

# **ECONOMY, ENERGY AND TOURISM COMMITTEE**

Wednesday 7 October 2009

Session 3

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# CONTENTS

Wednesday 7 October 2009

	Col.
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>2479</b>
<b>DRAFT BUDGET SCRUTINY 2010-11 .....</b>	<b>2480</b>
<b>ARBITRATION (SCOTLAND) BILL: STAGE 2 .....</b>	<b>2501</b>

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## **ECONOMY, ENERGY AND TOURISM COMMITTEE**

### **26<sup>th</sup> Meeting 2009, Session 3**

#### **CONVENER**

\*Iain Smith (North East Fife) (LD)

#### **DEPUTY CONVENER**

\*Rob Gibson (Highlands and Islands) (SNP)

#### **COMMITTEE MEMBERS**

\*Ms Wendy Alexander (Paisley North) (Lab)

\*Gavin Brown (Lothians) (Con)

\*Christopher Harvie (Mid Scotland and Fife) (SNP)

Marilyn Livingstone (Kirkcaldy) (Lab)

\*Lewis Macdonald (Aberdeen Central) (Lab)

\*Stuart McMillan (West of Scotland) (SNP)

#### **COMMITTEE SUBSTITUTES**

Nigel Don (North East Scotland) (SNP)

Alex Johnstone (North East Scotland) (Con)

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

David Whitton (Strathkelvin and Bearsden) (Lab)

\*attended

#### **THE FOLLOWING ALSO ATTENDED:**

Jim Mather (Minister for Enterprise, Energy and Tourism)

#### **THE FOLLOWING GAVE EVIDENCE:**

Philip Riddle (VisitScotland)

#### **CLERK TO THE COMMITTEE**

Stephen Imrie

#### **SENIOR ASSISTANT CLERK**

Katy Orr

#### **ASSISTANT CLERK**

Gail Grant

#### **LOCATION**

Committee Room 1



## Scottish Parliament

### Economy, Energy and Tourism Committee

*Wednesday 7 October 2009*

[THE CONVENER *opened the meeting at 09:32*]

### Decision on Taking Business in Private

**The Convener (Iain Smith):** I welcome you all to the 26<sup>th</sup> meeting of the Economy, Energy and Tourism Committee in 2009. I am pleased to see that we are a popular committee this morning. I welcome a group of students from Edinburgh Napier University and some visitors from Germany. I hope that you find the proceedings of interest.

Agenda item 1 is to consider whether to take item 4 in private. Are we agreed on that?

**Members** *indicated agreement.*

## Draft Budget Scrutiny 2010-11

09:33

**The Convener:** Item 2 is our continued scrutiny of the Scottish Government's draft budget for 2010-11. I am again pleased to welcome our adviser, Peter Wood.

This morning we will focus on VisitScotland's budget. I am pleased to welcome back to the committee for one of his regular visits Philip Riddle, who is the chief executive of VisitScotland. I invite him to say a few words of introduction, after which we will move on to questions.

**Philip Riddle (VisitScotland):** Good morning and thank you, convener, for this opportunity to talk with the committee about VisitScotland and tourism in Scotland. We always find the committee's proceedings constructive and useful, and I am sure that that will continue to be the case.

Relative to the general environment, the tourism industry is doing pretty well. We are not exactly booming, but relative to the doom and gloom that is around, tourism a resilient market, which is a great sign for Scotland's future. We have talked in the past about the importance of the tourism industry, and we increasingly see that it can withstand quite heavy external pressures because of its diversity in terms of regional spread, market spread and the spread in businesses. I think that we will come out of 2009-10 pretty well.

The challenge that we face is how to take advantage of coming out of the recession. In VisitScotland, you see an organisation that is robust and is performing very well, and we are looking at our own internal measures to help the industry to take advantage of the upturn. We are full of optimism but also quite aware of the challenges that we face. The path ahead is not an easy one, but we feel that there is real potential.

**The Convener:** Thank you. I will start by asking the obvious question. You had additional funding this year to support homecoming 2009, but you will not have that funding next year. What impact might that have on promoting tourism in Scotland in 2010-11?

**Philip Riddle:** Homecoming was, overall, very successful in terms of what it set out to do, and I am sure that it will achieve an economic benefit of an extra £44 million. The benefits to our reputation, particularly in respect of tourism and the benefits of the countryside in Scotland, have been great, as have the contacts that we have made with the diaspora.

We will lose almost £3 million from our budget; I think we had £2.7 million in the current year and

about the same in the year just past. However, we will be able to build on the lessons of homecoming; we will take forward some positives. The power of the events programme and the collateral that that has given us, and the ability to work together to achieve things have been fantastic during homecoming. We can take those forward into the future. Although we will lose the money, we will not lose all the benefits that we gained.

Looking beyond homecoming, we are also facing a budget cut. Our forecast budget will go down by a total of about £5.5 million. About £1 million of that will be from revenue reduction, rather than from the core grant, and—as I just said—about £2.7 million will be a result of the loss of the homecoming money, which will not be repeated. We also believe that we will be £300,000 down on capital. We have not had confirmation of the numbers yet.

We are still facing a bit of a deficit and we will have to find cuts in activities to meet that. We are confident that we can do that, but the question of how quickly we can do it is significant. At the end of the day, if we cannot improve our overall efficiency and cut our budget that way, we will have to cut activities. Our aim, however, will be to maintain front-line activities, marketing and events programmes, and to try and find efficiencies behind the scenes in order to meet the deficit.

**The Convener:** This is not intended as a criticism of VisitScotland, but it is quite difficult for the committee to scrutinise a budget when we do not actually know what it is. You are saying that you do not yet know the details of your final budget. We have requested level 4 figures from the Government, but it has not yet provided them, which makes it a bit difficult for the committee to do its job of scrutinising properly. Given the information that you have, can you give a clear indication of where VisitScotland is likely to make savings and what areas are going to be cut?

**Philip Riddle:** We are certainly looking at efficiencies in our network and quality assurance. Both areas have deficits today. We have good sources of income, but there are attendant costs in both areas. In our visitor network across the country, we have a cumulative deficit of around £6 million. Our QA and advice service has a deficit of about £1 million. We will look to cut those deficits through increased efficiencies.

The good news is that VisitScotland.com is now on board and is generating income for us. One of the recent highlights was when VisitScotland.com repaid £250,000 of the initial loan that was put into the company. That is well ahead of any plan; the last time I came before the committee, there was no idea that we would ever get any part of the loan back. That £250,000 will help.

Beyond that, we are considering our support services—where we can share with other agencies, how we can do better procurement, and where we can use common back-office services. We are going to try and save something like £1 million that way. We are already committed to Government efficiency targets for savings, which will be in the region of £1 million. As long as we are pulling those savings in, that will help us.

Naturally, we would prefer to make those savings and redeploy the money into front-line activities, but we recognise that we are in a difficult environment.

**The Convener:** I have one final question before I hand over to colleagues. Are the savings to which you refer likely to result in job losses?

**Philip Riddle:** We are working in an environment in which we must avoid job losses; we will certainly avoid any compulsory redundancies. There may be some opportunities for voluntary severance, but we are not restructuring in the sense of deliberately trying to eliminate jobs.

**Rob Gibson (Highlands and Islands) (SNP):** It is interesting to see the figures relating to the year of homecoming, as we will be able to see what happened last year, what has happened during the year of homecoming and what will have happened the year after that. That will give us a better idea of homecoming's impact. Can you give us a flavour of the amount of money that has been provided to the year of homecoming not from your budget, but from local authorities, events and so on? The actual quantity or a percentage figure would be helpful.

**Philip Riddle:** The money that was put in through VisitScotland and EventScotland was about £5.5 million. I am pretty confident that, taking into account the events for which the funding was only partial and the several hundred partner events, the figure will be significant. I will get back to you with an estimate for that figure; I cannot give a good estimate right now, so it would be a bit of a guess.

**Rob Gibson:** That would be helpful. Many of us received the brochure for the final weekend of the homecoming, for which events were held throughout the country. It would be good to see which of those events were supported by public money and which were supported by the local people who put them on. If you could give us that information, that would be useful.

**Philip Riddle:** Let us be clear. You are asking for a breakdown of the public and private funding. A lot of private money went into many of the events.

**Rob Gibson:** Yes. It is important for us to know that, to see the effectiveness of what you do.

In your written submission, you talk about seeking income from European campaigns. You state that the German touring campaign generated additionality totalling £7.5 million in the Highlands, £8.5 million in Edinburgh and £4 million in Glasgow. How did you get that interest from Germany?

**Philip Riddle:** Are you asking about the mechanics of the campaign?

**Rob Gibson:** Yes.

**Philip Riddle:** We concentrate quite a lot on direct access. A main element of our European campaigns has been our focus on the existing air routes and our work with the airlines; for example, we have a £1 million alliance for joint promotion with easyJet. Step 1 has been to consolidate the routes. We then have a quite segmented mailing list for every country and we follow up with direct mail, although that is more likely to be e-mail and e-bulletins. We also have a dedicated website that we use to get the message across. We might use some outdoor advertising as well, including posters, and we use specialist magazine advertising and editorial content. We also organise trips for journalists and place articles in relevant magazines. We always take a multichannel approach and use all the channels, weighting our focus differently and taking cognisance of the different segments that we are trying to attract.

In addition, we try to back up that work with special offers. A feature of recent tourism has been that people are interested in the quality and value balance and in ensuring that they get good value for money. Whenever we can back promotion up with a good offer, that reinforces all the multichannel exposure.

**Rob Gibson:** Can you measure the effectiveness of that work in getting German tourists to come here in 2007 and 2009? Did you undertake the same sort of campaigns in those years? In terms of the budget, we need to know whether that work will continue.

**Philip Riddle:** We can certainly come up with some estimates. We do not get the figures for every country every year; we tend to do sampling. I cannot remember offhand which countries we have sampled this year, but we sample two or three of our main markets every year and extrapolate from that selection. The cost of getting the figures for every market every year would be enormous. We can give you estimates of progress in our key markets.

09:45

**Lewis Macdonald (Aberdeen Central) (Lab):** I apologise for missing the bulk of your opening statement, although I enjoyed reading your written evidence in advance of today's meeting. I was curious about the figure of £44 million that you provided as the return on homecoming Scotland. Am I right in assuming that that is an optimistic expectation that is not based on a trend that you can demonstrate at this stage in the year?

**Philip Riddle:** It is certainly an expectation. It is based on the formula that we will get an £8 return on every £1 that we have spent. The evidence so far suggests that the figure of £44 million is not overly optimistic. One always hesitates to count one's chickens, but the returns that we have received from various events and our monitoring of media coverage, for example, show that we are well on track for that. As we have mentioned previously, we have several means of evaluation, including visitor surveys. An overall evaluation of homecoming will be produced and will be available in spring 2010. That is the moment at which we will be able to say whether we have reached the target. At this point, I feel comfortable with it.

**Lewis Macdonald:** In spring next year, when you assess the success or otherwise of homecoming and whether you have met the target, will the £8 for £1 calculation be made in relation to spending by visitors to Scotland or in relation to income for tourism-related businesses?

**Philip Riddle:** The figure relates to tourism spending.

**Lewis Macdonald:** For reasons that are not within VisitScotland's control—although you would hope to influence them—overall spending in the period since the target for increasing spending was set has come down. Since 2005, the figure has reduced by 4 per cent. When assessing the benefit of homecoming, to what extent will you discount or consider any underlying trend towards continuing reduction or a recovery in spending? Is there a technique that you intend to apply to distinguish the homecoming bonus from any wider recovery in tourism spending, or it is impossible to distinguish between the two?

**Philip Riddle:** It is not impossible to distinguish between them. We will measure homecoming in the same way that we measure every marketing campaign. The surveys that we carry out are focused on our identifying, to the best of our ability, the incremental spend that is attributable to homecoming, our German campaign and so on. We can identify additional spending, which may be alongside a downward curve or alongside an upward curve. It will be clearly separated.

**Lewis Macdonald:** This morning, I saw for the first time a submission from the Scottish Tourism

Forum that reflects concern about the decline in VisitScotland's budget and seeks increased resources for VisitScotland. The forum suggests that VisitScotland be given the powers to provide

"direct intervention, grant support and soft loans"

where that would be helpful. Currently, some of those powers lie with the enterprise networks. Do you have sympathy with the forum's proposal, from the perspective of marketing Scotland and promoting tourism, or would it muddy the waters with regard to the respective responsibilities of VisitScotland and the enterprise networks?

**Philip Riddle:** Decisions about our overall remit are beyond us—those are judgments for the Government. However, there are opportunities for consolidation, both vertically and horizontally. I cannot judge whether that would require structural change, but there are opportunities for us to use our marketing expertise more broadly for Scotland, which is horizontal integration of activities.

There are also opportunities for us to use our expertise in tourism in a more vertically integrated way, for example by helping at least with advice about tourism investment. In the future, it will be extremely important that we align investment with customer needs. We tend to be a bit introverted and to look at investment potential from the point of view of what we want or would like to do. I hope that we can be seen as a major contributor by identifying what the market is doing, what it wants and what customers want. That should be a major driver of investment decisions. The potential exists for us to help out in different ways.

**Lewis Macdonald:** If your budget was going up rather than down, would you be in a position to make a more effective intervention on tourism spend and providing what the customer needs?

**Philip Riddle:** Absolutely.

**Stuart McMillan (West of Scotland) (SNP):** Good morning. I have a few wee introductory questions. In relation to the European touring campaign, do you work collaboratively with the university sector in Scotland, given that many Scots students study abroad and many foreign students come to Scotland to study? There will be greater awareness of Scotland in countries where there are Scots students.

**Philip Riddle:** Absolutely. It is a market that has grown particularly strongly and has a lot of potential. Although you mentioned it in the context of the European campaign, there is probably more potential outside Europe. There are undoubtedly opportunities to work more effectively with universities in Europe, but I think that the real potential for the education sector lies in the emerging markets. We have a fantastic product in our education system, for which we know there is

great demand in, for example, China, India and South America. We have worked in such places, so that is where great potential exists for us to work in conjunction with the universities and other educational establishments. Together, we must probe the potential in those markets.

**Stuart McMillan:** My next question is for clarification and again relates to the European touring campaign. An extra £10 million has been generated for Glasgow, but does that include the rest of the west of Scotland?

**Philip Riddle:** It relates just to the Glasgow area. Glasgow and the Clyde valley is the area that we usually measure; it does not cover the whole of the west of Scotland.

**Stuart McMillan:** Okay. I do not know many people from Paisley or Greenock who would consider themselves to come from Glasgow. I, too, would see such places as being different markets from Glasgow.

Your submission contains a number of interesting quotations. I will not go through them all, but the first is that you want to maximise

"the economic value of the brand".

Scotland has several brands, including whisky, golf, and bagpipes, tartan and kilts. Another potential brand that Scotland could have relates to sailing and recreational boating. I am aware that in recent months VisitScotland gave Sail Scotland £65,000 to take part in boat shows to help to market the industry and Scotland abroad. Are there more opportunities for collaborative work involving VisitScotland and other bodies to promote Scotland's sailing and recreational boating industry and sea angling?

**Philip Riddle:** The answer to the more general part of the question, which was about whether we think there are other opportunities to exploit, is, "Absolutely." It is interesting that the more research one does on the branding of Scotland, the more commonality one finds on the core values. The core values that we have identified for tourism for the brand of Scotland are pride, proficiency, integrity and innovation. Those values are manifest in all sorts of different ways, but they lie at the heart of the brand. Although the external perception of our values might have taken a bit of a knock in some sectors, they hold true for practically everything, whether one is talking about golf, whisky or sailing. That gives us a great common platform for projecting a Scotland united message. We intend to use that.

Sailing is pretty exciting. I am a relatively recent convert—I was sailing this summer. I have been impressed by the investment, which is a great thing. If one is a marketer, one of the things that one really wants is great new product to sell all the



time. Scotland is fantastic and it is great to have that new product. The investment that has been made and the developments that have taken place in marinas—there are new marinas and there have been extensions of existing ones—give us a fantastic platform for marketing sailing even more in the future.

**Stuart McMillan:** There are more marinas and more berths. A third of berths in Scotland are taken up by people who stay in the south-east of England and fly up on cheap flights—they sail primarily on the west coast. Some companies in the charter business that I have spoken to have told me that this year has been their busiest year for a number of years. It is probably not unkind to say that there has been a dearth of public investment in the sector over a number of years, but it is an industry that has tremendous potential: with that potential comes the possibility of more jobs and more economic benefits.

**Philip Riddle:** Yes. The sector is also generally environmentally sound. We would like to encourage people to come from relatively close to Scotland, so that they are not travelling too far. Also, if they do not use the engine too much it can be a very environmentally sound holiday.

**Stuart McMillan:** In your opening comments you mentioned where you would like to see efficiencies, and your submission refers to the collaboration that is taking place. Sailing and recreational boating is not a new industry, but it is now on the public sector's horizon, and previously it was not. I urge VisitScotland to ensure that, where possible, moneys get put into the industry, because the return on investment will be tremendous for Scotland and, in particular, for communities.

**Philip Riddle:** Absolutely.

**Gavin Brown (Lothians) (Con):** Good morning. I will come back to the figures in the budget—certainly the ones that we have. Tourism was part of the Government's six-point plan for economic recovery, yet it faces a budget cut of about 11.7 per cent, some of which can be explained away by homecoming but some of which cannot. I do not ask you to comment on that political statement, but I want to go through your income and expenditure forecast, which has been provided to the committee, and find out what that means on the ground in the areas in which you are having to make cuts. When we hear that the budget for business engagement is being cut, it looks like just a budget line, but I am keen to explore what that means for your organisation and for Scottish tourism. I will start with the budget for business engagement, which goes down by £600,000—an 8 per cent drop. What does that mean on the ground?

**Philip Riddle:** My response will have to be slightly broad brush, because we have not yet put our operating plans in place.

Essentially, business engagement covers the promotion of VisitScotland products to the industry and, importantly, it also covers our QA. We certainly see efficiencies to be gained in the way that we promote VisitScotland products and invite the industry to buy them. One aspect, for example, is repeat purchase. Rather than having to go to people every year and say, "Here is what we have: would you like to purchase this?" we have found that most of our business customers tend to take something year in, year out, so we can cut a lot of our sales effort by rolling that over.

I have already mentioned the quality side and I will not go into great detail unless the committee would like me to, but we are carrying out a major review of how we do our quality assurance. We believe that that will produce efficiencies. As I said, the deficit between what we charge for quality assurance and what we spend is around £1 million. We hope to take away a considerable part of that deficit through our quality review.

Changing the selling method and undertaking the quality review will therefore be the biggest moves in the business engagement sector.

10:00

**Gavin Brown:** Are corporate services your human resources and administration functions?

**Philip Riddle:** Yes, that is all the back office. We have done well there, in areas such as procurement. We took out about £1.8 million in the first year after our most recent restructure. We are on target for Government efficiency savings, which will be mostly in that area as well—efficiency, shared services and procurement. There is more to come there.

**Gavin Brown:** The biggest cut in cash terms is in visitor engagement, with a cut of £1 million. What will the consequences of that be on the ground?

**Philip Riddle:** As I have said, our aspiration is to maintain the front-line marketing service. Visitor engagement is by far the biggest service, using £40 million of our budget. It covers all our marketing and all our visitor services—the network of information centres throughout the country. We hope that the biggest part of our savings will come from efficiencies in the network. We want to maintain the spend on marketing, while getting better at it and more efficient. We also want to maintain the service through the network; there will not be a slash-and-burn approach. We have made considerable progress with, for example, partnerships in visitor information centres. Two

examples of that are in Tarbert and in Tobermory, where we will close our existing information centre and move in with CalMac. That sort of thing will release good savings.

In the course of this year, we have also managed to reduce staff hours by 10,000, from a total of about 250,000. That was done by better use of the integrated network and staff, and by having staff who are very flexible and are prepared to move around. We can move people between VICs more at different times, including peak periods. Largely by having better rostering, we have therefore managed to cut hours, which is a big saving in itself.

We hope to get improvements on the income side as well. Our retail income just now is above target and unit spend per visitor to VICs is slightly above target. We are doing very well indeed in commission on ticket sales. I think that that is an underexploited area. Therefore we hope to close the deficit a bit on the income side, too. If we get all those in, we should make the savings. Obviously, we would like to make the savings anyway and release extra money to marketing, but at least we will protect the marketing. If we are not successful, though, we will have to cut some marketing.

**Gavin Brown:** I suppose the other two areas are capital partners and strategic partners, each of which faces, I think, a £300,000 cut. What are the implications on the ground of each of those cuts?

**Philip Riddle:** The strategic partnerships area is largely about communication, creating partnerships and building on our relationships with local authorities, tourism organisations and the wider industry. It perhaps sounds platitudinous, but we will just have to do more for less. We will just have to find ways of making our communication better but less expensive. We can do many small things in that regard. For example, we have stopped printing our annual report and it is now only available online, which saves several thousand pounds in itself. Doing such things will help us to make the cuts.

We will be able to manage the cut on the capital side. It is money that we need for our estate, which is the network, but the cut will not present any major obstacle to the way in which we operate the network.

**Gavin Brown:** I have a final question. A large proportion of your income comes from the Government, and you also have commercial and stakeholder income, which you predict will be slightly reduced in the next budget round. The table in appendix 1 of your paper predicted that that income would be £21.3 million for 2009-10. We are only six months into that budget year, but do you think that you are roughly in line with where

you hoped to be at this point in the year? Are you slightly behind or ahead of the forecast?

**Philip Riddle:** The 2009-10 figure that you have been given is a reforecast. We are a little bit behind in income and have already had to cut the figure a bit. There has been a downward trend for some time, but that is built into the current estimate. However, I am pretty comfortable with the current estimate. The environment is volatile, of course, so we cannot be too confident, but we should be all right with that figure.

**Christopher Harvie (Mid Scotland and Fife) (SNP):** I want to make three general points. The first is to do with our partners in Europe in particular. France and Germany together are our biggest single market. The second point is that many of us became concerned about the bad weather this summer. People were getting almost pathological in articles for the southern papers. The third point is that high-speed communications with the south have again come on to the agenda.

You and I were at the homecoming gathering, which was splendid and worked brilliantly. Would it have worked as well if there had been a total downpour on the day?

**Philip Riddle:** It is inevitable that the turnout would have been smaller if there had been a total downpour. We were blessed. I cannot claim that we organised the weather, but it was superb for ensuring that people turned up on the day.

The clan events were at heart of the gathering, and they would have happened with the same number of people, because advance bookings were made and people had come from around the world. However, it was undoubtedly a great bonus that so many people said, "It's a nice day, so let's go along and give it a try."

**The Convener:** Despite what Mr Salmond might think, none of us can control the weather. In any event, it is a reserved matter.

**Christopher Harvie:** I think that the event drew predominantly on North American elements. However, we were told at the reception for the German consul yesterday that there are no fewer than 300 Highland games in Germany every year. We should consider that in the next few years.

The 450<sup>th</sup> anniversary of the reformation will be next year, and the 450<sup>th</sup> anniversary of the return to Scotland of one of our most photogenic historical characters, Mary Stuart, will be the year after that. I think that that creates a disposition in France and Germany to follow in the footsteps. There is a lot of religious tourism involving Catholics and Protestants from Germany and a lot of cultural tourism. Do you have any projects in view in that context that could do with financing

but which might be disadvantaged by cuts in finance?

**Philip Riddle:** We have not picked up on those two specific examples for any projects. However, we have established good networks for events, especially in the cultural sector. That is a great legacy of the year of homecoming. Our contacts and planning for sporting events have been much better than our contacts and planning for cultural events in the past, because it is quite difficult to network as effectively in the cultural area, but things are now much better in that area. I expect that people will be attuned to the opportunities that are presented in culture and heritage and that they will see the potential in tourism, because everybody has been a bit more sensitised as a result of the year of homecoming. I am sure that proposals will be made, and we will consider how we can best use those proposals in our promotions.

**Christopher Harvie:** The Irish run an interesting cultural periodical called *irland journal* in Germany. It introduces books and various means of travel and includes offers, for example. It seems to me that the type of tourism that it promotes often has connections with universities, schools, community groups and twin towns. Would it not be worth experimenting with that approach, even though that is only one issue? Such an approach could be aimed at drawing in writers and so on from Scotland and could act as much as possible as an advert for Scottish cultural offerings, which can increase returns.

**Philip Riddle:** I think that that approach has potential. We are also quite excited about the creation of creative Scotland. We would look to it and the Scottish Government to signpost such things. I mentioned the opportunities to leverage our marketing through the one-Scotland approach. The Government is committed to that, as are we. The links into the cultural sector through creative Scotland will help us to do that in future.

**Christopher Harvie:** Good. My second point is linked to that. In general, the weather this summer was dreadful. The fact that we did really quite well out of it is a plus. Given the long-term statistics on heavier rainfall in summer—apparently, summer rainfall increased by 70 per cent during the 20<sup>th</sup> century—would it not be worth while for us to plan specifically to ensure that our utilities can cope and that the attractions that we offer will attract people in bad weather as well as in good?

The classic example that the committee saw of that was the blue lagoon in Iceland, which we saw in the middle of a storm, with pouring rain, in November, yet there were all these Icelanders and some members of the committee splashing around in liquid that looked like dilute Horlicks to the

accompaniment of a smell of rotten eggs. That was a tremendous triumph of man over nature.

Should we be looking at similar things in Scotland and finding ways in which to turn potentially evil weather to our advantage? I think that it can be done. I will give one example. It seems to me that our swimming facilities in ordinary country towns are utilitarian to say the least. The swimming bath is there for swimming practice and nothing more. We can compare that with what we find in many continental towns, even where their baths are indoors.

**Philip Riddle:** You have not completely sold me on that particular outdoor experience, but I am sure that there is potential. [*Laughter.*]

You are right. It is a good point and something that we encourage, although I would not underrate too much what we have. One of the big advantages of our network throughout the country is that, when it is wet, people can come in and say, "What can we do today?" There are usually lots of things that people can do. The issue is partly about information. It would also be good to think about having more facilities, but the responsibility for that goes beyond us to include the entire industry. People should be thinking ahead, looking at the weather and advising guests.

Underneath all that, though, most people know what Scotland is like. They are not surprised, when they get here, to find that they might get some rain. In fact, some people come here because of that. People who come from Texas or Spain probably come to play golf in the rain and the damp. There is a significant point behind that. We are asking ourselves whether we are seeing some fundamental shifts in consumer drivers and people's reasons for going on holiday, especially in relation to the United Kingdom market. The dominance of the package holiday and going away for two weeks in the sun has definitely faded.

That is partly because the value has gone—the quality-value equation has changed because of the strength of the euro, for example—but there are other trends beneath that. People are looking at holidays more in terms of what they can learn, what they can do and what is life enhancing. That stands us in good stead and we should build on it. We have a window of opportunity to do that. The economic trends might continue for 15 or 18 months—who knows?—and we should consider the pound's weakness and the propensity for people to stay at home. At present, the staycation effect is largely built on a value proposition, but we can exploit the fundamental change of attitude about what people get out of a holiday in Scotland. That brings us back to our culture and heritage. The weather is becoming less important.

**Christopher Harvie:** My final point is about the ambiguities of ease of access. Intriguingly, partly because of an earlier meeting of the committee, I have found myself advising the tenants and residents association of Lockerbie about how to improve the attractions there. That is rather ironic, given the airing that the matter got in the tabloid press, but the people there are concerned about the matter. Lockerbie is remarkably well connected. It is on the M74 and has a station on the main railway line. However, that means that people from that little town tend to shop in Carlisle or Glasgow if they need big-ticket items. The economy of Moffat, which is relatively withdrawn from the railway and the main road, is far livelier, because Moffat is a centre and it is difficult to get out of.

10:15

That is a paradox of access that we must consider in the context of faster rail links with England, for example. If it is easier to get to a place in Scotland, it is also easier for people in that place to get out. There is a need to hold and attract people. A factor that came up in Lockerbie was the absence of a swimming pool and other facilities that would keep kids and tourists in the town, such as shops and outlet centres.

We could do with more in-depth studies of how communities are affected by access and how access can be made to work positively for them. It is intriguing that, although Lockerbie can prosper from having good access, the issue also brings problems. For example, is it handy to have a motorway near a town if it deafens people when they visit and makes them reluctant to stay? Moffat does not have that problem. I would like studies of towns to consider how to retain and increase inward traffic rather than just assume that improving access will automatically improve the economy.

**Philip Riddle:** I think that the Government has done research on that. It is about getting the name on the map so that people recognise it as a centre. Events have an important role in that regard and have a powerful legacy.

I read about a town in the United States where an innovative approach was taken. The town enlisted the police force to stop cars that had out-of-state plates and say, "Why don't you come and stay in our town? Here's a voucher." I do not know that we could encourage such an approach on our motorways, but the example demonstrates that the issue is not specific to Scotland. As transport gets better and links get faster, communities are bypassed. Such places need to find ways to encourage people to stop for a minute and enjoy the amenities.

**Christopher Harvie:** The principal point is that there are many areas in which VisitScotland can profitably co-operate with universities and culture providers and so on. Strategies for particular areas can be drawn up. If there are financial cuts in one direction, there are ways in which the voluntary sector and organisations such as the National Trust for Scotland can get into new working relationships to pursue ideas.

**Philip Riddle:** Yes, absolutely.

**Lewis Macdonald:** We have talked about what VisitScotland might do in the context of an increase in funding and how you might collaborate with the enterprise networks on issues that you have in common. A year ago, when we were conducting our inquiry into tourism, you said that you were working with Scottish Enterprise and Highlands and Islands Enterprise on a national investment plan. In particular, you were considering transformational new investment. The intervening period has brought difficult times for the wider economy. Is the plan still on track? What progress do you hope to make?

**Philip Riddle:** I think that we copied the plan to the committee after that meeting. I am pleased that we did that. The plan is still there. You are right to suggest that the current environment has knocked off the smooth development of the plan, but it is still very much in sight.

The plan is probably more important in the current environment. Its whole aim is to allocate resources to where we can get the biggest bang for our buck and give the biggest impetus to the economy, so if there are fewer resources, it is even more important to have such a road map. The approach is still very much under development. In the current environment, we realise that the big areas on which we should focus are the top-end new developments that we need to attract. Work by Scottish Development International on that is progressing well. However, another strong theme that is emerging is that we must also encourage smaller scale investment and development in the middle tier to ensure that the fabric of our smaller three and four-star hotels, guest houses and visitor attractions does not deteriorate in this environment.

**Lewis Macdonald:** It is about investing in the existing stock as well as attracting new investment, which is what you highlighted a year ago.

**Philip Riddle:** Exactly.

**Lewis Macdonald:** You have kept us up to date with work in progress, but are you able to update us on what has happened with the tourism investment bank, which the committee was interested in last year? I realise that the

circumstances might not have been ideal for taking that forward.

**Philip Riddle:** After our previous meeting, the convener joined us in a discussion of the subject with banks and a number of invited Austrian guests. The idea still has great potential, but we think that establishing a bank might be inappropriate and simply a bit too much just now. However, we are certainly thinking along the lines of a tourism investment vehicle that, instead of taking in lots of money itself, would be more of a catalyst for bringing together investment and investment need. I can see the potential in that.

I was interested to note that you discussed this issue with Peter Taylor at last week's meeting. The fact is that the industry in general does not uniformly need such a measure, which is good. There are many big businesses out there that, despite the conditions, are fine, have good relationships with the banks and can secure financing for good projects. However, we still believe that there are several big pockets of smaller to medium-sized businesses, in particular, that will require some assistance not necessarily to find the money—I do not want to generalise too much, but there is quite a lot of money available as well as quite a few projects to invest in—but to take risk out of the equation. At the moment, there is a feeling of risk, and the financial community wants to reduce such risk.

We can add to the equation by helping to take out risk, particularly by analysing and kite-marking investment proposals and showing how they might fit with market requirements and so on. The success of a marina, for example, often depends on ancillary investment; in other words, what brings in the money is not the berths but the restaurants, the pubs, the access and the other activities that are available to people, and introducing something that helps in that respect might allow us to reduce the risk. Of course, some kind of guarantee mechanism would also take out risk.

In short, our thinking is moving away from the idea of a bank into which lots of money would be poured and towards some means of bringing together projects and money by reducing risk.

**Lewis Macdonald:** What do you think would be the appropriate relationship between you and the enterprise companies in those plans? Given the circumstances affecting their budgets and the difficulties that they are facing in deciding their priorities, how do you think that those ideas will develop? For example, how might certain guarantees be affected by changing relationships between the different players?

**Philip Riddle:** At this point, the biggest thing that we can offer is the market perspective. After

all, a good, solid view of how investment might fit market potential is key to reducing risk.

As for administering guarantees of funding, that is not an area for us, and neither are we equipped to lay out all the different elements that might be needed in an investment proposal. That could be the job of a separate body or the enterprise companies.

**Lewis Macdonald:** So a body could be created for that purpose.

**Philip Riddle:** There could be a joint body involving our organisation that would bring in expertise in different areas.

**Lewis Macdonald:** That was very helpful.

**The Convener:** In its submission, the Scottish Tourism Forum has suggested the creation of a single body with total responsibility for driving forward the ambition with regard to growth in tourism. In other words, VisitScotland should take back the powers over investment and business development in tourism from the enterprise agencies. Would that help to drive forward the tourism investment and tourism bank plans, or do you think that such a move is unnecessary?

**Philip Riddle:** As I said to Lewis Macdonald earlier, it is not for us to judge what should be done with regard to the allocation of the remits of various agencies; that is very much the Government's role. However, there is room for us to converge efforts—not only those of the public sector but those of the private sector as well—and create a better vertical integration within the industry and a better horizontal integration around marketing.

**The Convener:** If the decision about remits is for ministers, are the ministers driving the issue forward sufficiently? For example, when did you last meet John Swinney or the First Minister to discuss the development of tourism?

**Philip Riddle:** We met Jim Mather—our minister—on Monday, when we talked quite extensively about the development of tourism, industry engagement and priorities. I have had good access to John Swinney, and I have met the First Minister through the year of homecoming, but we have not sat down at that level to talk specifically about tourism issues recently.

**Ms Wendy Alexander (Paisley North) (Lab):** VisitScotland has helpfully provided a 2008 tourism summary, which contains information that the committee asked for in the recommendations that arose from its tourism inquiry. The regular reports from VisitScotland will be helpful in placing in a longer-term perspective the discussions that we inevitably tend to have on a six-monthly basis. That is where, I think, Parliament could add some value.

I have a couple of suggestions for VisitScotland. I note that it is not possible to adduce from the 2008 visitor summary the total spend in real terms over the past four years. It says that the nominal reduction in spend was more than 1 per cent and, in fairness, it also gives the total spend for domestic trips and international trips. I note that there has been a 2 per cent real-terms decline in the value of international spend and a real-terms decline in domestic spend of 5 per cent a year. In 2005, none of us sitting here today would have expected to see a 5 per cent real-terms reduction in spend over the five-year period, notwithstanding the fact that there have been many international vagaries and events that we might not have anticipated. However, if we look at the contribution of tourism to Scotland's gross value added in the period from 2004 to the present day, using the data that we have, we see that there is a less than 0.1 per cent increase.

In subsequent versions of this report, VisitScotland should think about ensuring that there are trend data on the total spend in real terms over, perhaps, a 10-year time horizon, if that is possible, and that there are similar data for international spend and domestic spend. There should also be a little bit more comparative data. I see that the UK figure for domestic spend is also down 5 per cent, which is fractionally more than the decline in Scotland, but it is difficult to tell whether a 0.1 per cent greater contribution by tourism to Scotland's GVA, a 5 per cent reduction in domestic spend year on year or a 2 per cent reduction in international spend represents a good or a bad performance when compared with the performance of other well-developed western European tourism markets or the tourism markets of the other nations of the UK.

Basically, I thank you for the annual summary, which was helpful. However, with regard to the committee's attempt to track the state of tourism, it would be helpful if the data that we receive on an annual basis were standardised. That would mean that, from Administration to Administration, we could gain a sense of whether tourism is meeting the objectives that we hope that it should, and it might enable us to better address issues such as quality, which the Scottish Tourism Forum raised in its submission but which we do not have time to pursue today.

The annual summary is helpful, but if there were more in the way of standardisation, real-terms figures and international data, that would make for a better-informed debate about the place of tourism in the wider Scottish economy.

**Philip Riddle:** I am happy to do that.

10:30

**Rob Gibson:** We read in *The Press and Journal* on Tuesday that, for summer breaks, the Scottish Highlands and the Western Isles were seventh and eighth in the top 10 in Britain this year. That is obviously rather good news about this year, but do you have any way of measuring whether it is an improved performance for those areas?

**Philip Riddle:** We know from an accumulation of data from various sources, including occupancy and visitor attraction data, that in general the Highlands and Islands have done extremely well this year. We do not yet have all the UK and international visitor data, but I am pretty sure that they will follow the trend and confirm that the Highlands and Islands have done well.

One gap, which we have mentioned previously to the committee and which we are still seeking to fill, is on day-trip data. We have to separate that out. Day trips are good for tourism—although of course they do not help the accommodation sector—but we have tended not to focus too much on them in the past. The reason for much of the resilience is that Scots have been staying in Scotland—they have been discovering Scotland, going from the central belt to the Highlands and Islands and going to attractions. Some of that has been day-trip traffic, which is of less value but in no sense less welcome.

**Rob Gibson:** As day trips are becoming more important, will you find a way of measuring them?

**Philip Riddle:** Yes. We are investigating how we can best assess day trips.

**Rob Gibson:** Next year, would it be possible for us to get a picture of the sort of data that we have seen reported in the newspapers, so that we can compare like with like?

**Philip Riddle:** I hope to have an estimate, but we will not have the trends that Ms Alexander asked for, because we have not been measuring for them. We can get a picture, but I am not sure that we will be able to draw many conclusions from it, because it will be a starting point rather than a picture of on-going movement.

**The Convener:** Will you give a little more information about VisitScotland.com, which has been brought in-house? You said that you are making a bit of money from VisitScotland.com, but will you outline for the committee your long-term plans for it? In a report last year, the committee argued that the previous business model for VisitScotland.com had failed, and we recommended a model that is based on enabling individual businesses to improve their services and offering them free software and assistance with their websites.

**Philip Riddle:** As an overview of the vision for VisitScotland.com, I describe it as broad and shallow. If I used those terms about you, convener, you would not think that they were particularly complimentary, but they capture the idea that we want to extend VisitScotland.com across the industry, with a much wider catchment.

We want people to come to VisitScotland.com by the website, the contact centre or by e-mail, but we want to make it shallow in the sense that we refer them on quickly to businesses. The vision that we are developing is consistent with the committee's discussions. The original concept for VisitScotland.com was that it reached out to a narrower base but held people in the website until they bought something or moved on. That concept has had its day and the approach has changed.

In practice, that means that we will put a lot less emphasis on bookings by VisitScotland.com and we will open up to more booking engines. In the past, booking has been focused exclusively on VisitScotland.com's booking engine but, in future, we will not mind where the booking is made. People will come through the website and we will pass them on to the booking. We will put the emphasis on listing more products on the site that we can show to people and to which we can pass them on.

That approach has an implication for our quality assurance system. We are doing a quality review, under which we will introduce a new entry level to our quality schemes. It is called "working with VisitScotland", and it will be a statutory minimum, comprising a self-verified entry level. It will enable a lot more businesses to come to the site. At present, it is necessary to be in the QA system. Businesses will still have to be in the QA system, but it is changing and will now reach out to a much bigger envelope of businesses.

As far as channels are concerned, we will be increasing the focus on the website and decreasing the focus on the contact centre. We will be developing more in other areas: we will consider our mobile presence and also look into social networking.

Commercialisation will change. In future, revenue will depend more on the effectiveness of people's listing on the site. We will probably charge by click-throughs or page views—in other words, by the performance of the site—rather than try to gain revenue from the bookings made at the end. Those are significant changes.

The technology that goes with that is not all straightforward, and it will have to be introduced over time.

**The Convener:** Once a business has qualified through having a QA certification of some sort, will it have to pay anything additional to be listed on

the site? Will the actual listing be free? You will obviously charge further down the system.

**Philip Riddle:** We have not worked out the detail. There will be various options. We could either offer all the options or just ask the industry which option it would like. One possibility would be for a business to have a flat fee for the QA assessment coupled with a listing on the site—and perhaps also coupled with a listing in the VisitScotland information centre. A further option might be simply to pay for the quality assessment and get a free listing on the site but then to pay by performance. In other words, we would put a business on the site, and it would pay a few pence, say, towards the costs every time someone clicked on its entry.

The technology gives us different options to tailor how we charge to what people want. Some people prefer to pay a flat fee up front—they might just say, "I want everything; don't bother me again." Other people prefer to make payment on a performance-and-return basis. We can offer that. We have not yet decided whether to segment that to every customer or to offer one or two options.

**The Convener:** How are you going to ensure that the costs of the project do not run away? Information technology projects of this sort can often get out of hand very quickly. How will you ensure that it stays within budget—and even becomes a profitable item for VisitScotland?

**Philip Riddle:** I look at the burn marks from past experiences with other projects. You are right to say that technology and new media can be difficult.

One of the successes of VisitScotland.com so far has been to protect the public purse from the risk that is associated with such projects. The arrangement that we put in place gave us risk protection. We are very conscious of that, and we are bearing it in mind for the future.

We now have a good handle on the numbers involved, as well as on the operation, which we are keeping much closer to us. We are aware of the dangers, and we will keep those factors very much in focus.

**The Convener:** That concludes our evidence session on the budget with VisitScotland. I thank Philip Riddle for his attendance. Our next evidence session on the budget will be at our next meeting, on 28 October, when we will take evidence from Scottish Enterprise, Highlands and Islands Enterprise and John Swinney.

10:38

*Meeting suspended.*

10:45

*On resuming—*

## **Arbitration (Scotland) Bill: Stage 2**

**The Convener:** Item 3 is stage 2 consideration of the Arbitration (Scotland) Bill.

I welcome the Minister for Enterprise, Energy and Tourism and his officials. I remind the officials that, as I am sure they are aware, they may not participate during the debate, although they may advise the minister at any point if required. I place on record our thanks to the minister and his officials for the constructive way in which they have engaged with the committee on the bill.

I remind members that they should have a copy of the marshalled list of amendments, a copy of the groupings of amendments and a copy of the helpful purpose-and-effect notes that have been provided for the Government amendments. We will now start consideration of the bill.

*Sections 1 to 5 agreed to.*

### **After section 5**

**The Convener:** Amendment 1, in the name of the minister, is the only amendment in group 1. I ask the minister to speak to and move the amendment.

**The Minister for Enterprise, Energy and Tourism (Jim Mather):** Before I speak to amendment 1, the committee might find it helpful if I summarise the work that, with the committee's sanction, was carried out over the summer to address the issues that were raised in the committee's stage 1 report on the bill.

During the stage 1 debate, I undertook to hold meetings with those who have an interest in consumer arbitration schemes and with stakeholders from the legal profession. The meetings duly took place on 6 August and 18 August—Nigel Don attended the meeting on consumer arbitration schemes—and they were very constructive. Following those discussions, draft Government amendments were circulated to the relevant stakeholders for comment. The Law Society of Scotland and the Chartered Institute of Arbitrators submitted comments. I understand that they also did that at the committee's invitation.

To keep the committee fully apprised of how the Government intended to address the concerns that were expressed at stage 1, I wrote to the convener on 14 September to indicate the Government's thinking on how the bill would be amended in light of the conversations that had taken place and the comments that had been

expressed. On receiving comments, we shared the draft Government amendments with the committee. Subsequently, the Government lodged its finalised amendments on 28 September so that committee members would have sight of them in advance of the committee meeting on 30 September.

As members will see, the Government has moved to address the concerns that were raised at stage 1 and has done its best to keep the committee informed of its further thinking. I hope that that open and inclusive consultation and discussion on the bill will be seen as a model of good practice for progressing legislation. Formal consultation is absolutely vital, but it can achieve only so much. Bringing the parties together in one room has proven to be extremely helpful and constructive in establishing which issues are important to those who will be affected, where potential conflict really exists and where the middle ground might lie.

I turn to amendment 1. If an arbitration agreement forms part of a larger contract, it is considered separately from that larger contract. That principle is enshrined in section 5 of the bill. In some jurisdictions, the law governing the arbitration agreement is the law that governs the contract that includes the agreement. In other jurisdictions, the law governing the arbitration agreement is the law of the "seat" of the arbitration. We understand that the international consensus among arbitrators is that it is preferable to use the law of the seat of the arbitration.

As the committee will be aware, a provision along those lines was suggested by the Chartered Institute of Arbitrators. The institute advises that, as far as it is aware, no legislation in the world addresses that important question. The significance of the law governing the arbitration agreement is that it covers matters such as the validity and scope of the agreement.

Amendment 1 introduces a new section that establishes a presumption that, when Scotland is designated by the parties as the seat of the arbitration, Scots law will govern the separable arbitration agreement, unless there is express agreement by the parties to the choice of law governing the agreement. At present, the matter is governed by the application of general rules of contract and international private law. The amendment is proposed as an improvement to the bill to clarify the circumstances in which Scots law applies to an arbitration agreement and to avoid potential litigation on the point, as has been the case in England.

I move amendment 1.

*Amendment 1 agreed to.*

*Section 6 agreed to.*



## Schedule 1

### SCOTTISH ARBITRATION RULES

**The Convener:** Amendment 2, in the name of the minister, is grouped with amendments 3, 6, 10 to 12, 16, 17, 28, 29, 38 to 41, 53 and 58.

**Jim Mather:** There are 16 minor technical amendments in the group, spread throughout the Scottish arbitration rules in schedule 1. Given the nature of the amendments, I do not propose to speak to them, but I would be happy to explain any that are of particular interest to the committee.

I move amendment 2.

*Amendment 2 agreed to.*

*Amendment 3 moved—[Jim Mather]—and agreed to.*

**The Convener:** Amendment 4, in the name of the minister, is grouped with amendments 5, 7, 25 and 27.

**Jim Mather:** Amendment 27 amends rule 56, “Correcting an award”, to ensure that it meshes with rule 79, “Formal communications”, by using the term “made” rather than “receiving”. Amendments 4, 5, 7 and 25 are required for the same purpose.

I move amendment 4.

*Amendment 4 agreed to.*

*Amendments 5 to 7 moved—[Jim Mather]—and agreed to.*

**The Convener:** Amendment 8, in the name of the minister, is grouped with amendments 9, 18 and 47 to 50.

**Jim Mather:** These are technical amendments in response to concerns raised by the judges of the commercial court of the Court of Session and the Chartered Institute of Arbitrators.

Amendments 8 and 9 provide expressly that, in rule 15, “Resignation of arbitrator”, and rule 16, “Liability etc of arbitrator when tenure ends”, the outer house’s decision is final.

Amendment 18 ensures that rule 43, “Court’s other powers in relation to arbitration”, is consistent with the rest of the bill in that the arbitration may continue notwithstanding the application to the court.

Amendment 47 provides that the court can refuse to enforce an award when it is being appealed, reviewed or corrected. It may be inappropriate for an award to be enforced while it is still subject to further consideration by the court or the arbitrator under part 8 of the Scottish arbitration rules or rule 56 on correction. The provision is based on article 36(2) of the United

Nations Commission on International Trade Law model law.

Amendment 48 is a technical amendment that ensures that section 11 does not bar recognition or enforcement of foreign arbitral awards under the 1958 New York convention or awards under any other enactment or rule of law.

Amendments 49 and 50 address concerns that sections 6 to 8 could mean that the Scottish arbitration rules in schedule 1 confer a private right between individuals rather than a statutory one such as is provided for by an act of Parliament. The amendments seek to make it clear that legal proceedings in relation to arbitration can be instigated only as provided for in the bill. Section 11 will bolster and support the finality and binding nature of arbitral proceedings in Scotland, and it confirms the jurisdiction of the courts when necessary.

I move amendment 8.

*Amendment 8 agreed to.*

*Amendments 9 to 12 moved—[Jim Mather]—and agreed to.*

**The Convener:** Amendment 13, in the name of the minister, is grouped with amendments 14 and 52.

**Jim Mather:** Amendment 52 provides a redrafted section 13 following the expression of concerns about the practicality of preserving anonymity when arbitration is the subject of legal proceedings.

Arbitration is usually conducted on a confidential basis both in Scotland and in other parts of the world—that is one of the main attractions of arbitration as a method of dispute resolution. Commercial parties, in particular, may not want their disputes to be conducted in public for reasons of commercial sensitivity. Rule 25 in the bill provides, on a default basis, that arbitration in Scotland will be conducted on a confidential basis.

It would defeat the object of confidentiality in rule 25 if the identity of parties were disclosed simply because one of the parties wished to raise legal proceedings in a court as a result of some aspect of the arbitration. In view of the issues raised, amendment 52 provides that the anonymity restrictions in relation to the identity of the parties in section 13 should depend on an application to the court, which would have discretion on whether to grant anonymity protection. There would, however, be a presumption in favour of granting such an application. Criminal proceedings and enforcement proceedings are also excluded from the anonymity protection in section 13. In the latter case, a party that is not complying with an arbitral award should not be able to hide behind anonymity.

Amendment 13 is a minor drafting change at the instance of the Law Society of Scotland to make it clear that breach of an obligation of confidence under rule 25 will be grounds for raising an appropriate action in court.

Amendment 14 extends rule 25 on confidentiality so that parties to an arbitral dispute will continue to be bound by confidentiality in relation to any court proceedings that arise from the arbitration, provided that the court has granted anonymity.

I move amendment 13.

**Lewis Macdonald:** The issue that was raised in evidence to the committee focused on the potential for conflict between the confidentiality that was sought in the arbitration process and the general principles on transparency in courts of law. Under these amendments, the judgment lies with the court. I take it that the combined effect of the amendments and the existing provisions will be that no appeal will be possible against that judgment.

**Jim Mather:** I will draw on the resources at my disposal to give you the correct answer to that. *[Interruption.]* We have not yet made that clear in the bill. It is a procedural matter, but we will endeavour to make that clear as we move to stage 3.

**Lewis Macdonald:** So an amendment will be lodged at stage 3 to clarify that.

**Jim Mather:** Yes.

*Amendment 13 agreed to.*

*Amendment 14 moved—[Jim Mather]—and agreed to.*

11:00

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

**Jim Mather:** We are grateful to the judges of the commercial court of the Court of Session for suggesting the amendment, which amends rule 29 on tribunal decisions. It provides that, when three or more arbitrators are unable to make a decision either unanimously or by majority and when no-one has been appointed to chair the tribunal, the last arbitrator to have been appointed will decide the matter.

That person will normally have been appointed by the two arbitrators who have already been appointed. In some cases, that will avoid the time and expense involved in appointing an umpire, including the time that it will take the umpire to become familiar with the dispute. When there are two arbitrators and no chair has been appointed,

the position remains that the decision will be made by an umpire.

I move amendment 15.

*Amendment 15 agreed to.*

*Amendments 16 to 18 moved—[Jim Mather]—and agreed to.*

**The Convener:** Amendment 19, in the name of the minister, is grouped with amendments 20 to 24 and 43.

**Jim Mather:** This group of amendments responds to representations made by stakeholders and the committee.

On rule 45(b) on damages, in line with the strong representations made about the risk of abuse of financially weaker parties by stronger parties, amendment 19 will separate out the rule, giving the tribunal the power to award payment and damages, in order that it can be made mandatory. That means that it will not be possible for parties to remove the arbitrator's power to award damages, although the position remains that there is no obligation on an arbitrator to award damages. It may be inappropriate for the tribunal to make such an award—for example, when no party seeks such an award. Also, the tribunal must resolve the dispute in accordance with the law, unless the parties agree to the contrary.

Rule 46 on interest will also be added by amendment 43 to the list of mandatory rules. That means that parties cannot agree that an award including interest will not be available to the arbitrator. Again, there is no obligation on the arbitrator to award interest, unless it is appropriate to do so in the context of the arbitration. We have raised concerns previously about making rule 46 mandatory, but we are taking on board the strong representations of the Law Society of Scotland in particular on this matter.

In addition, through amendment 23 we propose to make compound interest and the manner in which interest is calculated something from which the parties can contract out. The judges of the commercial court point out that compound interest cannot be awarded by the court unless the parties contract for it. We hope that that accommodation meets the committee's approval.

Amendment 24 is a technical amendment to remove rule 47 due to doubts about its interaction with other provisions. The judges of the commercial court highlighted that point in their evidence to the committee. Existing rule 54 as recast in the body of the bill will remain to provide the necessary protection for third parties.

Finally, reflecting the widespread views of stakeholders in evidence to the committee, amendment 43 will remove rule 50 on provisional

awards from the list of mandatory rules, thereby making it a default rule, and will add rule 51 on part awards to the list of mandatory rules. Although it was considered that making rule 50 mandatory could protect the weaker party, we have altered the protections in the light of the expert recommendations to the committee on what would be effective in practice.

The other amendments in the group will make consequential provision to make those changes work. I can address those amendments if members would like me to do so.

I move amendment 19.

*Amendment 19 agreed to.*

*Amendments 20 to 25 moved—[Jim Mather]—and agreed to.*

**The Convener:** Amendment 26, in the name of the minister, is grouped with amendment 46.

**Jim Mather:** Amendments 26 and 46 will move the provision made by rule 54 to the main body of the bill, which deals with enforcement.

The content of rule 54 is more appropriately located with the enforcement provisions, given that it relates to the final and binding nature of arbitral awards and that an arbitral award will, if necessary, be enforced by the courts. The Scottish arbitration rules in schedule 1 to the bill relate to the arbitral proceedings themselves.

I move amendment 26.

*Amendment 26 agreed to.*

*Amendments 27 to 29 moved—[Jim Mather]—and agreed to.*

**The Convener:** Amendment 30, in the name of the minister, is grouped with amendments 31 to 37.

**Jim Mather:** The amendments in this group seek to address concerns raised by stakeholders about the appeals process in rule 67, particularly the proposed procedure for seeking leave of the court to lodge such an appeal. The intention behind that proposal was to avoid vexatious appeals on spurious grounds that are simply intended to frustrate the finality of the arbitral process.

We hope that, once the bill has been enacted, the Lord President will be minded to direct that challenges and appeals relating to arbitrations will be dealt with by the commercial court of the Court of Session. The committee has received comments that my officials sought from Lord Glennie, the senior judge of the commercial court, in which he indicated that his court would establish procedures to deal with such applications. He further commented that that process works in

England and he saw no reason for it not to work in Scotland.

Nevertheless, amendments are offered that are intended to address some of the concerns that have been expressed. In particular, parties who agree that appeals on grounds of legal error should be available to them should also be able to agree to dispense with the process whereby the leave of the court has to be sought in order to proceed.

Amendment 31 adjusts rule 67—on legal error appeals—addressing concerns that the double-step appeal procedure, which is intended to deter applications that are simply delaying tactics, is too complicated or simply unnecessary since parties already have the option of contracting out of legal error appeals. Where parties have elected not to contract out of the appeal on error of law, that appeal should not be severely restricted, so the new sub-rule will more clearly allow the parties to bypass the hurdle of applying for leave to appeal on grounds of legal error. The agreement of the parties to allow legal error appeal will be possible either in the arbitration agreement or when the dispute arises.

The other amendments in this group are more technical. Amendment 30 is a minor drafting amendment to spell out fairness as an express ground for a serious irregularity appeal order on fees and expenses, for consistency. Amendment 32 amends rule 67(4)(c) to put it beyond doubt that there is no implication that a tribunal's decision cannot proceed on assumed facts by the arbitrator where appropriate.

Amendment 33 partly simplifies rule 67 by removing sub-rule 67(4)(d), as concerns were raised that the provision would allow the court to say that there was no appeal, even if there was an outstandingly bad error. The second sub-rule added by amendment 33 also provides that the court must proceed without a hearing, unless something convinces it otherwise. The fourth sub-rule provides that the appeal must be made within seven days once leave to appeal is granted, unless it is made with the agreement of the parties.

Amendment 34 is a minor consequential change that is needed as a result of the switch to express "leave" to appeal terminology in rule 67. Amendments 35 and 36 mean that an appeal must be made no later than 28 days after the later of the date on which the award giving rise to the appeal or application is made, or the date on which the tribunal decides on any correction to the award under rule 56. Amendment 37 makes it clear that the application for leave to appeal is the procedural step that is required to be taken by the end of the 28-day period for a legal error appeal.

I move amendment 30.

**Gavin Brown:** Amendment 30 is to insert

“that an arbitrator has not treated the parties fairly,”.

Fairness is obviously difficult to define and could be construed widely. Is the Government prepared to look at the concept of fairness to ensure that it cannot be abused by any parties? Will it assess whether there are ways of tightening up the definition—there might not be—to ensure that it is not open to abuse?

**Jim Mather:** I thank the member for that observation. I have no hesitation in giving him our agreement to do exactly that.

*Amendment 30 agreed to.*

*Amendments 31 to 41 moved—[Jim Mather]—and agreed to.*

*Schedule 1, as amended, agreed to.*

### Section 7—Mandatory rules

**The Convener:** Amendment 42, in the name of the minister, is in a group on its own.

**Jim Mather:** Amendment 42 will add rule 4, on eligibility to act as an arbitrator, to the list of mandatory rules in the bill. That is the provision that an arbitrator must be more than 16 years of age and cannot be mentally or otherwise incapable.

The Government cannot imagine why a party to an arbitration would want a minor or incapable person to be appointed as an arbitrator, other than for vexatious reasons. Such a person is unlikely to have the attributes, qualifications or experience necessary to conduct an arbitration that would have a legally enforceable result. The Chartered Institute of Arbitrators commented that it was unlikely that parties would wish to contract out of the rule and agree that a minor or incapable person could be appointed, and that it would look odd to international parties if that were possible in Scotland. The rule was also mandatory at consultation as part of a wider provision. We therefore propose that rule 4 is made mandatory so that a minor or incapable person cannot be appointed as an arbitrator.

I move amendment 42.

*Amendment 42 agreed to.*

*Amendment 43 moved—[Jim Mather]—and agreed to.*

*Section 7, as amended, agreed to.*

### Section 8—Default rules

**The Convener:** Amendment 44, in the name of the minister, is grouped with amendment 51.

**Jim Mather:** The Government’s position remains that, in accordance with the overwhelming body of opinion expressed at consultation, the model law should be replaced as the default arbitration law for international commercial arbitrations by an arbitration law that is based substantially on the principles of the model law, but which fills in the main gaps in the arbitrators’ powers. Accordingly, the bill proposes to repeal the 1990 act.

At consultation, repeal was supported by, among others, the Royal Institution of Chartered Surveyors; the judges of the commercial court of the Court of Session; Professor Fraser Davidson, a leading academic authority on arbitration; and the Chartered Institute of Arbitrators, which has members conducting arbitrations all over the world. In its evidence to the committee, the Faculty of Advocates also supported repeal.

In its stage 1 report, the committee recognised the strongly held views of those who supported repeal, and during the debate, I was happy to provide the assurance sought that even if the model law is repealed, it will be possible for parties to adopt it for their arbitration if they wish, subject to the mandatory rules, as the committee noted in its report. I repeat that assurance. Following our review of the bill and the model law, we propose one necessary technical amendment and also one clarification.

We have listened to stakeholders who said that it would be helpful to have an express provision that parties can agree to adopt the UNCITRAL model law in place of the default rules. That was previously implied in the bill, but amendment 44 will add the model law as an example in the bill. Parties will be able to choose which version of the model law to apply.

Amendment 51 will fix a gap in provision for the model law and ensure that recourse to the courts is available to appoint or remove an arbitrator when parties agree that the model law is to apply. There is no power at common law, given the other repeals in the bill. Other common law powers of the courts to support arbitration are preserved.

I move amendment 44.

**Lewis Macdonald:** Although the amendments respond to some of the questions that have been raised, the minister will be aware that the Law Society of Scotland remains hostile to the repeal of the model law, and makes its argument less around the technical and procedural issues that the amendments address and more around the signal of Scotland’s position in relation to the model law. We might want to discuss the matter further at stage 3, but I would be interested if, when he is responding to these points, the minister lays out his reasoning on the Law

Society's approach to the model law, the proposition of repeal and its impact on Scotland's international reputation.

11:15

**Jim Mather:** If the model law is not repealed, it will perpetuate the position in which there are two arbitration laws in Scotland: one for domestic arbitration and one for international commercial arbitration. We have listened to the Law Society with great care and attention, and we will continue to do so, in line with our attempts to reach a consensus on the matter through engagement. However, our view is pretty clear, and we want to move the situation forward.

The fundamental issue is that the model law is incomplete and contains many crucial gaps, as I have said today and in previous committee meetings. The law does not provide a comprehensive arbitration regime—the arbitrator is given no powers to award damages, expenses or interest, for example—so it has to be supplemented by domestic law. The bill, which—like the Arbitration Act 1996—is based on the model law principles, will provide a comprehensive framework for arbitration in Scotland. We understand the Law Society's feelings, but we think that there is a greater good in what we are trying to introduce.

*Amendment 44 agreed to.*

*Section 8, as amended, agreed to.*

### **Section 9—Suspension of legal proceedings**

**The Convener:** Amendment 45, in the name of the minister, is in a group on its own.

**Jim Mather:** The committee and the Faculty of Advocates were concerned that the Scottish courts should not lose the ability to refuse to sist where there is no genuine dispute. That can be used as a delaying tactic by the defender to a court action; however, the Government is not convinced that there would be a significant problem with cases being sisted as a delaying tactic.

Where parties have agreed to go to arbitration and a spurious point of law is raised to attempt delay, the remedy should be for the dispute to be resolved quickly using arbitration rather than litigation. The bill imposes a mandatory duty on arbitrators to progress arbitrations proactively, without unnecessary delay or expense. That broadly reflects the approach by the judges of the commercial court in their response to consultation on that provision.

Amendment 45 seeks to address some of the procedural concerns that have been raised about section 9, which may also help to ensure that

sisting legal proceedings is not used as a delaying tactic. By referring to the “matter under dispute”, the new provision recognises that where a dispute comprises numerous matters, only some of those may be for arbitration. It also clarifies that the provision does not have a wider effect than necessary.

The new provision provides in paragraph (b) that an applicant must be a party to both the legal proceedings and the arbitration agreement. Provision is made consistent with the Arbitration Act 1975 and the Arbitration Act 1996. The applicant may be a person claiming through or under the party to the arbitration agreement; for example, with a contractual right assigned to someone else, or as part of a group of companies.

The word “unenforceable” in the bill has been replaced with “inoperative” in new paragraph (e), which is the word that is used in the New York convention on the recognition and enforcement of arbitral awards, the model law and the 1975 and 1996 arbitration acts. There is no difference, but the drafting makes it clearer that the wording should be interpreted in line with the New York convention.

*I move amendment 45.*

*Amendment 45 agreed to.*

*Section 9, as amended, agreed to.*

### **Before section 10**

*Amendment 46 moved—[Jim Mather]—and agreed to.*

### **Section 10—Enforcement of arbitral awards**

*Amendments 47 and 48 moved—[Jim Mather]—and agreed to.*

*Section 10, as amended, agreed to.*

### **Section 11—Court intervention in arbitrations**

*Amendments 49 to 51 moved—[Jim Mather]—and agreed to.*

*Section 11, as amended, agreed to.*

*Section 12 agreed to.*

### **Section 13—Anonymity in legal proceedings**

*Amendment 52 moved—[Jim Mather]—and agreed to.*

*Section 13, as amended, agreed to.*

*Sections 14 to 17 agreed to.*

### **Section 18—Refusal of recognition or enforcement**

*Amendment 53 moved—[Jim Mather]—and agreed to.*

*Section 18, as amended, agreed to.*

*Sections 19 and 20 agreed to.*

### **Section 21—Prescription and limitation**

**The Convener:** Amendment 54, in the name of the minister, is in a group on its own.

**Jim Mather:** Section 21 clarifies the beginning and end of arbitration in relation to the loss of legal rights by prescription and the limitation of legal action over time. Some stakeholders pointed out that the process of interrupting the prescriptive period, during which court action can be taken by one party giving the other a notice submitting a dispute to arbitration, might be used tactically. Arbitration might never properly begin because, having referred the matter to arbitration in order to preserve its legal rights, the pursuing party would not move to appoint an arbitrator. As a result, the prescriptive period would remain interrupted indefinitely.

Amendment 54 simply seeks to provide that interruption of the prescriptive period does not arise if an arbitrator is not appointed. If the appointment is made, the interruption is backdated to the notice to submit the claim to arbitration.

I move amendment 54.

*Amendment 54 agreed to.*

*Section 21, as amended, agreed to.*

### **Section 22—Arbitral appointments referee**

**The Convener:** Amendment 55, in the name of the minister, is in a group on its own.

**Jim Mather:** Arbitration agreements commonly specify how arbitrators are to be appointed. Although the bill continues to permit that, it also addresses any failure or refusal by the parties to appoint an arbitrator, either under the arbitration agreement or under the default appointment provisions in rule 6. Rule 7 provides that either party is able to refer the matter to an arbitral appointments referee designated by the Scottish ministers.

When designating a body as an appointments referee, ministers must have regard to the desirability of ensuring that prospective referees are able to provide training and operate disciplinary procedures. Although it is expected that most bodies will provide such training and procedures, that might not be the case. However, arbitrators might not always be members of a professional body. They might have a lifetime's

experience in the area of the dispute's subject matter, but have no formal qualifications.

Amendment 55 seeks to put it beyond doubt that an arbitrator appointed by an arbitral appointments referee need not be subject to the referee's training and disciplinary procedures. For example, if the dean of the Faculty of Advocates were designated an arbitral appointments referee, he or she could appoint someone who was not a member of the faculty, such as a solicitor.

I move amendment 55.

**The Convener:** Although I welcome the fact that the amendment clarifies a situation raised by a number of people in evidence, I am concerned that the overall wording of section 22 is slightly inelegant. Could the wording be looked at again before stage 3 to make it more elegant?

**Jim Mather:** We will take that on board. We are always keen to improve and elegance will be sought.

*Amendment 55 agreed to.*

*Section 22, as amended, agreed to.*

*Section 23 agreed to.*

### **Section 24—Amendments to UNCITRAL Model Law or New York Convention**

**The Convener:** Amendment 56, in the name of the minister, is grouped with amendment 57.

**Jim Mather:** Section 24 gives the Scottish ministers the power, by order subject to affirmative resolution procedure in the Scottish Parliament, to amend and update the bill or provisions that are made under it in consequence of any future amendment to the UNCITRAL model law or the 1958 New York convention on the recognition and enforcement of foreign arbitral awards. Amendment 56 means that the Scottish ministers can also amend and update the act or provisions that are made under it in consequence of amendment to the UNCITRAL arbitration rules, which provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings.

Adding the UNCITRAL arbitration rules to section 24 demonstrates to the outside world that Scotland is determined to keep the Scottish arbitration rules at the forefront of international developments by reacting to any changes in modern arbitral practice. It is important that Scotland meets UNCITRAL standards. Of course, the Scottish arbitration rules in the bill are more comprehensive than the UNCITRAL model law and rules; however, it is right that there is a mechanism for reacting to changes in international practice.

Amendment 57 provides that the Scottish ministers must consult those whom they consider to be interested in arbitration law in Scotland before making changes to the act or provisions that are made under it in consequence of any change to the UNCITRAL model law, the UNCITRAL arbitration rules or the New York convention.

I move amendment 56.

**Lewis Macdonald:** The procedure exists in the bill as a discretion that is available to ministers, and there is no obligation on ministers to update Scots law to reflect changes in international provision. I am interested to know whether repeal of the model law reduces the extent to which the arbitration rules would be subject to updating. In other words, were the model law not repealed, would the obligation on ministers be mandatory rather than discretionary?

**Jim Mather:** We are trying to ensure that Scotland is in as competitive a position as possible in relation to dispute resolution. There is an imperative not just to be seen to be doing this, but to do it in principle. I will pause to take advice from my officials. [*Interruption.*] The consensus is that our rules already go much further. An interesting by-product of this procedure of engaging with the professions is that it has become something that we and they would want to continue. I think that they would be clamouring to continue that engagement both directly with ministers and through the committee or its successors. In our experience, that would be a sensible thing to do, as we are building consensus that removes conflict internally and allows us to demonstrate a much better position to those whom we would like to attract to Scotland to have their disputes resolved.

**Lewis Macdonald:** I recognise that there may be a technical element to this and I would welcome your assurance that you will clarify the discretionary/mandatory question at stage 3.

**Jim Mather:** I am content to give you that assurance.

*Amendment 56 agreed to.*

*Amendment 57 moved—[Jim Mather]—and agreed to.*

*Section 24, as amended, agreed to.*

*Sections 25 to 27 agreed to.*

*Schedule 2 agreed to.*

*Section 28 agreed to.*

### **Section 29—Interpretation**

*Amendment 58 moved—[Jim Mather]—and agreed to.*

*Section 29, as amended, agreed to.*

*Section 30 agreed to.*

### **Section 31—Orders**

11:30

**The Convener:** Amendment 59, in the name of the minister, is grouped with amendment 60.

**Jim Mather:** The substantive amendment is amendment 60, which provides that the bill will not apply to arbitrations that have begun at the time when the bill comes into force. We have proposed, however, that the bill will be applied to existing arbitration agreements, irrespective of when they were agreed, and that parties who want to use the old law may opt out of the new regime in the bill. That is to meet the concerns that were raised by the Law Society of Scotland and the Faculty of Advocates, which the committee discussed in its stage 1 report.

I clarify that even if it is applied to existing agreements, the bill will not be technically retrospective. It will not change the law in the past for events that occurred before commencement. However, it might interfere with existing rights, and it is right that such matters be considered. Disputes might exist without arbitration having begun, before the commencement of the bill, but the subject matter of the bill is the rules on arbitration. There is precedent in various arbitration acts in England for new law being applied to existing arbitration agreements. We understand that that approach has caused no difficulty.

The opt-out in the bill is a reasonable compromise. However, the bill was introduced because the old law is discredited, obscure, out of date and incomplete. It is difficult to imagine why parties would want to use the old law, which is likely to make the arbitral process more difficult, protracted and expensive, instead of the modern comprehensive regime that is provided for in the bill.

It is proposed that the opt-out from the new law be time limited. If, as is likely, parties are increasingly attracted to using the new law, the old law should be repealed. The alternative would be for two arbitration laws to run concurrently in Scotland. Subsection (4) of the new section that amendment 60 will insert will therefore give the Scottish ministers the power to remove the opt-out in due course, after a suitable period, by order subject to affirmative procedure. The power will not be capable of being exercised for at least five years. After that period, and following due consultation, the old law can be repealed.

The rest of amendment 60 provides for a number of technical changes. Subsection (6) of the proposed new section provides that for the purposes of the bill references to “arbiters” in arbitration agreements are to be taken as references to arbitrators. “Arbitrator” is the term that is used in the bill and is recognised internationally.

Subsection (7) makes it clear that any reference in statute to a decree arbitral is to be taken for the purposes of section 10 of the bill as a reference to a tribunal’s award. That is required because there are many statutory references to debts being enforced as a decree arbitral.

Subsection (8) makes transitional provision so that agreement to contract out of the stated case procedure—where the court is asked a question of law that arises in the arbitration—in an existing arbitration agreement will result in the exclusion of rule 40, which allows a party to ask the outer house of the Court of Session to determine any point of Scots law that arises during the arbitration, and rule 67, which replaces the stated case procedure with a default appeal for error on a point of Scots law, on the basis of the findings of fact in the award, to the outer house, against a final award of the arbitrator. That will preserve the intention of the parties.

Amendment 59 means that an order under the new section on transitional provisions will require affirmative resolution of the Scottish Parliament.

I move amendment 59.

*Amendment 59 agreed to.*

*Section 31, as amended, agreed to.*

*Sections 32 and 33 agreed to.*

### **After section 33**

*Amendment 60 moved—[Jim Mather]—and agreed to.*

*Section 34 agreed to.*

*Long title agreed to.*

**The Convener:** That concludes consideration of the bill at stage 2. I thank the minister and his team for their attendance and again put on record our gratitude for the support that the ministerial team has given us. We have dealt with 60 amendments in less than an hour, which is a testament to the amount of work that was done in advance of stage 2.

I do not think that we know when stage 3 will take place; it will not be in the first week after the recess.

11:34

*Meeting continued in private until 11:57.*



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