OFFICIAL REPORT
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Local Government and Communities Committee

Wednesday 4 December 2019

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
31st Meeting 2019, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Sarah Boyack (Lothian) (Lab)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)
Kenneth Gibson (Cunninghame North) (SNP)
*Graham Simpson (Central Scotland) (Con)
*Alexander Stewart (Mid Scotland and Fife) (Con)
*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kate Forbes (Minister for Public Finance and Digital Economy)
Liz Smith (Mid Scotland and Fife) (Con)
Kevin Stewart (Minister for Local Government, Housing and Planning)
Jean Waddie (Scottish Government)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 4 December 2019

[The Convener opened the meeting at 09:00]

Subordinate Legislation

Planning (Scotland) Act 2019 (Ancillary Provision) Regulations 2019 [Draft]

The Convener (James Dornan): Good morning and welcome to the 31st meeting in 2019 of the Local Government and Communities Committee. I remind everyone present to turn off their mobile phones. We have received apologies from Kenneth Gibson.

Agenda item 1 is consideration of the draft Planning (Scotland) Act 2019 (Ancillary Provision) Regulations 2019. The committee will take evidence on the instrument, for which I welcome Kevin Stewart, who is the Minister for Local Government, Housing and Planning, and Jean Waddie, who is the planning reform co-ordinator at the Scottish Government.

The Minister for Local Government, Housing and Planning (Kevin Stewart): Thank you, convener, and good morning. The regulations will simply correct some cross-referencing and typographical errors in the 2019 act. They are subject to affirmative procedure because they will amend the text of primary legislation. I will leave it at that.

The Convener: Thank you.

Andy Wightman (Lothian) (Green): How often do corrections have to be made to primary legislation?

Kevin Stewart: I cannot answer that question off the top of my head. Ms Waddie has been involved in a number of bills, so she might have an idea in relation to the bills that she has dealt with.

Jean Waddie (Scottish Government): I cannot answer that question. As members know, a lot of changes were made to the Planning (Scotland) Bill. There was a lot of back and forth, so a few things were missed as we went along.

Andy Wightman: Does the minister accept that, when errors have been made, we should accept them with good grace and deal with them?

Kevin Stewart: Typographical errors should be accepted with good grace. It is somewhat different if huge elements are missing from amendments or if due cognisance is not taken of the unintended consequences of proposals.

Graham Simpson (Central Scotland) (Con): I will try to assist Mr Wightman in my role as the convener of the Delegated Powers and Law Reform Committee. All such matters come through our committee. To be fair to the Government, the number of mistakes—let us call them that—that we have picked up has been reducing under the watchful eye of Graeme Dey, the Minister for Parliamentary Business and Veterans, who will appear before the committee very soon.

Kevin Stewart: In fairness to the bill team, who worked exceptionally hard, a number of things came back to us as a result of the huge number of amendments that were agreed to at stage 3 of the Planning (Scotland) Bill, which is now an act. I know that Mr Simpson and his committee keep a close eye on all such matters, but in this case we are talking about a few minor errors.

The Convener: On that basis, we move to agenda item 2, which is formal consideration of motion S5M-19958. I invite the minister to move the motion.

Motion moved,

That the Local Government and Communities Committee recommends that the Planning (Scotland) Act 2019 (Ancillary Provision) Regulations 2019 [draft] be approved.—[*Kevin Stewart*]

Motion agreed to.

The Convener: The committee will report on the instrument in due course. Does the committee agree to delegate authority to me, as convener, to approve a draft report for publication?

Members *indicated agreement.*

The Convener: Thank you very much.

09:04

Meeting suspended.

09:05

On resuming—

Non-Domestic Rates (Scotland) Bill: Stage 2

The Convener: Under agenda item 3, the committee will consider the Non-Domestic Rates (Scotland) Bill at stage 2, on day 2. I welcome Kate Forbes, who is the Minister for Public Finance and Digital Economy, to speak to and move amendments on behalf of the Scottish Government, and I welcome her officials. I also welcome Liz Smith, who has amendments to speak to. The intention is to finish stage 2 today; we have enough time, I hope, to do so.

Section 9 agreed to.

After section 9

The Convener: Amendment 73, in the name of Liz Smith, is grouped with amendments 74 to 83.

Liz Smith (Mid Scotland and Fife) (Con): Amendment 73 is about the equality of charities, which Mr Martin Tyson of the Office of the Scottish Charity Regulator raised as an issue when he gave evidence to the committee. He said:

"Our concern is that"

the proposal about section 10 of the bill

"goes to the basis of what the charity law in Scotland says a charity is ... For a long time, the assumption has been that any tax reliefs or rates reliefs apply equally to all charities, across the board. There are not some charities that are more charitable than others.

Our main concern is that we could start getting a blurring around the edges of what a charity is and of what the public ... understand a charity to be." —[*Official Report, Local Government and Communities Committee*, 19 June 2019; c 10-11.]

He went on to say that it was not clear why anybody would want to create that ambiguity, which would introduce differentiated treatment and be likely to open up legal challenges.

As members know, section 4 of the Local Government (Financial Provisions etc) (Scotland) Act 1962 provides for

"Reduction and remission of rates payable by charitable and other organisations".

As it stands, that section does not provide for any differentiation in how charities are treated in terms of their eligibility for reduction or remission of rates. Therefore, without section 10 of the Non-Domestic Rates (Scotland) Bill, charities would continue to be receive equal rates relief treatment. With that in mind, amendment 73 seeks to provide beyond doubt that all charities should be treated equally for rates relief.

Amendments 74, 75 and 78 are to do with rates reliefs for nurseries in independent schools. In combination, the amendments seek to provide that nurseries in independent schools will still be eligible for rates relief, putting them on an equal footing with private nurseries that are not in the independent school sector.

It is wholly anomalous to make legislation that removes charitable relief on business rates for not-for-profit charitable institutions yet allows private profit-making nurseries to continue to enjoy rates relief.

When responding, I ask that the minister explains the logic behind that decision, especially in terms of the pressure that the Scottish Government is under to deliver its 1,140 hours policy, to which independent schools, particularly the larger urban day schools, contribute.

The amendments provide that lands and heritages that are related to the provision of nursery classes in an independent school will be entered separately into the valuation roll and will be eligible for rates relief.

Amendments 76 and 77 are about the provision of education to children with additional support needs in mainstream independent schools. The amendments provide that mainstream independent schools will still be eligible for rates relief, if they deliver education to pupils with additional support needs who have been

"selected for attendance at the school ... by reason of those needs".

I see no reason why their needs should be classified differently from those of pupils at schools that are currently named as special schools.

Amendment 79 would leave out section 10. The minister is well aware why the independent schools sector is so strongly opposed to section 10; most especially, it does not consider that any comprehensive cost benefit analysis has been carried out. The evidence for that is the weak financial memorandum.

The minister persistently says that she values the high standards of education that is provided by the independent sector, and that it is an important part of Scotland's education system. Indeed, on the previous occasion when many such issues were considered, during the passage of the Charities and Trustee Investment (Scotland) Act 2005, much more detailed analysis was provided to assess the significant public benefit that is delivered by Scotland's independent schools, which resulted in unanimous agreement across Parliament. If that support remains, as the minister insists it does, and given that the Scottish Council for Independent Schools states that the

independent sector provides £51 million in financial support, it would surely have been appropriate to have carried out an accurate and comprehensive financial assessment.

However, this is about more than that. The proposed policy move has significant implications for the state sector, which should not be forgotten in the financial considerations and, indeed, in relation to the availability of places and teaching resources.

Annabelle Ewing (Cowdenbeath) (SNP): I hear what Liz Smith is saying, but I am a wee bit confused about why that is her conclusion. Why would there be a negative impact on the state school sector?

Liz Smith: That is because the state sector would inevitably be asked to place children from independent schools whose parents were no longer able to afford the fees. We know from many of their letters that headteachers in the independent sector anticipate that they will lose some of their pupils if there are fees increases. Those pupils have to be educated somewhere, so there would be an impact on the state sector.

The minister is also well aware that there are issues to do with the likely impact of the policy move on availability of bursary provision. It could have a detrimental effect on the ability of some schools not only to offer bursaries, but to offer their other facilities for public benefit. That is particularly true for many of the smaller schools.

To my mind, such schools face a very difficult situation. Without exception, there are likely to be considerable increases in fees and therefore fewer parents will be able to choose independent education, which means that independent education is likely to become more elitist and parental choice will be reduced. That is the exact opposite of Scottish Government policy and of what Parliament agreed to in 2005.

Amendments 81 to 83 are about the timing of the commencement of section 10. Amendment 81, which is a paving amendment, sets out that the Scottish Government ministers' power to make regulations on the commencement of the bill's provisions would be subject to the provisions of one or other of amendments 82 and 83.

Amendment 82 provides that regulations bringing the section into force cannot be made until after the next revaluation year, which, as the minister knows, is 2022. Ministers have already initiated some discussions about that, and they intimated that they are willing to listen to the sector's call for a short delay to implementation. It makes sense to ensure that the start date follows rather than precedes the new revaluations.

Amendment 83 recognises the provision of amendment 82. In addition to those provisions, it provides that the Scottish ministers must conduct a consultation after the bill receives royal assent and lay a report on that consultation before Parliament before making the regulations.

I move amendment 73.

Graham Simpson: Amendment 80 deals with the date on which section 10 would come into force. It gives the committee another option, if it was minded to agree that there should be a delay in introducing section 10. The committee is essentially faced with a choice between Liz Smith's amendment 82, which would delay commencement until 2022, or my amendment 80, which would simply delay it until 1 August 2021, which is the start of the school year, which seems a natural point in a school's business. I much prefer Liz Smith's amendment 82, but I am giving the committee a slightly softer option.

09:15

We have heard that some—not all—independent schools are in a perilous position. I am certain that the minister does not want schools to close, because I have heard her say so, but if we continue with the bill as it is, that could be the effect. Certainly, some smaller schools could close, which could lead to the situation that Liz Smith described in which the kids who go to those schools would enter the state sector. Of course, as we have heard, sadly, the Government has done no financial planning on that. I will therefore be happy to move amendment 80 when the time comes.

Andy Wightman: I have a few comments on section 10. I support its overall intentions. In principle, I believe that all non-domestic properties should pay something, and I moved an amendment to that effect last week, which was rejected. To that extent, independent schools are no different. Like many other non-domestic properties, they benefit from local services and should contribute towards them.

However, it is notable that the bill deals with the issue in a rather clumsy way, which in my view derives from the narrow focus of the Barclay review, which asked one question that was focused on business performance, notwithstanding the fact that more than a third of non-domestic properties are not occupied by businesses. That is why OSCR was not really involved at the beginning. The review's remit was to be cost neutral so, in order to provide the tax reductions that it suggested, it had to find money to pay for them. I put it on record that the review was not the comprehensive one that John Swinney promised about 10 years ago; it was a

narrow review, and that is why we are in the current situation.

On the withdrawal of charitable relief, as a matter of principle, I do not believe that any taxpayer, whether they are paying VAT, income tax or non-domestic rates, should have to face a fourfold or fivefold increase in tax liability almost overnight. At stage 1, the minister told the committee that she had no settled view on the commencement of section 10. No decision has been made on that and the bill makes no provision for it. I do not necessarily believe that the changes brought about by section 10 should be deferred.

However, I want to talk about the impact on different schools, which Graham Simpson mentioned. The committee held a round-table event at George Watson's college that was attended by representatives of quite a lot of independent schools. We went round the table and they were asked to provide information on the number of pupils at their schools and the cost implications of the withdrawal of the 80 per cent mandatory relief. I did a quick calculation, dividing one by the other, and it was clear that, for some smaller schools, the impact per pupil would be five, six or seven times higher than the impact would be on larger schools.

Another issue that became clear related to the fact that the tax is on the occupation of non-domestic property. We heard from the Steiner school in Edinburgh that, although it has about 250 pupils, it has a very efficient campus—basically, it is two detached villas in Morningside or somewhere—and so will have a relatively low non-domestic rates liability when the relief is withdrawn. Another school that has a similar pupil roll—I cannot remember which one, so I will not risk making an error by naming it—would have a tax liability that is three or four times higher because it has a much bigger campus and more buildings.

An issue is that we have a class of ratepayers who, for many years—certainly since mandatory relief was introduced—have not paid much attention to the efficiency with which they occupy their property, because they have no rates liability. There is therefore an argument for phasing in the change, so I would welcome the minister's comments on that.

I agree with and will support Liz Smith's amendment 75 and the related amendments 74 and 78.

Ministers indicated at the outset that the purpose of section 10, on the withdrawal of relief, is to provide a level playing field for the independent sector and the public sector. If one is going to provide a level playing field, one needs to do so in all circumstances; I will move on to discuss that in relation to my amendment 15 in the next group. It seems logical that nurseries that happen to be located on the campuses of independent schools should be eligible for the same rates relief, given that they are in the same class of property as nurseries that are located outside such campuses.

Annabelle Ewing: Good morning, minister. I will pick up on a few of the issues that have been raised thus far. To go back to first principles, the "Report of the Barclay Review of Non-Domestic Rates", which was published in August 2017, recommended that mainstream independent schools should receive the same rates treatment as state schools. In December 2017, the Scottish Government indicated that it accepted the review's recommendations, including the one to which I referred. That was two years ago, so the direction of travel should not come as a surprise to any interested party.

The committee, at paragraph 116 on page 36 of its stage 1 report, noted:

> "A majority of the Committee supports section 10 of the Bill, by virtue of which mainstream independent schools will no longer be able to claim charitable relief. The Committee agrees that this change is necessary to create a 'level playing field' between the state and independent sectors. It will also generate more revenue for councils to spend on services for citizens."

It went on to say:

> "The majority accepts that there will be a financial impact on independent schools, but notes the Scottish Government's view that on average the additional cost would equate to about 1.3% of annual fees."

That is the information that the committee had to hand.

In addition, it is worth noting that, as the report states clearly, the committee received no real evidence, if any, to suggest that there were any concerns that the wish to address the lack of a level playing field between the mainstream independent sector and the state sector was motivated at all by any petty desire to get rid of independent schools. The committee's report states that no real evidence to suggest that there was such a motivation was expressed on the part of those who had taken the time and trouble to make their submissions known to the committee. I hope that that clarifies a few myths that may have arisen.

With regard to some of the detail, Liz Smith suggested that a whole host of individuals would be seeking a place in the state sector because they could no longer afford school fees. As the minister stated, and as he will presumably comment further on today, the average increase would be approximately 1.3 per cent of annual fees, so it could amount to £20 per month or something of that order. I do not quite see that it

will be likely, therefore, that there will be a huge influx from the mainstream independent sector to the state sector. I do not think that that argument stands much scrutiny.

Graham Simpson: Does Annabelle Ewing accept that we heard in evidence that some schools are already in a perilous financial position, and that bringing this provision into effect could tip them over the edge and lead to some schools closing?

Annabelle Ewing: I hear what the member says. At the end of the day, as a matter of economics, if a mainstream independent school is struggling, it will, like any other business, have to look at its model to see what it could do to go forward—or not, as the case may be. It should not be a matter of taking away money that could otherwise be spent by the state for the benefit of citizens as a whole.

I turn to the argument that, somehow, mainstream independent schools would stop taking scholarship pupils. Again, I approach that argument with a degree of caution. If that were to be the case, such schools might risk their charitable status, which would mean that they would then risk not being able to reclaim VAT. That would make a much bigger dent in their budgets than anything else that we are discussing today.

It is important to address the key issues head-on. In accordance with the way in which I voted in committee at the time of our stage 1 report, I will not support the amendment that would remove the desire to create a level playing field between the mainstream independent school sector and the state sector.

Finally, it would be helpful if the minister could clarify where the Scottish Government stands on the issue of independent day nurseries.

Sarah Boyack (Lothian) (Lab): The amendments in this group raise a number of important issues. I support the principle of section 10, as my colleagues have done in the past, principally because it is about fair and equal treatment of our schools. However, I have questions about quite a few issues. It has been interesting to hear members' comments thus far.

I want to focus on two issues, the first of which is to do with nurseries and the second of which concerns the timing of the introduction of non-domestic rates for private and independent schools. I will begin by picking up on Annabelle Ewing's question. Why has the Scottish Government not applied the same criteria to private nurseries? Why has it taken a different approach to private nurseries as distinct from private nurseries that are in private or independent schools? If we want to have fair treatment, surely all those nurseries should be treated in the same way. I am interested to know what work the Scottish Government has carried out on the potential impact on those nurseries and why it has applied a different approach.

My second issue, which will probably be the big issue that we discuss, relates to the timing of the application of non-domestic rates to private schools. What consideration has the Scottish Government given to that issue? Could schools have to pay non-domestic rates from April next year without knowing what they are? If the bill goes through in early 2020, when will that effect kick in? We have two options in front of us—Graham Simpson's softer option and Liz Smith's slightly longer option, but I do not know when the bill, if it is enacted, will kick in. When will section 10 be commenced? Is it intended that that will be done through secondary legislation, or will the passing of the bill mean that non-domestic rates will automatically be applied to private schools?

I take Annabelle Ewing's point that the Government's intention in this area has been clear for quite a while, but that does not mean that schools have known exactly what the rates would be and have been able to plan for them, given that they will already have set their fees. I am interested in whether an impact assessment has been carried out on the effect of the introduction of the requirement for private schools to pay rates halfway through the school year in 2020.

There have been reports that not all schools will remain viable, and I want to develop the points that colleagues have made about the impact on state schools, focusing on the situation in Edinburgh, where 24 per cent of students go to private schools. I want to check that all those issues have been looked at properly when it comes to what the local impact would be of private schools having to pay rates. I welcome the fact that more money will go to local authorities, but I make the point that that does not automatically mean that the extra money will go to schools, given the crisis in local government funding.

I want to tease out those issues and get the minister's views on them. The timing of the introduction of the measure and its impact on schools are important. Although we want fairer treatment for all schools, as ministers have said, we do not want there to be unintended consequences. I would like to explore those matters in a bit more depth.

Alexander Stewart (Mid Scotland and Fife) (Con): It is vital that we get clarity from the minister on what the impact would be. Liz Smith has lodged her amendments in good faith. As we heard from the sector, the impact could be catastrophic for some schools. The sector has done some analysis of the potential impact, and

we got that information when we met schools at the event that we had at George Watson's college. As colleagues have indicated, it is anticipated that managing that impact could be a massive task for some of the small private schools.

I take on board what has been said about the effect on local authorities. The City of Edinburgh Council has been identified as one authority that will be affected, but Perth and Kinross Council will also be affected, because a large percentage of the school population in its area go to independent schools. The council could have to manage a massive knock-on effect. In addition, as we know, some schools in the area are already at breaking point, without having to take in extra pupils who previously went to private schools.

Perth and Kinross Council is planning a brand new high school that will be the first to be built in the area for 40 years, but that will take in only those pupils accounted for by the population increase, rather than those who might come as a knock-on effect of existing schools failing to survive and thrive.

That is important, but it is also vital that there is no bias or unfairness in nursery provision in the private school sector, so that such schools can compete. It would be useful if the minister could give further information on that.

09:30

The Convener: Before I let the minister back in, I have a question. Is it not true that at no stage in the evidence did we get the feeling that there would be a huge influx of pupils from the independent sector to the state sector? I get the point that there might be some, but there was never any suggestion that there would be such a huge influx.

Graham Simpson: Is that a question?

The Convener: I suppose that it is more of a point. I was waiting to see whether any committee member might say, "No—wait a minute. Mr So-and-so said something."

Annabelle Ewing: I agree with the convener on that point. I think that if we were to look back through all the evidence, that would be a fair assessment. I understand that, when a member is trying to argue in favour of an amendment, they will do their best. However, I feel that that particular argument is less compelling given the evidence that we received.

Graham Simpson: The problem is that no analysis has been done on the bill's proposals. We can expect some pupils to go into the state sector, but the convener is right to say that we do not know the numbers.

The Convener: Okay. I will let the minister in now.

The Minister for Public Finance and Digital Economy (Kate Forbes): Thank you very much, convener. There was a lot in that discussion. I would like to speak to the substance of the amendments and to set out the Government's intentions. I would also like to answer that question, and I assume that members will intervene if they feel that I have not done so.

However, before I turn to the amendments, I again want to put it on the record that I recognise that not all members support the Government's intentions in this area. As I have said before but will say again now, we recognise that the independent school sector is a well-established part of the Scottish education system that promotes choice for parents. We have no intention of using this legislation to go any further than we have already stated—it is not a cover for anything else.

Liz Smith: I think that everybody accepts that, minister. You have said that the Government has no intention of abolishing the sector, and I have listened very carefully to previous ministers who have said the same. The point is that—not least because some of it has not been worked through effectively by doing a cost benefit analysis—the bill suggests an intention to bring about significant constraints in the sector, especially for some of our smaller independent schools; we have already seen one closure and we know that there will be pressures in that area. That is where the concern lies, and nobody is saying otherwise.

Kate Forbes: I appreciate that clarification. However, I think it important that I state the Government's intention at the outset, because there are fears that the bill represents the start of a number of actions. I wanted to state first that that is not the case, before responding to some of the concerns that have been identified.

It is also important to state, in response to Andy Wightman's point, that there is a variety of impacts on schools. The independent school sector itself is very varied. Andy Wightman made a good point when he said that some very substantial, large schools could probably absorb such impacts better than other schools. I will go through the figures on that aspect in a minute. In the course of the past year, I have been in conversation with stakeholders and have looked at different scenarios to ensure that we avoid any unintended consequences through the legislation. However, we will come on to the substance of the points that have been identified.

The last point that I would make as an opening caveat is that independent schools already face a variety of constraints and difficulties. For example,

pension impacts are just one of the many costs that they are currently trying to absorb. The bill will certainly have some form of impact, but we think that it will be minimal in comparison with others that such schools face. However, any impacts will differ according to particular schools' sizes and resources.

Those are my caveats. As I said, I recognise that some members do not support these changes. I respect that position, but I disagree with it. We have agreed to the Barclay review recommendation that the current difference in rates treatment between independent and local authority schools should come to an end. I will go through the amendments one by one and perhaps finish with questions on the financial impact.

Amendment 73 clarifies the eligibility of charities for relief under section 4 of the Local Government (Financial Provisions etc) (Scotland) Act 1962 by suggesting that they are always eligible for relief. Section 4 of the 1962 act is already sufficiently clear that all charities can obtain relief if they meet the two tests that are set out in the section: that a property must be occupied by a charity or a trustee of a charity and that the property must be

"wholly or mainly used for charitable purposes".

That wording already meets the intention of amendment 73, and the amendment adds nothing to what is already in the 1962 act.

Liz Smith: Prior to putting those proposals forward, what discussions did you have with OSCR? Mr Tyson made a strong comment to the committee that they open up the possibility of different levels of charity.

Kate Forbes: You are right to say that the act sets out the definition and then makes provision for exemptions. That is where the exemption to charitable relief applies.

Liz Smith: What discussions did you have with OSCR about that?

Kate Forbes: Barclay offered all stakeholders, including OSCR, the opportunity to discuss these issues.

Graham Simpson: Is it correct to say that you had no discussions with OSCR?

Kate Forbes: We accepted the Barclay recommendations, which included the offer of discussions with OSCR. It might be because of a drafting error, but amendment 73, in the name of Liz Smith, does not add anything to what is already in the act.

Amendments 74, 75 and 78 seek to allow independent nursery schools, where they are located as part of an independent primary or secondary school campus, to apply for day nursery relief. Members know that we accepted the Barclay review recommendation that we introduce day nursery relief, which would help more of the workforce to return to work. We agreed and we have moved quickly to introduce day nursery relief from 1 April 2018. That 100 per cent relief is available for a three-year period to stand-alone nurseries, whether they are in the private, public or third sectors. When it comes to accessing that relief, there is already a level playing field between the private, public and third sectors. In 2018-19, around 700 such nurseries benefited from almost £10 million of relief.

Many private and third sector nurseries are stand-alone nurseries. Those nurseries, working in partnership with local authorities, have a vital role to play in ensuring that there is sufficient childcare in place to meet the Government's intention to expand nursery provision. We consider that the day nursery relief is correctly targeted and is benefiting those for whom it is intended.

Liz Smith: Could I ask about the specific anomaly? The proposal would give us a situation in which a nursery within an independent school, which is a charitable foundation, will have its business rates relief removed but an independent profit-making nursery will still be eligible. Where is the logic in that?

Kate Forbes: Non-domestic rates are levied on properties. Nursery relief applies to properties that are wholly or mainly nurseries. To do otherwise would not be consistent with the principles of rating whole properties. There is a big risk of unintended behavioural responses. Nursery relief already applies to properties that are wholly or mainly nurseries. If that were not the case, there would be potential for tax avoidance. Schools could create a small nursery in order to get relief on a significant part of the school. Non-domestic rates are levied on properties, and nursery relief applies to properties that are wholly or mainly nurseries, irrespective of whether they are private, public or third sector.

There are a number of advantages and efficiencies for properties that are part of a larger property, such as the sharing of resources and access. That is why it is important that nursery relief continues to apply to properties that are wholly or mainly nurseries. It is a level playing field in that it applies to public as well as private nurseries.

Andy Wightman: The minister made a distinction between properties that are and are not wholly or mainly used for nurseries in the context of nursery relief. I understand that point, but she seemed to imply that that is a general principle of rating that applies to properties across the board. That is not my understanding. Plenty of properties on the valuation roll are buildings that are

apportioned between different ratepayers according to different uses.

Was the minister just making a point about nursery relief—on which I think that she is correct; that is how it is framed, whether we agree with it or not—or was she seeking to make a wider point about rating in general?

Kate Forbes: I am making two different points. One is about rating in general, which is a property relief and it is important to identify it as such. The second is about the amendment. The bill does not distinguish between private, public and third sector provision, so it does not create an unfair disadvantage for the private sector. At the moment, the relief is in place for all properties that are wholly or mainly used for nurseries, so independent private nurseries have just as much to gain from that as nurseries in the state sector. We consider that nursery relief is correctly targeted, but the key point is that all nurseries, whether they are private, public or third sector, are currently being treated equally.

Sarah Boyack: Is there a specific issue about day nurseries, which you mentioned in your opening comments on the amendments? Are you making a distinction between day nurseries and nurseries where children are resident? Was that an intentional differential? Also, can you talk a bit about tax evasion? Are you suggesting that schools should reconfigure how they use their land?

Kate Forbes: I was not intentionally making that distinction. I do not believe that there is one. The point is that nursery relief is available to all stand-alone properties.

Sarah Boyack: Your distinction is on the stand-alone issue.

Kate Forbes: Yes. No—well, yes; my consideration is that the property should be mainly or wholly used for that purpose.

Sarah Boyack: Okay.

Kate Forbes: If the nursery is part of a larger property, it is clear that the property is not mainly or wholly used for that intention.

Andy Wightman: That is clearly how the nursery relief is framed. The question is whether that is how it should be framed, rather than hiding behind the fact that that is how the relief is framed. That is not a general principle of rating. If a private enterprise such as a shop or business were to open in a larger property that otherwise qualified for charitable relief or whatever, the assessors would assess the enterprise independently. It is not a general principle of rating, so is the way in which the situation is framed for nursery relief the way that it should be framed?

Kate Forbes: I appreciate that. I am trying to make the point that it is being presented as a significant unfair disadvantage for the independent sector, primarily, but the relief makes no distinction between private, public and third sector provision. In that sense, it creates a level playing field. The difference is whether the property is wholly or mainly used for that purpose. My understanding is that the relief that is being suggested could be accessed only by nurseries in the private school sector that are not mainly or wholly used as nurseries, without any thought being given to the fact that non-stand-alone nurseries in the public sector will not be able to apply for that relief. It would create unfairness where unfairness does not currently exist.

On additional support needs, we recognise that good work is undertaken in both independent and public sector schools to educate children with a range of differing needs. Placing a child with additional support needs in a mainstream school may not suit the child's ability or aptitude and it may negatively impact on the learning of other children in the school. For a number of children, that means that their needs are best met through attending an independent specialist school. Such schools cater solely for children with specific or complex additional support needs as a result of severe behavioural problems, learning difficulties or physical or sensory disabilities.

09:45

As members know, the bill retains relief for those special schools. Amendments 76 and 77 would retain relief for independent schools that provide any additional support, without a requirement that that is the whole or main purpose of the school. My hope is that all independent schools provide some form of support for the children in their schools who have additional support needs. Therefore, the amendments would undermine the Barclay review's recommendation to address fairness. As such, I cannot support them.

Amendments 80 to 83 relate to the timing of the commencement of section 10. Section 30 sets out the Government's position on commencement of the bill's provisions. The Barclay review implementation plan was published in December 2017, and we made it clear that we would deliver the change by 2020 to

"allow time for those schools affected to plan ahead."

The independent schools provisions are not currently identified for early commencement, but I confirm that it is the Government's intention to commence those provisions from 1 September 2020, subject to the committee's decisions and votes, of course.

A commencement date of September 2020 would be almost three years after the change was first recommended by the Barclay review, and it would tie introduction to the start of the academic year rather than to the start of the financial year, which should help schools with their planning for academic year 2020-21.

We have always been clear that we will deliver that change, as recommended by the Barclay review. I hope that that confirmation of the Government's commencement intentions will assist the sector in its planning.

Andy Wightman: Would the mandatory relief be withdrawn from 1 September 2020 and rates be payable from that date?

Kate Forbes: Indeed. As I said, it is almost three years since we published the Barclay implementation plan, which stated that the change would come into effect in April 2020. We added on some months in the hope that that would give schools the additional time to make their plans.

To address members' questions—I might well have forgotten some of them—I return to the point that I made at the outset. Notwithstanding the fact that some members fundamentally disagree ideologically with the Government's intentions, I maintain that the financial impact of the provision will be minimal.

Committee members have picked up on two areas: the impact on independent schools and the impact on the state sector. Scottish state schools had an average spare working capacity of 30 per cent in 2018. In considering the cost implications, we should be looking at the marginal cost. In a majority of cases, the marginal cost of a pupil moving from the independent sector to the state sector is zero. Even if 3 per cent of pupils were to transfer, we do not accept the suggestion that that would leave the policy revenue neutral.

Graham Simpson: That is a Scotland-wide figure. Have you done analysis in places such as Edinburgh and Perth and Kinross?

Kate Forbes: In places such as Edinburgh and Perth and Kinross in particular, a number of pupils are unlikely to go to a school in the same local authority area in which they live. For example, a number of pupils in independent schools in Perth and Kinross do not necessarily live there. Therefore, the impact would probably be distributed on a Scotland-wide basis—or the impact on the state would certainly be in the area in which they live and not in the area where they currently go to school. The Scotland-wide figure is therefore more important when looking at the impact in the round.

Graham Simpson: It sounds as though you have not done any analysis and that you are assuming things. Have you asked the sector where the independent school pupils are from and where they live?

Kate Forbes: The figures are informed by the Convention of Scottish Local Authorities. They are COSLA's figures on what it perceives the impact on local authority areas would be. As you know, COSLA represents all local authorities, and the figures are informed by a Scotland-wide perspective on what the impact on local authorities would be.

On the magnitude of the change for schools, I do not dispute that there will be a more significant impact on some smaller schools than on larger schools, as Andy Wightman said. That is why we have looked at the average impact. The impact of our proposals is equivalent to 1.3 per cent of the current average fees, which is a small increase compared with the average yearly fee increase of 4 per cent. I accept that those are averages, but it is important that we use averages because we need to look at the general impact. I find it difficult to accept that a change of that magnitude will be sufficient to lead to a mass exodus of pupils.

Aside from all that, our intention is to accept the Barclay review recommendation that we remove the unfairness that exists between public and private schools. I accept and will continue to accept that not all members share the Government's intention. However, that is the current progress that we are making in the area, and that is why I do not accept Liz Smith's amendments.

The Convener: Thank you, minister. I ask Liz Smith to wind up.

Liz Smith: I thank the minister and members for their contributions to the debate. I will begin with some general comments. I fully accept what the minister said when she replied to my intervention. This is not about trying to close down the independent sector. I understand that. The independent sector has a proud record of considerable educational advantage in the results that it delivers, not just to people who are able to afford the fees, but also in relation to the public benefit that independent schools provide to their local communities.

Back in 2005, when the Parliament debated whether the independent sector should have charitable status, there was considerable financial discussion about what the public benefit was, and all parties, including some that had dissented in the first instance, agreed that there should not be an attack on the sector. The problem that we have with the current proposals is that, perhaps as an unintended consequence, that is exactly what will happen. We know that some of the very small schools are really struggling at present, and that is

not just because of pension changes; it is also because of the proposals, which will—

Kate Forbes: Will the member take an intervention?

Liz Smith: Of course.

Kate Forbes: Does the member accept that the changes have not been implemented yet? If schools are, as she said, considering their business models, for want of a better phrase, it is clear that the independent sector is facing bigger challenges than the marginal changes that we are discussing.

Liz Smith: The independent sector, through the Scottish Council of Independent Schools, has provided you with substantial arithmetical calculations on the implications. That has come through some regional applications as well—in Perth and Kinross, Edinburgh, Glasgow or wherever it might be, schools have undertaken substantial analysis of the implications. I am sorry to say that I do not believe that the Scottish Government has undertaken the same comprehensive analysis. The stage 1 debate proved that. The financial memorandum on the bill is weak.

Nobody is arguing that there should be a circumstance in which the independent sector has special privileges when it comes to finances. That would be completely wrong. What the sector is asking for is that, if evidence is provided for the legislative changes, it should be convincing and based on the facts. Such evidence has not yet been provided.

I will take up a point that Annabelle Ewing rightly raised. I do not believe that there will be a mass exodus of pupils, but there will be some pupils whose parents can no longer afford education in the independent sector and, from a small-school perspective, that can make the difference between a school being able to continue or not.

The minister mentioned that schools have had three years to think about the Scottish Government's proposed changes, but during that time they have not had to hand the facts about the implications of the proposals and what they would actually mean for the sector.

Annabelle Ewing: I would bear in mind the following point. If I were on the board of a mainstream independent school, I would have started to investigate—indeed, it would be a dereliction of duty not to do so—what the situation would look like once the relief had been removed. The board would have to make plans with regard to future fee increases and all the rest of it. I find it very hard to believe, as a practical matter, that schools have not already started to look at the issue in detail.

Liz Smith: All the independent schools—their boards, heads and bursars—have been looking at the issue for a very long period of time. The problem is that the facts that they need from the Scottish Government on which to base their analysis are not there, or at least the information is not complete.

Annabelle Ewing: What facts? The facts are that, if a school is going to lose relief and pay rates, it can look at the rating law that applies to buildings of a similar size and so on. That is self-evident. I do not see what possible lack of facts Liz Smith could be referring to in respect of a school trying to ascertain, in a broad-brush way, what the rates will look like come the entry into force—I hope—of the bill.

Liz Smith: The bill has implications for whether schools will continue—or will not continue, not least based on what Martin Tyson said in his evidence to the committee—to be able to provide public benefit, but there are circumstances that are as yet not clear to the independent sector. That is the problem that the sector has.

Andy Wightman, in his very good comments on nursery provision, was absolutely right—my amendment 75 also differentiates between partial and whole use—that the proposed legislation raises issues other than just the wish for a level playing field, which is so important for its delivery. He made a strong point on that.

The minister is keen to promote what COSLA says, but that is only one part of the story.

Kate Forbes: I am not "keen to promote" what anybody is saying. I was merely answering the question about where the figures came from in order to emphasise that we are not plucking figures from the sky. COSLA, whose members deliver education, has identified the potential impact on the state sector.

Liz Smith: That is one issue. The other issue is what the real impact will be in terms of public benefit. I think that independent schools will want to continue to provide public benefit and to supply bursary support, the provision of which has increased considerably—rightly so, in my opinion—since the Charities and Trustee Investment (Scotland) Act 2005 came into force. We should not forget that some independent schools failed the charity test that was set out in the 2005 act—again, rightly so—and therefore had to up their game.

It is a great pity that the bill will undermine all the good work that has been done to ensure that those schools are more accessible. In many cases, youngsters would not be able to attend school in the independent sector unless they had a bursary. The bill undermines that principle. Given the Scottish Government's very strong

record in promoting equity and excellence in schools, I do not understand how the legislation before us meets that criteria. There is no doubt in my mind that it will make the sector more elitist, which is exactly what we do not want, and exactly what the independent sector has been fighting against for a very long time. I do not get where the legislation is coming from at all. It is a regressive step and, as I said, it undermines all the good work that the Parliament carried out unanimously in 2005. I will leave it there.

The Convener: Thank you. Are you going to press or withdraw amendment 73?

Liz Smith: I will press my amendment.

The Convener: I suspected that you might. The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Wightman, Andy (Lothian) (Green)

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

Amendment 73 disagreed to.

The Convener: Amendment 15, in the name of Andy Wightman, is in a group on its own.

10:00

Andy Wightman: As we have just discussed, section 10 provides for withdrawal of charitable relief from independent schools. At an early stage, there was, in response to the Barclay review recommendation on that, some debate about specialist schools in the independent sector. The bill reflects that conversation and will implement the Government’s decision to exempt them from withdrawal of charitable relief—in other words, to retain the status quo for them. There is an exemption for schools that provide education for pupils who

“are selected on the basis of musical ability or potential”.

My amendment 15 simply seeks to apply the principle that the minister has outlined on a number of occasions. Earlier today, she said again that the current difference between the independent sector and the public sector should end.

I think that only one school in the independent sector provides education for pupils who are selected on the basis of musical ability, but there are four public schools—or parts of them—that would have to be valued separately if my amendment were to be agreed to. They provide exactly the same services, and the minister is well aware of them. They are the national centres of excellence in music at Douglas academy in East Dunbartonshire, the City of Edinburgh music school at Broughton high school in Edinburgh and Aberdeen City music school at Dyce academy in Aberdeen, and the national centre of excellence in traditional music at Plockton high school, which the minister will no doubt be very familiar with.

My amendment merely seeks to extend the status quo in relation to relief from rates—not charitable relief, because public schools do not, of course, receive charitable relief—to specialist music schools that are in the public sector.

I move amendment 15.

Graham Simpson: Amendment 15 seems to be very fair. The committee was quite critical of the section of the bill that gives only specialist music schools rates relief. I recall that there was discussion about why schools that specialise in other areas, such as science or sport, would not receive that and why it should be left as just music schools. However, we are where we are, and the provisions are in the bill. It seems to me that, if they are to survive in the bill, what Andy Wightman has suggested is entirely fair. If the relief applies in the independent sector, why does it not also apply in the public or state sector?

Annabelle Ewing: Will the member take a brief intervention?

Graham Simpson: I have just finished, but feel free to carry on.

Annabelle Ewing: It is okay. I will come in later.

The Convener: I will let Sarah Boyack come in, after which Annabelle Ewing can make the point that she was going to make.

Sarah Boyack: She will probably intervene on me.

I would like to explore the issues in Andy Wightman’s amendment relating to state schools that specialise in music as centres of excellence getting the same treatment that St Mary’s music school gets. Because of Scottish National Party cuts, access to music in our schools has been increasingly under threat. All our schools should provide music tuition and access to teaching that supports students who want to excel in music or access music tuition and not have to pay for it. Music tuition is a really important building block for personal development, expression, confidence, health and valuable life skills.

I get the fact that local authorities face budget cuts and that instrumental music tuition in particular is feeling the pinch. In the most recent academic year, there was a sharp increase in fees for instrumental music tuition. Some 38 per cent of local authorities increased tuition fees, and that meant a decline in the number of students studying music in our state schools.

That is part of the context. It takes us to the question why the bill ignores the four state schools that are centres of excellence and have not just prioritised music teaching, which we would hope for in every school, but have invested heavily in it.

The four schools that Andy Wightman mentioned do not benefit in the way that St Mary's music school does. That is not to argue against St Mary's music school; I understand that 70 per cent of the school's funding comes directly from the Scottish Government. The issue is more to do with fairness in how the Scottish Government deals with music specialisms in schools. Surely the other schools are worthy of support, in acknowledgement of the substantial additional investment that is required to provide their music and teaching infrastructure. I am not arguing that other state schools should not make such investment. As I said, all schools should do that.

All state schools pay non-domestic rates, but not all that income goes back to schools, given the huge pressures. If the bill passes, I hope that extra resources will go to local authorities to enable them to prioritise music. However, that does not address the issue at the heart of amendment 15, which is equal treatment between the state and private sector.

Annabelle Ewing: In paragraph 117 of our stage 1 report on the bill, the committee said:

> "We are not persuaded that the case for treating independent specialist music schools (in practice, one school at present) any differently from any other independent schools has been clearly made. There are a number of independent and state schools that could be said to make a distinctive contribution to musical culture or in other areas, such as Scotland's National Centres for Excellence."

Amendment 15 seems to muddy the waters, rather than make the position clearer, and on that basis alone I cannot support it. As a matter of principle, I do not think that it helps us with consistency to any particular degree.

What is the cost of the status quo of the bill compared with the cost implications of the approach that Mr Wightman has proposed? I am looking at Mr Wightman to see whether he knows the cost of his approach, but he is not paying attention—I do not know whether that means that he does not know. Maybe the minister knows. Maybe someone knows what the cost implications of amendment 15 are.

Alexander Stewart: Amendment 15 has merit in that it would equalise things and give the same opportunities to the state schools that have expertise. As members said, councils are suffering. In the Clackmannanshire Council area, in my region, there has been a 60 per cent reduction in music tuition because of the fees that have been introduced, which is disadvantaging masses of individuals in the community who in the past would have had the opportunity to unlock their potential.

There should be more discussion to see whether what is proposed can be done, because I think that it would equalise things in the sectors and support the schools that we are talking about.

Liz Smith: Amendment 15 is important, because in lodging it Mr Wightman has identified that there are many different types of school in Scotland, in the state sector and in the independent sector. That perhaps reflects what I would describe as "exceptional circumstances" rather than just "special schools", which is the legal term that we are used to using. Amendment 15 reflects that difference. It might need to be refined before stage 3, but it deals with the anomaly that would occur if we allowed for differences in the independent sector without recognising that there are considerable differences in the state sector, too.

As I said to the minister, both sectors should be all about choice and excellence. There is no doubt that the schools to which Mr Wightman referred are excellent schools. Amendment 15 is therefore an important amendment.

The Convener: As Annabelle Ewing said, at stage 1, the committee made it clear that we did not support a proposal that would affect just one school. Andy Wightman had every right to lodge amendment 15, but if the committee agrees to it, we will be saying, "We disagreed with the approach at stage 1 but now agree with it at stage 2, as long as we add these four public schools but not the centres of excellence in other subjects." We would be giving music a more important place than other subjects in the curriculum, in relation to rates relief. That would make what we said in our stage 1 report look a bit strange.

Kate Forbes: I recognise that the committee was not persuaded by the case for treating independent specialist music schools differently, although I think that amendment 15 helps to highlight what a unique school St Mary's music school is. I will go through a number of comments on the amendment, which I believe is well intentioned.

The amendment, which seeks to broaden eligibility to include public schools that

"are wholly or mainly used for the purpose of developing musical excellence",

rightly recognises that schools have much to be proud of in promoting excellence across various subjects including sport, art and music. I recall that, previously, Kenneth Gibson called for a specialist school for football, having seen Scotland lose the night before.

Although there are schools that offer specialised provision, they nearly always do so as part of a mainstream curriculum and they rightly offer the benefits of that provision to other pupils who attend the school. For example, few of the pupils who attend the schools that have been identified, including Plockton high school and Douglas academy, do so solely because of their musical aptitude, although of course some do. Conversely, every pupil attending St Mary's does so purely on the basis of their musical ability and as such the school offers a unique national service, which is why it merits a unique policy solution.

I do not think that any school would currently meet the criteria that are set out in amendment 15. Schools such as Plockton and Broughton high schools do not select pupils on the basis of musical ability alone, nor are they, to use a favourite phrase from this morning,

"wholly or mainly used for the purpose of developing musical excellence".

Lastly, as Sarah Boyack identified, the impact would be on the local authorities, not on the schools themselves. The local authorities would decide whether—

Sarah Boyack: The minister was making the point that it is important to have one school of excellence. If we look at the income background of students attending St Mary's, we see that the number who come from the lowest-income backgrounds is declining. Surely there are real issues about access and fairness here? We have got four schools in the state sector that specialise in different parts of the country—albeit that one of them is Broughton high school—which exposes the challenging issue that students from low-income backgrounds are not getting access to music in state schools, and nor are they getting access to St Mary's. We have four schools that are more accessible for students in different parts of the country, yet they are not getting the same treatment as that which you are proposing in the bill for St Mary's.

Kate Forbes: That is a fair point. The intention of amendment 15 is laudable, but the amendment would not realise that intention because—unlike St Mary's—none of those schools is used "wholly or mainly" for the purpose of music tuition and students are not selected on the basis of aptitude. There may be a very strong argument for looking at what more we can do to ensure that St Mary's is more accessible and supporting music tuition across the state sector. However, the point here is that the local authorities in whose areas each of the four schools is situated would get a tax benefit and it would be up to the local authorities to decide whether that benefit is passed on—we cannot mandate them to do so.

Let us assume for a moment that only those four schools—those four local authorities—would get the financial benefit, and not every local authority that is providing music tuition. I understand that the cost of giving the relief to St Mary's would be approximately £30,000, but if the four schools that have been identified were eligible—and there are big questions marks around that—the cost would be approximately £900,000 per annum. The £900,000 would go to the four local authorities, whereas the cost for St Mary's is £30,000. That is a significant leap in cost.

10:15

Andy Wightman: I thank members for the various points that they have made, all of which I will try to deal with.

The convener referred to our stage 1 report. Of course, there is a case for extending eligibility for rates relief to other schools and national centres of excellence, and the convener is perfectly entitled to lodge amendments to that effect. I am merely focusing on specialist music schools, which are mentioned in the bill.

I turn to the minister's comments. I do not know what the selection criteria are at Plockton, but I know that the City of Edinburgh music school selects pupils on the basis of musical ability or potential. There are 50 or 60 pupils there, who are not just at Broughton high school; Flora Stevenson primary school is part of the school, too.

With regard to the "wholly or mainly" provision, we are talking about lands and heritages that are occupied by a public school that selects pupils on the basis of musical ability or potential and which

"are wholly or mainly used for the purpose of developing musical excellence".

Such schools have designated areas; they are premises.

Turning to Annabelle Ewing's question about the costs—and the minister's claim, about which I am intrigued—we could not identify the costs until we undertake a valuation. At the moment, each of the four schools in question is valued as one whole school. For example, Broughton high school has a rateable value of £803,000, as of April 2017. If amendment 15 were agreed to, the Lothian assessor would have to go there to reassess the

school and apportion a value to that bit of it that provides the specialist music school.

Kate Forbes: The costing that I identified is of the relief that would be applied if the whole school were to be exempt.

I accept that some pupils are selected on the basis of musical ability or potential, but subsection (2)(a)(ii) of the new section that amendment 15 seeks to insert specifically says:

"follows a curriculum which includes classes aimed at developing musical excellence, and

are wholly or mainly used for the purpose of developing musical excellence".

My point was that although some pupils might be selected on the basis of musical ability or potential and some classes might be focused primarily on musical excellence, I find it difficult to believe that all four schools are used "wholly or mainly" for that musical purpose, in the light of the fact that they are also local authority schools that have a catchment area.

Andy Wightman: That is the case—they are not wholly or mainly used for that purpose, but that portion of the lands and heritages that are used by the music schools are used wholly or mainly for that purpose. That takes us back to the argument about the nursery schools. I have just had a look at the Scottish Assessors Association's practice note on day nurseries. It says:

"Day Nurseries adjacent to or within the grounds of school properties or forming part of the school property and providing the pre-school education for the associated school may be valued in terms of SAA Public Buildings Committee Practice Note 5."

That is routine—

Kate Forbes: My point is that amendment 15 does not provide for any apportionment. Secondly, it is a lot easier to apportion different values to residential and non-residential parts of bed and breakfasts, for example. You are implying that we can apportion a value to a centre of excellence relative to the value of the rest of the school. That is very difficult to conceive of when many of the areas of that centre are common with the rest of the school.

Andy Wightman: The bill makes no provision on the process of valuation, which is undertaken by professional valuers independently. Valuers are well used to apportioning values in complex properties. Typically, they will apportion the value of common areas in proportion to the amount of use that that particular use takes of the whole building. That is not difficult for valuers to do, and it would be inappropriate for me to make any reference to how valuations should be carried out, because that is left entirely up to independent assessors.

If there are some drafting issues to do with the use of the phrase "wholly or mainly", I would be happy to deal with them, but amendment 15 is predicated on the notion that we have a well-established valuation process that already apportions values to parts of buildings that are used for different purposes, for example as cafes or shops.

Sarah Boyack talked about the more general question of musical education, and I accept all her points entirely. As a non-domestic rates bill, the bill is about the liability of properties for rates. In so far as music is being referred to, we are talking about properties that are used exclusively for specialist music schools, whether those schools are public or private.

I repeat that we could have further amendments in this area at stage 3. I am just seeking to apply some consistency in relation to the principle that has been established at the beginning of the process, which is that there should be parity between independent schools and public schools. The logic of that is that there should be a level playing field.

That was followed by a proposal by the Government, which is incorporated in the bill, that there should be certain exemptions. My amendment follows on from one part of that and sets out that there should be a level playing field for those exemptions.

The Convener: Are you pressing amendment 15?

Andy Wightman: Yes.

The Convener: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

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

Amendment 15 agreed to.

Section 10—Charitable relief: independent schools

Amendment 74 moved—[Liz Smith].

The Convener: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

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

As convener, I have a casting vote. Given that the member who is missing is likely to have voted along these lines, I will use it to vote against amendment 74.

Amendment 74 disagreed to.

Amendment 75 moved—[Liz Smith].

The Convener: The question is, that amendment 75 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

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

Once again, I will use my casting vote to oppose the amendment.

Amendment 75 disagreed to.

Amendment 76 moved—[Liz Smith].

The Convener: The question is, that amendment 76 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Wightman, Andy (Lothian) (Green)

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

Amendment 76 disagreed to.

Amendment 77 not moved.

Amendment 78 moved—[Liz Smith].

The Convener: The question is, that amendment 78 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

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

I will use my casting vote to vote against amendment 78.

Amendment 78 disagreed to.

Amendment 79 moved—[Liz Smith].

The Convener: The question is, that amendment 79 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Wightman, Andy (Lothian) (Green)

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

Amendment 79 disagreed to.

Section 10 agreed to.

The Convener: We will have a short break.

10:23

Meeting suspended.

10:28

On resuming—

After section 10

The Convener: Amendment 93, in the name of Sarah Boyack, is in a group on its own.

Sarah Boyack: I lodged amendment 93 in order to raise the issue of why councils pursue arm's-length external organisations. It was suggested in

the Barclay review that it was for tax avoidance, but is worth pointing out the immense pressure that local authorities are under, and that there are many benefits that come from arm's-length sports and cultural organisations that local authorities have set up specifically to enable communities to access facilities that they would not otherwise be able to afford.

I am not an enthusiast for outsourcing. I would far prefer councils to be able to run their own in-house services, but we should not forget that although ALEOs are not providing core services such as education and social care, and so investment in them is not ring fenced, they nonetheless have huge importance as a result of the health and wellbeing benefits they bring, particularly in the areas of sports and culture. Amendment 93 is a reaction against the term "tax avoidance" in the Barclay review, because I think that our public sector local authorities are acting under legitimate pressures and with the best intentions in trying to provide valuable and affordable services to our constituents. The issue is the funding deal that local authorities get from the Scottish Government. That is why I lodged the amendment and I am interested to hear colleagues' comments.

I move amendment 93.

10:30

Andy Wightman: I broadly agree with the intention of the amendment, but I note that it says,

"Any reduction or remission of rates ... should not be offset by a reduction in annual central government grants to that authority".

That gets us into the field of local government finance, and I wonder about the competence of the amendment in that sense. Given that the existing funding formula for local government takes account of non-domestic rates revenue, I do not think that it is obvious that, were this amendment to pass, there would be an automatic impact on the local government settlement. It would be difficult to introduce a financial mechanism to the annual settlement through an amendment to this bill, so I am keen to hear what the minister has to say.

Kate Forbes: There is widespread acknowledgement that ALEOs are often established for financial reasons—to avoid non-domestic rates. I agree with the committee's stage 1 report, that

"Tax avoidance corrodes public confidence in the tax system".

Amendment 93 would further facilitate that by removing the financial disincentive for councils considering adopting or expanding ALEOs. Perhaps it would be helpful if I were to set out the Scottish Government's position. We partly rejected the Barclay review recommendation that ALEOs should lose eligibility for charitable relief in order to protect public services that are already being delivered through that route across the country. As such, existing ALEOs will continue to receive the levels of charity relief support that they received at the time of the announcement, adjusted for inflation and the impact of future revaluations.

No existing ALEOs will be worse off as a result of the decision, but in the spirit of my initial comments around tax avoidance, and in order to prevent further proliferation of ALEOs, where a new ALEO is established, or an existing ALEO is expanded, we will claw back any increased cost of relief. Councils can still create or expand existing ALEOs where it makes policy sense to do so, but the Scottish Government will not facilitate tax avoidance by allowing them to retain the financial benefits.

I hope that that explanation is helpful. I do not think that it answers Andy Wightman's question, which he may want to repeat. He does not. In that case, I hope that Ms Boyack will consider carefully whether to press her amendment and I encourage the committee not to accept it, for the reasons that I have given.

Sarah Boyack: I will not press the amendment at this stage, but I remain convinced that ALEOs have not been established just for tax avoidance purposes. I know several local authorities that have established them for very good principles.

Amendment 93, by agreement, withdrawn.

Section 11—Power to reduce or remit rates for certain organisations: guidance

The Convener: Amendment 94, in the name of Sarah Boyack, is grouped with amendments 95, 40 and 41.

Sarah Boyack: I lodged amendment 94 because I thought it important that guidance is laid before the Scottish Parliament and that we get sufficient time for proper scrutiny, because these are important issues. It has been said before that we very rarely discuss non-domestic rates legislation, and this is a generational opportunity, so I want to make sure that we get proper updates following this bill. I have read the alternative proposals by the Scottish Government and, to me, they do not make that commitment. They do not go as far as my amendments, which are important for the purposes of accountability and transparency. I hope that colleagues will support them.

I move amendment 94.

Kate Forbes: I shall start with Sarah Boyack's amendments. We carefully considered what the

Delegated Powers and Law Reform Committee's stage 1 report had to say on the section 11 powers, which enable the Scottish Government to issue guidance to rating authorities about their discretion to grant rates relief to sports clubs. We consider that it is really important that those who need to have regard to the guidance, and those who may currently be in receipt of this discretionary rates relief, should be involved in the drafting of the guidance.

The guidance will be more about the dissemination of good local authority practice than about central Government seeking to direct what local authorities do. To that end, a working group has been set up to progress the drafting of the guidance and work will get under way shortly. The working group comprises representatives from the Office of the Scottish Charity Regulator, the Institute of Revenues, Rating and Valuation, sportscotland, the Scottish Sports Association, local authority revenue staff, Community Leisure UK—Scotland, and VOCAL, the voice of chief officers of cultural and leisure services in Scotland. However, if the committee would find it helpful, I would be very happy to undertake to seek the committee's comments on the draft guidance produced by the working group. That is my response to amendments 94 and 95.

Andy Wightman: I understand all that. On a broader point, section 4 of the 1962 act is entitled

> "Reduction and remission of rates payable by charitable and other organisations".

One of my concerns—and that of other committee members, I think—about the Barclay review was that it was very narrowly focused. Charitable relief then came up as an issue in relation to one particular type of property that enjoyed such relief, that is to say, independent schools. However, when we visited Kilmarnock we heard that a profitable business in the high street—a furniture shop—had closed down because of a charitable shop nearby that sold furniture; it did not, however, pay its staff, as they were volunteers. That highlights the fact that the independent schools amendment, which we have dealt with, is about only one bit of the charitable sector. We have anecdotal evidence that charitable relief is having a serious impact on the viability of businesses. Is there not a case for a wider review of how charitable relief is applied?

Kate Forbes: That is a very fair comment. Although it is a separate issue from those relating to the amendments in this group, I would not dispute the need perhaps to have a broader look at how charitable relief is applied across the board. In a sense, charitable relief is similar to the small business bonus scheme. In other words, this is about identifying whether the policy is achieving its purposes or whether it is undermining the rest of the local economy.

The amendments essentially address the issue of whether Parliament should determine the guidance or whether it should be informed by the stakeholders that I have identified. I will leave it to the committee to tell me whether it would be keen to comment on the draft guidance.

My amendments 40 and 41 require that, as soon as it is reasonably practical after producing guidance to local authorities, the Scottish ministers will lay a copy of that guidance before Parliament and publish it. That will ensure that the committee, if it sees the need, can consider what the guidance says. For that reason—because Parliament will have an opportunity to comment—I do not see the need arising for Parliament to annul the guidance. I therefore do not support amendments 94 and 95, and I hope that committee members will support my amendments 40 and 41.

Annabelle Ewing: I welcome the minister's helpful suggestion that she will seek to involve the committee by inviting it to comment on any draft guidance.

Mr Wightman called for a review of charitable relief in general. Last week, Mr Wightman lodged an amendment to, in effect, lock in a position on the national relief of the small business bonus scheme. The minister said that the scheme is subject to review, and we do not yet know the outcome of that. Mr Wightman's amendment last week was supported by others, although not by me and my colleagues in the Scottish National Party. I find his position a bit inconsistent. On the one hand, Mr Wightman wants a review of something. On the other hand, he would lock in a position—notwithstanding that there is a review—to take away the national relief of the small business bonus scheme. That is a bit inconsistent.

The Convener: Can we return to the issue in front of us, please? If no one else wishes to comment, I ask Sarah Boyack to wind up, and to press or seek to withdraw amendment 94.

Sarah Boyack: I am minded to press amendment 94 and to move amendment 95. We need more parliamentary scrutiny, notwithstanding the minister's comments about the working group. When we are passing complicated legislation, there is an issue about the amount of time that everyone has to deal with it. We need to ensure that all those who pay the tax and those it impacts are involved in that wider discussion. We need that accountability. I welcome the fact that we have a choice of amendments, which have different strengths. I prefer amendments 94 and 95 in my name to those in the minister's name.

The Convener: The question is, that amendment 94 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

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

Amendment 94 agreed to.

Amendment 95 moved—[Sarah Boyack].

The Convener: The question is, that amendment 95 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

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

Amendment 95 agreed to.

Amendment 40 moved—[Kate Forbes].

The Convener: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

Against

Boyack, Sarah (Lothian) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

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

Amendment 40 disagreed to.

Amendment 41 moved—[Kate Forbes].

The Convener: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

Against

Boyack, Sarah (Lothian) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

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

Amendment 41 disagreed to.

Section 11, as amended, agreed to.

After section 11

The Convener: Amendment 42, in the name of the minister, is grouped with amendment 43.

Kate Forbes: At the time of this year's Scottish budget, the Scottish Government committed to devolving empty property relief in time for the next revaluation. Amendment 42 delivers that by repealing legislation that provides that no rates will be payable on unoccupied lands and heritages. It also repeals a power that allows ministers to prescribe by regulation classes of unoccupied lands and heritage for which such rates are payable.

Although amendment 42 is simple, the implications are significant, both for national non-domestic rates policy and for local empowerment. When the relief is repealed, local authorities will benefit from the cost of empty property relief to the Scottish Government, as they will see an equivalent increase in their revenue funding. The nature of that transfer will be discussed with COSLA nearer the 2022 revaluation, as it is intended that the repeal will have effect from 1 April 2022.

Councils will have full flexibility over how they deploy those extra resources locally. Should they wish to replicate the former national relief, or to introduce any local relief, they have the option to do so using the powers given to them by the Community Empowerment (Scotland) Act 2015. Should they wish to use the resources to support other local priorities, then that is a matter for individual councils, which are accountable to their local electorate.

The reform, along with others agreed in the 2019-20 budget, represents the biggest empowerment of local authorities since devolution—that point might have been more accurate if I had said it last week; until last week, it was the biggest empowerment of local authorities since devolution. I hope that the committee can support amendment 42.

Amendment 43 is a technical amendment: it amends section 12 of the bill to accommodate the changes made by amendment 42.

I move amendment 42.

Sarah Boyack: I support the principle of the proposal in amendment 42, because it is important that rates are paid on unoccupied land. The proposal sits alongside the possibility that local authorities can still grant relief using powers under the Community Empowerment (Scotland) Act 2015. I note that COSLA has welcomed those powers in line with its aspirations for increased local fiscal empowerment.

However, there is a raft of powers that local authorities need in order to tackle the issue of unoccupied and underutilised land if we are going to see land being used for the benefit of all our communities and to enable wider economic success. One of the financial challenges that councils currently face is investing in regeneration and using compulsory purchase orders, as well as how they prioritise that in relation to other challenges.

It is important to have compulsory sale order powers as part of that range and it needs to be an option that sits alongside amendment 42 and the powers in the Community Empowerment (Scotland) Act 2015. It would be good to have an update from the minister on when she sees such a provision being in place, because I think that the powers would complement each another.

10:45

Andy Wightman: I thank the minister for lodging amendments 42 and 43, which form part of a commitment that was made in budget negotiations between the Scottish Greens and the Scottish Government in January this year to devolve non-domestic empty property relief to local authorities. I welcome the amendments and will support them.

Kate Forbes: I note Sarah Boyack's points. Perhaps it would be easier if I come back to her on them later.

Amendment 42 agreed to.

Section 12—Non-use or underuse of lands and heritages: notification

Amendment 43 moved—[Kate Forbes]—and agreed to.

Section 12, as amended, agreed to.

Section 13—Failure to pay instalments

The Convener: Amendment 44, in the name of Kate Forbes, is grouped with amendments 45 to 49.

Kate Forbes: Section 13 makes changes to the way in which local authorities can recover unpaid non-domestic rates. It aims to bring the enforcement position for non-domestic rates broadly into line with the enforcement position that currently exists under council tax.

The group of minor amendments that are before the committee today flow from discussions with local authority colleagues following the bill's introduction and they fine tune section 13 of the bill rather than make substantive changes.

Amendment 44 removes the reference to a "demand note", which may not cover a whole year and which is not essential to the operation of new section 8A(1) of the Local Government (Scotland) Act 1975. Instead, what matters is that the ratepayer has a liability to the local authority and has failed to pay an instalment of that liability.

Amendment 45 recognises that a ratepayer may be liable for the rates for part of the year only, because they occupy the property only for part of a year.

Amendments 47 and 48 amend subsections (4) and (5) respectively of new section 8A to make it clear that, following a default, the ratepayer becomes liable for payment in full of the rates for which they are liable, which may be less than the full rates for the year.

Amendment 46 is a consequential amendment that flows from amendment 44, and amendment 49 is a consequential amendment that flows from amendments 47 and 48.

We are keen to ensure that, as far as is practical, the legislation enables local authorities to administer the non-domestic rates system in a flexible, efficient and effective manner. The amendments in this group deliver on that.

I move amendment 44.

Amendment 44 agreed to.

Amendments 45 to 49 moved—[Kate Forbes]—and agreed to.

Section 13, as amended, agreed to.

After section 13

The Convener: Amendment 50, in the name of Kate Forbes, is grouped with amendment 51.

Kate Forbes: Amendments 50 and 51 reflect the aspirations of the committee and my responsibilities as minister for digital economy, as discussed during stage 1 evidence sessions, to improve the use of digital and electronic systems in the administration of the rates system. In its final report, the Barclay implementation appeals sub-group also supported the move to a paperless interaction between the assessor and the

proprietor, tenant and occupier. The amendments ensure that ministers are able, by regulations, to specify the way in which all notices in the context of non-domestic rates are communicated between parties.

Amendment 50 provides powers for ministers to make regulations to allow or require assessors, local authorities, ratepayers and any other statutorily involved party to issue notices by "electronic means". Such notifications are currently provided in postal form, and I hope that the committee agrees that it is important that we move forward.

Amendment 51 specifies that those regulations are subject to the affirmative procedure and that ministers must consult on them.

As well as providing the foundations to modernise the administration of the current system, including to support a more effective and efficient appeals system, the amendments will facilitate greater amounts of information being shared than is currently the case. For example, section 6 allows ministers to specify by regulations what information assessors must provide in the valuation notice. That may in future include the information that is currently publicly available on the assessors portal for around 60 per cent of properties in summary valuations.

The Barclay appeals sub-group called for the provision of that type of information to be subject to a statutory requirement. The private representatives of that group also called for assessors to publish information—subject, of course, to the general data protection regulation and commercial sensitivities—relating to the comparable properties that were drawn on to calculate a property's rateable value. That could amount to a significant amount of information that cannot reasonably be sent in postal form.

In the context of the climate emergency, I am keen to work with assessors and ratepayers to see how we can modernise the whole system in advance of the 2022 revaluation, particularly in light of the current figures. As things stand, assessors are required to send around 800,000 letters at each revaluation—400,000 at the draft valuation stage and 400,000 at revaluation.

I hope that the committee agrees that a move to a paperless system is in the best interests of all concerned and that there also needs to be the right opportunity to consult.

I move amendment 50.

Amendment 50 agreed to.

Amendment 51 moved—[Kate Forbes]—and agreed to.

The Convener: Amendment 4, in the name of Andy Wightman, is in a group on its own.

Andy Wightman: As members will be aware, last week we agreed to amendment 9, which inadvertently removed section 153 of the Local Government etc (Scotland) Act 1994. That was not my intention, and I put on the record that we will revisit that at stage 3.

Amendment 4 provides that the secondary legislation that is enacted under the powers in section 153 of the 1994 act should be subject to the affirmative procedure. Committee members will probably remember with great fondness our meeting on 20 March this year, in which we considered nine or 10 instruments relating to non-domestic rates. Eight Scottish statutory instruments were passed under the powers in section 153 of the 1994 act. One of those SSIs—the one for the small business bonus scheme—dealt with reliefs to the tune of £250 million to £270 million. When the Government spends that amount of money—that is what the Government is doing; it is giving that money to local authorities—the instrument should be subject to affirmative procedure.

On 20 March, we also passed the annual rate order to set the rate for the second-highest-yielding tax in Scotland—the amount involved is just under £3 billion. That was a negative instrument. Two years ago, I had to move a motion to annul in order to bring the cabinet secretary to the committee to have a debate about the rate of Scotland's second-highest-yielding tax. It seems to me to be inconsistent that we have an income tax resolution that is fully debated in the Parliament and is subject to a full vote and a great deal of scrutiny as part of the budget process but just under £3 billion of public finance is raised via the negative procedure. Amendment 4 deals with the question of reliefs, which I think should be subject to affirmative procedure, and I intend to lodge an amendment at stage 3 to amend section 7B of the Local Government (Scotland) Act 1975 to apply the principle of switching from a negative to an affirmative instrument to the order setting the annual poundage rate. I would be interested in the minister's views on that.

I move amendment 4.

Kate Forbes: I will respond very briefly to Andy Wightman's opening remarks. I accept that the debate about whether the regulations setting up those reliefs should be subject to affirmative or negative procedure has moved on considerably since last week, because of the repeal of section 153, but that is a discussion for another day. The points that I am about to make are not valid if the repeal of section 153 goes ahead.

For two reasons, I challenge any suggestion or inference that non-domestic rates policy decisions are not currently subject to parliamentary scrutiny. First, the committee and Parliament do scrutinise legislation carefully. Non-domestic rates decisions have been set out as part of the Scottish budget for a number of years and are subject to extensive consultation and scrutiny throughout that process. That gives Parliament and ratepayers a clear and explicit indication of the Government's policy intention, which was a key recommendation of the Barclay review. At the conclusion of the budget process, the Scottish Government routinely lodges eight to 10 instruments to bring into effect various rates and reliefs that need to be considered and in force for the start of the new financial year. Those will largely contain very technical details within the strategic boundaries that are set by the budget process. I suggest that the committee does not need me to appear before it to explain the detail of each, but I would be delighted to appear before the committee, if it thought that that was important, to talk about the technical details of those instruments. That can be done without changing the procedure. The committee can invite me to discuss a negative instrument if it wishes.

I do not see the advantage of amendment 4. It does not give the committee greater powers; the committee can scrutinise as it has always done. I do not quite see what is broken right now that needs to be fixed. If the amendment seeks change for the sake of change, I cannot support it, but I am very clear that, if the committee wishes me to speak to any of the instruments that will inevitably be lodged and subjected to scrutiny, I am always happy to accommodate the committee.

Andy Wightman: There is an established practice in Parliament—certainly since I came here and began observing the way in which primary legislation is enacted—that consideration is given both by the introducer of the bill and in more detail by the Delegated Powers and Law Reform Committee to whether specific powers and legislation should be subject to affirmative or negative procedure. That consideration tends to be based on the significance and import of the measure concerned.

I take the minister's point that there are a variety of reliefs under section 153. In March this year, we had the Non-Domestic Rates (Telecommunication Installations) (Scotland) Amendment Regulations 2019 which, from memory, was a fairly minor SSI. However, we also had the Non-Domestic Rates (Levying) (Scotland) Regulations 2019, which provided for this financial year's small business bonus scheme, which was £270 million of public expenditure. As a matter of principle, were we to draft legislation today that gave the powers that are contained in section 153 of the 1994 act, we would subject these reliefs to affirmative procedure. I am happy not to press amendment 4, on the basis that affirmative procedure would not be appropriate for all secondary legislation that flows from section 153, as some of it is minor and technical, but I disagree with the minister when she says that all such instruments are minor and technical. Public expenditure of £250 million or £270 million is not minor or technical; it is a major commitment of public finance. This year, for example we altered the thresholds.

Graham Simpson: Will the member take an intervention?

Andy Wightman: I am nearly finished. The minister says that that is part of a bigger debate on the budget. To be blunt, it might be part of that bigger debate, but specific taxes, notably income tax, are subject to a separate resolution. The minister also said that she is very keen to come here any time the committee likes. I welcome that, but it should not be subject to a member lodging a motion to annul—that is a very clumsy way of doing it.

Kate Forbes: Correct me if I am wrong, but I should have thought that the committee can invite me without needing to resort to such actions.

Andy Wightman: Absolutely—the committee will not hesitate to invite the minister along when we want to scrutinise her, but that is not the point here. We are talking about Parliament passing legislation, in this case specifically on the levying regulation, which is an instrument conferring power on ministers to spend £270 million. My point is merely that that should be an affirmative rather than a negative instrument.

11:00

However, in recognition of the fact that section 153 of the Local Government etc (Scotland) Act 1994 provides that there should be a variety of instruments, the financial consequences of some of which will be substantial, with those of others being more minor, I will not press amendment 4, but I want to speak to the minister between now and stage 3 with a view to ensuring that things such as the small business bonus scheme and any other relief whose quantum is over a certain threshold are dealt with, as they should be, in an affirmative instrument.

Graham Simpson: Given that Mr Wightman does not intend to press amendment 4, I might not have to say anything. If he had decided to press it, I would have supported it, having heard the various contributions. What he has said is very important. When we are dealing with large amounts of money, the negative procedure should not be used. The level of parliamentary scrutiny is very important. It is technical stuff, but it matters.

I take on board what Mr Wightman has said. If he changes his mind and presses amendment 4, I will support it. If he does not, that is fine; we can look at the issue for stage 3.

Andy Wightman: I thank Mr Simpson for that. In view of his ringing endorsement of amendment 4, I might press it. I am merely putting on record that an adaptation will be necessary before stage 3, because I recognise that some of the instruments in question are technical.

That said, as the minister correctly pointed out, the practice is that all such instruments come in a bundle. This year, they came to us on 20 March. They all come then because they have to be in place for the start of the new financial year. In practice, if the levying regulations for the small business bonus scheme were subject to the affirmative procedure, the minister would be here anyway, so it would not make much difference.

As Graham Simpson said—he has some authority in this area, as the convener of the Delegated Powers and Law Reform Committee—if we are spending large sums of public money and are changing the quantum, the thresholds and the rates every year, such specific legislative provisions should be subject to the affirmative procedure, albeit that I totally accept that those matters can be the subject of parliamentary debate and broader debate. My point is very straightforward.

The non-domestic rate (Scotland) order should also be subject to the affirmative procedure, although I concede that I have not lodged an amendment to that effect. I am not sure whether the minister was agreeing that that order should be subject to the affirmative procedure; I do not think that she was. At any rate, I will lodge an amendment to that effect at stage 3.

Kate Forbes: I was going to add something, but Mr Wightman has finished.

Andy Wightman: I have.

The Convener: Are you going to press amendment 4?

Andy Wightman: What the hell. I will press it.

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)

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

Amendment 4 agreed to.

Section 14—Assessor information notices

Amendment 52 moved—[Kate Forbes]—and agreed to.

The Convener: Amendment 53, in the name of the minister, is grouped with amendments 54 to 64 and 66.

Kate Forbes: The amendments in the group relate to civil penalties for failure to comply with assessor information notices. Before I go into the detail of each amendment, I would like to emphasise the importance of information sharing between the ratepayer and the assessor, which the committee also identified. In a letter to the committee dated 25 October, the Scottish Assessors Association said:

> "The non-domestic rates system is entirely based upon accurate information being returned to the Assessor in time to ensure that the Assessor can arrive at the correct valuations. Such a process is essential to allow ratepayers to be confident in their assessment and to reduce the time and cost of dealing with proposals and appeals."

There is among the majority of stakeholders recognition of the need to reform the current appeals process. We are doing that, but we also need to build trust in the system overall. One way to do that is to require assessors to provide more information to people so that they can understand their valuations better. The bill gives ministers the power to do that.

Another way to increase confidence in the system is by increasing the accuracy of valuations. In a submission to the committee for an evidence session on 26 April 2017, the Scottish Assessors Association highlighted that, in the licensed premises sector, just a little over 50 per cent of the rental and turnover information had been returned. Despite that, three quarters of the 74,000 revaluation appeals for the cycle that have been resolved to date have resulted in no change to the rateable value. If information return rates go up, I am confident that the accuracy of valuations could be even better, which will, over time, reduce the need to appeal.

I shall speak in detail only about the key amendments in the group, the others being technical and consequential on them. Amendment 53 responds to the Scottish Assessors Association's request, during stage 1 evidence to the committee, that the period for compliance with an assessor information notice be shortened from 56 to 28 days.

Graham Simpson: I want to ask about that shortening. Just 28 days to respond does not sound like an awfully long time to me. People could be on holiday, for example, and could easily miss that 28-day deadline. Obviously, 56 days is double that. How did you come up with 28 days? I can easily see situations in which people, through no fault of their own, would not meet that deadline.

Kate Forbes: We originally put 56 days in the bill, but the assessors highlighted that that would be a serious problem because of the need to get information up front. I repeat that in one sector in particular, only a little over 50 per cent of information was returned, which is not acceptable when appropriate information is needed in order to make judgments. It is no wonder that the number of successful appeals is so high when valuations reflect poor provision of information.

As for the 28 days, that is a judgment call on the basis that businesses should be able to turn the information around within a month. Businesses should probably be working to provide that information within a month, anyway. One hopes that they would have the information already and that it is not new information. That is borne out in comments to the effect that information is sometimes withheld intentionally in order that it can be provided later at an appeal.

Graham Simpson: I do not think that there is a right and wrong: it is about striking a balance. However, the owner of a small business, for instance, might be away. They could have taken a month's holiday—if they are lucky—and therefore be unable to meet a 28-day deadline. I accept the fundamental point, but there might be a balance to be struck between 28 and 56 days.

Kate Forbes: Yes. I am not dead set on the period, but in the context of three-yearly revaluations and a one-year tone date, one month really matters. Assessors will have only 12 months, from 2024, to make revaluations: they will not be able to afford to sit and wait for three months for the information. I take your point, but businesses work to one-month deadlines for a host of other matters. It would be very poor practice if, knowing that a revaluation was coming down the line for which they are expected to provide information, they did not factor that in, but instead went on holiday for a considerable period.

It is a judgment call. We are obviously working with very small businesses as well as with very substantial businesses. The substantial businesses should not be sitting on information for three months. One month is what the assessors have identified as appropriate. Assessors use their judgment—they do not leave it behind when it comes to tailoring responses to small businesses.

Graham Simpson: Given that it is a judgment call, would you be willing, should amendment 53 be agreed to, to enter discussions on the matter before stage 3?

Kate Forbes: I would need to see substantial concrete evidence that contradicts what the Scottish Assessors Association is calling for, which is born of comments by assessors and businesses. We cannot overstate how profoundly important it is that we deal with the appeals system, given that we are moving to three-yearly revaluations.

Businesses en masse welcome the move to three-yearly revaluations, but that will not happen if we do not get the appeals process right. However, we cannot get the appeals right if we do not get information sharing right, and we cannot get information sharing right unless we give the assessors the appropriate powers.

Andy Wightman: We have just agreed to amendment 50 on electronic communications in relation to paying—at least, I think we did.

Graham Simpson: Yes, we did.

Andy Wightman: My understanding is that that will not apply to assessors who request information. The valuation roll is partially digital at the moment. Should we have a system in which people are communicated with electronically and are asked to log on and enter the information that is requested? Basically, that information is the amount of rent that they will pay in that year. The process should take no more than 48 hours. The bill says that

"an 'assessor information notice' is a notice in writing".

Do you envisage everything being done electronically, and does the bill provide powers to enable that?

Kate Forbes: We will have the option to move all aspects of the process to electronic systems. That is certainly where I would like us to end up, so that we do not have letters being posted and perhaps being lost. I would like everything that could be electronic to be electronic. The thrust of the bill, including amendment 50, is to make electronic systems the default, with the obvious need for a caveat about there being options. I certainly want us to achieve Andy Wightman's vision of everything being electronic.

Andy Wightman: Will you clarify—

The Convener: You will have a chance to speak in the debate, Mr Wightman. Let the minister say her bit, then others can come in before the minister winds up.

Andy Wightman: Okay.

Kate Forbes: Amendments 54 and 56 to 58 will amend the civil penalty amounts. Under the amounts that are currently set out in the bill, it would take, for a property with a rateable value of £7 million, nearly 1,000 years for a penalty to reach its rateable value, which is the upper limit. That is not commensurate with an annual rates bill of £3.6 million. In particular, we must consider that withholding information could mean savings of tens of thousands of pounds due to the rateable value being lower than it would have been if the assessor had had the information.

The penalties must be appropriate and commensurate with the potential savings that could arise from withholding information from assessors. Moving to a percentage basis for the penalty, rather than using absolute amounts, allows for that. That is why amendment 56 will replace the first penalty with whichever

"is the greater of ... £200, and ... 1% of the rateable value of the lands and heritages concerned for the day on which the penalty notice is given".

Amendment 56 also specifies that, if the property is not yet entered in the roll, the penalty will be £1,000. Currently, the bill does not provide for that situation.

Amendment 57 will increase from 21 days to 28 days the time for provision of information before a person is liable to a further penalty after the first penalty notice is given. That is a point of fairness.

Amendment 58 will replace the second penalty amount with

"the greater of ... £1,000, and ... 20% of the rateable value of the lands and heritages concerned for the day on which the penalty notice is given,"

or £10,000 if the lands and heritages concerned are not yet entered on the roll.

Amendment 59 specifies that

"If the person fails to comply with the assessor information notice within ... 56 days"

of being liable for a penalty, they will become liable to a further penalty that is equal to the rateable value of the property, or £50,000 if the lands and heritages are not yet entered on the roll.

Amendment 66 will ensure that

"An assessor must pay any money that is recovered under"

the penalties to the Scottish consolidated fund. The amendment specifies that

"an assessor may do so after deduction of reasonable expenses incurred in relation to the giving of penalty notices under section 18 and the collection of penalties."

Amendment 66 will also enable the Scottish ministers to make provision by regulation about expenses that can be deducted, and provides that those regulations will be subject to negative procedure.

I am happy to answer questions on the amendments in the group.

I move amendment 53.

The Convener: I remind everybody that, once the mover of the lead amendment in a group has spoken, members have a chance to speak and can ask questions of the minister. However, this is not a question-and-answer session, so please ensure that interventions are short and to the point.

11:15

Andy Wightman: On my previous point about electronic communications, it is my understanding that, under provisions that we have just agreed to, the assessor information notices can be electronic.

Kate Forbes: Yes.

Andy Wightman: That is fine. Forgive me if I am incorrectly raising this question, but on amendment 56, if we go to a 28-day period in section 14—

Kate Forbes: Are you talking about amendment 57?

Andy Wightman: No. I am talking about amendment 56, which includes the words:

"For the purposes of subsection (2)(b)".

Is my understanding correct that, if a ratepayer fails to respond within 28 days or 56 days—depending on where we go with that—and their property has a rateable value of £3 million, they would be liable for a fine of £300,000?

Kate Forbes: Yes.

Andy Wightman: I wonder whether that is—

The Convener: Minister—you know that you can answer questions when you sum up.

Kate Forbes: I am sorry. I will answer the questions at the end of the debate.

The Convener: That will mean that there is no question-and-answer session.

Andy Wightman: I simply wonder whether the approach is proportionate. I understand the arguments that the minister has put forward on assessor information notices and moving to 28 days, but I wonder whether a £300,000 fine on a £3 million property for being a day late is proportionate. I think that there would be a £700,000 fine in relation to the Parliament building. It is a genuine question. I wonder whether, where there is no intention to delay, that approach would be proportionate.

Graham Simpson: I thank the convener for allowing me to ask the minister some questions earlier, because the answers were useful, and they helped to clarify things in my mind. I was genuinely wrestling with amendment 53 and the balance between 56 days and 28 days. I do not think that a balance has been struck, so I think that I will oppose amendment 53 at this point. I hope that we can get some movement on the issue at stage 3.

Andy Wightman has just spoken to amendments 56 to 59, which deal with penalties. A judgment call is involved on the balance. I am quite taken by what he said about potential fines being out of kilter. The Scottish Property Federation made the same point to the committee. I am therefore probably swayed against the amendments, at the moment.

Annabelle Ewing: Will the member take an intervention?

Graham Simpson: I will. I had just finished, but I am aware that I prevented Ms Ewing from speaking earlier, so I would love to hear from her.

Annabelle Ewing: Thank you. Graham Simpson might not be keen on the approach that is proposed, but we took evidence and there is enthusiasm for moving the system into a different space in which it works much more effectively with incentives and penalties for not complying. What penalty level does Graham Simpson think would be satisfactory, as he is not keen on the approach that has been put forward?

Graham Simpson: I do not have a figure in mind, although I have genuinely wrestled with the issue and the figures in the bill feel too high.

The Convener: It is fair to say that Andy Wightman's example was quite extreme, although it was legitimate. We had the same problem at stage 1: we all agreed that something had to be done, but we were not quite sure what to do.

Graham Simpson: Absolutely. I agree that something has to be done. As we discussed earlier, it is about striking a balance.

The Convener: I am not sure whether that helps at all, minister.

Kate Forbes: It does. May I respond now?

The Convener: Yes.

Kate Forbes: I agree with all members that a judgment call is involved. I want to emphasise that the core problem in the non-domestic rates system is the withholding of information and appeals, which will have come through to the committee in evidence.

If we look at the significant percentage of ratepayers who withhold information that assessors must then chase—when they are already busy enough—we see that something must be done. We will be unable to deliver three-yearly revaluations if assessors do not have stronger powers on information sharing. If there are no penalties for, or consequences of, not providing information on time, a move to 28 days, 56 days or something in between would be irrelevant.

The penalties are not intended to be revenue raising. If they were, they would probably be much lower, because it is more likely that ratepayers would make a judgment call as to whether to pay or whether to withhold information. The penalties are intended to be effective in delivering what assessors say is critical for their role, which is that they get the information that they need in plenty of time. It is important to state that assessors have powers to remit or reduce penalties, and that penalties can be appealed to the valuation appeal committee, which gives ratepayers access to justice. Assessors are good at using their judgment when it comes to ratepayers.

The penalties amounts might seem to be high, but if we take, for example, the large business supplement with a poundage at 51.6 per cent, large properties pay their rateable value's worth in tax in less than two years. In many cases, withholding information can lead to a significantly lower rateable value. For those who wish to avoid tax in that way, is it better to pay the penalty and withhold the information or to share the information and pay their rates bill?

Annabelle Ewing: We took quite a bit of evidence on that at stage 1. It has just occurred to me that there is a key issue of fairness for people who comply and provide information, and who see others—for whatever reason—not doing so.

Kate Forbes: There is the key issue of fairness. It is an issue of fairness in the appeals system, as well. In reforming the appeals system, my priority is to make sure that those who deserve a reduction in their rates bill get the access to justice that they need.

I will be blunt: at the moment, people withhold information knowing that they will be able to provide it in the appeal process and have their rates bill reduced. That is borne out by the figures. I would rather that people provided full information, which they should be able to do anyway, so that those who deserve access to justice and need to see their valuation reduced can do so through an appeals system that is not clogged up.

For me, it is about access to justice and fairness. The penalties are intended to be effective. They are not intended to raise revenue. They will be effective only if they are significant while still allowing for mitigating circumstances, in

which assessors have the opportunity to reduce and remit them.

The Convener: As was mentioned earlier, if a small business is struggling to meet the deadline and makes the assessors aware of that, could they get an extra week or whatever to get their figures in?

Kate Forbes: That would be for the assessors to judge.

The Convener: Is that a possibility?

Kate Forbes: That possibility exists. Because of how the system works, assessors usually know their ratepayers inside out. They have relatively good relationships with them. If you look at how we are reforming the appeals system more generally, you will see that we are formalising what already takes place informally, which is casual conversations between assessors, which then move to the formal appeals system. Assessors know their ratepayers and are able to make such calls.

More than 40 per cent of properties also get the small business bonus. For the system to be effective, we want a penalty amount that reflects, or is on the same scale as, the rates bill. That means that people who have a substantial rates liability would pay substantially more in penalties than those who have smaller liability who should not pay the same level of penalty.

For me, it is about having an effective and fair appeal system. I know that the figures might cause some alarm, but they are not designed to raise revenue—in other words, to get as much money as possible—but to make it very clear that we expect ratepayers to comply with their duty to share information.

Alexander Stewart: You are indicating 28 days. Will that be the timescale? You indicated that the assessor will have knowledge of what businesses are doing, but will that clamp down after 28 days?

Kate Forbes: There are two elements to your question. Amendment 57 will increase from 21 to 28 days the timeframe for provision of information after the first penalty notice was given, before a person is liable to a further penalty. The change that Graham Simpson was talking about was about the move from 56 days to 28 days, which was in response to requests that the period for compliance with an assessor information notice be shortened. There are two discussions about timeframes.

I press amendment 53.

The Convener: The question is, that amendment 53 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Wightman, Andy (Lothian) (Green

Against

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

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

Amendment 53 agreed to.

Section 14, as amended, agreed to.

Section 15 agreed to.

Section 16—Duty to notify changes of circumstances

The Convener: Amendment 96, in the name of Sarah Boyack, is in a group on its own.

Sarah Boyack: I listened carefully to the previous discussion about timescales. The point of amendment 96 is to give companies more leeway when they notify changfes of circumstances. The current requirement is for them to do so within 21 days, which seems an incredibly short period. Adding 21 days to take it from three weeks to six weeks will ensure that companies that are going through changes in their business do not inadvertently fail to notify their change of circumstances.

I am keen to get an assurance from the minister that there will be increased communication of the requirements that companies will face once the provisions are in force, so that they are aware of the changes and when they will take effect. My points here are similar to those that I made about independent schools. Aspects of the bill will mean huge changes for many businesses, so we will need to ensure that they are up to speed on the changes. The point of my amendment is to encourage businesses to comply by giving them a bit more time to get their notice organised, and I hope that colleagues will support it.

I move amendment 96.

Graham Simpson: I will certainly support amendment 96 for the reasons that I outlined when I spoke to amendment 53. It will provide the right balance: 21 days is too short a period, and 42 days seems about right. Maybe we can get to that position with the minister in relation to her amendment 53.

Kate Forbes: First, I will speak to Sarah Boyack's point about supporting ratepayers before the changes are made. Throughout the process, I have had extensive consultation, meetings and engagement with most of the representative

bodies, including the Federation of Small Businesses, the Scottish Retail Consortium and others that are too numerous for me to name. I have taken seriously the job of providing information up front and supporting those bodies to support their members, and I know that the committee has carried out a lot of consultation. I would therefore like to think that the changes are high on people's agendas and that they know that the changes are coming, not least as many of them will be very welcome to ratepayers—particularly the move to three-yearly revaluations and the changes to get appeals right.

On the change to the timeframe that is proposed in amendment 96, I note that, notwithstanding my earlier comments about information sharing, which is the most critical element of the bill, it is important that local authorities have accurate, up-to-date information and that ratepayers have the opportunity to make changes. Such changes can be quite diverse. There are a host of possible changes, some of which are more profound than others, and up-to-date information will enable the most appropriate relief to be applied. It is not just about the tax liability. Those are important factors in ensuring that all ratepayers contribute their fair share to the cost of public services.

11:30

Most ratepayers do what is asked of them and comply with requirements, but there are those who do not. They might fail to notify the local authority of a change in tenant or to respond to a direct information request from the local authority. The introduction of a civil penalty will empower local authorities to seek better compliance.

I note the comments that Sarah Boyack has made. It is a matter of judgment. Ratepayers face differing circumstances—they differ in size, apart from anything else. An argument can be made for ratepayers to be given a longer, but still clearly defined, timescale. In the spirit of not rejecting all good ideas that come from the committee, I will be delighted to support amendment 96.

Sarah Boyack: In that case, I had better press amendment 96. It is a matter of judgment, but it is about providing more information to everybody so that those who can comply more quickly will do so and those for whom it is difficult will also be able to comply, but with a little more time in which to do so.

The Convener: In the spirit of the confusion that we had earlier, Sarah Boyack could have withdrawn her amendment, but she has chosen to press it.

Amendment 96 agreed to.

Section 16, as amended, agreed to.

Section 17 agreed to.

Section 18—Civil penalties for failure to comply with assessor information notices

Amendments 54 to 63 moved—[Kate Forbes].

The Convener: Does any member object to a single question being put on amendments 54 to 63?

Graham Simpson: Yes.

The Convener: I knew that you were going to say that.

Amendments 54 and 55 agreed to.

The Convener: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Wightman, Andy (Lothian) (Green)

Against

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

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

Amendment 56 agreed to.

Amendment 57 agreed to.

The Convener: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Wightman, Andy (Lothian) (Green)

Against

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

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

Amendment 58 agreed to.

The Convener: The question is, that amendment 59 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)

Ewing, Annabelle (Cowdenbeath) (SNP)
Wightman, Andy (Lothian) (Green)

Against

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

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

Amendment 59 agreed to.

Amendments 60 to 63 agreed to.

Amendment 97 moved—[Sarah Boyack].

The Convener: The question is, that amendment 97 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)
Wightman, Andy (Lothian) (Green)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

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

Amendment 97 disagreed to.

Section 18, as amended, agreed to.

Section 19—Penalties under section 18: appeals and enforcement

Amendments 64 and 65 moved—[Kate Forbes]—and agreed to.

Amendment 98 moved—[Sarah Boyack].

The Convener: The question is, that amendment 98 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 98 disagreed to.

Section 19, as amended, agreed to.

After section 19

Amendment 66 moved—[Kate Forbes]—and agreed to.

Section 20—Civil penalties for failure to comply with local authority information notices and for failure to notify changes in circumstances

Amendment 99 moved—[Sarah Boyack].

The Convener: The question is, that amendment 99 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Lothian) (Lab)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Wightman, Andy (Lothian) (Green)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 99 disagreed to.

Section 20 agreed to.

Section 21—Penalties under section 20: appeals and enforcement

The Convener: Amendment 67, in the name of the minister, is grouped with amendment 69.

Kate Forbes: Amendment 69 provides that Scottish ministers may make provision by regulations on the collection of civil penalties that are imposed under section 20 for failure to comply with local authority information notices and failure to notify changes in circumstances. The amendment provides the Scottish ministers with the power by regulations to enable councils, for instance, to handle the collection of civil penalties in non-domestic rates in the same way that they do in council tax.

In council tax, where the person who is liable to pay the penalty is also liable to pay council tax, local authorities have the option to add the penalty to the person's council tax liability. The local authority can then collect the penalty along with council tax that is due, in exactly the same manner. That is an efficient, cost-effective approach, and councils may wish to have the power to do the same thing with non-domestic rates. I hope that that system is familiar to those who pay council tax.

The collection of penalties—including around the use of demand notices, the service of notices,

suspension of collection during appeals and the potential offset of penalties collected if an appeal is successful—is an administrative matter and it should fall to be dealt with in regulations. As this is a complex area of law, it may be necessary under those regulations to be able to modify different acts in order to achieve the desired change, hence the extent of the powers that are provided for in amendment 69.

The regulations will be subject to the affirmative procedure if they add to, replace or omit any part of the text of an act. Otherwise, they will be subject to the negative procedure. I believe that that strikes the right balance, which was highlighted earlier in the meeting, between parliamentary scrutiny and administrative adaptability.

Amendment 67 simply contains a consequential provision that arises from amendment 69.

I move amendment 67.

Amendment 67 agreed to.

Amendment 68 moved—[Kate Forbes]—and agreed to.

Amendment 100 not moved.

Section 21, as amended, agreed to.

After section 21

Amendment 69 moved—[Kate Forbes]—and agreed to.

Section 22 agreed to.

Section 23—Anti-avoidance regulations

The Convener: Amendment 101, in the name of Sarah Boyack, is in a group on its own.

Sarah Boyack: The technical term for a business disappearing and then being reborn is “phoenixing”. The aim behind amendment 101 is to prevent people from deliberately avoiding paying tax, which is not acceptable. I welcome the support from Scottish Land & Estates for the amendment, which gives local authorities the ability to recover rates that are lost through the means that I have mentioned. Scottish Land & Estates commented that it supports the principle of increasing fairness and ensuring a level playing field among taxpayers, and it views the proposed provisions as a positive addition to the bill.

Amendment 101 would provide the legal tools that are necessary to empower local authorities to pursue any party for payment of non-domestic rates when it can be shown that it was involved in the evasion, and the amendment would protect other parties that were not involved in avoiding the payment of non-domestic rates.

I move amendment 101.

Kate Forbes: At the beginning of the committee’s meeting last week, Sarah Boyack asked me to explain the difference between her amendment 101 and Andy Wightman’s amendment 84. I said to Andy Wightman that I would be happy to have discussions about his amendment, and there might be scope to have discussions with Sarah Boyack as well before stage 3.

As I mentioned last week, I am a firm believer in tackling avoidance. The reason for part 4 of the bill is to allow ministers to tackle it as effectively as possible. As it stands, the bill requires that we consult on such regulations with assessor and local authority representatives. It is important that we do that, because it means that there will be greater input from those who administer the system than there would be with an amendment to the bill.

Sarah Boyack: On that point, in relation to a previous amendment this morning, you said that assessors know the ratepayers. I lodged amendment 101 because there are times when the assessors do not know the ratepayers because ratepayers are deliberately trying to avoid the process. Will you pick up on the point that assessors do not know the ratepayers in all circumstances?

Kate Forbes: Absolutely—that is a fair point. When I made that comment, I meant that there is an extent to which assessors understand the nature of ratepayers, so they can reduce or remit penalties. However, Sarah Boyack is quite right. I point out, though, that amendment 101 is not about assessors; it is about councils. It is important to make that distinction.

When it comes to general anti-avoidance regulations, the consultative route is my preferred approach for considering whether to provide councils with additional powers in relation to property owners and the rates liability for their property. I believe that we have found the right balance with part 4 of the bill and the powers to tackle avoidance that it creates. Therefore, for the moment, I will not support Sarah Boyack’s amendment, but I have committed to considering the points of discussion that were raised last week around amendment 84.

Amendment 101 is quite broad, and we certainly need answers to some specific questions. For example, how far back could rates be sought from an owner? I would be happy to go into more detail on the differences that I perceive between amendments 101 and 84, and I am happy to discuss both amendments if Sarah Boyack and Andy Wightman choose to work together, but I do not see a need for amendment 101. I would rather

allow local authorities and assessors to inform the approach that we take on anti-avoidance.

Sarah Boyack: The minister has both reassured me and worried me a bit. She says that amendment 101 is too broad, but she is also ruling out certain factors that I think are important. It is not just about making a statement on the tackling of anti-avoidance; it is about making sure that local authorities have the necessary legal tools to do that. I think that she called into question whether local authorities need those tools, as well as assessors. That has worried me.

Kate Forbes: We are very clear—it was a key part of the Barclay review's conclusions—that there should be increased powers around general anti-avoidance regulations. We are absolutely committed to that. The only difference of opinion that I have on the amendment is to do with how we do that. I would rather that local authorities and assessors shaped what we do through a consultative approach than that we just make an amendment to the bill. I completely understand where Sarah Boyack is coming from and I agree with the intention. I just do not think that amendment 101 is the way to do it.

Sarah Boyack: On that basis, I will not press amendment 101 at this stage, but I reserve the right to come back to the matter at stage 3, having discussed it with the minister and Andy Wightman, and depending on the result of those conversations. I do not want to drop the issue, because it is an important one and we need to firm up on it before we get to stage 3.

Amendment 101, by agreement, withdrawn.

Sections 23 to 26 agreed to.

Section 27—Procedure for anti-avoidance regulations

11:45

The Convener: Amendment 70, in the name of the minister, is in a group on its own.

Kate Forbes: My remarks on amendment 70 flow neatly on from our previous conversation. In our response to the Delegated Powers and Law Reform Committee's stage 1 report, we said that we would lodge amendments at stage 2 in response to several of that committee's recommendations.

Amendment 70 sets out when the Scottish ministers must notify the Scottish Parliament that a consultation on draft anti-avoidance regulations has been issued—it provides that that must happen as soon as is reasonably practical after the consultation has begun, which is what the DPLR Committee asked for.

I move amendment 70.

Amendment 70 agreed to.

Section 27, as amended, agreed to.

Section 28 agreed to.

Section 29—Ancillary provision

Amendments 71 and 72 moved—[Kate Forbes]—and agreed to.

Section 29, as amended, agreed to.

Section 30—Commencement

Amendment 80 moved—[Graham Simpson].

The Convener: The question is, that amendment 80 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Wightman, Andy (Lothian) (Green)

Abstentions

Boyack, Sarah (Lothian) (Lab)

The Convener: The result of the division is: For 2, Against 3, Abstentions 1.

Amendment 80 disagreed to.

Amendment 81 moved—[Liz Smith].

The Convener: The question is, that amendment 81 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Wightman, Andy (Lothian) (Green)

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

Amendment 81 disagreed to.

Amendment 82 moved—[Liz Smith].

The Convener: The question is, that amendment 82 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Wightman, Andy (Lothian) (Green)

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

Amendment 82 disagreed to.

Amendment 83 moved—[Liz Smith].

The Convener: The question is, that amendment 83 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Simpson, Graham (Central Scotland) (Con)
Stewart, Alexander (Mid Scotland and Fife) (Con)

Against

Boyack, Sarah (Lothian) (Lab)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Cowdenbeath) (SNP)
Wightman, Andy (Lothian) (Green)

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

Amendment 83 disagreed to.

Section 30 agreed to.

Section 31 agreed to.

Long title agreed to.

Andy Wightman: On a point of order, convener. Earlier on, you used your casting vote. As I understand it, conveners of committees are entitled to use their casting vote in the manner that they see fit, which is perfectly proper. However, I think that the committee would value some guidance from you—not today perhaps, but at a future meeting—on how, in general terms, you intend to exercise that power. When you exercised that power, you named a specific member of the committee who was absent and you told us that you were voting, in effect, as a proxy. I think you said, "Kenny Gibson would have voted this way." The exact words will be in the *Official Report*.

The Convener: Would you like me to explain that?

Andy Wightman: I would like to finish the point of order.

The Convener: It is not a point of order—we do not have points of order in committee—but feel free to continue.

Andy Wightman: Okay. You indicated that you were voting broadly in line with what you anticipated was the way in which the member who was not present would have voted. If that is to be your position in future, it would be useful for us to know that. For example, in circumstances in which I was absent and was not able to appoint a substitute, I would value knowing that that was how you intended to use your casting vote, so that I could inform you of my intentions.

That said, the effect of your use of the casting vote was consistent with the principle that it be used to maintain the status quo. That was the effect of your use of the casting vote earlier this morning, but I would appreciate your giving some guidance on how you intend to use it in the future.

Earlier in the meeting, I said that 1 per cent of £3 million was £300,000. That is wrong—it is £30,000.

Graham Simpson: I will speak as a fellow convener. If it comes to it, conveners can use their casting vote as they see fit. I think that you made a slip of the tongue, convener. I do not think that you meant to imply that you were using a proxy vote. That was clearly not the case. It is a casting vote, and you can vote in whichever way you see fit. On the occasion in question, I think that you used it against an amendment that I supported, but that is your prerogative, as it would be of any convener.

The Convener: Thank you for that.

I said what I said to make it clear that I was not voting to maintain the status quo but was voting in the way that I thought it was appropriate to vote. Mr Wightman is right to say that I probably should not have mentioned Kenny Gibson's name. I voted in the way that I thought was appropriate as convener. I have the right to vote in whichever way I want.

The solution to a casting vote not being used is for members to turn up at the committee. That would be the ideal scenario. However, as Graham Simpson said and as the regulations say, my casting vote is my casting vote, and I can deal with it in whatever way I want.

That ends our stage 2 consideration of the bill. I thank the minister.

11:51

Meeting suspended.

11:52

On resuming—

Subordinate Legislation

Charities Accounts (Scotland) Amendment Regulations 2019 (SSI 2019/393)

The Convener: Agenda item 4 is consideration of an instrument—SSI 2019/393—that has been laid under negative procedure, which means that its provisions will come into force unless the Parliament agrees to a motion to annul it. No motions to annul have been lodged.

The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 26 November 2019 and determined that it did not need to draw the Parliament's attention to the instrument on any grounds within its remit.

Do members have any comments on the instrument?

Members: No.

The Convener: Does the committee agree that it does not wish to make any recommendations in relation to the instrument?

Members *indicated agreement.*

Meeting closed at 11:53.

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