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Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 26 January 2011

Session 3

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CONTENTS

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
3rd Meeting 2011, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Patricia Ferguson (Glasgow Maryhill) (Lab)
*Alex Johnstone (North East Scotland) (Con)
*Alasdair Morgan (South of Scotland) (SNP)
*Mary Mulligan (Linlithgow) (Lab)
*Jim Tolson (Dunfermline West) (LD)
*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
*Malcolm Chisholm (Edinburgh North and Leith) (Lab)
Alison McInnes (North East Scotland) (LD)
David McLetchie (Edinburgh Pentlands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Alex Neil (Minister for Housing and Communities)
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

THE FOLLOWING GAVE EVIDENCE:

Graham Owenson (Scottish Government Directorate for Local Government and Third Sector)
John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

CLERK TO THE COMMITTEE

Susan Duffy

LOCATION

Committee Room 1

Scottish Parliament

Local Government and Communities Committee

Wednesday 26 January 2011

[The Convener *opened the meeting at 09:30*]

Property Factors (Scotland) Bill: Stage 2

The Convener (Duncan McNeil): Good morning and welcome to the third meeting of the Local Government and Communities Committee in 2011. As I usually do at this point, I remind members of the committee and the public to turn off all mobile phones and BlackBerrys.

Item 1 is day 2 of our consideration of stage 2 amendments to the Property Factors (Scotland) Bill. I welcome Alex Neil, Minister for Housing and Communities, and, from the Scottish Government, Simon Stockwell, family and property law; Barry McCaffrey, legal directorate; Max McGill, office of the Scottish parliamentary counsel; and Stephen White, head of consumers in private housing. I also welcome Patricia Ferguson MSP.

Section 15 agreed to.

Section 16—Application to homeowner housing panel

The Convener: Amendment 9, in the name of the minister, is grouped with amendments 85, 10 to 12, 87, 13, 14, 89, 15, 90, 16 to 18, 30 and 31. I draw to members' attention the pre-emption information in the groupings list.

The Minister for Housing and Communities (Alex Neil): My speaking notes start off by saying that the Government and Patricia Ferguson are aiming for a similar objective but we have different amendments. However, I have just spoken to Patricia Ferguson and I believe that she is not going to move the amendments in her name and will support the Government amendments. I will briefly explain the background to the Government amendments.

The bill allows applications to the dispute resolution service in relation to alleged failures

"to comply with any term of contract between the homeowner and the property factor".

The problem is that there may not be a "contract" between the home owner and the property factor. In land management cases, there may be an obligation in the title deeds that is not a contract. In other cases, the property factor may have been appointed by the developer, perhaps under a manager burden under section 63 of the Title Conditions (Scotland) Act 2003.

Amendment 9 proposes that the reference to "contractual duties" should be deleted and replaced by a reference to "property factor's duties" generally to cater for the situation that I have just described. That would mean that, when a home owner wishes to use the dispute resolution service, it would not matter whether there is a contract.

Amendment 14 defines "property factor's duties", with particular reference to duties to the management or maintenance of land.

Amendments 10 and 12 are consequential and remove references to "contractual".

Amendments 30 and 31 amend section 28 to remove a reference to the definition of "contractual duties" and insert a reference to the proposed definition of "property factor's duties".

Amendments 11, 13, 16 and 18 are drafting amendments so that the bill continues to refer to the need "to comply with" the code of conduct.

Amendment 15 relates to section 18, which provides that, if the home owner housing committee concludes that the factor has complied, the committee must consider making an order. That is a mistake. An order is not required when the factor has carried out his or her duties. Amendment 15 corrects that error. Amendments 15 and 17 also take out a reference to "contractual duties" and insert "property factor's duties" instead. They also clarify the language so that, instead of compliance, the reference will be to failing

"to carry out the property factor's duties".

In conclusion, I invite the committee to support all the Government's amendments.

I move amendment 9.

Patricia Ferguson (Glasgow Maryhill) (Lab): I am happy not to move amendments 85 and 87, on the basis that the amendments in the name of the minister will create a concept of "property factor's duties" that is wide enough to include the kind of contractual duties and duties from real burdens that I wished the bill to include. Accordingly, I will not move those amendments. I will also not move amendment 89.

I support amendments 10 to 15, 30 and 31. In light of my support for the minister's creation of the concept of "property factor's duties", I do not intend to move amendment 90 and will support amendments 16 to 18.

Amendment 9 agreed to.

Amendment 85 not moved.

Amendment 86 moved—[Patricia Ferguson]—and agreed to.

Amendments 10 to 12 moved—[Alex Neil]—and agreed to.

Amendment 87 not moved.

Amendments 13 and 14 moved—[Alex Neil]—and agreed to.

Section 16, as amended, agreed to.

Section 17—Referral to homeowner housing committee

The Convener: Amendment 88, in the name of Patricia Ferguson, is grouped with amendments 91 to 93, 98, 104 and 105.

Patricia Ferguson: All the amendments in the group are technical and are designed to tidy up the language that is used in this part of the bill.

I move amendment 88.

Alex Neil: The Government supports the amendments and, indeed, has worked closely with Patricia Ferguson on them.

Amendment 88 agreed to.

Section 17, as amended, agreed to.

Section 18—Determination by homeowner housing committee

Amendment 89 not moved.

Amendment 15 moved—[Alex Neil]—and agreed to.

Amendment 90 not moved.

Amendment 16 moved—[Alex Neil]—and agreed to.

Amendments 91 and 92 moved—[Patricia Ferguson]—and agreed to.

Amendments 17 and 18 moved—[Alex Neil]—and agreed to.

Amendment 93 moved—[Patricia Ferguson]—and agreed to.

Section 18, as amended, agreed to.

Section 19—Property factor enforcement orders

The Convener: Amendment 94, in the name of Patricia Ferguson, is grouped with amendments 95 to 97, 99 to 103 and 112.

Patricia Ferguson: This small group of amendments makes a number of minor technical amendments to improve the precision of the language that is used in part 2 of the bill.

I move amendment 94.

Alex Neil: The Government is content with amendments 94 to 97, 99 to 101 and 112. However, we are not content with amendments 102 and 103 and invite the committee to reject those.

Amendment 103 appears to remove proposed ministerial powers on making sheriff court rules. We agree with removing ministerial powers in that area, and Government amendments 19 and 20, which are due to be debated in the next grouping, achieve that. However, amendment 103 appears to give ministers the power to make regulations in respect of the right to appeal. That seems unnecessary. Section 21 already lays down rights of appeal.

In our letter of 4 October 2010, we pointed out that the rights of appeal in section 21(1) might need to relate to the president of the panel, who takes decisions under the bill, rather than the panel, which does not take any decisions under the bill. Perhaps that is something that the member in charge could consider for stage 3. We are happy to provide assistance in that regard.

The Government is uncertain about the rationale for the change that is proposed in amendment 102, which does not appear to be necessary.

In conclusion, I invite the committee to reject amendments 102 and 103 and agree to the other amendments in the group.

Patricia Ferguson: The reason for the amendments was to react to points that were made by the Government about the rules of court. In view of the minister’s comments, I am happy not to move amendments 102 and 103. I believe that what the minister says with regard to amendment 103 is correct, so I will not move it. As a consequence of that, it is best not to move amendment 102, but I will come back to the issue at stage 3, if necessary.

Amendment 94 agreed to.

Amendment 95 moved—[Patricia Ferguson]—and agreed to.

Section 19, as amended, agreed to.

Section 20—Variation and revocation of property factor enforcement orders

Amendments 96 and 97 moved—[Patricia Ferguson]—and agreed to.

Section 20, as amended, agreed to.

Section 21—Appeals

Amendment 98 moved—[Patricia Ferguson]—and agreed to.

Section 21, as amended, agreed to.

Section 22—Effect of failure to comply with property factor enforcement order

Amendment 99 moved—[Patricia Ferguson]—and agreed to.

Section 22, as amended, agreed to.

Section 23—Property factor enforcement order: offences

Amendments 100 and 101 moved—[Patricia Ferguson]—and agreed to.

Section 23, as amended, agreed to.

Section 24—Power to make further provision about applications etc

Amendment 102 not moved.

09:45

The Convener: Amendment 19, in the name of the minister, is grouped with amendment 20. I draw members' attention to the pre-emption information in the groupings list.

Alex Neil: Amendments 19 and 20 relate to section 24, which provides that ministers would make rules in relation to appeals to the sheriff against decisions by the home owner housing panel or the home owner housing committee. As previously debated, it is not appropriate for ministers to make sheriff court rules. Therefore, amendment 20 would delete the reference in section 24 to appeals. Amendment 19 is consequential on that.

I move amendment 19.

Patricia Ferguson: I support amendments 19 and 20 and will not move amendment 103.

Amendment 19 agreed to.

Amendment 20 moved—[Alex Neil]—and agreed to.

Section 24, as amended, agreed to.

After section 24

Amendment 21 moved—[Alex Neil]—and agreed to.

Section 25—Annual report

Amendments 104 and 105 moved—[Patricia Ferguson]—and agreed to.

Section 25, as amended, agreed to.

Before section 26

Amendment 117 moved—[Patricia Ferguson]—and agreed to.

Section 26—Delegation of functions

Amendment 106 moved—[Patricia Ferguson]—and agreed to.

Amendments 22 to 24 moved—[Alex Neil]—and agreed to.

The Convener: Amendment 25, in the name of the minister, is grouped with amendments 26 and 28.

Alex Neil: Amendment 26 provides that ministers may, by affirmative resolution order, make ancillary provision in relation to the bill. The power extends to modifying primary legislation, including the bill once enacted. Amendment 25 provides that the ancillary provision power cannot be delegated. Amendment 28 amends section 27(3) to exclude provisions under the power from those statutory instruments under the bill that are subject to negative resolution procedures.

The power could be used in a number of areas. The Government and Ms Ferguson have recognised that the bill will need to interact with the Title Conditions (Scotland) Act 2003. In particular, the 2003 act contains provisions on appointing managers. We expect to use ancillary powers to clarify what powers residents have to appoint a new manager if a land maintenance company should be refused registration or deregistered.

Other areas in which we might need to use the powers include dealing with transitional issues while the registration scheme is being established; dealing with transitional issues in relation to the additional functions that are conferred on the home owner housing panel and committee in relation to the dispute resolution service; and ensuring that the provisions of part 9 of the 2003 act, on varying and discharging burdens in title deeds, will work appropriately if they need to be used by residents after any deregistration of a land-owning land maintenance company.

Ms Ferguson, her advisers and Consumer Focus Scotland have thought about the consequences of deregistration and the interaction with other legislation such as the 2003 act. My officials and I are happy to discuss the use of the ancillary provision powers with Ms Ferguson, her advisers and Consumer Focus Scotland. In addition, we would be happy to discuss compulsory purchase. At last week's meeting—at column 3982 in the *Official Report*—Patricia Ferguson referred to compulsory purchase. We, too, have considered the issue. As Ms Ferguson said, compulsory purchase provisions are "relatively radical", although there are existing local authority powers in the area.

We would positively welcome discussions with Ms Ferguson on ancillary powers, compulsory purchase and the consequences of the bill. Implementing the bill will be a challenging task and we welcome help and support.

I move amendment 25.

Patricia Ferguson: I support the introduction of ancillary provisions in the event that the powers need to be used as a consequence of the bill. I am happy to discuss further with the minister and, for that matter, anyone else the situation that might arise were the Greenbelt Group or another land management company to be deregistered—an event that I suspect is extremely unlikely. I simply point out that the process would have been a lot simpler if amendments 116 and 117, in my name, had been agreed to last week.

Amendment 25 agreed to.

Section 26, as amended, agreed to.

After section 26

Amendment 26 moved—[Alex Neil]—and agreed to.

Section 27—Regulations and orders

Amendments 27 to 29 moved—[Alex Neil]—and agreed to.

Section 27, as amended, agreed to.

Section 28—Interpretation

Amendment 30 moved—[Alex Neil]—and agreed to.

Amendment 107 moved—[Patricia Ferguson].

The Convener: The question is, that amendment 107 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Tolson, Jim (Dunfermline West) (LD)

Against

Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

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

I use my casting vote in favour of the amendment.

Amendment 107 agreed to.

Amendment 108 moved—[Patricia Ferguson].

The Convener: The question is, that amendment 108 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Tolson, Jim (Dunfermline West) (LD)

Against

Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

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

I use my casting vote in favour of the amendment.

Amendment 108 agreed to.

Amendment 109 moved—[Patricia Ferguson].

The Convener: The question is, that amendment 109 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Tolson, Jim (Dunfermline West) (LD)

Against

Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

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

I use my casting vote in favour of the amendment.

Amendment 109 agreed to.

Amendment 31 moved—[Alex Neil]—and agreed to.

Amendment 110 moved—[Patricia Ferguson].

The Convener: The question is, that amendment 110 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Tolson, Jim (Dunfermline West) (LD)

Against

Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

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

I use my casting vote in favour of the amendment.

Amendment 110 agreed to.

Amendments 111 and 112 moved—[Patricia Ferguson]—and agreed to.

Section 28, as amended, agreed to.

After section 28

The Convener: Amendment 32, in the name of the minister, is in a group on its own.

Alex Neil: Amendment 32 relates to the Crown application of the bill. We expect the impact of the bill on the Crown to be minimal. The bill is aimed at property factors, and the Crown is not generally engaged in such activities, but we cannot completely rule out the possibility of the Crown carrying out factoring on some estates in a way. Therefore, in accordance with normal practice in legislation, the amendment provides that the Crown should not be criminally liable under the bill but should be subject to a declarator of non-compliance in the Court of Session.

I move amendment 32.

Patricia Ferguson: I support the amendment.

Amendment 32 agreed to.

Section 29—Short title and commencement

10:00

The Convener: Amendment 33, in the name of the minister, is grouped with amendments 113, 34 and 35. I draw members' attention to the note on pre-emption in the groupings list.

Alex Neil: Amendments 33 and 35 seek to commence part 3 immediately after royal assent. The powers on ancillary provisions, which we have just debated, are in part 3, and commencing them immediately after assent is given will help with the bill's implementation.

Patricia Ferguson and I have discussed commencement for parts 1 and 2 and have agreed that, after further consideration, a stage 3 amendment will be lodged seeking the bill's final implementation by 1 October 2012. We already agree on many issues. The bill needs to be implemented and, under its provisions, the Government will have to establish a new registration scheme and a dispute resolution service; prepare and consult on the code of conduct; consult and make regulations on matters such as fees and charges; and put together information and guidance for the industry and the public. Although officials can start that work, the fact is that a large number of tasks have to be carried out, some of them in sequence. As a result, full implementation will take us to the October 2012 deadline. I should emphasise, however, that that is the absolute deadline and that, if we can implement any sooner, we will do so.

I will not move amendment 34, which relates to commencing parts 1 and 2, but I will move amendments 33 and 35, on commencing part 3 immediately after royal assent, which is the area on which Patricia Ferguson and I agree.

I move amendment 33.

Patricia Ferguson: The minister is correct to say that we have discussed the matter and have reached agreement on the commencement date. The bill has a commencement date of September 2011, which amendment 113 seeks to change to the end of December 2011. However, having discussed the matter in some detail with the minister and his officials, I accept that a number of hurdles have to be overcome before the bill can be implemented and I am therefore happy to come back with a stage 3 amendment to ensure that implementation takes place no later than 1 October 2012.

That said, it is important to have a commencement date. People expect that any legislation that the Parliament passes will begin to help them with the difficulties that gave rise to it as quickly as possible. However, people are also reasonable and will understand that work needs to be carried out to allow the legislation to be implemented as well as it can be. As the agreed timeframe gives officials and others time to put the bill into practice, I will not move amendment 113.

Amendment 33 agreed to.

Amendments 113 and 34 not moved.

Amendment 35 moved—[Alex Neil]—and agreed to.

Section 29, as amended, agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister, his team and Patricia Ferguson.

As I pointed out earlier, the cabinet secretary will not be available until 11 am. If the committee agrees, we could move on and consider items 4 and 5. Are members agreed?

Members *indicated agreement.*

Subordinate Legislation

Non-Domestic Rates (Levying) (Scotland) (No 2) Regulations 2010 (SSI 2010/440)

Non-Domestic Rate (Scotland) (No 2) Order 2010 (SSI 2010/457)

10:04

The Convener: Item 4 is consideration of two Scottish statutory instruments, both of which are subject to the negative procedure. Members will have received an electronic copy of the instruments and I point out that no concerns have been raised on them and no motions to annul have been lodged. Do members agree not to make any recommendations to Parliament on the instruments?

Members *indicated agreement.*

European Union Legislative Proposals (Reporter)

10:05

The Convener: Item 5 is nomination of a committee member to act as European Union reporter for the period of the pilot for consideration of EU legislation proposals, as set out in the clerk's paper. Members have received correspondence on this matter. Do I have any nominations?

Alex Johnstone (North East Scotland) (Con): Have you picked a volunteer, convener?

The Convener: It sounds as though you have done the job for me, Mr Johnstone.

Alex Johnstone: Not me.

Patricia Ferguson: I will do it. I am on the European and External Relations Committee and, anyway, it is only for the next few weeks.

The Convener: Do members agree?

Members *indicated agreement.*

The Convener: That concludes our business for now. I suspend the meeting until 10.55.

10:06

Meeting suspended.

11:01

On resuming—

Subordinate Legislation

Non-Domestic Rates (Levying) (Scotland) (No 3) Regulations 2010 (SSI 2010/441)

The Convener: We come back to agenda item 2. Given that we have a new audience in the room, it is important to remind people of the normal advice about ensuring that mobile phones and BlackBerrys are switched off.

The committee is asked to consider the Non-Domestic Rates (Levying) (Scotland) (No 3) Regulations 2010. I welcome to the meeting Jeremy Purvis, who has lodged a motion to annul the regulations. As is our practice, we will have a brief evidence-taking session, with the Cabinet Secretary for Finance and Sustainable Growth and his officials, to allow members to ask questions and seek clarity. We will then debate the motion to annul the regulations.

I welcome John Swinney MSP, Cabinet Secretary for Finance and Sustainable Growth, and from the Scottish Government Colin Brown, senior principal legal officer, and Graham Owenson, team leader in local government finance. Does the cabinet secretary wish to make any opening remarks?

The Cabinet Secretary for Finance and Sustainable Growth (John Swinney): If I may, convener. As I explained to Parliament when I set out the rationale for the draft budget for 2011-12, we have had to face some tough decisions. The United Kingdom Government's decisions have resulted in a reduction in the Scottish Government budget for 2011-12 of an unprecedented £1.3 billion. In parallel, the United Kingdom Government has increased VAT to its highest-ever level—a measure that will cost Scotland an estimated additional £1 billion per annum. That is at a time when household finances are already strained and many in Scotland can least afford it.

That is why in the draft budget we wanted to support family and household budgets as far as possible despite the reduced resources that are available. It is why, for example, we have prioritised freezing council tax for the fourth year in a row. It is also why, when economic recovery remains so fragile, we consider it a priority to continue to help our small and medium-sized businesses. At a time when demand is being suppressed and access to finance remains reduced, we have reaffirmed a package of business relief worth £2.4 billion over five years, including extending the small business bonus scheme in full.

We must work within the spending limits that we have been given, and that means producing a balanced budget. While that has led to some hard choices about cutting costs in a number of areas, I considered it necessary also to look at what options there might be to raise a small amount of additional revenue. The option on which I settled was business rates paid by some of our largest retail stores. On balance, I felt that it was only fair that a sector with some of the largest premises could pay a little more. That is why I brought forward the regulations that the committee is considering today.

We took the view that, faced with those challenges, it was only fair that those with the broadest shoulders should bear a greater burden. We also wanted to continue to protect small and medium-sized businesses that have been hit hard by the recession. The retail levy will raise an additional £30 million, 90 per cent of which will come from the four big supermarkets and out-of-town retail parks. It will impact on just 0.1 per cent of business properties in Scotland—those with a retail value of more than £750,000. For example, in Glasgow, our largest city, out of 25,000 business premises, only 17 city centre stores will be affected. That trend is reflected across the country.

Let me put the proposal into perspective. As I have mentioned, the increase in VAT will cost Scotland more than £1 billion, which is 35 times more than the amount that will be raised by the retail levy. We must consider the relative proportion of those factors. Last week, the committee took evidence from the Federation of Small Businesses, the representative voice of small businesses across the UK. Three quarters of its members support our policy, which has also received support from the Scottish Licensed Trade Association, the Scottish grocery retailers forum and the Scottish Trades Union Congress.

In the current financial climate, there are difficult decisions to take. Introducing an additional levy on the largest retail properties, most of which are outside town and city centres, will allow us to take a small step towards levelling the playing field and to redress a little the balance between independent town centre retailers and the largest supermarkets, which will contribute more than three quarters of the total of £30 million that is to be raised by the levy. The Government has set out a range of other measures to support the small business community, town centres and business improvement districts, and we believe that they will help town centres to flourish.

I will be delighted to answer any questions that the committee has on the regulations.

The Convener: I thank the cabinet secretary for his opening remarks. We will move directly to questions.

Alasdair Morgan (South of Scotland) (SNP): You said that the decision was taken on balance. If we accept the need to raise more revenue, it would have been possible not simply to concentrate on the retail sector but to look at other establishments with higher rateable values and other people who might be considered to have broad shoulders. What led you to decide to concentrate on the retail sector alone?

John Swinney: The decision that I took was influenced by the economic experience of the period that we are in. I tried to identify areas in which, in the current very difficult economic circumstances, there was an ability to pay. As I indicated in my opening statement, the overwhelming majority of those businesses that will be affected by the regulations are large supermarkets, which continue to perform very well and very strongly financially. Despite the current economic difficulties, members of the public are continuing to give significant support to those supermarkets by spending their money in them. My judgment was that the proposed levy would be a reliable and dependable way of raising additional revenue. In the current economic conditions, that was a sustainable judgment to arrive at.

Jim Tolson (Dunfermline West) (LD): Good morning, cabinet secretary.

Has the Government conducted an impact assessment of the proposed levy? If so, what were its main findings? If not, what was the rationale for not undertaking such an assessment?

John Swinney: The Government did not undertake a business regulatory impact assessment because I judged that, as the proposal would affect 0.1 per cent of the properties that are liable to pay business rates in Scotland, the undertaking of such an assessment would be disproportionate. As Mr Tolson will know, the undertaking of a regulatory impact assessment is discretionary rather than mandatory. Given the detail of the circumstances that I have shared with Mr Tolson, I considered it appropriate not to undertake such an assessment.

Jim Tolson: As the cabinet secretary will be aware, many large and some small out-of-town and in-town retailers are extremely concerned about the Government's proposal. In the light of his answer to my first question, it might help him to have an example. I have one from my back yard. For the medium-sized Asda store on the edge of Dunfermline, which employs nearly 500 staff, the proposed tax rise would mean an increase of some £328,000 to more than £1.2 million—a rates rise of more than 40 per cent.

There is serious concern about the potential impact on the Scottish economy if large retailers such as Asda expand less and perhaps open fewer new stores. The Government plans to generate more than £30 million from the proposal, but I am concerned that there might be a much larger loss to the Scottish economy, which will not be known unless there is a regulatory impact assessment. How do you respond to that?

John Swinney: The key question is whether economic opportunity is in any way undermined by the proposal. I do not think that it is. Let us cast our minds back a number of years. For many years—until about 2005-06, if my memory serves me well—Scotland had higher business rates than those south of the border. There was constant pressure to level the poundage. The previous Government did that in about 2005-06, and the current Government has sustained that approach during its term in office.

The crucial point is that although in an earlier period there was a higher business rates poundage in Scotland than there was in the rest of the United Kingdom, that did not stop supermarkets developing their presence in Scotland. We are all aware that over the years there has been a substantial expansion of supermarkets of the type and size of the one in Dunfermline that Mr Tolson mentioned. I do not think that there will be any loss of economic opportunity.

I have heard the argument about the measure resulting in investment not taking place. Let me take members back to the debates that took place around the time of the referendum on the establishment of the Scottish Parliament and for many years before that. We all heard stories about how business would leave the country if there was a Scottish Parliament. We heard that the very act of establishing a Scottish Parliament would cause such difficulties for business that companies would leave. Of course, the experience of the past 12 years has been absolutely the contrary. Economic circumstances and conditions, not decisions at the margins such as the one that we are considering, affect companies' decisions and performance. That is the experience of the past 12 years.

My final point, which puts the issue in context, is that business rates account for about 2 per cent of the large supermarkets' turnover. As a consequence of the proposed measure, business rates will account for about 2.3 per cent of turnover. When we consider all the issues in context, we can see that there is a case for the proposal that I am putting forward and that there will be no detriment to the economy.

Jim Tolson: I wish that I could fully share your view; you will not be surprised to hear that I do not do so. I am sure that you well recall the recent discussions and debates in the Parliament about transitional rates relief for small businesses. As you have rightly said, you have flexibility about whether to take measures forward, and you decided to take forward increases for many small businesses without introducing a transitional rates relief scheme. Many small businesses, including businesses in business improvement districts, not just in my area but throughout Scotland, are concerned about the impact of that.

I am concerned about the impact of large retailers not expanding—and perhaps even decreasing—on the small and medium-sized enterprise sector in our towns and cities. The loss of large retailers would no doubt affect our town centres. The Government should listen to the concerns that are being strongly expressed in this committee and outside the Parliament, rather than trying to drive through a measure that will damage all retailers, large and small, in our town centres.

11:15

John Swinney: With the greatest of respect, I think that that is largely an opinion. The Federation of Small Businesses would have said something fundamentally different to the committee last week. Mr Tolson cited some of his anecdotal experience. Some of my anecdotal experience is that small retailers feel very pressurised by the growth and dominance of large retailers.

I listen frequently to debates in Parliament in which members who represent small and medium-sized towns—from across the political spectrum and all localities in Scotland—express formidable and reasonable concern about the presence of large supermarkets and their impact on the retail sector in town centres. I hear what Mr Tolson is saying, but it does not bear out what we hear from organisations such as the Federation of Small Businesses or the comments that I regularly hear from members of Parliament across the political spectrum about their experience in their localities.

The Convener: For clarity, cabinet secretary, do you accept that there would be a negative impact on jobs, considering the investment in supermarkets in Scotland? Supermarkets provide tens of thousands of jobs. Do you accept the position of people who suggest that there would be that negative impact?

John Swinney: When we consider all of the issues involved in the establishment of large supermarkets, the experience is that there is an impact on other retailers, many of which are smaller retailers who find it difficult to compete with large retailers that can use their strong competitive position. Frankly, that is a statement of the obvious. The employment generated by supermarkets is, of course, welcome in Scotland, but we must understand that there are consequences for other retailers. That is the simple point that I was making in my answer to Mr Tolson.

Mary Mulligan (Linlithgow) (Lab): Good morning, cabinet secretary. In answer to Mr Tolson, you said that the Scottish Government has not carried out a regulatory impact assessment. Was there any discussion or consultation prior to your announcement on the tax?

John Swinney: When I set out the proposals in November, I was setting out the draft budget, which was available for consultation. This afternoon, we will start the formal parliamentary process of agreeing the budget bill, but a process of consultation on the contents of the draft budget has been taken forward by both the Government and parliamentary committees. We will start to debate that this afternoon.

The consultation period is sparked by the launch of the draft budget. My ability to undertake any other consultation beyond that is compromised by my obligation to share details of the budget first with Parliament. It is difficult for me to carry out a separate consultation on a proposal that is in the budget and which I am assuming will raise revenue of £30 million and contribute to balancing the budget—that is what the retail levy will contribute. In essence, the opportunity for consultation is sparked by the publication of the draft budget in November.

Mary Mulligan: Cabinet secretary, when you announced the tax that we are considering today, you had no information about the impact it might have on stores' plans to open new premises or expand them and to take on staff to service new builds or expansions. Do you have any facts or figures that you can give us this morning to reassure us that the tax will not have a negative impact?

John Swinney: In essence, the judgment that I arrived at was informed by the points that I raised in response to Mr Morgan's question. I refer to the performance of the major retailers in recent years, their significant expansion and the fact that business rates account for a very small proportion—2 per cent—of their annual turnover. As a consequence of the measures that I am taking, the proportion will increase from 2 to 2.3 per cent. I formed a view on the context in which the proposal was set and made a judgment on the ability of retailers to pay the appropriate levy. I was able to arrive at the judgment based on that evidence.

As I said to Mr Tolson, many comments about likely economic consequences have been injected into the political debate over the years. That is part of the firmament of political debate and discussion.

I accept that. My point is that the Parliament has to be pretty rigorous in its consideration of the substance of the proposal, given the other evidence that I have marshalled for the committee today on the level of profitability of the companies that will be affected and the relatively small proportion of the revenue that business rates influence.

Mary Mulligan: It is interesting, cabinet secretary, that you are asking the committee to be rigorous in investigating this when you do not appear to have been yourself.

Of the 225 stores that it is predicted will be affected by the proposal, can you guarantee that each one will continue to develop in a way that they would otherwise have done? Will we see further developments in the local economies and further job opportunities from those stores?

John Swinney: Given the economic context, I see no reason why that should be influenced by the proposal that the Government has arrived at and which we are asking the committee and Parliament to endorse. Mary Mulligan made an observation on rigour. I assure her that I have looked carefully at the financial impact of the proposal. That is what gives me the confidence to say that we do not expect that the development of these supermarkets will in any way be affected.

Mary Mulligan: In their submissions, the various stores have made clear the effect that the proposal may have. You said that you have seen a number of the submissions. The companies have said that their headline profits might show that many of them are doing well, but that decisions are taken on an individual store basis. The fact is, if a store in Bathgate, for want of a better example, is to be opened or expanded, and it has to pay the levy that is suggested in the bill, the option might be to open or expand a store in Liverpool, for example. Does that worry you, cabinet secretary?

John Swinney: Of course, I want to ensure that we are able to attract all business opportunities that it is possible to attract to Scotland. I spend a significant amount of my time trying to do that. We have seen recent examples of business development measures that have brought significant investment to Scotland. Ministers are involved in that constantly. Of course, I want to achieve that in every way that we can.

Companies base their investment decision making on a number of factors. I suggest that the amount of money that we are talking about here would not influence decision making about supermarket opening. As a consequence, the committee can be confident that the measures can be supported without the economic consequences that have been suggested.

The Convener: The cabinet secretary will be aware that we have had strong representation from the retail sector outlining that there would be an impact. Justin King of Sainsbury's has been reported as saying:

> "We have a three-year pipeline. We have to prioritise where we spend our money. Part of our prioritisation is where that money makes the best return."

He went on to say:

> "We are not talking about a marginal tax. It will have a material effect. That is going to make a difference to store investment decisions."

We have had representations from people who are not in the retail sector and, in the past few days, from the Union of Shop, Distributive and Allied Workers, telling us that the rates rise will impact on their investment decisions and their investment in training. Are you suggesting that that is all political rhetoric? It would make it easier for us to come to a decision and to support the rates rise if you gave us the other side of the argument—the impact assessment and the rigorous examination of the proposal—but you are saying to us, "Trust me. These people are all talking through their hat."

John Swinney: What I am saying is that the committee must come to a judgment about a levy that is a marginal factor in relation to the turnover of supermarkets. The proportion of supermarkets' turnover that is business rates is 2 per cent, and it is likely to go to 2.3 per cent. It is a decision at the margins. In that context, comments about economic impact and decision making are not appropriate. I am asking the committee to make a judgment in the context of the wider financial and economic assessment that has been set out.

The Convener: We have been told that the turnover of British Gas is £21 billion, but the Scottish Gas headquarters in Edinburgh will pay less than the supermarket down the road, which will pay 17 times more. What about the argument about broad shoulders that Mr Morgan has mentioned on a couple of occasions? According to the representations that we have had from large retailers, the rates rise is being applied unfairly. They are being asked to pay all that money more.

John Swinney: The Scottish Gas example is interesting. The business rates that Scottish Gas pays do not relate just to its Granton headquarters. What it pays is influenced by the Scottish Gas infrastructure and network throughout the country. If my memory serves me correctly, the committee had an interesting debate once about telecommunications companies and evaluations for business rates purposes. The comparison has been made between the Scottish Gas headquarters—one building—and a supermarket. I do not have all the detail in front of me, but in comparing what the utilities and supermarkets pay in business rates, I know that the utilities pay significantly more than just the business rates for their headquarters.

The Convener: I am surprised that the cabinet secretary is not even prepared to concede that there is an issue of fairness here. He has quoted extensively from the Federation of Small Businesses. The FSB and the retailers agree that the rates rise is being applied unfairly. The evidence that the committee took last week confirmed that.

John Swinney: It is an appropriate financial measure to take. The Government has the opportunity to raise a modest amount of revenue from a highly profitable sector, which will contribute to the public purse of Scotland. It will enable us to afford some of our other priorities, which are a material consideration in the judgment that I have got to make.

11:30

The Convener: Cabinet secretary—

John Swinney: There is—as you well know, convener—a balance in the debate on fairness between raising revenue and reducing expenditure. I have had to address the necessity to reduce expenditure by £1.3 billion in this financial year, and I have taken some steps to cushion that blow—at a modest level, I concede—through raising additional revenue.

The Convener: You have used the word “appropriate”, rather than the word “fair”. Are you prepared to say that the levy will be applied fairly?

John Swinney: It will be applied fairly, yes.

The Convener: Across all the sectors?

John Swinney: I think that the business rates regime is fair across all sectors.

Patricia Ferguson: Good morning, cabinet secretary. I am particularly interested in two aspects of the matter. One is the process and the other is jobs—jobs being my overriding concern, of course.

In your exchange with Mary Mulligan, you mentioned the need for “rigorous” interrogation of what was happening, and you made some comments about the committee’s involvement in that regard. Many of the people from whom we have taken evidence and who have contacted us have made the comment—if not the complaint—that they have not been consulted about the proposal, so would it have been possible to use a different methodology to take your proposal through?

John Swinney: The option that I chose was to set the proposal out first to Parliament, to include it in the draft budget, which is—as it says—subject to consultation, and to consider conclusions as part of that. The consideration of the regulations is a material part of that consultation process. If Patricia Ferguson has any other suggestions as to how we might have proceeded with that, I would be happy to consider them. I took the option that I thought was appropriate: to tell Parliament first, to consult on the draft budget and then to undertake the formal process.

Patricia Ferguson: I can suggest another process that I think would have been more effective, which would have been to use the Parliament’s super-affirmative procedure. It involves the Government laying draft regulations before Parliament for a specified period of time for scrutiny and comment, and it may also involve external consultation and the requirement to take those views into account. It may have made for a safer passage for the regulations, had the minister gone down that route.

John Swinney: I am being advised that the legislation does not provide for that. Perhaps I should write to the convener with chapter and verse on that, given the advice that I have just received.

If we strip down the super-affirmative procedure, the process essentially involves a proposal being put forward, people setting out their views, another proposal coming forward and a decision being made on it. Compare that framework with what we are discussing just now, which is that a proposal was put forward in the draft budget, people put forward their views, I then laid the regulations and we decided on it.

I am not sure that there is that much of a difference, but I am happy to consider Patricia Ferguson’s point, and I will clarify any relevant legislative issues.

Patricia Ferguson: That would be helpful. At least the super-affirmative procedure offers the opportunity for more consultation and discussion around the issues that are being raised.

I move on to my concerns about jobs. As the convener rightly indicated, we have received representations from a number of organisations, including the Union of Shop, Distributive and Allied Workers, which has stated:

> “One of the highest costs for retailers is staffing and all retailers assess the staffing levels and hours of work offered on a store-by-store basis according to each store’s profits. This levy will create an enormous additional cost burden for the stores affected that will place further pressure on store managers to reduce other costs where possible.”

The implication is that the cost might fall on jobs and on employees' hours of work. Does that concern the cabinet secretary? Does he think that there is any justification behind the point that USDAW and others are making?

John Swinney: The question relates to the scale of the issue with which we are wrestling. I come back to the point about 2.3 per cent of turnover being a marginal cost. The cost of staffing within the turnover of supermarkets will be significantly greater than the proportion that is allocated to business rates. We must keep that comparison very much in our minds. In my opinion, the cost is very much at the marginal end of the debate in relation to the financial performance of supermarkets.

In terms of the overall impact, I want to ensure that we maximise employment. A significant part of the Government's whole economic recovery plan is to support and expand employment. The level of employment in Scotland is rising at the moment, which is very welcome, and the maintenance and expansion of employment is very important to the Government.

Patricia Ferguson: I am interested in the point that the cabinet secretary made about fairness. When we talk about profit and turnover, we are talking about two different things—they are not the same. Similarly, staffing may account for a high percentage of a business's turnover but it is optional, and rates are not optional except for particularly profligate traders. The argument that staffing will not be affected because it is a marginal cost is, therefore, not a good argument to use in the context.

John Swinney: I am sorry—I may not have expressed that clearly enough. I was not saying that staffing is a marginal cost. If I said that, it was inadvertent. I was saying that the rise in business rates from 2 to 2.3 per cent is marginal. Staffing will account for a much more significant proportion of supermarkets' turnover.

I take a different view from Patricia Ferguson about staffing. To me, staffing is mandatory and unavoidable—a supermarket cannot run without staff. A distinction has been made that is not particularly appropriate.

Patricia Ferguson: The point is that a supermarket can be run with fewer staff. Yes—it will need to have staff, but the number of staff who are employed is something over which the employer has control. The payment of a new levied rate is not something over which businesses have control.

I will give an example. Tesco has recently opened a partnership store in my constituency. As part of that process—as has been the company's habit for a number of years—Tesco has worked very closely with the Glasgow North Regeneration Agency. As a result, when that store in Maryhill opened late last year, it was able to offer training and assistance to 114 local people from among the long-term unemployed. Of those people, 88 were subsequently able to find work in Tesco and many others have found employment elsewhere. That was on top of recruiting people who had previously worked in Tesco and others who had come through other routes. Those 88 long-term unemployed people would not otherwise have got employment.

There is no roll-out that says that operations such as Tesco must do that kind of work. They do it because—I presume—they see a benefit to themselves and to the communities of which they want to be part. Do you not think that exactly that kind of opportunity might in the future be lost to people like my 88 constituents if this tax goes ahead because that is not something that a retailer has to do?

John Swinney: Patricia Ferguson has answered her own question. The supermarkets will do such things because they consider them to be good for the community, for the individuals who are involved and for themselves. I am familiar with many good examples of the kind of initiative that Patricia Ferguson raises, whereby individuals' life chances are absolutely transformed by their being able to get into employment. I have absolutely no dispute with that. However, I do not think that we should accept that a marginal change of the type that the Government is suggesting will have the effect that has been suggested.

Let us consider the context. The other important statistic regarding business rates shows the comparative benefit to the business community in Scotland of maintaining business rates at the same poundage as those south of the border. If we were to calculate business rates according to the model that existed previously, before parity, businesses would be paying about £200 million more in business rates. They are not paying that just now, which is a benefit of our competitive business tax regime.

There is a judgment to be applied. All the factors that influence the investment decisions and the financial performance of supermarkets must be taken into account, not just one of them.

Patricia Ferguson: I simply make the point again that the number of staff a supermarket employs and the amount of effort to which it goes to make those people employable and to assist them into employment are optional, whereas paying rates that have been agreed by a Government and a Parliament is not optional. Therefore, in my opinion, projects such as I have described may well be put in jeopardy.

John Swinney: I hear all that Patricia Ferguson says on the issue. However, in my view, we are talking about a marginal change to the economics of the retail sector, which I do not think would have the consequences that she suggests.

Patricia Ferguson: I hope that you are right.

Bob Doris (Glasgow) (SNP): Good morning, cabinet secretary. I will continue on the theme of jobs, where Patricia Ferguson left off. I, too, praise the Tesco store in Maryhill for the work that it has done in getting local long-term unemployed people into work. However, that is not a cost-free option. I know the small retailers on Maryhill Road very well, and that new Tesco store is having a significant impact on their businesses—they are struggling. It has been put to me that, if it were not for the small business bonus, some of them may have gone under by now. I have direct experience of that.

I would like to widen out the discussion on jobs, as this is a tax for the whole of Scotland. Figures that have been provided by various parliamentary answers show that, for example, from 1998 to 2008, the number of retailers of fruit and vegetables decreased from 1,160 to just 400; that the number of retailers of butcher meat decreased from 1,310 to 755; and that the number of retailers of baked produce decreased from more than 1,000 to around 800. Does the cabinet secretary believe that the levy may go some way towards rebalancing the proportion of jobs in the large retailers with the proportion of jobs in the small and medium-sized businesses?

John Swinney: The retail levy assists us in ensuring that we strike the right balance in reducing public expenditure and increasing revenue within the public finances. There is a balance to be struck and the Government needs to have that in mind as it proceeds.

Mr Doris makes an important point about the shift that has taken place in the retail sector. At the heart of the Government's small business bonus scheme has been a drive to create the conditions in which it is more possible and practical for small retailers to continue to operate. In that respect, the small business bonus has been a very welcome form of assistance. The question of how the retail levy can be paid for is answered by the scale of economic activity that businesses represent. The retail levy can make a helpful contribution to the public purse and ensure that we have a better balance in how respective sectors of the retail economy contribute, and in the extent to which they are responsible for paying costs into a central pot.

11:45

Bob Doris: I want to move on and consider not how the £30 million will be raised, but what will happen if it is not raised. If it is not raised, it will leave a gap in the Scottish Government's funding assumptions. Given, as I understand it, that money from non-domestic rates goes into local government coffers, have you estimated how much less money Glasgow City Council, for example, might get if the £30 million is not forthcoming?

John Swinney: The £30 million is assumed in the calculation of the amount of non-domestic rates revenue that it is expected will be generated in 2011-12, and it forms part of the budget proposals that I have set out. I am afraid that I cannot today give you an extrapolation of the proportional impact on Glasgow City Council, but I can certainly make that information available to the committee.

Bob Doris: Last week, Fiona Moriarty from the Scottish Retail Consortium made some interesting points. I will paraphrase, rather than quote her directly, which would involve having to cut and paste from different parts of her evidence. She said that there would not be such vocal disagreement to the levy if the money were not given to local government coffers but was instead spent on other things, particularly on supporting small to medium-sized enterprises. It seems, therefore, that there might be a divergence in policy among the opposition to it, with some disagreeing less about the affordability of the levy itself than about how the money is spent.

My understanding is that, initially, the levy will be for only one year. Where will this route for raising cash go in subsequent years? Will the cabinet secretary consult large retailers and others on whether the money could be spent in other ways, and examine the impact of how it is spent in future years?

John Swinney: On the point that Mr Doris suggested that Fiona Moriarty advanced last week, I think that, unless we design a retail levy that ring fences the revenue for whatever purpose, we will find it difficult to say in any revenue assessment that it should be spent on a certain policy item. The retail levy money goes into the public finances but, given the strain that those finances are under at this time, we must take decisions that allow us to afford particular priorities. For example, our ability to maintain in our budget proposals the small business bonus scheme has been indirectly assisted by the £30 million that we will raise in the retail levy. There is an indirect connection between the revenue that is raised and budget priorities; after all, if we cannot raise all the revenue that we expect to raise in non-domestic rates, we will not be able to afford all the priorities in the budget. I do not want to exaggerate the position and suggest that there is a direct relationship in this respect; nevertheless, there are comparative relationships and, undoubtedly, an indirect relationship between the amount of money that is raised and how it is spent.

As for Mr Doris's question on assumptions about the levy's on-going nature, I point out that we only ever set non-domestic rate arrangements for 12 months. My assumption is that the levy will become an on-going element of the non-domestic rates infrastructure and I therefore expect it to be part of the on-going arrangement for the collection of non-domestic rates.

Bob Doris: I will double-check one matter. If we support the regulations and if they come into force, will you give a commitment to a full analysis of the impact of the £30 million levy before considering future levies, if you are back in your post after the Scottish elections?

John Swinney: If the levy is supported, I will certainly be happy to undertake further work to consider the experience of its impact and to discuss that with Parliament.

Alex Johnstone: I have serious concerns about the impact on jobs and investment, which several committee members have pursued. I agree with them, but I will develop the issue in a slightly different direction and explore one or two issues that run in parallel.

The cabinet secretary made it clear in his opening remarks, and we have heard from several sources, that the supermarkets are perhaps an appropriate target for such a tax because they have broad shoulders—they are very profitable and can afford to pay a bit more. Does that fail to recognise that the supermarkets' profits come from somewhere and not from thin air? Where does the cabinet secretary believe supermarkets' money comes from, if not from the check-out?

John Swinney: I am not sure whether that was a question to lull me into a trick situation and whether an answer will be given at the end.

The Convener: So suspicious.

John Swinney: You know me so well, convener.

The revenue that supermarkets raise is important, as are the prices that supermarkets pay farmers for the produce that they supply, and other factors that are implicit in that relationship.

Alex Johnstone: Will introducing an additional levy on supermarkets in Scotland result in increased prices over time?

John Swinney: I do not see why that needs to be the case. Many pressures bear on supermarkets' prices; for example, commodity prices are a significant factor. Some of my constituents have dealings with supermarkets: producers—dairy farmers in particular—complain regularly that, in their view, the price that supermarkets pay for the produce that leaves the farm gate is not fair or justifiable. Many factors impact on supermarkets' pricing structures.

Alex Johnstone: I doubt very much whether a levy on supermarkets will be likely to increase supermarkets' willingness to pay dairy farmers a bit more for their product. However, my concern is about whether the levy will have an impact on the cost of living in Scotland. You suggest that it will not affect what supermarkets charge. Can we therefore assume that the money that will be used to pay the levy will come not from customers in Scotland but from customers throughout the supermarkets' whole trading area? Have you managed to invent a tax that will, in effect, be paid by people outside Scotland?

John Swinney: The supermarkets will be liable for the tax on the basis of their eligible properties with a rateable value of more than £750,000. The tax will have to be paid in Scotland.

Alex Johnstone: You have suggested that the tax will change the balance slightly between large and small retailers. To achieve that objective, it will inevitably have to increase the cost of living in Scotland, because it will have to reduce competition in some areas. As you suggest, that will allow smaller retailers to survive where they otherwise might not, but it will also increase disproportionately the cost of living in such areas. Do you expect the tax to have that impact?

John Swinney: No. I have a wee bit of difficulty in following the rationale behind the question. If, because of the measure, small retailers survived when they ordinarily would not, that would increase—not decrease—competition. From all that I have ever read, I think that more competition would be beneficial to ensuring that prices remain competitive for individuals who purchase items.

Alex Johnstone: My understanding is that you believe that, by making the supermarkets less competitive, smaller businesses will benefit. The measure is, by your definition, designed to make supermarkets less competitive in some environments.

John Swinney: I do not think that the measure will have that effect. Raising the levy contributes to the public purse, which allows us to afford and to continue to support priorities such as the small business bonus scheme. Those measures enhance competition in the Scottish economy, which is to be welcomed.

Alex Johnstone: I move on to what the money will be used for. Are non-domestic rates a local or national tax?

John Swinney: Non-domestic rates are generated locally and distributed nationally.

Alex Johnstone: Do you have figures on whether the tax would have a redistributive effect? In other words, will it be paid disproportionately in some areas and used disproportionately in others?

John Swinney: The non-domestic rates will be generated based on the location of the individual property concerned. They will contribute to the non-domestic rates pool, which is then distributed according to, I think, the local government distribution formula.

Graham Owenson (Scottish Government Directorate for Local Government and Third Sector): It is indeed. The money will be distributed on the basis of where it was collected or raised.

Alex Johnstone: Therefore, if I am challenged by someone in the city of Aberdeen who believes that the tax increases their cost of living, I can console them by suggesting that they might get a little more money back to their local authority.

John Swinney: The point is that non-domestic rates are generated locally and distributed through the local government distribution formula.

Alex Johnstone: It might be suggested that that disadvantages councils such as Aberdeen City Council.

John Swinney: Those points are all considered as part of the overall funding of local government in Scotland.

Alex Johnstone: Indeed they are, as we are all aware.

The Convener: I have John Wilson followed by Jeremy Purvis, unless any committee members want to follow up on that issue.

Mary Mulligan: I do.

The Convener: I will allow a brief supplementary on that issue before we go to John Wilson.

Mary Mulligan: I want to be clear about what the cabinet secretary is saying. He said that, although the money will be collected from stores across Scotland, the £30 million will be redistributed according to the formula for funding local authorities and not according to, for example, the number of stores that happen to be in a council area.

John Swinney: There will not be a separate distribution of the £30 million. It will go into the non-domestic rates pot, which will be distributed on the basis on which all non-domestic rates moneys are distributed. Perhaps Graham Owenson can give the details of that.

Graham Owenson: That is done on the basis of the needs-based distribution formula. We establish local authorities' needs and then, to fund that need, we establish what they can raise in non-domestic rates income in their area, and that is used as part of the funding formula. The balance is made up of general revenue grant. It is need that drives the amount of money that we give councils.

Mary Mulligan: That was helpful. Thank you.

The Convener: Alasdair Morgan has requested to ask a question. I hope that it is a supplementary on the same issue.

Alasdair Morgan: It is very much on that issue. I ask the cabinet secretary to confirm my impression that, if there is any unfairness involved in the redistribution, be it of the 2.5p supplement at the lowest level or the 15p supplement at the highest level, that unfairness is also in the redistribution of the 42.6p for the overall rateable poundage. The new measures are no different in that regard.

John Swinney: Absolutely. The distribution mechanism is no different from the mechanism for the other proportion of non-domestic rates, which is the point that I was trying to make in answer to Mary Mulligan. The £30 million will not be distributed differently from the rest of the non-domestic rates income.

12:00

John Wilson (Central Scotland) (SNP): The Scottish Retail Consortium has indicated that the proposed retail supplement might contravene state aid regulations. What is the cabinet secretary's opinion of that?

John Swinney: The clearest answer that I can give is that I would not introduce regulations to the committee if I did not believe that they were legally sustainable.

John Wilson: I know that a number of members have concentrated today on the supermarket sector and the valuable employment that it provides in many of our deprived communities throughout Scotland. Someone mentioned various major supermarket chains and the employment opportunities that they give to people, and I make the point about the corporate social responsibility shown by some of those supermarket chains in where they locate and the jobs that they create. Last week at committee, we heard from the Scottish Retail Consortium and the British Retail Consortium about the impact that the regulations might have on the operation of individual stores or supermarkets. Has the cabinet secretary received any further details from the large supermarket operators, the British Retail Consortium or the Scottish Retail Consortium about the individual operational turnover or profits of those stores that they claim might be affected?

John Swinney: I have not seen anything that goes into more detail than the information that has been given to the committee and expressed in the public domain.

John Wilson: Convener, I made the point to draw out, as I did last week, the current scaremongering about stores that might be forced to close down because of the levy being imposed. I want to clarify whether there will be any major impact on the long-term investment strategies of the four major supermarket chains and other retailers in the sector. John Lewis has indicated that the retail sector, like other employers in the UK, has been faced with increases in VAT and employer's national insurance. However, those are normal increases. I distinctly remember when the national minimum wage was introduced in 1998 and a number of employers, including those in the retail sector, indicated that it would be detrimental to the UK's future economy. However retailers in particular seem to have not only survived but expanded exponentially since the introduction of the national minimum wage and the other increases that have happened since 1999. Does the cabinet secretary want to comment on that?

John Swinney: Mr Wilson's point falls into the same category as my point about some of the speculation about the establishment of the Parliament and the impact that it would have on business. His example of the national minimum wage is a good and apposite one.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Convener, I am grateful to you for allowing me to ask some questions.

Cabinet secretary, I was not sure that I heard you correctly when you said that the Scottish Grocers Federation is supporting the statutory instrument.

John Swinney: I think that I said that, yes.

Jeremy Purvis: I spoke to the chief executive in advance of the committee—

John Swinney: It was the Scottish Grocery Retailers Forum.

Jeremy Purvis: Ah. The Scottish Grocers Federation is opposed to it. You might have omitted to say that.

John Swinney: My speaking notes say the Scottish Grocery Retailers Forum. I apologise if I did not say that.

Jeremy Purvis: I have some follow-on questions about the small business bonus. Is that paid for by being divided up at source to the councils using the formula that you outlined earlier or is it paid through a different mechanism?

John Swinney: I would characterise it as essentially income foregone. A small business that is eligible to apply to the small business bonus scheme will not pay money and then get a rebate, for example; it will simply not pay the business rates. The eligibility criteria determine that at the local level.

Jeremy Purvis: But that is calculated and support is then provided to councils for actual lost revenues. Is that correct?

John Swinney: That will be part of the assessment of need that is undertaken as a consequence of the assessment of individual local authorities' funding priorities.

Jeremy Purvis: How much of the £30 million that you have estimated will be raised will fund the small business bonus scheme?

John Swinney: That was really the point that I was making earlier. The question cannot be answered unless we specifically hypothecate sums of money and say, "Right. We'll implement this measure and it will pay for that item." The point that I was making earlier was that it is clear that there is an indirect connection between what we raise and what we are able to afford. Mr Purvis will be familiar with the fact that I have wrestled with a reducing budget this year. Therefore, in order to sustain priorities, I must make decisions about where there will be reductions in public expenditure and where we will increase revenue. Those decisions come together in the budget document and the Budget (Scotland) (No 5) Bill, which we will debate in Parliament this afternoon.

Jeremy Purvis: Did you consult the Federation of Small Businesses in advance of launching the small business bonus scheme in the spending review for 2007-08?

John Swinney: The Government was elected on a commitment to implement the small business bonus scheme, and I took forward the Government's priorities as set out in our manifesto.

Jeremy Purvis: Did you consult the FSB in advance of your announcement to members about the small business bonus?

John Swinney: I do not think that I did so, but I would have to check my records to determine that.

Jeremy Purvis: So, on the consultation policy, the budget was launched on 17 November, I think, and the consultation period was between then and 8 December, when the regulations were made. I think that you mentioned out-of-town retail parks in your statement.

John Swinney: The Government set out in the draft budget its proposal on the retail levy. For completeness, I said in my statement on 17 November:

> "I intend to secure additional resources in 2011-12 by increasing the business rates that are paid by the largest retail properties, including supermarkets and out-of-town retail parks."—[*Official Report*, 17 November 2010; c 30463.]

The regulations were published in early December and are, of course, subject to the consultation and discussion that the committee has presided over and which is implicit in the parliamentary scrutiny process.

Jeremy Purvis: That is only because I lodged a motion to annul. We are talking about a negative instrument. Is that correct?

John Swinney: It is open to any member to do that.

Jeremy Purvis: Right, but the consultation process with regard to the budget could not have allowed any scrutiny of the statutory instrument unless the motion to annul was lodged.

John Swinney: People constantly write to me about the contents of the budget. Just yesterday, I received an e-mail about points relating to the freight facilities grant, for example, which is included in the budget proposals. I receive representations all the time about the contents of the budget, and I consider them as I formulate my view on how the Government's budget should proceed.

Jeremy Purvis: You mentioned 0.1 per cent of rateable properties being affected. Are public sector bodies included in that calculation, or does it relate only to businesses?

John Swinney: It includes public sector premises.

Jeremy Purvis: So you said that the measure will apply to 0.1 per cent of properties, and you included all the public sector estate in the calculation.

John Swinney: Yes, because it is liable for business rates in many respects.

Jeremy Purvis: You have gone into quite a lot of detail about the impact of lowering or increasing taxes. Just for the record, is it your view that we should reduce corporation tax for large businesses?

John Swinney: Yes, that remains my view.

Jeremy Purvis: What discussions have you had with business improvement districts? I am sure that you have seen for yourself some of the angry comments; for example, Tom Campbell, chief executive of Essential Edinburgh, has said:

> "Essential Edinburgh absolutely opposes any suggestion that this is either an appropriate tax or one that will assist in the economic recovery and growth of the city centre."

As part of what you believe to have been a full consultation exercise, what consultation did you have with business improvement districts in Scotland?

John Swinney: I have seen some comments from business improvement districts but I cannot find them in my briefing papers. I have not had direct conversations with the BIDs, but I have of course discussed the issue with a number of retailers.

Jeremy Purvis: And you believe that the levy will have no impact on any proposal by any business improvement district in Scotland.

John Swinney: That would be my judgment. Business improvement districts are part of a voluntary measure that local businesses implement to enhance a proposition that has, in many respects, been successfully taken forward.

I knew that I had seen something in my briefing notes about business improvement districts. The business improvement districts executive director said that he supported Government plans for the levy.

Jeremy Purvis: But you have not spoken directly to the BIDs in Falkirk or Edinburgh.

John Swinney: No.

Jeremy Purvis: In light of your intention to make the levy a permanent feature and given that you have now published indicative four-year figures for the Scottish budget, have you estimated how much the measure will raise over that four-year period?

John Swinney: That calculation will be affected by a number of things, not least of which are decisions on uplifts in business rates from year to year and other assumptions such as valuation appeals.

Jeremy Purvis: So you have no forecast for how much will be raised.

John Swinney: Forecasts will have been undertaken but not yet published.

Jeremy Purvis: You have made forecasts, but you have not published them. When do you intend to do so?

John Swinney: Ordinarily we would publish them as part of the budget process for each financial year.

Jeremy Purvis: Can you share with the committee today your estimate of how much the measure will raise over four years?

John Swinney: No. I do not have that information to hand. I point out, though, that there will be variations because of a number of factors including, as I have said, valuation appeals, inflation uplifts and other relevant considerations that must be included in the calculation.

Jeremy Purvis: Other committee members have already asked why you looked only at retail. You have probably seen the UK gross domestic product figures, which show that, far from being the most profitable sector, retail is continuing to struggle. Why, in that case, have you felt it appropriate only to tax Tesco's retail component, given that the headquarters of Tesco bank is also in Edinburgh? That is a large property and is over the threshold, but Tesco will not have to pay a levy on it; however, John Lewis in Princes Street will have to pay for its property. Why do you think that Tesco bank's shoulders are not as broad as those of Jenners or John Lewis?

John Swinney: The question comes down to what is the appropriate source of revenue. My judgment is that the retail sector has undertaken significant expansion and remains significantly profitable and, as a consequence, has the capability to increase the marginal proportion of its turnover base that is allocated to business rates, to contribute more to the public pot.

12:15

Jeremy Purvis: Does not what you said apply to Tesco bank?

John Swinney: A judgment must be made about sources of income. Through the business rates collection mechanism, many organisations across the board are making a contribution to the business rates regime. Ultimately we must make a judgment about the most appropriate place to levy the tax, and that is the judgment that we arrived at.

Jeremy Purvis: Did you consider raising extra revenue from, for example, Tesco bank or the Royal Bank of Scotland at Gogarburn?

John Swinney: Our decisions on the retail levy were taken in the context of the rates revaluation that was undertaken, which has had consequences for many organisations—the consequences have been well debated. It was my judgment that the sector that is in a position to contribute is the retail sector, which is why the proposal is formed as it is.

Jeremy Purvis: Figures that the Scottish Parliament information centre has helpfully provided show the moneys that have been collected through business rates since the Parliament was established—you have the data, too. In 2010, the amount that was predicted in the draft budget was £88.6 million less than the moneys that were collected. Therefore, there is an £88.6 million surplus in 2010-11. Where has the money gone?

John Swinney: Will you go through that again?

Jeremy Purvis: SPICe said that the draft budget predicted £2,076.3 million but £2,164.9 million was collected. The difference is £88.6 million.

John Swinney: Which financial year are you talking about?

Jeremy Purvis: 2010-11.

John Swinney: I do not think that the numbers can be available for 2010-11.

Jeremy Purvis: The source for moneys collected is a personal communication with the Scottish Government, so SPICe got the information from you.

John Swinney: We are in the financial year 2010-11. The year is not complete yet.

Jeremy Purvis: I do not know what information the Government provided—

John Swinney: I will try to be helpful. The point that you are driving at is that in some years we get our estimates correct and in some years we do not get our estimates correct. There is what I will call a holding account within the Scottish consolidated fund, in which surpluses or deficits are held. During the years since 1999, the balance of the holding account has varied from being in credit to the tune of £167 million, at its highest, to being in deficit to the tune of £104 million, at its lowest.

Every year, that is the starting point for considering what assumptions can be made about what can be collected from business rates and all that goes with them, to ensure that we retain a sustainable non-domestic rates pool. The numbers inevitably vary—some years there is a surplus and some years there is a deficit—but that is an entirely separate pool, which must be held to ensure that the Government can honour its commitment to local government that it will fully fund whatever sum of money we commit to in the budget bill.

Jeremy Purvis: SPICe gave information for 2009-10, which is a full year—we can pursue the figures for 2010-11, but they must refer to moneys that have been collected so far. In 2009-10 there was a negative difference of £129.5 million. I do not know whether that tallies with the figures that you have.

John Swinney: I am afraid that it does not.

Jeremy Purvis: We need to get whoever the person is who provided the personal communication with the Scottish Government. How much is in the pool at the moment?

John Swinney: At the start of 2010-11, the pool was in deficit by £34.393 million. The judgment on that is this: there is really no value in giving a figure. I do not have the figure to hand today. We will get the figure for the start of 2011-12. That will inform the decision making on business rates.

Jeremy Purvis: So, the Government has no information at the moment that says that it is raising more in the 2010-11 financial year than it predicted would be the case in the draft budget.

John Swinney: The financial year is not yet complete, so the answer cannot be given.

Jeremy Purvis: You do not track the situation at all.

John Swinney: Of course we track it, but we cannot give a definitive answer on that.

Jeremy Purvis: So, the assumption that £30 million would be raised from this revenue has to be seen alongside all the caveats that you have given in all these questions.

John Swinney: No. I return to Patricia Ferguson's question on this being a mandatory levy. Unless any of these retail outlets close, they will be liable for the levy.

Jeremy Purvis: The question is about the size of the pot that will be redistributed.

John Swinney: In my draft budget, I state the amount that I expect to raise from non-domestic rates. That is an estimate of what I expect to raise. Actually, it is more than an estimate; it is a guarantee to local government that it will get that sum of money, come what may—no ifs, no buts. I have to be able to guarantee that. To enable me to do that, I have to ensure—as my predecessors before me have had to ensure—that the cumulative account balance that the Scottish Government holds allows us to fund that amount within reasonable tolerance margins. We can go into deficit; the Treasury permits that. However, we have to do that within a regime that is acceptable to the Treasury in terms of the long-term sustainability of the balance.

Jeremy Purvis: Regardless of what happens today, your forecast may be out by more than £30 million and yet you have guaranteed that figure to local government. You could have made errors elsewhere in the assumption that are greater than the £30 million that is to be raised. As you indicated, the greatest deficit that there has been was more than £100 million. However, you have guaranteed that sum to local councils, so they are fine. In terms of council tax and all the other areas on which we have had press release after press release from the Scottish National Party over the past week, that money is guaranteed. You have said that.

John Swinney: No. It is not guaranteed.

Jeremy Purvis: So, it is not guaranteed.

John Swinney: It is guaranteed the minute that Parliament passes the regulations.

Jeremy Purvis: No, it is guaranteed in the budget, cabinet secretary. You have just said that. It is not guaranteed in the regulations.

John Swinney: The creation of the non-domestic rates pot is contributed to by combining a number of instruments. That adds up to a line in the budget for the level of non-domestic rates that is guaranteed to local government. The Government has to raise sufficient revenue to keep that account in balance to enable us to deliver the commitment to local government.

Jeremy Purvis: Since you have come to office, have the moneys that you predicted in the draft budget differed from the moneys that were collected by more than £30 million in any given year?

John Swinney: Yes.

Jeremy Purvis: And, even though the amount has differed, the figure in the draft budget is still guaranteed to councils.

John Swinney: As it always has been. It could never be any different.

The Convener: That concludes our questioning. We move to the debate. I invite Jeremy Purvis MSP to move motion S3M-7629.

Jeremy Purvis: I know that I am testing the patience of the committee this morning, convener.

The latest GDP figures should give any Government that wants to increase tax on business in Scotland, thereby taxing jobs and growth, pause for thought. Regrettably, it has not given this Government pause for thought. The signal that the Government is sending out is that if you are successful at doing trade in Scotland or at growing businesses and employing people, you are liable for an arbitrary tax that the Government did not consult on. Also, after the tax is launched, business has the opportunity to catch the ear of Government only if it persuades an MSP to move a motion to annul the measure. Surely that cannot be the right way to treat businesses in Scotland.

It is interesting that the cabinet secretary said that he could not consult because he had to tell Parliament first. We know that he consulted on many measures in advance of the budget, across many different sectors, so we know that that is not the case. The fact is that he did not want to consult.

This arbitrary measure was spun like mad to make it seem that it was going to apply only to out-of-town retailers, but when the Economy, Energy and Tourism Committee highlighted the fact that it was not, the Government hurriedly had to change its case. It was presented first as making no difference to investment choices—the cabinet secretary has said that today—but it has also been presented as a way of reducing the number of out-of-town shopping areas and helping small businesses. It is interesting that the cabinet secretary struggled to give Bob Doris the answer that he wanted to hear on whether the levy will rebalance the number of jobs in large and small retailers. That is what is being said publicly, but the cabinet secretary confirmed today that that may not necessarily happen. I do not know what the Government's position is. Either the levy will rebalance large against small or it will not make any difference to investment opportunities.

This was presented first as simply a means of raising revenue—purely as a revenue-raising mechanism. Then it was claimed that it would fund social workers, transport, free prescriptions and free personal care—all of those things have been said over the past week. We were also told that it would help to freeze the council tax. Today, the cabinet secretary has given no evidence of how any of that can possibly be the case. On the BBC last week, the First Minister said that it would be the equivalent of hiring 1,000 nurses. Unless 1,000 nurses are going to be hired using the money and then fired next year, I am not sure how that can be at all credible.

There is no escaping the arbitrary nature of the levy, which is a real difficulty for us. The Government has chosen to tax one element, based on the cabinet secretary's judgment that large retail is appropriate for the levy but other forms of large business are not, simply to raise revenue. He said that large retailers have the broadest shoulders. However, he will know because he will have scrutinised the matter carefully that, in the past quarter, those with the broadest shoulders in terms of GDP were the utility companies. The cabinet secretary has tried to give the impression that putting a levy on large utility companies would not be equivalent to putting a tax on large retailers because Scottish Gas has different infrastructure across Scotland that is rated. Well, business rates apply to buildings, and that is exactly the same for Scottish Gas as it is for B&Q.

The chief executive of B&Q wrote to the committee, saying that the levy will result in

"an additional increase of £2.065m in our annual tax bill in Scotland, significantly adding to the operating costs of individual stores."

His submission continues:

"This comes on top of the substantial rates contribution we already make of £10.6m per year; approximately £365k per store."

The cabinet secretary believes that the 20 per cent increase in business tax that he has at his disposal will have no impact at all. If that is the case, why does the Government have a policy of reducing the corporation tax of that very same business? The Government wants a differential business taxation system in Scotland. It wants to reduce by a considerable amount the profits of Tesco, Morrisons and Sainsbury's in Scotland and have a greatly reduced corporation tax. I simply do not know what the Government's position is.

What the cabinet secretary said about Tesco bank is interesting. He feels that to impose the tax on Tesco bank would not be justified, but to impose it on a Tesco store would be. I cannot understand the rationale for that. I am certain that it has nothing to do with the fact that Alex Salmond opened the Tesco bank in Edinburgh—a building that is beyond the threshold, with a rateable value of more than £750,000, but which will not be affected by the levy.

We must all be very careful when scrutinising what the Government does with its tax policies for Scotland. That is not just what I say, because John Swinney used to say that about having a differential tax system. He has referred to that on many occasions and has sought to give the impression that, under the previous Administration, businesses paid a lot more for the four years before he took office. That is the impression that is always given, but it is not the case. The fact is that in 2009-10 businesses in Scotland paid more than £2 billion in rates for the first time ever. Regardless of what the cabinet secretary has said, they are forecast to keep above the £2 billion mark. He said today that he has forecasts at his disposal but he will not share them with the committee.

The cabinet secretary's point to anyone who dares to question his proposal is that the underlying threat of not having the £30 million is that social workers will be fired, the council tax freeze will not go ahead and there will be no investment in town centres and a number of other areas. However, the cabinet secretary himself has said that the projections in his budget documents have not always met the reality of the revenue that is raised; yet, we are expected to believe that this one is an absolutely perfect assumption that there is no dubiety about. I do not accept that.

I will move my motion and I ask the committee to agree that the measure should not progress so that, at last, there might be an opportunity for the Government to sit down with the business community and restore a relationship that is quite clearly significantly damaged.

I move,

That the Local Government and Communities Committee recommends that nothing further be done under the Non-Domestic Rates (Levying) (Scotland) (No.3) Regulations 2010 (SSI 2010/441).

12:30

The Convener: I will take bids from any other members who wish to take part in the debate. I see that Alasdair Morgan wishes to do so; he will be followed by Bob Doris.

Alasdair Morgan: I will start with the final point that was raised. It is bizarre to argue that because the tax that has been collected by the end of the year under a Government's taxation policy—whether income tax, business rates or whatever—will not be what was estimated at the beginning of the year, which is the only certainty in this, the Government cannot take into consideration a proposed change in the rate of that tax prior to the beginning of the year when it is deciding on its spending plans. Clearly, the Government must do that. It must make its plans on the assumption that it will get so much revenue and have so much expenditure based on that projected revenue.

I will deal with one or two other points that have been raised. The committee should bear in mind the effect on the Government's overall budget. I know that, in the debate on the regulations, the committee does not have the same obligation as other committees do in the budget process whereby, if they propose a cut or an increase, that must be balanced somehow. Nevertheless, the Government has taken this £30 million into account in its calculation on expenditure and, if we annul the regulations, that money will have to be found in another way or the Government's expenditure will have to be shaved by £30 million somewhere. Most of the demands that I hear in the chamber and elsewhere are for increased spending rather than less spending, so I just do not know where the £30 million will come from.

On consultation and regulatory impact assessment, what more would we have learned had we gone through that process? It clearly can be no surprise to any of us that the large stores and supermarkets that are potentially affected by the proposal say that it is the end of the world for them, just as they did about the national insurance increases that went through under the previous Government and which took effect at the beginning of this financial year, and about the national minimum wage. However, we did not have quite the same brouhaha among other members about those measures.

Even if we had consultation till kingdom come, we would not get detailed figures from the stores to show the basis on which they calculate the profitability or possibilities of expansion of any particular store, nor would we expect them to give us that information, because it is quite clearly confidential to them. They will simply say that any increased expenditure will affect their decisions, and I suppose that they are right to do so. However, I do not think that the argument is really about the lack of consultation.

On fairness, I wonder what is fair between different sectors. Are we saying that the current system is exactly fair? I know that it is the status quo, but I am not sure that it is exactly fair, and I know that many people in the small retail sector think that the game is stacked in favour of large retail and that small retail does not get a fair crack of the whip. Perhaps a profit-based taxation system might be a better way of dealing with the issue, but most parties that are represented in the Parliament do not want those powers to be available to the Scottish Parliament anyway.

With regard to the effect on staffing, supermarkets always bear down on costs. They bear down on the cost of staff and primary producers. I cannot imagine that the sharpness of the accountant's pen in the supermarket will get any sharper because of this measure. I do not think that it will make any substantial difference to the behaviour of supermarkets, and it pales into insignificance when compared to other measures that Government has introduced in the recent past, such as the national minimum wage, which has been mentioned, and, more important, the raising of the employer's national insurance contribution.

On the effect on supermarkets opening new stores, I would say that Scotland is pretty well supermarketed at the moment and is fairly well provided with out-of-town shopping opportunities. Particularly in current economic times, if any more large supermarkets of the type that would be affected by the levy—which are, presumably, the only ones that we are talking about—are to be opened, I do not think that they will increase overall consumption, spending or employment in Scotland. What they will do is transfer that spending and employment from other places in the economy, but they will not necessarily provide better employment, so that is not a reasonable argument either.

Many of the arguments against the proposals do not stand up to examination.

Bob Doris: Mr Purvis mentioned the letter that he received from the chief executive of B&Q. That that letter should have been written is hardly surprising. I fully accept that large retailers do not want to pay more taxes. Who does? I do not think that we can read too much into that.

From what I have heard about the difference that the proposal will make to large retailers—it will result in them paying 2.3 per cent of their turnover rather than 2 per cent—I believe that the additional levy is at the margins of their profit and turnover. Perhaps some members have fallen victim to being overly persuaded by corporate lobbying and have overlooked the hard facts. The hard facts are that there has been a collapse in the small retail sector in the past 10 years; that, even though there have been increases in taxes over that period, Tesco, Asda, Sainsbury's and the other large retailers have continued to grow in size and employ more people; and that, as John Wilson said, even though large retailers opposed the introduction of the minimum wage on the ground that jobs would be lost, that did not happen. We have to consider the hard facts rather than the understandable self-interest of large retailers.

On the basis that the cabinet secretary has said that the proposals might become a permanent fixture of revenue for the Parliament, I note that he agreed to review and analyse the impact of the £30 million levy once it has been collected. That will allow us to engage in forward planning on how the sector is best taxed.

Mr Purvis mentioned the Tesco bank and other large retailers' personal finance services. The Parliament has a narrow tax base from which to raise revenue, but there is a wide range of taxes that impact on the profitability of Asda, B&Q, Tesco and other large supermarkets. Corporation tax has been mentioned, but we also have VAT, national insurance and petrol prices. Very few of those powers are at our disposal in the Parliament. I am keen to know Mr Purvis's plans for levying further taxes across a wider range of institutions in Scotland. I look forward to hearing about that.

The crux of the matter is that, if the regulations are annulled, we can be sure that £30 million of additional money will not be raised. Mr Swinney has said that he will still give that money to local authorities, but that is £30 million less to be spent by any future Scottish Government. To illustrate what that means, I point out that local authorities and the Convention of Scottish Local Authorities rightly asked the Scottish Government for additional revenue for their winter roads budget because of the recent severe weather. I understand that £15 million was given to Scotland's local authorities. That is one example. If the money is not raised and the Parliament and Government forgo the income, the Government will be able to do less to help Scotland's local authorities and less across its spending responsibilities.

As I said last week—I have heard nothing today to change my mind—the large retailers have significantly overegged their case. I will vote today on the side of small retailers, hard-pressed council tax payers and local services throughout Scotland. I will not support the motion to annul.

Mary Mulligan: The cabinet secretary started at a disadvantage, because he did not carry out an impact assessment on which he could base his oft-repeated views. Unfortunately, if views are presented without an evidence base, that makes it difficult when the committee is asked to consider those views as well as the views of the many organisations that have lobbied the committee. I agree totally that those with the broadest shoulders should bear the greatest burden. As Jeremy Purvis said, it is not only retailers that have made profits—other businesses have done so, too, yet they are not being asked to share that burden. Including them might have given more justification to the cabinet secretary's arguments.

In all our discussions on the issue, it has not been possible to say that taxing the larger retailers would benefit smaller retailers. I am one of those in the Parliament who has frequently argued in favour of smaller retailers and in favour of our town centres, but nothing that I have heard has convinced me that the tax will assist them. I am therefore not convinced on that, either, despite the cabinet secretary's implication when he announced the measure that it was about out of town versus town centre, although he later qualified that for us.

I might have been persuaded if I believed that the tax would come out of the profits of the major retail companies, but my big concern is that it will come not out of their profits but out of funding for new stores and extensions to stores, hence affecting the possibility of increased job opportunities. We should all be focused on addressing the requirement for additional jobs, so we have to consider that risk. That point probably convinces me to support the annulment of the regulations.

We have heard that it is to be expected that companies would cry wolf. We have had instances of that previously in relation to measures such as the minimum wage and changes to national insurance contributions. We have been told that measures would have a detrimental effect when, in fact, the companies got over that. However, that focuses on the company, whereas one of the clear points that have been made is that the levy will affect individual stores, not companies. Despite the tax, I am sure that the likes of Tesco and John Lewis will continue to make big profits, but will they continue to open stores in Maryhill, as Patricia Ferguson said, or in other parts of Scotland? An individual store could make a difference to a local community and that is the risk that is most troubling today.

On a number of occasions, the cabinet secretary has said that the charge is marginal and will not have a big impact. He might want to tell us what percentage of the overall Scottish Government budget the £30 million is and whether it is marginal and will not have the impact that Bob Doris and others have suggested. Like everyone else's, my focus is on sustaining business to ensure that we provide more jobs for people throughout Scotland when unemployment is at a rate that none of us wants to see. On the balance of probabilities, and because I am not able to get from the cabinet secretary the information necessary to reassure me that the levy will not have a detrimental effect on communities and the perception of how Scotland supports successful business, I can only support the motion to annul.

12:45

Alex Johnstone: I come from Stonehaven, which is one of the larger towns in Scotland that have no presence from any of the four major supermarket chains. I am lucky because I can jump in the car and go wherever I want to do my shopping. Not everyone is in that position. There are people in Stonehaven who cannot afford to run a car and possibly larger numbers of elderly people who are no longer able to run a car. I have spoken to a number of them in the run-up to today's decision and they feel that, in the current retail environment in their town, they are being held to ransom at the checkout. Competition would benefit those people.

I am most concerned about the levy because future investment decisions will be affected by the imposition of a tax that, perhaps superficially, appears to have been levied against those that make the biggest profits simply because they make the biggest profits. In the longer term, I want to see a Scotland that is attractive to business and inward investment. Targeting the large retailers with an additional levy sends out the wrong message. I am genuinely worried that, by moving down this road and targeting those that the Government might have thought we would be least likely to defend, we are doing the wrong thing to create future economic growth in Scotland. We are doing the wrong thing if we want to increase the revenue that is generated in Scotland in future. The right thing to do is to ensure that retailers that choose to operate in Scotland are not charged disproportionately on aspects of their business compared with what they face in England.

During the debate, members have mentioned the minimum wage and national insurance as additional costs that were levied against large companies, but those were implemented evenly across the whole UK. They were not implemented in Scotland alone. That is why the proposed retail supplement concerns me more and why I will vote for the motion to annul.

The Convener: Does any other member wish to contribute to the debate?

I will make a plea for the committee. This debate is part of the process not the end of it. I am just a bit worried about what some people are saying. The motion to annul the regulations is a legitimate part of the process and I look forward to hearing what the cabinet secretary has to say to indicate that he has taken on board some of the concerns that have been expressed in the evidence that we have heard and the written evidence that has been submitted. If he does not do that, I will support the motion to annul.

At this point, I invite the cabinet secretary to respond to the debate and I will give Jeremy Purvis the opportunity to wind up after that.

John Swinney: Thank you, convener. I am grateful to the committee for its consideration of the issue today. I will begin with the point that Mr Purvis and Mary Mulligan raised about how the levy was set out. I reiterate what I said to Parliament on 17 November:

> "I intend to secure additional resources in 2011-12 by increasing the business rates that are paid by the largest retail properties, including supermarkets and out-of-town retail parks."—[*Official Report*, 17 November 2010; c 30463.]

I do not think that I could have been any clearer about the extent to which the levy was being targeted in that way. What I said certainly should not have created the impression that anyone other than the largest retail properties were affected and that that would include supermarkets and out-of-town retail parks. Those were the words that I used in Parliament on 17 November.

The second point that I would like to raise is about whether having a tax like this is a competitive disadvantage to Scotland in the context of supermarket developments in Scotland. A representative of Sainsbury's, Justin King, took part in a BBC breakfast news broadcast dealing with members of the public and a caller from Inverness called in, ostensibly to make a plea for there to be a Sainsbury's in Inverness. The Sainsbury's representative said in response:

> "Scotland is a part of the country, along with parts of the north, Wales and the west, where our market share is very low and that's where we're aiming to add a lot more stores. In fact, we have added 12 new stores in Scotland in the last 12 months or so; over 1,000 jobs created in Scotland as a result of that. So we'd love to be in Inverness and, indeed, many other towns in Scotland and we're working on that."

That was on 12 January 2011, when this debate was at its highest. That would suggest to me that, away from the intense consideration of these regulations, the development plans and perspective of the large supermarkets are that, where they see market opportunities, they will continue to pursue them. I do not think that that will be any different as a consequence of the regulations that we are discussing today.

One other point in that respect is about the development of supermarkets over the past number of years. Mr Morgan made the point that there has been substantial growth in supermarkets in recent years, which is true. That has taken place at a time when business rates in Scotland were for a substantial amount of the period higher than those in the rest of the United Kingdom. From 2000-01 until 2007-08, when the position was levelled, business rates in Scotland were at a higher poundage than in England. Since then, we have pegged the poundage at the English rate, providing, compared with the methodology that was used beforehand, a business rates benefit to companies in Scotland, which will be shared by supermarkets. There is a competitive advantage built into our business rates regime already, which is to the benefit of individual supermarkets into the bargain.

I do not want to detain the committee longer than I need to, because the committee has heard a great deal from me this morning. There have been many examples of measures of this character being met with a howl of protest and predictions of disaster that do not materialise. The committee and the Parliament have to be sanguine about these considerations because, in a variety of areas, we are facing difficult decisions. The point has been made that it was said that the increased national insurance contributions and the minimum wage would bring about disaster, but they have not done so and I do not believe that that will be the case with this proposition either.

Mary Mulligan said that it would have been better if I had undertaken an impact assessment. We have to be careful about our assessment of these points. When bringing forward a measure that affects only 0.1 per cent of the business property base in Scotland, we must be careful to take a decision that is proportionate and appropriate. That is the reason for the approach that I took to the impact assessment.

I turn to the issue of consultation. The draft budget gives people the opportunity to engage with the Government on issues about which they are concerned. I have plenty of discussions with people about the contents of the budget and what it involves; I have had discussions on this question into the bargain.

Members suggested that they might be happier about the levy if they could see what it was contributing to. The point that I must make to the committee relates not just to the levy but to the wider budget that the Parliament will consider this afternoon. I have had to remove from public expenditure £1.3 billion in one financial year. That is the largest sum of money that has had to be taken out of public expenditure in one go in recent years. In the context of that set of decisions, I have opted to increase revenue by a measure of £30 million, which I consider to be a contributor to addressing the circumstances that we face. That £30 million is material to the budget; we have had illustrations of its equivalent cost. Our ability to sustain the small business bonus scheme, for example, is affected by our overall ability to produce a budget that balances, despite the fact that we will lose £1.3 billion in revenue in the next financial year.

Members need to be conscious of the fact that annulling the instrument would have an impact of £30 million on our budget and would mean that certain things that we wanted to fund could not be funded. We would have to change those provisions. As Mr Morgan fairly pointed out, we are not always inundated with suggestions about ways of not spending money; rather, we are pushed to spend more money in certain ways. I have gone through a set of difficult decisions to reduce public expenditure. However, if we are short in the budget by £30 million, we will have to arrive at a further set of decisions, to which Parliament will have to be party.

Key issues have been raised in relation to the retail sector. I continue to believe that the sector is a strongly profitable and successful sector of the economy that has the profitability and profit position in the current economic climate to sustain the additional levy that is being applied. I consider that to be the case because, in the economic difficulties that we face, when people are making choices about many of the things that they can and cannot afford, they will continue to undertake the retail practices that they undertook in the past. I hear all this angst about a £30 million levy, but I find it difficult to compare that with the VAT increase of £1 billion with which householders in our country are wrestling.

Mr Purvis opened his argument for the annulment of the order by saying that yesterday’s GDP figures should give any Government pause for thought. Believe you me, I hope that the United Kingdom Government was listening to him, because this is definitely a moment for thought. The figures are an indication that the type of spending decisions that I have had to confront in Scotland in order to reduce public expenditure by £1.3 billion may not be in the best interests of the citizens whom we represent in the Parliament; I certainly do not believe that they are. I cannot believe that adding to that problem by taking another £30 million out of public expenditure will help the process. I ask members to consider that point seriously when coming to a conclusion.

I recognise that this issue causes angst and am certainly prepared to consider further suggestions about how in future we might be able to take action that addresses some of the concerns that have been raised in evidence to the committee. However, I point out that the budget that we will consider this afternoon is predicated on raising £30 million from this levy and, if we cannot generate that money in this way, we will have to examine how we might reduce the other commitments proposed in the budget. I cannot believe that that is the right choice, given the challenging UK GDP figures that were announced yesterday and the major public expenditure challenge that this Parliament faces.

I therefore ask the committee to reject the motion to annul the order.

13:00

The Convener: I call Jeremy Purvis to wind up.

Jeremy Purvis: I will try to be brief, convener.

I believe that any Government in any part of the UK that seeks to introduce a new tax on jobs and growth should pause for a moment. However, it is obvious that that is not going to happen; indeed, the cabinet secretary has confirmed today that he wants the levy to become part of the permanent structure of rates in Scotland. How can he reflect on some of the concerns that have been raised if he wants to lock in the measure? Moreover, the measure itself cannot be amended because of choices that the cabinet secretary made last autumn. As a result, I believe that the proposal must be taken off the table and I hope that the committee supports my motion in that respect.

As for the budget element, the cabinet secretary stated very clearly on the record that, during his term, the rates pot has run a deficit. I might have missed it, but I was not aware of his having raised the issue before, particularly at a time when the council tax freeze and the small business bonus have been under threat and social workers and nurses face the sack.

John Swinney said that the people who believe that the levy will change behaviour in the retail sector in Scotland are wrong. I assume that he was addressing Alasdair Morgan's point that the primary effect will be displacement of consumption for consumers in Scotland and that he was responding to Bob Doris, who said that the levy will help to address the collapse in small retail businesses and rebalance the trend. However, the cabinet secretary made it clear that what was claimed by both members will not be the case.

Bob Doris also mentioned the Parliament's tax powers; I think that he was referring to corporation tax. The cabinet secretary confirmed that the Scottish National Party would be able to reduce the burden on Tesco, Sainsbury's, Morrisons and the other massive companies that it talks about by 30 per cent if it could cut corporation tax by 10 per cent. I say to Mr Doris that I am not sure how that would rebalance the current situation, but the fact is that I simply do not know what the Government's position is. The cabinet secretary has made it very clear, though, that the £30 million will not be ring fenced, which means that, despite comments in various press releases that have been issued over the past week, many of which have been directed at me, the money will not, as Christine Grahame has suggested, be used to support town centres; it will not, as Joe FitzPatrick has suggested, ease pensioners' ability to pay council tax; and rejecting this measure will not, as Stuart McMillan and Bob Doris have suggested, lead to an increase in council tax. Last week, the First Minister said that it would pay for 1,000 nurses and we have just heard from Mr Doris that it will cover the £15 million winter pressure costs. However, according to the cabinet secretary, none of those statements can be accurate because none of the money has been ring fenced and it will have no impact in the areas in which it has been claimed that it will have an impact.

However, we at least know that one statement on the SNP's website is not true. I am not sure whether the cabinet secretary has approved the protect our progress campaign, but its webpage says:

> "Tory, Lib Dem and Labour MSPs tried to take £30 million out of Scotland's public services by opposing our plan to increase the tax rate for just 0.1% of Scottish businesses".

The cabinet secretary has confirmed today that that is not the case because that 0.1 per cent is of all rateable properties not, as the SNP website claims, 0.1 per cent of Scottish businesses.

I do not know what Government policy lies behind the levy, but I do know that it is causing damage. It is damaging Scotland's reputation and I know from a constituent of mine working in IKEA in Midlothian and indeed from others working in retail that, without question, it is causing concern. That is why the Government should pause. I have heard nothing from the Government that changes my view and I hope that the committee supports my motion that nothing further be done with the regulations.

The Convener: The question is, that motion S3M-7629, in the name of Jeremy Purvis, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Duncan McNeil (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Tolson, Jim (Dunfermline West) (LD)

Against

Doris, Bob (Glasgow) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Motion agreed to,

That the Local Government and Communities Committee recommends that nothing further be done under the Non-Domestic Rates (Levying) (Scotland) (No.3) Regulations 2010 (SSI 2010/441).

Meeting closed at 13:06.

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