The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

FINANCE COMMITTEE

Wednesday 2 March 2016

Session 4

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FINANCE COMMITTEE
8th Meeting 2016, Session 4

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
*Lesley Brennan (North East Scotland) (Lab)
*Gavin Brown (Lothian) (Con)
*Mark McDonald (Aberdeen Donside) (SNP)
*Jean Urquhart (Highlands and Islands) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Swinney (Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Finance Committee

Wednesday 2 March 2016

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Kenneth Gibson): Good morning and welcome to the eighth meeting in 2016 of the Finance Committee of the Scottish Parliament. I remind everyone present to turn off mobile phones, tablets and other electronic devices.

Agenda item 1 is a decision on whether to take items 4 and 5 in private. Do members agree?

Members *indicated agreement.*

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

09:00

The Convener: Item 2 is stage 2 consideration of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill. We are joined by the Deputy First Minister, who is accompanied by Robert Buchan, Willie Ferrie and Greig Walker. I welcome them to the meeting.

Section 1—Land and buildings transaction tax: second homes etc

The Convener: Amendment 1, in the name of the Deputy First Minister, is grouped with amendment 18.

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): The committee carefully considered a number of calls for relief from the supplement, while cautioning that a preponderance of reliefs could give rise to complexity and opportunities for tax avoidance. In its stage 1 report, having reflected on the written and oral evidence, the committee recommended a relief for purchases of six or more dwellings. In my response to that report, I was pleased to accept the committee's recommendation, as I am well aware that the assistance that is given to first-time buyers through the introduction of the supplement needs to be balanced with the need to protect investment in the private rented sector. I note that the decision to introduce the relief has been welcomed by the property sector.

Amendment 18 delivers the relief that the committee recommended. Amendment 1 is consequential and inserts a reference to reliefs into the overview paragraph that summarises the content of the new schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013. That reflects the fact that, if amendment 18 is agreed to, there will be provision about the reliefs in schedule 2A.

I move amendment 1.

Gavin Brown (Lothian) (Con): I welcome the amendments in the group, which reflect the committee's view. It is clear that the Government has listened to the committee as well as, probably, privately listening to industry. Without the amendments, there would have been a risk to housing supply. I put it on the record that I welcome the amendments.

The Convener: Does the Deputy First Minister have anything further to add?

John Swinney: I have nothing to add.

Amendment 1 agreed to.

The Convener: Amendment 2, in the name of the Deputy First Minister, is grouped with amendments 4, 5, 9, 13, 15, 16, 21, 22 and 24.

John Swinney: This group is a collection of technical drafting amendments. The bill team has been careful to ensure that the wording in the bill is as clear and consistent as possible in order to minimise the risk of doubts or disputes over interpretation. Amendments 2, 4, 5, 21 and 22 ensure that the bill refers consistently to the dwelling being the subject matter of a transaction, rather than the "main" subject matter of a transaction. In some cases, other property may be involved in addition to the dwelling.

Amendments 13, 15, 16 and 24 are similar. They ensure consistency in references to a dwelling being, or being part of, the subject matter of a transaction or of trust property. Again, other property—in addition to the dwelling—may be involved in some cases.

Amendment 9 clarifies the operation of paragraph 4(3)(b) of proposed schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013. The amendment provides that, when a transaction is a mixed property transaction that contains residential and non-residential elements, the supplement is chargeable to the proportion of the chargeable consideration that is attributable to the dwelling or dwellings.

Amendment 9 has an anti-avoidance function, which is to ensure that any subordinate real rights relating to a dwelling that are acquired along with the dwelling are not artificially severed when people work out how much of the consideration is attributable to acquisition of the dwelling. As I said to the committee in my stage 1 evidence, the Scottish general anti-avoidance rule is on hand to deter and counteract artificial tax avoidance schemes. However, that should go hand in hand with legislation that is as clear and well ordered as possible.

I move amendment 2.

Amendment 2 agreed to.

The Convener: Amendment 3, in the name of the Deputy First Minister, is grouped with amendments 6, 10 to 12 and 33.

John Swinney: Amendments 3 and 6 ensure that only transactions with consideration of £40,000 or more are relevant to proposed new schedule 2A to the 2013 act. The bill includes a £40,000 threshold in relation to the value of properties that are already owned, but the amendments clarify that that is also separately relevant to the chargeable consideration that is paid for the purchase of a dwelling. There are detailed rules for determining chargeable consideration in the existing schedule 2 to the 2013 act.

Amendments 10 to 12 ensure that the £40,000 threshold for the consideration that is paid for the purchase of a property is included as one of the conditions for the purchase of a dwelling when there are joint buyers.

Amendment 33 makes a consequential amendment to the order-making power in paragraph 9(3) of schedule 2, reflecting that there are now three references to the £40,000 figure. We will debate the parliamentary procedure that is applicable to paragraph 9(3) orders separately in one of the later groups.

I move amendment 3.

Amendment 3 agreed to.

The Convener: Amendment 43, in the name of Gavin Brown, is grouped with amendment 17.

Gavin Brown: Amendment 43 is an attempt to deal with something that has become known as the accidental second home owner. Where somebody has a simple main residence and they decide to change their main residence, they will be liable to pay the tax if they have not managed to sell by the time they purchase a new property.

A huge number of transactions do not settle on the same day, for a huge number of reasons. Some fall through entirely in the first instance, which can lead to a delay of weeks or months, and some properties simply take longer to sell than was envisaged, given difficult market conditions. The amendment is an attempt to avoid that happening.

I draw members' attention to the written submission from the Chartered Institute of Taxation, which says:

"the inclusion of reliefs and exemptions should follow the policy objectives."

The policy objective, as set out in the memorandum from the Government, is clearly not to bring people who are in that category within the realm of the tax, particularly as some of them may be purchasing properties that would otherwise not be subject to land and buildings transaction tax at all because they are under the threshold. All of a sudden, they may have to pay 3 per cent on the entire purchase price.

The Chartered Institute of Taxation goes on to say:

"In addition, consideration should be given to the Adam Smith principles".

I know that the cabinet secretary, the Government and the committee have attempted to stick to those pretty closely. On the ability to pay, which is the first of those principles, for a number of

people, it may be challenging suddenly to find thousands of pounds at short notice to cover the shortfall in the first instance—even if they get that money back, as I am sure they would in most cases—and the requirement is not necessarily linked to the ability to pay.

Mark McDonald (Aberdeen Donside) (SNP): Gavin Brown said that a significant number of transactions would fall into that category, but when we took evidence at stage 1 we were unable to get any hard data behind what was essentially anecdotal evidence. Can Gavin Brown provide a number? Does he have the data to hand, and can he put it on the record?

Gavin Brown: No. Mr McDonald raises a perfectly fair point. I did conveyancing for only six months, but from anecdotal evidence it was pretty obvious to me that between 10 and 15 per cent of transactions did not settle on the same day. I emphasise that that is anecdotal. I have formally requested the data that Mr McDonald quite fairly asks for and I was hoping to have it for stage 2, but it is not here—it looks like it will be here for stage 3.

If that anecdotal evidence from my experience is correct and the figure is 10 to 15 per cent, the number will potentially be up to 10,000 transactions, given that there were 99,000 transactions last year, so people in every constituency in the country would be affected. That is not an official figure and I advise everyone to treat it with caution, but it would not surprise me in the slightest if, when the figures come in, the number is of that magnitude.

John Mason (Glasgow Shettleston) (SNP): How would that work in practice? At the moment, it is fairly clear cut, in that people have to pay LBTT. If somebody has to chase 10,000 people—or perhaps even more—60 days afterwards, are we not inviting people to take the opportunity to slip through a loophole and never pay?

Gavin Brown: I do not think so. I take a more generous view of the taxpayer than the picture that Mr Mason attempts to create.

By their nature, almost all the transactions that we are discussing will involve solicitors to complete the legal procedures, and a limited number of firms are using the system, particularly the online system. Most people will ultimately settle—people do not want to pretend to move house; they actually want to move house—and keeping track of such cases will ultimately be more straightforward.

If my amendment is agreed to, we will avoid the bureaucracy of taking £3,000 here, £10,000 there and £20,000 there into the pot and then having to pay it back a week, a month, nine months or 17 months later. The system that is proposed in the bill is slightly messier than—or at least as messy and complex as—the system that is proposed in amendment 43.

On the principles, LBTT is not linked to the ability to pay. On the principle of certainty, it creates certainty that, if a person does not sell a house in time, they will pay the tax. That is a bit arbitrary, as sellers do not know whether they are definitely going to sell the house on the same day. The approach brings an uncertainty into the tax system.

On the principle of convenience, it is pretty inconvenient suddenly to have to find the money if a house does not sell on time, and as well as all the other stresses and strains that exist, it would be necessary to find some kind of bridging finance. The bureaucracy that was created would be greater than the bureaucracy that would, admittedly, be created with some form of exemption.

There is a personal injustice for those who would have to pay the tax at a time of stress, and there is a degree of bureaucracy. If there is a chain of transactions with each relying on the others to happen on the same day, but one of them falls through and the seller cannot find the £5,000 or £10,000 that will suddenly be needed at short notice and they pull out, what impact will that have on the market as a whole and on the chain?

From a wider, longer-term market perspective, if we end up in a situation in which sellers pretty much have to sell before they can buy, that will be a huge change to the way in which the market has operated in Scotland for decades, if not centuries, and ultimately it will mean a reduced number of transactions. People will be a lot more cautious about moving house.

For all those reasons, the committee reached the view that it did. We did not agree on the timing, so members may not agree with the 60 days that I propose. I have tried to reflect the average time that is taken to sell so that, in most cases, if one transaction falls through, the seller ought still to be able to meet the requirement.

I move amendment 43.

John Swinney: The committee has discussed a grace period and it was one of the main topics of interest in the stage 1 debate. Both the Law Society of Scotland and Revenue Scotland have contributed technical expertise on the matter to assist the Government in its consideration.

Amendment 17 allows for the possibility that a person could claim exemption from the supplement in the initial LBTT return. That may be possible in circumstances in which the sale of the previous main residence is completed before the LBTT return for acquisition of the new main

residence has to be submitted. There would therefore be no need for a supplement to be paid. That creates a grace period as part of the transaction.

However, I recognise that that does not provide a solution for all instances in which the purchase of a new dwelling takes place before the sale of an old one, because the purchaser will need to submit the tax return in order to register the title to the property. As I explained in the stage 1 debate, I will monitor the situation for the first six months and decide whether a further relief is required in the form of a grace period. That will give us an opportunity to tabulate the data to make sure that we can have an informed debate about the extent of the issue with which we are wrestling. There is an order-making power in the bill to allow a change to be made by secondary legislation.

09:15

Mr Brown's amendment 43 seeks to amend the bill so that the supplement applies only if, at the end of the 60th day after the effective date of the transaction, the buyer owns more than one dwelling. It is not clear how the amendment is intended to work administratively, as the LBTT return must be submitted within 30 days of the effective date. The 60-day grace period would apply to all cases, which might conflict with the requirement for the return to be submitted within 30 days. The interaction between the two is therefore unclear. The period would apply to all cases and there would be no way of exempting a case.

It is unlikely that the buyer will, on the 60th day, still be a client of the solicitor who submitted the return or have any on-going engagement in that respect. I would therefore have compliance concerns about the obligation to ensure that all issues are resolved satisfactorily. That opens up the possibility of increased costs of compliance and the necessity to pursue potential debt liabilities. One of the founding approaches of Revenue Scotland has been to minimise the available debt approaches.

There is a facility for an individual who inadvertently ends up owning two properties to claw back the supplement if the sale goes through within 18 months of purchase. If there are concerns about the operation of the property market, it strikes me that that protection for individuals is more comprehensive than believing that such issues can be resolved within 60 days, as amendment 43 suggests.

I hope that the committee will take my assurance that amendment 17 allows for a grace period in certain circumstances and that I will monitor the number of cases in which the supplement is repaid shortly after being paid, in order to establish whether a further grace period is required.

On that basis, I ask Gavin Brown not to press amendment 43 and I invite the committee to support my amendment 17.

Gavin Brown: Technically, there would need to be a change to the return because of amendment 43, but there will have to be a change to it anyway as a consequence of the bill. We do not have a 3 per cent surcharge on all second homes. Changes to the return are not specifically captured in the legislation and can be dealt with by regulatory powers. That is not a huge objection.

The Chartered Institute of Taxation recommended a three-month period, which is longer than the period I am seeking, and it did not see the issue as one that could not be resolved.

John Swinney: The issue can be resolved. The question is whether it is desirable to resolve it. Parliament has to be mindful that there is an obligation in the tax arrangements that we have put in place to collect taxation liabilities timeously. In the LBTT legislation, Parliament decided that collection had to be complete within 30 days, which respects the point about timeous resolution of the issue. That would not be available to us if amendment 43 was agreed to.

Gavin Brown: I do not accept that that is true. Changes to the return could easily capture that. There could easily be boxes on the return that say, "We are selling our main residence" or "We are purchasing only a main residence. We are not attempting to be a second home owner and it is our intention to pay within 60 days if we have not sold".

The GAAR that we have set up is pretty wide ranging and there is no huge risk of people slipping through the net. The greater risk is to the property market and the injustice to individuals of having to pay up front, although that might be administratively nicer and I am quite sure that Revenue Scotland would favour that approach.

The cabinet secretary said that the Government has spoken to the Law Society, but in my conversations with the Law Society in the past week, in its evidence and in the draft amendment that it submitted, it does not favour the approach that the Government suggests. Therefore, I do not think that the 30 days is a hurdle that could block my amendment.

I am not sure that I accept, either, that the purchaser would no longer be a client of the solicitor. Ultimately, if people have to pay the money up front and claw it back in the future, many people will require the assistance of a solicitor to do that. I am sure that some people will

deal directly with Revenue Scotland but, given that most people are not attached to the online system, they might well use the services of a solicitor to claw the money back. Solicitors are potentially going to be involved in those cases anyway so, again, I am not sure that that is a strong objection to my amendment.

If I got an indication from the Deputy First Minister that he is not against the principle of what I am suggesting and that he is genuinely open to exploring how we can exclude this kind of transaction from the ambit of the tax, I would be prepared not to press my amendment. He is sincere, and if he sincerely wished to explore that and attempt to agree an approach that captures all the risks and makes sure that we do not inadvertently set them up, I would be prepared not to press my amendment.

However, my impression is that he does not accept the principle and he wants to monitor the process for six months. Something that might initially have been an unforeseen consequence is now a foreseen consequence. In the absence of a hint from the Deputy First Minister that he accepts my principle, I press amendment 43.

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Brown, Gavin (Lothian) (Con)

Against

Gibson, Kenneth (Cunninghame North) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 43 disagreed to.

Amendments 4 to 6 moved—[John Swinney]—and agreed to.

The Convener: Amendment 7, in the name of the Deputy First Minister, is grouped with amendments 8, 14, 25 and 37.

John Swinney: Amendment 8 is the main one in this group. It relates to paragraph 3 of new schedule 2A, which applies to purchases by non-individuals, for example companies, and also to purchases by individuals in certain circumstances, in particular when an individual purchases a dwelling in the course of a business.

The amendment changes the definition of business in that paragraph so that an individual's business is only relevant to paragraph 3 if it has a sole or main activity of trading in, or investing in, property. Amendment 8 also ensures that the definition covers a business carried on by individuals through a partnership.

Amendment 8, together with amendment 7, also applies paragraph 3 to purchases by individuals acting as trustees, unless the beneficiaries of such trusts have a relevant interest in the property. Amendment 37 provides a definition of what constitutes a case where the beneficiary has a relevant interest—basically, an interest similar to ownership.

The definition inserted by amendment 37 will apply to a number of references in the bill to such beneficiaries and, as a consequence, amendments 14 and 25 take out two existing definitions that are no longer needed.

I move amendment 7.

Amendment 7 agreed to.

Amendments 8 to 18 moved—[John Swinney]—and agreed to.

The Convener: Amendment 19, in the name of the Deputy First Minister is in a group on its own.

John Swinney: Amendment 19 ensures that there is no double counting of properties that are treated as being owned by an individual and those treated as being purchased by a business. The amendment ensures that if the supplement is charged on the purchase of a dwelling because it is made by a business, for example a sole-trader property investment business or partnership, that dwelling is not included as being owned by the individual when that individual purchases a dwelling in their own right.

Amendment 19 also ensures that properties purchased through such businesses elsewhere in the world are similarly not included as being owned by the individual. That reflects the principle of equivalence.

I move amendment 19.

Amendment 19 agreed to.

The Convener: Amendment 20, in the name of the Deputy First Minister, is grouped with amendments 23, 26 to 29, 35 and 36.

John Swinney: The policy for the bill is that to determine whether the supplement applies, it is necessary to count the number of dwellings that are owned by the buyer at the end of the effective date. In many cases that exercise will be simple, as the ownership in question will be a simple ownership in Scotland or elsewhere. However, what counts as ownership is not always straightforward. The key principle underpinning

this group of amendments is the principle of equivalence.

Amendment 20 clarifies how the rule about counting only dwellings that are worth £40,000 or more is intended to apply. The subtle change that it makes is that for counting owned properties, one no longer looks to the market value of the dwelling as such; one looks to the market value of the ownership interest. That change takes account of the fact that ownership interests will include equivalent interests that are deemed to be ownership, as we shall see in other amendments in the group. It reflects, for example, that the market value of a 90-year lease will be less than the market value of full ownership.

Amendment 20 also has an anti-avoidance function. It clarifies that the value of subordinate real rights that are attached to an ownership interest are not to be artificially severed so as to take the market value under £40,000.

Amendment 23 ensures that where a dwelling is subject to a bare trust, the beneficiary is treated as the owner. That treats bare trusts in the same way as other similar trust arrangements, under which the beneficiary has a significant interest in a dwelling that forms part of the trust property.

Amendment 26 is a technical drafting amendment for clarity and consistency.

Amendment 27 reflects the principle of no double counting. It clarifies that trustees and executors will not be treated as owning property in their care unless they are the owner for another reason, such as being a relevant beneficiary. It is the counterpart to paragraph 11, which treats the beneficiary as the owner.

Amendment 28 is principally intended to cover leasehold interests in England. The nuance is that it is done by reference to the closest approximation in Scots law—the notion of long leases, which are leases over 20 years. Long residential leases have always been rare in Scots law, and following implementation of the Long Leases (Scotland) Act 2012, they are now very rare. Nonetheless, a handful of long residential leases still exist, so where they exist they will be counted as ownership. That better delivers the principle of equivalence, in that a 90-year residential lease in Scotland and a 90-year leasehold in England—which exists quite commonly—will be treated equivalently.

Amendment 29 delivers equivalence between trust liferents, which are already dealt with under paragraph 11 of proposed schedule 2A, and what are known as “proper liferents” in Scots law.

Amendments 35 and 36 clarify definitions in paragraph 15 that relate to trusts.

Members will have noted the complexities that can arise when less common forms of ownership are an issue. I will ask members to bear that in mind when we debate the group of amendments that concerns delegated powers.

I move amendment 20.

Amendment 20 agreed to.

Amendments 21 to 29 moved—[John Swinney]—and agreed to.

The Convener: Amendment 30, in the name of the Deputy First Minister, is grouped with amendments 31 and 32.

John Swinney: The policy for the bill is that the supplement applies when the buyer owns two or more dwellings at the end of the effective date. Often all relevant dwellings will be in Scotland; however, all existing property holdings anywhere in the world are to be counted.

An important principle in the bill is the principle of equivalence—that an interest in a dwelling that is situated outside Scotland should be counted as ownership if the interest is equivalent to ownership in relation to a dwelling that is situated in Scotland. Currently the bill references United Kingdom stamp duty land tax legislation for interest in dwellings that are situated in the rest of the UK. Stakeholders have commented that that approach is not particularly clear, and I accept that.

The amendments in the group adopt a simpler approach that better delivers the principle of equivalence. The test for what counts as ownership of dwellings that are situated outside Scotland will be the same whether the dwellings are in or outside the UK. The test is whether they are equivalent to the Scottish ownership interests as set out in the bill.

In assessing whether an interest in a dwelling outside Scotland is equivalent to an ownership interest, account will also have to be taken of the deemed ownership rules in new schedule 2A for special cases, as discussed in relation to the previous group of amendments.

I move amendment 30.

Amendment 30 agreed to.

Amendments 31 to 33 moved—[John Swinney]—and agreed to.

09:30

The Convener: Amendment 34, in the name of the Deputy First Minister, is grouped with amendment 38.

John Swinney: During the stage 1 debate, members raised the challenges of legislating to an expedited timetable, particularly the risks—as they

saw them—of unintended consequences. The Land and Buildings Transaction Tax (Scotland) Act 2013, which the bill will amend, contains a number of delegated powers to ensure that there is flexibility in the LBTT legislation to react to changing circumstances. Those powers allowed for the development, for example, of a targeted sub-sale development relief, which was enacted by order last year. In introducing this bill, I proposed a measured package of delegated powers for the supplement, which are contained in paragraph 14 of proposed schedule 2A. Having reflected on the stage 1 evidence, I consider it appropriate, in the interests of flexibility and future proofing, to propose additional delegated powers to amend certain aspects of proposed schedule 2A. That is what amendment 34 does.

Partnerships and trust arrangements can be complex and can give rise to some of the most difficult aspects of LBTT policy and practice. There are existing regulation-making powers in the 2013 act to amend the LBTT treatment of partnerships and trusts, but they do not extend to schedule 2A for the supplement. Amendment 34 would therefore introduce an equivalent power for schedule 2A, which is consistent with the existing power.

In a previous group, we discussed amendments to part 6 of schedule 2A, to improve and clarify the rules on what counts as ownership. I consider that that is another aspect of schedule 2A where there should be power to adjust the provisions by regulations in the months and years ahead. I have in mind the complexity of some ownership arrangements, particularly cross-border arrangements or arrangements to mask true ownership.

Finally, I propose a power to amend the interpretive paragraph 15, which is consistent with the existing power in the 2013 act allowing for the definition of "dwelling" to be adjusted in other schedules should that prove necessary in future.

Amendment 38 ensures that the regulation-making power inserted by amendment 34 is subject to affirmative procedure, which I consider appropriate given that exercise of the power would affect a taxpayer's position in terms of their liability to the supplement.

I move amendment 34.

Amendment 34 agreed to.

Amendments 35 to 37 moved—[John Swinney]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Consequential amendments

Amendment 38 moved—[John Swinney]—and agreed to.

The Convener: Amendment 39, in the name of the Deputy First Minister, is grouped with amendment 41.

John Swinney: The bill includes an order-making power to vary the £40,000 threshold by order. As drafted, that order is subject to negative procedure. The Finance Committee endorsed the recommendation of the Delegated Powers and Law Reform Committee that the order-making power should be subject to the provisional affirmative procedure. I am persuaded by the arguments that the committees have presented, so amendment 39 is to apply provisional affirmative procedure to the delegated power to modify the £40,000 figure.

Amendment 41 makes a consequential amendment to the Revenue Scotland and Tax Powers Act 2014.

I move amendment 39.

Amendment 39 agreed to.

The Convener: Amendment 40, in the name of the Deputy First Minister, is in a group on its own.

John Swinney: Amendment 40 is technical in nature. Changes were required to the rules for multiple dwellings relief to ensure that the calculation for that relief still works, given the introduction of the supplement.

No changes have been made to the principles that underpin multiple-dwellings relief. The amendment is required to ensure that the calculation of the relief still works, given that the supplement may be payable on some but not all properties that are subject to a claim for multiple-dwellings relief.

As we have decided to accept the committee's recommendation on the relief for the purchase of six or more dwellings in one transaction, a further change is required to the rules to ensure that the supplement is not included in the calculation of multiple-dwellings relief for transactions in which the relief for the purchase of six or more dwellings is claimed. Amendment 40 delivers a new method of calculation for all purchases to which the supplement applies and for which multiple-dwellings relief is claimed, as well as changes to the calculation for cases in which the relief for the purchase of six or more dwellings is claimed.

I move amendment 40.

Amendment 40 agreed to.

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

Section 2, as amended, agreed to.

Section 3—Transitional provision: application of this Act

The Convener: Amendment 42, in the name of the Deputy First Minister, is in a group on its own.

John Swinney: It is settled policy that the bill will apply only to transactions with an effective date on or after 1 April 2016. There have been calls for me to delay that date but I have been clear with Parliament that the supplement should come into force as planned to protect first-time buyers from the impacts of higher rates of stamp duty land tax in the rest of the United Kingdom. However, there is a second limb to the transitional policy, which is currently pegged to 16 December 2015—the date on which I made my 2016-17 budget statement and announced the LBTT supplement. That limb requires missives to have been concluded on or after that date.

It has been put to the Scottish Government that some purchases that were agreed in principle before my announcement would not have progressed to conclusion of missives until a short while later and so would be caught. I have sympathy with those cases. I therefore propose changing the conclusion of missives cut-off date to 28 January 2016, which is the date on which the bill and accompanying documents were published.

Therefore, the transitional policy will be that the bill will apply in relation to a chargeable transaction where missives were concluded on or after 28 January 2016 and the effective date of the transaction is on or after 1 April 2016. That will provide fairness for taxpayers while not being so generous that undue opportunities for forestalling become available.

I move amendment 42.

Amendment 42 agreed to.

Section 3, as amended, agreed to.

Sections 4 to 6 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. The bill will now be reprinted as amended and will be available in print tomorrow morning. Parliament has already agreed that stage 3 proceedings will take place next Tuesday, 8 March, and that the deadline for lodging stage 3 amendments will be noon this Friday, 4 March.

I suspend the meeting to allow the changeover of officials. We will be back in a couple of minutes.

09:37

Meeting suspended.

09:40

On resuming—

Fiscal Framework

The Convener: Our next item is evidence from the Deputy First Minister on Scotland's fiscal framework. Mr Swinney is joined for this item by Sean Neill and Alison Byrne, from the Scottish Government. We will take evidence tomorrow from the Chief Secretary to the Treasury on the same subject, before submitting our views on the agreement between the two Governments to the Devolution (Further Powers) Committee later this week. Members have received copies of the document, "The agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework".

Given that we had a statement from Mr Swinney last week, we will go straight to questions—and, of course, I will begin. I am pleased that the document answers a number of our questions. I have some 16 questions, but I am aware that the Deputy First Minister has to be away by 11 o'clock and that fellow committee members also have questions, so I will limit myself to just—

Members: Fifteen questions. [*Laughter*.]

The Convener: It'll be 17, if you don't watch it.

My first question was asked by Gavin Brown at a meeting yesterday, so—

Gavin Brown: Do not let that stop you.

The Convener: I do not want to steal your thunder, so I will go on to my next question.

Paragraph 23 of the agreement says:

"The fiscal framework does not include or assume the method for adjusting the block grant beyond the transitional period. The two governments will jointly agree that method as part of the review. The method adopted will deliver results consistent with the Smith Commission's recommendations, including the principles of no detriment, taxpayer fairness and economic responsibility."

You are probably aware that Professor David Bell has commented on that in the media this morning, and suggested that paragraph 23 kicks the issue into the long grass. What is your response to that?

John Swinney: In essence, the agreement delivers the outcome that the Scottish Government sought, in terms of the block grant adjustment mechanism; it delivers the outcome that would be generated by per capita indexed deduction, which we think is the most effective way of delivering the principles that were set out by the Smith commission, and of fulfilling the commitments that were made.

The review mechanisms are consistent with the Smith commission proposition that such measures should be reviewed but should not require persistent intervention—the point that is made in paragraph 20 of the agreement. The details of paragraph 23 ensure that the Scottish Government has as much control over the process of the review as we have had over settlement of the issues that have been at stake during formulation of the agreement for establishment of the fiscal framework.

I do not agree that the issue has been kicked into the long grass—it had to be resolved for the application of the block grant adjustment, and the agreed application will now take its course. The implication of the agreement is not that it delays anything; the agreement provides for a block grant adjustment mechanism that will be required in order to implement the agreement on 1 April 2017.

The Convener: After months of negotiation, have the positions of both Governments changed? Is there a more bilateral relationship than perhaps there was previously?

John Swinney: The key characteristic of the discussions, which is reflected in paragraph 23, is that the Scottish Government is in a position to agree with the Treasury and the United Kingdom Government the details of the fiscal framework. That required our consent.

The financial arrangements under which we normally operate do not tend to operate in that fashion. I have previously explained to the committee my frustration over the details of the approach that has been taken in the statement of funding policy, for example, which formerly controlled the arrangements for financial management of the Scottish Government and was agreed between the United Kingdom Government and the Secretary of State for Scotland. I was never a signatory to that document, but I had to operate within its constraints. Clearly, I am a signatory to the current agreement, which is a great advance on our normal position.

09:45

The Convener: That puts things on a much sounder footing.

Paragraph 28 of the agreement says:

"Revenues from courts and tribunals in Scotland will be retained by the Scottish Government from April 2017."

How much will that amount to annually?

John Swinney: I do not have a figure to hand, but I will certainly write to the committee about that.

The Convener: Thank you.

In the following paragraph, the agreement states:

"The implementation dates for welfare will be agreed by the Joint Ministerial Working Group on Welfare. The Joint Exchequer Committee will oversee the transfers of funding."

Do you have any information on when that is likely to be?

John Swinney: We will want to make the swiftest possible progress on that. However, as I think I said last week—forgive me, but I appeared in front of two committees on the subject last week, so I may have said this either to the other committee or to the Finance Committee—

The Convener: You mentioned it last week.

John Swinney: We will have to put in place the necessary arrangements to ensure, at the very minimum, continuity of provision to recipients of welfare payments. It will require careful preparation to ensure that all the necessary arrangements are in place. The Scottish Government will want to proceed with that in as timeous a fashion as possible. I have no reason to believe that the United Kingdom Government will take a different view, but we must acknowledge that we will have to wrestle with a range of practical issues in order to make the change.

The Convener: There are 10 paragraphs entitled "Administration and implementation costs", on which I have a number of questions. It might be easier to ask an overall question. Paragraph 30 says:

"In line with the Smith Commission recommendations the UK government will transfer funding to support a share of the associated implementation and running costs for the functions being devolved."

Last week, you were asked about the £200 million for the implementation of new powers and the baseline transfer of £66 million to cover on-going administration costs. We also had information about

"additional administration and programme costs directly associated with the exercise of the powers in paragraphs 44 to 45 of the Smith Commission Heads of Agreement".

Will you give us your most accurate estimate of the costs of administration and implementation and what the overall likely support from the UK Government will be, relative to that cost? Paragraph 35 of the agreement says:

"the Scottish Government will reimburse the UK government for net additional costs wholly and necessarily incurred as a result of the implementation and administration of the Income Tax powers."

Basically, once the dust settles, what will the cost of implementation be and what funding will the Scottish Government receive to deliver that? Will we have to fund anything from existing resources?

John Swinney: The funds that will be available are clear in the agreement. There will be a one-off transfer of £200 million to support implementation of the powers in the agreement. There will be an annual transfer of £66 million that will be operated in line with the Barnett formula to support that operation. It is absolutely clear what funding will be available as a transfer from the United Kingdom Government to the Scottish Government.

What it actually costs the Scottish Government will be partly directly under our control. I will come on to give details of the estimates of those factors that have been made in the Scottish Government. We will be the determinants of the costs of implementation of the provisions through the decisions that we take. Obviously, I will try to minimise that cost to the public purse.

There will be other costs. The Scottish Government has paid the implementation costs for devolution of the Scottish rate of income tax, which will become effective on 1 April. That is really a product of the statement of funding policy and the habitual operation of arrangements in that respect. I envisage some further, but pretty minor, costs in relation to income tax, given that the overwhelming majority of income tax devolution has been effected by the application of the Scottish rate of income tax.

There will be other specific costs related to the paragraphs to which the convener referred. For example, we have agreed to

"share equally all costs wholly and necessarily incurred as a result of the implementation and administration of VAT assignment."

There will be specific provisions in place for that.

We have made estimates based on Department for Work and Pensions data and further research that the Scottish Government undertook, which suggested that the cost range for implementation of the welfare provisions will be between £400 million and £600 million. The Smith commission agreement said that the UK Government should pay a share of those costs; the agreed sum is £200 million, which I think takes fair account of the issues.

However, I come back to the point that I made a moment ago: although we have estimated the costs, I will be exercising those responsibilities with the objective of minimising the cost to the public purse.

The Convener: I know that Lord Forsyth and others are unhappy even about the sums of £200 million and £66 million a year, which are set out clearly in the document. I am thinking about what kind of margins there are and about additional costs that the Scottish Government is likely to bear. I know that you are trying to minimise those costs. When will we have hard-and-fast figures on the Scottish Government's contribution?

John Swinney: There will be a number of stages at which the costs will become apparent. Paragraph 33 of the agreement, for example, puts in place a different cost arrangement and repeats that the Smith commission heads of agreement indicated that the Scottish Government would meet the costs of varying the elements of universal credit. I cannot possibly unpick the Smith agreement proposition in that regard—I have to respect it. Obviously, we will calculate costs and act to minimise them as we proceed with devolution of responsibilities.

Paragraph 37 is on equal sharing of the costs of assignation of VAT. Those costs will become apparent as we go through joint working with the UK Government on that. I would be very surprised if the costs of assignation of VAT between the two Governments were to reach a seven-figure sum.

There will be varying levels of costs, and it will be important that the Government continues to update Parliament on their negotiation.

To go back to the Scottish rate of income tax, early estimates of the cost of devolution of income tax were of the order of £45 million, if my memory serves me right, but we are now looking at a significantly lower figure since the programme has progressed. Obviously, ministers will be anxious to minimise the cost to the public purse.

The Convener: There has been much discussion about no detriment. There are 10 paragraphs in the agreement under the heading "No detriment due to policy spillover effects", including one that says:

"The Smith Commission stated that there should be no detriment as a result of UK government or Scottish Government policy decisions post-devolution."

Paragraph 52 states that

"Any decision or transfer relating to a spillover effect must be jointly agreed by both Governments. Without a joint agreement, no transfer or decision will be made."

However, prior to that, paragraph 47 states that the main categories of those effects can be divided into

"Direct effects—these are the financial effects that will directly and mechanically exist as a result of the policy change ... and ... Behavioural effects—these are the financial effects that result from people changing behaviour following a policy change."

Do you have any concrete examples of a direct effect from the agreement?

John Swinney: I can only speculate on what direct effects there might be. In welfare, if the Scottish Government increases eligibility for certain devolved benefits, that will automatically passport the recipient on to certain reserved

benefits. That would be a traceable direct effect of actions that will be taken by the Scottish Government. If we decided to extend eligibility for a passported benefit but that was not the case in the rest of the United Kingdom, that would give rise to increased cost for the DWP, which would be clearly identifiable. That is one example of how such effects could crystallise, but the approach has to be clearly demonstrated and evidenced to the satisfaction of both Governments.

The Convener: I have one more question on capital borrowing before I open up the meeting to questions from colleagues. Paragraph 54 says that

"due consideration was given to the merits of a prudential borrowing regime in line with the Smith Commission's recommendation."

Of course, that was also a recommendation of the Finance Committee. Why was it rejected?

John Swinney: There has to be give and take in a negotiation. My sense is that the UK Government's approach has been—as it is perfectly entitled to do, within its reserved responsibilities—to create for the UK a fiscal framework that involves, by 2019-20, no borrowing whatsoever. The Chief Secretary to the Treasury and the Treasury are anxious that if there are to be facilities for Scotland to borrow, consistent with the Smith commission and the fiscal framework, there has to be some compatibility between that borrowing and the fiscal framework of the UK. That is a fair point.

The Smith commission report made it clear that we have to operate within the fiscal framework of the UK; that was, after all, the conclusion of the referendum in September 2014. Therefore, I had to accept that in exchange for securing additional borrowing capacity—which I have been able to secure—I would have to operate in an environment that enables the UK Government to continue to protect the fiscal framework that it believes is important in management of UK macroeconomic issues.

Prudential borrowing would not have given the UK Government a context within which it could operate and fulfil its commitments in relation to its own fiscal framework because prudential borrowing would have been down to decision-making by the Scottish Government and the Scottish Parliament, in considering what we could judiciously and prudentially borrow to support long-term investment. The UK Government made the fair point that it needs a greater framework that assures it of the compatibility of the borrowing arrangements with the wider UK fiscal framework.

The Convener: It still seems to me to be anomalous that councils in Scotland can have providential borrowing, but the Scottish Government cannot.

I have a further point to make about borrowing, on interest rates. Paragraph 59 of the agreement says:

"The Scottish Government may borrow through the UK Government from the National Loans Fund, by way of a commercial loan".

Has the Scottish Government been able to, or will it be able to, negotiate a special rate for borrowing?

10:00

John Swinney: When we borrow, we will negotiate for the cheapest available borrowing, to put it bluntly. That is what we will pursue on every occasion.

The Convener: Previously, there was a concern that you would have to pay above the odds; the UK Government was considering that you would perhaps have to pay 1 per cent or even 2 per cent above commercial rates. Is that not going to be the case?

John Swinney: I do not see what justification there would be for that.

Lesley Brennan (North East Scotland) (Lab): It has been really useful to have the text of the agreement, but the wording of paragraph 66 is perhaps not as clear as it could be. It talks about

"A Scotland-specific economic shock"

being

"triggered"

by

"onshore Scottish GDP".

Do you mean GDP growth?

John Swinney: Yes.

Lesley Brennan: If we are going to be held to the agreement, we want clarity. So, it is GDP growth, not just "GDP".

The paragraph says that such a

"shock is triggered when onshore Scottish GDP is below 1% in absolute terms".

Do you mean in real terms?

John Swinney: No.

Lesley Brennan: What do you mean by "in absolute terms"?

John Swinney: It is just if it grows. It is a growth calculation. If onshore GDP grows and growth is 1 per cent below—just 1 per cent—

Lesley Brennan: Looking at the figures, I think that it would be better for our interest if that was in

real terms. It is not a criticism—[*Interruption*.] No, no—I have had the Scottish Parliament information centre look at this, too. An economic shock is determined by this. The paragraph talks about

"1% ... on a rolling ... quarter basis".

What do you mean by that? Do you mean annualised GDP growth on a quarterly basis?

John Swinney: I mean four quarters, rolling—1, 2, 3, 4, sequentially.

Lesley Brennan: Do you mean like a moving average?

John Swinney: No, I mean quarter 1, quarter 2, quarter 3 and quarter 4. That is what I mean by "4 quarter"—

Lesley Brennan: If you mean—

John Swinney: Sorry—actually, what I mean by that—

The Convener: Or 3, 4, 1 and 2.

John Swinney: It might start at quarter 2, followed by quarter 3, quarter 4 and quarter 1. It might start at quarter 3, followed by quarter 4, quarter 1 and quarter 2.

Lesley Brennan: Okay. So you mean the difference—

John Swinney: It is a sequential four quarters.

Lesley Brennan: Okay. I am a wee bit concerned about that. If you look at the figures—the data—since 1999, you will see that the criteria would never be met.

John Swinney: Well, they might not be met, because—

Lesley Brennan: No, no. It was during the recession. So—

John Swinney: Forgive me. Let us just take stock here.

Lesley Brennan: No, but I—

John Swinney: Let me just take stock here. I would like to reassure Lesley Brennan that the management of United Kingdom economic shocks is a matter for the United Kingdom Government, as those issues are reserved. The economic downturn of 2008, 2009 and 2010—whatever time period we want to apply—would be entirely the responsibility of the United Kingdom, because there was a United Kingdom economic shock.

Paragraph 66 refers only to a set of circumstances in which there is no United Kingdom economic shock and Scottish economic performance is poor in comparison. Paragraph 66 defines a Scotland-only economic shock.

Lesley Brennan: I asked the economists at SPICe to have a look at this, and in relation to a change from quarter 1 to quarter 2 one of the SPICe researchers said:

"Additionally quarterly growth in quarterly GDP is unlikely to be above 1% (that would give annual GDP growth of 4.1% or more) ... I presume they mean **annualised GDP growth on a quarterly basis**."

John Swinney: I think that that is a misreading. Paragraph 66 talks about

"when onshore Scottish GDP is below 1% in absolute terms on a rolling 4 quarter basis".

That is over a four-quarter period. If Scottish onshore GDP is below 1 per cent in absolute terms over a four-quarter period, and it is 1 percentage point below UK GDP growth over the same period, we would have a Scotland-only economic shock.

Lesley Brennan: I am honestly trying not to be critical; I just want to make sure that, if we put this fiscal rule in place, the threshold is not so high that, if there was a Scotland-only downturn, we could not realistically meet that threshold.

Another point is about what the agreement says about outturn. There is obviously a lag in the data. Using the outturn data, you would be able to identify an economic shock 18 months after the shock started.

John Swinney: It could be about 18 months, but it may be 15 months rather than 18 months. An economic shock happens over a period of time, and it triggers resource borrowing to deal with the circumstances. If I feel that an economic shock is happening, I will change policy, and I will do things differently. We would not just sit around for 15 months asking where the economic shock was coming from. Whenever we see that the economic data is turning, we will start to act.

Let me give an example. In the summer of 2008, I started to revise my capital investment programme because, as we headed towards the financial crash of autumn 2008, I could see that there was a problem in the housing market. The Cabinet took decisions to change our investment programme, and I started shifting resources into capital expenditure, to shore up capital investment. I started to act right away. This is about the Cabinet giving me the financial flexibility to deal with the consequences of a Scotland-only economic shock.

In 2008, I had to go to the Treasury and ask it to give me a bit of flexibility over my capital departmental expenditure limits budget over a series of years, to allow me to inflate capital expenditure in the short term. To the credit of Her Majesty's Treasury, it agreed to that.

This will allow me to take some decisions, in the short term, to change spending priorities and make different interventions. It will give me the resource-borrowing capability to deal with that economic shock.

Lesley Brennan: Are you confident about and comfortable with that? In a Fraser of Allander institute article entitled "How wrong were we? The accuracy of the Fraser of Allander Institute's forecasts of the Scottish economy since 2000", the institute shows that models perform poorly in predicting turning points. I assume that we will be forecasting quarterly GDP growth.

John Swinney: Yes.

Lesley Brennan: That will obviously be more challenging than forecasting annual GDP growth—that is what the experts suggest.

John Swinney: Actually, the GDP forecasts will be designed by the Scottish Fiscal Commission, as I have indicated. I have agreed to those changes as part of the fiscal framework. I do not know whether the Fiscal Commission will give us quarter-by-quarter performance. However, it will have to do that to enable us to arrive at an annualised estimate.

Lesley Brennan: When I read paragraph 66, I thought that the language could do with a bit of firming up to ensure clarity, given that the Government will be held to account on this. There is a threshold in the event of a Scotland-specific economic shock in which tax receipts are not what you expected. You would want to draw down additional resource, and my concern is to ensure that the threshold is not unrealistic.

John Swinney: We have gone through a lot of analysis and discussion of the circumstances because the United Kingdom Government is clear that it has the responsibility for dealing with a UK economic shock. You can ask the Chief Secretary to the Treasury about that when you see him tomorrow.

Lesley Brennan: I am talking about a Scotland-specific shock.

John Swinney: I am crystal clear about this. The United Kingdom Government is very clear about its responsibility for a UK economic shock. Paragraph 66 acknowledges that there would be certain implications for Scotland if there was a Scotland-only economic shock. Having considered the analysis, I believe that the threshold in paragraph 66 is a reasonable trigger point for that.

Lesley Brennan: Okay. I will ask quickly about paragraph 19, which says:

"During the transitional period up to and including 2021-22, however, there will be an annual reconciliation process to achieve the Indexed Per Capita outcome."

Will you talk me through that?

John Swinney: In essence, the comparability model will be run, and it will give a certain outcome; the per capita indexed deduction model will also be run, and it will give a certain outcome. If there is a difference between the two, it will be reconciled to the per capita indexed deduction outcome.

Lesley Brennan: So we will get—

John Swinney: We will get per capita indexed deduction as the outcome.

John Mason: I asked you about VAT last week but we postponed the discussion until I could see the agreement. To go back to that, will you give us your thoughts on why we are using the consumption method? I understand that that means that everything is based on the final consumer. The downside would be that, if we built a new factory, for example, and there was value added, we would not gain any of the VAT on that. Is it an admin question more than anything else? I would be interested in your comments on that.

John Swinney: I am not sure that we will be able to go much further into the detail, beyond the fact that we have agreed in principle a consumption-based approach. The methodology for all of that has to be composed to enable the approach to be undertaken. As the agreement says, that methodology will be taken forward as a joint initiative between the Scottish Government and the United Kingdom Government, for implementation in 2019-20.

10:15

The work that will have to be undertaken will consider a range of questions around VAT on household expenditure, business expenditure, Government expenditure and housing expenditure. We will look at a number of different techniques that enable us to undertake that activity. There will be a comprehensive exercise to identify and resolve many of the detailed points that will be implicit in the methodology, which will be available for the committee to scrutinise as it is formulated.

John Mason: Let me put my key point. As I understand it, if there is a 10-step process, say, a bit of VAT is added at each of the 10 steps. I assume that dividing all that up on a Scottish basis would be incredibly complex. You said in response to the convener that you hope to keep the admin costs down. Is that one of the reasons why we have gone for the consumption approach, in which we look just at the final step?

John Swinney: Yes. Ultimately we must remember that this is an assignation process, not a revenue-generation process. An assessment will

be undertaken of the total amount of VAT that is generated in Scotland, using the methodology that I talked about, and then 50 per cent of that will be assigned to the Scottish budget, and the block grant adjustment will be calculated accordingly. The exercise will be undertaken as part of the overall block grant assessment. That gives a flavour of the degree of risk that we carry in that regard.

John Mason: Is it 50 per cent, or is it the 10p? If VAT is varied to 19 or 21 per cent, how will that affect us?

John Swinney: It is 50 per cent of the rates.

John Mason: Right, so if it is 19 per cent we get 9.5 and if it is 21 per cent we get 10.5.

John Swinney: Yes.

John Mason: Thank you. On no detriment, I think that we have agreed the first step, but there is an issue to do with the second stage and any policy spillover effect. The agreement talks about that from paragraph 44 onwards. In particular, I was interested to read paragraph 50, which says:

"Behavioural effects that involve a material and demonstrable welfare cost or saving will be taken into account where these are in exceptional circumstances. Behavioural effects that impact tax revenues can be taken into account where, in exceptional circumstances, they are demonstrated to be material and both governments agree that it is appropriate to do so."

Can you give examples of where that might happen?

John Swinney: It would follow from a policy decision that was taken by an individual Government, so I am not really in a position to speculate about that, other than to say that the wording in the agreement sets a very high bar as to when such issues would come into consideration. This would not be a routine issue; the language that is used includes the words "material", "demonstrable" and "exceptional". We are not talking about an everyday occurrence, and obviously both Governments would have to agree that the factors were in place that invoked the provisions, so it is not something that will happen habitually.

John Mason: There was a worry that almost anything that anyone did, on both sides of the border, would have some kind of knock-on effect. Basically, we are sweeping out all those minor things.

John Swinney: What I am clear about is that the language of the agreement sets a very high bar before any of those provisions would be invoked.

John Mason: Thank you. In relation to the block grant adjustment, I seek a bit of clarification on some of the different taxes. The suggestion in the agreement, as I read it, is that the block grant adjustment will be based on the year before the change is made in relation to income tax, LBTT or whatever. For LBTT, we had talked about a five-year rolling average or something along those lines, depending on whether we were looking back or forward, but has that approach now been replaced by the idea that we just look at one year for the block grant adjustment?

John Swinney: The baseline adjustment will be driven by a year-zero calculation based on the revenue that was generated in the year before devolution.

John Mason: On income tax, the point has been made that we will not know the receipts for the year 2017-18 until March 2019. Will the adjustment be made on the basis of the forecast receipts? If so, how would the SFC and the OBR work on that if their forecasts are different?

John Swinney: The forecast that will matter under the new arrangements that I intend to put in place will be the one that is generated by the SFC. That is subject to the provision that I reserve the right to use an alternative forecast if I do not have confidence in the SFC's forecast, but we will come on to discuss that issue at stage 3 of the Scottish Fiscal Commission Bill process if Parliament is agreed.

The forecast is made by the SFC, but there is a reconciliation over time as receipts become clear and if there is any change to what was anticipated.

John Mason: So there will be a block grant adjustment for 2017-18 based on the SFC forecast, but that adjustment could change depending on the actual receipts.

John Swinney: That is correct, yes.

John Mason: For 2016-17, you have agreed a block grant adjustment of £600 million. That may also be revised as we go forward and find out what the receipts are.

John Swinney: I think that there is a provision in the agreement that says, without prejudice to the changes for 2015-16, the issues around 2016-17 will be the subject of further discussion with the Treasury, given the fact that we agreed the block grant adjustment outwith the details of the fiscal framework negotiations.

John Mason: My final question is on the SFC itself. Have you had any discussions about timescales and when it will be up and running? Will it be able to do forecasts for 2017-18?

John Swinney: That is under active discussion. The forecasts for 2017-18 will eventually have to be available by September, when the normal statutory budget process will take its course. There are two things that strike me in that respect;

I may as well rehearse some of that territory for the benefit of the committee and the wider audience.

First, the changes in the agreement on fiscal scrutiny that can be enacted by Parliament—if it agrees to do so—in relation to stage 3 of the Scottish Fiscal Commission Bill, which will come to Parliament on 10 March, can relate only to the Scotland Act 2012, because we do not yet have legislative competence to exercise any changes in relation to the current Scotland Bill. The only changes that we can make would involve putting in place a rolling five-year forecast for LBTT, landfill tax, income tax and non-domestic rates—

John Mason: Sorry—can you just clarify something? Are you saying that we will not have power over the full extent of income tax until the Scotland Bill is passed at Westminster? Can we not even forecast those elements before we have that power?

John Swinney: No. Well, I cannot mandate the Fiscal Commission to do that statutorily, because we do not have the legislative competence to do so. That will arise only once the Scotland Bill receives royal assent. We cannot legislate for things for which we do not yet have legislative consent—that is not allowed, I am afraid to say.

We will make those changes and we will go through the process. I have yet to clarify exactly how far the Fiscal Commission will be able to go in its forecasting responsibilities, even in relation to a forecast for 2017-18 on LBTT, for example, given that the Fiscal Commission today, on 2 March, does not have that independent forecasting capability. That forecasting capability rests within the Government.

There will also be important information about having access to data, which was part of our reciprocal agreement with the United Kingdom Government.

John Mason: Thank you.

Gavin Brown: Once the outturn figures are available, you will run the comparable model with the per capita indexed deduction model. If there is a difference, an adjustment will be made. If the per capita indexed deduction model is more favourable, that is helpful to the Scottish Government. In the hypothetical situation where the comparable model would actually have been better for Scotland in any one fiscal year, what happens? Do we move to PCID anyway?

John Swinney: I think that Mr Brown is adding one hypothetical on to another hypothetical and trying to imagine circumstances that will not materialise.

Gavin Brown: But what if it did? I do not think that I am adding one hypothetical to another—I think that there is one hypothetical. If that system, for whatever reason, turned out to have been better in one fiscal year, you would make the change to PCID anyway. Is that technically correct?

John Swinney: That is the rationale of the agreement, yes.

Gavin Brown: Okay. In relation to the independent report, obviously there will be input from both Governments in setting up the review, and the report is to be produced by the end of 2021. What is the status of that report? Is it legally binding on both Governments, or is it politically highly persuasive? Is there a formal status for that report?

John Swinney: It is a report provided to both Governments.

Gavin Brown: So it is not legally binding in any way.

John Swinney: No.

Gavin Brown: It is then a matter for the Governments to agree how to treat that report.

John Swinney: Paragraph 22 of the agreement is very clear:

"The review will be informed by an independent report with recommendations presented to both Governments by the end of 2021."

Gavin Brown: You have been asked a couple of questions by the convener and the deputy convener about behavioural effects, which I guess are captured mainly at paragraphs 50 and 51 of the agreement; you have talked about there being a high bar, about hypotheticals and so on. My own view, having read the agreement, is that there would be some merit in both Governments sitting down before disputes arise—that is, now, when you are producing various annexes.

Could you not cover a number of hypothetical situations, in the way that they were covered when you worked on the LBTT legislation a couple of years ago, or at least in the consultation for that? You outlined probably half a dozen hypotheticals to work out what sort of treatment would be given. It strikes me that there is merit in the Governments doing that now when there is not actually a dispute. Have you had that discussion with the UK Government?

John Swinney: I have gone through certain hypothetical circumstances with the UK Government on what might or might not be envisaged in that respect, but I do not actually think that that type of analysis helps in this case.

The difference with the LBTT proposition was that I was not giving hypothetical situations but modelling particular scenarios and setting out what

would happen to revenue raising if I made certain tax decisions. That is fundamentally different from identifying what one Government might do and how that might have an effect on the effects of another. What is clear, though, is that the language of that section is designed to set a very high bar before we would get into that territory.

10:30

Gavin Brown: Let us move on to what might actually occur, given the commitments that have been made publicly.

We will get power over air passenger duty in 2018 and your commitment if you are re-elected is to reduce APD by 50 per cent over the lifetime of the session of Parliament. If that helps airports in Scotland, and airports in the north of England lose business, is it clear how that scenario would be treated in the agreement that you have structured?

John Swinney: We would have to go through a process of negotiation and discussion on the issues around that question.

Gavin Brown: Could you be a bit more vague?

John Swinney: Well—

Gavin Brown: Forgive me, that sounded a bit churlish.

John Swinney: It certainly did. That is a very fair account of it.

Gavin Brown: I accept that.

There are some disputes that we know might arise. I am just trying to put the point forward that it might be worth doing a bit more groundwork now, instead of working out what the agreement means if they arise in a couple of years' time.

John Swinney: The agreement sets out the approach to be taken in relation to spillover effects. It is set out in considerable detail from paragraph 44 onwards. There are direct effects, which we can easily tabulate, and there are behavioural effects, which are less easy to tabulate. We have agreed to take account of all direct effects. A pretty clear approach has been set out.

Gavin Brown: I will not press that any further.

You have been asked some questions on capital borrowing. Can you give us an indication of the practical effect of the changes? The limit goes up to £3 billion and you are allowed 15 per cent of CDEL instead of 10 per cent. In this financial year you are allowed to borrow £304 million. In an annual sum, what are you likely to be able to borrow once the agreement is in force?

John Swinney: The first point is to correct Mr Brown. The 15 per cent is of the overall borrowing cap, which is different from the Scotland Act 2012 provisions, which were set at 10 per cent of the Scottish Government's capital budget, or CDEL, total.

Taking the current provisions, the capital borrowing limit for the current financial year is £304 million. For 2016-17, it is £316 million. The 15 per cent of the overall cap on capital borrowing would be £450 million. The capital borrowing under the 2012 act would have changed over the duration of the spending review, because it is a factor of CDEL and the CDEL line is rising. By about 2019-20, the CDEL borrowing total would have been about £330 million. The equivalent number under the agreement will be £450 million.

Gavin Brown: So, for clarity, the £450 million would be the annual figure at the end of the spending review period.

John Swinney: No. The capital borrowing limit is 15 per cent of the overall borrowing cap. The new borrowing powers come into effect on 1 April 2017. In 2017-18, the borrowing limit will be £450 million. Under the Calman proposals in the 2012 act, that number would have been something like £322 million.

Gavin Brown: That is helpful—thank you.

The agreement says that resource borrowing takes place over a period of three to five years. For any individual item of resource borrowing, do you agree whether it is three, four or five years, or can the Scottish Government simply decide that you want a particular item to be three years, another one to be five and so on?

John Swinney: That is at the discretion of the Scottish ministers.

Gavin Brown: I do not think that this came up last week. Paragraph 76 says:

"The Scotland Reserve will be capped in aggregate at £700m."

For the sake of the record, can you outline the basics of the Scotland reserve? I do not think that we covered it last week.

John Swinney: The Scotland reserve brings together the cash reserve provision of the Scotland Act 2012, which was a reserve fund held at the Treasury into which excess proceeds that arose on our devolved taxes generated in Scotland, and that we had not predicted would be deployed in our public expenditure, would go. If we had agreed with the Treasury that we would generate, say, £500 million in tax and we generated £525 million, £25 million would go into the cash reserve in the UK Treasury, capped at £125 million.

That money could be used to deal only with any shortfall in tax revenue in a later year. If, in a later

year, we were short by £10 million, we could dip into that cash reserve and everything would be neutral.

The Scotland reserve is a combination of that facility and our budget exchange mechanism. Those two are combined, they have a combined aggregate of £700 million, and we have the ability to undertake annual drawdowns from that reserve of £250 million for resource and £100 million for capital. That is less restrictive than the terms of the cash reserve in the Scotland Act 2012.

Gavin Brown: I guess that the big change is that you can draw down reserve or capital for any areas of public spending on which you want to use it.

John Swinney: Correct.

Gavin Brown: And that is as opposed to covering shortfalls.

John Swinney: Yes—shortfalls in tax. There was an annual limit on the budget exchange mechanism of around £150 million of resource and about £40 million of capital, which we were free to roll forward and utilise in the careful and prudent management of public finances.

Gavin Brown: Thank you, Deputy First Minister.

Mark McDonald: My first question is on the use of the year prior to devolution for baseline adjustment in some instances, as opposed to an average calculated over a number of years. There is a risk that the year prior to devolution is a year of poorer economic performance or output than previous years averaged out; was that risk factor taken into consideration when agreeing to that model?

John Swinney: Yes. The pattern of taxation tends to be fairly stable on most items. There can be variations in terms of economic shock, and we have to be mindful of that but, in the current context, and considering the period when the decisions will be taken, I think that that is a reasonable risk, with the exception that some provisions are more volatile. There is specific provision in the agreement around cold weather payments, because the performance on those is wildly varied, depending on the temperature; the agreement takes in the cold years in averaging it out.

Mark McDonald: On the issue of no detriment and dispute resolution, I note the disaggregation of indirect and second-round effects. Has any consideration been given as to how far after a policy decision had taken effect it would be before you would consider something to be a second-round effect, as opposed to a delayed behavioural response—if you follow my logic?

John Swinney: The issue of second-round effects is covered by paragraph 48, which states:

"Governments have agreed that the financial consequences of these should not be included in the scope of the 'no detriment' principle."

That says to me that it is clear, direct effects that are the central proposition that is in scope.

Mark McDonald: The agreement refers a number of times to the assessment of causality. Is that an assessment that is to be undertaken by the Fiscal Commission and the OBR or by others, or will it be the Governments themselves that determine causality?

John Swinney: The Governments will look at that information, but there may be occasions on which we seek wider counsel on those questions. Fundamentally, though, it is the Governments that will undertake that.

Mark McDonald: That brings me to paragraphs 98 to 104, on dispute resolution, to which you have alluded. I note that paragraph 103 states:

"If no agreement can be reached then the dispute falls—there would be no specific outcome from the dispute and so no fiscal transfer between the Governments."

My concern from a Scottish perspective is that, if the Treasury simply dug its heels in and was intransigent in relation to a decision that it had taken that affected the Scottish budget, it might be that no fiscal transfer would take place as a consequence.

John Swinney: In the interests of fair play, for which I am renowned, I have to accept that there might be perceived intransigence at the other end of the east coast main rail line, and I am not talking about Aberdeen. The dispute resolution procedure is designed to encourage an evidence-based approach to the formulation of a resolution of issues, so it walks step by step through how evidence can be gathered. Paragraph 101 states:

"Technical input on the dispute may be sought from the OBR and the Scottish Fiscal Commission."

That brings in some other independent empirical analysis in the process. The provisions are there for a fair process for resolving any questions that may arise based on the evidence that is available in those circumstances.

Mark McDonald: I note that the findings of technical input and analysis would also be published. The Devolution (Further Powers) Committee, on which I also sit, has discussed how to improve intergovernmental relations and the negotiations and discussions that take place. Do you see this as a more public mechanism for resolving disputes than might have been the case under previous joint exchequer committees?

John Swinney: I think that it is more transparent, so there is more evidence presented about what it is about. Work is undertaken by both Governments and it is a joint process. Disputes are encouraged to be resolved in a timeous fashion and the process can be informed by external opinion. There are a lot of reasons to be confident that the process will be operated in good faith.

Mark McDonald: It is not mentioned in the heads of agreement, but do you envisage a role for either this committee or a successor committee, or for a successor to the Devolution (Further Powers) Committee, if there is one, in probing into the positions of the Governments on disputes?

John Swinney: It is entirely a matter for committees and for Parliament to decide what to look at. There is an intergovernmental process set out in the agreement to try to resolve issues. If Parliament or committees wished to exercise some scrutiny of that from their own perspectives, I can see no reasonable basis for resisting that.

10:45

Jackie Baillie (Dumbarton) (Lab): I will start with the issue of transparency that Mark McDonald raised. We have not yet seen the detailed annexes to the agreement and I suspect that a lot of the detail that we crave might well lie in there. In your letter to the Finance Committee and at the Devolution (Further Powers) Committee, you indicated that you will be looking to publish the annexes. When are they likely to be published?

John Swinney: I cannot give a definitive time on that. Also, I am not sure that the answers that Jackie Baillie is looking for will be in that detailed work. I expect that to be technical information about how the agreement is constructed. This is the agreement. There is not another document that will give you more of the agreement—this is it. The annexes will contain technical information that will underpin the agreement, but this is the agreement.

Jackie Baillie: I understand that but, in your evidence to the committees, you talked about the key documents on the fiscal framework that would support the scrutiny process. You know about the committee's attention to detail and we have been led to believe that there are underpinning documents that you will publish. It would be useful if you could review that commitment.

John Swinney: The technical documents that support the agreement will be public documents. I am simply trying to give the committee a flavour that the substance of the issues that have been agreed between the Governments is essentially represented in the document that the committee has in front of it now. The technical information will simply support what is in the agreement.

Jackie Baillie: I look forward to receiving that.

I take you to paragraph 12 on forestalling. As I did with you separately, I note that the forestalling adjustment figure for LBTT appears to be £20 million. The committee got quite excited earlier that the OBR suddenly agreed that forestalling was £30 million and perhaps expected more money to come to the Government as a consequence of that. Will you address that point?

On a related point, if no additional forestalling will be available for new powers, I am concerned about the mechanisms that we use to set budgets and the timeline that will be involved for new tax powers, for example. Convener, I wonder whether that should be captured in a legacy paper for the new finance committee. I would also welcome the cabinet secretary's comments.

John Swinney: The £20 million represents the gain that is assessed by the OBR to have been made by the UK Government in stamp duty land tax because of the time difference in the changes being announced. That figure is calculated by the OBR, and I have accepted that it is beyond dispute.

Jackie Baillie makes a fair point about the second part of paragraph 12. Parliament and Government have to be mindful of it when making decisions about tax issues because the agreement essentially prevents any further forestalling from being taken into account in intergovernmental relations. Again, this is one of the issues that we have agreed on. It creates an issue that Parliament has to take into account if we are taking any decision in future. However, it also opens up some questions for Parliament and the committee about how our financial procedures and tax decisions are made. I would welcome the committee's consideration of that. It is essentially about the interaction with the budget process in the Scottish Parliament.

In 1999, I was one of the members of this distinguished committee when it did the preparatory work on the Public Finance and Accountability (Scotland) Bill. Our tax powers were restricted to the Scottish variable rate and did not countenance provisions on borrowing, different forms of taxation and all sorts of other issues. Those very good and robust arrangements that were put in place for the budget process, which has given the Parliament a commendable and exemplary process of budget scrutiny, might not be appropriate for the issues that we are now wrestling with to do with tax decisions. Obviously, I have opinions about that from my experience, but it would be helpful if the committee considered those points in its legacy approach.

Jackie Baillie: Thank you.

I want to stick with the impact on the budget timetable. Obviously, the lead-in time for the Scottish Fiscal Commission to assume its new powers and have them effectively operational will bump up against the immediacy of the budget process. If the SFC and the OBR are both forecasting, we have already acknowledged the data limitations. They forecast at different times. The OBR forecasts are biannual. Would the processes be married together? What are the potential consequences for the timetable for next year's budget? Do you think that the SFC will be ready by September, or are you looking to implement later?

John Swinney: I think that it is unlikely that the Fiscal Commission will be ready for September. In all fairness to its members, that would be a lot to ask of them, given what I have said about the fact that what we could ask them to do would be around only LBTT, landfill tax, income tax and non-domestic rates. Even on non-domestic rates, we will not have given the Fiscal Commission legislative authority to give it access to information that the assessors hold. The Government has that, but it does not.

For 2017-18, our process will have to be appropriate for the powers and the capability that exist. I am keen to get the Fiscal Commission into a position in which it can exercise its full responsibilities as quickly as possible, but it is only fair to say to the committee that I do not think that that will be the case for 2017-18.

Jackie Baillie: So you do not see the Fiscal Commission exercising its powers in advance of 2017-18. Does that mean that some of the choices that we have in exercising those new powers will be put off until the Fiscal Commission is able to forecast?

John Swinney: I am not following the point that is—

Jackie Baillie: If we are saying that a lot of the data on which you would base your budget would be down to the Fiscal Commission's forecasting, but it is not up and running—this is simply an administrative point—and is not able to advise on those things, what does that mean? What if you chose to raise the top rate of income tax to 50p, for example, as is rumoured? We look forward to seeing that announcement in due course. Would there be any practical implication for your ability to do that in 2017-18 if the Fiscal Commission has not done anything in advance?

John Swinney: No—none at all. That would mean that the forecast would not have the Fiscal Commission's imprimatur on it. For example, my LBTT forecasts for 2017-18 will go through the same amount of scrutiny that the Fiscal Commission would apply to them and that has applied to them over the past couple of years.

Jackie Baillie: But not with the new powers. I just wanted to clarify that. Ideally, we want the Fiscal Commission to be in place as quickly as possible.

John Swinney: Yes. However, in all fairness, it would be a lot to ask members of the commission to take on the responsibility to be ready for September.

Jackie Baillie: I understand that.

For my final area of questioning, I move on to the block grant adjustment. Obviously, the mechanism is in place for five years and it is subject to review. It is clear that the outcome that you want is per capita indexed deduction. That will be achieved as a consequence of the process, and that is very helpful, but why are we using the comparable model as well? Forgive me for asking, but is that a sign that the Treasury has not quite given up on it and that we are delaying the debate on that for five years?

John Swinney: If Jackie Baillie wanted to probe Treasury intentions—

Jackie Baillie: I certainly will.

John Swinney: I gracefully say to her that I am not the man to ask about that.

Jackie Baillie: You have an opinion on most things, so I wondered whether I might entice you to share your opinion on that.

John Swinney: I think that we have come to an agreement whereby we got the outcome that I wanted on the block grant adjustment. The route by which we got it was somewhat circuitous, but we got the outcome that I wanted.

Jackie Baillie: I absolutely understand that. Will you publish both numbers? It would be interesting for us to see the relative advantage that your model may well have over the comparable model that the Treasury is supporting.

John Swinney: I can see no good reason why not.

Jackie Baillie: Excellent. It strikes me—again, I do not know, but I am making assumptions—that the real consequences for our budget arise with more divergent levels of population change between the rest of the UK and us, and the effects of that are much further down the road. I come back to the question of whether this is a case of putting things off and the numbers becoming more acute later on.

John Swinney: No. We already carry population risk within the Barnett formula, and that

is an established part of our financial arrangements.

Secondly, the agreement that we have arrived at is that the outcome of per capita indexed deduction will be delivered in the short and the medium terms. Those issues will be considered in the review in 2021-22, at which point the Scottish Government will have as much negotiating leeway and influence over the process as we have had in this process.

Jackie Baillie: I know that I have explored this before, but let me do so again. Let us assume that there is disagreement at the end of the review, despite all the reassurances that you are given—I know that you are such a consensual politician that that is unthinkable for you. What would be our fallback position? Would it be the status quo as is set out in the dispute resolution mechanism? If so, would it be the status quo that will have existed prior to the agreement or post-agreement? I want to know what we are left with.

John Swinney: There can be only one status quo, which is the one that is there at the time. That was not meant to be a rock band comment—"There is only one Status Quo."

Jackie Baillie: That is post-agreement.

John Swinney: Post this agreement. It is what will be there in 2022.

Jackie Baillie: That is fine, as long as that is your understanding. I will undoubtedly explore the matter with the Treasury as well so that we have a shared understanding on what happens in the event of a disagreement.

John Swinney: I think that the key point about a shared understanding of what happens in 2022 is that there has to be an agreement between the two Governments. That is the shared understanding.

Jackie Baillie: That is the desirable outcome, but there might be circumstances in which a shared agreement is not reached. I seek to understand the totality of what is on the table—

John Swinney: Yes, but there is a requirement to come to an agreement. That is the requirement. We have gone through that process and got to this point of agreement already.

Jackie Baillie: Will the details of that review and of the overall review of the fiscal framework be published in due course? I do not think that there is a great deal of information about who is in the review and so forth.

John Swinney: The review that is discussed at paragraphs 20 to 23 will be the subject of discussion and agreement between the two Governments, and of course that will have to be set out to Parliament to enable it to consider those issues. Further detail about the review is given at paragraphs 111 to 113 to ensure that all those matters and other issues in relation to the Smith commission recommendations are considered appropriately.

Jackie Baillie: The Finance Committee had a recommendation for some kind of independent arbiter. I understand that there is a review of the protocol on the resolution and avoidance of disputes. Is that something that you are likely to recommend as part of that process?

John Swinney: What would I be likely to recommend?

Jackie Baillie: The Finance Committee's recommendation—

John Swinney: For an independent arbiter?

Jackie Baillie: —to you, which is for an independent arbiter that might be useful in a dispute resolution process.

John Swinney: I would be quite happy with the concept of independent arbitration, and I argued for it in the discussions with the UK Government, but I was unable to secure agreement on that point.

11:00

Jean Urquhart (Highlands and Islands) (Ind): The administration and implementation costs are covered on page 5 of the agreement. Paragraph 31 talks about a £200 million payment. I think that the amount was initially estimated to be between £400 million and £600 million. The agreement is for £200 million. The last sentence of paragraph 31 states:

"The profile of this transfer is to be agreed by the JEC",

What does that mean?

John Swinney: It just means that the joint exchequer committee will agree whether, for example, there will be a one-off payment of £200 million in 2016 or four payments of £50 million over four years.

Jean Urquhart: The agreement quite often mentions things that need to be agreed by the JEC. What does the JEC look like and how open will its discussions be during the negotiations?

John Swinney: The JEC is essentially the Chief Secretary to the Treasury and me; we are the JEC, supported by our respective officials. The JEC is obliged to work in a fashion that secures agreement. The terms of reference of the JEC will be in the technical annex that I mentioned to Jackie Baillie. The working approach of the JEC is to try to reach agreement on issues that are referred to it or which it has responsibility to address.

Jean Urquhart: Thank you.

The Barnett formula is still a mystery to most people. Throughout our evidence taking, there has been reference to whether people understand the Barnett formula. Do you understand the Barnett formula?

John Swinney: I like to believe so—although whether I would choose the Barnett formula as my specialist subject on "Mastermind" is a different question. However, I like to think that I understand it.

Would the committee like an explanation? Decisions are taken by the UK Government about public expenditure in England. The Barnett formula is then applied to the changes that are made and the Scottish budget is varied to take account of those changes. The core calculation is driven by a set of comparability factors that are published in a statement of funding policy. At one extreme, health has a comparability factor of 100 so if the health budget increases by £100 million, Scotland will get our population share of that £100 million increase. If the defence budget were to increase by £100 million, because the comparability factor is zero we would get no direct financial benefit to the Scottish block of expenditure from the increase in the defence budget.

Any fiscal event—any change to departmental budgets in England—is tabulated by the Office for Budget Responsibility. The changes are visible to us. The comparability factors are applied and everything appears in a spreadsheet that is available to me and my officials. I scrutinise the spreadsheet to check that the Barnett formula has been properly applied, to our satisfaction.

Fundamentally, the Barnett formula is a population share model that is applied to changes in public expenditure in England.

Jean Urquhart: Page 13 of the agreement refers to devolution of Crown Estate powers. I know that I should get this, but I am a bit confused. The agreement says that

"the ... Government's block grant will be equal to the net revenues generated by the Crown Estate assets in Scotland",

which I understand. That money will then be transferred, but I am not quite sure whether the net costs of running the Crown Estate in Scotland will still be met by the UK Government.

John Swinney: No they will not, because the Crown Estate will be devolved. The net costs will be paid out of Scottish revenue.

Jean Urquhart: But those costs are also going to be deducted from the amount that will be transferred.

John Swinney: The revenues of the Crown Estate and the Crown Estate itself are being devolved to Scotland. We have to run the Crown Estate out of those revenues.

Jean Urquhart: Right. So why, in that case, would there be any transfer of income? If the Crown Estate in Scotland is to be an independent entity, why would it affect the Barnett formula or any other calculation or Westminster tax? Would it not operate like an independent department in Scotland?

John Swinney: I am not following what Jean Urquhart is troubled by. The Crown Estate will be devolved, and the revenues that are generated in Scotland from its activity will become available to what I will call the Scottish Crown Estate for funding its activities.

Jean Urquhart: Yes, but we are still talking about its affecting the block grant. The agreement says:

"The Governments have agreed that a baseline deduction to the Scottish Government's block grant will be equal to the net revenues generated by the Crown Estate".

Does that mean that all the revenues that are generated by the Crown Estate in Scotland will still go to Westminster and then be transferred back?

John Swinney: No. We will keep the revenues.

Jean Urquhart: There will be no effect on the block grant.

John Swinney: There will be an effect, because revenues from the Crown Estate across the United Kingdom currently flow into the Treasury—into what I might call "the big pot"—from which we get our block grant. If we get to retain Crown Estate revenues in Scotland, our block grant will have to be reduced to make the transaction neutral.

Jean Urquhart: Net of the costs of running it.

John Swinney: No. The costs of running it will come from the revenues that are generated in Scotland. On a neutral basis, the block grant will be reduced to take account of the fact that Scotland will retain the revenues that will be generated from Crown Estate activities in Scotland—apart from, I might add, Fort Kinnaird shopping centre. The Crown Estate revenues will flow into the Scottish Government; our block grant will come down, and that amount will be replaced by those revenues. We will have to use those revenues to pay for running the Crown Estate in Scotland. That is application of the no-detriment principle.

Jean Urquhart: That will give us full control of the Crown Estate, too, I presume.

John Swinney: We are now straying out of the fiscal framework into the Scotland Bill, and the

criticism that I and the Government have made of the mechanism that has been selected for devolution of the Crown Estate. I do not think that the mechanism is quite as simple as Jean Urquhart has suggested, with regard to our having full control. We are talking about a scheme of devolution that is terribly cumbersome and terribly restrictive and which could have been much simpler. We suggested alternative approaches to the United Kingdom Government, but it was intent on taking that approach. It is one of only a handful of issues about the content of the Scotland Bill on which we still disagree with the United Kingdom Government. We consider that the provisions are unnecessarily restrictive.

Jean Urquhart: Should the Scottish Government introduce a new tax—a land tax, for example—would that affect the block grant? Is there any challenge to Scotland growing taxes?

John Swinney: If we want to introduce a new tax, we will have to secure the consent of the United Kingdom Government. Since the Scotland Act 2012, the provision has existed whereby we have the ability to generate a tax if we wish to do so, but we have to seek the prior consent of the United Kingdom Government because it has reserved responsibility for taxation. That is the case unless that responsibility is devolved to us through provisions such as the Scotland Act 2012 or the Scotland Bill, when it is enacted.

The Convener: That concludes questions from the committee. I have one issue for clarification. APD has been raised a couple of times. I understand that, on 19 January last year, the chancellor said that he did not consider devolution of APD to be at all a breach of the no-detriment principle.

John Swinney: In that discussion, the chancellor made a very helpful contribution to the Treasury Committee. He put issues such as the change in APD into their proper context, which is that if Governments wish to do things differently and take different steps, they should be free to do so.

The Convener: Thank you very much for that.

Before I wind up, I want to thank Professor Gavin McEwen for all the tremendous invaluable advice that he has given to the committee. This is the last committee meeting that he will attend. A lot of the work that we have done has been highly complex and would have been, if not for Professor McEwen, a much more difficult task for the committee. I want to record our thanks for all the work that he has done for the Finance Committee.

That being the end of our public deliberations, I close the public part of the meeting.

11:12

Meeting continued in private until 11:24.

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