taxable activities on more than 12 days in any 12-month period is not eligible to make occasional returns. That will improve certainty as to the threshold level of taxable activity.

The second is to increase from £5,000 to £20,000 the maximum ADT liability in any 12-month period that an aircraft operator can incur in order to be entitled to make an occasional return. That will ensure that the tax liability threshold is set at a realistic level in light of the threshold level of taxable activities.

It is also considered necessary to amend section 18 by changing the date by which an occasional return is due from seven days to 30 days after the date of the taxable activity. That will give aircraft operators and their representatives more time in which to make an occasional tax return and pay any ADT due to Revenue Scotland.

I move amendment 24.

**Patrick Harvie:** I ask the cabinet secretary to say a bit more about the change of threshold from £5,000 to £20,000. The explanation seemed a little vague. Why was £5,000 proposed in the first instance? What was the rationale for setting it at £5,000 when the bill was drafted? What is the rationale for proposing the new threshold of £20,000, rather than any other figure? What types

of operators will be treated differently as regards returns, as a result of the change in threshold? In the various discussions that the Government has had with stakeholders, have any organisations lobbied for the change in threshold, and, if so, who are they?

**The Convener:** Cabinet secretary, perhaps you will deal with those points when you wind up.

**Derek Mackay:** Revenue Scotland has engaged with stakeholders. As I understand it, the UK APD threshold has been sustained at £5,000—the same figure as in the bill. When we had an opportunity to look further at what was appropriate, it was felt that a threshold of £20,000 kept within the area of seasonal flights without extending into the area of the major operators and airlines. On balance, we felt that £20,000 would be an appropriate threshold in comparison with the level that we inherited from the UK, which was £5,000. I can get further information on that, if the committee requires it.

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

**Patrick Harvie:** I suppose.

**The Convener:** There's nae suppose about it—it's either yes or no.

*Amendment 24 agreed to.*

*Amendments 25 to 28 moved—[Derek Mackay]—and agreed to.*

*Section 18, as amended, agreed to.*

### **Section 19—Form and content of returns**

**The Convener:** Amendment 29, in the name of the cabinet secretary, is grouped with amendments 30, 31, 36 and 38.

**Derek Mackay:** I will speak to amendment 29 and the other amendments in the group together.

Amendments 29 to 31 make better provision in the bill for agents, who may or may not be tax representatives, to submit ADT returns to Revenue Scotland on behalf of taxable persons. Where that happens, the agent must declare on the return that the taxable person has declared to the agent that the information provided in the return is

“to the best of the taxable person’s knowledge, correct and complete”.

That provides equivalency with the legislation on LBTT and the Scottish landfill tax.

11:00

Amendments 36 and 38 are considered necessary to ensure that taxable persons continue to be responsible for the accuracy and

completeness of information in a tax return, even when they have appointed a tax representative. The amendments prevent a tax representative from making a declaration in a tax return that should be made by the taxable person.

I move amendment 29.

*Amendment 29 agreed to.*

*Amendments 30 and 31 moved—[Derek Mackay]—and agreed to.*

*Section 19, as amended, agreed to.*

### **Section 20—Special accounting schemes**

*Amendment 32 moved—[Derek Mackay]—and agreed to.*

*Section 20, as amended, agreed to.*

### **Section 21—Duty to have tax representative**

**The Convener:** Amendment 33, in the name of the cabinet secretary, is grouped with amendments 34, 39, 41, 42 and 48.

**Derek Mackay:** The proposed amendments to section 21 will make it clear that the voluntary appointment by an aircraft operator of a tax representative will not take effect, for the purposes of the ADT legislation, until the details of the appointment are notified to Revenue Scotland. The proposed amendments to section 26 will make it clear when the appointment of a tax representative will take effect. Different rules will apply depending on whether the appointment is voluntary or is required under section 21(1).

I move amendment 33.

*Amendment 33 agreed to.*

*Amendments 34 and 35 moved—[Derek Mackay]—and agreed to.*

*Section 21, as amended, agreed to.*

*Section 22 agreed to.*

### **Section 23—Fiscal tax representatives: powers, duties and liabilities**

*Amendment 36 moved—[Derek Mackay]—and agreed to.*

*Section 23, as amended, agreed to.*

### **Section 24—Administrative tax representatives: powers, duties and limits on liability**

*Amendments 37 and 38 moved—[Derek Mackay]—and agreed to.*

*Section 24, as amended, agreed to.*

*Section 25 agreed to.*

### **Section 26—Duration of tax representative appointments**

*Amendments 39 to 42 moved—[Derek Mackay]—and agreed to.*

*Section 26, as amended, agreed to.*

*Section 27 agreed to.*

### **Section 28—Security required by individual directions**

*Amendments 43 and 44 moved—[Derek Mackay]—and agreed to.*

*Section 28, as amended, agreed to.*

*Section 29 agreed to.*

### **Section 30—Meaning of handle and handling agent**

**The Convener:** Amendment 45, in the name of the cabinet secretary, is in a group on its own.

**Derek Mackay:** I am sure that the committee will appreciate this being the final amendment that I will speak to.

At the moment, the handling agent services that are defined in section 30 of the bill include only the allocation of seats to passengers and the supervision of passengers during boarding, which matches the UK APD approach. However, business and private jet operators are increasingly self-service, with some using handling agents only for passenger baggage handling arrangements. Therefore, amendment 45 is considered to be necessary to ensure that Revenue Scotland is able to give notice under section 31 of the bill to a handling agent that provides only a passenger baggage handling service to the aircraft operator.

I move amendment 45.

*Amendment 45 agreed to.*

*Section 30, as amended, agreed to.*

*Sections 31 and 32 agreed to.*

### **Section 33—Inaccuracies in information notified to Revenue Scotland**

*Amendments 46 to 49 moved—[Derek Mackay]—and agreed to.*

*Section 33, as amended, agreed to.*

*Section 34 agreed to.*

### **Section 35—Regulations**

*Amendment 50 moved—[Derek Mackay]—and agreed to.*

*Section 35, as amended, agreed to.*

*Section 36 agreed to.*

### **Section 37—Interpretation**

*Amendments 51 to 53 moved—[Derek Mackay]—and agreed to.*

*Section 37, as amended, agreed to.*

*Section 38 agreed to.*

### **Schedule 2—Minor and consequential modifications to Revenue Scotland and Tax Powers Act 2014**

*Amendments 54 and 55 moved—[Derek Mackay]—and agreed to.*

*Schedule 2, as amended, agreed to.*

*Sections 39 and 40 agreed to.*

### **Schedule 3—Index of defined expressions**

*Amendments 56 to 65 moved—[Derek Mackay]—and agreed to.*

*Schedule 3, as amended, agreed to.*

*Sections 41 and 42 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill, which will be reprinted as amended. Parliament has not yet determined when stage 3 will take place, but members may lodge amendments with the legislation team. Members will be informed of the deadline for amendments once it has been determined.

I suspend the meeting for a few minutes to allow the cabinet secretary and his officials to leave, and I thank them for attending.

11:10

*Meeting suspended.*



11:13

*Meeting closed at 11:13.**On resuming—*

## **Subordinate Legislation**

### **Scottish Landfill Tax (Administration) Amendment Regulations 2017 (SSI 2017/139)**

**The Convener:** The next agenda item is consideration of a statutory instrument that is subject to the negative procedure, which relates to the Scottish landfill tax regulations. As members have no comments on the instrument, is the committee content to note the instrument and to make no recommendations on it?

**Members** *indicated agreement.*



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

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