



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

FINANCE COMMITTEE

Wednesday 5 June 2013

Session 4

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FINANCE COMMITTEE
17th Meeting 2013, Session 4

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*Gavin Brown (Lothian) (Con)

*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

Michael McMahon (Uddingston and Bellshill) (Lab)

*Jean Urquhart (Highlands and Islands) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alistair Brown (Scottish Government)

Stuart Greig (Scottish Government)

David Kerrouchi (Scottish Government)

John St Clair (Scottish Government)

John Swinney (Cabinet Secretary for Finance, Employment and Sustainable Growth)

Dave Thompson (Skye, Lochaber and Badenoch) (SNP) (Committee Substitute)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Committee Room 6

Scottish Parliament

Finance Committee

Wednesday 5 June 2013

[The Convener *opened the meeting at 09:30*]

Decision on Taking Business in Private

The Convener (Kenneth Gibson): Good morning and welcome to the 17th meeting in 2013 of the Finance Committee of the Scottish Parliament. I remind everyone present to turn off mobile phones, tablets and other electronic devices, please.

We have received apologies from Michael McMahon and from Jamie Hepburn, whose substitute is Dave Thompson. Welcome to the committee, Dave.

Agenda item 1 is to decide whether to take items 5 and 6 in private. Do members agree to do so?

Members *indicated agreement.*

Landfill Tax (Scotland) Bill: Stage 1

09:30

The Convener: Item 2 is to take evidence from the Scottish Government bill team as part of our stage 1 scrutiny of the Landfill Tax (Scotland) Bill. I welcome to the meeting Alistair Brown, David Kerrouchi, John St Clair and Stuart Greig, and invite one of the witnesses to give a short opening statement.

Alistair Brown (Scottish Government): I will make an opening statement on the taxation elements of the bill. If it is all right with the committee, I will then invite Stuart Greig to say a few words about the environmental context.

Thank you for the opportunity to give evidence to the committee on the bill. As the committee knows, the bill is the second of two bills to establish devolved taxes in Scotland following the devolution of legislative competence to Scotland in the Scotland Act 2012. The committee is already very familiar with the Land and Buildings Transaction Tax (Scotland) Bill; indeed, your further examination of that bill at stage 2 will follow this evidence session. As the committee is also well aware, a third bill is in preparation for the 2013-14 legislative programme to provide for tax management arrangements. All, of course, are subject to the Parliament's agreement.

With your permission, convener, I would like to invite Stuart Greig to set the environmental policy context for the Landfill Tax (Scotland) Bill.

Stuart Greig (Scottish Government): Good morning. Actually, I will set the economic context for the bill.

Over the past 10 to 12 years, we have seen around 100 years of commodity price reductions wiped out, as we have moved beyond the simple efficiencies that we have managed to create in manufacturing processes, and as access to raw materials and critical resources has become more costly and expensive. At the same time, as a nation, we landfill around 16.5 million to 17 million tonnes of waste each year. We are becoming much better at recycling, but there is an opportunity to make a much deeper shift in our economy around these things.

There is currently around £5 billion-worth of gold in the waste chain and there are other critical raw materials. There are vital electronics components and so on. The real shift is in getting those things back into supply chains. It is about creating remanufacturing opportunities, potentially reinstating a manufacturing base, and being part of global supply chains, which are about reverse

logistics for things. It is not just about recycling. There is a big long-term opportunity for everyone. We are saying that everything around us—everything in this room and outside—is a critical resource asset that we need to become much better at putting back into our economy rather than into low-grade outlets or landfill.

On what the Landfill Tax (Scotland) Bill will do, landfill tax has existed in the United Kingdom for a number of years and has helped in the transition. It has created a price point for landfill that makes other options, such as recycling or investment in more innovative technologies, real market opportunities. It creates jobs and a shift in our economy. That is the context. Although the tax is about protecting our environment and reducing carbon, it is also about stimulating a change in economic conditions that will allow innovation. The bill is one step of probably many more steps to come in the future.

Alistair Brown: May I continue for another two minutes, convener? Is that acceptable?

The Convener: Seeing as it is you.

Alistair Brown: I thought that it might be helpful for the committee to compare and contrast the landfill tax provisions with the provisions on land and buildings transaction tax, which the committee is more familiar with. There are many similarities. This bill defines the taxable event or taxable transaction—in this case, it is disposal to landfill—and specifies the point in time when the tax becomes due, which is when the disposal is made. It makes provision for who is liable to pay the tax—the landfill site operator—and it sets out how the tax due is to be calculated. In each case, you will find parallel provisions in land and buildings transaction tax.

However, the landfill tax is a good deal simpler than LBTT. The transaction itself is a physical transaction rather than a legal or financial one, so it is easier to define and recognise and it is harder to avoid. There is only one type of taxable transaction in the bill before the committee and we do not have the complication that we have in LBTT of taxing leases, for example, as well as property purchases.

In landfill tax, we do not need to differentiate between the different bodies that make the transactions, unlike in LBTT, where we differentiate—for example, when a charity is involved in a transaction, or a partnership or a trust. Landfill tax does not have the same complicated reliefs—LBTT has a schedule of 19 reliefs. The same situation does not arise in relation to the landfill tax. There are important points of similarity to and difference from LBTT.

The committee might find an update on the financial impact of the bill on the Scottish budget

helpful. As the Scottish Parliament information centre briefing says, the impact on the budget depends on two things: on receipts from the Scottish landfill tax from April 2015 onwards and the offsetting block grant adjustment. Projections of receipts depend on a number of factors—including the success of the policies that Stuart Greig referred to, to divert waste to streams other than landfill.

It is also necessary for us to differentiate between Scottish and non-Scottish receipts in the UK tax receipt figures produced by Her Majesty's Revenue and Customs. Scottish receipts are not measured at the moment—we have an estimate and further work is in hand with UK Government officials to improve our understanding of current and forecast receipts from landfill tax in Scotland. In the meantime—as the committee knows—we have forecasts that are prepared by the Office for Budget Responsibility. As the SPICe briefing notes, those forecasts were revised downwards in December 2012 and again at the time of the budget in March 2013. The block grant adjustment is a work in progress and continues to involve officials and ministers in the Treasury and the Scottish Government in discussion.

I hope that those remarks are helpful in setting the scene.

The Convener: Yes, thank you very much, Alistair. As always, I will start off with some questions—I will try not to steal all the juicy ones right at the start so that my colleagues around the table will have a few to follow on with. You said that one of the points of the tax is that it is harder to avoid, but the Scottish Environment Protection Agency said:

“HMRC cannot collect tax from operators whose sites are not permitted. This loophole encourages large scale illegal dumping as the tax avoided and the relatively small fines imposed by the courts make the activity financially attractive.”

The Law Society of Scotland is of the view that that

“means that compliant operators may be at a competitive disadvantage”.

SEPA and revenue Scotland both talk about how tackling illegal dumping is important. How will the bill impact on that issue?

Alistair Brown: The policy intention in the bill, which differs quite markedly from the policy of the UK landfill tax that is already in place, is that illegal disposals to landfill should be subject to tax. That is provided for in the bill by allowing the tax authority to deem an area that has been used for disposals as an authorised landfill site for tax purposes. The legislation is drafted with a view to taxing the situation that SEPA had in mind. Stuart

Greig and John St Clair can add some more details.

Stuart Greig: I will be brief. The bill is introducing a unique policy that does not exist at a UK level at the moment. It is intended to be another strong tool in the armoury to tackle illegal waste dumping. That is a criminal offence and it should be a taxable offence. To be frank, we need to clamp down on the people who are getting away with it at the moment. The bill is a critical action to allow us to do that.

The Convener: Will the financial penalties that will be imposed through the bill ensure that we eliminate or significantly reduce illegal dumping?

Stuart Greig: They will be another significant deterrent. I will put the measure in context and then we can talk about specific cases. We are talking not about small-scale fly tipping but about large-scale organised crime and the illegal dumping of materials that is evading tax of the order of £5 million plus. They are isolated activities, but they are not small scale at times. The financial penalties will help us to start to tackle that.

John St Clair (Scottish Government): You asked about the effect on the illegal dumper, convener. He will be subject to a range of sanctions. Currently, he is subject to criminal sanctions but, once we decide to tax the activity, he will also be liable for tax evasion and liable for the cost of dumping his waste properly. Therefore, he will be taxed for the illegal dumping and there will be another penalty when he has to take the waste to a proper site because, in effect, there will be two disposals. We think of that as quite a powerful battery of sanctions against illegal dumping and hope that even the message about that going out might help to reduce such activity.

The Convener: A number of respondents have raised the issue of waste tourism. For example, Scottish Borders Council warns that, if there is a change in the list of materials that are exempted, it may lead to an influx from elsewhere in the United Kingdom. Funnily enough, North Ayrshire Council, which covers my area, seemed concerned about waste tourism, although I think that there would have to be a pretty massive differential for people to drive all the way to North Ayrshire to dump any waste.

In such submissions, there always seems to be a view that the taxes will always be higher in Scotland and that there will never be an incentive the other way. It always seems to be negative towards Scotland. What is your thinking about the level of tax that will be set for waste relative to the level in the rest of the UK? Have you been able to draw on any experiences of cross-border dumping

in Europe or between the UK and the Republic of Ireland?

Alistair Brown: Again, I will begin the answer and then ask Stuart Greig to come in, particularly on our understanding of what the differential in tax rates must be before people begin to incur the cost of moving waste north or south of the border.

In describing his intentions for the Scottish landfill tax, Mr Swinney has said that he will ask the Parliament to approve the setting of rates that are no lower than the corresponding UK rates come 2015. That is for two reasons: to minimise cross-border movement and to give certainty to companies that are investing in the waste sector, which have prepared their investment plans on the basis of escalating tax rates, particularly for active waste.

The committee will be aware of the tax escalator that has been in place throughout the UK since 2011, whereby the tax rate for active waste increases annually by £8 a tonne. It is now at £72 a tonne, will move on to £80 a tonne with effect from April 2014 and is expected to be at £80 a tonne in 2015. Companies have made their investment plans on the basis of those taxes, which are costs on business. Mr Swinney has said that he will propose rates in Scotland that are no lower than those that are in place in the UK as a whole in 2015. However, work has been done on the propensity of operators quite legitimately to move waste about if tax rates were lower or higher in the neighbouring jurisdiction.

Stuart Greig: In the eyes of waste legislation, the border with England is not a border. There is no legal issue with waste movement across the country, but we are an island and it is a genuine concern, so we have focused in on the matter.

The committee would be surprised at how small the differential in tax rates would be for it to be cost effective to move waste. Companies can do back hauling and so forth to reduce their fuel costs. We need to be aware of that and have stated that, initially, we would want to mirror the UK structure and rates closely. I will not get into the details of precisely what the threshold is at which waste might start to be moved, but it is much smaller than the committee might imagine. We want to work closely with the UK Government to try to ensure that, if any moves are afoot or there is any consideration either south or north of the border, we talk and we understand the direction of travel for the tax.

09:45

The Convener: The bill has to be consistent with the four principles that have been established, which are certainty, convenience, efficiency and a tax being proportionate to the ability to pay. The

Scottish Environmental Services Association states in its submission:

“The Scottish Government appears to have drafted the Bill as an enabling framework, with specific detail on how the new tax regime might apply in practice to follow later in secondary legislation. As the Bill offers the industry little in the way of certainty then we would have to argue that it is not consistent with the principles described above.”

North Ayrshire Council states:

“There remains uncertainty over the rate of Landfill Tax which will be charged which has an impact on financial planning for the Council.”

Obviously, the plans are long term. It continues:

“Although it states that rates will closely align to UK rates we still don’t know for sure what this rate will be beyond £80 in 14/15.”

When is the Scottish Government likely to look at setting the rates, given the long-term planning that local authorities are undertaking?

Alistair Brown: I will begin to answer that, and I will then invite Stuart Greig to comment further on certainty about which materials are taxed at which rates.

I am not aware that Mr Swinney has publicly given any indication of the timing of the setting of tax rates for landfill tax. The committee knows from its discussion with the minister on land and buildings transaction tax that he is listening carefully to representations that are made to him about the timing of the setting of rates for that tax. I expect that he will want to take into account both the written representations that the committee has received and the oral evidence that it takes in considering the issue that you raise.

The issue that arises in relation to the property markets from setting rates very early or very late do not seem to me to be quite so applicable to landfill tax. People are not going to stockpile waste while waiting for a reduction in tax rates or whatever—that is unlikely. However, the committee might want to return to the issue when it takes evidence from the minister in two weeks’ time.

The subject of the first part of your question, and certainly the burden of the point that was made by SESA and North Ayrshire Council, was certainty about the range of materials that are covered by the tax and whether there will be a lower or higher rate. I invite Stuart Greig to offer the committee a response on that.

Stuart Greig: We are well aware of the concern. It is not just about the rates but applies across the board to the administrative system, the qualifying materials and so on. It is vital that the industry has as much certainty as we can provide. It is appropriate to reserve a number of policy matters to subordinate legislation, as that will allow

the Parliament to adjust critical aspects of the tax to bring it into line with shifts in policy and external circumstances, which is essential.

We have asked SESA—it is working on something for us—to identify all the points on which it needs most certainty. Some things can be covered in guidance and some will be in the subordinate legislation, but that will give us a hit list of things on which we need to work closely with SESA to give it as much certainty as we can as soon as we can. That has been our approach, and we will continue to pursue that over the coming months as the bill moves through Parliament.

The Convener: You mentioned the adjustment to the block grant. I know that discussions are continuing on that. SEPA states:

“We trust that any adjustment will allow for the proposed Revenue Scotland, Registrars of Scotland and SEPA set up and running costs.”

Do we know whether that will be the case? In the financial memorandum, the running costs from April 2015 are estimated to be £2.2 million, although I am pleased to see that the 26 full-time equivalent staff will be employed here in Scotland rather than our paying for them to be employed south of the border by HMRC.

Alistair Brown: I have a great deal of sympathy with SEPA’s comment, but the policy of the UK Government is that the costs of administering devolved taxes—and devolved anything else—should fall on the Scottish Government’s budget. That is more than an expectation; it is an explicit policy of the UK Government. The block grant adjustment would not, therefore, include an allowance for the costs of administering landfill tax or land and buildings transaction tax in Scotland. It is similar to the situation with the Scottish rate of income tax. The Scottish Government is being invoiced for the costs of establishing that tax, and from 2016 onwards we expect to have to pay the cost of running it.

The Convener: I know that you have said that to the Finance Committee on several occasions, but it is important to get that kind of thing on the record.

I have one last question to ask before I invite colleagues to come in. South Ayrshire Council has said:

“inert materials could perhaps be better used in the production of aggregates, building blocks, filtration equipment or landscaping, than going for landfill disposal”.

Two other written responses have suggested that asbestos should be moved on to the list, including the response from Viridor, which states:

“a lower tax on asbestos may encourage less environmental crime resulting from the illegal disposal of this form of waste. Such a move would balance the increased costs of treating this form of waste and combined

would encourage more responsible disposal of asbestos in Scotland.”

What is your comment on that?

Alistair Brown: I invite Stuart Greig to respond to that.

Stuart Greig: Those are good and valid points, but we need to be careful that we work through all the potential ramifications. For instance, if we reduce the rate for asbestos, will a lot more of that material be moved to Scotland from England? We need to understand the full implications of that proposal.

The purpose of the tax is to drive more recycling, and I am sure that ministers will be open to considering those sorts of options as the tax is implemented. We would not want to have too many radical changes at the point of implementation but, as we move forward post-2015, such things might be considered. That is one of the reasons why we have created a slightly more flexible system in the bill to allow ministers and the Parliament to bring things into the tax or adjust it to make things simpler.

The Convener: Thank you. I open it up to questions from the committee.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): You have gone through the differences between landfill tax and LBTT. When I thought about it beforehand, one of the differences that struck me was the Government's clear commitment to achieving revenue neutrality on LBTT. I presume that that is not relevant in this context, as the landfill tax is one of those strange taxes for which we want the yield to be as low as possible, although that might create some problems when it comes to the block grant adjustment. What is the Scottish Government's thinking on the landfill tax? The estimate that we have been given is that it will generate £107 million in 2015-16—although you emphasise that that is only an estimate—falling to £40.5 million in 2025. What is the Scottish Government's attitude to the block grant adjustment if those are the guiding figures that we have?

Alistair Brown: There are two points to make in response to Mr Chisholm's question. First, tax revenues are normally broadly pegged to economic activity and, as the economy grows or stagnates, tax revenues behave similarly. However, an environmental tax whose policy intention is measured by a reduction in revenues is quite unlike any other tax that we have to deal with. For the UK Government, looking at a very broad basket of 30-odd taxes, a reduction in the income stream from one of those taxes is something to be balanced against the income streams from many others. However, because the landfill tax is one of only two devolved taxes—

three if you include the Scottish rate of income tax—the reduction is of particular concern for the Scottish Government. How it deals with that forecast reduction in the context of agreeing a block grant adjustment method with the UK Government, and with the Treasury in particular, is a significant issue that we have been discussing at official level. It is in Mr Swinney's mind too, given his position in all this. It is a real issue, but we do not yet have an answer to it. However, I can safely say that Mr Swinney expects us to define an answer that he can bring to the Parliament in due course.

Secondly, how good we are at forecasting these things is a slightly more academic point. As the committee will be aware from the SPICe briefing, the OBR currently produces a set of tax receipts projections, the most recent of which was published for the budget in March 2013. Broadly speaking, I would say that the OBR sees tax revenue from landfill tax staying level in cash terms from 2015 onwards, whereas we project a significant reduction, as you have just quoted, of more than 60 per cent by 2025. Further work needs to be done on that, so we are engaged in conversation with officials south of the border on exploring further the best way to project or forecast the tax receipts.

Malcolm Chisholm: Is the expectation that there will be a one-off block grant adjustment for landfill tax as for LBTT? Obviously, the Scottish Government will argue for as high an adjustment as possible, so I presume that it will start by arguing for £107 million. I suppose that, in principle, there is almost an argument for having a running adjustment that would vary with the overall UK take over a period of years. Otherwise, the Scottish Government will presumably need to try and argue for the £107 million, but the OBR projections obviously offer a strong counterargument to that.

Alistair Brown: That is very much the substance of our discussions with the Treasury. The UK Government's policy on the issue was originally set out in the November 2010 command paper, which put together the two devolved taxes that we now call land and buildings transaction tax and Scottish landfill tax. In discussing the block grant adjustment, the UK Government has not differentiated between the two taxes.

The Convener: Malcolm Chisholm said that the Scottish Government would argue for as high a block grant adjustment as possible. Would it not argue for as low an adjustment as possible?

Alistair Brown: Yes. In our discussions with the Treasury, we want to achieve a block grant adjustment that is as low as possible, so that we minimise the risk of the Scottish budget losing when the devolved taxes start up in April 2015.

Malcolm Chisholm: I thank the convener for that. I was thinking that we would gain £107 million, but obviously we would lose £107 million. As ever, the convener is right—I bow to him on that.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): Good morning, gentlemen. As director of protective services for Highland Council many years ago, one of my responsibilities was waste disposal so I wonder whether the following situation that used to arise is considered in the bill. Where someone was developing a piece of land that had perfectly good topsoil or general spoil that was not contaminated in any way, it was sometimes useful to allow that material into our site to help us to create bunds that could line the site. The legislation was structured in such a way that we were prevented from using the dilute and dispersal method that we had used successfully for a long time, so we did not get a lot of material. We could not even arrange to purchase the material because, as the developer's intention was to dispose of the material as a by-product from developing land for housing, it could not be sold—I cannot quite remember all the details. I think that we need a mechanism that allows the developer to give away at low cost material whose disposal would incur landfill tax, or which would be kept on site through the creation of artificial bunds around the housing estate, which might not be desirable. Has any thought been given to how we might help developers and landfill operators to find a mutually beneficial way of dealing with such material?

Stuart Greig: I am not sure how long ago you were involved in the area.

Dave Thompson: It was about 15 to 20 years ago, right enough.

10:00

Stuart Greig: The legislation has probably changed fairly substantially since then. At present, there are a number of exemptions that allow developers to move material around and use it in certain ways on site. You have entered a fairly controversial area, as that is one of those classic ways in which people can hide some of the more illegal aspects of waste activity. Something might be sold as good-quality soil but, under the top layer, there is a host of sins. We need to strike a balance between allowing flexibility to get good use of the topsoil and so on, and not creating an open avenue for people to abuse the system and avoid the landfill tax by disposing of things that they should not dispose of in such areas.

The system has changed, however. If you would like more information on it, that is not a problem—we can give you an update.

Dave Thompson: I just wanted to tease out the issue. You are obviously thinking about the issues and what could be mutually beneficial. I understand the points about people perhaps abusing or misusing the situation. I apologise for my out-of-date information.

I have a second point, which is on the landfill communities fund. I seek information on where the fund can be distributed. In the past, if a local authority had a landfill site in its boundaries, the fund that was built up could be distributed to local communities. Perhaps that has changed, too, since I worked in the area but, as landfill reduces, fewer and fewer communities will have landfill sites in the immediate vicinity. Will it be only communities that are close to landfill sites that will benefit from the fund and, if so, what is the definition of “close”? Alternatively, is there a plan to broaden out the scheme to create a Scotland-wide fund into which communities can bid?

Alistair Brown: I ask Dave Kerrouchi to respond to Mr Thompson.

David Kerrouchi (Scottish Government): We are listening to the landfill communities fund forum and environmental bodies about how to do that. The guidance has a 10-mile radius rule and there is the objective of environmental improvement, although that does not always happen within 10 miles of a landfill site. Further down the road, when we come to producing the guidelines under subordinate legislation, we will listen to community and environmental groups about how best we can apply the depreciating returns to the funds.

Dave Thompson: It would be unfortunate if areas that got rid of their landfill sites did not benefit while those that kept sites benefited. There is a case for ensuring that the whole of Scotland can access the fund, rather than just communities that are close to landfill sites. It might be useful to have a two-tier system so that communities that are close to sites get an additional benefit but other communities can benefit, too.

Alistair Brown: It might be worth saying, in addition to Dave Kerrouchi's response to Mr Thompson, that there is a regulation-making power in section 18 to deal with what are called tax credits—the landfill communities fund to which Mr Thompson refers is funded by payments from landfill operators who then achieve a credit on the tax that is due. The bill does not bind the regulations to deal only with uses for environmental purposes within a certain radius of a landfill site. The regulations can make broader provision than that. As Dave Kerrouchi said, in making the regulations, the Scottish Government will consult closely those who are affected, including the environmental bodies, which are pretty effective at getting their points across.

Stuart, is that a fair representation?

Stuart Greig: Yes.

Jean Urquhart (Highlands and Islands) (Ind):

The submission from Comhairle nan Eilean Siar— or Western Isles Council—raises an issue about the cost of transporting stuff for recycling. That is of course relevant to any island or island group. Although we encourage people to recycle as much as possible and we have a zero waste policy, clearly councils in such areas are at a disadvantage, given the transportation cost.

Stuart Greig mentioned a programme of reverse logistics. Will that be run at the same time as we look at what we do with landfill waste? There are community groups in Shetland, for example, that do not transport glass; they use it for road repairs and for making tiles and bricks—all kinds of things. They have to apply to different funding organisations to keep schemes going, so they might have a short shelf life. Do you think that such schemes are practical?

Stuart Greig: Yes, absolutely. There are lots of really good examples of how the island communities and more remote areas rise to the challenge of trying to close the loop with those materials. They have a different set of circumstances, some of which are similar to those of Scotland as a whole, in that Scotland is off the coast of mainland Europe.

On reverse logistics, some councils are backhauling materials with other loads on ships that are returning to shore. Some interesting work is being done on community anaerobic digestion for food waste and other things. We appreciate the unique challenges that exist in island areas. Some of our other policies have provided much greater flexibility for the island communities, so that they can adapt them. It would be challenging to do something very specific with landfill tax; it is more about our other support mechanisms, such as zero waste Scotland, helping to give communities access to funding and technical support to put those creative mechanisms in place.

Jean Urquhart: I have a supplementary question. You talked about the penalties that would apply to illegal dumping. Apart from tax avoidance, there is the fact that that such dumping constitutes a criminal offence—indeed, we can throw the book at the perpetrators. How will we know who they are? They should rightly be charged; that sounds like a practical solution. How successful are we in bringing criminal proceedings against people who do illegal dumping? How do we resolve such situations? How will we get the tax?

Stuart Greig: We are quite successful. SEPA has a number of initiatives in its environmental crime task force work. There have been a number

of recent high-profile prosecutions for some quite large-scale activities. The proposed tax will give us another tool to use in that context. SEPA will be able to play a joint role: it can use the information from its environmental enforcement work to inform the tax administration side of things as well, which will bring real strength. Although there is more to be done, adding the tax is another thing that will help. Once the tax is in place, we will look to SEPA and others to focus in on the issue with the new tool at their disposal.

John St Clair: It might be worth mentioning that two parties can be involved in illegal dumping if there is a fly-by-night incident. One is the illegal dumper, and the second is the landowner—if they are complicit. That is why section 16(3) says that where there is unauthorised dumping, it is not only the person who makes the disposal who is liable, but anybody who knowingly was in on it. That would catch cases where the landlord must have known that a truck was dumping stuff.

Gavin Brown (Lothian) (Con): The Chartered Institute of Taxation stated in its written evidence that the current rates structure does not really

“fit with the objectives of the tax.”

Does the Scottish Government have any views at this stage on what the rates structure ought to look like?

We have two rates at present. Is the bill an opportunity for us to change the rates structure to reflect what we are trying to achieve? In particular, is there potential for changing the definition of inert waste to reflect the fact that some such items could be recycled more easily than others? Can you expand on the Government’s thinking at present?

Alistair Brown: I will start with a brief response and then invite Stuart Greig to come in.

On the structure, we have read the Chartered Institute of Taxation’s response carefully, and there are other arguments for increasing the number of tax rate bands. At present, there are two. There is a very low rate of £2.50 a tonne for inert material, which consists of smashed-up masonry, aggregate and whatnot, and there is a rate of £72 a tonne for active waste, which is generated from households and collected by local authorities.

There are arguments for having a rate in the middle—for example, for materials that are less environmentally harmful than others but not completely inert. However, the more rates we have, the more complicated the tax is to administer, not only for the tax authority and SEPA, but for the waste contractors and local authorities that have to stream waste and separate it into its different taxable components.

I am speaking as a bit of a tax man, so I will let Stuart Greig give his view.

Stuart Greig: To be honest, I do not have too much more to add. As with anything, we could make the system far more sophisticated than it is at present by adding extra rates and so forth, but every time we did so we would introduce another potential loophole and another complexity in administering the tax.

However, that is not to say that such things are off the table in any sense. The critical point is that if at some stage we were to look at introducing something new, we would need to ensure that industry had the appropriate lead-in time and understood that the change was coming so that people could change their investment plans appropriately. We need to consider the full implications of introducing a new rate.

Gavin Brown: That is helpful.

You have had a couple of questions already about illegal operators, and most people would welcome the provisions that allow SEPA and others to clamp down on them. One question that has come up in the written submissions is whether there will be additional resources for SEPA and other organisations to enforce their new powers, or whether the Government takes the view that they do not need additional resources.

Alistair Brown: I will begin and then invite Stuart Greig to come in.

As the committee knows, the Government has provided estimates in the financial memorandum of the costs of administering landfill tax and land and buildings transaction tax. Those can be broken down into several components. At the revenue Scotland level, we have not been able to separate the costs of administering land and buildings transaction tax and landfill tax at this stage. As the design of revenue Scotland and its staffing structure become clearer, it will be possible for it to estimate its costs in running the two taxes.

We have also provided in the financial memorandum an estimate of SEPA's costs for setting up systems, recruiting and training staff and so on, and running landfill tax. An element has been included in revenue Scotland's costs for compliance, and we have not differentiated between compliance for landfill and compliance for LBTT.

We expect that those estimates will be sufficient to cover the full range of compliance activity. We also expect the actual costs to be scrutinised post 2015 and compared with our forecasts. If SEPA, in operating the tax, made a particular proposition about the way in which compliance was operating, for example, the Scottish Government would listen

to that. However, our present forecasts include compliance costs.

I invite Stuart Greig to add anything that he wants to on the way in which SEPA operates.

10:15

Stuart Greig: It is just a minor point. We are working on the issue with SEPA, which is already looking at the opportunities that it can seize off the back of taking responsibility in this area. For example, it is looking at some of the environmental crime task force work and at the Regulatory Reform (Scotland) Bill. I think that we will undoubtedly see a push by SEPA on this front as we move towards 2015 and in subsequent years.

Gavin Brown: My next question was going to be about how much of revenue Scotland's costs could be attributed to landfill tax, but Alistair Brown has pre-empted it.

I have a final question. You have had a couple of questions about the landfill communities fund and, in particular, the 10-mile radius issue. With regard to any regulations that you might introduce, does the Government have an estimate of the cost of the landfill communities fund? We have estimates for how much the tax will collect. Presumably, some money will be taken from that to fund the landfill communities fund. Is there such an estimate, albeit that it cannot be accurate at this stage? Do you have a best estimate?

Alistair Brown: I will begin and then ask Dave Kerrouchi to come in. Our starting point is that there is already a landfill communities fund at the UK level. As I recollect, the amount of tax credit that operators can get back from contributions to the landfill communities fund is 5.6 per cent of their contribution.

The Convener: It is 6.8 per cent.

Alistair Brown: Stuart?

Stuart Greig: It is 6.8 per cent.

Alistair Brown: It is 6.8 per cent—thank you, convener.

For every £100 million of tax due, those who pay the tax—the landfill operators—can earn credit of £6.8 million by making contributions to the landfill communities fund. We have not specified in the bill the parameters for the landfill communities fund going forward, but Dave Kerrouchi can perhaps provide more information.

David Kerrouchi: I have not much more to add, except that the credit scheme has a high take-up rate and is quite successful. On the tax due to Government, I imagine that, on implementation of the bill, over 90 per cent of it will be diverted away

from Scottish Government coffers to environmental bodies.

Stuart Greig: Just to give the committee a feel for that, the most recent figures, which are from 2011, show that about £4.5 million has been distributed through the landfill communities fund. That figure will diminish, which is why the minister said that he would increase the fund by around 10 per cent. However, it is valid to ask how we make best use of a diminishing pot of money—money that has been really valuable for organisations such as the RSPB in funding its work and in helping to mitigate the impacts of landfill sites. That is a real challenge for us in the years ahead.

John Mason (Glasgow Shettleston) (SNP): I will probably touch on issues that have already been addressed. Waste tourism has been mentioned, particularly with reference to England. The point was made that it can be sometimes worth while to take waste a long way away, but there are stories of western companies dumping stuff in Africa. How do we prevent that from happening?

Alistair Brown: Your question rather goes beyond my knowledge, so I ask Stuart Greig to answer it.

Stuart Greig: There are international agreements and Europe-wide legislation on waste. We are not allowed to export traditional waste—the stuff in our black bins. There is a transfrontier shipment regime, so that waste does not get exported, other than in some very illegal circumstances. A number of materials are not now considered to be waste—for example, the recyclate in our recycling bins—some of which go to China, Indonesia and other places, and some of which stay here and are turned into plastics for use in food-grade containers and so forth. There is also a grey area in the middle on which SEPA is very focused at the moment—it is clamping down on the movement of waste through abuse of transfrontier shipment.

John Mason: We do not need to worry too much that, if the tax rate increases, that will push waste overseas, for example. That should not be a factor.

Stuart Greig: That is a genuine concern. Whatever we do to try to ensure that we drive waste out of the bin and into other avenues, there will always be people who will try to see that as an opportunity to circumvent the system and make some money out of it. Whatever is done with the tax, it is essential that we ensure that the legislation and its enforcement are as tight as possible. We have a good regime in place, and we will add what we can to it through the bill.

John Mason: Okay. Thanks.

SESA was critical of the fact that we are talking about closely following the UK rates. It felt that that is “rather ambiguous” and does not provide the “certainty or clarity” that it would like. It seems to me that it wants 100 per cent clarity and certainty. How do we get the balance between certainty and uncertainty?

Alistair Brown: As we said earlier, Mr Swinney has said—this is not in the bill—that he intends to invite Parliament to agree rates for the Scottish landfill tax that are no lower than the rates that are applied in the rest of the UK from 2015 onwards. In that respect, I think that he was concerned about providing as much certainty as possible to the industry. He was not fettering his discretion to propose higher rates than those that might apply in the UK in future.

John Mason: Are you saying that the industry really does not need any more certainty other than a floor?

Alistair Brown: The industry might feel that it would like to have certainty about the ceiling as well as the floor, but at this stage we are offering certainty about the floor, which we believe is important. It is particularly important for the investment plans that companies that are active in the sector have made, which depend on the cost of landfilling.

John Mason: In that case, am I right to say that it is the minimum cost that matters, because that makes it worth while to invest, and that if the rate of tax was higher, that would be even more of a bonus, in a sense?

Stuart Greig: Waste management companies are now quite diverse organisations. They will deal with recycling, but they might also deal with black-bag residual waste and electronics. If one thing is changed, that will disincentivise their involvement in one of area of work but create an opportunity in one of the other areas. The floor and ceiling will therefore be relevant to them.

The really important point is that waste management companies have no certainty about what the UK Government’s position on landfill tax will be post next year, so the situation that they are in in Scotland is basically the same as the situation in the rest of the UK. Waste management companies make a great contribution to our economy and are vital in the shift to handling waste as a resource, but their current business model is based on handling volumes of waste. If you make money from a volume of material, you will want certainty about how much of that might be around in the future. We cannot give 100 per cent certainty. We are always trying to drive down the amount of waste that flows through our economy, and landfill tax will always be used to try

to drive down the amount of waste in our economy.

We have said that we will provide as much certainty as we can in a way that is very similar to the position in the rest of the UK in the first instance, but we continue to be open to ideas about where we will go in the future.

John Mason: Okay. Thanks.

The Chartered Institute of Taxation says in paragraph 18 of its submission that

“the resource that is being protected is land”.

I am not sure that I agree with that. I thought that we were trying more to protect resources with a wider remit, especially in light of what Mr Greig said earlier. Do you agree that

“the resource that is being protected is land”?

The Chartered Institute of Taxation built on that by saying that the tax should be based not on weight but on some other “fairer measure”, although I do not think that it suggested what that might be. What is your response to that?

Alistair Brown: If Mr Mason is content for me to do so, I will invite Stuart Greig to comment on the statement that

“the resource that is being protected is land”.

Other resources are being protected through the landfill tax. Stuart, will you comment on that?

Stuart Greig: I will try, although I might be as confused as you are on this point. I am struggling to understand how the tax will protect land. The focus is on getting the stuff out of the sites. At the moment, we have 78 landfill sites but at some point there will be significantly fewer, and some may offer opportunities for redevelopment. The Scottish Government building is on a landfill site. I can see the value of the land in that sense.

John Mason: The logic of the statement struck me as strange when I read it. I just wanted a bit of reassurance that I had not misunderstood it. By the chartered institute’s logic, if we dug a deep enough hole, that would not use up very much land and any amount of stuff could be put in. However, you said at the beginning that we are trying to save resources on a wider scale.

Alistair Brown: As the committee will know, the Chartered Institute of Taxation has been very helpful to us in our work on devolved taxes, particularly the land and buildings transaction tax. Through the contact that we have with the chartered institute, we can make sure that we fully understand the point that it is making. There is an opportunity for us to have a conversation with the chartered institute about the point that you have raised.

John Mason: Thanks.

In its written submission, the Convention of Scottish Local Authorities talks generally about the new taxes and the importance of their having a local dimension. I am sympathetic to that. However, am I right to say that you would not even consider the landfill tax being a local tax because it needs to be a national tax?

Alistair Brown: I will respond to that and invite Stuart Greig to come in if he wishes.

First, we have a Scotland-wide network of landfill sites and waste companies that operate them. Local authorities dispose of their waste to landfill in local authority areas other than their own—there is a lot of cross-boundary operation in that respect. Secondly, I would have thought that, were the tax to be devolved to the local level, there would be considerable difficulty if different local authority areas set different rates. Thirdly, there is a coherent Scottish policy on waste disposal that diverts waste from landfill, which would be supported by a Scotland-wide approach to the landfill tax.

John Mason: Glasgow City Council makes the point that, if there were two different tax regimes, that could add bureaucracy for companies that operate across the UK. Are we talking about companies that operate only in the UK, which would move from one tax regime to two, or are we talking about companies that operate internationally, which would be moving from, say, 20 tax regimes to 21?

Alistair Brown: We recognise that several companies in the waste management sector operate across the UK and that they will move from having to deal with one UK-level landfill tax regime to having to deal with two—one for Scotland and one for the rest of the UK. Stuart Greig can perhaps provide further information about the degree to which those companies operate internationally. In the financial memorandum, we make the point that we believe that the increased burden on companies that will move from operating within one tax regime to operating within two will be relatively small.

Stuart, do you have anything to add on the international dimension?

Stuart Greig: A couple of companies that operate landfill sites have an international dimension, and Mr Mason is right to say that it might be a case of adding one extra tax to 25 others that they are dealing with. We are doing everything that we can to simplify the system for Scotland and, with SEPA and revenue Scotland, we will seek to introduce an electronic returns system. We are trying to minimise the burden of administration on operators in Scotland and, by

doing so, to make it as easy as possible for them to adapt to having two tax systems.

John Mason: On the landfill communities fund, the 10-mile radius has been mentioned. In Dave Thompson's constituency 10 miles is quite a short distance, but in my constituency 10 miles is absolutely mega-huge; it is far too great a radius. Has consideration been given to changing the measure? Could the landfill communities fund apply to the ward that the landfill site is in and the adjoining wards, which would be more compact in urban areas and much wider in rural areas?

10:30

Stuart Greig: Yes—we will probably need to look hard at the 10-mile radius rule. There are other ways to achieve the same thing.

There is also the issue that the material that gets to a landfill site travels along our roads, which causes disruption to people and communities not only in the close vicinity of the site.

There are good reasons for the radius to be smaller and closer around the landfill site in some circumstances, but there are other justifications for broadening it out across transport networks. There is also a good justification for coverage outside an urban area if we want to counter the environmental damage of landfill sites.

We need something a little more sophisticated for the future, which is why we think that guidance is the way to deal with the matter. Measures that are set in guidance can be more flexible and accommodating in the more complex circumstances about which we are all talking. Undoubtedly, we will consider that with everyone who is involved in the fund over the next 18 months, before the legislation is implemented.

John Mason: From what I understand, Glasgow City Council dumps a lot of its rubbish in South Lanarkshire, but it argues in its written submission that much of the benefit should come back to Glasgow rather than staying in South Lanarkshire where, I presume, the people suffer from dumping of the waste. Has there been thinking on that, or is it still to be developed?

Stuart Greig: We want to ensure that the people who are affected by landfill sites are the first port of call for compensation for that damage. They will be either the people right beside a landfill site or people who are affected by transportation of the waste to the site. They are the number 1 priority. The priority after that is to consider the other environmental implications of landfill so that money can, perhaps, flow into things outside the closest and most-affected communities.

Glasgow City Council may have justification for what it says if some of its citizens are affected by

transportation—the movement down the street—to the landfill site in South Lanarkshire.

John Mason: How specific should the fund be? One suggestion is that it should be for environmental projects or for preventing future waste. The Patersons Quarries Ltd landfill site is in my constituency, so we have had some of the fund. One of the funded projects built a tennis court, which is good: I am for tennis courts, but the link to waste is a bit limited. Another project was a church kitchen: I am also a fan of church kitchens but, again, the link to waste is limited. Do we need to make the fund more restricted to waste reduction?

Stuart Greig: There is potential for that to be done. When the fund was initiated, it covered a much broader range of projects; money was diverted into research on how to recycle more, for example. The challenge is that there are a number of vested interests in the fund around such research—waste management companies operate a number of the charities that distribute the fund and have vested interests in trying to increase recycling rates. That is what the regulator, Entrust, keeps an eye on.

There is an opportunity to try to ensure that the fund is focused on measures that will make the biggest difference whether locally or to the policy landscape. However, it must be done in a way that does not interfere with the free market and competition between the waste management companies.

John Mason: RSPB Scotland said:

“The current administration of the tax”—

I think that it means for the fund—

“is ungainly and costly (it costs 2% of the value of the Landfill Communities Fund to administer).”

I thought that 2 per cent was quite good. Many charities spend a lot more than that on administration. Will you comment on that?

Stuart Greig: The critical thing is that the money will reduce, so we must put in place an administration system that is as cost effective as possible so that as much as possible of that money gets to worthy causes. We are considering options; the current distributive bodies have a strong view of what the system might look like. There are a couple of models on the table, and we will consider taking that forward in the subordinate legislation.

The options are, broadly, self-regulation, which would take out a tier of administration, and simplification of the number of bodies that are involved, whereby there could be one overarching body that helps to administer the funds. Whatever we do, we want to ensure that the fund never

touches the Government's hands, so that it can be used for match-funding purposes and everything else.

There is no simple solution to all the points that have been raised. We definitely have some thinking to do, and we have a few more discussions to have with all the people who are involved in the fund, but I have no doubt that we will have a good idea on the table in six or 12 months.

Dave Thompson: It might not relate directly to the bill, but I have a question on the fund, which will reduce, as you said. It might be useful if the fund could be bolstered or boosted by some kind of incentive for people who create recycling and other positive waste disposal facilities. If we are trying to encourage less landfill, more recycling and so on, it would be logical not just to reward communities for the damage that is caused by landfill sites, if I can put it that way, but to reward those who create positive recycling facilities and so on. That would help to maintain the fund going forward and would broaden it out around the country, as well. Do you have any views on that idea?

Stuart Greig: I like the idea; some such suggestions have been made. The challenge is to ensure that such a reward would not give a particular waste management company a competitive advantage because it handles specific recyclable materials as part of its business. It is a question of finding a way to do what Dave Thompson suggests without disrupting the competitive market.

Alistair Brown: We would have to take into account the wider issues of Government revenues and what can be afforded, and the fact that some Government expenditure goes into encouraging positive environmental practice.

To clarify Stuart Greig's point that the revenues that are available to the landfill communities fund will decline, I am sure that his comment was based on the forecast in the financial memorandum, which is that we expect receipts to decline by about 60 per cent between 2015 and 2025. The background is a projection of declining revenues from landfill tax, and because the landfill communities fund is geared to landfill tax receipts—it is a credit up to a fixed cap—we expect that the income that is available to the fund will decline from 2015 onwards from about £7 million a year.

The Convener: That concludes questions from members, but I have a few questions to finish with. We have talked a lot about the landfill communities fund and I do not want to dwell on it, given that it represents a fairly small proportion of

the bill, but I want to add my comments. SESA states:

“The relatively small fund would be diluted by extending its remit, leaving less available to those communities experiencing the most direct disbenefit.”

I agree. The area that I represent has a number of landfill sites, particularly in the Garnock valley, and some disadvantaged areas find it difficult to apply for resources from the fund. Work must be done to make it easier and less costly for people to apply, so that the areas that are most affected are the areas that benefit. I certainly do not believe that a declining fund should be extended to the rest of Scotland. I do not see what the benefit of that would be. Do you have any comments on those points?

Alistair Brown: I have a point on the landfill communities fund to make, which comes out of Stuart Greig's earlier observations. The Scottish Government will be working with the industry, community groups and people with environmental interests to develop proposals that will then be reflected in subordinate legislation that will come to Parliament for approval.

I do not speak with any knowledge of the environmental policy scene, but I expect that many of those issues will be thrashed out in the process of discussing the proposals with interested groups. I also expect that we will find that there are different and sincerely held views that will be difficult to reconcile. There will be people who believe for good reason that the fund should be available to support environmental good causes anywhere in Scotland, and there will be others who believe that the fund should be directed towards good causes that are geographically close to landfill sites. We will need to do our best to draw out some kind of synthesis of those views and reflect that both in the statutory instruments that will require parliamentary approval and in the guidance, which will help whoever ends up administering the fund for Scotland to reflect the policy intention that is finally decided on.

There is a lot of discussion still to be had and a lot of opinion still to be brought in from relevant groups. As you and others have pointed out, we are seeing some of that opinion being expressed—quite coherently, I think—in the responses to the committee's request for written evidence. The discussion has started and will continue. Perhaps Stuart Greig can confirm whether that is a fair representation.

Stuart Greig: Yes, it is.

The Convener: Let me move on to a couple of other areas before we wind up. Will SEPA or revenue Scotland be responsible for enforcement of the tax?

Alistair Brown: That issue is still for discussion. Very broadly—this is an observation rather than an answer to the question—we have put the costs of enforcement or compliance into the revenue Scotland box for the purposes of the financial memorandum. However, we also register the point that the division between revenue Scotland’s responsibilities and those of SEPA—or of Registers of Scotland, in the case of land and buildings transaction tax—is not cast in stone. The division between those two sets of responsibilities is not legislated for, although we expect to address the issue in the tax management bill that we will introduce towards the end of this year.

My expectation is that the precise division of responsibilities will be worked out between the two organisations. They are already working together, now that we have revenue Scotland staffed up in its pre-statutory phase. The head of revenue Scotland, Eleanor Emberson, and her staff, including the chief operating officer Nicky Harrison, are discussing—or beginning to discuss—those issues with SEPA. I think that over the next year or so we will see development such that the division of responsibilities will be well understood and provided in good time, before April 2015.

The Convener: Stuart Greig mentioned that there are 78 legal landfill sites in Scotland. Do you have any idea of the number of illegal sites? One might think, “Well, they’re illegal, so we can’t really know”, but it is not quite like estimating the number of illegal immigrants, which no one can know for sure. Illegal sites are geographical things that to some extent can be identified. What is the scale of illegal activity? How much of that will be brought into the tax regime if the proposed changes are made? Can you give a broad estimate of what the financial benefit will be?

Alistair Brown: I will make just one point and then invite Stuart Greig to respond. Obviously, illegal sites are a big environmental issue; SEPA exists partly to monitor and tackle environmental problems such as illegal dumping. The committee might want to ask SEPA about those issues when it gives evidence on, I think, 19 June. However, we will have some knowledge of the estimated scale of illegal activity. Stuart Greig will comment on that.

10:45

Stuart Greig: I do not want to say too much on illegal dumping. SEPA is best placed to give the committee a picture of how significant the problem is. We know that the problem is widely dispersed, but there are undoubtedly big pockets of illegal activity. As I said, there have been two or three high-profile large-scale cases in the past couple of years. One involved what was, in effect, an illegal

landfill site—we are not talking about a few thousand tonnes of something in the corner of a field, but about a really significant operation. There was also a tyre situation recently. There are substantial cases, but such activity does not happen all over Scotland all the time. There are pockets of significant activity, some of which are around conurbations. A lot of work is being done to tackle the problem.

As I said, the extra tool in the bill—the ability to go after the evaded tax—will be a significant additional deterrent. There is no doubt that, if we are to have a zero-waste society, we will need the most robust market conditions that we can create, because making the right investment in alternatives to landfill is a risky business; profit margins are still thin. Anything in the marketplace that disrupts that and lowers the price that can be charged is very damaging, so that is a real priority for us.

The Convener: There being

“a few thousand tonnes of something in the corner of a field”

seems quite alarming to me, given that there might be a lot of vehicle movements to dump it there. Is there an issue about a lack of enforcement and of resources for it? If large quantities of tyres or drums of chemicals suddenly appeared in a field near my house, I would contact the authorities, and I am sure that plenty other people would be of the same mind. Is that an issue that the bill might help to address?

Stuart Greig: A lot of work is going on to develop better intelligence on such issues, which is exactly the point that you raise. Investigations of such issues are nowadays treated in the same way as any criminal investigation is treated. A strong case has to be built and intelligence has to be used from all sorts of avenues, including industry and the public. With significant instances, all that information has to be pulled together and the police have to be brought in. They are major investigations.

Illegal dumping is a significant issue that we definitely do not want to underestimate. SEPA will be able to give the committee a good picture of the work that is going on at the moment and the activity on which it is focusing. We are all looking forward to having the extra powers that the bill will give us to clamp down on such activities.

The Convener: I thank our witnesses and colleagues for their questions.

I suspend the meeting briefly, until 10.55, so that we can change witnesses and so that members can have a break.

10:47

Meeting suspended.

10:55

On resuming—

Land and Buildings Transaction Tax (Scotland) Bill: Stage 2

The Convener: Item 3 is the second day of our stage 2 consideration of the Land and Buildings Transaction Tax (Scotland) Bill. I welcome to the meeting the Cabinet Secretary for Finance, Employment and Sustainable Growth, along with Neil Ferguson, John St Clair and Ian Young from the Scottish Government.

Members should note that the cabinet secretary's officials cannot speak on the record at stage 2. As in the previous stage 2 session, all questions should be directed to the cabinet secretary. Members should have the marshalled list of amendments and the groupings.

Sections 44 to 46 agreed to.

Section 47—Residential property holding companies

The Convener: Amendment 35, in the name of the cabinet secretary, is grouped with amendments 36 and 37.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): This is a small group of three amendments to section 47, which gives Scottish ministers a power to capture the wrapping of residential properties in company structures to avoid LBTT. Tax avoidance is not welcome in Scotland. The amendments clarify the scope of any regulations that are made under section 47.

Amendment 35 will ensure that the regulations are able to capture the transfer of an interest in a residential property-holding company when the company holds property outside as well as within Scotland. That provision is needed because the definition of "chargeable interest" in section 4 captures property in Scotland only. Regulations that are made under section 47 will ensure that the chargeable consideration on which the LBTT payment is based will be in proportion only to the property that is held by the residential property-holding company in Scotland.

Amendment 36 clarifies that the regulations can specify different LBTT rates and bands for the transfer of an interest in a residential property-holding company.

Amendment 37 will enable the regulations to expand what counts as residential property for the purposes of section 47.

It is imperative that Scottish ministers are able to regulate to ensure that transfers of residential properties cannot avoid LBTT liabilities under section 47 by being held together with some non-residential property in a property-holding company, and amendment 37 will provide the flexibility to do that. For example, it will enable the regulations to capture any residential property that is held as part of a larger mixed-use property.

I move amendment 35.

Amendment 35 agreed to.

Amendments 36 and 37 moved—[John Swinney]—and agreed to.

Section 47, as amended, agreed to.

Section 48 agreed to.

Section 49—Partnerships

The Convener: Amendment 38, in the name of the cabinet secretary, is grouped with amendments 64, 40, 45 to 50, 65 and 62.

John Swinney: I will speak to amendments 38, 40, 45, 50 and 62, and respond to amendments 64 and 65, which Gavin Brown has lodged.

The partnership provisions in the LBTT bill are complex, at least partly because of the complexity and range of the commercial transactions that the provisions bring within the scope of the tax. We took a conscious decision to follow closely the stamp duty land tax provisions in the area of partnerships, knowing that taxpayers and their agents have already been operating under parallel provisions in relation to SDLT for nearly a decade.

Despite the complexity, the provisions deliver policy objectives that I believe will bring about fair and reasonable tax outcomes. The first objective is that partnerships should get a partial relief from LBTT when they acquire a chargeable interest from a partner, to reflect the partner's retained interest in the property that is transferred. The same principle should apply when a chargeable interest is taken out of a partnership.

Parts 4 and 5 of schedule 17 currently provide for that. The sum of the lower proportions calculation is used in both and has been used in practice since the SDLT partnership provisions were set out in the Finance Act 2004; it ensures that an appropriate amount of relief is obtained in any particular case.

11:00

The second policy objective is to ensure that partnerships and transactions involving them

should not be a means of avoiding LBTT. Schedule 17 contains a number of different provisions to tackle avoidance. In particular, the schedule ensures that land transactions between partners and partnerships are taxed at the market value of the land in question rather than the actual price paid, if any. The schedule also provides for certain events following a land transaction to be taxed as if they were land transactions to prevent tax avoidance. For instance, paragraph 17 treats a partnership transfer as a chargeable land transaction if the transfer is pursuant to arrangements in place at the time of the transaction. Paragraph 18 makes further anti-avoidance provision.

Thirdly, paragraph 6 of schedule 17 contains provisions for property investment partnerships—PIPs—which are partnerships whose sole or main activity is investing or dealing in a chargeable interest in property. In essence, the provisions aim to prevent the wrapping of land and property in a partnership structure to avoid LBTT liability by ensuring that transactions in such wrapped property are liable to tax. Paragraph 31 of schedule 17 achieves that by providing that a transfer of an interest in a PIP is treated as a land transaction.

I reiterate what I said to the committee on 22 May on the issue of partnership provisions. We commissioned external advice to assist us in looking at options to simplify the provisions. The recommendations from that work shed some light on the issues, but further work is required to explore them and to decide what changes should be implemented. I do not believe that significant changes should be made without further engagement with stakeholders on these important matters and without particularly careful consideration of their effect. I accept that there are parts of schedule 17 that could be simplified or improved, but such alterations should not be rushed.

Amendment 38 therefore will enable schedule 17 to be amended by subordinate legislation in the future. That would allow the Scottish Government to revise the provisions on partnerships if that was felt necessary following further work and engagement with stakeholders. Amendment 62 provides that the subordinate legislation will be subject to the affirmative procedure, enabling close parliamentary scrutiny of any future proposals.

One way of helping taxpayers and their agents to navigate complex areas of tax legislation is to provide clear and comprehensive guidance. In my view, there is scope for addressing complexity in that way through revenue Scotland working closely with stakeholders. I therefore propose that officials working with those outside Government

who have an interest in and are expert in partnership taxation matters should undertake further work on schedule 17. The aim of the further work will be to identify ways of making the law on the taxation of partnership transactions easier to understand and operate. I would also want that work to ensure that it remains difficult to avoid paying LBTT. Such work will look at addressing the complexity of the provisions by providing clear guidance; it will also consider whether the legislation itself needs revised.

Mr Brown's amendments 64 and 65 represent an alternative approach to the issue, as they would take out all provisions on partnerships in their entirety. In my view, that would leave a vacuum in the LBTT framework. I stress again what I said to the committee on 22 May, which is that I have no desire to leave a gap in the LBTT bill. I appreciate that Mr Brown no doubt has it in mind that further work would be done to examine the options and then recreate an equivalent schedule 17, which would be added to the eventual act using subordinate legislation, and I accept that that would be an alternative way forward. However, I believe that the most effective approach is for officials to work with stakeholders to explore how best to address any shortcomings with the existing provisions, including through clear guidance. I do not want to anticipate the outcome of that further work, but it would be my intention to keep the committee abreast of progress and, if recommendations to amend schedule 17 emerge, to return to Parliament in due course with legislative proposals for approval.

The other amendments that I have lodged in relation to the partnership provisions can be classified as tidying-up amendments. Amendments 40 and 46 correct minor typographical errors. Amendment 40 inserts a missing "is" in paragraph 17(1)(a) of schedule 17. Amendment 46 changes "different" to "difference" in paragraph 31(5)(b) of schedule 17.

Amendment 45 ensures that a transfer of an interest in a property investment partnership that holds chargeable interests outwith Scotland as well as within Scotland is caught by the LBTT bill, although we note that by introducing the amendment we narrow the scope of the provisions in part 6 of schedule 17 compared with the equivalent provisions for SDLT. Where there is a transfer of an interest in a property investment partnership that holds land in Scotland and outside Scotland, the LBTT that is chargeable will be in proportion to the property or properties that are held by the partnership in Scotland only. That is provided for by paragraph 31.

Amendments 47, 48 and 49 are all amendments to paragraph 39 of schedule 17. Their main purpose is to clarify the application of charities

relief in schedule 13 to transfers of partnership interests. Amendment 47 adds a further modification of paragraph 3 of schedule 13 to clarify what it means to hold property in a partnership for charitable purposes. The way that the provision read when the LBTT bill was introduced did not quite make sense and would have caused difficulties in practice, as it would allow charities relief to be claimed only in instances of the transferee holding the subject matter of a particular transaction, when the test ought to be that the chargeable interest itself is what is held for charitable purposes.

Amendment 48 allows charities relief to be claimed when profits are applied to the charitable purposes of the partners rather than just the partner to whom the interest has been transferred. Amendment 49 is a minor consequential amendment to paragraph 39(5) of schedule 17.

The purpose of amendment 50 is to clarify that a transfer of an interest in a partnership is constituted either when a partner acquires a partnership share or when their partnership share increases. The amendment does not constitute a policy change; it merely adds clarity with regard to the use of the legislation. The position is that a transfer of an interest in a partnership is constituted either when a partner acquires a partnership share or when either partnership share increases. In the latter case, an active step is not needed by a partner who is increasing their partnership share as the result of another partner retiring, for example.

I apologise for that marathon.

I move amendment 38.

Gavin Brown: Amendment 64 would compel the Scottish Government to make regulations in relation to how the law applies to partnerships, as opposed to allowing it to do so. Amendment 65 would leave out schedule 17, which deals with provisions for partnerships, in its entirety. I lodged the amendments because two weeks ago the committee had compelling evidence from the stakeholders—some of whom the cabinet secretary has referred to in previous evidence—that the partnership provisions, as they stand, simply do not work. They operate in practice, but as regards being workable for practitioners and those in partnerships, they are simply not up to the job. A number of interesting adjectives and nouns were used to describe how they were in practice—I will not repeat them. The provisions cut against the principles of the bill that the cabinet secretary laid out at the very beginning of the process—or, at least, against three of those principles: convenience, efficiency and certainty.

Consider some of the evidence that we have received. The Scottish Property Federation said:

“One of the problems with the SDLT legislation is that it has been built on over and over in 2003, 2004, 2007, 2010 and again in 2013, which does not make for good legislation.”

I agree with that. That is why I prefer to scrap schedule 17 and build it up from first principles, according to what stakeholders believe ought to happen, as opposed to hoping that we can build on it again and tinker with it.

We heard from the Institute of Chartered Accountants in Scotland, which said:

“In many cases, there is a complete lack of comprehension ... on the part of people who have worked in the area for many years, including those in HMRC. It does not work and, in many cases, is ignored because people do not know that there is a potential liability when transactions happen ... I strongly urge you to start again”.

We also heard that day from the Law Society of Scotland, which said:

“it is often ignored because people do not understand it ... SDLT partnership rules are based on income-sharing ratios. People find that difficult to understand because in real partnerships in the real world there are profit-sharing ratios and capital-sharing ratios, which are different. Automatically, therefore, you are off on the wrong foot”—*[Official Report, Finance Committee, 22 May 2013, c 2648-49.]*

As I said at the beginning, I found those submissions compelling. I have a huge concern that we are simply cutting and pasting 19 pages out of the 97 in the bill straight from the provisions on SDLT, which is acknowledged by certain committee members and, indeed, the Institute for Fiscal Studies and the OBR as a tax that wins numerous prizes for being the worse-designed tax. My amendments would make the new regulations mandatory.

I take on board the cabinet secretary's point that he would not want a vacuum at the end of this process, but there would be a vacuum only if, when the tax applies on the ground in April 2015, nothing had been put in place. I accept entirely that the matter is complex. However, given the quality of the work done so far by stakeholders and, indeed, the bill team, I cannot see why we are not capable, within the best part of two years, of putting in comprehensive, workable partnership provisions, built up from first principles, which apply the principles that the cabinet secretary described for the bill at the start of the process.

John Mason: I will speak briefly to amendments 64 and 65, to which Gavin Brown has already spoken.

As the cabinet secretary has accepted, the reality is that there are arguments on both sides. It gives a degree of certainty to have something in black and white now; there is a lot less certainty if we have nothing down in black and white and just leave a gap. Although it is possibly the case that,

as Gavin Brown feels, two years is plenty of time to come back with something better, I prefer to leave what is already there. If somebody comes up with something better over the next months or years, by all means let us lodge an amendment and change that.

I may be biased, because I am an accountant. When I speak to some of the lawyers, the attitude seems to be that if we had any amount of time and could really start from scratch in an empty room—and so on—we could build a perfect piece of legislation. That is not quite where we are now. It is great that this is the first tax bill that we have had in this Parliament. At the same time, however, we have time constraints; witnesses repeatedly tell us that they want certainty sooner rather than later. We would be going against the principles of predictability and certainty if we were to leave this provision out altogether and I feel that it is right that it remains.

Malcolm Chisholm: To be honest, I find the decision a difficult one. There is a certain irony in the debate today, given that the cabinet secretary and, indeed, John Mason are lifting 17 pages straight out of Westminster legislation and Gavin Brown is saying, “It is rubbish, so let’s take more time to deal with it.”

The fact that the legislation is not coming into force for almost two years might tip the balance towards Gavin Brown’s argument, and I take the force of the cabinet secretary’s argument that normally we would not want to leave a significant gap in a piece of legislation. Therefore, I am tempted to cop out and abstain. On balance, however, I have been persuaded by Gavin Brown’s argument and shall vote for his amendment.

11:15

John Swinney: I have nothing to add to the comments that I have made, but I will address Mr Brown’s argument. On 22 May, I made the point to the committee that the Government has endeavoured to explore in detail and substance an alternative approach. With respect, we have not just cut and pasted 17 pages of UK legislation; we have commissioned external input to give us advice on whether there is a better way of going about this. The recommendations from that work have shed some light on the questions involved, but we need to undertake further detailed study before we can commit to any further legislation. That leads me inevitably to the conclusion that, despite our best endeavours to date, there is no compelling alternative proposition that is superior to the provisions in the bill. If we took them out we would leave a vacuum, and whatever the compulsion of Mr Brown’s amendment we might find ourselves back where we started when we

came to fill that vacuum—which we would have to do, or we would leave the door wide open to potential evasion of tax. I do not think that the committee would want us to be in that situation.

I have looked again at the evidence that the committee has heard and I do not find it compelling. The witnesses suggested that the legislation operates but does not work, but I am afraid that I do not understand that proposition. If something operates, it must work. That seems a rather incoherent argument to make.

The provisions are complex because we are dealing with a very complex area of business activity. Therefore, the right thing to do is to create the legislation as we have suggested and to resist Gavin Brown’s amendments. We can then explore with stakeholders—as we have already done on the question of leases—how to formulate alternative propositions if we can. I stress that it is not a given that we will be able to do that. We have already done part of that exercise and have not found any better or stronger material than what is in the bill at the moment.

I encourage the committee to resist the temptation to leave a vacuum in the bill and to acknowledge that there is a good intention to deliver improved provisions if we can, although the evidence and the work that we have undertaken so far show that that is by no means guaranteed.

Amendment 38 agreed to.

Amendment 64 moved—[Gavin Brown].

The Convener: The question is, that amendment 64 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brown, Gavin (Lothian) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)

Against

Gibson, Kenneth (Cunninghame North) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)

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

Amendment 64 disagreed to.

Section 49, as amended, agreed to.

Schedule 17—Partnerships

The Convener: Amendment 39, in the name of the cabinet secretary, is grouped with amendments 41 to 44, 54, 55, 53, 53A, 56 to 61 and 63.

John Swinney: The key amendment is amendment 53, which introduces a new schedule to deal with the tax treatment of leases under the land and buildings transaction tax. The new schedule sets out the detailed rules for taxing leases. Broadly speaking, the tax chargeable for a lease will be determined by calculating the tax that is due on the rent using the net present value of the rent payable over the length of a lease plus the tax that is due on any premium paid in addition to rent, which the schedule describes as a “consideration other than rent”.

The schedule sets out how to calculate the net present value for rent payable. Although the calculation appears to be quite complicated, it is widely accepted as the most appropriate way of calculating, for tax purposes, the value of a stream of rental payments over a number of years.

The calculation has three elements. The first is the temporal discount rate, which the bill sets initially at 3.5 per cent, which is the same rate as is used for stamp duty land tax. The discount rate could be varied by order, subject to parliamentary process. The effect of applying the rate is to calculate the value today—the present value—of rents that will be paid in the future. The second element of the calculation is the length of term of the lease. The third element is the amount of rent payable. Once the length of term of the lease and the rent payable have been determined, the statutory formula that is set out in paragraph 6 of the new schedule is used to calculate the net present value of rental payments. That is the amount on which tax due is based.

Scottish taxpayers will be familiar with the formula, as it is very similar to the formula that is used to calculate the net present value for leases that are taxed under stamp duty land tax. Taxpayers and their agents will have access to an online calculator to assist them with the calculation. Once the net present value of the rental payments has been calculated, the tax liability can be arrived at by applying the relevant rates and thresholds.

Leases often include a consideration other than rent, such as a premium payment that is made up front. That must also be taxed, because otherwise such arrangements could be used to minimise the rent payable and therefore the tax due. Tax due on the non-rental element of the consideration will be calculated in the same way as tax on chargeable consideration generally so, for example, section 25, on the amount of tax chargeable, will apply.

The new schedule also provides that, after submitting the initial tax return, a tenant must carry out a review of the tax due based on the rent actually paid in the period. The review period is every three years. The tenant must make a tax

return to revenue Scotland at each review date and at the end of the lease. That will ensure that the tenant pays the correct amount of tax over the term of the lease by providing a mechanism for adjusting the tax due and paid if the rental or other payments under the lease vary over time. The review process will also recognise and account for other changes, such as extensions to the duration of a lease or the continuation of a lease beyond its end date by tacit relocation.

That approach, which has been discussed in detail with the Law Society of Scotland and other relevant stakeholders in the working group on non-residential leases, is considered to have advantages over the current system that applies to calculating tax due on leases under stamp duty land tax. For example, the revised system provides greater certainty about the timing of recalculations of tax payable and therefore about tax payments. The revised system also places fewer obligations on the tenant to submit a tax return during the period of the lease. It will no longer be necessary to submit a return every time that the rent changes. For example, the rental payable under some leases is based on turnover and the rent changes annually, depending on turnover figures. Under LBTT, additional returns will be limited to the three-yearly return and the return at the end of the lease. In short, any recalculation of the tax chargeable will generally occur only every three years.

I am grateful to the members of the working group on non-residential leases for their invaluable input into the preparation of the detailed rules for taxing leases that are set out in the new schedule. The group’s work demonstrates what can be done through joint working to achieve an outcome that is suitable to Scotland.

I am sure that it has not escaped the committee’s notice that the leases schedule runs to more than 15 pages. That demonstrates the complexities and technicalities that arise when seeking to apply taxation fairly and reasonably to the range of commercial situations that can arise perfectly legitimately under property law. That said, the system that I have outlined is, in the view of experts in the field, now better aligned with Scots law and practices and will therefore serve taxpayers in Scotland better than the current UK stamp duty land tax system.

The dialogue with the non-residential leases working group to refine the leases schedule continues, and a further meeting of the group has been arranged for 11 June. Following those discussions, it is possible that amendments will be required to the leases provisions at stage 3. At stage 3, I will also lodge technical amendments to earlier provisions of the bill that were considered at last week’s meeting.

All the other amendments in the group are consequential technical amendments to sections in the bill, and to schedules 17 and 19, that are necessitated by the leases schedule that amendment 53 will introduce.

I move amendment 39.

Gavin Brown: Before speaking to amendment 53A, I acknowledge the great work that the non-residential leases working group and the bill team have done. It seems from the evidence that the committee has received that the group's proposals have had wide acceptance.

I have lodged one simple amendment, which concerns the rates that would apply to leases. I am advised that, under SDLT, there are currently two rates, which are 0 per cent and 1 per cent. My amendment 53A to the cabinet secretary's amendment 53 would give the Scottish Government flexibility to mirror the situation south of the border or not, but being different would be a proactive decision.

I am not sure what the Scottish Government's exact thinking is on the rates that it wants to apply or whether there would be two, three, four or more bands but, as amendment 53 stands, the Government would be locked into having a nil rate band and at least two other rates, which would mean that it could not possibly mirror what happens south of the border. The Government might not want to mirror that when the time comes to set the rates, but it might want to.

For that reason, I lodged amendment 53A to keep things entirely flexible. It would give the Government the option of following exactly what happens south of the border or doing whatever it likes when the time comes to make the decision.

Malcolm Chisholm: I hesitate to speak, having made one mistake already this morning. I do not think that Gavin Brown is allowed to reply, which is perhaps a problem with the procedure in our Parliament, but my reading of his amendment 53A is that it would provide no flexibility, because it seems to say that there would have to be a nil rate tax band and one other tax band. I am not sure how that would give the flexibility that he mentions.

Gavin Brown: Convener, may I intervene on Malcolm Chisholm?

The Convener: No, you cannot, but it is okay.

Gavin Brown: If the member reads amendment 53A in conjunction with what the cabinet secretary said, he will see that there would not be just one band. Amendment 53A would replace "two" with "one", which means that there could be one, two or three bands, or as many as the Scottish Government likes.

Malcolm Chisholm: Convener, am I allowed to come back in?

The Convener: Of course.

Malcolm Chisholm: That is not my reading of amendment 53A, and I do not really understand Gavin Brown's point, but we do not need to delay things, because I am not going to vote for his amendment anyway.

John Mason: Can I intervene, convener?

The Convener: On you go.

John Mason: If I read amendment 53A correctly—Gavin Brown can correct me if I am wrong—the words "at least" in amendment 53 will stay, so we would just be replacing the phrase "two other tax bands" with the phrase "one other tax band". The new schedule would therefore say, "at least one other tax band," which could be one or more.

Malcolm Chisholm: Okay—I understand the point. I have made two mistakes this morning.

John Swinney: I will address the issues that Mr Brown raises in amendment 53A. Paragraph 3(2)(a) in the new schedule that will be inserted by amendment 53, which is lodged in my name, provides for a duty on the Scottish ministers to set "a nil rate band and at least two other tax bands".

That reflects the move to a progressive tax structure and is in keeping with the provisions in the bill for setting tax bands for other land transactions, such as purchases of property. Gavin Brown's amendment 53A would change amendment 53 so that the Scottish ministers were under a duty to set a nil rate band and at least one other band.

The committee has just had an extensive debate about the retention of the crucial two words "at least". Interestingly, that would allow the Scottish ministers to replicate the approach to SDLT if they chose to do so. However, as Mr Brown said, his amendment would not prevent the Scottish ministers from having a nil rate band and two or more other bands for non-residential leases. In the interests of progress and consensus, I am prepared to accept Mr Brown's amendment 53A.

Amendment 39 agreed to.

Amendments 40 to 50 moved—[John Swinney]—and agreed to.

The Convener: Amendment 65, in the name of Gavin Brown, was debated with amendment 38. Does Gavin Brown wish to move or not move amendment 65?

Gavin Brown: Without amendment 64, amendment 65 would not make sense, so I will not move it.

Amendment 65 not moved.

Schedule 17, as amended, agreed to.

Section 50 agreed to.

Schedule 18—Trusts

11:30

The Convener: Amendment 51, in the name of the cabinet secretary, is grouped with amendment 52.

John Swinney: A bare trust arrangement is used when a trust holds assets for a minor or a person with a disability or when a trustee is appointed to hold property as nominee for someone else. At present, the beneficiary of a bare trust will be liable to pay LBTT.

However, bare trusts are sometimes set up to keep the beneficiary's identity and interest confidential, which might present opportunities for tax avoidance. As a result, the bill's policy memorandum included an intention to explore the possibility of lodging a stage 2 amendment to make the bare trustee liable for LBTT rather than the current position in which the beneficiary is liable.

Having considered the matter further, I have concluded that reversing the position for LBTT so that the liability fell on the bare trustee could create complications and unintended consequences. It is notable that for a number of taxes, including income tax and capital gains tax, the beneficiary is liable to pay the tax when the liability arises in respect of a bare trust. A better approach to tackling the problem is that proposed in amendment 51, which gives revenue Scotland a right of recovery against a bare trustee, in addition to its ability to recover tax from the beneficiary of a bare trust. For example, revenue Scotland could use that right of recovery when the beneficiary failed to make a tax return or when, following an inquiry, it is found that outstanding tax is due on a transaction.

Amendment 52 is consequential on amendment 51.

I move amendment 51.

Amendment 51 agreed to.

Amendment 52 moved—[John Swinney]—and agreed to.

Schedule 18, as amended, agreed to.

Section 51 agreed to.

After section 51

Amendment 30 moved—[John Swinney]—and agreed to.

Sections 52 to 54 agreed to.

Section 55—Application of this Act to leases

Amendment 54 moved—[John Swinney]—and agreed to.

Section 55, as amended, agreed to.

Amendment 55 moved—[John Swinney]—and agreed to.

After schedule 18

Amendment 53 moved—[John Swinney].

Amendment 53A moved—[Gavin Brown]—and agreed to.

Amendment 53, as amended, agreed to.

Section 56 agreed to.

Section 57—Connected persons

Amendments 31 and 56 moved—[John Swinney]—and agreed to.

Section 57, as amended, agreed to.

Sections 58 to 61 agreed to.

Section 62—Meaning of “effective date” of a transaction

Amendment 57 moved—[John Swinney]—and agreed to.

Section 62, as amended, agreed to.

Sections 63 to 65 agreed to.

Schedule 19—Index of defined expressions

Amendments 58 to 61 moved—[John Swinney]—and agreed to.

Schedule 19, as amended, agreed to.

Section 66 agreed to.

Section 67—Subordinate legislation

Amendment 62 moved—[John Swinney]—and agreed to.

The Convener: Amendment 66, in the name of the cabinet secretary, is grouped with amendment 67.

John Swinney: The bill provides for tax rates and tax bands to be set by order. It also provides that the order for the first setting of tax rates and bands for land transactions other than non-residential leases will be subject to the affirmative procedure. As things stand, subsequent orders

that might change tax rates or bands will be subject to the negative procedure.

Amendment 66 provides for the first order that sets tax rates and bands for non-residential leases to be subject to the affirmative procedure. Amendment 67 provides for subsequent orders that change tax rates or bands for all land transactions, including non-residential leases, to be subject to the provisional affirmative procedure. That will allow changes to the tax rates and bands by subsequent orders to be made with immediate effect, subject to parliamentary approval within 28 days.

Amendments 66 and 67 fulfil the commitment that I made in response to the Subordinate Legislation Committee's report on the bill at stage 1. My letter to that committee stated:

"I intend to bring forward an amendment at stage 2 to provide that the power in section 24(1) will be subject to a form of provisional affirmative procedure after the first occasion that the bands and rates are set. This will allow the Scottish Government the necessary flexibility to respond swiftly to changes in the property market."

I move amendment 66.

Amendment 66 agreed to.

Amendments 32, 63 and 67 moved—[John Swinney]—and agreed to.

Section 67, as amended, agreed to.

Sections 68 to 70 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. Members should note that the bill will be reprinted as amended and will be available in print and on the web tomorrow morning. Parliament has not yet determined when stage 3 will take place, but members can now lodge stage 3 amendments at any time with the legislation team. Members will be informed of the deadline for amendments once it has been determined.

I thank the cabinet secretary and his team for their attendance. I am sure that you will all be glad that stage 2 is now complete—I certainly am. Thank you very much.

11:38

Meeting continued in private until 11:50.

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e-format first available
ISBN 978-1-78351-239-3

Revised e-format available
ISBN 978-1-78351-253-9