



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

FINANCE COMMITTEE

Wednesday 11 June 2014

Session 4

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FINANCE COMMITTEE
19th Meeting 2014, 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:

David Gauke MP (Exchequer Secretary to the Treasury)
John Swinney (Cabinet Secretary for Finance, Employment and Sustainable Growth)
Lindsey Whyte (HM Treasury)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Finance Committee

Wednesday 11 June 2014

[The Convener *opened the meeting at 09:15*]

Decision on Taking Business in Private

The Convener (Kenneth Gibson): Good morning and welcome to the 19th meeting in 2014 of the Scottish Parliament's Finance Committee. I remind everyone present to turn off mobile phones, tablets and other electronic devices, please.

Our first item of business is a decision on whether to take items 4 and 5 in private. Do members agree to do so?

Members *indicated agreement.*

Revenue Scotland and Tax Powers Bill: Stage 2

09:15

The Convener: Our second item of business is stage 2 consideration of the Revenue Scotland and Tax Powers Bill. We are joined by the Cabinet Secretary for Finance, Employment and Sustainable Growth and by Mr Colin Miller and Mr Greig Walker, who are officials from the Scottish Government team. Members should note that, as officials cannot speak on the record at stage 2, all questions should be directed to the cabinet secretary.

The bill is lengthy and we have more than 300 amendments to dispose of. The cabinet secretary will give evidence to the Economy, Energy and Tourism Committee later this morning, so proceedings on the bill will have to be concluded by around 11.15. I do not intend to set a target, but we shall attempt to make as much progress on the bill as possible today.

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

I formally welcome the cabinet secretary and his officials to the meeting.

Sections 1 and 2 agreed to.

Schedule 1—Revenue Scotland

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

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Amendment 1 deals with the issue that it would be inappropriate for serving members of the National Assembly for Wales or the Northern Ireland Assembly to be eligible for appointment as members of revenue Scotland. The amendment will have the effect of disqualifying them from appointment. Members of the Scottish Parliament, the House of Commons and the House of Lords are among others who are already disqualified.

I move amendment 1.

Amendment 1 agreed to.

Schedule 1, as amended, agreed to.

Section 3—Functions of Revenue Scotland

The Convener: Amendment 2, in the name of the cabinet secretary, is grouped with amendments 4, 6, 7, 29, 49 to 51, 111, 125 to 127, 166, 167, 265 to 274, 293, 294, 297, 299 and 302 to 305.

John Swinney: The amendments in the group are all minor technical and drafting amendments. Perhaps the most significant of them are those that relate to section 3, which sets out revenue Scotland's statutory functions, and to section 10, which relates to the charter of standards and values.

In response to recommendations from stakeholders, we lodged an amendment to section 3 to make it clear that references to persons to whom revenue Scotland must provide information and assistance include taxpayers and their agents. The same amendments will be made to section 10 to ensure that the charter that revenue Scotland must prepare specifically addresses taxpayers and their agents.

I move amendment 2.

Amendment 2 agreed to.

The Convener: The committee has now been joined by Jean Urquhart and by Ian Young and John St Clair, who are the cabinet secretary's officials.

Amendment 3, in the name of the cabinet secretary, is in a group on its own.

John Swinney: The arrangements that we are putting in place for revenue Scotland include an emphasis on providing opportunities for disputes to be settled quickly without the need for expensive and time-consuming legal proceedings. One of those opportunities is the provision for revenue Scotland and the taxpayer to enter into independent, third-party mediation. The purpose of amendment 3, which makes specific reference to mediation among revenue Scotland's statutory functions, is to underline the importance that Parliament attaches to that provision.

I move amendment 3.

Amendment 3 agreed to.

Section 3, as amended, agreed to.

Sections 4 to 7 agreed to.

Section 8—Ministerial guidance

Amendment 4 moved—[John Swinney]—and agreed to.

Section 8, as amended, agreed to.

Section 9 agreed to.

Section 10—Charter of standards and values

The Convener: Amendment 5, in the name of the cabinet secretary, is grouped with amendments 8 and 9.

John Swinney: I undertook to lodge the amendments in the group in response to

recommendations that the committee made in its stage 1 report. The amendments will ensure that the charter imposes reciprocal obligations on revenue Scotland and the taxpayer and will require revenue Scotland to consult on the terms of the first charter and any subsequent revisions to the charter.

I move amendment 5.

Amendment 5 agreed to.

Amendments 6 to 9 moved—[John Swinney]—and agreed to.

Section 10, as amended, agreed to.

Sections 11 and 12 agreed to.

Section 13—Use of information by Revenue Scotland

The Convener: Amendment 10, in the name of the cabinet secretary, is grouped with amendments 11 to 27 and 292.

John Swinney: The group concerns part 3, which is on information. Section 13 allows revenue Scotland and persons to whom it delegates any of its functions—that is, Registers of Scotland and the Scottish Environment Protection Agency—to share information with each other in connection with their statutory functions, including land registration and environmental functions. Section 15 imposes a duty on officials who exercise tax functions to maintain the confidentiality of taxpayer information, and the bill provides that the wrongful disclosure of protected taxpayer information will be a criminal offence.

The amendments in the group will clarify the detail of those arrangements and provide additional safeguards by modifying the legislation that governs Registers of Scotland and SEPA to ensure that protected taxpayer information can be disclosed only in appropriate given circumstances. With the addition of the amendments, part 3 will strike the right balance between allowing information to be shared between the relevant agencies for the proper exercise of their functions and properly protecting the confidentiality of taxpayer information.

I move amendment 10.

Amendment 10 agreed to.

Amendments 11 to 15 moved—[John Swinney]—and agreed to.

Section 13, as amended, agreed to.

Section 14—Protected taxpayer information

Amendments 16 to 19 moved—[John Swinney]—and agreed to.

Section 14, as amended, agreed to.

Section 15—Confidentiality of protected taxpayer information

Amendments 20 to 24 moved—[John Swinney]—and agreed to.

Section 15, as amended, agreed to.

Section 16—Protected taxpayer information: declaration of confidentiality

Amendment 25 moved—[John Swinney]—and agreed to.

Section 16, as amended, agreed to.

After section 16

Amendments 26 and 27 moved—[John Swinney]—and agreed to.

Sections 17 to 22 agreed to.

Section 23—Temporary President

The Convener: Amendment 28, in the name of the cabinet secretary, is grouped with amendments 30 to 48.

John Swinney: The amendments in the group will broadly align the provisions that relate to appointments to the Scottish tax tribunals with the corresponding provisions in the Tribunals (Scotland) Act 2014, which Parliament recently endorsed. It would be inappropriate for serving members of the National Assembly for Wales or the Northern Ireland Assembly to be eligible for appointment as members of tax tribunals. Amendment 35 will disqualify them from appointment as such members.

I move amendment 28.

Amendment 28 agreed to.

Section 23, as amended, agreed to.

Section 24—Members

Amendment 29 moved—[John Swinney]—and agreed to.

Section 24, as amended, agreed to.

Schedule 2—The Scottish Tax Tribunals

Amendments 30 to 51 moved—[John Swinney]—and agreed to.

Schedule 2, as amended, agreed to.

Sections 25 and 26 agreed to.

Section 27—Decisions in the First-tier Tribunal

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

amendments 53 to 57, 63 to 70, 309, 71 to 79, 277 and 278.

John Swinney: Like the amendments in the previous group, the amendments in this group broadly align the procedures and administration of the tax tribunals that are implicit in the bill with the corresponding provisions in the Tribunals (Scotland) Act 2014.

I draw the committee's attention in particular to amendments 53 and 54, which address concerns that the committee raised in its stage 1 report. The amendments provide that the size of the panel that hears an appeal in the upper tribunal can be augmented at the discretion of the president of the tax tribunals.

Amendments 70 and 278 provide that the Scottish ministers may, by regulation, provide for offences and penalties in relation to the proceedings of the tax tribunals. The power is aligned to the corresponding power available to the Scottish ministers under the 2014 act.

I move amendment 52.

Amendment 52 agreed to.

Section 27, as amended, agreed to.

Section 28—Decisions in the Upper Tribunal

Amendments 53 and 54 moved—[John Swinney]—and agreed to.

Section 28, as amended, agreed to.

Section 29—Declining jurisdiction

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

Section 30 agreed to.

After section 30

Amendments 56 and 57 moved—[John Swinney]—and agreed to.

Section 31—Appeal from the First-tier Tribunal

The Convener: Amendment 58, in the name of the cabinet secretary, is grouped with amendments 59 to 62, 262 and 264.

John Swinney: The amendments in this group provide for a different test to apply to the procedure for permitting an onward appeal from the upper tribunal, depending on whether the original appeal was heard in the upper tribunal at first instance. What is known as the second appeals test will apply in the fashion that the Parliament endorsed in the Tribunals (Scotland) Act 2014. If an appeal is heard in the upper tribunal at first instance, an appeal to the Court of

Session on a point of law is permitted if the upper tribunal or the Court of Session agrees. If an appeal that is heard in the upper tribunal has already been heard in the first-tier tribunal, the upper tribunal or the Court of Session may agree that an onward appeal is permissible if it would raise an important point of principle or practice, or if there is another compelling reason to allow the appeal.

Amendments 58, 60 and 262 provide that if the tribunal refuses to allow a late appeal there is no right of onward appeal. Amendment 264 provides that a settlement agreement will be treated as a decision of the tribunal, but not in respect of a right of onward appeal.

I move amendment 58.

Amendment 58 agreed to.

Section 31, as amended, agreed to.

Section 32 agreed to.

Section 33—Appeal from the Upper Tribunal

Amendments 59 and 60 moved—[John Swinney]—and agreed to.

Section 33, as amended, agreed to.

Section 34 agreed to.

09:30

Section 35—Procedure on second appeal

Amendments 61 and 62 moved—[John Swinney]—and agreed to.

Section 35, as amended, agreed to.

Sections 36 to 40 agreed to.

Section 41—Venue for hearings

Amendment 63 moved—[John Swinney]—and agreed to.

Section 41, as amended, agreed to.

Sections 42 and 43 agreed to.

Section 44—Award of expenses

Amendments 64 to 69 moved—[John Swinney]—and agreed to.

Section 44, as amended, agreed to.

Section 45 agreed to.

After section 45

Amendment 70 moved—[John Swinney]—and agreed to.

Section 46—Tribunal rules

Amendments 309 and 71 to 73 moved—[John Swinney]—and agreed to.

Section 46, as amended, agreed to.

Sections 47 and 48 agreed to.

Section 49—Proceedings and steps

Amendment 74 moved—[John Swinney]—and agreed to.

Section 49, as amended, agreed to.

Section 50—Hearings in cases

Amendments 75 and 76 moved—[John Swinney]—and agreed to.

Section 50, as amended, agreed to.

Section 51—Evidence and decisions

Amendment 77 moved—[John Swinney]—and agreed to.

Section 51, as amended, agreed to.

Section 52—Practice directions

Amendment 78 moved—[John Swinney]—and agreed to.

Section 52, as amended, agreed to.

Section 53 agreed to.

Section 54—Guidance

Amendment 79 moved—[John Swinney]—and agreed to.

Section 54, as amended, agreed to.

Sections 55 and 56 agreed to.

Section 57—The general anti-avoidance rule: introductory

The Convener: Amendment 80, in the name of the cabinet secretary, is grouped with amendments 87 to 91, 94, 95, 131, 275 and 276.

John Swinney: The bill as introduced established three separate categories of officer—an authorised officer, a designated officer and a designated investigation officer, who were each able to exercise some of the powers of revenue Scotland. During stage 1, that was criticised by a number of stakeholders as being unnecessarily complicated. I accept that criticism. Therefore, the purpose of the group of amendments is to replace the three different types of revenue Scotland officer with a single category of designated officer for the purpose of exercising relevant powers. That will enable revenue Scotland to ensure that officers who exercise particular powers are

sufficiently senior or specialist without unnecessarily complicating arrangements.

I move amendment 80.

Amendment 80 agreed to.

Section 57, as amended, agreed to.

Section 58 agreed to.

Section 59—Meaning of “artificial”

The Convener: Amendment 81, in the name of the cabinet secretary, is grouped with amendments 82 and 83.

John Swinney: The amendments in the group relate to the general anti-avoidance rule in part 5. I have made it clear that we intend to take the toughest possible approach to tax avoidance. I am delighted that the committee supported that approach in its stage 1 report. The committee recommended that we should further strengthen condition B of the general anti-avoidance rule. That position was also supported by the Scottish Trades Union Congress and Unison. These amendments are designed to do exactly that.

Amendments 81 and 82 provide that condition B will be satisfied if a tax avoidance arrangement lacks either economic or commercial substance—not just commercial substance. Amendment 83 adds a further factor, which might indicate that an arrangement lacks economic or commercial substance, which is where it results in a tax advantage that is not reflected in the business risks undertaken by the taxpayer. The amendments further reinforce the very robust approach that we intend to take to any form of artificial tax avoidance.

I move amendment 81.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I thank the cabinet secretary for responding to the committee’s recommendation on this, as on other matters. The committee also recommended in paragraph 38 of its report that reasonable business conduct be extended to cover reasonable personal conduct. The example cited by the committee in its report was the matter of a personal gift that has no commercial substance and would not normally be employed in reasonable business conduct. Why did the cabinet secretary not take on board that particular aspect of the committee’s recommendation?

John Swinney: Our view is that the definition of the amendments—by adding in economic substance as well as commercial substance—would address the issue that the committee raised in its report. We consider that the amendments are sufficiently broad in scope to capture the scenario and issues that Mr Chisholm raises.

I am certainly happy to reflect further on that in the light of the point that Mr Chisholm has made to satisfy myself that the aspiration that we have set out in the bill of establishing a high level of intolerance of tax avoidance is met by the provisions that we have put in the bill. If there is a necessity to bring forward further provisions at stage 3, I will consider doing so.

Amendment 81 agreed to.

Amendments 82 and 83 moved—[John Swinney]—and agreed to.

Section 59, as amended, agreed to.

Section 60 agreed to.

Section 61—Counteracting tax advantages

The Convener: Amendment 84, in the name of the cabinet secretary, is grouped with amendments 85, 86, 92 and 93.

John Swinney: This group of amendments makes further provision in respect of counteraction taken under the general anti-avoidance rule. In particular, it provides that adjustments that revenue Scotland makes in order to counteract tax advantages under the GAAR are subject to the same administrative processes as are set out elsewhere in the bill, for example in relation to amending and correcting returns, the making of assessments and determinations by revenue Scotland and time limits.

Amendment 93 provides that the taxpayer must pay any outstanding tax, penalty or interest within a period of 30 days after a final notice of counteraction is issued under the general anti-avoidance rule.

I move amendment 84.

Amendment 84 agreed to.

Amendments 85 and 86 moved—[John Swinney]—and agreed to.

Section 61, as amended, agreed to.

Section 62 agreed to.

Section 63—Notice to taxpayer of proposed counteraction of tax advantage

Amendments 87 to 90 moved—[John Swinney]—and agreed to.

Section 63, as amended, agreed to.

Section 64—Final notice to taxpayer of counteraction of tax advantage

Amendments 91 and 92 moved—[John Swinney]—and agreed to.

Section 64, as amended, agreed to.

After section 64

Amendment 93 moved—[John Swinney]—and agreed to.

Section 65—Assumption of tax advantage

Amendments 94 and 95 moved—[John Swinney]—and agreed to.

Section 65, as amended, agreed to.

Section 66 agreed to.

Section 67—Overview

The Convener: Amendment 96, in the name of the cabinet secretary, is grouped with amendment 97.

John Swinney: During the committee's evidence sessions at stage 1, the Law Society of Scotland and others questioned the need for section 68 as currently drafted. In particular, they did not feel that it was appropriate to have a section on taxpayer duties when there was no corresponding section on revenue Scotland duties. Although section 68 was intended only as an index, rather than to impose duties, I accept that that caused some concern. I therefore propose to remove section 68.

I move amendment 96.

Amendment 96 agreed to.

Section 67, as amended, agreed to.

Section 68—Taxpayer duties

Amendment 97 moved—[John Swinney]—and agreed to.

Section 69—Duty to keep and preserve records

The Convener: Amendment 98, in the name of the cabinet secretary, is grouped with amendments 99 to 110, 128, 129, 310, 290 and 301.

John Swinney: I shall first speak to amendment 98, together with amendments 99 to 104 and amendment 301.

Amendment 99 makes further provision about a person's duty to keep and preserve records when they are liable to be registered for tax. It specifies what type of records must be kept, including records relating to material on a landfill site or part of a landfill site. Amendment 101 sets out the period for which such records must be kept and preserved.

Amendment 104 addresses a recommendation of the Delegated Powers and Law Reform Committee. It amends section 70 to introduce a power for the Scottish ministers to make

regulations, subject to negative procedure, prescribing any conditions or exceptions to the form and means by which records may be preserved.

Amendment 301 repeals two sections of the Landfill Tax (Scotland) Act 2014 that are no longer required as a result of the amendments in this group. The other amendments are minor and consequential.

I shall now speak to amendment 105, together with amendments 106 to 110, 128, 129 and 310. At stage 1, I undertook to lodge a number of penalties amendments, in response to recommendations that both the Finance Committee and the Delegated Powers and Law Reform Committee made in their stage 1 reports, and also in response to views expressed by stakeholders.

These amendments relate to the penalties in section 71 and paragraph 5 of schedule 3 for failing to keep and preserve records. They specify the assessment and enforcement arrangements for those two penalties, as well as providing a power for revenue Scotland to waive the penalty if it is satisfied that there is a reasonable excuse on behalf of the person liable to the penalty. The amendments also introduce two regulation-making powers for the Scottish ministers to make further provisions about those two penalties. Those regulations will be subject to the affirmative procedure.

I move amendment 98.

Amendment 98 agreed to.

Amendments 99 to 103 moved—[John Swinney]—and agreed to.

Section 69, as amended, agreed to.

Section 70—Preservation of information etc

Amendment 104 moved—[John Swinney]—and agreed to.

Section 70, as amended, agreed to.

Section 71—Penalty for failure to keep and preserve records

Amendment 105 moved—[John Swinney]—and agreed to.

Section 71, as amended, agreed to.

After section 71

Amendments 106 to 109 moved—[John Swinney]—and agreed to.

Section 72—Further provision: land and buildings transaction tax

Amendments 110 and 111 moved—[John Swinney]—and agreed to.

Section 72, as amended, agreed to.

Section 73—Dates by which tax returns must be made

09:45

The Convener: Amendment 112, in the name of the cabinet secretary, is grouped with amendments 113 to 116, 119, 279, 295, 296 and 298.

John Swinney: Amendment 112 will remove the power for the Scottish ministers by regulations to define when a tax return must be made. Provision defining when tax returns have to be made is contained in the two tax-specific acts. It is therefore unnecessary to have the same power in the bill.

Amendments 114, 116 and 119 provide that, when a designated officer of revenue Scotland has amended a tax return under section 78 or section 84, the taxpayer cannot subsequently amend the return under section 74. In those circumstances, the taxpayer's recourse would be to seek a review or to appeal the decision.

Amendment 115 will amend section 75 to reduce the time within which revenue Scotland may correct an obvious error or omission in a tax return from three years to 12 months. Given that the section deals only with obvious errors and omissions, I took the view that 12 months is probably sufficient to allow revenue Scotland to do that.

I move amendment 112.

Amendment 112 agreed to.

Amendment 113 moved—[John Swinney]—and agreed to.

Section 73, as amended, agreed to.

Section 74—Amendment of return by taxpayer

Amendment 114 moved—[John Swinney]—and agreed to.

Section 74, as amended, agreed to.

Section 75—Correction of return by Revenue Scotland

Amendment 115 moved—[John Swinney]—and agreed to.

Section 75, as amended, agreed to.

Sections 76 and 77 agreed to.

Section 78—Amendment of self-assessment during enquiry to prevent loss of tax

Amendment 116 moved—[John Swinney]—and agreed to.

The Convener: Amendment 117, in the name of the cabinet secretary, is grouped with amendments 120, 122 to 124, 242 and 243.

John Swinney: These amendments provide further detail about when additional tax that is due as a result of a revenue Scotland amendment, determination or assessment must be paid. Amendment 242 provides that interest is payable on any outstanding amount of tax from the relevant date until it is paid. The relevant date will be a date that is set by the Scottish ministers in regulations.

Amendment 243 provides that revenue Scotland will provide a receipt for any amount of tax that is paid in all circumstances and not only if the taxpayer requests one.

I move amendment 117.

Amendment 117 agreed to.

Section 78, as amended, agreed to.

Sections 79 to 83 agreed to.

Section 84—Completion of enquiry

The Convener: Amendment 118, in the name of the cabinet secretary, is grouped with amendments 121, 130, 255 and 260.

John Swinney: These amendments will provide increased certainty for the taxpayer. When revenue Scotland has opened an inquiry and for whatever reason has not issued a closure notice, the taxpayer will be able to treat the inquiry as closed three years after the filing date or the date on which the return in question was made.

Amendments 255 and 260 make consequential changes.

I move amendment 118.

Amendment 118 agreed to.

Amendments 119 to 121 moved—[John Swinney]—and agreed to.

Section 84, as amended, agreed to.

The Convener: I will suspend the meeting for a wee minute, because there is an anomaly between what I have in front of me and what the clerk has.

09:50

Meeting suspended.

09:51

On resuming—

The Convener: Okay, folks. I reconvene the meeting—we are back on track.

Section 85 agreed to.

Section 86—Determination of tax chargeable if no return made

Amendment 122 moved—[John Swinney]—and agreed to.

Section 86, as amended, agreed to.

Sections 87 to 95 agreed to.

Section 96—Assessment procedure

Amendments 123 and 124 moved—[John Swinney]—and agreed to.

Section 96, as amended, agreed to.

Sections 97 and 98 agreed to.

Section 99—Claim for repayment if order changing tax basis not approved

Amendments 125 to 127 moved—[John Swinney]—and agreed to.

Section 99, as amended, agreed to.

Sections 100 to 105 agreed to.

Schedule 3—Claims for relief from double assessment and for repayment

Amendments 128 to 130 moved—[John Swinney]—and agreed to.

Schedule 3, as amended, agreed to.

Sections 106 to 110 agreed to.

Section 111—Designated investigation officers

Amendment 131 moved—[John Swinney]—and agreed to.

Sections 112 to 116 agreed to.

Section 117—Approval of taxpayer notices and third party notices

The Convener: Amendment 132, in the name of the cabinet secretary, is grouped with amendments 133 to 161, 163 to 165 and 227 to 229.

John Swinney: The amendments in this group make further important provisions about the rules and procedures regarding information notices. Among other things, they will require that a designated officer must always seek and obtain

the approval of the tribunal before an information notice under section 119 or 122 can be given.

In keeping with the move to a single designated officer classification, the amendments remove all references to a designated investigation officer. The references to “a transaction” and “buyer” in section 121(2) of the bill may inadvertently create an assumption that the provision only applies to land and buildings transaction tax. Amendment 142 therefore makes it clearer that the section applies to a wider range of circumstances and, therefore, to both devolved taxes.

The current wording in section 121(3)(a) does not cater for partnerships that are not registered, such as common-law partnerships. Amendment 143 corrects that by allowing a third-party notice to state a name by which the partnership is known.

Other amendments in the group make further important provisions about inspections of business premises and the investigatory powers available to a designated officer. The amendments make it clear that a designated officer can carry out an inspection of business premises without advance notice only if there are reasonable grounds for believing that giving notice would seriously prejudice the assessment or collection of tax. When advance notice is given, it must be given in writing.

The amendments also give additional powers to an officer carrying out such an inspection, so that revenue Scotland can effectively discharge its investigatory functions in relation to Scottish landfill tax. Among other things, an officer will be able to bring other persons to the inspection. Such persons will be able to take and use any equipment or materials required for the purposes of the inspection, such as heavy machinery.

Finally, section 142(3)(b) of the bill currently places a reasonableness condition on the ability of a person to request a copy of a document that they produce to a revenue Scotland designated officer and which is subsequently removed by that officer. I do not think that such a condition is either necessary or fair. A person should always be entitled to request a copy of a document removed in such circumstances, and amendment 159 makes that clear.

I move amendment 132.

Amendment 132 agreed to.

Section 117, as amended, agreed to.

Section 118—Copying third party notice to taxpayer

Amendment 133 moved—[John Swinney]—and agreed to.

Section 118, as amended, agreed to.

Section 119—Power to obtain information and documents about persons whose identity is not known

Amendments 134 to 140 moved—[John Swinney]—and agreed to.

Section 119, as amended, agreed to.

Section 120—Third party notices and notices under section 119: groups of undertakings

Amendment 141 moved—[John Swinney]—and agreed to.

Section 120, as amended, agreed to.

Section 121—Third party notices and notices under section 119: partnerships

Amendments 142 to 144 moved—[John Swinney]—and agreed to.

Section 121, as amended, agreed to.

Section 122—Power to obtain information about persons whose identity can be ascertained

Amendments 145 and 146 moved—[John Swinney]—and agreed to.

Section 122, as amended, agreed to.

Section 123—Notices

Amendment 147 moved—[John Swinney]—and agreed to.

Section 123, as amended, agreed to.

Sections 124 to 126 agreed to.

Section 127—Information notices: general restrictions

Amendment 148 moved—[John Swinney]—and agreed to.

Section 127, as amended, agreed to.

Sections 128 to 134 agreed to.

Section 135—Carrying out inspections under section 133 or 134

Amendments 149 to 153 moved—[John Swinney]—and agreed to.

Section 135, as amended, agreed to.

After section 135

Amendment 154 moved—[John Swinney]—and agreed to.

Sections 136 and 137 agreed to.

Section 138—Approval of tribunal for premises inspections

Amendments 155 to 157 moved—[John Swinney]—and agreed to.

Section 138, as amended, agreed to.

Section 139 agreed to.

Section 140—Power to take samples

Amendment 158 moved—[John Swinney]—and agreed to.

Section 140, as amended, agreed to.

Section 141 agreed to.

Section 142—Power to copy and remove documents

Amendment 159 moved—[John Swinney]—and agreed to.

Section 142, as amended, agreed to.

Section 143 agreed to.

Section 144—Review or appeal against information notices

Amendments 160 and 161 moved—[John Swinney]—and agreed to.

Section 144, as amended, agreed to.

After section 144

The Convener: Amendment 162, in the name of the cabinet secretary, is grouped with amendments 246, 248 to 251, 282 and 287.

10:00

John Swinney: This group makes procedural changes to the circumstances in which decisions taken by revenue Scotland are to be appealable. For example, amendment 248 provides that a decision of revenue Scotland under section 61 to make adjustments to counteract a tax advantage is an appealable decision. Amendments 249 and 250 will ensure that any decision in relation to a penalty is appealable, including decisions on the amount of the penalty and whether to suspend a penalty.

Amendments 162, 246, 282 and 287 provide affirmative order-making powers for the Scottish ministers to modify the list of non-appealable decisions in section 144 and to specify additional circumstances in which decisions in relation to notices given under section 193 may be appealable.

I move amendment 162.

Amendment 162 agreed to.

Section 145 agreed to.

Section 146—Offence of concealing etc documents following information notice

Amendments 163 and 164 moved—[John Swinney]—and agreed to.

Section 146, as amended, agreed to.

Section 147—Offence of concealing etc documents following information notification

Amendment 165 moved—[John Swinney]—and agreed to.

Section 147, as amended, agreed to.

Section 148—Penalties: overview

Amendment 166 moved—[John Swinney]—and agreed to.

Section 148, as amended, agreed to.

Section 149—Double jeopardy

Amendment 167 moved—[John Swinney]—and agreed to.

Section 149, as amended, agreed to.

Section 150—Penalty for failure to make returns

The Convener: Amendment 168, in the name of the cabinet secretary, is grouped with amendments 169 to 206, 283 and 311.

John Swinney: As I said in the context of the amendments in group 13, during stage 1 I undertook to bring the detail of the penalties regime into the bill. This group of amendments relates to the penalties in sections 150 and 151 for failing to make a tax return or pay tax on time. They specify the circumstances under which either penalty is payable and the penalty amounts. They also tidy up the wording in sections 152 to 159.

The amendments also remove the two regulation-making powers in section 150(2) and section 151(2), replacing them with a single regulation-making power for the Scottish ministers to make further provision about penalties in chapter 2 of part 8 of the bill. Any such regulations will be subject to the affirmative procedure.

I move amendment 168.

Gavin Brown (Lothian) (Con): I welcome the Government's approach to penalties and its decision to put penalties in the bill.

The committee has had representation on amendments 179 to 186 that questions the reason for making the penalty payable, if tax is outstanding, the day after the due date. The representation that we have received suggests that that will be a little harsh on the taxpayer on some occasions, particularly if there has been a

genuine oversight or error or if there has been a bureaucratic error by revenue Scotland or those who collect the tax. What is the Government's thinking on going for the day after? Could the Government be flexible on that issue and reflect on it before stage 3?

John Mason (Glasgow Shettleston) (SNP):

The committee welcomes the increased consistency from having the penalties in the bill. How will inflation be dealt with? The penalty is fairly low but, over time, £100 will become worth less and less. We have seen penalties in some older Westminster legislation become almost meaningless. When the penalties are in the bill, how will they be reviewed over time?

John Swinney: I will deal with Mr Mason's question first. The bill contains a power to apply an inflation adjustment by regulation, so discretion is available. Action would have to be taken—it would not happen automatically—but a power could be used to apply an inflation adjustment as appropriate.

As for Mr Brown's point, the Government's view is that we should establish a regime that errs heavily on the side of the proper reporting and disclosure of liability for tax purposes and prompt payment as a consequence. That is a good and sound general principle, which is reflected in the regime that we have set out in the bill in response to the committee's representations. The bill also gives revenue Scotland discretion to allocate more time in exceptional circumstances, if it considers that necessary.

The bill strikes the correct balance—it emphasises prompt payment but allows discretion to be used in exceptional circumstances. In general, I think that Parliament's view is that we should err on the side of encouraging prompt payment but leave room for discretion if it is absolutely required.

My sense is that we have struck the right balance. If the committee supports the amendments, I will certainly reflect further on the point that Mr Brown made. If he wishes to make further representations to me, I will be happy to consider them. If I do not believe that we have constructed the correct balance, I will be happy to lodge stage 3 amendments to alter the balance.

Amendment 168 agreed to.

Amendments 169 and 170 moved—[John Swinney]—and agreed to.

Section 150, as amended, agreed to.

After section 150

Amendments 171 to 178 moved—[John Swinney]—and agreed to.

Section 151—Penalty for failure to pay tax

Amendments 179 to 181 moved—[John Swinney]—and agreed to.

Section 151, as amended, agreed to.

After section 151

Amendments 182 to 186 moved—[John Swinney]—and agreed to.

Section 152—Interaction of penalties under section 150 with other penalties

Amendments 187 to 189 moved—[John Swinney]—and agreed to.

Section 152, as amended, agreed to.

Section 153—Interaction of penalties under section 151 with other penalties

Amendments 190 to 192 moved—[John Swinney]—and agreed to.

Section 153, as amended, agreed to.

Section 154—Reduction in penalty under section 150 for disclosure

Amendment 193 moved—[John Swinney]—and agreed to.

Section 154, as amended, agreed to.

Section 155—Suspension of penalty under section 151 during currency of agreement for deferred payment

Amendment 194 moved—[John Swinney]—and agreed to.

Section 155, as amended, agreed to.

Section 156—Special reduction in penalty under sections 150 and 151

Amendment 195 moved—[John Swinney]—and agreed to.

Section 156, as amended, agreed to.

Section 157—Reasonable excuse for failure to make return or pay tax

Amendments 196 and 197 moved—[John Swinney]—and agreed to.

Section 157, as amended, agreed to.

Section 158—Assessment of penalties under sections 150 and 151

Amendments 198 to 202 moved—[John Swinney]—and agreed to.

Section 158, as amended, agreed to.

Section 159—Time limit for assessment of penalties under sections 150 and 151

Amendments 203 to 205 moved—[John Swinney]—and agreed to.

Section 159, as amended, agreed to.

After section 159

Amendment 206 moved—[John Swinney]—and agreed to.

Section 160—Penalty for error in taxpayer document

The Convener: Amendment 207, in the name of the cabinet secretary, is grouped with amendments 208 to 226, 284 and 312.

John Swinney: The amendments in the group are part of the penalties amendments that I undertook to lodge at stage 1. The amendments relate to the penalties in sections 160, 162 and 163 for submitting inaccurate documents to revenue Scotland or for failing to take reasonable steps to notify it about a revenue Scotland underestimate of tax. They specify the circumstances under which those penalties are payable, the penalty amounts and how they are calculated. They also remove the three regulation-making powers in sections 160(7), 162(4) and 163(3) and replace them with a single regulation-making power for the Scottish ministers to make further provision on penalties in chapter 3 of part 8 of the bill. That power will be subject to the affirmative procedure, of course.

I move amendment 207.

Amendment 207 agreed to.

Amendments 208 and 209 moved—[John Swinney]—and agreed to.

Section 160, as amended, agreed to.

After section 160

Amendment 210 moved—[John Swinney]—and agreed to.

Section 161 agreed to.

Section 162—Penalty for error in taxpayer document attributable to another person

Amendments 211 to 213 moved—[John Swinney]—and agreed to.

Section 162, as amended, agreed to.

Section 163—Under-assessment by Revenue Scotland

Amendments 214 to 216 moved—[John Swinney]—and agreed to.

Section 163, as amended, agreed to.

After section 163

Amendments 217 to 220 moved—[John Swinney]—and agreed to.

Section 164—Special reduction in penalty under sections 160, 162 and 163

Amendment 221 moved—[John Swinney]—and agreed to.

Section 164, as amended, agreed to.

Section 165—Reduction in penalty under sections 160, 162 and 163 for disclosure

Amendment 222 moved—[John Swinney]—and agreed to.

Section 165, as amended, agreed to.

10:15

Section 166—Assessment of penalties under sections 160, 162 and 163

Amendments 223 to 225 moved—[John Swinney]—and agreed to.

Section 166, as amended, agreed to.

After section 166

Amendment 226 moved—[John Swinney]—and agreed to.

Section 167—Penalties for failure to comply or obstruction

Amendment 227 moved—[John Swinney]—and agreed to.

Section 167, as amended, agreed to.

Sections 168 and 169 agreed to.

Section 170—Power to change amount of penalties under sections 167, 168 and 169

The Convener: Amendment 228, in the name of the cabinet secretary, is grouped with amendments 230, 231, 247, 285, 313 and 288.

John Swinney: The amendments in the group remove the two order-making powers in sections 170 and 196 and replace them with a single regulation-making power for Scottish ministers to make further provision about penalties in chapter 4 of part 8 of the bill. That power will be subject to the affirmative procedure.

I move amendment 228.

Amendment 228 agreed to.

Sections 171 to 173 agreed to.

Section 174—Reasonable excuse for failure to comply or obstruction

Amendment 229 moved—[John Swinney]—and agreed to.

Section 174, as amended, agreed to.

Sections 175 and 176 agreed to.

Section 177—Increased daily default penalty

Amendment 230 moved—[John Swinney]—and agreed to.

Section 177, as amended, agreed to.

Sections 178 to 180 agreed to.

After section 180

Amendment 231 moved—[John Swinney]—and agreed to.

Section 181—Penalty for failure to register for tax

The Convener: Amendment 232, in the name of the cabinet secretary, is grouped with amendments 233 to 241, 286 and 314.

John Swinney: The amendments in the group relate to the penalty in section 181 for failing

“to comply with a requirement imposed by or under section 22 or 23”

of the Landfill Tax (Scotland) Act 2014. The provisions require the taxpayer, or prospective taxpayer, to notify revenue Scotland when they form the intention of engaging in or desisting from engaging in taxable activities. The amendments specify the circumstances under which the penalty is payable, the penalty amounts and how they are calculated, the enforcement and assessment arrangements and the discretionary powers that revenue Scotland will have in relation to that penalty.

The amendments also remove the regulation-making power specific to section 181(2) and replace it with a broader power for Scottish ministers to make further provision about penalties in chapter 5 of part 8 of the bill. That power will be subject to the affirmative procedure.

I move amendment 232.

Amendment 232 agreed to.

Amendments 233 and 234 moved—[John Swinney]—and agreed to.

Section 181, as amended, agreed to.

After section 181

Amendment 235 to 241 moved—[John Swinney]—and agreed to.

Section 182—Interest on unpaid tax

Amendments 242 moved—[John Swinney]—and agreed to.

Section 182, as amended, agreed to.

Sections 183 to 185 agreed to.

Section 186—Issue of tax demands and receipts

Amendment 243 moved—[John Swinney]—and agreed to.

Section 186, as amended, agreed to.

Section 187 agreed to.

Section 188—Certificates of debt

The Convener: Amendment 244, in the name of the cabinet secretary, is grouped with amendments 245 and 300.

John Swinney: Section 188 makes provision for a designated officer to issue a certificate of debt that a sum payable to revenue Scotland has not been paid. Amendments 244 and 245 make further provision for designated officers to issue certificates that no return or notice has been made.

The importance of the certificates is that, on the strength of them, revenue Scotland can obtain summary warrants under section 190, which are immediately enforceable against taxpayers who owe it money.

Similar provision for those two types of certificates is already made in section 28 of the Landfill Tax (Scotland) Act 2014. Amendment 300 will repeal that section, in consequence of amendments 244 and 245.

I move amendment 244.

Amendment 244 agreed to.

Amendment 245 moved—[John Swinney]—and agreed to.

Section 188, as amended, agreed to.

Sections 189 to 194 agreed to.

After section 194

Amendment 246 moved—[John Swinney]—and agreed to.

Section 195 agreed to.

Section 196—Power to change amount of penalty under section 195

Amendment 247 moved—[John Swinney]—and agreed to.

Section 197 agreed to.

Section 198—Appealable decisions

Amendments 248 to 251 moved—[John Swinney]—and agreed to.

Section 198, as amended, agreed to.

Section 199—Right to request review

The Convener: Amendment 252, in the name of the cabinet secretary, is grouped with amendments 253, 254, 256 to 259 and 261.

John Swinney: This group of amendments relates to review and appeals, and is entirely procedural. The intention is that any review should take place before an appeal to the tribunal. The amendments provide that a taxpayer cannot ask revenue Scotland to review a decision if he or she has already lodged a notice of appeal to the tribunal against it. Likewise, the taxpayer may not lodge an appeal if he or she has already asked revenue Scotland to carry out a review. If the taxpayer has entered into a settlement arrangement with revenue Scotland, he or she cannot either ask for a review or lodge an appeal against the decision.

Amendments 259 and 261 simply provide that an appellant must give notice of appeal directly to the tribunal and not to revenue Scotland.

I move amendment 252.

Amendment 252 agreed to.

Amendment 253 moved—[John Swinney]—and agreed to.

Section 199, as amended, agreed to.

Section 200—Notice of review

Amendments 254 to 256 moved—[John Swinney]—and agreed to.

Section 200, as amended, agreed to.

Sections 201 to 205 agreed to.

Section 206—Right of appeal

Amendments 257 and 258 moved—[John Swinney]—and agreed to.

Section 206, as amended, agreed to.

Section 207—Notice of appeal

Amendments 259 and 260 moved—[John Swinney]—and agreed to.

Section 207, as amended, agreed to.

Section 208—Late notice of appeal

Amendments 261 and 262 moved—[John Swinney]—and agreed to.

Section 208, as amended, agreed to.

Section 209 agreed to.

Section 210—Reviews and appeals not to postpone recovery of tax

The Convener: Amendment 263, in the name of the cabinet secretary, is grouped with amendment 289.

John Swinney: Section 210 provides that any tax, penalty or interest is payable in advance of a review or an appeal but allows ministers to bring forward regulations providing for the postponement of tax, penalties or interest pending a review or appeal. However, in relation to both land and buildings transaction tax and landfill tax, I believe that it is right that any tax that is due and any associated penalties and interest should be paid immediately. It will not therefore be necessary to bring forward regulations providing for postponement, although revenue Scotland will of course be able to exercise its discretion to allow postponement on a case-by-case basis.

I move amendment 263.

Malcolm Chisholm: I was just a bit surprised by that. It seemed rather harsh not to have any provision for appeals. Obviously, there could be cases where an appeal is being used as an excuse to postpone payment but, equally, an appeal might well have merit and the taxpayer might even be suffering hardship.

I was interested in the cabinet secretary's comments about landfill tax and land and buildings transaction tax, but surely the bill is supposed to refer to any future taxes as well—those two taxes are not mentioned specifically in section 210. It seems rather harsh that there should be no provision for postponement with a review or appeal, because it may well be that revenue Scotland will sometimes make mistakes.

Gavin Brown: Amendment 263 removes sections 210(2) and 210(3). As it stands, subsection (2) gives the Scottish ministers the power to make regulations providing for the postponement of any tax, penalty or interest pending review or appeal. It does not force ministers to do so; it gives them the option, should they choose, to make such regulations. The Government's position, as of today, is that it does not think that it would want to do so. However, this Government and future Governments might change their mind. I am therefore not sure that there is anything to be gained by removing subsections (2) and (3). If the Government genuinely reaches the view that it does want to bring in regulations, it simply does not have to do so. I do not see the harm in retaining subsections (2) and (3). To follow on from what Mr Chisholm said, it might be unduly harsh in some cases for taxpayers not to have a degree of flexibility. I urge

the cabinet secretary not to press amendment 263.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I agree with the cabinet secretary that it is obviously important to get tax and penalties paid when they are owed. That came out in the considerable evidence that we took over stage 1 and I think that it is broadly where the committee is as well. The discretion that revenue Scotland can exercise in these circumstances might be important, and that will obviously be subject to ministerial direction. Will the cabinet secretary set out the circumstances in which revenue Scotland might exercise such discretion in these areas?

John Swinney: This is reasonably similar territory to the other issues that we discussed earlier. There is a question of balance here. Section 210(1) makes it very clear that

"Where there is a review or appeal under this Part, any tax charged or penalty or interest imposed remains due and payable as if there had been no review or appeal."

There is therefore clarity in subsection (1) that, even if a taxpayer has requested a review or an appeal, the liability to pay tax still crystallises. There is a need to address the circumstances in which that might not apply, given that subsection (1) is very clear that it applies in all circumstances. It comes down to a judgment between whether ministers should have the power to specify that in regulations or whether revenue Scotland should exercise its view on a case-by-case basis. The issue is whether any general schematic view should be taken or whether it should be left to the individual judgment on a case-by-case basis, which revenue Scotland is able to exercise by virtue of its general function of collecting and managing the devolved taxes.

10:30

Mr Hepburn asked in what circumstances revenue Scotland would exercise that judgment. I can certainly think of at least two areas, one of which is hardship; revenue Scotland could receive material information that would inform its view on that question. The other is where there is the emergence of a point of law that is a reasonable point of debate and dispute.

There is certainly sufficient scope for revenue Scotland to take the view that some discretion should be applied on a case-by-case basis. The judgment on amendments 263 and 289 is whether there should be a more general provision giving us the option of providing for postponement through regulations. Clearly, it is a matter of judgment as to whether that is a relevant power for ministers to have. I am certainly very happy to look at this again in the light of the issues that the committee has raised. If there are any more points of detail

that the committee wishes to draw to my attention, I will certainly consider them. In the light of those remarks, I will not press amendment 263.

Amendment 263, by agreement, withdrawn.

Section 210 agreed to.

Section 211—Settling matters in question by agreement

Amendments 264 and 265 moved—[John Swinney]—and agreed to.

Section 211, as amended, agreed to.

Section 212—Application of this Part to joint buyers

Amendment 266 moved—[John Swinney]—and agreed to.

Section 212, as amended, agreed to.

Section 213—Application of this Part to trustees

Amendments 267 and 268 moved—[John Swinney]—and agreed to.

Section 213, as amended, agreed to.

Sections 214 and 215 agreed to.

Section 216—General interpretation

Amendments 269 to 272 moved—[John Swinney]—and agreed to.

Section 216, as amended, agreed to.

Section 217 agreed to.

Schedule 5—Index of defined expressions

Amendments 273 to 276 moved—[John Swinney]—and agreed to.

Schedule 5, as amended, agreed to.

Section 218—Subordinate legislation

Amendments 277, 278, 310 and 279 moved—[John Swinney]—and agreed to.

The Convener: Amendment 280, in the name of the cabinet secretary, is grouped with amendment 291.

John Swinney: The regulation-making power in section 102 is currently subject to the affirmative procedure, but only where the regulations amend primary legislation. At stage 1, the Delegated Powers and Law Reform Committee recommended that the regulation-making power in section 102 should always be subject to the affirmative procedure, to bring it into line with the other regulation-making powers in the bill involving penalties, all of which are already subject to the

affirmative procedure. I accepted the committee's recommendation and gave an undertaking to lodge the necessary amendments at stage 2. Amendments 280 and 291 give effect to that commitment.

I move amendment 280.

Amendment 280 agreed to.

The Convener: I invite the cabinet secretary to move amendments 282, 283, 311, 284, 312, 285, 313, 286, 314 and 287 to 291 en bloc.

John Swinney: I do not want to move amendment 289. It is in the same bracket as amendment 263, which I opted to withdraw.

Amendments 282, 283, 311, 284, 312, 285, 313, 286, 314, 287 and 288 moved—[John Swinney]—and agreed to.

Amendment 289 not moved.

Amendments 290 and 291 moved—[John Swinney]—and agreed to.

Section 218, as amended, agreed to.

Sections 219 and 220 agreed to.

Schedule 4—Minor and consequential modifications

Amendments 292 to 305 moved—[John Swinney]—and agreed to.

The Convener: Amendment 306, in the name of the cabinet secretary, is in a group on its own.

John Swinney: Amendment 306 makes a minor additional amendment to the Tribunals (Scotland) Act 2014 to ensure that, at the appropriate time, the tax tribunals will be able to transfer into the new unified tribunals established by that act.

I move amendment 306.

Amendment 306 agreed to.

Schedule 4, as amended, agreed to.

Sections 221 to 223 agreed to.

Section 224—Commencement

The Convener: Amendment 307, in the name of the cabinet secretary, is grouped with amendment 308.

John Swinney: Among the detailed technical provisions of schedule 4 are amendments to provide that references to “the Tax Authority” in the Land and Buildings Transaction Tax (Scotland) Act 2013 and the Landfill Tax (Scotland) Act 2014 mean “Revenue Scotland” as constituted by the Revenue Scotland and Tax Powers Bill. The amendments in this group ensure that the

necessary change is made the day after royal assent.

I move amendment 307.

Amendment 307 agreed to.

Amendment 308 moved—[John Swinney]—and agreed to.

Section 224, as amended, agreed to.

Section 225 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank everyone for their perseverance during today's proceedings. Members should note that the bill will now be reprinted as amended. The Parliament has not yet determined when stage 3 will take place, but members may now lodge stage 3 amendments with the legislation team. Members will be informed of the deadline for amendments once it has been determined.

I thank the cabinet secretary for his attendance and contributions today, and I thank his officials for coming to the committee.

10:40

Meeting suspended.

10:55

On resuming—

Scotland Act 2012 and United Kingdom Budget

The Convener: Our next item of business is to take evidence from David Gauke MP, Exchequer Secretary to the Treasury, on the United Kingdom Government's report on implementation of the financial provisions in the Scotland Act 2012 and on the impact on Scotland of the recent UK budget. Mr Gauke is joined by Lindsey Whyte, deputy director devolved and local government at HM Treasury. I welcome you both to the meeting and invite Mr Gauke to make a short opening statement.

David Gauke MP (Exchequer Secretary to the Treasury): Thank you very much, convener. It is a great pleasure to be here.

There is nothing that I particularly want to open with and I am happy to get to questions as quickly as possible. I am grateful for the opportunity to appear before the committee to discuss the subjects that you have mentioned and to provide evidence that I hope demonstrates constructive progress on the implementation of the Scotland Act 2012 and addresses any concerns in respect of the last budget.

The Convener: Thank you very much for your comments. As is normal procedure in the Finance Committee, I will start with some opening questions before we open out the session to colleagues.

First, I will touch on chapter 6 on borrowing powers. In September 2013, the committee sought clarification from the Chief Secretary to the Treasury regarding whether the Scottish Government and Scottish local authorities might be disadvantaged by not having access to the preferential project rate at which English local authorities could borrow from 1 November 2013 to take forward major infrastructure projects. The Chief Secretary to the Treasury stated that that seemed to be a "perfectly reasonable point" and undertook to look into it. As yet, we have received no clarification. Can you provide clarity for us?

David Gauke: What I can say, convener, is that in the 2013 autumn statement the Government announced that local authorities in Scotland and Wales will have access to the Public Works Loan Board project rate to support priority infrastructure projects. From 2014-15 to 2015-16, £250 million of project rate borrowing will be available to Scotland, subject to agreement with the Scottish Government on the precise mechanics and conditions. That will mean access to cheaper

borrowing at a discount of between 20 to 40 basis points on the certainty and standard lending rates.

The Convener: Thank you for that response. I am sure that that is very welcome for Scottish local authorities, but is there any reason why the Scottish Government should not be able to access the same rate?

David Gauke: We have made a number of changes in respect of capital borrowing powers and have reduced the restrictions, so there is greater flexibility for the Scottish Government. Does Lindsey Whyte want to add anything on the particular point about the Scottish Government?

Lindsey Whyte (HM Treasury): No, but I add that the Public Works Loan Board rate is available only to local authorities throughout the United Kingdom—it has been designed as a lending rate for local authorities.

The Convener: Okay. Thank you for that.

I move on to the block grant adjustment. The Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney, stated:

“We need to agree soon the block grant adjustment mechanism for the devolved taxes, not least to ensure that estimates can be factored into the preparation of the draft Scottish budget this autumn.”—[*Official Report, Finance Committee*, 7 May 2014; c 4080.]

Obviously, time has been rolling on over the issue for some months. Indeed, the Chief Secretary to the Treasury said last September that “time is marching on.” What are the bottlenecks when it comes to reaching an agreement? How do you believe that we can and should overcome those?

David Gauke: In respect of the block grant adjustment for stamp duty land tax—as it is in the UK—and for landfill tax, the UK Government put forward our proposals in December of last year. The Scottish Government responded in April.

We have differing approaches to how the matter should be addressed, but it would also be fair to say that both sides are prepared to look at the numbers. We are looking at the numbers now and I hope that we can work constructively with the Scottish Government. As I said, we put our proposals in place last year. As far as I am concerned, I want to ensure that we have a constructive dialogue with the Scottish Government to see whether we can resolve the matter sooner rather than later.

11:00

The Convener: Is there any specific date by which you hope to have the matter resolved, from your perspective?

David Gauke: I am not sure that I want to put a particular deadline on it. Clearly, the sooner that

the issue can be resolved the better. We want to work through the numbers in order to resolve the situation, and I think that the Scottish Government does, too. It is challenging to ensure that we can get that one-off adjustment to ensure that the matter can be dealt with, addressing not only the situation now but that in future years, when there are likely to be changes in terms of the yield that will be brought in by the taxes.

It is a complicated matter. However, as I said, we put forward our proposals some time ago, and the Scottish Government responded a couple of months ago. We are working constructively with the Scottish Government to resolve the issue.

The Convener: The UK Government proposes an adjustment to the block grant based on the approach that was taken when business rates were devolved to Scotland, which involved a reduction in the block grant baseline and

“updating the ... Barnett comparability factor from 100 per cent to 0 per cent”,

although those elements would need to be negotiated in respect of the block grant adjustment.

I understand that, on 28 May, the Chief Secretary to the Treasury said that there is no political party in the UK that is proposing to make any changes to the Barnett formula, that he did not think that it was on the cards and that there was no prospect of a change to the Barnett formula. How does what is being proposed square with what Danny Alexander said just a couple of weeks ago?

David Gauke: The point that I would make is that the Barnett formula remains in place, but that it has been the case throughout the history of the Barnett formula that, as more items have been devolved—taxes or spending—adjustments have to be made to take into account that further devolution. What we are talking about is not a fundamental rewrite, reform or recalculation of the Barnett formula—far from it. It is a further example of a situation that we have seen a number of times in recent years in which the Barnett formula needs to be updated to reflect the fact that there is further tax devolution.

The Convener: Thanks for that. I am sure that colleagues will explore some of those issues further.

Jamie Hepburn: I want to stick with the issue that was just raised. Mr Gauke, in 2010 your Government published a command paper that it called “Strengthening Scotland’s Future”—I emphasise that that is your title rather than one that I might accept myself. That paper says:

"When the smaller taxes are devolved, currently planned to be April 2015, there will be a one-off reduction which will then be deducted from the block grant for all future years."

The convener read out the updated position, as set out in the latest update on implementation. Why has the UK Government changed its position?

David Gauke: I do not accept that we have changed our position. We want a one-off adjustment. It is important that that adjustment reflects not only the existing yield from those taxes but also what is likely to happen in the coming years. That is why the one-off adjustment should consist of both an adjustment to the block grant and an adjustment to the Barnett consequential calculation. We believe that that change is the best way to reflect both the situation that we are in and where we are likely to be, given the forecast for significant increases in the yield from stamp duty land tax in the coming years and for decreases in the yield from landfill tax.

Jamie Hepburn: You say that the adjustment that is made will be a one-off adjustment. Under the mechanism that you propose, will the figure be the same year on year?

David Gauke: We are getting into the details of the discussions that we would have but, essentially, we are looking at a one-off change to the block grant adjustment and a one-off change in the Barnett consequential for future years.

Jamie Hepburn: Would you not accept that, to most people, a "one-off adjustment" would mean that the figure would be the same year on year? Is that not what most people would understand a one-off adjustment to be?

David Gauke: It is important that the adjustment takes into account what is likely to happen over the years ahead. Indeed, the Scottish Government's proposal in this area involves uprating in line with inflation. I do not think that it would be a sensible course to make a cash reduction to the block grant and to set that in stone without taking into account the fact that there are likely to be changes in yield over the years ahead. I do not think that that would be a fair way of doing it, either for the UK as a whole or for Scotland, because either the one-off adjustment that was set up would overshoot the current situation to reflect what was likely to happen in future years or it would underestimate and fail to properly reflect what was likely to happen in future years.

Jamie Hepburn: Both the Scottish Parliament and the Parliament in which you sit considered the Scotland Bill on the basis of the command paper. Do you not think that we have been somewhat misinformed, as we are no longer clear that what was termed a "one-off adjustment" will be a one-off adjustment?

David Gauke: No, I do not accept that. It has been a well-established principle that tax powers should be devolved in such a way that the process does not have an unfair impact on the nation to which the powers are being devolved or on the UK as a whole. In relation to the block grant adjustment for the two taxes concerned, we have consistently sought to ensure that the formula that is used is fair to Scotland and to the UK.

Jamie Hepburn: You mentioned that the Scottish Government has proposed a mechanism whereby the one-off adjustment could be uprated. It sounds to me as though, in the process of negotiation, the Scottish Government is trying to accommodate and move towards the UK Government's perspective. How is the UK Government moving towards the Scottish Government's perspective?

David Gauke: As I said earlier, we set out our proposals in December last year and the Scottish Government set out its proposals in April of this year. We are in discussion. Both sides have agreed to look at the numbers and to explore the particular proposals. We do not believe that we have heard anything to suggest that there is a better approach than the one that we set out in December, but I stress that we are keen to engage constructively, to look at other options that might be available and to explore those in a constructive manner.

Jamie Hepburn: You said to the convener that your proposal would not alter the Barnett formula, but it strikes me that that is precisely what it would do. You may say that it would not alter it in a substantial way, but I again refer to the command paper, which stated:

"The UK Government recognises some of the concerns expressed about the current system of devolution funding but at this time the priority is to reduce the deficit and any changes must await the stabilisation of the public finances."

I think that the UK Government said that that would not happen until 2018 at the earliest, but we now find that the mechanism that you propose is an alteration of the Barnett formula. Why has there been a change in the position that you set out to the Scottish Parliament and the UK Parliament in your command paper?

David Gauke: Again, I do not accept that. What is proposed is not a fundamental change to the Barnett formula. It is an updating of the Barnett formula to take into account further devolution, in the same way as adjustments were made when business rates were devolved and when additional spending areas have been devolved, which has led to changes to the Barnett consequential. Certainly, as far as the UK Government is concerned, this is not a rewriting of the Barnett formula. I accept that there is a threat to the

Barnett formula, but that is a yes vote in the referendum.

Jamie Hepburn: We could explore that one, but surely the key difference with the devolution of business rates is that the command paper that this Parliament and the UK Parliament considered said that you would not alter the Barnett formula, but we now find that you seek to do so. You say that it is not a change and that the formula is merely being updated. Do you accept that many people might view that as semantics?

David Gauke: No, I do not. We need to find a sensible way to ensure that the changes to the block grant and the overall support to the Scottish Government reflect the yield forgone to the UK as a consequence of devolution. It is important to deal with two points, which are, first, working out the existing yield, which is a relatively simple task, and, secondly, taking into account what happens in the future given that, as a consequence of devolution, the future yield of SDLT that is anticipated will no longer come to the UK Exchequer. That will be forfeited, and it is important that the public finance system reflects that.

Jamie Hepburn: Turning to the issue of air passenger duty, the command paper was informed by the Calman commission, which called for the devolution of air passenger duty. However, the UK Government decided not to do that on the basis that it was considering the wider future of aviation duty and that it would not be practical to devolve the duty while those considerations were on-going. I understand that the plans to reform APD are now in place. Indeed, your party, through the commission that was chaired by Lord Strathclyde, has called for the devolution of air passenger duty, so when are you going to get on with that?

David Gauke: There is continued uncertainty as to the impact of devolving APD on the UK as a whole. There is evidence to suggest that devolution would result not so much in an increase in the numbers of people flying, but a switch from one part of the UK to another. We need a proper understanding of the impacts on the UK as a whole. There are significant powers in the Scotland Act 2012, which we are implementing, and it is right that we focus on that. Until we are more confident as to the impact of devolving APD, we are not focused on that particular area. However, as you said, the debate on that is on-going. The Strathclyde commission has recommended that APD be devolved, so the matter has not gone away. To be very frank, we also have to take into account what the impact would be in the UK as a whole.

Jamie Hepburn: So the Strathclyde commission, which your party set up, was too

quick off the mark in calling for the devolution of that particular duty right now?

David Gauke: I think that the Strathclyde commission has made a valuable contribution to the debate but, here and now, our focus is on implementing the significant powers that are in the Scotland Act 2012. That is where we are looking. The position on APD has not changed. We need a proper understanding of the risks from a distortion of competition and the risk to revenue were we to devolve APD. We continue to keep the matter under review but, as I say, our main focus at the moment is on implementing the existing powers in the Scotland Act 2012.

11:15

Jamie Hepburn: With your refusal to accede to a request from a commission within your own party for the devolution of what might be felt to be a—

Gavin Brown: On a point of order, convener. This agenda item is on the implementation of the Scotland Act 2012 and the UK budget for 2014. I seek your guidance on how questions on a commission set up by a political party are relevant to the matter under discussion.

The Convener: I think that the questions are relevant because paragraph 4 of the foreword to the report states:

“This Coalition Government made a commitment to people in Scotland to deliver the recommendations of the Calman Commission in our Programme for Government, and we have delivered.”

Jamie Hepburn is querying whether that has actually happened in terms of APD. However, I hope that Jamie will move on from this topic fairly soon.

Jamie Hepburn: I will ask my last question, which I think is relevant to the Scotland Act 2012 because that act sets out that it is possible to devolve other taxes to the Scottish Parliament in the future, and it might be thought that APD is a fairly minor but obvious one. The Exchequer Secretary's party made a recommendation that stated that that could be done right now but, from what we are hearing, there is a refusal to do that. I suppose the question that that begets is how serious the prospect is of further devolution of any substantial taxation powers in the future, whether they have been recommended by the Strathclyde commission or not.

David Gauke: In addition to the points that I have already made, there is the point that we have been clear that post the referendum we will look at these matters again. However, as I said, at this point in time our focus is on implementing the powers that are in the Scotland Act 2012.

Michael McMahon (Uddingston and Bellshill)

(Lab): The Scottish Government is about to set up its independent fiscal commission to look at forecasts for the three taxes that have been devolved. That will run in conjunction with the Office for Budget Responsibility, which will continue to produce forecasts twice a year on the land and buildings transaction tax and the landfill tax. The OBR will also give forecasts for the aggregates levy, although that is not being devolved.

During our discussions on forecasting and our discussions with the OBR directly, there have been a number of requests for the OBR to consider producing forecasts across all its areas of responsibility to help advise the Scottish Government in terms of the strength of the economy. Could the OBR play a role in producing that type of information? Are there reasons why you would think that that could be problematic?

David Gauke: As far as what the OBR could do for the Scottish Government, that is principally an issue for the Scottish Government and, to an extent, the OBR, assuming that it has the capacity to do what is requested of it. The extent to which the Scottish Government wishes to make use of the OBR, or wishes to have an independent body on the more purely Scottish aspects, is a matter for the Scottish Government. We think that the OBR is doing a very good job. It is seen internationally as a very respected organisation. A lot of countries are looking very closely at the model that we have followed in the UK, in which there is an independent forecaster and body, separate from Government, which gives greater credibility to the numbers. We are very pleased with how the OBR has operated.

On services that the OBR might provide to the Scottish Government, I would be interested to see what the Scottish Government had to say first.

Michael McMahon: A number of changes have been made in other areas, such as welfare reform. The devolved settlement has been affected by the Welfare Reform Act 2012. For example, council tax reduction has been introduced and changes have been made to other aspects of funding and support that were previously provided by the UK Government, but which are now the sole responsibility of the Scottish Government. We get information about the changes at a national level, but we do not get it at a Scottish level. Could we get the OBR to provide a service that we will not get under the Welfare Reform Act 2012?

Scotland's independent fiscal commission will look at the taxes that are devolved and we will continue to get figures from the OBR on those devolved taxes, but in other areas in which powers have been devolved, we will not get any comment from the OBR on the financial impact on Scotland,

nor will we get any comment from the independent fiscal commission. Would it not be helpful if the OBR could provide information in such areas? If such an arrangement is good enough for the Scotland Act 2012, should it not also be good enough for the Welfare Reform Act 2012?

David Gauke: I fully take on board the point that you make. I am slightly nervous about jumping in without hearing what the OBR might say about the practicalities of that and whether some of the forecasts that it currently provides could be broken down for the nations and regions of the UK in a sufficiently robust and reliable way. Your question is a technical one that it would be better to raise with the OBR than with me.

I take on board your argument, but you would need to ascertain from the OBR the answers to various questions relating to the strength of the challenge that doing what you suggest would present it with.

Michael McMahon: We have set up a parliamentary committee to examine the impact of welfare reform. I convene that committee and I would love to have an opportunity to discuss the welfare changes with Iain Duncan Smith or Esther McVey in the same way that I am discussing with you the changes that the Scotland Act 2012 has brought about. The next time you speak to them, could you tell them that we would be happy to have a discussion with them about how they could help in getting the OBR to inform us about the issues that we are considering? At the moment, they will not talk to us and will not give us that information.

David Gauke: I will be happy to take that away. If we are getting into matters for the Department for Work and Pensions rather than matters of tax—

Michael McMahon: I would much rather ask the DWP ministers about those issues, I can assure you.

David Gauke: That is for them to deal with; it is not for me to speak on their behalf.

John Mason: I want to pursue some of the issues that have been touched on.

Our hope is that the income from the landfill tax will decrease—I assume that that is the case in the UK as well—because less will go to landfill. If we were hugely successful and managed to have no landfill after a year or two years, there would be no revenue from that source. That would be the extreme case; I am not suggesting that that will happen. That would mean that there would be quite a dent in our budget. Has that been taken into account in looking at the forecasts?

David Gauke: Very much so. We have two taxes that appear to be moving in opposite

directions. You are absolutely right—we anticipate that landfill tax receipts will fall in the years ahead. If we considered that in isolation, it would not be fair on Scotland were we just to make a one-off block grant adjustment on the basis of current receipts, when those receipts are likely to fall away. We must also put into the equation what is likely to happen with stamp duty land tax, on which the projections are that the yield will increase over the years ahead. It is worth pointing out that SDLT is a bigger tax—the Scottish yield from landfill tax is roughly £100 million a year, whereas from SDLT it is £500 million a year. We must take into account the trends on both taxes, which are going in different directions.

John Mason: They are also, to be frank, very hard to forecast. We have spent a bit of time meeting the OBR and looking at the new Scottish fiscal commission, and the one message that has come out of all that work is that everyone accepts that it is very difficult to forecast any of these things. There will never be agreement between the Scottish and UK Governments on an exact forecast for those taxes, will there?

David Gauke: It is fair to say that SDLT is—and clearly has been—a volatile tax. It is also fair to say that these areas are difficult. That said, however difficult they might be, it is only right and proper that we do everything we can to reach agreement in this area. We need to be fair to the UK and Scotland by making an adjustment that lets us know where we stand and which attempts to address what is happening with current receipts and what is likely to happen in future. Given that the two taxes are moving in different directions, if we froze things where they stand at the moment, the adjustment for landfill tax would likely turn out to be too great and the adjustment for stamp duty land tax would rather underestimate the likely future yield.

John Mason: I think that we agree on the issues, but I suppose that my question is actually about timescales. When you were asked earlier about the timescale, it did not come across to me that you felt this to be very urgent. One of the major elements of the committee's remit is watching the budget, and we are now approaching the budget for 2015-16, the process for which will start after the summer. This discussion, too, is part of that process and I am concerned that the matter is just drifting on. You made your proposal in December, or seven months ago; you have had a counter-proposal, but according to you nothing better has come forward since December. That suggests to me that we are not making much progress on this matter.

David Gauke: I certainly do not want to suggest that there is any lack of urgency on this matter. We set out our proposal in December, and the

Scottish Government responded some four months later. We are keen to reach agreement.

John Mason: Has the UK Government moved its position at all since December, or has it basically said that the Scottish proposal is not very good, so nothing is going to happen in that respect?

David Gauke: We still believe that we have seen nothing better than the proposal we set out in December. However, I stress that we are keen to engage constructively. We are working through the numbers, which has been very helpful. I hope that we can reach agreement—we are keen to do so—and it is important that both sides engage in the process. I entirely agree with the point that you have just made.

John Mason: I am uneasy about your comment that there has been nothing better than what came forward in December. I am not asking for all the details, but your proposal had, say, 10 points, and assumptions were made about inflation and other matters. I presume, therefore, that it would not be a question of a whole new and better package coming along, but of saying, "Well, you think inflation's going to be 2 per cent; we think it'll be 4 per cent, so let's settle on 3 per cent." Is that the kind of area that we are in?

David Gauke: Perhaps I should attempt to describe our proposal very briefly and in very broad terms. The framework that we have proposed is that there would be a one-off block grant adjustment and, at the same time, an adjustment for the Barnett consequentials. Four months after we made that proposal, the Scottish Government came back with a proposal for a block grant adjustment and then an uprating in line with inflation. We believe that our proposal better reflects the position that we should all be trying to get to, which is something that reflects the current and future position of yield from those taxes. We are more than willing to engage constructively with the Scottish Government, and I hope and believe that the Scottish Government is willing to engage with us and that we can reach agreement in this area.

11:30

John Mason: To use a phrase such as "willing to engage" is all very well, but we are now in June and I would have expected a little bit more than "willing to engage". Are the two sides actually engaging? Is anybody looking for a halfway house?

David Gauke: We are working through the numbers together. We are trying to reach agreement on the matter. We set out our proposals some time ago. We want to reach agreement and we are not being in any way

unreasonable. We are not ruling out options. We are trying to explore things in the hope that reasonable people can reach agreement in this area.

John Mason: The ultimate scenario is that there is no agreement. However, a decision will have to be made at some stage. You have your budget and we have ours. For us, it is probably slightly more important, in that what is being devolved is a bigger chunk of our budget than it is of yours. Ultimately, you have the power to set and impose a figure. At what stage would the UK Government just impose a solution?

David Gauke: The UK Government wants to reach agreement. We are not trying to say that things must absolutely be done in a certain way, or we will impose them upon you. We are engaging and working with the Scottish Government. We are listening to what it says in response to our proposals. We are trying to explore the detail. As you have said, the matter is complex, but I believe that we are acting in a perfectly reasonable way, with a genuine desire to reach agreement on it.

John Mason: I certainly hope so.

The final area that I wish to touch on is chapter 7 of your report, which is headed "Power to devolve further existing taxes and create new devolved taxes". From what I have understood, you have said that the focus at the moment is on delivering the Scotland Act 2012; I certainly agree with that. The point is made in paragraph 48 that

"neither the Scottish Government nor the UK Government has put forward proposals to create new devolved taxes".

As regards the Scotland Act 2012 and the Scottish rate of income tax in particular, the timescale before it is fully devolved is quite long—it will probably be 2018-19 or beyond before that is totally hived off. Is that the sort of timescale that you are thinking about, and would we not consider any further existing taxes until the 2012 act provisions have been fully implemented?

David Gauke: As the Prime Minister has made clear, we need to know first what Scotland's constitutional future will be; obviously, we will know that later this year. The committee's focus today is very much on the 2012 act but, post-referendum, assuming a no vote, there will be considerable thought and interest regarding what further powers the Scottish Government should have. That debate will be very interesting. However, at this point the focus is on what we already have in the Scotland Act 2012.

John Mason: So you would not even be willing to commit to consider other powers or taxes before 2018-19 if there was a no vote.

David Gauke: Beyond what is already set out, that is a matter for debate post the referendum, not pre the referendum.

Gavin Brown: You have had a number of questions about the block grant adjustment mechanism, but I make no apology for returning to it, because it is by far the most important issue. I share John Mason's concerns about timescales. The Scottish Government has to produce a draft budget at the beginning of October, and work for that will begin in the months leading up to that time. Without an agreement on the block grant adjustment mechanism, that will be a pretty difficult exercise. What plans are there to meet and engage at ministerial level to accelerate progress on the matter?

David Gauke: A lot of work is under way at official level. As and when it is necessary to progress the matter further, I am sure that we would meet at a ministerial level as well. Indeed, in the past, we have held joint Exchequer committee meetings and discussed the matter. From a UK perspective, we are keen to progress the matter.

We have asked the OBR to start forecasting on the taxes now, so that it can refine its methodology before the system is implemented in April 2015. However, we need to reach a conclusion about how the adjustments will be calculated. We want to do that as soon as we can.

Gavin Brown: Who in the UK Government is ultimately leading the discussions? Would it be you or one of your colleagues?

David Gauke: That would be me.

Gavin Brown: Is a meeting scheduled with Scottish Government ministers in order to progress the matter?

David Gauke: Not at the moment, but there is constructive dialogue between officials. We hope that we can make as much progress as possible through that dialogue. As far as I am concerned, as and when we need to have a meeting, we will have a meeting.

Lindsey, do you have anything to say on where officials are with the conversations on the block grant calculation?

Lindsey Whyte: The position at official level is very much as you have set out. We have had the Scottish Government's proposal and we are talking to the Scottish Government to understand the mechanics of that proposal. We are at the stage of working through the detailed numbers in order to compare the two proposals and assess them so that both Scotland and the UK get fair and equal treatment.

Gavin Brown: Minister, I appreciate that, quite rightly, you were not willing to commit to a

deadline for resolving the issue, but in effect there is a deadline in that the draft budget comes in October and work will have to be done in the run-up to that time. Clearly, you cannot be held to this, but is it likely that the issue will be resolved in June, July or August?

David Gauke: I can see why you ask that question. I remain reluctant to put a particular date on it. It would be beneficial all round if we could reach agreement sooner rather than later. It is some time since we set out our detailed proposal—we did that in December last year. As I say, I hope that we can make progress sooner rather than later. There are two parties involved, but both sides can engage constructively—it is in both our interests to resolve any uncertainty.

Gavin Brown: I will not press the point further, but I hope that you will take from the number of questions on the issue the depth of its importance to the committee.

On the block grant adjustment, are you discussing each of the two taxes separately or will there be a blended block grant adjustment?

David Gauke: That is a good question. There is a degree of flexibility on that. We want the best result. As I said, the two taxes rather go in different directions: the yield of one is likely to increase and the yield of the other is likely to fall. We want to reflect the totality, so we are prepared to be flexible on whether the answer involves looking at the two separately and then bringing them together or whether the answer is, to use your word, a “blended” adjustment.

Gavin Brown: Your paper suggests that, as everyone knows, there will be a transitional period for the Scottish rate of income tax. It talks quite specifically about a transitional period of two or three years. Has there been a final decision on whether it will be two or three years, or is it the case that, at this stage, we do not know and we will see how things develop?

David Gauke: The latter. No final decision has been made. We want to see how things are working and we want to see the smooth and successful delivery of the SRIT. We will take a view later on the necessary length of a transitional period.

Gavin Brown: How is work progressing to identify clearly who are Scottish taxpayers?

David Gauke: My understanding is that that is going very well. We have a clear definition. We have just made a very minor change to the definition via the Wales Bill to pick up a small technical point. As I understand it, that seems to be pretty successful and no new difficulties are emerging.

Gavin Brown: Finally, the original cost estimate for creating the Scottish rate of income tax was £40 million to £45 million. The most recent estimate that I have seen is a reduction of that to £35 million to £40 million. Is that £35 million to £40 million the most up-to-date estimate as far as you are concerned or has that figure changed?

David Gauke: That is the most up-to-date number that I have as well.

Malcolm Chisholm: I am afraid that I am going to talk about the block grant adjustment, too. It is understandable for two reasons: first, because it is relevant to the immediate budget that we face; and secondly, because it is the critical factor for the fiscal devolution that we are going to get and indeed the enhanced devolution that some of us—a minority around the table, I think—want rather than independence. It is pivotal for that.

I support more fiscal devolution because it gives us more flexibility on the rates but also because of the central idea that we should gain more of the fruits of economic growth and so on. I presume that that is the thinking behind the block grant adjustment for the SRIT, which will be by far the most important one. Have all the details of that been resolved? There was some discussion about whether differences in population size would be taken into account. The cabinet secretary, John Swinney, told us that he had asked officials to give further consideration to that question. Is that still an issue or, from a Treasury point of view, is population size just related to economic growth more generally?

David Gauke: I entirely agree with your point about the purpose of the Scottish rate of income tax, about improving accountability and about there being a greater link, if you like, between economic performance within Scotland and tax base and so on. It is an important point.

The UK and Scottish Governments have agreed the mechanism for the Scottish rate of income tax and the way in which the block grant will be adjusted in relation to that. It is consistent with the principles that have been agreed by both Governments, so I do not see any particular difficulties or unresolved matters with that process.

Lindsey Whyte: Specifically on the population point, once we are through the transition period, we have agreed between both Governments that the adjustment will be indexed to the UK’s non-savings and non-dividend tax base. That tax base will of course vary according to a range of factors, one of which will be population, so it will be factored through that part of the process.

11:45

Malcolm Chisholm: I will revert to the main question of the day, which is the immediate block grant adjustment. As far as I could see, the difference in your latest statement was between an additional adjustment for Barnett consequentials and an additional adjustment for inflation. You might already have explained this and I might have missed it, but could you say a bit more about what an adjustment for Barnett consequentials would mean in concrete terms?

David Gauke: It would mean that the Barnett consequentials would be reduced, presumably by a small amount, given that the taxes concerned are relatively small. The amount is to be determined, but it should reflect the future yield of those taxes.

Malcolm Chisholm: Would that adjustment vary from year to year, or would it be a one-off?

David Gauke: It would be a one-off in that it would be agreed here and now. It would be put in place for the future, and we would not revisit it in future years. To ask whether there will be an identical percentage for each and every year in future or whether the percentage will be agreed here and now but might reflect projected changes in yield is very much to get into the precise details of the mechanism. The point is that it is a one-off, in that we agree the adjustment now, and it is in place, so that there will be certainty for the Scottish Government and the Scottish Parliament about the impact on the Barnett consequentials for future years.

Malcolm Chisholm: Does that mean that there will be a one-off block grant adjustment and then an addition, which, from the Scottish point of view, would just be indexation for inflation? From your point of view, it presumably means a bit more than that.

David Gauke: I am not putting numbers on it, but there would be a change in the Barnett consequentials, reflecting what we anticipate will be the future changes in yield for the taxes.

Jean Urquhart (Highlands and Islands) (Ind): The earliest projections that we had from the OBR for landfill tax were dramatically wrong, and they were then reviewed. That was in recognition of the political policy in Scotland—you can correct me if I am wrong about how that changed and what that might mean.

I suspect that there was something of a learning curve for what we now call the land and buildings transaction tax, given the difference in house prices and commercial property prices in Scotland.

What other learning curves are there for you? As you try to estimate the economy in Scotland in

different areas, is there a realisation that there are considerable differences in other areas, too?

David Gauke: In calculating the adjustment of the block grant, it is not necessary to calculate what will be raised from the equivalent Scottish tax. The point is to work out what the SDLT yield will be. The relevant number is what is forfeited from the UK Exchequer. That is the number that results in the block grant adjustment, not the amount that is going to be raised by the Scottish tax. I want to be clear about that important distinction.

As regards the OBR forecast or any forecast for yield, such things are notoriously difficult. The OBR's reputation and credibility are very strong. For example, I was talking to a Canadian economist who has been looking at the OBR's performance and he was very impressed by it. That is not to say that everything is bang on, but there is no obvious sign of getting things wrong consistently in one direction as opposed to another. The OBR is widely respected and seen as independent, as indeed it is. That is important, but forecasts are notoriously difficult and there is always more to learn, refine and improve, and circumstances are always changing, which can make things difficult.

Jean Urquhart: On the Scotland Act 2012 and the Calman recommendations on air passenger duty, would the same prediction or calculation have been done to evidence your statement that devolving air passenger duty would cause disadvantage elsewhere in the United Kingdom?

David Gauke: That work was undertaken internally in the Treasury and Her Majesty's Revenue and Customs. The UK Government has to take into account the concern that if APD were devolved and there were markedly different rates in different nations of the UK, there could be a transfer from one UK airport to another UK airport that would result in an overall reduction in yield and create a distortion. That is why we have been cautious about devolving APD.

Jean Urquhart: In that evidence, has there been recognition of the different kind of flight and airport services in Scotland as compared with England, Wales and Northern Ireland?

David Gauke: Yes. It is worth bearing in mind that there are already changes. For example, flights from the islands do not have APD charged, and that measure is in place to reflect the fact that there are different characteristics there. Nonetheless, if one looks at what is likely to be a distortion between Newcastle and Edinburgh, or between Bristol and Cardiff, those are factors that a UK Government has to take into account.

Jean Urquhart: You recognised the difference between Belfast and Dublin airports and made

allowances. Was that a consideration when you looked at Newcastle and Edinburgh, for example?

David Gauke: Of course, Dublin is not part of the United Kingdom, but there are particular circumstances in respect of Northern Ireland, which shares a land border with another country, as that other country has a different regime. As a consequence, we saw that Northern Ireland faced particular difficulties, so we sought to address the situation, but it was based on the specific circumstances that applied in Northern Ireland.

Jean Urquhart: Given the evidence and the decisions that you have arrived at, will it be a permanent feature that air passenger duty will not be a devolved tax? To your mind, is the evidence against devolving it so strong that it would not be considered in future?

David Gauke: That is not what I am saying. What I am saying is that there are challenges and difficulties, and there is clearly an on-going debate about APD that may well be revisited in future. The point that I want to get across is that we must exercise a degree of caution because of those difficulties, and that our focus is on trying to implement the Scotland Act 2012, which is a significant and important matter that should not be underestimated, and which the committee clearly takes seriously.

Jean Urquhart: Would any OBR reflections on the income that would be raised be available?

David Gauke: I do not know whether the OBR has done any work on that. I can see what information is available and provide it to you.

The Convener: That concludes questions from colleagues around the table, but I have a few more. I will start with air passenger duty, which Jean Urquhart and others have asked about. The issue is that the market is already distorted. I remember that, when I was younger, I was able to fly from Glasgow directly to Porto, Banjul in the Gambia, Kefalonia—I went to all sorts of places in my wild youth. However, you cannot fly to any of those places from Glasgow, because APD has focused more flights in places such as Manchester and London. That means that there are not so many jobs in our airports, because there is not as much need for taxi drivers, engineers, baggage handlers, caterers and so on. There is already a distortion, because people are having to travel a couple of hundred miles to Manchester or go via London, with all the environmental and other issues that come into play.

Given that promises were made—as can be seen in the foreword to this report—and the fact that your party north of the border believes the proposal to be a good idea, I do not understand why there is such reluctance on your part.

David Gauke: The point that I would make on APD more generally is that it raises a considerable amount of revenue for the Exchequer. At a time when, although we are bringing down the deficit significantly, there continues to be a large deficit, we have to be careful about what we do with the public finances. It is also worth pointing out that, at the budget, we made changes to APD so that the more expensive band, as it were, was removed and rolled into a less expensive band. We have taken steps to reduce APD in a number of circumstances. That had a fiscal cost. That was a tax cut and represents money that we have forgone and which, therefore, cannot be used in other areas. We are restricted by the state of the public finances. It is also worth pointing out that no VAT is charged on air flights, so APD is perhaps performing a role that other taxes do in some other circumstances.

APD applies consistently across Great Britain and brings in a great deal of revenue, and being sensible about the public finances means that we face some difficult choices.

The Convener: In paragraph 66, you talk about “making all Barnett consequentials slightly smaller”.

You have answered a number of questions on that. Malcolm Chisholm asked what amount of money you were talking about, and you said that that is still to be determined and that you do not really want to put figures on it. I can understand your position but, from our perspective, that is quite frustrating. Do you have a ballpark figure in mind? Are we talking about hundreds of thousands of pounds? Millions of pounds? Tens of millions of pounds? You must have a rough estimation of the sort of sums you have in mind.

David Gauke: What I would say is that we are keen to resolve the issue. I have quoted to you what the sums are in terms of SDLT and landfill tax—if you like, the revenue that would be forfeited as a consequence of devolution. However, there are differing trends, and it is important that the formula that we come up with reflects that.

As you say, you can see why I do not want to put a number on it, and I can also see why I do not want to put a number on it, even though I appreciate your position and the fact that you would like to put some parameters on it. However, the most helpful approach is for us to continue to engage constructively with the Scottish Government and for the Scottish Government to continue to engage constructively with us in a way that means that we can reach agreement on this matter.

12:00

The Convener: You are not the first minister to have given us an answer along those lines. It is frustrating when we cannot get the numbers, but I understand that you do not wish to go any further.

You were asked about the final decision on the block grant adjustment in the event that no agreement is reached between Governments. We need to have some idea about when the final decision will be taken. It was last September that Danny Alexander said, "Time is marching on." All colleagues round the table would be keen to know when the final decision will be made and who will take it.

David Gauke: As far as I am concerned, the focus is on reaching agreement. I do not want to put a particular deadline on that and convey a sense of, "If you don't agree with us by such and such a date, then we're going to do our own thing." That is not the appropriate approach. I want to work constructively with the Scottish Government, so that we reach agreement. The sooner we do that, the better. I think that the committee would agree with that.

The Convener: Yes—I think that everyone wants constructive negotiations. You have emphasised the need for that a number of times. You also said that you do not seek to impose a decision. At the same time, surely there must be a deadline after which there would, as Gavin Brown said, be an impact on the Scottish budget deliberations. Surely there must be a deadline in mind that you cannot go beyond and by when negotiations must be concluded.

David Gauke: As I say, in the spirit of a continuing constructive dialogue, setting deadlines would be counterproductive. What we want is to reach agreement.

The Convener: You were also asked about possible face-to-face ministerial engagement to reach that agreement. You said that you will meet at ministerial level as and when it is necessary to do so. You are in Scotland. The cabinet secretary with whom I imagine you would have those discussions was here half an hour before you were. Surely it would have been sensible to arrange to discuss the matters while you were here.

David Gauke: At this precise point, as we have heard, there is constructive engagement between officials and a lot of detailed work is on-going in working through the numbers. It is important that officials are able to continue that work—to work through the numbers, the details and the implications of the two proposals that are, if you like, on the table. Once that has been completed, and to the extent that there are any outstanding areas for agreement, that would be the point at

which a face-to-face meeting would be most beneficial.

I am grateful for your suggestion that I meet Mr Swinney today. I would be more than happy to meet him. I am not sure that this point is necessarily the best time to do that, but I would be more than happy to meet him to discuss the issue further, as and when it would be appropriate for concluding the matter.

The Convener: Thank you. I have a final question: how will any decision that is taken be communicated to the committee and to the Scottish Parliament?

David Gauke: I am not quite sure exactly how we would do that but, assuming that agreement has been reached, we would work with the Scottish Government to ensure that the committee was informed fully of the details of the agreement.

The Convener: Thank you very much for answering our questions. We really appreciate you coming to the Scottish Parliament and, in particular, the Finance Committee. I also thank colleagues for their questions.

12:04

Meeting continued in private until 12:29.

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