OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 17 January 2018

Session 5

The Scottish Parliament
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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
2nd Meeting 2018, Session 5

CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

DEPUTY CONVENER

*Monica Lennon (Central Scotland) (Lab)

COMMITTEE MEMBERS

*Kenneth Gibson (Cunninghame North) (SNP)
Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*Graham Simpson (Central Scotland) (Con)
*Alexander Stewart (Mid Scotland and Fife) (Con)
*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Derek Mackay (Cabinet Secretary for Finance and the Constitution)
Douglas McLaren (Scottish Government)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 17 January 2018

[The Convener opened the meeting at 10:02]

Decision on Taking Business in Private

The Convener (Bob Doris): Good morning, everyone, and welcome to the second meeting in 2018 of the Local Government and Communities Committee. I remind everyone present to turn off mobile phones. As meeting papers are provided in digital format, members may use tablets during the meeting.

We have one apology: Jenny Gilruth unfortunately cannot be with us. We wish her a speedy recovery.

Agenda item 1 is a decision on taking business in private. Do members agree to consider the committee's draft report on homelessness in private today and at future meetings?

Members *indicated agreement.*

Barclay Review of Non-domestic Rates

10:02

The Convener: Agenda item 2 concerns the Barclay review of non-domestic rates. The committee will take evidence on the review from Derek Mackay, the Cabinet Secretary for Finance and the Constitution; and from Douglas McLaren, the head of local taxation at the Scottish Government.

Thank you for joining us, cabinet secretary. I was going to filibuster slightly but you have arrived. I know that you have an opening statement prepared. If you are ready, we will hear it now.

The Cabinet Secretary for Finance and the Constitution (Derek Mackay): Thank you, convener. I am pleased to be back before your committee so soon after giving evidence on the draft budget on 20 December. I welcome this scrutiny of the Government's response to the Barclay review and, I suspect, non-domestic rates more widely.

I have found the Barclay review and our response to be a positive process that has involved wide-ranging and on-going engagement across the private, public and third sectors. My relationships with stakeholders and the dialogues that I have had are invaluable for informed decision making. Long may that continue. I reiterate my thanks to Ken Barclay and the other group members for their efforts and engagement.

As the committee is well aware, I set out an initial response to the review in a ministerial statement on 12 September. That was just three weeks after the Barclay report was published and was, as promised, a swift response. Responding substantively where possible, I accepted the vast majority of Barclay's recommendations at that time. I duly took time to engage further on certain aspects, and our full response to the 30 recommendations was set out in an implementation plan, which was published alongside the draft budget on 14 December.

Some of the Barclay measures form part of our 2018-19 budget proposals. Statutory instruments will be laid shortly where appropriate. Other measures are longer term, and some require primary legislation.

There is, of course, further work to do, as outlined in the implementation plan. We have convened an advisory group of stakeholders to help to inform and develop the next steps. Its first meeting is later this month.

I reiterate that my key aim in all of that work is fair and sustainable taxation, in line with Scotland being the best place in the United Kingdom in which to do business. Clearly, there is a range of issues and detail across the respective Barclay recommendations, and I look forward to members' questions.

The Convener: Thank you very much, cabinet secretary. That was helpful for setting the scene.

I will start with a general question. It was clearly part of the Barclay review's remit to ensure that, whatever the recommendations were, the sum of the parts should be revenue neutral if they were all to be implemented. In hindsight, did that stifle how radical the review could be? Was it radical enough? Does the Government have other proposals lurking around that it might be keen to progress? I am asking for some general comments on whether the context in which the review was held limited any radical proposals.

Derek Mackay: That is a fair question. I did not personally set the remit—there was a change in ministerial portfolios after it was set—but it was a fair remit to set. The review was intended to be budget neutral, as you described.

However, despite having what some people would argue was a tight remit, the review group was not impeded in considering alternative forms of taxation or going beyond the revenue-neutral position. It had to produce a report that met the requirement in its remit but, from reading the Barclay report, you can see that the group examined and asked about other matters and considered submissions from people who went further than we would have expected, given the remit.

Ultimately, the report's final recommendations were fiscally neutral but, in the narrative, it said that, if we could, we should do certain other things, which is exactly what I propose to do in the fullness of time. For example, switching the poundage uplift from the retail prices index to the consumer prices index was not a hard recommendation of the Barclay report, but it was desirable. In fact, it was business organisations' number 1 ask of the budget. It was referred to in the Barclay report but it could not become a hard recommendation because the report tried to be revenue neutral.

Despite a perception of rigidity, the remit did not impede the review group's ability to debate comprehensively other matters and make recommendations to me on which I was able to go further.

The Convener: I assume that the Government's consideration of each recommendation is not impeded. Our briefing from the Scottish Parliament information centre shows that the measures that you have accepted and now seek to implement are not revenue neutral but will cost the Government £93 million. Is the Government operating under constraints in relation to which recommendations it will or will not consider?

Derek Mackay: I would want to double check that figure. It is in the range of £90-odd million. That might be right. If the relief for independent schools is delivered, the figure is brought back down. However, it is about £93 million or £96 million.

That makes my point. I answered no to the question whether the remit impeded the review group, but neither did it impede the Government; it informed the Government. That is the beauty of the dynamic that has been created. It has strengthened stakeholder engagement, and it has given assessors, local government and the Scottish Government a focus, post revaluation, on the actions that we can take and how we can improve matters.

A number of consequential improvements have come from the report. The recommendations that I have accepted on business support measures will certainly come at a cost, as will the new nursery relief.

The other side of the coin, of course, was raising revenue, which was to be achieved through a number of measures. The most high-profile one was lifting the relief from arm's-length external organisations, but there was no appetite in Parliament to do that. When some folk ask why there is an imbalance, it is because Parliament is very enthusiastic about the business development measures, supporting nurseries and so on, but it was not so keen on the recommendations on raising extra revenue.

There is no loss to local government as a consequence, because those decisions are taken within the full approach to the budget, as you have described, convener. We both recognise that I wanted to accept as many recommendations as it was sensible to accept, but there are wider budget considerations.

The question was asked previously in Parliament whether I would have to make up the sums for the extra support and the Barclay recommendations on non-domestic rates. The answer is no; the Government can make them up through wider budget decisions.

The Convener: We will be looking at those individual proposals and recommendations in a bit more detail as members ask their questions.

The overall remit of the Barclay review was

"to enhance and reform the ... business rates ... system in Scotland to better support business growth and long term investment and reflect changing marketplaces".

Given the limitations of the annual business survey, how do you evaluate the impact of NDR policy measures on business growth and investment? In other words, how do we know that they are working? As so many external factors impact the economy, how do you know that the levers that you have are having the desired effects?

Derek Mackay: That is a good question. It would be hard to strip out what decisions solely on non-domestic rates have meant for any business. Businesses might be able to tell you what they mean for investment, balance sheet or profitability. Indeed, in some businesses, the reliefs have meant the difference between surviving and not surviving. To quantify that in a qualitative way is quite difficult. It is difficult to strip out rates from parts of Government intervention that make a business more or less viable.

The strength of the economy overall is judged by looking at gross domestic product and employment, and the business survey is helpful, but it is very hard to extrapolate from that what difference overall rates policy means.

I am sure that we will come on to the small business bonus. The best survey evidence on that comes from the Federation of Small Businesses, which consulted its members on what the small business bonus has meant for those businesses.

I suppose that we will have to use a range of measures to judge the overall health of the economy—GDP, business start-up rates, success and sustainability rates, and direct engagement with businesses and their representative organisations to get a sense of what difference rates relief, support, poundage and so on are making.

Sometimes with non-domestic rates we focus just on businesses. I make the point that a whole range of other parts of society benefit—the third sector, charities, religious organisations and education. Although the committee is very focused, as it should be, on business, a large part of reliefs is for non-business organisations.

The Convener: That is an important point, and I want to go into it in a second. You say that there are a range of measures that you might consider using to see whether current NDR measures are causing that economic boost to businesses in the wider economy, but you did not pin down precisely what you would look at. The committee would welcome more information so that we can get a better idea of that.

I go back to the part of the group's remit that was about better supporting business growth. The committee has just finished an inquiry into city region deals. There was a conflict—a creative tension, if you like—between the UK Government and the Scottish Government over whether they should maximise economic growth or use the concept of inclusive economic growth.

Where does NDR sit as part of that? Are you looking to get the biggest bang for your buck out of economic growth by the measures that you are taking in relation to NDR, or does the idea of inclusive economic growth transfer between portfolios? Obviously, Keith Brown is very keen to see inclusive growth in relation to investment in city deals.

Derek Mackay: I am very keen to see that, too. We want all businesses to engage in inclusive growth. They might do that by signing up to the business pledge, which includes material considerations such as whether they pay the living wage or support investment in young people, apprenticeships and so on. My next engagement after this committee meeting is to visit the 425th business that has signed up to that pledge.

10:15

We emphasise responsible policies with the business community—we are engaging in that. There is an expectation of a focus on inclusive growth. A few weeks before the draft budget was presented, we convened a conference in Glasgow, along with international experts, to which we invited key business organisations and at which we made the point about inclusive growth. I agree that non-domestic rates should be part of that. As for how we provide support for the business community, there is a quid pro quo, in that business should deliver more, overall, around the living wage, socially responsible policies and investment in training, skills and apprenticeships.

You talked about conflict—or creative tension, as you characterised it—

The Convener: I was being unusually diplomatic.

Derek Mackay: As far as NDR measures are concerned, our overall approach is that we want to support all business in Scotland. However, it is clear that we have been targeting small and medium-sized enterprises more on the rates that we propose to levy. That is because we have kept the approach as local as possible. The biggest beneficiaries of the small business bonus scheme are local, independent properties that are not part of a chain, so there is a sense of localism in our NDR policy.

On creative tension, I have to be mindful that many businesses are competing across the UK, and the regime in Scotland needs to be attractive both in terms of how people perceive it and in reality, so that Scotland is seen as an attractive place in which to live, work and invest. Having resources to spend on tackling inequality will come from having a healthy economy. A successful, healthy economy and progressive taxation go hand in hand.

The Convener: Thank you, cabinet secretary.

I should put on the record a tribute to our previous deputy convener, Elaine Smith. In taking evidence from the Barclay group, she was very keen to point out to Mr Barclay and others that the issue was about not just business rates but non-domestic rates, and that it involved charities and third sector organisations about which she was passionate. I am glad to hear you echo some of those thoughts to the committee today.

You mentioned the SBBS. I will allow other committee members to tease out more information on that in a second. However, I want to ask about the review of how effective it has been, which is about to commence. You have said previously how challenging it is to work out what the direct impact of NDR more generally has been. Around 100,000 businesses benefit from the small business bonus, and other businesses benefit from various other reliefs, but no conditionality has been put on that—for example, businesses do not have to pay the living wage or to demonstrate growth if they are in receipt of such reliefs. I understand that there are issues around that, but could you give us a little more information on how you intend to gauge the success of the bonus?

I will be churlish about it. I could say, anecdotally, that on my local high street I see businesses that I suspect are still going because of the small business bonus, which I support. However, my saying that by way of anecdote is very different from a measured, Scotland-wide approach to reviewing its effectiveness and perhaps improving it.

Derek Mackay: Since we are being diplomatic, convener, I will gently challenge your assertion that reliefs are not targeted. They are, and there is an essence of conditionality. If we look at the table of reliefs that are available—which I can share with the committee if members do not have it—we can see that, in order to get some of them, applicants must fit into the appropriate category. For example, that condition applies to empty property relief and to relief for disabled people, which would be worth £63 million. I could go through the list, but, by definition, applicants must be eligible in order to get many such reliefs. I want to make that point, because any suggestion that the approach is entirely generic is not correct. There are very specific reliefs for very specific entitlements.

That said, the small business bonus is the most substantial relief, and I take that point. The reliefs may amount to about £235 million for 2018-19. Of course, those figures are just forecasts, but we hope that they are reliable ones.

Just like you, convener, I could recount a number of anecdotal cases regarding the small business bonus. A cafe in Paisley that I visited went from not being eligible for the SBBS to being eligible for it. When I asked the owner how she would spend that saving, she said that she would train a new member of staff. That is what the saving meant for her, and we would all welcome that. We can all provide such examples.

We have anecdotal information that the SBBS has been a lifeline in a period of economic challenge, particularly in our town centres. There is no doubt about that. The Federation of Small Businesses surveyed its members, which were asked about what would happen if the support through the SBBS were abolished. The FSB conveyed back the information from proprietors that around a fifth of small firms—18.9 per cent—reported that they would close the business. Similar proportions argued that they would have to cancel investments or amend their plans for growth: 19.9 per cent argued that they would have to cancel investments and 18.3 per cent argued that they would have to amend their plans for growth. That is what the representative organisation for small and medium-sized enterprises in Scotland has told us about the savings.

Members might say, “The FSB would say that, wouldn’t it?” I understand that, but that is what the survey said. That is what businesses said would be a consequence of abolishing the SBBS.

That takes me to the convener’s key point about the evaluation. Barclay asked us to evaluate the scheme’s effectiveness. I want to be very clear that I want the evaluation to be about how we can maximise the social and economic benefits of the relief. On the exact remit of that work, which we want to undertake this year, the Barclay recommendation was that the evaluation should take into account any changes for the next revaluation.

I have not yet determined what that work should look like, or what its remit or focus should be, beyond what we have already stated. Therefore, I invite the committee to say what it would like me to evaluate and what it thinks that could lead to. We may have different perspectives in assessing the social and economic benefits of the scheme. One example has already been touched on. Should a recipient pay the living wage? I have considered that in the past. Getting to that point would probably require a massive new administrative burden, and the question might be: is that worth it? It might well be. That is all the more reason to evaluate the scheme and then assess what the options might look like.

I give the committee an open invitation to make its deliberations and say what it would like me to do in that evaluation, rather than my simply proposing what the evaluation will do and the committee saying that that is not what it wants it to do. My mind is not set in concrete on what the evaluation should look like any further than what I have announced, which is that it should be about maximising the economic and social benefits in tandem with a commitment that 100,000 properties will be taken out of rates altogether as a result of the small business bonus. I want to get the evaluation that Barclay asked for right. I have taken a collaborative approach to considering non-domestic rates decisions, and I want that to continue.

We also have a new forum to look at implementation issues around amendment, which has representations from the sector. Rather than there being a fait accompli, I want the process to feel collaborative.

The Convener: Thank you, cabinet secretary. I will restrict myself from following up on that, as I know that Monica Lennon wants to talk about similar aspects.

Monica Lennon (Central Scotland) (Lab): That is a good opportunity, cabinet secretary, and I am sure that we will take it on board, but I am a bit concerned. When you develop policy, should a plan not be in place for how you will monitor and evaluate it? It seems a bit strange that we will set out retrospectively how we will measure whether a policy has been fit for purpose. However, the opportunity is welcome, and I am sure that we will feed into that process.

You mentioned non-domestic rates, which affect not just businesses. I know that you have been engaging with the Scottish Sports Association. You will be well aware of its concerns about the 13,000 community sports clubs that it represents. Can you give us an update on how they could be impacted by the relief recommendation?

Derek Mackay: There are two key points. The Scottish Government was elected on a manifesto proposition on the small business bonus scheme, which we believe has been working.

I said that I would try to accept as many of the Barclay recommendations as I could, so, as there was a request for more monitoring and evaluation, we are responding positively to that while holding true to our manifesto commitment on the small business bonus. The committee should welcome the opportunity to feed into what that evaluation should look like and how we go forward. I think that collaboration is the right approach, as well as consultation with the committee.

I would not say that we do not know whether the policy is working. We believe in it. I believe that the small business bonus been a lifeline for many small businesses across the country, particularly those in town centres. When I was a constituency member, I mapped out what the small business bonus and other reliefs meant to my home town of Renfrew, and it was undoubtedly a factor in there being very few void—closed—properties. Different communities will face different challenges, but I absolutely believe that it has been working.

There has been a request for evaluation and assessment of the scheme, and we are responding positively to that. However, I have no doubt that it has had a positive effect and that not having it would have caused great difficulties during what we are all aware have been a difficult few years for the economy. Going forward, we will have the opportunity to refine the scheme in a fashion that members can support.

On sports specifically, I want to make the intention clear. We all now know that non-domestic rates are incredibly complex. It is not good enough just to say that we need a radical overhaul. Every time we look at the issue, we all come back to the same conclusion that there is no good radical overhaul that resolves all the issues that might have been raised. We are now taking a forensic look at refinement.

What was Barclay driving at with the recommendations for sports clubs, particularly golf clubs? There was no intention to lift relief from every sports club in the country. It was about a sense of fairness. Some large clubs out there have policies that might not fit with an inclusive agenda, and some are cash rich and profit making, and there was a question mark over how organisations that feel more like commercial organisations than sporting organisations should be interpreted for the application of non-domestic rates. It is therefore reasonable to look at that recommendation and refine it.

I do not yet have the statutory instruments, but we have the policy intention stemming from Barclay. Golf is a good example. It is not that every local golf association, golf course or members' club in the country should now be subject to rates. I think that Barclay had in mind clubs that are asset rich, that have particular policies and that behave more like commercial enterprises. I will engage and consult to get that regulation absolutely right, so that we do not unintentionally lift relief from bona fide community organisations that provide a service and do not fit within the spirit of those organisations that Ken Barclay and his panel were trying fairly to identify as different.

I hope that my appearance at the committee will reassure the sporting community that the review was more about the organisations that I have referenced than the many organisations that are delivering a grass-roots community facility. The committee will see that regulation as I propose it. It is secondary legislation and the committee will see the statutory instrument before Parliament votes on it. Before we get to that, I will consult on it. It was a key recommendation in Barclay that I should consult on any major change of policy. [*Interruption*.] I have just been advised that it will actually be primary legislation, so it will be even longer than I had anticipated. However, it will still require engagement and consultation to refine the policy and get it right.

The recommendation in the Barclay report might have caused a bit of consternation in the sporting community, especially alongside the recommendation on ALEOs, which would have had a more profound impact on it. Clearly, the Government has not taken forward the recommendation on ALEOs in the fashion that Barclay requested. That has given certainty to arm's-length sporting and cultural organisations.

We will very carefully consider refinement of the outstanding recommendations. I hope that I have been able to give some clarity on which organisations will be in scope and which will not. It would not be right for me to say whether this golf course is in or out, or whether that club is in or out. I could do that, but it would not be fair. It would also predetermine what Parliament might propose or amend.

10:30

Monica Lennon: I am pleased that you are alive to the concerns that have been expressed by the Scottish Sports Association. You mentioned on-going engagement and the advisory group. Have you invited the association to join that group?

Derek Mackay: No, but I will tell you what—I will do so. There we go. I see no reason why it should not be on the group, because I have clearly been responding to it. If you think that membership of the group and attendance at its meetings will help the association, we can invite it to join.

Monica Lennon: It will be very pleased to get that invitation. After all, there are big concerns about some of the unintended consequences here. The convener has touched on the Government's aspiration of inclusive growth, and we will all agree on the need for strong and resilient communities. Anyone who was listening in last night will have heard quite a lively members' business debate on the £70,000 that has been stripped from Scottish Sports Association funding. We are hoping that you might have a whip-round in St Andrew's house to deal with that, but if you go back and look at the debate or speak to Aileen Campbell, you will see and hear about some of the genuine concerns that the association has. If you were to reach out, it would reassure communities right across Scotland.

Derek Mackay: I have not had the opportunity to see the *Official Report* of that debate, but we are continuing to engage with the association. During and after the Barclay review, I had meetings with a number of associations, including the Scottish Sports Association—indeed, I did the same with independent schools and others—to get their evidence on the consequences of my enacting Barclay, and that was one of the key factors with regard to the Government's response on ALEOs.

Given that wider budget issues have been touched on, it is only fair that I point out that another substantial risk to the income of sporting organisations and sportscotland, as well as the cultural sector, has been the downturn in lottery income, and I have been trying to be as supportive as possible to culture and sport in recognition of the fact that they are feeling the pinch from that downturn. There has been no support from the UK Government, which ultimately determines the conditions with regard to the lottery, but I have tried to helpful in the overall budget that I have set out, by not proceeding with the recommendation on ALEOs in the Barclay review and by ensuring that there is specific and on-going consultation to get this right.

I cannot be any clearer about policy intention without showing you the composition of the legislation. However, we have not yet got to that point, because I want to engage on the question of how we design the right statutory content in that respect. We are not rushing our approach to this; we are going to take our time to get it right in the spirit of consultation, as per the Barclay review report. This should not be a shock to the system for the sporting community.

Alexander Stewart (Mid Scotland and Fife) (Con): You have touched on the issue of nursery relief. How will the Scottish Government evaluate that relief and what specific indicators will it use to ensure that it is producing outcomes and benefits?

Derek Mackay: The view of the Barclay review was that such a measure would help to deliver our childcare policy. How will I judge its success and whether it is helping to deliver that policy? I suppose that it will give a wee bit more financial support. However, I must make it clear that, because it is a relief, state aid limits will apply. Indeed, I have been advised that, even if I had made it an exemption rather than a relief, the same limits would have applied. The testament to its success will be how well our early learning and childcare policy is going.

I should put the matter in context by pointing out that the financial cost of non-domestic rates to the childcare sector is less than 2 per cent—that is the scale of the economic and fiscal shift, as far as the sector is concerned. Nevertheless, Barclay argued that such an intervention would be helpful, and the Government has supported that recommendation.

Alexander Stewart: How will we ensure that the savings that are made as a result of the relief are transferred to nursery costs for parents and carers? That will have to happen between now and April 2018, instead of there being, as was talked about in the review, an evaluation after three years.

Derek Mackay: We can still do our best to carry out an evaluation after three years, but it is a bit like the overall approach to non-domestic rates. The fact that the cost of non-domestic rates to nursery education is less than 2 per cent contextualises the financial difference that this measure will make. The overall policy is a commitment to delivering 1,140 hours of provision by the end of the current parliamentary session, and success will be down to the delivery of that policy.

I cannot guarantee that a private nursery provider who is eligible for the relief will pass it on through costs. I suppose that that is the nature of relief. Will it help the sector? Yes. Was the sector's view that it wanted the relief? Absolutely. If we look at the overall impact of revaluation, we see that those who were impacted most by the most recent revaluation were the hospitality sector, utilities and nurseries, with the latter being fairly high up among those whose values were increased by independent assessors I think that that is what led to the recommendation to give them a relief.

Andy Wightman (Lothian) (Green): Cabinet secretary, you invited comments on the remit of the small business bonus scheme. I suggest that you look at whether it should exist at all. What is a generic relief? The scheme is generic, as the only qualification for it is being under a certain valuation threshold. Is that appropriate, given some of the people who are getting the benefit? You should look at the capitalisation effect as well. I am happy to write to you with further ideas about what you should include.

I also have a question about annex C in the Barclay report, which contains quite a lot of suggestions that are not formal recommendations. In your opening remarks, you said that the Barclay review had gone further than its remit but that it stuck to its remit when it came to recommendations. Have you any intention of responding to the proposals in annex C?

Derek Mackay: No. The 30 recommendations in the Barclay report are the 30 recommendations, and those are what I have responded to in the implementation plan. I will not respond formally to anything other than the recommendations that have been presented to me. It would seem a bit strange if I delivered a response to other ideas as opposed to what the Barclay report actually recommended. That said, digital issues, for example, will need on-going work, because, as far as I can see, no one has yet been able to crack the problem of how we adequately tax digital transactions. However, I will not respond to anything beyond the Barclay recommendations, because the implementation plan is about how we implement what has been recommended.

Can those other matters in annex C still be debated, though? Yes, whether they involve digital issues, valuation methodology, which will be a matter for assessors—I am still engaging with assessors on their plan—or evaluation of the small business bonus scheme. There can still be live debate on any of those matters, but my formal response in the implementation plan was to the Barclay report's recommendations and not to matters beyond that.

Andy Wightman: Thank you. I turn to recommendation 28. You do not accept the recommendation that all property should be added to the valuation roll, with agricultural land being the biggest current category that is exempt from valuation. Your argument for not accepting that recommendation refers to "administrative burden", not

"implementing this when there is no intention to levy non-domestic rates"

and "State aid implications". We now know that over 10,000 properties that are eligible under the shootings and sporting category have been added to the roll for 2018-19. There are only 14,000 or 15,000 agricultural properties, and virtually all of them are on the roll anyway at the moment. In October 2017, you provided information that showed that, of the 10,246 properties that had been added to the roll, 10,174—in other words, all of them bar 72—are under the £15,000 threshold and are, therefore, eligible for the small business bonus scheme. You have, therefore, added over 10,000 properties that are not going to pay any NDR, but your argument is that we should not add all properties to the valuation roll because

"there is no intention to levy non-domestic rates".

That seems to be a contradiction.

Derek Mackay: No. It is quite clear. I will ask Douglas McLaren to cover the specific point on forestry, shootings and so on.

In the Barclay report, the recommendation was to put all agricultural land on the valuation roll but with no intention to tax it. Frankly, any amount that was spent on that would be a waste of resource, because the Government has absolutely no intention of taxing generically agricultural land or removing relief. I cannot be clearer on that. When there is no intention to do that, it would be unnecessary to ask assessors to put effort into quantifying that which we do not propose to tax as opposed to putting energy into the recommendations themselves from elsewhere in the Barclay report and beyond.

It is not as simple as saying that such properties are all going on the roll anyway, because of the decisions on forestry, hunting and shooting. It is not the case that all of them will automatically or indirectly end up on the roll. It was also the assessors' view that there would be an administrative cost without any real effect. It would be an interesting exercise, but it would be a distraction for assessors when we are asking them to refine all the matters that have been deemed priorities. Fundamentally, there is a point of principle. It would create an unnecessary administrative burden and, potentially, dispute around the assessment, because there would be a fear of a move to an additional levy or a removal of the exemption for agricultural land.

Douglas McLaren has more information about the number of properties that enter the roll in the category of forestry and hunting and are then eligible for relief.

Douglas McLaren (Scottish Government): The eligibility criterion for the small business bonus—the £15,000 rateable value—relates to a ratepayer's cumulative property. A farm shop or bed and breakfast would be considered together with its rateable shootings. If the rateable shootings were of less than £15,000 in rateable value, they might not be cumulatively eligible for 100 per cent relief. Hence, the Scottish Fiscal Commission estimated about £6 million or so of net income from shootings and deer forests. Since 100,000 properties are taken out of rates by the small business bonus, there are considerably more properties on the roll with a rateable value of up to £15,000, and they do not all qualify for 100 per cent relief.

Andy Wightman: I understand that.

Your other argument was around state aid. You have said that the advice in relation to nurseries is that state aid rules apply whether something is exempted, as agricultural land currently is, or goes on the roll and gets a relief. I do not understand the argument that bringing agriculture land in would engage state aid rules when, at the moment, it is exempt.

Derek Mackay: State aid interpretation always brings great joy to ministers in being told what we can and cannot do. Two lawyers will give different perspectives. Some have said that the Scottish Government lawyers err on the conservative side. Douglas McLaren is not a Government solicitor but is familiar with the legal advice and why there is a difference.

Douglas McLaren: That is largely because agricultural properties have been excluded from the roll since before the European Union or accession to the European Economic Community in 1973. Excluding agricultural properties from rates is materially selective, and, were we to end the exclusion from the roll and at a future point try to apply a rates relief, that might come within state aid consideration. Because the exclusion is pre-accession and has been there for decades—

Andy Wightman: I do not want to pursue the legal technicalities about pre-accession rules. The point is that, in annex C, Barclay urges the Government to revisit whether all properties should pay something as a matter of democratic principle, because all properties benefit to an extent from the provision of local government services. That is why I am asking whether the Government will respond to annex C. Even if it is a modest contribution of £100 per property, as a matter of principle that should be paid by all ratepayers.

If that proposal were implemented and you were to bring agricultural land in, you would increase the tax burden and, as an increase in taxation, I suggest that that would not engage the state aid rules. I do not want to get into a debate about state aid rules, but I would be interested in your view on the principle of whether all non-domestic properties should pay something, even if it is a token amount.

Derek Mackay: I am gobsmacked that Andy Wightman of all people does not want to look at the legal technicalities of a particular issue.

Andy Wightman: We do not have time.

10:45

Derek Mackay: We do not have time. I thought that it might be as simple as that. Mr Wightman is always forensic in such matters.

There are two key points of principle. In relation to agricultural land, I do not see the point of putting in administrative effort when there is no intention to tax or to lift any exemption or relief. That feels unnecessary and I do not see the purpose of doing it. Barclay recommended it, but the Government is entitled to not accept every recommendation. We have not accepted the recommendation on ALEOs, and we have refined some of the other recommendations, which we might come to later.

Andy Wightman: My question—

The Convener: Mr Wightman, let the cabinet secretary answer the question.

Derek Mackay: There were a few questions there. One was about why we are not simply doing what Barclay asked, and I have tried to give a reason for that. As for the direct question of whether I believe that, as a point of principle, every person on the roll should pay a contribution, I do not. I referred earlier to some of the existing reliefs. There are reliefs for religious buildings and for buildings related to disabled people and charities, and there are a range of people who do not pay a penny. That is the nature of the reliefs.

Applying the principle that everyone should pay something would mean that all those who currently enjoy those reliefs would pay something. We must make a distinction, and I believe that the policy can be more progressive in how it determines reliefs, such as at what point the threshold is reached for maximum support, less support or no support.

Andy Wightman: On the principle that everyone should pay something, a lot of the reliefs are not 100 per cent reliefs. Even reliefs for charities are not necessarily 100 per cent reliefs. The principle in Barclay is that everybody should pay something. The report says, for example, that

“a minimum charge of £250 ... would affect around 110,000-120,000 properties that currently do not pay rates.”

That would bring in £30 million, and that is nothing to do with agriculture; it is from properties on the roll. That is the question. We are talking not about 100 per cent reliefs but about the principle that everyone should pay something, albeit a modest sum, to acknowledge the fact that there is a link between the services that non-domestic properties receive from local government and the cost of providing them.

The Convener: Mr Wightman, I do not want to curtail your exchange, but I think that you might have had an answer to that question and we are under time restraints. Cabinet secretary, can we have the answer again, briefly? We will then move on to another line of questioning.

Derek Mackay: One hundred per cent relief means that someone pays nothing. I was directly asked whether I believe, as a point of principle, that everybody should pay something. No, I do not. I think that that is too generic and that relief should be a bit more refined.

There are reasons why some people pay nothing. Some properties have zero-rateable values and some are entitled to maximum relief. It is a fair question and a fair point, because it would raise money if there were a change of policy to say that everybody should pay something. However, that is not what was recommended, it is not what has been found to have support among stakeholders and it is not the Government’s position. There is anecdotal evidence that some people in some areas would be willing to pay something but, if you proposed to remove their relief, I think that they would quickly change their minds.

I have tried to answer the question as best as I can. What you propose is a different view and perspective, but it is not Government policy. You could say the same—that everybody should pay something—for income tax, but it is not the case for that either, because of the personal allowance and that which is discounted. It all depends on how much someone earns. The policy proposition is not that of the Government.

The Convener: Mr Wightman, I am happy for you to explore the issue further if you want to do so, but I think that you have had an answer to that specific question, although it was not the answer that you wanted. You can explore the line of questioning further if you want.

Andy Wightman: No, convener. I was challenging the cabinet secretary’s idea by saying that not all the reliefs are 100 per cent reliefs. I am happy to leave it there.

The Convener: It is all on the record.

Graham Simpson (Central Scotland) (Con): Let us return to the advisory group. Who is in that group?

Derek Mackay: I can share the full membership and composition of the group with the committee. I can say more now or share it in writing.

Douglas McLaren: It includes the business groups that you would expect: the Confederation of British Industry Scotland and the Scottish Chambers of Commerce, as well as others such as the Convention of Scottish Local Authorities and the professional practitioners group, which is called the Institute of Revenues, Rating and Valuation. We could write to the committee with the full details.

Graham Simpson: That would be useful.

In his recommendations on universities, Barclay referred to things such as renting out

“halls of residence or self-catering flats”

and to other commercial enterprises that universities carry out. In response to your implied question, Ken Barclay is satisfied with the Government’s response. He said:

“these commercial elements of the university should be liable for rates where they compete with the private sector. This should also be the case for commercial activities such as renting out venues for conferences and other functions.”

However, in response to that, the Government said:

> "we recognise that a range of charities and other not-for-profit organisations undertake some commercial activity and continue to be eligible for charity relief. Aside from the principle in question there would also be practicability issues in distinguishing commercial from non-commercial use."

What principle have you referred to in your response?

Derek Mackay: Essentially, the driver behind Barclay looking at that recommendation was that part of the estate was being used for commercial functions.

Graham Simpson: I am sorry, but what is the principle that you are referring to in the Government's response?

Derek Mackay: Let me cut the chase on the issue. Barclay took a view on how universities were conducting some of their affairs. An example would be the use of student accommodation over the summer not by students and not in relation to educational purposes, which generates income. The universities reinvest the profit—if there is any—from renting out that accommodation back into the university.

From Barclay's point of view, the issue is one of fairness and equality. From the Government's point of view, we support the higher and further education sectors. We want fairness in the rates system, but it was clear, in looking at the issue and engaging with the sector, that the sums involved were far from massive. As with the situation in agriculture, the elements would be complex, hard to define, fluid and difficult to assess. It really was not worth the effort of changing the regulations to achieve the principle of fairness and equity in treatment, because the private sector would say that it competes with the higher and further education sectors.

The situation is similar to that of ALEOs. You can take a view on where profits are invested or reinvested. You would take a different view on the reinvestment of profits back into a university from that which you would take on someone hiding personal wealth, for example. That is why the Parliament takes a different view on ALEOs. How ALEOs conduct their affairs is, by definition, tax avoidance, but those sums are then reinvested for public good—for example, into community facilities, as we described earlier.

That was the nature of the discussion in relation to universities.

Graham Simpson: If I understand it right—you will correct me if I have got this wrong—you think that the principle of applying rates to those commercial activities is fine but that it is too tricky, difficult and complex to do so.

Derek Mackay: The overriding matter was the administrative nature of any change. We also want to support both higher and further education. We support and understand what Ken Barclay and his team said about fairness and equity, but the Government arrived at its decision because it was too complex and administratively cumbersome to make the change and it would not be worth any savings that could be achieved.

Graham Simpson: Alexander Stewart asked you about nurseries. You have decided to apply relief to privately run nurseries that make profits, but you have not taken that approach with nurseries in the independent school sector that do not make profits. That seems inconsistent to me. Will you explain that position?

Derek Mackay: We have yet to conclude the necessary legislation that would achieve that. Clearly, we support nurseries. We are talking about reliefs, so an application will have to be made, and each nursery will be judged on its merits. Within that, there is the complexity of what a dedicated independent nursery is. As I say, the eligibility for relief will be in the legislation on which we will consult. I do not know why there is a view that we are not proposing the right balance for state nurseries and private nurseries. If there is a nursery attached to an independent mainstream school, it will be a question of how it is defined as part of the structure of that organisation, so I do not think that we should generalise. Douglas McLaren may wish to say more about that.

Douglas McLaren: As the cabinet secretary says, the detail will come out in the legislation. We are not trying to be exclusive here, but we have to deal with rates and they can be a bit of a blunt instrument. We look at a property that is on the valuation roll, and if that property is wholly or mainly a nursery, we will try to give it the relief. If it is predominantly a school campus with a nursery on a smaller part of the campus, it is difficult to look at that property and say that it is a nursery. We will try to contend with that in the legislation.

Graham Simpson: Might the inconsistency that I described be sorted out in the legislation?

Derek Mackay: The policy intention is clear. There is 100 per cent relief for nurseries—subject to state aid rules—in the public and private sectors. The definition of each will be determined by those allocating the relief complying with the legislation. The intention is clear and the detail will be based on consultation but, beyond that, eligibility will be based on compliance with the criteria. We cannot generalise. As Douglas McLaren has tried to clarify, it comes down to a question of whether it is a bona fide nursery with a dedicated use within those criteria, or whether it is separate. Non-domestic rates are essentially a property tax, and each property is judged on its characteristics.

Graham Simpson: The last time you appeared before the committee, I asked you about independent schools and rates, and I asked you whether you had done any assessment of the effect of imposing non-domestic rates on the independent schools sector. I asked that because, if there is an extra bill for that sector, there could be a knock-on effect on councils if schools start to put up their prices and kids therefore end up in the state sector. At that point, you told the committee:

> "The information that I have seen suggests that there will not be a mass exodus from independent mainstream schools to state schools ... The sums involved in non-domestic rates can be absorbed by such schools."—[*Official Report, Local Government and Communities Committee*, 20 December 2017; c 19-20.]

What is the information that you have seen that suggests that there will not be a mass exodus? Why do you say that the sums involved can be absorbed? What evidence have you got for that?

Derek Mackay: One leads to the other. To understand the overall context, I look at the non-domestic rates bill for that sector and ask about the impact of the change that we are about to make. That is a fair assessment. As I described, the figure for nurseries is less than 2 per cent of expenditure for that sector, and I believe that it is also less than 2 per cent for independent schools. Let me run through why I believe that to be the case. The estimated average charity relief per pupil is £225. The average fees paid per pupil are estimated to be around £13,700 per annum. Those are averages based on the work that we have done. Total fees are estimated to be around £374 million, so charity rates relief represents around 1.6 per cent of the average fees paid. For around 80 per cent of pupils that we have been able to look at, given the numbers that we have, the average charity relief will be £300 or less.

I am trying to put into context that, if the response of the mainstream independent schools that will be covered by the policy is to increase their fees in line with those figures, that would not be such a financial shock that it would lead to a mass exodus from independent schools to the state sector. I am not aware of any concerns being raised with me by the main local authority that would be affected by such a policy, City of Edinburgh Council, about pupils returning to the state sector.

I also said at the committee meeting to which you referred that it will be for mainstream independent schools to respond accordingly. It does not affect their charity status—it affects only the non-domestic rates status.

11:00

It has been put to me that some schools might respond by curtailing bursary entitlement to less well-off students. I do not think that there will be a rush by independent mainstream schools to encourage the perception that they are becoming more elitist. However, if they pass on the removal of relief directly, the scale that we are talking about is less than 2 per cent. From that analysis, I conclude that it would probably be absorbed by the vast majority of fee-paying pupils and their families. I did not just assume that; I listened, looked at the evidence that was presented by the independent schools' representatives and asked them for further information. You asked for my opinion, and my opinion is that it can be absorbed.

Graham Simpson: I have one final question. You said that you had evidence from the independent school sector. What was that evidence?

Derek Mackay: In the same way that the committee calls the presentation of an opinion evidence—that is why you call them evidence-taking sessions—I heard evidence in personal meetings with the Scottish Council of Independent Schools. Also, there was written correspondence to the Barclay review, which would have considered it, and correspondence directly with Government when the Barclay report was published, and I looked at those letters. As with business, for which I referenced the Federation of Small Businesses and its evidence about what impact a change to the small business bonus would have, I looked at what the council and individual correspondents said they believed the impact of any removal of relief would be.

I can show how I have responded to evidence, in relation to a fair question about specialist schools and those with a particular focus on special needs and the disabled. I am not taking the approach suggested by the Barclay review, which was that all independent schools should have their relief removed. I have been far more specific and refined, saying that the policy intention is that it applies to independent mainstream schools, because I believe there to be a case for further support for schools with those dedicated functions.

We will make sure that we refine the legislation to get that right. That will involve further consultation and, in keeping with the spirit of the Barclay review, a lead-in time as well. It is, therefore, at least a couple of years away, so that we get the consultation and engagement, the legislation and its refinement right, but the policy intention is not to go as far as Barclay, because I recognise that a special case can be made for schools with those special functions. Through engagement with the sector, I have arrived at that conclusion.

The Convener: Given that the exchange was about concerns about the displacement of students from independent schools into the state sector—and I know that that was a resource issue rather than any other type of comment—do you agree that a lot of people will make a positive choice to educate their children in the state sector? I would not want anyone picking up on this evidence session to think that there was a concern about children having to be educated in the state sector—that is a positive choice for the vast majority of families in Scotland.

Derek Mackay: Absolutely. I have not gone into the principle behind it, because I am giving you—as best I can—straightforward finance secretary answers on our analysis of the fiscal position in our response to the Barclay review. Surely every member of the committee will take the view that we want all children to be educated to the highest-possible quality and level. That is why more in the draft budget is dedicated to attainment and financial support for education.

Let us not forget that the Barclay review recommended the removal of relief on the basis of fairness. Local authority schools pay non-domestic rates, so why should independent mainstream schools not pay? A special case can be made for other independent schools, as I say, and I am looking at that, but this is about fairness in education. I will say again that it is the Government's ambition to give every young person the best possible quality of education.

As the convener has hinted, I would dispute any charge that, in going from an independent school to a state school, there is any diminution of education. I say that simply because the convener has asked me to be clear on it.

The Convener: I am not suggesting that anybody has said that, but I just wanted to set the context for anyone who is tuning in—if anyone is. I am conscious that this is not the education committee and that you are not the education secretary but, if you can carry out a review, in conjunction with Mr Swinney, of the churn of students between the state and independent sectors, I would urge you also to look at the senior end of secondary school, because I have heard anecdotally that independent schools sometimes cherry pick some of the highest performing state school students. I would encourage you to look at churn in both directions. However, I am conscious that this is the local government committee rather than the education committee and that we are looking at non-domestic rates.

ALEOs were mentioned—

Derek Mackay: Can I just give a further piece of evidence that is probably important in that regard? I have been asked about the effect of the change of policy on the level of fee and the consequent outcome. During the recession, the number of independent school pupils was sustained and, over recent years, it has continued to grow, even though there is pressure on household budgets. I just make the point that the evidence that we have from more difficult economic times suggests that there is not a mass movement between the independent sector and the state sector based on this kind of fiscal movement. That is helpful evidence to be aware of.

The Convener: That is helpful.

I want to briefly pick up on a point about ALEOs. You said that having an ALEO is tax avoidance but, if you like, it is done for all the right public interest reasons. If that is the case in relation to ALEOs, can the same not be said of the local authorities that have not moved to ALEOs? What consideration have you given to equalising the impact of non-domestic rates across all local authorities in this context?

Derek Mackay: As you know, the system of local government funds distribution is complex enough already, although you make a fair point. Very few local authorities have not gone down the ALEO route and, frankly, I am not suggesting any further change to equalisation. The overall settlement is needs based, and then there is the equalisation measure, which is known as the floor, and which leads to as much convergence as possible. I do not propose a further financial mechanism beyond the current statement on ALEOs. Of course, the good news is that the local authorities that thought that the relief was going to be removed are welcoming the decision. However, I have clearly had to draw the line somewhere, so that there are no new ALEOs conducting their affairs in a fashion that leads to questions about tax avoidance.

I share your view that there is tax avoidance in which people are hiding personal wealth, which is to be condemned, but that in this case we are talking about the public sector designing structures for good and well-meaning reasons and in a way that allows for sums to be reinvested in public sector provision. There is a world of difference between the two behaviours but, by definition, it is tax avoidance.

Andy Wightman: I have another question, as we have a little bit of time left. I have asked a written question on this issue, but such questions are often not the best way of getting answers; in this case, it might have been more to do with my interpretation than with your answer. During the passage of the Land Reform (Scotland) Act 2016, which reintroduced shooting rates, the policy intention that was announced was that the moneys that were raised—the Scottish Fiscal Commission estimates those to be £6 million next year—would not be retained in the non-domestic rates pool but would be used by the Scottish Government to finance the Scottish land fund. Is that the Scottish Government's position now, two years after that policy intention was set?

Derek Mackay: I will ask my official to answer that detailed question.

Douglas McLaren: I was more closely involved with that at the time, which was when Mr Swinney was the finance secretary. There is no change to the treatment of non-domestic rates income for this, because it helps with the totality of the budget and enables us to direct more resource from another part of the budget to the Scottish land fund. That was the rationale. There is no difference in treatment for non-domestic rates.

Andy Wightman: So it was announced that the Scottish Government would retain the money for the land fund, but that is no longer the case. The money will go into the pool—

Derek Mackay: I want to have a personal look at the issue and write back to you.

Andy Wightman: If you could write to clarify that, that would be helpful.

Derek Mackay: I will do that.

Andy Wightman: I just note that I have submitted a written question on the matter, so I know that it is a difficult issue on which to provide written questions and answers.

Derek Mackay: I will endeavour to do my best to get a straightforward answer to that question.

Andy Wightman: Grand—thanks.

The Convener: It would be helpful if you shared that answer with the committee more generally.

Derek Mackay: I will write to you, convener, the clerks and directly to Mr Wightman.

The Convener: Before I close this evidence session, would you like to add anything, cabinet secretary? We have a small amount of time available.

Derek Mackay: No. We have covered the issues fairly comprehensively. I will just say that my suggestion on SBBS evaluation is a serious one. There is time to help to shape that engagement and I am happy to have further discussion on that.

The Convener: I was going to comment on that before closing the session. I welcome the offer to the committee to talk about how the success of the small business bonus scheme should be evaluated. I hope that we can also consider what future success would look like for the scheme. I hope that the process will not just be about considering how effective the scheme has been to date but about what the committee would like the positive outcomes to be in the next five years. That puts us in a proactive position rather than just deciding on the criteria by which we judge current success or otherwise.

Derek Mackay: Okay—that is fair. If the committee has a collective view, that will give me greater focus.

The Convener: That would certainly be welcome.

I thank the cabinet secretary and Douglas McLaren for coming. We have found the session very helpful.

Subordinate Legislation

Letting Agent (Registration and Code of Practice) (Scotland) (Miscellaneous Amendments) Regulations 2017 (SSI 2017/428)

Fife Council Area and Perth and Kinross Council Area (Keltybridge and Fife Environmental Energy Park at Westfield) Boundaries Amendment Order 2017 (SSI 2017/430)

11:11

The Convener: Item 3 is consideration of two Scottish statutory instruments that are laid under the negative procedure, which means that the provisions will come into force unless the Parliament votes for a motion to annul. No motions to annul have been lodged. As members have no comments, does the committee agree that we do not wish to make any recommendations on the instruments?

Members *indicated agreement.*

The Convener: We will now move to item 4, which we previously agreed to take in private.

11:12

Meeting continued in private until 12:31.

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