



Official Report
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DRAFT

Finance and Public Administration Committee

**Comataidh an Ionmhais
agus Rianachd Phoblaich**

Wednesday 7 October 2026

Session 7



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FINANCE AND PUBLIC ADMINISTRATION COMMITTEE

8th Meeting 2026, Session 7

CONVENER

*Clare Haughey (Rutherglen and Cambuslang) (SNP)

DEPUTY CONVENER

*Alan Brown (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Liam Kerr (North East Scotland) (Con)
Michael Marra (North East Scotland) (Lab)
*Liam McArthur (Orkney Islands) (LD)
Kim Schmulian (Glasgow) (Reform)
*Pauline Stafford (Bathgate) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jenny Brough (Scottish Government)
Martin Davidson (Scottish Government)
Jenny Gilruth (Deputy First Minister and Cabinet Secretary for Finance and Local Government)
Marion McCormack (Scottish Government)
Francesca Morton (Scottish Government)
Laura Wilkinson (Scottish Government)

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Wednesday 7 October 2026

[The Convener opened the meeting at 09:31]

Decision on Taking Business in Private

The Convener (Clare Haughey): Good morning, and welcome to the eighth meeting in session 7 of the Finance and Public Administration Committee. We have received apologies from Michael Marra MSP and Kim Schmulian MSP. I remind everyone to switch off or put to silent mobile phones and any other electronic devices.

The first item on our agenda is a decision on whether to take in private item 5, which is the review of evidence heard earlier in the meeting, and on whether to consider future such items in private. Do members agree to take those items in private?

Members indicated agreement.

Public Office (Accountability) Bill

09:31

The Convener: The next item on our agenda is an evidence session with the Deputy First Minister and Cabinet Secretary for Finance and Local Government and supporting officials on LCM-S7-10—the second supplementary legislative consent memorandum relating to the United Kingdom Public Office (Accountability) Bill—which was lodged on 28 July 2026.

The purpose of the bill is to create a statutory duty of candour and assistance for public authorities and officials involved in inquiries, inquests and similar investigations. It would also create new criminal offences and include provisions on ethical standards and parity of representation.

I welcome to the meeting the Deputy First Minister and Cabinet Secretary for Finance and Local Government. She is supported by the following Scottish Government officials from the LCM support and co-ordination unit: Jenny Brough from the safer communities directorate, Francesca Morton from the legal services directorate and Marion McCormack from the justice directorate.

Before we move to questions from the committee, I invite the cabinet secretary to make an opening statement.

The Deputy First Minister and Cabinet Secretary for Finance and Local Government (Jenny Gilruth): Good morning. Thank you for inviting me to support your scrutiny of the legislative consent for the Public Office (Accountability) Bill.

As you know, the bill encompasses the UK Government's commitment to rebuilding public trust through ensuring that public officials perform their functions with candour and transparency at all times. The Scottish ministers are supportive of the principles of the bill. My predecessor Kate Forbes met the Hillsborough Law Now campaign earlier this year in relation to the legislation. I pay tribute to the campaigners' enduring determination to secure changes in the aftermath of the Hillsborough disaster.

The Scottish Government has worked with the UK Government in support of Scotland's interests relating to the legislation and reached an agreement on aspects of the bill that are within devolved competence.

The duty of candour and assistance will impose a duty on public authorities and public officials to act with candour, transparency and frankness in their dealings with inquiries and investigations,

which includes proactive notification and the provision of information and assistance. That will aid in providing inquiries and investigations with factual and timely information as a standard obligation.

The bill also requires public authorities to promote, and take steps to maintain, high standards of ethical behaviour within their organisations. That will include the requirement to adopt and make publicly available a code of ethical conduct that sets out the standards of behaviour that will be expected of staff. The offence of misleading the public will seek to capture public authorities and public officials that intentionally mislead the public or are reckless as to whether their act will do so.

The bill also creates two statutory offences of misconduct in public office. The offences are informed by recommendations made by the Law Commission of England and Wales. They will replace the current common-law offence in England and Wales. Scotland does not have an existing offence of misconduct in public office, although a close comparator is the common-law offence of wilful neglect of duty by a public official. The Scottish ministers consider that there are strong benefits to extending those statutory offences to Scotland.

The bill will also amend the Legal Aid (Scotland) Act 1986, enabling the Scottish ministers to make regulations that modify that act in respect of the availability of non-means-tested legal aid to persons participating in fatal accident inquiries where a public authority is a participant. That will mirror the legal aid provisions for England and Wales and ensure that there is no disparity across the UK. That complements the commitment to Parliament made by the former Cabinet Secretary for Justice and Home Affairs in early 2025 to introduce legislation that would provide non-means-tested legal aid for families participating in death-in-custody FAIs.

There has been, and continues to be, ongoing engagement with the UK, Welsh and Northern Irish Governments on a four-nations approach to the bill. The agreement that we have reached with the UK Government on amendments to the bill to ensure that the various provisions can operate effectively within the Scottish context has enabled us to recommend that the Parliament should now consent to the relevant provisions in the bill. In respect of further amendments that are relevant to devolved Scottish provisions, the Government is in close contact with the UK Government and will consider the need for any future LCMs as those amendments progress.

As I know the committee appreciates, the bill covers a broad range of portfolio matters. If

questions touch on the portfolio lead responsibilities of my ministerial colleagues, I will ensure that the committee receives a follow-up response in writing with any additional information that would be of assistance in your scrutiny.

My officials and I are happy to take questions.

The Convener: Thank you very much, cabinet secretary. You will be aware that the Delegated Powers and Law Reform Committee published a report on the LCM on 30 September. It noted that discussions between the Scottish Government and the UK Government continue on how the secretary of state's guidance-making power under clause 11, on guidance, will operate in devolved areas and how the Scottish ministers' consent will be obtained. Will you update the committee on those discussions?

Jenny Gilruth: I have written to the DPLR Committee, and it is fair to say that, as I set out in my introductory remarks, we are in close contact with the UK Government on those matters. It remains our principled position that the Scottish ministers should be responsible for Scottish and devolved matters. However, given that we are taking a four-nations approach, we are engaged with the UK Government on a range of different matters. I will be more than happy to write to the committee when it is clear how the secretary of state's guidance-making power is proposed to operate within a devolved context. However, we are clear that Scottish ministers' consent would be fundamental to the guidance.

There was a separate matter on the regulation-making powers in clause 16. That clause defines who holds public office for the purposes of the two new statutory offences of misconduct in public office. Both the secretary of state and the Scottish ministers can take forward such regulations but, where the secretary of state takes forward such provisions, the bill makes it clear that it is subject to the Scottish ministers' consent.

That safeguard protects the Scottish ministers' role in relation to clause 16 but, on both those matters, we are still in dialogue with the UK Government, so I would be more than happy to share further detail with the committee as and when it is developed.

My officials might want to say more on the specific clauses.

Jenny Brough (Scottish Government): At official level, we are in regular discussion with our UK Government counterparts on matters such as the guidance, so we can prepare further updates to provide to the committee.

Francesca Morton (Scottish Government): The availability of concurrent powers can ensure that, where there is agreement between the

Administrations about UK-wide changes, the secretary of state can amend the list in a single, consistent update rather than four separate instruments being necessitated. That expediency could be a good reason behind the concurrent powers, and it will always be subject to the Scottish ministers' agreement.

Jenny Gilruth: Just to close off that point, the DPLR Committee's concern was about the role of the Scottish ministers in the matter. I was content that the Scottish ministers' consent would be sought in relation to the provisions in clause 16. We will write to the committee with further detail on that, but the DPLR Committee has been keen to seek further detail on that principled approach. I want to be as candid as I am able to be at this time. However, given that we are still in dialogue with the UK Government on a range of those matters, I will be more than happy to facilitate writing to the committee when we have clarified those points further with the UK Government.

The Convener: That would be very helpful. I was going to request that you do that after your answer.

Pauline Stafford (Bathgate) (SNP): I have a follow-up question to that, cabinet secretary, although I appreciate that you might not have the information in question to hand. I will also just put on record my entry in the register of members' interests as a sitting councillor on West Lothian Council.

The DPLR Committee also highlighted concerns about powers that are exercisable by UK ministers to amend the list of office-holders who would be subject to the new misconduct in office offences. What safeguards has the Scottish Government secured, and what safeguards is it looking for and working with the UK Government on? What recourse would we have if consent to this were not granted between Governments?

Jenny Gilruth: As I have outlined to the convener, a lot of these issues relate to our ongoing dialogue with the UK Government. However, I am content thus far that matters relating to clause 16 will be subject to the consent of the Scottish ministers. Building on that, I think it important to give the Parliament assurance that our powers in Scotland will not be overridden in any way.

It is worth while recounting the fact that Andy Burnham has made it clear that his approach to devolution will not seek to override this Parliament's powers. That is a change from his predecessors' view, and it is welcome. That in-built mechanism for protecting the Scottish ministers in relation to regulation-making powers and our consent gives us a degree of assurance, but, as I have said to the convener, those matters need to be discussed further with the UK Government.

I think that Francesca Morton wants to come in on the specifics of the office-holder point.

Francesca Morton: It was not specifically on the office-holder point, but it might be important to make it clear that the consent provision is in the bill. Therefore, it is set out in statute that, where UK ministers make amendments to the list of office-holders in relation to Scottish devolved matters, that will be subject to the consent of the Scottish ministers. It binds future Governments, too.

Liam Kerr (North East Scotland) (Con): I have a couple of questions. The Scottish Government originally recommended that the Parliament not agree to the legislative consent motion. After some work, you have come back and said that you do recommend that it be agreed to. What precisely has changed between the original position and now?

Jenny Gilruth: I will be candid and say that some of this predates my time in office. I do not know whether Jenny Brough wants to come in on that.

Jenny Brough: Certainly, and I will also let Francesca Morton pick up on some points of detail.

There have been two previous legislative consent memorandums—an initial memorandum and then a supplementary memorandum earlier this year—and there has been an element of evolution in the provisions as they relate to Scotland. At the time of the first LCM, we required to see some amendment to provisions to ensure that they would operate properly—that is, effectively and as intended—in the Scottish context. At the time of the second LCM, earlier this year, the Scottish election was forthcoming, and then the bill at Westminster was delayed, primarily due to the ongoing concerns of campaigners such as Hillsborough Law Now and others in relation to coverage of the security services in the security and intelligence provisions. The bill had to be brought back to the Commons as a carry-over bill.

As I said, that happened earlier this year, before the election, and the timing all ran together. I do realise that that is a very inelegant way of explaining it. I will let Francesca Morton add to it, but that is the summary.

Francesca Morton: That sums it up nicely, but the main point is that the Government has always been supportive of the principles behind the bill. There were points of technical detail that we wanted to pick up in relation to the first legislative consent memorandum. They included the definitions of public authorities—the definition of the term “NHS body”, for instance—and how the duty of candour and assistance applied to local authorities in Scotland, given that the

arrangements are slightly different from those in England and Wales.

Also, as Jenny Brough has said, there were, at the time of the first supplementary legislative consent memorandum, issues of timing and uncertainty with the UK bill that stopped its progress to the report stage.

Liam Kerr: Jenny Brough mentioned in passing the security and intelligence provisions, which, according to the memorandum, you are still considering. You say that you have been engaging with Police Scotland on the matter, because you are not quite sure how they

“will work in practice in”

Scotland. Can you give us a bit more detail on that? What issues are you are seeking to resolve, and how are things progressing in that respect?

Jenny Gilruth: Officials will correct me if I am wrong on this. As I understand it, there are issues with the intersection between the security services and the role of Police Scotland, but the bill will apply to Police Scotland. It will place responsibility on the head of a relevant public authority for ensuring compliance with obligations under the duty of candour and assistance. Police Scotland is operationally responsible for counter-terrorism policing, and it is independent of the Metropolitan Police. As I understand it, some elements of the provision are under discussion in relation to how they would interact across the UK, because of our differing approach to policing.

Officials are nodding at me, so it seems that I have said the correct thing.

09:45

Francesca Morton: Yes, absolutely. There is no issue in principle with clause 6, which includes the security and intelligence provisions and the safeguards that are in play in that area. It is just about how they interact and work in the Scottish context, and making sure that they work as intended. Those discussions are ongoing.

Liam McArthur (Orkney Islands) (LD): Witnesses have broadly welcomed the principles and, as it has been amended, the detail of the bill. It obviously refers and relates to the duty of candour in the context of inquiries. Witnesses expressed the—not unreasonable—view that it is tricky to legislate for the cultural shift that, it is hoped, the bill will result in. This might fall to one of your ministerial colleagues, Deputy First Minister, but I would be interested to know what further work the Government is considering to support the culture shift, not just in the context of inquiries but more broadly in relation to the public sector and the expectation of candour now being the *modus operandi*.

Jenny Gilruth: I followed some of the evidence that the committee took last week from John Sturrock, and an interesting point was raised, which might have been from Mr Marra or Mr Kerr. It was about whether legislative change can lead to cultural change. In itself, I do not think that it can. It reminded me of debates that we had over the Education (Scotland) Bill in the previous parliamentary session, because legislating to replace an exam board does not in itself change culture; it is about how the legislation is interpreted and how it is enacted by public bodies.

Some provisions of the Public Office (Accountability) Bill relate to training, as I understand it. The Hillsborough Law Now campaign, which I mentioned, has proposed a training programme for public officials. Kate Forbes was involved in that work in the previous parliamentary session, and we would be supportive of that coming forward to help to inform wider cultural change.

My other observation on cultural change is that the chronology of the introduction of the bill is quite interesting, in that it interacts with public service reform, to some extent. If we want to drive a public service reform agenda, there is a need for cultural change. Some of these principles will flow into the wider work that is being led by Mr McKee, but it will take time, because, ultimately, it is about changing behaviours and improving the culture within our public services. Through public service reform and the training that I alluded to in relation to the work of the Hillsborough Law Now campaign, there are opportunities to drive some of that work forward.

Liam McArthur: That is helpful, and I am sure that there will be interaction with the debate on public service reform. The example that I used with Mr Sturrock and other witnesses was that of the Freedom of Information (Scotland) Act 2002, which, at the time, was said to be a mechanism to ensure that public bodies did not simply respond to FOI requests but proactively put information out in the public domain in a timely fashion. We would all recognise that the volume of FOI requests and the number of successful appeals to the Scottish Information Commissioner suggest that that has not necessarily played out as we might have wished. Could the bill's provisions be a strand of public service reform that will ensure that we see the cultural shift that John Sturrock talked about?

Jenny Gilruth: They absolutely should be. The FOI legislation is a great example. I do not know how many FOIs the Scottish Government is currently dealing with, but it is a huge number, and a huge amount of officials' time is devoted to responding to those requests. One of the points that was made last week was about public inquiries not becoming an industry, perhaps in a similar way.

I also heard John Sturrock's evidence about the move from defensiveness and denial to candour. That will not happen overnight as a result of the legislation; it will take time. However, if we are able to deliver on the proactive duty to share information and to come forward and share details, it will help our approach to public inquiries. John Sturrock made the point that, when people are engaged in public inquiries, they are looking for an acceptance of responsibility. However, that discussion can sometimes take far too long and cost far too much public money. The Finance and Public Administration Committee in session 6 wrote a significant report on that, which I am sure we will come on to talk about.

There are opportunities here for people who have been victims to get access to justice far more timeously than they otherwise might have. The behaviour change that you talked about will take time to develop, and the automatic defensiveness and protectionism that exist will take time to break down. The legislation will be part of that, but we will need to work on the wider training. You are right to mention the public service reform agenda, which allows us a unique opportunity to drive forward the behaviour change that we need to see.

Alan Brown (Kilmarnock and Irvine Valley) (SNP): I have a small question about something that was touched on in the opening remarks. Is it correct that the changes to legal aid provision are solely for fatal accident inquiries? Is it just to provide greater access to legal support for family members of the deceased, if they have to participate?

Jenny Gilruth: The changes to our legal aid position build on changes that, as I think I mentioned in my introductory remarks, were confirmed by the former Cabinet Secretary for Justice and Home Affairs in the previous parliamentary session. Those related to deaths in custody, fatal accident inquiries and families having access to non-means-tested legal aid. The bill goes further than that, because it commits us to making legal aid free and non-means tested for families who are involved in FAls where a public authority is a participant. That takes us a step further than the commitment in the previous parliamentary session. Marion McCormack might want to say more on that specific point.

Marion McCormack (Scottish Government): On going the next step on fatal accident inquiries, we want to do that in tune with responding to Sheriff Principal Abercrombie's review, to ensure that we get the landscape right. As the committee knows, we have a large bill on legal aid coming through. We want to ensure that we do it once and that we do it right, so that we get the legal aid landscape that fits for Scotland. The landscape will be slightly different in Scotland, because we have

fatal accident inquiries; in England and Wales, they have the inquest structure, and Northern Ireland has a slightly different structure. Instead of having a one-size-fits-all approach, we want to make sure that it is right for Scotland.

Alan Brown: If I put a finance hat on—rather than a public administration hat—is it correct that there are no direct financial consequences of the LCM and that the only indirect financial consequences would relate to the cost of access to legal aid in those circumstances?

Marion McCormack: Yes. The direct consequences for legal aid at the moment would be the same as they are for the support provision that we have in place for deaths-in-custody FAls. However, taking this further step would have financial implications. We would be happy to come back to the committee once we have further information.

The Convener: That concludes the committee's questions on the LCM. The committee will take its decision on steps in relation to the LCM later in the meeting.

09:53

Meeting suspended.

10:33

On resuming—

Subordinate Legislation

Air Departure Tax (Scotland) Amendment Regulations 2026 [Draft]

Air Departure Tax (Administration) (Scotland) Amendment Regulations 2026 [Draft]

The Convener: The next item on our agenda is an evidence session on two draft regulations. I welcome back the Deputy First Minister and Cabinet Secretary for Finance and Local Government, who is supported by the following Scottish Government officials: Stuart Wilson, the transport taxes team leader; Martin Davidson, the head of the new taxes unit; and Laura Wilkinson, a lawyer.

Before we move to questions, I invite the cabinet secretary to make an opening statement on both instruments.

Jenny Gilruth: Thank you for the opportunity to give evidence to the committee. I appreciate that it has been some time since the previous committee considered legislation on air departure tax, so I will provide some context before turning to the draft regulations.

Air departure tax will be the devolved replacement for the current UK-wide air passenger duty. It will be a tax on the carriage of passengers departing from airports in Scotland, and it will be paid by airlines to Revenue Scotland. Rates will vary by distance and the class of travel, and there will be higher rates for those travelling by private jet.

The Scottish Fiscal Commission published its first full forecast for ADT in August this year. It estimates that ADT will raise £428 million in 2027-28, rising to £509 million by the end of the forecast period, in 2031-32.

Revenues from ADT will be subject to a block grant adjustment. Yesterday, I wrote to the committee to set out the methodology for the BGA that I have agreed with the Chief Secretary to the Treasury.

Initially, the tax was intended to be introduced in April 2018, but the Government identified state aid concerns with the air passenger duty exemption for flights from Highlands and Islands airports, with implications for an equivalent ADT exemption, so ministers took the decision to defer the tax's introduction until a solution could be found. In the intervening period, the European Union's state aid regime was replaced in the UK by a new subsidy

control regime, which added further uncertainty and complexity to the regulatory landscape.

The Government remained committed to finding a solution for the Highlands and Islands exemption. We were consistently clear that ADT would be introduced only in a way that protected aviation connectivity for people and communities in the Highlands and Islands. For those communities, air travel is often the only viable mode of transport, especially for return journeys that need to be completed on the same day.

As part of the 2026-27 Scottish budget, the Government announced that a solution had been identified and that ADT would become operational from 1 April 2027. The regulations before the committee provide for the new ADT Highlands and Islands exemption and other administrative modifications that are required for ADT to become operational. The objective of the exemption is to protect connectivity in the Highlands and Islands by maintaining the tax-exempt status of flights from airports in the Highlands and Islands to the rest of the UK.

The opportunities of devolution have allowed us to go further. From 1 April next year, all passengers flying from Scottish airports to the Highlands and Islands will be exempt for the first time. That delivers on a commitment that we made in our new national islands plan, and I hope that it will be welcomed by the member for the Orkney Islands.

Protecting connectivity, including through a tax exemption, is widely accepted as a legitimate equity rationale for the purpose of the Subsidy Control Act 2022. To that end, on 17 July, the Government uploaded details of the exemption to the UK Government's subsidy control transparency database. There was a one-month window for interested parties to challenge the exemption on the grounds of compliance with the subsidy control regime. That window has now closed. Given that we received no notifications of challenge, the Government's view is that the position regarding subsidy control is now settled. That has allowed us to introduce the regulations, and we will continue to work with the industry to deliver Scotland's next devolved tax from 1 April next year.

I am happy to take questions from the committee on those matters.

The Convener: Thank you very much.

Liam Kerr: I have a couple of questions. I am grateful for the cabinet secretary's engagement with my parliamentary questions on the issue and for her providing fuller answers than the answers that I received from one of her colleagues in the chamber. I will interrogate those responses.

The proposed system will create an asymmetric tax position. By not extending the exemption to Aberdeen airport, the Government will make it cheaper to fly from Inverness to London, for example, than it would be to fly from Aberdeen to London, so, when there is competition regarding domestic routes, Highlands and Islands Airports Ltd will win. I totally get that the exemption is about protecting communities, but it is not about giving one area a competitive advantage. That begs this question: what assessment has the Scottish Government carried out on the impact of the different treatment on Aberdeen airport's ability to compete regarding domestic routes and, therefore, on the connectivity of the north-east?

Jenny Gilruth: I thought that Mr Kerr might ask me a number of questions on that issue. I have been responding to his PQs, and I am sympathetic to some of the points that he has made.

It is fair to say that the instruments apply to the Highlands and Islands and focus on issues there. There are specific connectivity issues that are unique to the Highlands and Islands and that do not apply to the north-east. The Highlands and Islands account for 51 per cent of Scotland's land mass but less than 9 per cent of Scotland's population. Five of the six local authorities in the Highlands and Islands have the lowest population densities. There are broader connectivity issues that, arguably, do not apply to the north-east of Scotland, although Mr Kerr might have a different view on that.

Research from 2018 that looked at journey times showed that people in towns and communities across the Highlands faced journey times of two to three hours just to reach Inverness. I do not think that we have data to suggest that journey times have changed since that analysis was carried out.

More broadly, the approach that we have taken to the setting of rates will keep us in line with the UK Government for the next year, but, as we approach the budget, such matters will need to be considered in the round. If Mr Kerr feels strongly about the issue, I will engage with him during the budget process. I am sympathetic to some of the points that he has made, but the Scottish statutory instruments that are before the committee are focused on the Highlands and Islands.

Liam Kerr: I appreciate that, and I will look to engage with the cabinet secretary. If I am right in what I heard her say, no assessment relating specifically to Aberdeen and the north-east has been carried out. She referred to data from 2018. Part of the Government's evidence base was the Civil Aviation Authority's departing passenger survey—I think that that is the information from 2018 that she was referring to. That looked at data from Edinburgh, Glasgow, Inverness and

Aberdeen. Given that that data is from 2018, to what extent was it relied on? Have you assessed to what extent it is still valid, given that the survey predated issues such as Covid and the economic challenges for the north-east?

Jenny Gilruth: As I understand it, the 2018 data does not sit in a silo. We used more up-to-date passenger data to inform the regulations. Mr Kerr makes a valid point about Covid and changes to travel patterns. We did not use only the data from 2018. I think that the 2018 data relates to journey times. We have taken account of more up-to-date information about passenger numbers and travel routes.

I will bring in Martin Davidson to talk about the specifics of the dates.

Martin Davidson (Scottish Government): The 2018 data that has been referred to relates to a survey by Highlands and Islands Enterprise that looked at surface journey times in the Highlands and Islands region. When it comes to passenger data, we have used the latest data from the CAA, which is from 2024-25. We also procure commercial data from a commercial supplier, which is up to date and includes data on numbers of passengers departing from airports this year. When it comes to assessing passenger numbers and aircraft movement, we use much more up-to-date data.

Liam Kerr: The Government's own analysis recognises that a difference in the application of the ADT exemption can distort competition between Scottish airports. That is why the international exemption was removed from HIAL. That begs the question of why the Scottish Government applies that analysis to the international exemption but not to the domestic exemption and the advantages that that will convey.

Jenny Gilruth: I think that Mr Kerr is pursuing the point about the difference in the treatment of Aberdeen and Inverness airports. The reason for that goes back to the data on journey times and the isolation that Highlands and Islands communities experience. We would argue that the connectivity argument does not apply in the same way to the north-east. I think that that is the point that Mr Kerr is making—he is shaking his head, so I am happy to hear more.

Liam Kerr: I am grateful. As I understand it, the Government has perhaps had legal advice that says that an exemption for one set of airports for the international market distorts competition between airports that enjoy such an exemption and those that do not. As a result of its own analysis, the Government has decided that it needs to take away the exemption for international flights. However, you have retained an exemption

for domestic flights for the airports in question when, logically, that must also distort competition. Why have you applied an exemption in one area and not another? Would the simplest thing not be to give Aberdeen an exemption for domestic flights?

Jenny Gilruth: I know that that is Mr Kerr's view, and I would be more than happy to meet him to discuss the matter. As the committee will understand, I cannot share the detail of legal advice that I have received in my capacity as a minister. Our view is that there would not be a distortion of the kind that Mr Kerr has outlined. However, I am happy to engage with him on the issue, because I understand the points that he has made about the communities that he represents. While the instruments before the committee are focused on the Highlands and Islands, I recognise that there are connectivity issues in the north-east of Scotland as well.

10:45

The Convener: I call Liam McArthur.

Liam McArthur: I very much welcome the progress that has been made. A point that I would make in response to the most recent exchange is that you are dealing with flights that, for the Highlands and Islands, can genuinely be described as lifeline flights. After all, they get patients to hospital appointments, apart from anything else. Indeed, over the summer we saw some of the impact that the withdrawal of a number of services from Inverness to the Western and northern isles had on patients in all three island communities. I, therefore, welcome the move.

The extension of the exemption to inbound flights from Scottish airports is welcome, too. Under the current regime, islanders found leaving home to be just expensive, but returning home even more so, and I welcome the consistency in that respect.

As the cabinet secretary has acknowledged, the proposed policy on this has been a long time coming, but I am interested to explore with her the way in which it might have evolved. I note that the consultation analysis document published in July says:

"The evidence, analysis and insight provided by respondents has helped shape the Scottish Government's understanding of the aviation market and the potential impacts of the revised Highlands and Islands exemption."

It would be helpful to have a bit more detail on what that process illuminated and how it has shaped the position that the Government has arrived at.

Jenny Gilruth: I welcome Mr McArthur's support for the proposals. He will appreciate that some of the work was undertaken prior to my time

in office, so I will give him an outline of some of our engagement.

In the consultation, 85 per cent of respondents supported retaining the exemption for passengers travelling from airports in the Highlands and Islands to UK destinations, including—perhaps unsurprisingly—100 per cent of Highlands and Islands stakeholders. That data was important in informing our steps forward, as was the engagement that the previous cabinet secretary had with a range of stakeholders. I believe that Mr Flynn is meeting members on 28 October to have wider engagement on connectivity for the communities that they represent. I should mention, too, the ADT expert advisory group, which includes a range of representatives. It was convened in March and has met on a number of occasions.

All of that engagement has helped to feed into the broader policy, but I might defer to officials on the issue of how the ask of communities informed our approach to shaping policy.

Martin Davidson: The main insights that we have been able to get from that engagement relate to up-to-date data. We have been able to tap into the networks that are in place across the Highlands and Islands, and the regional transport partnerships and the enterprise agencies have shared data with us; indeed, HIAL was able to share with us quite sensitive commercial data that allowed us to understand passenger movements and the number of passengers taking certain flights. That information informed our forecast of a number of things, including the revenue impacts.

Liam McArthur: Is the welcome move to extend the exemption to inbound Highlands and Islands flights the result of a change in the way that the UK legislation now applies compared with the way in which the EU state-aid legislation applied? The demand for a consistent approach to outbound and inbound flights has been there for some time, but my understanding is that there was a legal block to it. Clearly, a way has been found to overcome that, but I am not clear whether it is a result of the way in which the UK state-aid legislation has been drafted and is being applied.

Jenny Gilruth: I think that it is both things. It is a policy choice that we as the Government have made, but, thinking back to my period as transport minister in 2022, I know that this has been a long-running issue for many years, and we have not been able to resolve it. Brexit was part of the challenge, and the engagement with the UK Government has been helpful in that regard. You will see from my letter to the committee that we have had very strong engagement with the Chief Secretary to the Treasury on this matter and the UK Government has agreed to the approach that has been set out.

I do not know whether Martin wants to say anything more about the subsidy control rules element, but I would say that we have been able to work very proactively with the UK Government in quite a short period of time since I came into office to get this over the line and take the next steps.

Martin Davidson: Mr McArthur is right about the history. The exempting of the return leg has been a long-standing ask; I think that the Labour Government tried to put that in place in 2001, but it was unsuccessful for reasons that I cannot remember.

When we spoke to the UK Government, our initial ask was whether we could bring across the current exemption from air passenger duty into a devolved regime—essentially, could we port it from one piece of legislation to another? The UK Government said no, and told us that we had to treat it as a fresh exemption and a fresh set of considerations, and run it through the Subsidy Control Act 2022, which now provides the regulatory framework in the UK. That gave us an opportunity, because it allowed us to redesign or reimagine the exemption for Scotland in 2027, when it will come into effect. The 2022 act also provided some flexibilities that were not inherent in the state-aid regime. Devolution provided us with opportunities to redesign the exemption, which allowed us to add that bit in.

Liam McArthur: You are right that the Labour-Lib Dem Executive had a policy of trying to introduce that provision, but there were clearly legal impediments at the time.

When you refer to the return leg, I take it that you are not saying that flights initiating in Aberdeen, Edinburgh and Glasgow into the Highlands and Islands and then returning are not exempt from the tax.

Martin Davidson: Under the air passenger duty provisions, if you flew from Shetland to Aberdeen, that would be covered by the exemption. However, if you went from Aberdeen to Shetland, it would not be covered by the exemption. Under air departure tax, both Shetland to Aberdeen and Aberdeen to Shetland would be covered.

Liam McArthur: So, if you are a consultant flying up from Aberdeen to hold consultancies in Shetland or Orkney, you will be exempt for both the inbound and the outbound flights. It is not just about the return leg being exempt: flights initiating in Aberdeen and going to the Highlands and Islands are exempt on both legs. Is that correct?

Martin Davidson: Yes.

Pauline Stafford: I have a few questions on the 2022 act. I appreciate that you have said that you cannot comment on specific legal advice, cabinet

secretary, but I am looking for an assurance about how confident you are that the Highlands and Islands international exemption will now comply with subsidy control. Are there any outstanding legal risks around that?

Jenny Gilruth: One of the points that I mentioned in my opening statement was that we had uploaded to the UK Government's subsidy transparency database details of the exemption on 17 July. That sat for a month, when any interested party could raise a concern about legal challenge. As no interested party did so, our view is that there is no obvious opportunity for legal challenge, given that the opportunity to raise such a challenge has now expired. We have been through that process, and we are as assured as we can be that no challenge will be presented.

Pauline Stafford: You mentioned that it was a long process. Were any other subsidy control-compliant mechanisms explored during that time? Are any European neighbours having to navigate similar state-aid rules? If so, have they found workable solutions?

Jenny Gilruth: We engaged with the Competition and Markets Authority on its work on voluntary referrals. It had an issue relating to capacity at the time, so I am not sure that it was able to provide much assistance.

I will bring in officials on the wider point about comparable European Union countries and subsidy control.

Martin Davidson: We looked at international comparators as an evidence base for inspiration about what could be achieved within the devolved regime. For example, Norway has flights to certain enclaves, but those enclaves sit outside the European economic area and are, therefore, outside the state-aid regime, so they were not directly applicable. Germany has discounted rates to some islands, but, again, they sit in a different regime, so those examples were not directly applicable to our work. We carried out an options appraisal, which looked at things that we could do within the devolved context, informed by what European neighbours were doing in relation to their circumstances.

Pauline Stafford: So, those examples are not directly comparable. You mentioned that there were some more flexibilities in the 2022 act compared with the state-aid regime. Can you give us any details of those differences?

Martin Davidson: I ask Laura Wilkinson to answer that.

Laura Wilkinson (Scottish Government): It is difficult to make a general point about this, but they are fundamentally different regimes with slightly different approaches. If you are working within the

other framework, you do not have to take the same EU-derived approach. In some respects, it is more challenging, because it is so new. The arrangement has never been tested in court in this context, but we have a good set of evidence and analysis that supports what we have ended up with.

Pauline Stafford: What mechanisms will the Government use to monitor the impact on the Highlands and Islands in terms of route viability and passenger numbers once the new framework is implemented?

Jenny Gilruth: It is fair to say that we will maintain an approach to direct engagement on the issue of routes and connectivity. We have an interest in relation to our public service obligation routes in particular, so we will continue to monitor the situation with regard to passenger uptake. We will also monitor the development of the policy and how it interacts with passenger behaviour.

Pauline Stafford: I appreciate that.

The analysis raised the issue of private jets making ghost flights. I think that the Scottish Government was seeking additional devolved powers to close the loophole in that regard. Can you give us any information about the progress on securing those powers?

Jenny Gilruth: The private jet tax is not a standalone tax; it is a special rate of ADT that is applicable only to private jets, and it will be provided via secondary legislation. I will set out the ADT rates for 2028-29 during the budget process, when I will say a little bit more on that.

I am not able to say anything further in relation to the ghost flights, but officials may want to add something. We are taking policy advice on that issue. It is quite challenging to establish data on some of these matters, given their complexity. There is also an issue around devolved and reserved powers. I will defer to officials on the wider ghost flights issue.

Martin Davidson: It might be helpful if I explain what ghost flights are, as some people might be unfamiliar with the term. Ghost flights are private jet movements involving a private jet that has flown into Scotland with passengers and then leaves without passengers, perhaps to pick someone up in another country—the flight out of the country is the ghost flight. The air departure tax does not apply to those flights, because it is a tax on the carriage of passengers. Therefore, we would need to seek further powers in order to tax those flights, which might involve implementing a wholly new tax or making an amendment to an existing tax. As the Deputy First Minister said, that involves quite a complex set of considerations.

Pauline Stafford: It is probably difficult to get the data, but do we have any idea of the scale of the revenue that we are missing at the moment, or the emissions that are generated by the ghost flights?

Jenny Gilruth: I do not think that we do, because the data is very difficult to collect. As Martin Davidson has rightly set out, we would need further powers from the UK Government to take further action, and it would be quite challenging to even gather the evidence and the data that would be required. We will engage with the UK Government on those issues, and I should say that the UK Government has engaged very positively with us in relation to ADT and the block grant adjustment that will be required, as was set out in the letter that I shared with the committee.

Liam McArthur: I want to take you back to the questions that Pauline Stafford asked in relation to what you will do to monitor the impact of the changes. I very much welcome what you said in that regard.

Earlier, you alluded to the meeting that the transport secretary is due to have with a number of members on the wider debate about the need for a longer-term strategy for air services in the Highlands and Islands. I think it important that that process continues to be led by the Scottish Government.

HITRANS, ZetTrans and other partners have made an invaluable contribution to identifying ways in which, by drawing on international models, we might be able to structure that service in a more sustainable way. My view is that, without ongoing Scottish Government leadership, the likelihood of those proposals being put into effect is vanishingly slim. Therefore, as part of the monitoring of the impact of the measure that we are discussing today, which I very much welcome and which I think will be helpful, can I seek your support for my plea that the Government continues to lead that effort?

Jenny Gilruth: Absolutely. Obviously, the Cabinet Secretary for Economy, Tourism and Transport has a key role to play, and later this month he will convene a meeting with a number of MSPs on those issues. In itself, that shows the Government's willingness to lead on those matters.

I know how important those flights are for the communities that Mr McArthur represents, but also for the broader Highlands and Islands region. Those are lifeline flights, as Mr McArthur set out earlier, so it is hugely important that the Government plays a role. We already play a significant role in relation to our PSO flights, but, with the introduction of the new tax, there will be a greater opportunity for us to support those island

communities in rural parts of Scotland. We will continue to show that leadership, and Mr McArthur has an assurance from the Government in that regard.

The Convener: We move to agenda item 4, which involves formal consideration of the motions on the draft affirmative instruments. I invite the cabinet secretary to speak to and move motions S7M-01280 and S7M-01281.

Motions moved,

That the Finance and Public Administration Committee recommends that the Air Departure Tax (Scotland) Amendment Regulations 2026 [draft] be approved.

That the Finance and Public Administration Committee recommends that the Air Departure Tax (Administration) (Scotland) Amendment Regulations 2026 [draft] be approved.—[*Jenny Gilruth*]

Motions agreed to.

The Convener: I thank the cabinet secretary and her officials for their evidence today. In due course we will publish a short report to the Parliament, setting out our decision on the instruments.

During the suspension, we dealt with the items that we earlier agreed to take in private, so we can now conclude our meeting.

The next meeting of the committee will take place on Wednesday 28 October, when we will take evidence on the autumn budget revision and consider two draft reports.

Meeting closed at 11:00.

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