



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SCOTLAND BILL COMMITTEE

Tuesday 25 January 2011

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2011

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by email to:  
[licensing@ogps.gov.uk](mailto:licensing@ogps.gov.uk).

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by  
RR Donnelley.

---

**Tuesday 25 January 2011**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>253</b>
<b>SCOTLAND BILL .....</b>	<b>254</b>

---

**SCOTLAND BILL COMMITTEE**  
**3<sup>rd</sup> Meeting 2011, Session 3**

**CONVENER**

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

**DEPUTY CONVENER**

\*Brian Adam (Aberdeen North) (SNP)

**COMMITTEE MEMBERS**

\*Robert Brown (Glasgow) (LD)

\*Tricia Marwick (Central Fife) (SNP)

\*David McLetchie (Edinburgh Pentlands) (Con)

\*Peter Peacock (Highlands and Islands) (Lab)

**COMMITTEE SUBSTITUTES**

Michael Matheson (Falkirk West) (SNP)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

John Aldridge

Derek Allen (Institute of Chartered Accountants of Scotland)

David Bennett (Law Society of Scotland and R3)

Bruce Cartwright (Institute of Chartered Accountants of Scotland)

Isobel d'Inverno (Law Society of Scotland)

Evlynne Gilvarry (General Dental Council)

Deborah Lovell (Law Society of Scotland)

Joseph McIntyre

Duncan Rudkin (General Pharmaceutical Council)

Marc Seale (Health Professions Council)

Ben Thomson (Reform Scotland)

John Whiting (Chartered Institute of Taxation)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

Committee Room 5



## Scottish Parliament

### Scotland Bill Committee

*Tuesday 25 January 2011*

[The Convener *opened the meeting at 14:18*]

### Decision on Taking Business in Private

**The Convener (Ms Wendy Alexander):** Good afternoon. Welcome to the third meeting of the Scotland Bill Committee in 2011. I begin with the usual invitation to people to turn off mobile phones, BlackBerry devices and other electronic devices. We have received no apologies; David McLetchie has been detained at a meeting of the Parliamentary Bureau but will join us shortly. No MSPs other than committee members are in attendance today.

Does the committee agree to take item 3 in private?

**Members** *indicated agreement.*

## Scotland Bill

14:18

**The Convener:** The next item on our agenda is to continue to take evidence as part of our scrutiny of the Scotland Bill and the relevant legislative consent memoranda.

We have a huge territory to cover today. Before we begin, I will share with witnesses and others who are with us how we intend to approach it. At first, it looks like a rather unusual mix. We are trying to explore the re-reservation of powers, the regulation of insolvency and some additional questions relating to the practicalities of administering the proposed income tax powers. Our first panel will address those issues; I will come back to it in a moment.

The second panel is much more self-explanatory. It consists of Ben Thomson, who will set out his views and those of Reform Scotland on the Scotland Bill.

Our final panel will give evidence on the practicalities for business and Government of implementing the financial provisions in the bill, including those on stamp duty land tax.

I return to our first panel. We hope to start with the Institute of Chartered Accountants of Scotland on re-reservation of insolvency. We will also take evidence from ICAS and the Law Society of Scotland on the Scottish income tax power. We will then discuss re-reserving regulation with our colleagues from the health professions.

I welcome everyone to the meeting. I invite people to introduce themselves, to say what organisation they come from and to make brief opening remarks.

**David Bennett (Law Society of Scotland and R3):** I represent the Law Society of Scotland and R3—the insolvency practitioners body. I will deal exclusively with insolvency and not with income tax, dentists or anything like that.

**Isobel d’Inverno (Law Society of Scotland):** I am the convener of the Law Society of Scotland’s tax law sub-committee. I am here to talk about the practicalities of the income tax proposals.

**Derek Allen (Institute of Chartered Accountants of Scotland):** I am director of taxation at the Institute of Chartered Accountants of Scotland. I am here to talk about the tax proposals and definitely not about insolvency.

**Bruce Cartwright (Institute of Chartered Accountants of Scotland):** Well described.

**The Convener:** Very helpful.

**Bruce Cartwright:** I am the chairman of ICAS's technical policy board and the former chairman of its insolvency committee. My day job is being a partner in PricewaterhouseCoopers and an insolvency practitioner, so I will stick to insolvency.

**Marc Seale (Health Professions Council):** Good afternoon. I am the Health Professions Council's chief executive and I will stick to the regulation of health professionals.

**Joseph McIntyre:** Good afternoon. I am the director of dental technology training at NHS Education for Scotland, but I am here to represent dental technicians and not NES or myself.

**Duncan Rudkin (General Pharmaceutical Council):** Good afternoon. I am the General Pharmaceutical Council's chief executive and registrar. We regulate pharmacists, pharmacy technicians and pharmacy premises.

**Evlynne Gilvarry (General Dental Council):** Good afternoon. I am the General Dental Council's chief executive and registrar. I am here to talk about the regulation of dental care professionals.

**The Convener:** It is very helpful that everyone is so clear about their expertise. I thank everyone who submitted evidence. The detailed nature of much of the written evidence will help the committee. It is important to use today's session to put on the record one or two matters that are in your evidence.

We begin with insolvency.

**Robert Brown (Glasgow) (LD):** I thank the Law Society and ICAS for their helpful evidence on insolvency and tax matters. Clause 12 of the bill proposes the re-reservation of corporate insolvency. I direct my questions to Mr Cartwright and perhaps Mr Bennett. You will be aware that the Scottish Government has responded that it has several proposals to try to disentangle some of the processes and deal with issues. Will you put on record your organisations' views on the re-reservation proposal? Will you give us a feel for some of the practical difficulties that have been caused? What is your comment on the Scottish Government's response that all the matters can be dealt with under current devolution arrangements?

**Bruce Cartwright:** The issue probably arose as much as five years ago for us. We are talking in practical terms; we have not disagreed as a profession or with the legislators about what the rules should say. Over several years, we have found that we are not keeping pace with rule changes that have been made in England and Wales. Such changes have not been made at the same pace here. For administrative reasons more than anything else, we are being left behind.

I qualify that by saying that the rules—the mechanism by which we apply the law—are

important. Over the years, we have been consulted by the Insolvency Service in England and Wales, where fairly quick changes have happened. It is frustrating when we are left behind. The majority of the issue is purely practical and comes down to the mechanics of how we go about our daily jobs—it does not affect the fundamental principles of case law or the separate impact of Scottish legal decisions.

I will give a simple example that is on my desk now. It relates to the Globespan case, which has been going for about a year. Much of the administration is now done. We are about to switch that case—and have switched some of it—into liquidation.

The reason why we are switching from administration into liquidation is technical, but by historic fate, one of the two main Globespan companies is English registered and the other is Scottish registered. The English-registered one happens to have the bulk of the creditors—just short of 50,000; the Scottish one has something like 12,000. During the course of the administration, we managed to get court direction and jump ahead of the legislation, which means that we can do everything by website. You can imagine the saving from communicating to 50,000 to 60,000 people by a website. We estimate that in the first month we saved about £400,000 in bureaucracy—in administrative costs.

Moving on to the legislation, the rules have been changed in England and Wales already to reflect the fact that when someone goes into liquidation, they can continue to use the website for communication. For whatever reason, when the rules were brought in in Scotland last year, that facility was omitted. We are in the rather absurd position that, for the same company—or rather, group—in England and Wales we have gone smoothly into communicating with the creditors with no discernible change, but technically if the Scottish-registered company goes into liquidation, we would have to start writing to all the creditors, because the rule change has not happened in Scotland, although it could have been put through simply.

The reality is that I do not think we will have to write to the creditors; we will apply to the court to give us direction to continue with the website. Our argument is that in such a simple case, we should not have to apply to court. That practice is running in one of my cases on one half of my desk, but not in a case on the other half, and there is no discernible difference in what we are trying to achieve.

**Robert Brown:** Is the cross-border element a major feature of corporate insolvency situations that we should be aware of? Individuals do not move about quite so much as corporations.

**Bruce Cartwright:** Yes, but it is not just about cross-border situations such as Globespan. Even in a simple liquidation in Scotland, the fundamental aim of winding up a company is that of getting the funds back to the people who are owed the money in the most efficient way. It does not have to be a cross-border situation; it could be a simple liquidation of a business that is based only in Edinburgh. The principle of making the liquidation as efficient and clean as possible, with less court direction and less bureaucracy, has to be right. That is the principle in England and Wales, and it should be the same in Scotland.

**Robert Brown:** The Scottish Government appears to argue that, albeit that there have been some deficiencies in the past, the matter can be disentangled adequately using the devolved arrangements. Do you have a view on that?

**Bruce Cartwright:** Some of it can be disentangled. I will hand over to David Bennett on the primary legislation, but there is an argument that the ability to legislate should be retained here anyway.

In relation to the rules, the question is, why disentangle all that when the message is exactly the same? If the message is stated once, let us have it once. We have always consulted the Insolvency Service well, both pre and post devolution. The Insolvency Service has always consulted us on what is happening in England and Wales and more widely.

All we are saying is that although the person who chairs the consultation is based in a certain place, that will not change the rules, so why have two consultations to achieve the same aims?

**David Bennett:** I will not repeat what Bruce Cartwright has said, because the Law Society agrees with his point of view. As I said, I am also here to speak for R3, the insolvency practitioners body. It could not find anyone to sit in this chair for it, so it asked me to do so. The two bodies say exactly the same thing, in line with what Bruce Cartwright has been saying.

The Scottish insolvency rules have not been looked at in any significant way since they were made in 1986. They have not been looked at to take on board the implications of what one might call the devolution settlement in 1998-99. That gives rise to the kind of problems that Bruce Cartwright has outlined. Indeed, in the Law Society's submission we point to the problem that arises from the change in the Scottish insolvency rules, which came into effect last April. No change in the Scottish liquidation rules has been made to mirror those.

The bill provides for paving provisions to enable—in concept—the Insolvency Service to make rules applicable to Scottish liquidations to

overcome what Bruce Cartwright has just been talking about.

I speak for both bodies when I say that we do not want to make Scots law on liquidation subservient to Westminster. It was not before 1998 and it does not need to be now. What we are concerned about is getting the rules fit for purpose so that they are efficient, do not cause expense to Scottish creditors or creditors of Scottish companies, and are as simple as possible, although that seems quite hard work.

The current situation, whereby the rules are divided into rules for which the Scottish Government has responsibility—the Accountant in Bankruptcy is the relevant official—rules for which the Insolvency Service and Westminster have responsibility, and rules for which both Governments have responsibility and at which they poke away without apparently or necessarily consulting each other, is a recipe for confusion and expense and we would like it to end.

14:30

Re-reserving the power to make the procedural rules—not the substantive law stuff—would at least put the issue in the hands of the Insolvency Service, which has demonstrated the ability and the willingness to tackle the problem and to listen to Scottish representation over the years, as Bruce Cartwright said.

We have asked the Accountant in Bankruptcy what it intends to do about the Scottish rules, as I think that the Insolvency Service has done. Various things have been said, but nothing has emerged that gives us any confidence that the department has the resources to tackle what is a highly technical problem, which requires quite a bit of time and careful understanding but which is resolvable, whether it is tackled in Westminster or tackled partly in Westminster and partly here, provided that the relevant parties confer, consult and ensure that they are singing from the same hymn sheet.

**Robert Brown:** Thank you. That was helpful.

**Brian Adam (Aberdeen North) (SNP):** The witnesses have not said that they want the power to be re-reserved. I am paraphrasing what David Bennett said, but I think that he identified problems to do with differences between the rules and said that he is looking for a mechanism whereby the rules can be updated and correlated. Does that necessarily require re-reservation, as is envisaged in the bill?

**David Bennett:** It does not necessarily require re-reservation, provided that the Accountant in Bankruptcy is given instructions to work with the

Insolvency Service and the resources to do so. We are talking about no more than technicalities.

**Brian Adam:** The proposals seem to be a sledgehammer to crack a nut.

**David Bennett:** The nut has to be cracked.

**Bruce Cartwright:** I would go further and say that, based on the experience of the past five or 10 years, the power needs to be re-reserved, because we need to have confidence that someone is going to get on and do the work. Also, there is no history of corporate change at the Accountant in Bankruptcy, which is a personal bankruptcy body.

**Brian Adam:** Is it not true that the Scottish Law Commission, which is charged with the responsibility for suggesting how the law could be updated, does not share the view that it is necessary to re-reserve the power?

**Bruce Cartwright:** It is not for us to say what the SLC's view is. I am a practitioner who deals with the issue every day, and I can tell you, from the coalface, that the problems and gaps that exist make it harder for us to do our job. If the power was re-reserved and the issue was consulted on and tackled in one place, I am confident that we would be able to do our job more easily.

**Brian Adam:** You are happy for oversight of such matters to be passed to Westminster and for there to be no route whereby practitioners in Scotland, who must work within Scots law, which is different—even in the matters that we are talking about—can influence the changes that are required.

**Bruce Cartwright:** I do not understand why we would not have that influence. We deal in Scots law every day and are familiar with Scots law, although we deal with English and Scottish-registered companies. Whether we consult with someone at the Accountant in Bankruptcy or someone in the Insolvency Service, the level of consultation does not change and the addendum on looking at the position in Scots law does not change. We are saying that we would have an efficient process, where—

**Brian Adam:** What would change is that the people at Westminster would not be familiar with Scots law. That expertise lies in Scotland. Issues to do with the rules and how the systems fit together would be considered from a perspective that did not include Scots law.

**David Bennett:** With respect, that was the position before 1998 and it caused no fundamental problems. The fact is that the Insolvency Service in England knows that Scots law must be catered for and consults the relevant people up here. There was no problem with ensuring that the rules fitted Scots law in the past, so we do not expect

that the Insolvency Service would have a problem with consulting appropriately and ensuring that the Scottish arrangements fitted Scots law.

**The Convener:** I am mindful of the time and the amount of business that we must get through. We have had a helpful airing of the issues.

Tricia Marwick might want to pick up on the point about registered social landlords.

**Tricia Marwick (Central Fife) (SNP):** Before I do so, I will return to some of the technicalities that we have been discussing. Since 1999, it has always been possible to have a Sewel motion or legislative consent motion when bills have been going through Westminster so that it can legislate in areas of Scottish Parliament competence. Why have there not been any requests to do that in this area? If the mechanism is there, why should it not be used?

**David Bennett:** The evidence is that it was not used in the case of the Scottish insolvency rules. We asked the Insolvency Service if it had consulted the Accountant in Bankruptcy, with a view to establishing whether the Scottish rules dealing with liquidations could be amended. We could see that only English liquidations were being dealt with at that point.

The mechanism for such an amendment could be a Scottish statutory instrument or a Sewel motion within an English measure. The result is what matters to us. We explored those possibilities with the relevant authorities, and they did not do anything—they did not take the hint. That is our evidence that the arrangements are not working at the moment. There is obviously more than one way to make an arrangement work, but the current arrangement does not work.

**Tricia Marwick:** I turn now to the issue of RSLs. Should RSLs be included in the Scotland Bill proposals? Do you have a view?

**David Bennett:** I am not familiar with registered social landlords. I have looked up what appears to be a registered social landlord, but that is not my practical scene. I have no views.

**Tricia Marwick:** Do you have a view, Mr Cartwright?

**Bruce Cartwright:** I am sorry, but this is not an area on which I have a view, as I do not have a strong knowledge of it.

**Tricia Marwick:** It is of concern to the committee that, although we have a system of registering social landlords in Scotland, clause 12 would reserve responsibility for insolvency to Westminster. The Scottish Parliament has particular responsibility in this area, as was recently exercised under the Housing (Scotland) Act 2010. I cannot press you on the matter if you



have no view, but we need to get somebody before us who has a view, as it is a very important aspect of the bill.

**The Convener:** We have asked the Scottish Federation of Housing Associations to provide written evidence on the subject. We should return to the matter when that happens.

**Robert Brown:** The Law Society has members who work for housing associations, among others, on stock transfer and various other matters. Presumably, they have some feel for the issue. Would it be possible for Mr Bennett to make inquiries among his colleagues in that regard, to get a legal view of the situation?

**David Bennett:** I will see whether my boss in the Law Society, Michael Clancy, will pick up on that. It is not my scene. The relevant modification to the relevant schedule to the Scotland Act 1998 seems to suggest that the exception to the reservation relates to social landlords, industrial and provident societies or similar bodies,

“but only in so far as they relate to a moratorium on the disposal of property”.

That is not a comprehensive exception to the reservation. That is as far as I have been able to take the matter. It does not seem to be a straightforward issue on the face of the relevant regulations.

**The Convener:** That was helpful; we will also talk to the SFHA.

I am very mindful of the time, so we will move on to issues surrounding the Scottish income tax power, the definition of “Scottish taxpayer” and so on.

**Peter Peacock (Highlands and Islands) (Lab):** Mr Allen, ICAS has helpfully given detailed evidence about the definition of “Scottish taxpayer”, and it has highlighted a number of concerns about how the bill currently proposes to deal with that. You have provided a lot of written evidence on the matter, and there is no need to go over all of it, but could you say a bit about that?

**Derek Allen:** We are an apolitical organisation—our membership covers the whole spectrum of politics. We have been concentrating purely on the technicalities. The representations that we have made are designed to help keep the cost of compliance down and, importantly, to give certainty to taxpayers. We have tried, in particular, to improve the definition of who is a Scottish taxpayer.

One of our concerns is that, if we look around the world, there are many other jurisdictions that have differential state taxation—Canada and Australia are obvious ones—but they have a reporting mechanism whereby every taxpayer is

required to report annually. In Scotland, we have a selective self-assessment regime and we do not have the same information-gathering powers.

We suggest that the building base should be the definition of residence. There is quite a lot of evidence from the courts—such as *Gaines Cooper v HMRC* and the *Davies* case—that the UK definition of residence is creaking at the seams. It has relied on concessionary treatment, but that treatment has changed. In December 2010, HMRC published 86 pages of updated guidance in the form of HMRC6, and it is already a complicated area. We suggest that, if we begin now, we can create a statutory definition of residence that will give taxpayers greater certainty and help to define who is a Scottish taxpayer, because that is the next step up on the building blocks. We should do that with a view to creating a mechanism that will keep the costs down and create more certainty.

**Peter Peacock:** From what you have said, although you have comments about and some criticism of the proposed way of dealing with the problem, you do not think that it is insurmountable—

**Derek Allen:** Exactly.

**Peter Peacock:** —provided that the Government takes the right approach. You state in your written evidence:

“We recommend that the definition ... is reconsidered and a statutory definition introduced”.

Do you believe that that is entirely achievable given your understanding of the system?

**Derek Allen:** Yes. It will be a relatively complex matter, but if we begin now, we can certainly create a statutory definition of residence and improve on what is suggested in the bill.

**Peter Peacock:** You say that we should begin now. When would you expect the work to finish? How long do you think that it would take?

**Derek Allen:** That probably depends on the level of political debate, but I would not see any difficulty in creating a working statutory definition of residence within, say, a 12-month period if the political—

**Peter Peacock:** So the bill would have to provide for that dialogue. An order-making power or some other power would have to be inserted into the bill at Westminster to allow that dialogue to happen and agreement to be reached. Is that essentially what you are saying?

**Derek Allen:** That would be preferable. My concern is that the bill as it stands would enshrine a definition of “Scottish taxpayer” that would cause problems in the future.

**Brian Adam:** Would that have to be done in the context of having redefined what a UK taxpayer is in the first instance and then forming a definition of “Scottish taxpayer”? Some of the problems that you highlight in your submission do not relate only to the application of a Scottish income tax rate; they also highlight difficulties that exist in UK tax law.

**Derek Allen:** It would be preferable to get the foundation correct, which will require UK residence to be carefully defined, and then build on that using the definition of “Scottish taxpayer”.

**Isobel d’Inverno:** The Law Society agrees that the definition in the bill would be complicated for an ordinary person to understand. It would be much better if there was a simpler definition that anybody could pick up and read. That would be a first for tax legislation, obviously, but it would be a good thing to aspire to. There is already a leaning towards a statutory definition of residence in UK taxation, so perhaps the two things could go hand in hand.

**Peter Peacock:** Have you given sufficient thought to what would be a suitable amendment to the bill to allow what you seek to be achieved, or have you not got to that point?

**Isobel d’Inverno:** Not as such, but we could easily do so.

**Peter Peacock:** I am sure that the Law Society will do so, given past experience.

**Brian Adam:** Your written submission highlights people who work on oil rigs. Tens of thousands of folk work offshore and, although they clearly pass through Scotland to reach oil rigs, they are not necessarily normally resident in Scotland. How can that be dealt with? It would be easy enough to construct a situation where not only the taxation on the wealth that is generated as a result of work offshore would go to Westminster but the income tax and the various other taxes as well.

How do you suggest that that is tackled? Would people working on the UK continental shelf have to be defined as Scottish taxpayers, UK taxpayers or some other, special breed?

14:45

**Isobel d’Inverno:** That is a complicated question, and there are many such complicated cases. There are many people who work in London and who live in Scotland, coming back at the weekend. The important thing is probably to have a definition that seems fair to most people, and which does not seem counterintuitive. As it is presently worded, the bill provides for no split-year treatment. Someone who lives in Scotland for part of the year and who moves to England might think that they are a Scottish taxpayer for the first part of

the year and an English one for the second part, but the bill would not necessarily have that effect. It is important to have a care for people’s ability to guess what sort of taxpayer they would be, on the basis of their circumstances, and for that to follow what they might naturally think, instead of having a complicated tax rule that has an odd effect.

**Brian Adam:** How do you think that the various tax reliefs that currently exist would be handled were a Scottish income tax rate to be set? I am talking about gift aid or the reliefs that are given on pension contributions, for example. How would they work when set against the Scottish tax rate? Are there no such additional complications?

**Derek Allen:** There must inevitably be a perception of what is fair and what is not. If a differential rate applied for Scotland, there should, in an ideal world, be symmetry so that people could know that if, for example, they made a gift aid donation net of basic rate tax, whatever that might be, it would be received by the charity on the other side. However, that starts to get extremely complicated, so there is some merit in saying that, in the interests of simplification, an understanding should be reached whereby charity donations would be dealt with as if there were standard all-UK rates, instead of trying to recognise a differential.

The situation gets more complicated when we look at pension contributions because, in that context, the person has an element of self-interest, so it might be better if every effort were made to ensure that there was symmetry between the contribution that was made to the pension fund and what the pension fund received. The worry about the bill in its present form is that such things will get quite complicated.

**David McLetchie (Edinburgh Pentlands)**  
**(Con):** Good afternoon, everyone. First of all, I apologise to our witnesses for not being here for the start of the meeting.

I want to ask about the definition of a Scottish taxpayer. The ICAS submission says that there were concerns about the definition that was used in the Scotland Act 1998 for the purposes of the SVR, but that those were mitigated because

“there was clear guidance on the definition of residence and ordinarily resident ... in IR20.”

I take it from that that HMRC has not updated IR20 in the past 14 years to reflect changes in court rulings on what constitutes residence or ordinarily resident.

**Derek Allen:** IR20 has been withdrawn and replaced with the 86-page HMRC6. The point takes on much more importance when we think that the issue of residence will affect a lot more people than has been the case. We have freedom

to move throughout the UK, so getting the definition of who is a Scottish taxpayer correct so that we can improve compliance at minimum cost, while ensuring that there is an understanding of who is responsible, is an important part of enacting the bill in a way that will work.

**David McLetchie:** Are you saying that levels of mobility and, therefore, of changes in residence are higher in 2011 than they were in 1997?

**Derek Allen:** The answer is probably yes. Conversely, however, we live in a different world, and information technology has greatly enhanced the ability to handle the situation if we get it right. It also means that we cannot necessarily say from where somebody is working. They could be supplying services to London, for example, while being based in Edinburgh, or vice versa. We live in a world that is different from the world of 1997.

**Isobel d'Inverno:** We also need to bear in mind the fact that pensioners will be affected as well. The situation will affect not just people in their working environment, but people who work for their whole lives in England and retire to Scotland, for instance.

**David McLetchie:** Rather than defining a series of ever more elaborate rules to cope with all the complexities that you describe, is there not merit in deciding a determining point and saying, "For this year you are resident in Scotland," or, "For this year you are resident in the United Kingdom"? That may be hard and may produce a favourable or unfavourable result, but that would be it—that would be the rule that we need in the interests of clarity. If we have all this tracking going on, we will end up with a very tortuous situation, as you describe it.

**Derek Allen:** That was the merit in the suggestion that the definition of a Scottish taxpayer and the statutory definition of residence need to be crystallised. That would reduce the cost of compliance.

You are talking about a simple situation in which a person passes certain triggers. I agree with Isobel d'Inverno that, in an ideal world, we should have a one-page, simple concept, but we do not live in an ideal world. I give the illustration of a pensioner who comes from England to live in Scotland part of the way through the year. Let us say that they make the migration in August and they do not report it until February. At that time, HMRC makes a notification that the person was a Scottish taxpayer for the whole of the previous year—there are no split years. Their only income is an annuity that is being paid by a pension provider, but there is an arrear to be collected. Unless we get the definition correct, so that people understand when they become a Scottish taxpayer

and they feel that it is fair, we will get an emotional backlash.

I guess that we are talking about only 30,000 people migrating backwards and forwards on the margin. However, if people feel that other people are getting away with something or that they are being treated unfairly, we will have a complication that will be in nobody's interest at all. I am suggesting that it would be better to get it right from the start than to find yourselves facing a hostile reaction.

**David McLetchie:** Are you saying that we should have split tax years—that the tax year should be split around a person's residence?

**Derek Allen:** Yes.

**David McLetchie:** Therefore, they would have two assessments—for the period in which they were a Scottish taxpayer and the period in which they were a UK resident but a non-Scottish taxpayer.

**Derek Allen:** That would give greater certainty.

**David McLetchie:** I want to ask you about one of the examples that you give in your written submission. You write:

"For example, an itinerant worker might have spent 101 days in Scotland, 99 days in England and 165 days working overseas but in such a case he would be UK resident and deemed to be a Scottish taxpayer despite the fact that he has spent the majority of his time outside Scotland. If there is a tax differential introduced the individual affected is not going to think the result either fair or acceptable."

I have some difficulty in following that concept. Surely, the essence of the matter is that the person would determine, first of all, whether they were a UK taxpayer. Having determined that they were a UK taxpayer, the fact that they spent some time overseas—working, on holiday or whatever—would be irrelevant. The issue would then be whether they were a Scottish taxpayer. I cannot see how somebody's having been overseas, in answer to the first question, would make the answer to the second question unfair. Can you explain that to me?

**Derek Allen:** I do not disagree with you. Under the current drafting, they would be a UK resident because they would have spent more than 183 days here, and because they spent the major part of their time—101 days—in Scotland, they would be a Scottish taxpayer. However, that is a clear example where the person might say, "Actually, I spent 264 days outside Scotland, so I don't feel like a Scottish taxpayer and I'm not going to be happy about this."

**David McLetchie:** Well, if he is not happy about that, he should of course live in an independent country. However, if he wants to be a citizen of the UK, he must observe UK tax laws, but that is

another constitutional debate. Of course, if you took this argument to its logical conclusion, what you would be arguing for would be split tax years vis-à-vis residents and non-UK residents, would you not?

**Derek Allen:** No.

**David McLetchie:** Why not? You are saying that you would apportion residence internally as between Scotland and the rest of the UK. If the man had that grievance, why would he not be allowed to split his income, if you like, so that for 165 days he would be classed as non-resident and he would be taxed for only the 200 days that he was resident? It seems to be the same principle of apportionment, does it not?

**Derek Allen:** As you say, there are intellectual arguments to say that it is the same principle of apportionment. However, if you look at it differently, the 101 days would not need to be consecutive, whereas I am suggesting that when somebody moves from one part of the UK to another part of the UK, that should be recognised as a watershed change, which is an argument for saying that there should be a split treatment. If you had the situation of a day count, you could not say that there was justification for the additional complication of daily apportionment in order to split it.

**David McLetchie:** So would you have split treatments only where there is a permanent move and not where people move backwards and forwards because they work a few days in England and go back home to Scotland for the weekend, or whatever? What about people who are WILLIES—work in London, live in Edinburgh? What happens to them as far as being Scottish taxpayers is concerned? What do we do about the WILLIES?

**Derek Allen:** If you have a decent definition, their position will be clear. However, with a self-assessment regime, it is important that everybody understands their position.

**Tricia Marwick:** Fascinating though it is, is it not the case that we are having this conversation about who might or might not be a Scottish taxpayer because of the lack of clarity in the bill, and that what we need more than anything is for that clarity and fairness to be in the bill before it is passed?

**Derek Allen:** Yes. However, we have recommended putting in place a reporting mechanism now, such that people would have to notify promptly their change of address, which would give greater certainty. At present, roughly two thirds of the tax-paying population do not make annual returns, so we have a gap in the mechanism. That is why I have suggested that we should begin to look at the mechanics of

implementation as well as the legislative framework.

**Tricia Marwick:** Okay. Can I move on? Obviously, as you say in your paper, the more complicated and complex the definition of a Scottish taxpayer is, the more expensive the system will be to implement. The UK Government has said that the cost of implementing the tax changes that the Scotland Bill proposes is expected to be £45 million. In your written evidence, you talk about the cost being between £45 million and £150 million, depending on the complexity of the system. You go on to say:

“Conversely, if the definition of a Scottish taxpayer is viewed as vague, liable to dispute and litigation and difficult to define, then costs will be significantly higher and would probably exceed by a considerable margin, the figure of £150 million.”

So we have figures of £45 million and £150 million, and it comes down to the vagueness of the bill. Are you aware of any reliable data or any data from the UK Government to back up its £45 million estimate?

15:00

**Derek Allen:** No. However, in its regulatory impact assessments, the UK Government almost invariably underestimates the cost of legislative change—indeed, quite often, it does so significantly. What we have said in our representations is designed to keep the cost as low as possible. However, the upper end is open to speculation. As soon as you take a contentious case, or a series of cases, to the House of Lords, things get really quite expensive. It would be better to try to get it right from the start and avoid that ever happening.

**Tricia Marwick:** So you are saying that practice and history tell you that UK Government estimates are normally underestimates. You are saying that we are talking in excess of £45 million.

**Derek Allen:** I do not like to use the phrase “normally underestimates”; I prefer the phrase “frequently underestimates”.

**Tricia Marwick:** Some say “frequently” and others say “normally”. The matter is vital to the Scottish Parliament. You may or may not be aware that the UK Government expects the Scottish Parliament to pay the costs of implementation. That flies in the face of Treasury funding policy, which says that whoever takes the decisions should pay the costs. The figure of £45 million is bad enough, but a figure of £150 million and rising would have to come out of the Scottish block grant. Are clear figures on the costs of implementation needed from the UK Government?

**Derek Allen:** Yes.

**Tricia Marwick:** Thank you.

**The Convener:** In trying to move to a system of a shared tax base, you point to the difficulties of the UK not having universal self-assessment. You will be aware of the large number of representations that we have received from many quarters that say, "Look, you should be able to have a Scottish rate of income tax that varies rates and bands and gives the ability to vary the high rate separately." From what you have said, I take it that there is also a need to focus on simplicity and minimising compliance costs. If the Scottish Parliament could vary the higher rate separately, what would that do to the costs of collection and administration? Would it mean that individuals would be even more willing to choose their residency for tax purposes?

As I have said, most of the evidence that we have heard on the structure of the income tax power is driven by what could be called economic first principles. Very little of the evidence is driven by the practicalities of compliance and collection. If we could vary the higher rate separately in the first instance, would that add to the complexity? What are your thoughts?

**Derek Allen:** The rate is a political decision and not one on which ICAS wishes to comment. Around the world, jurisdictions such as Australia and Canada have differential state taxes with differential higher rates. If they can do it, I see no reason why the Scottish Parliament could not do it, if it was so minded. I am afraid that I have no expertise on behavioural results, including taxpayer reaction. I will refrain from commenting on that.

**The Convener:** And compliance costs have implications.

**Derek Allen:** Yes. The cost of compliance is kept to a minimum if you have a simple system. It is also more efficient if you have a broader tax base. If we look at the top rate of tax of 50 per cent, which applies to those who earn in excess of £150,000, we see that the actual yield is minimal. The decision on that is a political decision for the Parliament. Varying the high rate would have quite a disproportionate compliance cost compared with making a broader-based variation on the basic rate.

**Isobel d'Inverno:** It depends on how the compliance issues are dealt with. There is a perception that dealing with everything through pay as you earn is an easy approach, whereas we have seen examples in the recent past of PAYE underpayments and of notices of coding being incorrect, with people being unable to contact the tax office to deal with them, therefore having people make returns, albeit simple ones, might well have benefits, particularly in this age of online

submissions. Trying to make everything work through PAYE might well bring administrative difficulties that would not arise if we had a different approach.

**The Convener:** We have had a long run round the houses on that. I thank the witnesses from the health professions for their patience. I invite them to say whether the reservation to the UK Parliament of the regulation of health professions is desirable and, if so, why.

**Evlynne Gilvarry:** The General Dental Council does not have a view on whether that is desirable—the council is wholly apolitical. However, we have had the experience of working with devolved power for a number of years, since 2006. During that time, there has been little practical effect. We have had limited experience therefore of reserved powers.

Looking ahead, one cannot estimate whether there might be greater complexity if the Scottish Parliament legislated but, for now, as a matter of routine, we liaise closely with the Scottish health directorates, just as we do with the Department of Health at Westminster. We have a statutory duty to liaise with our stakeholders and we take that seriously. We have good relationships with the Scottish health directorates.

My answer might be a little unsatisfactory, but the bottom line is that we are a responsible regulator and we will work responsibly in the public interest, whatever the outcome of the current debate.

**Duncan Rudkin:** The General Pharmaceutical Council's position is identical to that. As a statutory body, we have taken a principled position that it is not a matter for us to have a view on the scope of our remit—that is a matter for the legislation within which we work. We have been the regulator for pharmacy since September 2010. Our predecessor as the regulator was the Royal Pharmaceutical Society of Great Britain. One aspect of its legacy is the pharmacy technicians register, which was originally created by the society when it was the regulator. The story of the creation of that register illustrated some of the issues around the current situation, in as much as there was delay in introducing the legislation and, as I understand it—although I was not involved at the time—there were some interesting discussions about the role of the Parliament in relation to the subsidiary rules that are made by the regulator, which are obviously an important part of the regulatory framework.

Our experience so far is that, in our set-up phase during 2010, the section 60 order under the Health Act 1999 that created the General Pharmaceutical Council and set our framework, and the subsequent subsidiary instruments that

needed parliamentary approval in Westminster and the Scottish Parliament, were handled efficiently and did not cause us any practical problems. We are perfectly content to work within the current system.

**Joseph McIntyre:** I do not want this to give you déjà vu, convener, but I would like to put my point across. I had a short period of time in which to contact Scottish technicians and get feedback from the Dental Laboratories Association, which represents dental laboratories. Its representatives got back to me this morning to say that the people who got back to them said overwhelmingly that they want things to stay in Scotland. If we were going to look further, there would have to be a much bigger scoping exercise.

**Marc Seale:** I will give you a little bit of background. The Health Professions Council is a multi-professional regulator of just over 200,000 health professionals throughout the UK, covering 15 professions including paramedics, physiotherapists and practitioner psychologists.

The central issue is that the HPC supports the approach of a UK-wide system of regulation. We think that that is appropriate and beneficial. We support that because of our experience of two processes in bringing new professionals into statutory regulation. The legislation on operating department practitioners and practitioner psychologists was reviewed at Westminster and by the Scottish Parliament's Health and Sport Committee. Our view is that that process worked very well.

Looking to the future, if the legislation changes, the HPC and how we engage with Scotland and the other home countries will remain the same. Our role as a regulator is to work with the different systems however they are run and in whichever country.

**Brian Adam:** Perhaps you could give us an idea of any problems that there are in the current system that might be addressed by the change that the UK Government is proposing. I was interested to hear Mr McIntyre say that he had consulted some of the staff who will be directly affected. Have the other representatives around the table who have an interest in these matters consulted any of the new professions on regulation?

**Evlynne Gilvarry:** No, we have not consulted.

**Brian Adam:** So on what basis can you give us meaningful evidence on these matters? Some of those who are in the evolving professions will have qualified through the Scottish education system, colleges and universities, and they might reflect a slightly different background. If regulation is set at the UK level, it might not deal adequately with those professionals' circumstances. I suspect that

Mr McIntyre might make that point. Indeed, in relation to Mr Seale and his psychologists, I believe that the UK Department of Health wishes to set a PhD as the standard for practitioner psychologists, whereas in Scotland a masters degree was eventually agreed. I am therefore not sure how you can give us meaningful evidence about the practicalities.

**Marc Seale:** The HPC is committed to working with all the devolved Administrations. For example, we work with the Executive's civil servants at St Andrew's house and with NHS Education for Scotland. We attend party conferences. We held our annual meeting in Edinburgh several months ago.

We are absolutely committed to our standards, which should be appropriate for the different countries. For example, education standards are set by the regulator, but the HPC approves university and other higher education programmes throughout the UK. When those standards are set, the legislation requires us to consult anyone who has been affected—we would do that anyway. In setting the standards, we consulted on education with everyone throughout the UK and it was agreed that those were the appropriate standards.

As regulators, it is important for us to be flexible in how we approach regulation, so that it is appropriate for the different countries. At the same time, we have to consider the benefit of having consistent standards in the UK, so that there is consistency for registrants who move around and there is consistency for employers in terms of recruitment.

We are required to consult whenever we change our rules or regulation, therefore if the system changes, we undertake consultation.

15:15

**Brian Adam:** But we have got evolving professions and the current system appears to be working, so what is being suggested is a fix for something that ain't broken. Is that a fair comment?

**Marc Seale:** From a regulatory perspective, we are absolutely committed to whatever legislative system is used in whatever home country—that is what we have to do. It is up to you, as legislators, to create the legislation.

**Brian Adam:** But you have had no feedback from any of the evolving professions for which you have responsibility.

**Marc Seale:** We are working very well with the system as it is. If it changes, we will endeavour to work very well with the new system.

**Brian Adam:** Mr McIntyre, what feedback have you had from practitioners?

**Joseph McIntyre:** For dental care professionals, the transition period 2006 to 2008, when they were under the regulation of the GDC, was difficult. I am not here to represent the GDC—Evlynne Gilvarry is here to do that—but it worked hard to bring about that transition. A lot of technicians saw a way forward in that but a lot thought that it was just heavy regulation. The fact is that the GDC is here and we are regulated by it, and going back from that would be impossible.

I made it one of my jobs to ensure that as many people as possible knew about the General Dental Council and what was coming along. The timescale of the bill is tricky, but I tried to get back to the groups that I am responsible for to ensure that people had a voice in the north, east and west. However, that was a limited area, and we would need to go a bit further to get a full feeling. There are not that many technicians in Scotland, so that would be possible. It would be interesting to hear their collective thoughts on the matter. The DLA does not represent everybody in Scotland; there is also the Dental Technologists Association, and there are professionals who do not belong to any association.

**Duncan Rudkin:** On consultation, as a new body we have been actively seeking to work and engage with—both formally and informally—all of our partners, including the professions that we regulate in Scotland. We have not consulted them on the position that I outlined, partly because we are clear that our role does not extend to speaking for the professions that we regulate. In our context, as a new regulator in a profession that has previously had a history of combined representation and regulation, it is especially important that we do not fall into the trap of purporting to speak for the professions.

You have heard from the regulators who are present about the commitment to work with whatever legislative arrangements we are asked to work with. I can illustrate that with a pharmacy example from Northern Ireland. We are a Great Britain regulator rather than a UK regulator, as Northern Ireland currently maintains its own pharmacy regulator. However, that does not prevent freedom of movement or maintenance of standards between Northern Ireland and Great Britain, because we work closely with the regulator there. For example, we undertake joint accreditation visits of universities so that there is, in practice, no problem.

**Tricia Marwick:** I will try to sum up. You are saying that you do not perceive any problems with the current system and that, regardless of the system that is set up—or not—following the bill, you will continue to work with it. It seems to me

that the default position is no change. Do you agree?

**Duncan Rudkin:** That summarises the position of my organisation. I will not attempt to speak for the Department of Health or for UK ministers. It is true that, in the case of pharmacy, the pharmacy technicians register was not delivered to the original plan, which was linked to debates about the role of the Parliament in relation to the subsidiary regulations, which I have mentioned. Therefore, it is undoubtedly true that the legislative process that we would have to go through in establishing subsidiary instruments would be more complex than that which is undertaken by other regulators that do not regulate devolved professions, for example.

**The Convener:** Thank you. I am acutely aware of the time, colleagues.

**David McLetchie:** Is there any difference between the dental profession regulations that have been introduced to date in Scotland, which apply to the new categories, and the regulations that apply south of the border?

**Evlynne Gilvarry:** No.

**David McLetchie:** How was the consultation process that led to the devising of those regulations handled?

**Evlynne Gilvarry:** We experienced no difficulties as a result of—

**David McLetchie:** I am sorry. I meant who handled the process rather than how was it handled. What was the process?

**Evlynne Gilvarry:** The General Dental Council regulates the profession throughout the UK; it sets the standards. So far we have not encountered any difficulties related to devolved professional care regulations. Our one experience was a change to our legislation that required a section 60 order. We had to consult the Scottish Parliament and proposed legislation had to be laid before it, but we experienced no delays at that point.

**David McLetchie:** I am trying to get a handle on who passed all the laws—both the principal instruments and the subordinate legislation—that created the rules. Were they passed at Westminster or in the Scottish Parliament? Were they passed at Westminster with the assent of the Scottish Parliament through a legislative consent motion?

**Evlynne Gilvarry:** They were passed at Westminster, with the Scottish Parliament's consent.

**David McLetchie:** Who led the consultation on the laws for the regulation of the professions?

**Marc Seale:** The Department of Health does that.

**David McLetchie:** So the consultation with the profession to frame the rules was led by the Department of Health, not the relevant Government department in Scotland. Is that correct?

**Marc Seale:** There are two processes. The fundamental legislation that governs the regulators goes through the Westminster process and the Department of Health on behalf of the UK Government. The regulation of new professions is a devolved matter, so the new legislation has to go through both the Westminster process and the Scottish Parliament. Therefore, there is a different process.

To return to an earlier question, the other significant issue that relates to differences in Scotland and England is that, when a complaint is made against a registrant in the professions that we regulate, it will be dealt with in Scotland under Scottish rules of evidence. As a regulator, we deal with both English and Scottish rules. The situation in Northern Ireland is similar. Depending on what is going through the process, it will be covered by either Westminster legislation or legislation approved at Westminster and here.

**David McLetchie:** But their substantive content is no different.

**Marc Seale:** Currently, they are identical. There are similar processes and similar standards, which is a great advantage.

**David McLetchie:** So what would happen if I were a member of one of those professions and mobile? The same issue was discussed in relation to people becoming Scottish taxpayers or non-Scottish taxpayers. If there were divergences in the processes, might somebody who moved between one jurisdiction and another find that they were subject to a higher or lower professional standard? Is that legally a possibility? I know what you are saying about things practically.

**Evlynne Gilvarry:** The standards are UK-wide, so it is not possible for dental care professionals to be subject to one standard in one part of the UK and another standard in another part of the UK.

**David McLetchie:** I do not quite understand why one body does not simply set one set of standards and we just get on with it.

**Evlynne Gilvarry:** But that is exactly what happens. The General Dental Council sets the standards for the whole profession.

**David McLetchie:** I am slightly lost. That body sets the standards for all the profession, but we are hearing that some of them have to be re-reserved. What exactly will be re-reserved? What

difference will that make? What rules will be different? Can you give some specifics that might affect one of the professions?

**Marc Seale:** I am pretty sure that I will get what I am about to say right and that people behind me will start to wave if I do not. The regulation of new professions is central.

When devolution took place, certain professions—for example, the medical profession—were regulated by a single UK-wide organisation. However, if a new profession is brought under statutory regulation, that is devolved and the regulation has to go through the two Parliaments. In the case of the Health Professions Council, after devolution there was a decision to regulate operating department practitioners and so there was a requirement for that regulation to go through both the Scottish Parliament and the UK Parliament.

The question is whether the system should continue as it is—I think that we are all saying that we are quite happy with the situation—or whether it should go back. I think that we are saying that, if it goes back, that is it.

**The Convener:** On a point of clarification, how many new health professions have been created since devolution?

**Marc Seale:** I can remember only those that are covered by my organisation, which are practitioner psychologists and operating department practitioners.

**Evlynne Gilvarry:** In our case, there are four: dental nurses, dental technicians, clinical dental technicians and orthodontic therapists. The key point to remember is that although the new professions are regulated in Scotland, a single regulator sets the standards for every professional throughout the UK.

**Peter Peacock:** Is that immutable or could that change? If the powers remain as they are at present, could the Scottish Parliament take a different view on the regulation of new professions? Is that within its competence?

**Evlynne Gilvarry:** Yes, I am sure that it could.

**Duncan Rudkin:** It might help if I illustrate how the system works currently.

**The Convener:** Can I stop you, please? I am very aware of the time. Let me set out the point that the committee is trying to understand. A historically well-established health profession will be regulated on a GB basis, whereas a health profession that has been created in the past 12 years will potentially be regulated on a different basis. We are trying to understand the philosophical basis for that distinction. That is obviously the rationale behind the proposal to tidy



this up, and we are to reach a view on the wisdom or otherwise of it.

**Duncan Rudkin:** The General Pharmaceutical Council covers one of each of those types of profession. The profession of pharmacists is more than 100 years old. Pharmacy technicians were created as a statutory regulated profession after devolution, which is why the regulation of that profession is within the competence of the Scottish Parliament.

**The Convener:** But, on first principles, surely it is desirable to say either that each of the four nations should regulate its own doctors, nurses, dentists and members of every health profession that has been created in the past 12 years or that, philosophically, because of freedom of movement and common standards, regulation should be undertaken on a UK-wide basis. I am trying to understand whether there is any philosophical rationale why recent professions should be regulated on a different basis.

**Duncan Rudkin:** The only answer that I can give is that I am not aware of any. As far as I am aware, the position is a function of the timing of the Scotland Act 1998. If a profession was regulated at that time, it was reserved; if it was not, it was a new profession in the future unknown and was, therefore, not reserved but devolved. In the case of pharmacy, one of the impacts of that scenario is that, because we, as a regulator, would rather not make different sets of regulations for technicians and pharmacists and most of our regulations cover both professions, although the regulation of pharmacists is reserved to Westminster, the Scottish Parliament undoubtedly has an influence over the regulation of reserved professions even though it does not technically have the legislative competence over them that it has over pharmacy technicians.

**Brian Adam:** It is also true that, in the traditional regulated professions—the ones that were regulated prior to devolution—the regulation was not UK-wide anyway. Substantial parts of the professions were regulated in Northern Ireland before devolution and continue to be regulated there. There appears to be no philosophical point behind whether the professions are regulated at the UK level or at the devolved level, as there was no standard before. Is that a fair comment?

**Duncan Rudkin:** As I have said, it is true that Northern Ireland maintains its own pharmacy regulator, but that does not impede freedom of movement or the maintenance of consistent standards.

**Brian Adam:** That has been the case for many years, not just for 12 years.

**The Convener:** I thank the witnesses for elucidating a complex point for us at the end of the

session. I thank all the witnesses who have attended for their evidence and suspend the meeting for a moment or two to allow a changeover of panels.

15:30

*Meeting suspended.*

15:33

*On resuming—*

**The Convener:** I am delighted to welcome Ben Thomson, chair of Reform Scotland and, I think, convener of the campaign for fiscal responsibility—you may wish to clarify that. I thank you for attending, and I invite you to make some opening remarks if you so wish.

**Ben Thomson (Reform Scotland):** Thank you for inviting us to present Reform Scotland's point of view. We have submitted a paper, which I am sure you all have, and I am happy to answer questions on it.

The Scotland Bill is an opportunity. As we have stated in our submission, we are concerned that it will be an opportunity missed if we do not change it into more of a process than a single solution. That is the tenet of our paper. I do not wish to add any more at this point but, as I said, I am happy to take questions.

**Tricia Marwick:** On the point about trying to change the bill into something more, if it was up to you, what changes would you make to the bill to make it more than it is at the moment?

**Ben Thomson:** In terms of what is feasible, I would like the bill to become much more of an enabling bill. In the words of Ron Davies—this applies equally to Scotland as it does to Wales—devolution should be a process, not a solution. Similarly, the present Scotland Bill should be a process, not a single solution.

That can be achieved through an examination of the definition of devolved taxes. The proposed new clause 80A(4) of the 1998 act deals with the definition of devolved taxes. It would be good to make that definition wider so that, over time, we could devolve more and more taxes, moving towards the philosophy that we describe in our paper: that the majority, if not all, of the taxes for the money that is spent in Scotland are raised in Scotland. That comes to about 60 per cent of the budget.

**Tricia Marwick:** In essence, you view the bill as a starting point for getting closer to your position. You would like it to be an enabling bill.

**Ben Thomson:** The bill as introduced implements much of what was proposed in the

Calman report—but not everything. It proposes a specific set of solutions, and it will take a considerable amount of time to put them in place and to sort out the technical complications.

It would be much more pragmatic to have a bill that allows taxes to be passed across as and when they are ready and there is agreement with the Treasury. For instance, the aggregates levy, air passenger duty and stamp duty were mentioned in the Calman report, and they are almost oven ready—they could be brought across straight away; implementing that would not require a four or five-year delay.

Then, we could consider more complicated taxes such as income tax. As we have said in our submission, that is flawed. However, we can consider bringing a range of taxes across, which would achieve the aim of transferring fiscal responsibility.

**Robert Brown:** There is a trade-off between having more fiscal responsibility and achieving a greater match between the Scottish Government's expenditure and its income. There are issues around the efficiency or otherwise of the tax system. As I recall, Calman spent quite a lot of time examining the question of which taxes were most easily moveable and which, in principle, worked well in the context of the Scottish experience. To some extent, that assessment was based on federal systems in other parts of the globe.

What views can you give us on the appropriateness of other taxes in this regard, referring to the principles that the Calman commission considered in relation to restrictions of tax competition and the surrounding, ether-type problems that would make the reservation of tax difficult, or that would limit the extent to which a devolved authority could use such taxes?

**Ben Thomson:** We view it the other way round. Through devolution, Westminster said that it was retaining certain areas of responsibility and power but the rest should be devolved to Scotland. In a similar way, we think that some taxes should be retained by Westminster—and there are some taxes that should obviously be retained, such as VAT, which can only be changed by a European Union member state—but that once there is a sufficient tax base to cover what Westminster spends on Scotland, which is about £20 billion of the £50 billion or so of the Scottish budget, the remainder of the taxes should be devolved to Scotland.

In that way, Scotland could use a different range of taxes and the political parties represented around this table could examine proposals for the combination of taxes to be used and how to change taxes. There would be two aims to that.

One would be to create fiscal levers that are suitable for the Scottish economy, which are not necessarily the same levers as are good for the economy of the south-east of England. The second would be to be more accountable, so that political parties' actions are reflected in and can be determined through taxation.

**Robert Brown:** I understand that point—you made it very well. However, I was trying to get you to give me your view on the other constraints and issues that Calman identified relating to tax efficiency. For example, Calman indicated that if a particular tax was devolved and there was a change in the rate, that could lead to a lesser UK take in total from that tax, which would not be good when viewed from the broader position. I think that Calman used the example of corporation tax in that regard. I have some sympathy with corporation tax as an issue, but I am just trying to pin down whether there are tax competition issues that you think could cause problems and which ought to be at the back of our mind when we decide which taxes to devolve.

**Ben Thomson:** From the point of view of a consumer who pays taxes, I quite like the idea of competition. At the moment, there is a monopoly on taxes. If we can get some tax competition, that would be a good thing. We already have some tax competition in the UK in places such as the Channel Islands. It is not just about competition between—

**Robert Brown:** With respect, is it a good thing? The Channel Islands is a tax haven. Do you envisage Scotland being a tax haven with powers over extra taxes, particularly corporation tax?

**Ben Thomson:** No. Scotland has a particular set of industries and we should ensure that whatever range of taxes we have suits the sort of economy that we have, the sort of business that we want to attract and how we use that to grow our gross domestic product. So, it is not just a question of competition between England and Scotland; it is a question of getting the right taxes in order to compete.

Why have economists and the Confederation of British Industry in Northern Ireland been campaigning for lower corporation tax? I see in today's *Herald* that supposedly a senior Conservative figure—I do not know whether David McLetchie can enlighten me on who it is—has been rumoured to be saying that having powers over corporation tax in Scotland is a good thing. Certainly, if we consider Eire, what they fought for most of all there was the ability to control things like corporation tax in the face of European pressure to put it up. That was because they saw that tax as an important fiscal lever. We are in competition with places like that.

**Robert Brown:** Well, we are and we are not is really the point that I am trying to make. I am not sure that I am getting an answer to the question that I originally asked, which is whether Reform Scotland or you have looked at issues that would perhaps constrain or limit using competition in relation to certain taxes within what are, at the end of the day, small islands.

For the sake of argument, how far do you think that you can move corporation tax without it becoming something that is, in effect, paid for by the English, if you follow my point, because there is a diminution of tax take as you achieve the objective that you set, which is the movement of companies from one place to another because of the taxation arrangements that are in place? Is not that, in fact, competition and something that is arguably to the detriment of other parts of the UK? What are the constraints on that? How could that work? What are the technicalities of it? Have you looked at that sort of issue?

**Ben Thomson:** Yes, we have looked at that.

**Robert Brown:** What have you found out about it?

**Ben Thomson:** You can look at countries that have devolved taxes, such as Canada, Australia, Switzerland and America. It would be a big mistake if just one large tax was pushed down on us, whether it was income tax or corporation tax. That would be a very blunt tool, and you would have only one tool in the toolbox to do anything with. You need to have a range of taxes to be able to achieve a good environment. If you suggested to me that the one tax that we should have is corporation tax, Reform Scotland's view would be that that would still not satisfy. You need to have a range of taxes in the same way as countries such as Switzerland have a range of taxes at a local level. They are perfectly happy to survive with competition between one part of Switzerland and another; it is a good thing and does not do them any harm.

**Peter Peacock:** I want to pursue some of this. You said that there was a campaign in Northern Ireland for lowering corporation tax, which I think is correct. However, there is a situation there within one island, in that the south of Ireland has arguably very competitive corporation tax in a European sense and certainly in relation to the British isles. So, there is an immediate cross-border effect for Northern Ireland and you can see why people there might want to argue for lowering corporation tax. Would it be fair to say that that is their motivation?

15:45

**Ben Thomson:** That is absolutely right. I remind you that, outside the UK, Ireland is our largest

trading partner. So we also compete with Ireland, although perhaps not to the same degree. When I was chairman of Noble Group, five of our clients moved their businesses out of the UK so that they could benefit from cheaper taxation either in Dublin or elsewhere. That was a detriment in that we lost taxes that we could have collected through employees and in other ways. That is a real example of companies doing that.

**Peter Peacock:** Who is Scotland in competition with? Is it Ireland, Northern Ireland, Wales and England?

**Ben Thomson:** That depends on the sector. In the finance sector, we compete with Luxembourg, the Channel Islands, Dublin and Switzerland. In the renewables sector, the countries are different. In the oil sector, we compete with Norway and so on. For different industries, the competition is different, so we cannot just say that Ireland or Luxembourg are our main competition. There is a range of taxes.

**Peter Peacock:** Indeed, but what I am getting at is that if Scotland is to be competitive, in your terms, in whatever sector, we would have to undercut each of the competitors in that sector. That is my first point. Secondly, what economic evidence is there on the amount by which we would have to undercut the competition before we got movement of not only businesses but, we hope, jobs? Do you have a view on that?

**Ben Thomson:** If I was representing Tesco and saying that it had a monopoly position in providing food, you would say that we should increase the competition, as that would be a good thing for the consumer. I am a consumer in that I pay taxes. My point of view is that it is a good thing if countries have to be more competitive about tax because we want politicians to have incentives to make the public sector more efficient and effective—that is the philosophy of Reform Scotland—and we get that through a measure of competition. We need to see what is being done in other regions, take the best parts and make those parts better.

**Peter Peacock:** I will come on to this, but another side to the equation is the income side. That supports public spending as well as tax competition.

Is it Reform Scotland's position that there should be zero corporation tax in Scotland? I understand that you have advanced that argument, although I might have been reliably misinformed about that.

**Ben Thomson:** That is not a Reform Scotland view. At a conference organised by *The Scotsman*, I talked about how we would use the powers if we had them. I was asked, as I suspect you will be asked when you have the powers, how I would use them and how I would vary the existing levels. I said that corporation tax will

become a poorer and poorer method of tax collection. The reason is that as businesses become more global, they can shift their profits around the world, as manufacturing and trade happen and headquarters are set up in different places. Therefore, countries are seeking to set corporation tax at a low level, as well as considering other more effective ways of raising taxes, such as through income tax, property tax and sales tax, which, by stimulating the economy, will replace what they might lose in corporation tax. I said that such countries would be ahead of the curve and not behind it in attracting companies and that, if we take that to its absolute extreme, we might see zero per cent corporation tax.

**Peter Peacock:** You give a sense that across Europe there is a race among countries to undercut one another. There must be a negative end point to that, because we cannot all get down to zero and then be competitive with one another.

**Ben Thomson:** Corporates and individuals want sensible public services. People understand that they have to pay taxes. It is not as though we are all trying to avoid paying taxes. We want a sensible level of public services. We also want the public sector to be efficient. To return to the Scotland Bill and the issues that we have been discussing, we also want a greater level of accountability and responsibility.

**Peter Peacock:** On that point, you mentioned that the purpose is to create stimulus in the economy by attracting more business. Your theory is that, although income is lost in the short term, having a lower rate of corporation tax stimulates economic growth longer term. What is the evidence for that? How long does it take to get payback from taxation cuts? Is there a lot of international evidence that after, say, two, three, five or 10 years, the loss of income is made up? Is there a direct relationship between the two?

**Ben Thomson:** As I said, it comes down to a range of taxes. In our report, "Powers for Growth", we showed correlations between falling income tax and rising growth and between the public sector as a falling percentage of GDP and growth. Obviously, many factors make up growth, but there is a positive correlation between the two.

**Peter Peacock:** Over what timescale?

**Ben Thomson:** Over a 10-year period.

**Peter Peacock:** Okay. I turn to the other side of the equation. In your scenario, corporation tax is part of the basket of income that we depend on to support current spending levels. Given that you would cut corporation tax, there would be a shortfall in income in the short term in the hope of stimulus and greater income in the longer term. What is your view on how to fill the gap? Would it be done principally through public expenditure

reductions, borrowing or a combination of the two? If a combination is involved, what are the proportions?

**Ben Thomson:** First, let me take you back to what Reform Scotland has said. It has not said anything about whether to increase or lower corporation tax. It has said that we need fiscal powers if we are to create accountability and responsibility. If the parties had those powers, each of them would set out how they would create a balanced budget.

If you are prepared to read our research, we have another paper on the subject. It says that if sustainable long-term growth is an objective—I think that I am right in saying that, last time round, all the manifestos had sustainable long-term economic growth within their objectives—we have to consider a measure for how to do that, including through taxes and making the public sector more efficient. There are also things such as how to use capital for long-term infrastructure to grow the economy. The Reform Scotland view is that the bill is about not growing the economy but giving politicians the ability to have a range of taxes to enable them to set out how they would grow the economy and be accountable for it.

**Peter Peacock:** I am sure that you accept that we have a range of powers at present. Quite a lot of the evidence that we are getting on how to grow the economy is that the principal driver of growth is spend on education, transport, health and other things. At the moment, we have powers over non-domestic rates, from which we raise about £2 billion. Scotland's share of corporation tax would be about £3 billion, so the two are in the same ballpark in overall terms, yet there is no evidence that political parties in Scotland are up for taking the kind of dramatic action with non-domestic rates that they could take. We have the flexibility to take such action with our current powers. What is the evidence that, in the Scottish political firmament—if that is the way of putting it—the course of action that you are suggesting would happen?

**Ben Thomson:** I totally agree with you. I have asked the question many times. Why, when you have the powers—including the 3p variable tax rate, which you have not mentioned thus far—have you not used them? If you look at the evidence that I submitted, one graph—I am highlighting it—shows clearly the total amount of tax raised. Westminster and Scotland are both included; the green block is what comes from Westminster. Frankly, the blue bit at the bottom, for local taxation, is so small that, even if it were to be doubled, it would not make a huge impression on the total bar. If you are looking for an incentive, that would not be enough to make a difference.

**David McLetchie:** When Mr Peacock was asking about non-domestic rates, Mr Thomson started an answer by saying something like, “If I were Tesco”. If you were Tesco and you were at this meeting—or perhaps, rather, at a meeting tomorrow of another committee of the Parliament—I think that you would be objecting fiercely to the exercise of a devolved taxation power that would subject supermarkets and other retail businesses to a non-domestic rates surcharge. Does not that demonstrate that powers can be used for good and ill? If you were Tesco, would you be in favour of the surcharge or would you be arguing for a reduction in Tesco’s rates? Would you be arguing for a discount for Tesco, for coming in to an area and creating jobs?

**Ben Thomson:** We are arguing that if politicians have powers that they are capable of using, they are much more accountable because they must set out to the public what they are doing. The example that you gave proves the point: you can see from the reaction that using the power has made the politicians accountable. We have consistently argued that if politicians had the range of powers that we propose they should have, they would have to set out their stall. If they are after long-term sustainable economic growth, they must set out a range of policies and taxes that can be justified by long-term sustainable economic growth.

**David McLetchie:** Does not that assume that we can conceive or divine some magic formula—some permutation of taxes—that will increase long-term economic growth? Were there such a formula and self-evident agenda, would not someone have adopted it by now and would not we all be living in a paradise?

**Ben Thomson:** In my experience as a businessman, departments that are run as budgets, and that receive a budgetary amount, act inefficiently because the temptation is to think that their duty is to spend the budget up to the maximum every year—if not to spend a little more in order to justify the budget for next year. That is partly why I think that all the parties have recognised that having a completely budgetary Barnett formula does not work. If you had not recognised that, I suspect that you would be arguing for the status quo and we would not be here today.

We recognise that the purely budgetary formula does not work—I know that from my business. It is difficult to control the IT budget, because every year the department asks me for 5 per cent more, even though the cost of computers has halved. The budgetary formula does not lead to greater efficiency. What leads, in part, to greater efficiency is people having to be responsible for the money that they raise and the money that they spend.

**Brian Adam:** Greater flexibility on the income side as well as the expenditure side of the equation is also an issue. Currently we have control over the expenditure side but not the income side. I presume that you are arguing that the greater the flexibility on the income side of the equation, the better chance there is of getting the budget under control and stimulating the growth that we have all—allegedly—signed up to.

**Ben Thomson:** Yes.

**Peter Peacock:** What is the evidence for there being a relationship between devolving more taxes and growth?

**Ben Thomson:** I have not made that evidence. Given the committee’s reputation, I have to be careful about saying that I am an economist, because you seem to eat economists for breakfast. We have argued that we need to match spending with tax raising in order to make people accountable. It is then up to politicians to set out the policies to match that. If long-term economic growth is one of your party’s policies—I think that that is the case for all members of the committee—you will have to justify that in the policies that you set out.

In an earlier paper, we said that there is clear evidence that lowering certain taxes and reducing the size of the public sector as a percentage of GDP has an impact on economic growth. I think that Professor Feld has made the same statement: there is an economic performance bonus, because countries that have devolved and decentralised power have tended to use their powers to do exactly those two things.

**Peter Peacock:** You are predicating that on the basis of shrinking the public spending cake—

**Ben Thomson:** I am not predicating that on the basis of shrinking public spending; I talked about reducing public spending as a proportion of GDP. The more optimistic approach is to envisage GDP growing faster and the public sector being held at a particular percentage of GDP

16:00

**Peter Peacock:** I come back to your starting point, which is that you see devolution as a process and not an event.

A decade on, we have significant expenditure powers—the full range of expenditure powers, to all intents and purposes, leaving aside pensions and benefits—including significant powers to vary expenditure and the size of the public sector, and tax-varying powers. In that context, is not it the case that what the Scotland Bill proposes, in terms of moving income tax to the Scottish Parliament for the reasons of accountability that you have outlined, is a perfectly reasonable next step in the

process, and one that will bring benefits? It may not be all that you want, but it is—in your own terms, a significant improvement on where we are today. Do you accept that?

**Ben Thomson:** We said at the time that we thought it was a step in the right direction. There are two issues. One is that there are a number of technical problems with the proposal. Another problem is that if you move just one tax, and not a range of taxes, it is a little bit like giving a plumber a hammer to do the job—he has only one tool in his box and he cannot even get started. The trouble with income tax is that it creates volatility. You need a range of taxes to be able to match expenditure with tax raising. There is therefore a big flaw in the proposal, in that using just one tax will create a very volatile system.

**The Convener:** I see that some members want to come in. I think Tricia Marwick was first—Brian Adam and I can come in afterwards.

**Tricia Marwick:** I have waited a wee while; unfortunately, the men in this committee just keep jumping in. Hey, ho.

The UK Government has stated that the Scotland Bill will increase to 35 per cent the proportion of the Scottish budget that is raised directly by the Parliament. The Reform Scotland submission suggests that the figure is actually 26 per cent. Can you tell the committee how you have arrived at your figure, and why it is so different from the figure that the UK Government has claimed?

**Ben Thomson:** It is the magic of figures, of which there are three. Jim Gallagher probably has the best analysis. The first figure is the total amount that is raised—there is a helpful graph on the last but one page of our submission. Using the “Government Expenditure and Revenue in Scotland” figures for 2008-09, the graph shows the total amounts raised and spent. About 7 per cent of everything that is spent in Scotland, is raised in Scotland. That sum is about 11 per cent of the Scottish budget, given that the Scottish budget is £33 billion out of the £50 billion that is spent in Scotland. Adding landfill tax and stamp duty tax takes the percentage of the budget raised in Scotland from 11 to 26 per cent. The figure of 35 per cent is arrived at by adding in borrowing powers. To use the borrowing powers to the full in a year should not really be counted as a tax raise, because that is an increase in borrowing. That is where the difference comes from.

**Tricia Marwick:** Do you think that the UK Government has exaggerated the increase in financial accountability in the Scotland Bill, or has it just played with the numbers?

**Ben Thomson:** What does the UK Government say the statistics are? I have forgotten, but there is a quotation—

**Tricia Marwick:** The UK Government suggested—

**Ben Thomson:** The quotation is, “lies, damned lies and statistics”.

**Tricia Marwick:** Indeed.

**Ben Thomson:** You can carve the numbers up however you want; you can get to all three numbers. Obviously, the UK Government wanted to have the highest number possible, so it has included borrowing, and it has based the figure only on the Scottish budget rather than on the total amount of public sector expenditure in Scotland.

**Tricia Marwick:** How much would Reform Scotland wish the Scotland Bill to specify as the amount that the Scottish Parliament could raise?

**Ben Thomson:** I come back to the chart in our submission. As a basic philosophy, we believe—as we have stated in many of our papers—that the best way to make people accountable is for each level of government to raise approximately the amount that it spends.

If you look at the four columns in the chart, the column on the left-hand side shows our current situation. The block in green is the amount that is raised by Westminster, the block in red is the amount that is raised by Holyrood from business rates and the block in blue is the amount that comes from local tax. The second column shows what Calman is proposing. As you can see, most of the column is still green. The three lines across indicate the Scottish budget, local government expenditure and total government expenditure. What the proponents of fiscal autonomy, such as Professor Hughes Hallett and Professor Scott, propose is shown in the fourth column. Reform Scotland would say that the best way to achieve real accountability is to match the amount that has to be raised with the amount that has to be spent, both at Westminster level and at Scotland level, because we would like the Westminster politicians to be made as accountable as the Scottish politicians for the taxes that they spend.

**Tricia Marwick:** I will turn briefly to borrowing. You say in your submission that the borrowing powers in the bill are too limited

“to allow for fiscal policy in Scotland to vary from the UK’s overall fiscal framework.”

Will you explain in more detail what you mean by that?

**Ben Thomson:** The difficulty with borrowing powers at the moment is that we have broken the golden 40 per cent rule that we were supposed to

have, so we are looking at the issue at a time when we are saddled with a hugely high level of debt.

In any normal cycle, one would look to use borrowing powers to create growth through long-term capital investment—there is a direct correlation between the two. One of our papers looks at the correlation between the long-term capital expenditure of a company and growth. If Scotland had a proportion of borrowing powers that was similar to the breakdown of spending at Scotland level and at UK level, with similar limits and a global limit, that would give local infrastructure spending the same sort of relative clout as Westminster spending. In a normal environment, one would expect the Scottish Government to be able to raise a similar proportion through borrowing to what a UK Government could raise, which it could spend on long-term capital infrastructure projects.

**Tricia Marwick:** Such as the Forth bridge.

**Ben Thomson:** I will not get into a debate on what capital projects are good ones.

**Tricia Marwick:** There is some suggestion that the Calman proposals and the Scotland Bill are deficient in not suggesting that the Scottish Government could issue bonds. Do you have a view on that?

**Ben Thomson:** The total level of borrowing obviously needs to be controlled, but bonds are very useful. The ability to access the market to get the cheapest possible rates for services in the public sector and to build long-term infrastructure projects is a good thing, so we would recommend that, if the ability to borrow is to be available, all the different methods of borrowing should be looked at.

**Tricia Marwick:** Bonds being one of them?

**Ben Thomson:** Bonds being one of them.

**Tricia Marwick:** Thank you.

**David McLetchie:** As I understand it, the model that Reform Scotland is proposing is that we should have tax powers that are sufficient to raise all the money that we spend on devolved services. Is that the basic proposition?

**Ben Thomson:** Yes.

**David McLetchie:** That being the case, given the current level of spending on devolved services, would the basket of taxes that you envisage result in people having to pay higher or lower taxes than they currently pay to finance that level of devolved spending? Have you run a model to show what the effect would be?

**Ben Thomson:** The wonderful thing is that a real opportunity exists to adopt such an

arrangement now, as the graph, which is based on the GERS figures for 2008-09—the most recent year for which financial accounts for Scotland have been produced—shows. In 2008-09, Scotland's expenditure pretty much matched the amount that was raised from taxes in Scotland. That means that now is a good time to come to such an arrangement, because we would just be starting at a position in which there were enough slices of the cake for everyone to have a good meal.

**David McLetchie:** Can you give us an illustration? Let us say that we have to raise £32 billion with the basket of taxes that you have proposed. At what rates would corporation tax, income tax, excise duty and so on be set? Have you run any models that would demonstrate to us what the tax rates that you have proposed would be?

**Ben Thomson:** Reform Scotland's paper sets out four different models, but the beauty of the system is that on day 1 you would not have to change any rates to sort the two levels of taxes that we propose, achieve the £33 billion and still give taxes to the UK to help it raise the £20 billion that it will spend on Scotland. In other words, it is a net-net result. As for what one does with those taxes, the whole reason why we see this as an opportunity is that it gives Scottish politicians of all parties sitting around the table the ability to set out what they would do to raise that £33 billion. You are starting from a new proposition.

Let me turn the question round the other way: if you had the powers, what would you do with them to fulfil the pledges in your manifestos to stimulate growth?

**The Convener:** If, for example, oil taxation fell from £12 billion to £6 billion, which is what happened in the year after the most recent GERS figures were published, we would not find ourselves in a net-net position. How, in your scenario, would the Scottish Government cope with that sort of volatility in oil revenues?

**Ben Thomson:** That is why it is so important to have a balance of taxes. Last year, income tax fell but the overall tax take went up. Having a range of taxes enables you to overcome volatility.

**The Convener:** How do you overcome volatility of the order of a £6 billion loss in oil revenues in one year if you are using oil to fill a revenue hole instead of for some other purpose? Surely that would increase, not diminish, volatility. Moreover, the situation would not be in the hands of Scottish politicians.

**Ben Thomson:** Plenty of countries have volatile industries and are still able to cope.

**The Convener:** Such countries do not use that revenue for current expenditure, which I believe is the premise behind your proposals. According to your exemplifications, oil is part of the balance, but most of the countries that you have referred to do not use natural-resource taxation to balance the annual budget precisely because of its volatility.

**Ben Thomson:** That is exactly why any country should have reserves or the ability to borrow: they need to be able to cover and smooth out the ups and downs. If oil revenues went up to £18 billion a year instead of down to £1 billion, you could build up a bit of a reserve to cope with the bad times or use borrowing to smooth out the long-term cycle.

**The Convener:** Would you like to hazard a guess as to the last time oil revenues reached £18 billion?

**Ben Thomson:** That was probably in the 1980s. However, the way that oil is going, it might well get back to those levels.

**Robert Brown:** You said that last year tax revenues went up. Did you mean in the UK as a whole?

**Ben Thomson:** No, I was talking about Scotland. The last GERS figures show that in Scotland the income tax take went down but the overall tax take went up.

**Robert Brown:** In the UK, income tax, VAT, corporation tax and most of the other more minor taxes went down as a result of the recession.

**Ben Thomson:** So, are you telling me that Scotland is less volatile than the UK?

**Robert Brown:** No. I am simply pointing out that it is quite tricky for any Government at any level to cope with that sort of thing. What would happen if, in a relatively small country such as Scotland, where the balance of resources might be slightly different, the tax take from your proposed basket of taxes went down?

**Ben Thomson:** Any country, no matter how big or small, could find itself in a disastrous time when everything goes one way. Indeed, one might argue that what has happened in the past few years has shown that to be the case. At such times, you have to start borrowing and taking remedial action.

However, in a normal business cycle, one part of the economy will be doing relatively well while another might not be doing so well. Some taxes are volatile and some are less volatile. Having a range of taxes rather than relying on a particular tax—which creates volatility—allows you to smooth that. That brings me back to the problems with what was proposed by Calman and is now in the Scotland Bill. If you rely on one major tax—income tax—you are creating an unsustainable and volatile situation. I suspect that if it were

introduced, politicians would be as loth to use the 10p variation as they have been the 3p variation because of the volatility that it would create. Perhaps someone would care to say that they would raise or lower the rate of income tax now and disprove that.

16:15

**Peter Peacock:** What would you make of the counter-argument that given the potential instability in what you are proposing—because oil revenues, corporation tax and income tax may rise or fall—there is in your proposals an inherent risk to the standards of public services that people expect? You have made the point that we would have to adjust in a variety of ways. Could it be argued, as part of the process of gradually moving further down a devolutionary road, that maintaining the block grant is a significant stabiliser for our ability to manage the public sector in Scotland while we also receive tax powers on top of those that we already have, and therefore to become more accountable?

**Ben Thomson:** I totally disagree with that as a philosophy. Becoming dependent on a block grant creates no incentives—

**Peter Peacock:** Are you suggesting that we should become less dependent on a block grant?

**Ben Thomson:** Do you mean in terms of moving towards what we are proposing?

**Peter Peacock:** Yes.

**Ben Thomson:** I am totally for moving towards what we are proposing—that is exactly what I am here to promote.

**The Convener:** I am struck by the tenor of your remarks about the advantages of increasing the tax powers of the Scottish Parliament, which have been couched almost exclusively in terms of increasing political accountability. On the campaign for fiscal responsibility's website there are the Reform Scotland papers and, of course, the paper by Andrew Hughes Hallett and Drew Scott. As you know, we closely questioned the professors on one specific issue, which was whether the 1 per cent fiscal decentralisation that they posited could be expected to deliver a 1.3 per cent increase in GDP in Scotland over five years. I notice that that has not featured in your remarks nor, indeed, in the professors' voluminous correspondence in the media. As you know, the issue is featured in the Scottish budget, Scottish policy documents and the submission to the UK Government. Has the campaign for fiscal responsibility looked at that relationship? Does it believe that it holds?

**Ben Thomson:** I will come to the campaign in a second. As far as I know, Reform Scotland has



never claimed that fiscal responsibility increases growth. It is about not what powers you have, but how you use them. We want to make it so that politicians can set out their stall on the income side and the expenditure side. Our subsequent argument, which is totally different from what is proposed in the Scotland Bill, would be “These are some of the things that you could do with tax and to make the public sector more efficient that would increase the economy.” The correlation is not between the act of giving the powers and growth, but between what you do with the powers and growth.

I do not want to get into the debate about what is a performance bonus and what is sustainable growth because the difference between two similar graphs is really for the economists to argue. What we keep coming back to is that what we want is for you, as politicians, to have the power to say what you would do with the economy to make Scotland a better place, to give it good sustainable growth and to achieve economic efficiencies. We do not believe that large reliance on a block grant—after the proposals that you are putting forward at the moment, there will still be large reliance on a block grant—will give you that responsibility.

You asked me a second question about the campaign for fiscal responsibility. As soon as the Calman report came out, we submitted a letter to Calman saying that we did not think that it went far enough. Many businessmen and community leaders, such as Martin Sime, Martin Gilbert and Jim McColl, who were not involved in Reform Scotland and would not necessarily want to join a think tank—they perhaps see themselves as being above that—said that the proposals did not go far enough in that they would not give people the sort of fiscal responsibility that is necessary. They suggested that a broad-church campaign should be set up that would bring together under a single banner anyone who is broadly of the view that there should be more fiscal responsibility and accountability for politicians, even though we do not all necessarily believe in the same end results and proposals.

When we launched the campaign, we got a lot of support from the media and the general public, who felt that what we had set out was a good thing.

**The Convener:** As an interested party in this area, do you think that it is appropriate for us to pursue the question whether there is a relationship between fiscal decentralisation and growth? That is at the heart of the debate and the campaign. There is clearly a political-accountability dividend. In the interests of the nation, the issue of the evidence base around any empirical relationship between fiscal decentralisation and growth is surely something that we should resolve.

**Ben Thomson:** I totally agree with you, but I think that that will come through each of your parties putting forward your proposals.

Growth is dependent on a number of factors. It is not the powers that are important but factors such as how much capital you are going to spend on long-term growth, and what decisions you make about how education can contribute to growth and how efficiencies in the public sector can help. The public sector has grown by around 60 per cent in real terms in the past 10 years. There must be efficiencies to be made there. As we have set out, the evidence shows that some of those factors are correlated to long-term growth. It is not the powers in themselves that create growth but use of those powers, so it is important that you politicians set out how you are going to use the powers to do that.

**Brian Adam:** In an absence of an increase in powers and without the flexibility that additional powers would allow, what are the prospects for achieving the maximum sustainable growth?

**Ben Thomson:** I have gone on record as saying that the goal for politicians with a budget that is given to them—under Calman, most of the money will come in that form—is to maintain the level of that budget, so they end up saying, “Please don’t cut my budget.” However, what we believe—I am sure that members believe it in their hearts as well, but do not have the incentive to do it—is that what is important is the creation of a system that enables you to use levers to grow the economy and create efficient public services.

We have published 20 papers that try to get to the heart of the question of how the Parliament could potentially use the powers that it has to create a more efficient public sector.

**The Convener:** The issue that you have raised about our having only one club goes to the heart of the matter. The bill will deliver wider income-tax powers. Scotland already has non-domestic rates and council tax, and it will get stamp duty land tax and landfill tax. VAT is out, in a European context, and you are ruling out the devolution of pensions, welfare and national insurance, because they fund the welfare state. Therefore, the substance of this debate comes down to corporation tax and oil, as they are the only other big revenue raisers. In that context, why has Reform Scotland chosen a route involving devolved and reserved taxes, rather than proposals for more shared tax bases, which is the pattern that you typically see in all the other federal countries that you have cited today? You can achieve the basket by extending shared tax bases. You seem to be proposing a solution that involves a division of tax responsibility that is not typically seen in other countries that have shared tax bases.

**Ben Thomson:** Our two papers on that, which members can see, set out four different models, all of which have an element of shared tax. We believe that there should be a few fundamentals if there is shared tax. First, things should be clear. The problem with taxation is that it has become far too complicated. Secondly, if income tax, for example, is shared, each side should be responsible not only for setting the rate, but for setting the tax's thresholds and terms. Flexibility is needed with taxes to get the range right and to create efficiencies in the public sector. If promoting welfare reform is being considered, for example, the ability to change thresholds is needed, but there is no such ability under the current income tax proposals. Members will see from the four models that they propose sharing different things, but they all come down to a split, with 60 per cent going to Scotland and 40 per cent going to the UK. Once that split is established, both sides should have the freedom to change the taxes and to be accountable to the electorate for how they change them and the money that they raise for the services that they provide.

**Tricia Marwick:** When the Calman report came out, the campaign for fiscal responsibility said that the proposals were simply not good enough.

**Ben Thomson:** We said that the report was a step in the right direction but did not go far enough.

**Tricia Marwick:** I would hate to have misquoted you on that. Was the campaign for fiscal responsibility asked to give evidence to the Calman commission in the first place?

**Ben Thomson:** The campaign for fiscal responsibility started the day after the Calman report came out, of course, but Reform Scotland gave evidence in the national conversation and for the Calman report. I think that both sides praised us for coming out with constructive ideas and thoughts on technical aspects—on things such as the Gibraltar and Azores cases and what was happening in Northern Ireland—and for a general overall philosophy. I think that many Calman commission members appreciated the liberal, federalising and decentralising ideas that we proposed. Obviously, people connected with the national conversation want to go much further than we do, but they acknowledge our work. We were involved in both processes.

**Tricia Marwick:** Were you disappointed that ideas that you put forward did not see the light of day in the Calman report or the Scotland Bill?

**Ben Thomson:** We are disappointed only because we saw the Scotland Bill as a real opportunity to create accountability. Everyone here recognises that we need greater accountability; we would not be here otherwise.

We would not have had the Calman report or the national conversation if none of us wanted accountability—and we all want long-term sustainable growth. Reform Scotland wanted the Scotland Bill to deliver those things, but we think that the level that has been gone to—over four or five years—will not be enough to achieve them. Members can see that from our graphs. We are disappointed that an opportunity has been wasted at a time when we desperately need our politicians to be thinking of creative new ideas, looking for efficiencies and considering how to grow things. An opportunity has been wasted to have a bill that gives members the powers to do exactly those things.

**The Convener:** We are terribly pushed for time. David McLetchie can ask one question, and Peter Peacock may ask a question on a different matter. We must then move to our third panel.

**David McLetchie:** I was struck by Ben Thomson's reference, in answering an earlier question, to freedom for both "sides" in setting rates. Many people in the Parliament do not think of Scotland and the rest of the UK as two sides; rather, we think of them as one side.

**Ben Thomson:** No, I meant—

**David McLetchie:** I am sorry; I will come to my point. All the discussion that we have had has worked on the assumption that, somehow or another, it is only by the exercise of powers by the Scottish Parliament that we will generate economic growth in Scotland, but many people would subscribe to the view that one of the biggest factors in the generation of economic growth in Scotland is the policies that the United Kingdom Government pursues, which might well include policies in the wider international arena. Where are all the Reform Scotland papers on what we should do to grow the UK economy, of which Scotland is a significant part? Why is there such an obsession with focusing on the narrow aspect of the Scottish economy and powers for this Parliament instead of looking at the powers held by Scotland's two Parliaments—here and at Westminster?

16:30

**Ben Thomson:** First, if I said "sides", I did not mean it in the antagonistic way of the word—my apologies for that. What I really mean is that there are five different governmental levels: Europe, Westminster, Holyrood, local government and community. Each level has defined powers and each is responsible for different aspects. We believe that each of the levels of government should have responsibility for a greater part of the revenues required to provide the services that it is responsible for, and we would have exactly the

same arguments about local government as we do about devolved government.

I do not see it as a matter of confrontational sides. Reform Scotland has never taken a view about independence or seen antagonism between the UK and Scotland. We are great believers that, like Europe, the UK is a good affinity group for the services that it provides.

**David McLetchie:** The UK Government is responsible for the management of the economic and monetary union that is the United Kingdom. Surely the growth and prosperity of the United Kingdom as a whole will largely be determined by the success of the policies pursued by United Kingdom Governments, which are specifically charged with that responsibility—a responsibility that, as I understand it, you do not want to change.

**Ben Thomson:** That is a very centralist approach. I believe that good growth comes not just from central Government but from local government—local government economic initiatives and ensuring that public services delivered by local government are delivered efficiently—from devolved government looking at how to grow the economy, and from—

**David McLetchie:** But we have already established that there is no correlation with who exercises the power. The relationship is with how the power is exercised. By your argument, we could have devolved Governments exercising poor judgment, such as by proposing a supermarket levy, and a UK Government at a federal level exercising some sound judgment, such as by cutting corporation tax—which the present UK Government is committed to do. It could equally be argued that Scottish growth will be enhanced by that process and level rather than by anything that is done at a lower level. Is that not the case?

**Ben Thomson:** That is a very pessimistic view of our local—

**David McLetchie:** No. It is a very optimistic view of what the UK Government is going to achieve.

**Ben Thomson:** No, it is a pessimistic view of what our local and devolved politicians do, because they do—

**David McLetchie:** I have seen some of them. *[Laughter.]*

**Tricia Marwick:** I have seen some of them, too.

**The Convener:** I am mindful of the time. Peter Peacock has a question on a different matter.

**Peter Peacock:** It is on an entirely different subject. Mr Thomson, in your evidence you talk about devolving responsibility for the Crown Estate. I understand your argument, which seems to be based on the regulatory improvements that

that might bring to the renewables sector. I want to be clear: when you talk about devolving responsibility, are you talking about devolving the Crown Estate income, so that, in other words, only the net resources raised in Scotland come to Scotland and, equally, the net resources raised in the rest of the UK go to the rest of the UK?

**Ben Thomson:** Yes. Only the Scottish element of the Crown Estate income would be for Scotland. Politicians seem to see renewables as an attractive strategy—I see it as an interesting development and the sort of thing that politicians should be involved with. Devolving the Crown Estate income would give you the incentive that, if you can put in investment and make renewables work, you will get some payback. It is an example of the incentives that I have been talking about.

**Peter Peacock:** There is a question mark in my mind. At the minute, I think that, out of about £250 million a year net income to the Crown Estate, about £8 million is attributable to Scotland.

**Ben Thomson:** The amount is a bit more than that, but it is the same sort of quantum—it is tiny.

**Peter Peacock:** So we would be cutting ourselves off from a huge potential investment supply that is currently being spent partly in Scotland on developing renewables. Would that be an entirely wise strategy in the short term?

**Ben Thomson:** Income is very small at the moment, but you could have made exactly the same argument about oil fields 40 years ago. They produced tiny amounts of income, so what was the point in bothering about them because they would not amount to much? If the renewables strategy works—it may or may not—it could deliver huge amounts of income to the Scottish Government. Why should we not give the Government that incentive? Why should we not give you the incentive to follow a policy that will deliver dividends to the public sector if it works?

**Peter Peacock:** So your argument is not born of a particular criticism of how the renewables promotion is currently being undertaken by the Crown Estate; it is simply a principled position similar to the other arguments that you have advanced.

**Ben Thomson:** Yes—it is a principle.

**The Convener:** Ben, thank you for your time. We will suspend just for a moment until the new panel joins us.

16:35

*Meeting suspended.*

16:38

*On resuming—*

**The Convener:** I invite the members of the final panel to introduce themselves, after which we will move to questions. In the interests of time, our intention is to deal with insolvency first, so we will speak to John Whiting on that. We will then come to John Aldridge on new taxes, and then to Deborah Lovell on stamp duty land tax. I say candidly that we will try to limit the questions to a couple on insolvency and stamp duty land tax, to get the issues on the record. Our questions to John Aldridge will be a bit more wide-ranging, and other panel members will want to come in. I am committed, for your sake, to try to get us through this in half an hour or so.

**John Aldridge:** Until about five and a half years ago, I was a civil servant. Latterly, I was a finance director with the then Scottish Executive. More recently, I was a member of the independent expert group on finance that advised the Calman commission.

**John Whiting (Chartered Institute of Taxation):** My main role is as tax policy director of the Chartered Institute of Taxation. I am also a member of the Low Incomes Tax Reform Group. Both of those are pan-UK bodies, and we work very much with our Scottish members. We have done a lot of research with them to get views on the issues. I must also put on the record that I am the tax director of the Office of Tax Simplification. *[Laughter.]* That usually arouses a gale of laughter. I am sorry if I made you choke, convener.

**Deborah Lovell (Law Society of Scotland):** I am a member of the conveyancing committee of the Law Society of Scotland and a conveyancing practitioner. I have been involved in liaising with HMRC on practical issues in the introduction of stamp duty land tax.

**The Convener:** We have already had one run round the houses today, so I hope that we can keep things relatively brief.

**Robert Brown:** Mr Whiting, I want to begin with the procedures for corporate insolvency, which are to be re-reserved to a degree under the proposals in the Scotland Bill. Do you welcome that? Will it solve problems or just create other confusions, or do you not have a view?

**John Whiting:** Forgive me, but corporate insolvency is not my area at all. I am a tax practitioner and tax adviser.

**Robert Brown:** Right, so it is not your area of interest. Do the other witnesses want to say anything on that? Ms Lovell?

**Deborah Lovell:** It is not my area of expertise.

**Robert Brown:** In that case, we will leave insolvency.

**The Convener:** Forgive us—we will leave insolvency. Let us come to John and then to stamp duty land tax.

**Peter Peacock:** Is it John Aldridge we are talking about?

**The Convener:** We are indeed.

**Peter Peacock:** Okay. Just as well we are not confused about that.

John, you ran the system in the Scottish Government and you liaised with the Treasury down the years, with some frustrations on occasion, I have no doubt. From a practitioner's point of view and from your practical experience, are the proposals in the bill workable?

**John Aldridge:** I think that they are, although I suspect that there are still details to be clarified. For example, I was struck by the discussion about the definition of a resident for tax purposes. That issue might need clarifying and tidying up. As long as that can be sorted out, I have no doubt that the arrangements are workable. It will need the development of new skills among some of my former colleagues in the Scottish Government to deal with income as well as expenditure, but I have every confidence that they will be able to develop those skills.

**Peter Peacock:** That is an important point. I presume that the function of the finance department will have to change to more of a treasury function. Will you say a word about that?

**John Aldridge:** You are right that it will mean changes, although some of them might not be terribly visible. The finance group in the Scottish Government might have changed a bit since I was there, but it is, I suppose, a partner with the other parts of the Government. If it adopts a tax-raising role as well as an expenditure one, it will have to become more detached and, as you say, more like a treasury. It will take more of an overall view and will have a first-among-equals role in the Scottish Government's administrative structure.

**Peter Peacock:** Again looking at the generality, you say that the powers are workable, but do you welcome them? What dimension will they add to the work that you used to do and that others do now in managing the finances?

**John Aldridge:** I welcome the powers. It is difficult to distinguish how much that is a personal welcome and how much it is to do with my previous role. It is a logical development of devolution to move from being in charge of how the money is spent in Scotland to taking some responsibility for how it is raised and what is raised. That will increase the accountability and

responsibility. I was struck earlier by the comments that, when you are responsible only for spending money, the incentive is to spend your full budget. That was certainly the case in the early days of devolution—I remember being hauled over the coals by committees in the Parliament for not having spent the full budget. With the power to raise revenue, there is much more of a balance. The incentive to save should be there. One of the more forgotten parts in the bill, which is good, is the establishment of a Scottish cash reserve, which will give an incentive to save money and to underspend rather than overspend.

16:45

**Peter Peacock:** I welcome your latter point. I was coming to it, but you got there first.

The bill implies that the relationship with the Treasury will be quite changed at one level. What is your perception of that? How might that relationship work in future?

**John Aldridge:** That is one of the most fundamental changes in the bill, although it has not received much attention until now. To be polite about it, the Treasury will have to be even more open than it has been until now with the Scottish Government and also, I suspect, with other parts of the UK. The Treasury will have to change the way it works to a large extent. I am not sure that it realises that yet, but I welcome it.

**Peter Peacock:** You welcome the requirement for new dynamic in the system.

**John Aldridge:** I do. Increasing openness between the different parts of the UK, and particularly between the Treasury and the parts of the UK, will be a great benefit of the bill.

**Peter Peacock:** At our previous meeting there was a bit of to-ing and fro-ing about going beyond the extension to income tax and further taxes. I do not particularly want us to go there again, but I recall that you wrote an article some time ago expressing the view that we have existing powers that we choose not to use—which is a clear political choice by all the parties—and that there are other ways in which finance can be managed through user charges and so on. What is your view about the extension of income tax taken together with those other issues? Do we have a significant range of choices at our disposal today?

**John Aldridge:** The addition of income tax to the tools that are available to the Scottish Parliament or Government is welcome. We can argue about the figures, but it will increase the proportion so that about 30 per cent of what Scotland spends will come from resources that have been raised in Scotland through income tax,

non-domestic rates and council tax, along with the other smaller taxes.

As you mentioned, that does not cover the ability to raise user charges—they might be politically controversial, but I will mention them anyway—such as road tolls, which are common throughout continental Europe. Scottish Administrations have tended to remove charges rather than make use of them. Prescription charges have been part of the armoury for a long time, and various other more radical user charges could be considered for the use of facilities within various parts of the health service. As I say, there is a wide range of possible user charges that have not been used but which are an option.

**Brian Adam:** Why is the Treasury so desperate to hold on to so much power and influence over what is a very modest part of its overall budget? If 30 per cent of the total money that is spent in Scotland will be under our control, that would amount to perhaps 3 per cent of the Treasury's budget. With your long experience in the civil service, why do you think that the Treasury wants to constrain to a maximum extent the use of any new powers over things like new taxes, borrowing or even borrowing in relation to revenue?

**John Aldridge:** It is partly just because of the Treasury's history. Traditionally, it has been a centralised and controlling department. The UK has been an almost uniquely centralised state and the Treasury has been a centralised part of that centralised state. It is just very hard to give up power when you have had it for a long time. The Scotland Act 1998 introduced devolution, and now we have the further proposals in the Scotland Bill, and it is quite an achievement to have got the Treasury to go that far because it is hard for it to give up the power that it has had for so long.

**Brian Adam:** I would be more than happy to hear what Mr Whiting has to say on that.

**John Whiting:** I echo very much what John Aldridge said. My experience with the Treasury is that it likes to hold on to everything. You can see that in its opposition over the years to any suggestion of hypothecated taxes. It tends to say, "Oh, we cannot control where the money goes." In general, the Treasury has fought against hypothecated taxes and that sort of thing. This is quite a change for the Treasury; it will have to get used to it.

Another subtle thing that the Treasury will have to get used to is consulting on tax changes. It is getting much better at that, as we have seen over the years. The process has become more open and consultative, but the Treasury will have to get used to consulting an ever widening range of bodies and accepting that it may not have the final

say on things. The Scottish Parliament may well have the say, for example.

**Brian Adam:** Are there any good reasons why the Treasury should hold on to power and influence over the borrowing capacity for capital and revenue in Scotland?

**John Whiting:** I can see some sense in that, just because the Treasury has an overview, but it should be a partnership. The Treasury may have a big pool of expertise and, whether we are talking about tax raising or borrowing, that expertise should be made available to the Scottish Parliament to draw on.

**John Aldridge:** I agree with that. The Treasury must have an overall view of the macroeconomics of the country and the level of borrowing throughout, but whether we need the restrictive limits on borrowing that are in the bill is a moot point.

**Brian Adam:** The proposed revenue borrowing is modest, as is the proposed capital borrowing. Is there any reason for the Treasury to hold on to control other than that it is used to having control? Surely at the macro level, whatever capacity the Scottish Government has to borrow is constrained by its capacity to repay. Surely the discipline that the budget itself sets is what is needed, not further discipline from Whitehall.

**John Aldridge:** I tend to agree. As I said, I am not sure where the limits in the bill came from. I can understand why the Treasury would want some kind of long-stop power in case a devolved Administration went bonkers. It would want to be able to prevent that from happening. Other than that, I take your point.

**Brian Adam:** The Parliament may be given new powers if the bill makes its way through Westminster. Scotland-only taxes may be one change. In your view, would that be a good or a bad thing? What is your view on the influence that the Treasury wishes to retain over what might or might not be a suitable tax?

**John Aldridge:** Do you mean the power to create new taxes?

**Brian Adam:** Yes.

**John Aldridge:** I note that the bill has a power to further devolve existing taxes. That is another important power in the bill. I am delighted to see it there. It has the potential to increase the flexibility and options that are available to the Scottish Government and Scottish Parliament to rearrange a basket of taxation to create new incentives. I welcome that. For example, the power gives the option for the kind of thing that Professor McLean proposed in evidence on rearranging the various land and property taxes into a new single tax to

create better incentives. For all those reasons, it is a good element to have in the bill.

It is absolutely right that there should be a need for consultation with the UK Government on new taxes. That is needed just in case the tax has cross-border effects and what have you. I would have liked to see some kind of greater presumption in the bill that any new tax would be approved unless there were very good reasons not to do so. The position at the moment is in effect, "Well, we will have a talk about it."

**Tricia Marwick:** My question is on the precise point that has been raised. We have had a little bit of a lack of clarity from some witnesses on the position of the new taxes that a future Scottish Government might propose. Will you confirm that, in effect, Westminster will retain the power of veto over whether the Scottish Government can impose new taxes? I have heard the woolly words about consultation, but let us get down to the nitty-gritty. Will Westminster still hold a veto?

**John Aldridge:** I honestly do not know whether the powers in the bill amount to a veto. You say that you have heard many woolly words. What is important is the commitment to consultation. As I said, I would prefer a stronger presumption that a tax that the Scottish Parliament proposed would be approved unless there were good reasons not to do so. The bill certainly contains no explicit veto; I am not in a position to say whether the powers amount to a veto.

**Tricia Marwick:** Ben Thomson said in his evidence that he would have liked the bill to be enabling, which would make devolving taxes to Scotland in the future far easier, as the whole Westminster legislative process would not have to be followed again. Do you support that?

**John Aldridge:** I was a bit puzzled by Ben Thomson's comment, because a clause in the bill achieves what he described for new taxes. A new tax will not require primary legislation at Westminster.

**Tricia Marwick:** I am talking about other matters forby that.

**John Aldridge:** I am not sure in what other areas enabling powers would be wanted. On taxation, an enabling power is in the bill. That should make introducing new taxes relatively straightforward, as long as agreement can be achieved.

**John Whiting:** That is how I read the bill. The Parliament will have the power to bring in what is new. If members wanted to devolve more—as with the earlier discussion on corporation tax—they would have to persuade Her Majesty to give them an order in council, which I presume is made on Parliament's advice.

I will hark back to reflect on the Treasury's continuing power. I draw members' attention to proposed new section 80G of the 1998 act, which will give the Treasury immense powers to make amendments just by statutory instrument, whatever the Parliament has been given. That is a serious power—it is generally known as a Henry VIII power—and it seems to be crawling into an awful lot of acts from Westminster. The Treasury is reserving to itself the right to amend absolutely anything that it feels like amending.

As I read it, proposed new section 80G will mean that the Treasury will still have the power to amend almost anything. The provision even talks about retrospective amendment. Members might question what approval the Treasury will ask of the Parliament before exercising that power.

**Robert Brown:** I confess that I expect more emphasis on partnership and collaboration than some questions have suggested. I ask the two Johns whether they expect particular principles—on tax competition or whatever, which has been discussed—to be applied to the question of new taxes. Given the potential for disagreement between the two Governments, which will exist in any political set-up, will more robust arbitration arrangements be needed? Perhaps John Aldridge could refer to mechanisms that could sort out conflicts on a principled basis from his experience of working with the UK Government under devolution. In more developed federal systems, matters might go to constitutional courts. Are our joint ministerial bodies strong enough to do the trick? What principles would apply?

**John Aldridge:** When I worked in the Scottish Executive, the joint ministerial groups were variable. Some worked very well, but some did not. The finance group worked better than many. I notice a proposal to establish a new joint tax committee, of which the Scottish Government and the Treasury would be members. That should be sufficient to sort out any problems, if the will exists to make the committee work. If not, more formal mechanisms might need to be developed, as you say.

17:00

**Robert Brown:** Could the Office for Budget Responsibility advise on the detail of workability, practical implications and so on and allow a more reasoned decision-making process?

**John Aldridge:** There would be no harm in that. However, I would caution against putting anything like that in legislation, given that the OBR might not always exist.

**John Whiting:** Moreover, the OBR is very much to do with the finance side of things. With regard to the running of the tax system, many of the tax

powers that you are getting are shot through with the need to consider how individual disputes are resolved, no matter whether we are talking about individual taxpayers, internationally through double taxation agreements or the operation in the UK, on which Mr Brown is focusing. At one level, you must ensure that the mechanisms exist. As for the practicalities of running a tax system, I would expect, at an operational level, HMRC's board to include what would in effect be a Scottish representative and for there to be someone similar at the Treasury. You might then develop a code for dispute resolution at ministerial level.

**Robert Brown:** Is there not so much a code but what you might call a golden rule to deal with all this? For example, although there might be a presumption in favour of the Scottish Government getting a particular tax power if it wants it, the power might not be given because of detrimental effects on the rest of the UK. Can you give us a feel for the limitations that might exist in a practical—and not necessarily political—sense?

**John Aldridge:** I think that the white paper that the Government produced sets out a list of criteria to be met for approval of a new tax, and the Scottish Government would be expected to provide evidence to show that they had been met. Those criteria are what you might expect: the measure would have to conform to international obligations, should not create the kind of unreasonable tax competition that, as you suggested earlier, might lead to a race to the bottom and so on.

My feeling is that those criteria will have to be refined and tightened up as time goes on and, perhaps, in the light of experience. There is a risk that the Treasury could use the current criteria to turn down any proposal—after all, some excuse can always be found to do so—but, in my experience, I honestly do not think that it would do that. Nevertheless, the risk exists so it might be worth trying to get the criteria tightened up as time goes on.

**Robert Brown:** So it would be useful to push forward on that.

**The Convener:** I am very mindful of the time. However, I wonder whether Mr Whiting, as Scotland's tax simplification expert, has anything to add to our earlier discussions. I should also say that if the rest of the panel wishes to provide any additional written evidence, we will be very happy to receive it.

**John Whiting:** I have come prepared to talk about many of the issues that were discussed earlier, including corporation tax, which I have discussed with the Northern Ireland Affairs Committee, and the practicalities of running the income tax side of things. Clearly there is a great

deal to be done; as Derek Allen said, all things are possible, but quite a number of issues revolve around all this, the first of which, inevitably, is residence for UK tax purposes. As you might be aware, there is a lot of discussion as to whether there should be a statutory residence test. After all, it will be pretty difficult to hang a system off something over which you have no control.

An interesting point that the committee might also care to think about is that someone who is not a UK resident cannot be a Scottish taxpayer, which seems to cut out a number of people such as non-resident sportsmen and entertainers who carry out Scottish duties and would normally be taxed in the UK. Various issues need to be resolved, but clearly if it is easier for me to provide a submission I will do so.

**The Convener:** Do you have anything to say about corporation tax?

**John Whiting:** As I said, we have done a lot of work with the Northern Ireland Affairs Committee in its consideration of this issue. I believe that corporation tax should be devolved or, at least, widely consulted on. I subscribe to a previous witness's view that it is, in a sense, a decaying tax; I do not think that there will be a race to the bottom and/or to introduce a zero rate, but it is tempting to offer cut prices. To all intents and purposes, that is what the Republic of Ireland did and it has done pretty well from the first-mover advantage it secured in dramatically cutting its rate. Northern Ireland is thinking quite hard about arguing for that power, and Scotland could, too. Whether that really would give you the payback, however, is more of a moot point. Ireland has arguably got that, having cut its rate so much, and as the UK rate generally is coming down, I am not sure that there will be the space to make a big difference.

Fundamentally, on the question whether you should have power over corporation tax, I find the situation odd. In one sense, you are getting the power over a large proportion of income tax, and corporation tax would seem to go along with that.

**The Convener:** Are there a lot of other jurisdictions within the European Union that have such a power?

**John Whiting:** Within the EU, most have only federal rates. Germany has the power to a certain extent: the Länder are permitted to set varying rates, which they do to a certain extent, as do some cities. For example, a company that is based in Munich can find itself paying Munich corporation tax, Bavarian corporation tax and the federal tax. The administration is pretty efficient, so the companies end up paying one bill, and the central authority then allocates the money.

**The Convener:** So it is a shared tax base rather than a devolved tax?

**John Whiting:** Yes.

**Peter Peacock:** On that point, Professor Holtham, who has done work on similar questions in Wales, where it has been argued that there should be some devolution of corporation tax, suggested to us that the tax could be devolved with a cap on it so that it would not lead to tax competition across the boundaries. Have you any thoughts on that?

**John Whiting:** The answer, to a certain extent, is that it depends what you want to achieve. Yes, there could be a cap and collar both ways, but one reason for having the power to vary the tax locally is to make it attractive, or not.

To go back to the previous discussion, countries get their taxes in very different ways. Countries such as France or Belgium raise far more in social security and far less in corporation tax. You may or may not want to follow that mechanism, but that presupposes that you could change the rate quite significantly.

**The Convener:** When the Exchequer Secretary David Gauke came to the committee, he said that the UK was, from its reduction in corporation tax from 28p to 24p, looking at a loss to the Exchequer of about £800 million each year for each penny of the reduction. The UK Government is seeking to meet that cost through changes to national insurance contributions and through another tax, although I do not recall which tax was mentioned. He was pretty clear that the loss was £800 million per percentage point reduction; he did not, for example, envisage any quick rise in receipts from even just a 1 per cent cut.

Have you or Northern Ireland thought at all about how you might replace income on that scale? That is obviously one of the issues.

**John Whiting:** Part of the payback on the reduction is the reduction in capital allowances, so there is some balancing. I cannot remember whether the £800 million is net of the payback on lower capital allowances.

Fundamentally, the reduction—certainly from a UK point of view—is a long-term bet, or gamble, in the light of clear evidence that the UK rate of corporation tax, and indeed the whole system, is much less competitive than it used to be. We are seeing a far greater flow of corporate investment out of the UK, and companies are moving; there are plenty of headlines on that.

The reduction is part of the overall long-term strategy to try to make the system more competitive. If it costs £500 million or £1 billion, you are taking the risk—as Northern Ireland would be, although the figures would be much smaller—of making a cut, putting something down and aiming to get more in. You would be trading, as



Ireland did, on the basis that if a country makes some money out of corporation tax, that is almost a bonus. You are really trying to get income tax, PAYE, national insurance, VAT and generated business rates—all the other taxes—from companies. That is where corporate investment delivers money to the Exchequer.

**The Convener:** What do you expect the Treasury's likely response to be? A consultation is envisaged, and you have worked for the Northern Ireland Affairs Committee. Do you want to hazard a guess, given that, as you say, the Government is likely to move to fill the gap by raising other very visible taxes? You can probably read the situation better than we can.

**John Whiting:** I think that the Treasury will want a fairly convincing case from Northern Ireland. If it gets a convincing case that Northern Ireland really wants corporation tax to be devolved—I would not say that that is certain—it will want to talk to Wales and Scotland and say, "Well, we're doing it for one. Would you like us to do it for you as well?" I imagine that the Treasury will go round the loop again, because if you are trying to devolve corporation tax for one part of the UK, why not go the whole hog and give it to everybody? The argument for not giving Scotland corporation tax powers rather falls away in that case.

**The Convener:** And you think that the Treasury will do it for Northern Ireland and compensate by raising other taxes.

**John Whiting:** My reading of the Northern Ireland Affairs Committee is that I am not sure that it will go there, because it is seen as a gamble, which clearly it is. Needless to say, when the southern Irish economy was doing tolerably well the thinking was, "Oh, yes, we'll have some of that," but now there is a feeling within the Northern Ireland Affairs Committee of, "Oh, gosh, if that's what it did to Ireland maybe we'll pause a bit."

**Brian Adam:** Of course, it was not the reduction in tax take from corporation tax that hurt southern Ireland so much; it was the reduction in the amount from property taxes.

**John Whiting:** It was the much wider economy—you are absolutely right.

**Brian Adam:** If there is a general trend towards reducing corporation tax—whether or not it is a chase to the bottom—is there any evidence from elsewhere in the world of alternative, less volatile taxes being used to replace the previous tax take? Or have folk just given up trying to get taxes in?

**John Whiting:** The main shift across the world has been to indirect taxes—in our terms, VAT. That can be seen around Europe, where such rates are generally rising. What most countries are

looking for, as a sort of holy grail, are the green taxes; there is a feeling that there may be more to be made out of that area, partly because it perhaps encourages the right behaviour. However, many countries are struggling with the problem that corporation tax revenues are felt to be very vulnerable.

**Brian Adam:** Taxes on consumption or on damage to the environment would tend to fall on individuals, whereas corporation tax and business taxes, by their very nature, do not fall directly on individuals. Is there any evidence from international experience that the balance has gone as far as it can in the direction of taxes on consumption as opposed to taxes on business?

**John Whiting:** Under European rules, VAT can go up to a maximum of 25 per cent; the Danes are there and feel that that is all right. We have a bit of a way to go in that regard. I do not think that the balance has gone totally as far as it could do in the direction that you indicated, but you are right that that is an issue. The issue is also causing many countries to go back to the tax area that is, in some ways, one of the oldest of all: property. The perception is that perhaps property is not paying its way as it should do. That might give you a cue for going on to stamp duty.

**The Convener:** We will segue into that, as we need to end this line of questioning. However, that evidence was very interesting. We are trying to add a few pointers for the future rather than look at the past in any observations on green taxes. We have a landfill tax and we may get a tax on aggregates. Any observations on global trends in the spectrum of land and property taxes and what the committee should be alert to would be very helpful in due course.

**David McLetchie:** I want to ask Deborah Lovell about the bill's proposal to devolve stamp duty land tax. Most people in Scotland are aware of that tax in terms of the stamp duty that they pay when they buy their house, which is determined on a tiered rate by reference to the value of the house. However, the proposal, as I understand it, would apply not just to that tax but to all land and property transactions. It is correct, is it not, that the proposal does not refer just to residential properties?

**Deborah Lovell:** That is right.

**David McLetchie:** My recollection is that in days of yore much fertile imagination and creativity used to go into the avoidance of stamp duty on commercial property transactions. From my days as a solicitor, I recall that the trick was to turn a property transaction into a share transaction, so that shares in a company that owned the property were transferred, which allowed a lower rate of tax to be paid than would be the case simply by

transferring the property. Is that correct, broadly speaking?

**Deborah Lovell:** Yes, that is correct.

17:15

**The Convener:** The rest of us have learned something. [*Laughter.*]

**David McLetchie:** Well, there you are. I did not do that, though—I was just told that it happened. It is all perfectly legal, you know.

That sort of activity, legitimate as it was, created a situation in which significantly lower taxes were paid. Does the devolution of stamp duty land tax under the bill deal with that potential avoidance problem, or would it still be possible, notwithstanding the devolution of stamp duty land tax, to do share transactions that are fundamentally property transactions and thereby save considerable amounts of money?

**Deborah Lovell:** Your example illustrates something that went on and which led to the introduction of SDLT, and to anti-avoidance measures being developed.

To set the scene, since SDLT came in, we and other stakeholders, including the Scottish Property Federation and the Scottish stamp taxes practitioners group, have had a continuing dialogue with HMRC about practical difficulties with the tax, some of which are specific to Scotland and some of which apply throughout the UK. If it would be useful, we can supply a separate note about what are accepted to be the issues that are being discussed at the moment.

That has led to many amendments being made to the original SDLT legislation, and to many guidance notes and pieces of technical guidance being made available. The result is that the average taxpayer, whether that is the average house purchaser or someone involved in a commercial transaction, finds it difficult to know what the tax is and what they must do to comply. Those measures are not deliberate anti-avoidance, although avoidance schemes are still going on—people can search for them on the internet. Since the introduction of SDLT, HMRC has dealt with that by having specific anti-avoidance measures, which have been added each time that something has happened.

The conveyancing and tax law committees of the Law Society of Scotland believe that there is an opportunity to address some of those matters. The belief is that most people want a fair and reasonable system that is clear, that contains certainty and that they understand. That is not what we are living with at the moment. As I say, that is because of both Scotland-specific issues and other reasons.

**David McLetchie:** That is helpful, but there is another aspect that I want to get to the bottom of. There might be evidence of a substantial revenue loss in situations where, in reality, the beneficial ownership of an office block, for example, has changed hands. That could yield 4 per cent of the value of the property if it was just done as a straight property transaction, which might be a considerable amount of money. There could be evidence of such transactions being conducted in some more elaborate way, which renders them liable not to stamp duty land tax in its direct form but to another variation of stamp duty on share transactions. Is it not the case that we have a devolved tax, but that we do not necessarily have the mechanisms to address the avoidance of that tax? Presumably, all those measures remain reserved to Westminster and to HMRC. Is that correct?

**Deborah Lovell:** A suggestion could be made for a general anti-avoidance measure, which would be easier than having specific reactions according to different schemes. You are focusing on one example, but there are general anti-avoidance measures at the moment in the SDLT legislation. There are other specifics—it is a complex matter.

**David McLetchie:** Would all the anti-avoidance measures and powers be devolved under the Scotland Bill?

**Deborah Lovell:** There is nothing at the moment—we have a blank sheet of paper in that respect.

**The Convener:** I have just been checking the Law Society's evidence on the matter, and it is terse. I note that Michael Clancy is in the room. It would be helpful if you could write to us about the opportunity that exists in the bill. Our impression is that the policy intent is that there should be a blank sheet of paper. I take the point that some ancillary observations about avoidance might be required, but it would be a superb way to end the meeting to hear tax experts talking about the opportunity that the bill represents, rather than about all the difficulties of definition, residency and so on.

Perhaps we could invite the Law Society—without pre-committing you in any sense to what the reforms might be—to give a sense of the existing deficiencies and of what the issues might be that you would wish to be resolved. You could also explain what implications that might have for the bill as drafted, as that would need to go into our report with a view to making such a wholesale reform possible from 2015.

**Deborah Lovell:** We are open to consultation and assistance on that. At the moment, there is nothing specific to comment on in that regard. We

can give you details of where we are at the moment in practical terms, and of the issues that we see.

**The Convener:** Yes—and of what you would like.

**John Whiting:** One route that was discussed when SDLT came in was to have a look-through mechanism, as is practised in Australia, to address underlying land values. However, that can get clumsy and administratively complex, which possibly brings us back to the general point about anti-avoidance.

I echo what has just been said: you have a blank sheet of paper and can start again, perhaps doing things better than was the case with the existing measures, which were rather rushed through with not as much consultation as would have been ideal.

**The Convener:** That is helpful. Let us call it a day. I thank the witnesses very much, and I am sorry that we kept you waiting so long.

17:21

*Meeting continued in private until 17:32.*



Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

Members who wish to suggest corrections for the revised e-format edition should mark them clearly in the report or send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP.

#### PRICES AND SUBSCRIPTION RATES

##### OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament annual subscriptions: £350.00*

##### WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by RR Donnelley and is available from:

#### Scottish Parliament

**All documents are available on the Scottish Parliament website at:**

**[www.scottish.parliament.uk](http://www.scottish.parliament.uk)**

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille, large print or audio), please contact:

#### Public Information Service

The Scottish Parliament  
Edinburgh EH99 1SP

**Telephone: 0131 348 5000**

**Fòn: 0131 348 5395** (Gàidhlig)

**Textphone users** may contact us on **0800 092 7100**.

We also welcome calls using the Text Relay service.

**Fax: 0131 348 5601**

**E-mail: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)**

We welcome written correspondence in any language.

#### Blackwell's Scottish Parliament Documentation

**Helpline** may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

#### Telephone orders and inquiries

**0131 622 8283 or**

**0131 622 8258**

#### Fax orders

**0131 557 8149**

**E-mail orders, subscriptions and standing orders**  
**[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)**

#### Blackwell's Bookshop

**53 South Bridge  
Edinburgh EH1 1YS  
0131 622 8222**

#### Blackwell's Bookshops:

243-244 High Holborn  
London WC1 7DZ  
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

#### Accredited Agents

(see Yellow Pages)

and through other good booksellers

e-format first available  
ISBN 978-0-85758-461-8

Revised e-format available  
ISBN 978-0-85758-475-5