



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

### FINANCE COMMITTEE

Tuesday 25 January 2011

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**FINANCE COMMITTEE**  
**4<sup>th</sup> Meeting 2011, Session 3**

**CONVENER**

\*Andrew Welsh (Angus) (SNP)

**DEPUTY CONVENER**

\*Tom McCabe (Hamilton South) (Lab)

**COMMITTEE MEMBERS**

\*Derek Brownlee (South of Scotland) (Con)  
\*Malcolm Chisholm (Edinburgh North and Leith) (Lab)  
\*Linda Fabiani (Central Scotland) (SNP)  
\*Joe FitzPatrick (Dundee West) (SNP)  
\*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)  
\*David Whitton (Strathkelvin and Bearsden) (Lab)

**COMMITTEE SUBSTITUTES**

Gavin Brown (Lothians) (Con)  
Lewis Macdonald (Aberdeen Central) (Lab)  
Stewart Maxwell (West of Scotland) (SNP)  
Liam McArthur (Orkney) (LD)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

Andy Kerr (East Kilbride) (Lab)  
Tom McCabe (Hamilton South) (Lab)  
Jack McConnell (Motherwell and Wishaw) (Lab)  
John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

Committee Room 2



## Scottish Parliament

### Finance Committee

*Tuesday 25 January 2011*

[The Convener *opened the meeting at 13:32*]

### Decision on Taking Business in Private

**The Convener (Andrew Welsh):** Good afternoon and welcome to the fourth meeting of the Finance Committee in 2011. Agenda item 1 is to decide whether to consider in private at future meetings our draft report on our inquiry into the Scottish variable rate of income tax. I propose that we do so. Are members agreed?

**Members** *indicated agreement.*

## Scottish Variable Rate Inquiry

13:32

**The Convener:** Item 2 is to conclude the evidence taking on our Scottish variable rate inquiry. First, I welcome to the committee three former finance ministers: Andy Kerr MSP, Tom McCabe MSP and Jack McConnell MSP. I invite the former finance ministers to make opening statements.

**Jack McConnell (Motherwell and Wishaw) (Lab):** I want to outline briefly, mostly from memory, what took place in summer 1999 when I was appointed as the first finance minister in the new Parliament and the new Scottish Government. I should probably say by way of a preface that I had throughout the 1990s been involved in the design of the legislation that created the Parliament, and specifically in the discussions about the tax power. I therefore had some experience in advance of May 1999 of why the power had been created and the democratic purpose for which it was designed.

I was appointed Minister for Finance shortly after the election in May 1999 and was immediately notified by officials. I am afraid that I do not have dates because there do not appear to be any papers on the Scottish Government file that relates to this period—certainly none has been provided to me in advance of this inquiry.

However, I recall very clearly that there were two immediate issues that needed my attention. One was the creation of the new financial procedures for the Parliament, which later became the Public Finance and Accountability (Scotland) Act 2000. The second issue was the decision on what to do about the infrastructure for the tax varying power. The United Kingdom Government—I think that the minister involved was Henry McLeish—had put in place an infrastructure in advance of the 1999 election in anticipation that at least one party might propose using the tax power, so there had to be a state of readiness.

Some time in early June 1999, within a fortnight or so of my becoming Minister for Finance, there was a meeting between me and Donald Dewar—I think that Jim Wallace might also have been involved, as Deputy First Minister—at which I made a recommendation on the way ahead. Officials had provided me with options that ranged from one extreme, which was to maintain a full infrastructure and would be quite expensive, to the other, which was to abandon all the infrastructure. That was the cheapest option, of course, but in my view it was undemocratic. I made a recommendation to the First Minister and Deputy

First Minister, which they accepted, and the recommendation was subsequently communicated to, and accepted by, the Cabinet. I informed the Parliament in a parliamentary statement on 24 June.

It is worth saying that in my mind—and in the minds of Donald Dewar and Jim Wallace, in my memory—there was never any question of not having some basic infrastructure in place for democratic reasons, and there was never any question of not communicating that decision to Parliament as quickly as possible.

The statement on 24 June covered both issues: the bill that became the Public Finance and Accountability (Scotland) Act 2000 and the tax-varying power. Members of the committee might not have seen the statement among the paperwork for the meeting, so I will mention two or three points that I made. I made it clear that we had made a decision that would

“take account of the possibility that a future Scottish Executive might decide to use the tax-varying power”,

and that we had

“concluded that it would be financially irresponsible and politically unacceptable to abandon all the implementation work that has already been done.”

I said that we did not want to deny any party the opportunity, should they succeed in forming an Administration, to use the power during the four-year session or subsequently. At the time, the Scottish National Party was the main Opposition party and was proposing to use the tax power, so that was the example that I used, but it could have been any party.

I also told the Parliament that we had

“devised an option that would allow the tax to be introduced in the financial year immediately following a Scottish election”—

that is, if the election was held in May the tax could be introduced in the following April, should the Scottish Government choose to do that. That was the option that I had recommended to the First Minister and Deputy First Minister and which had been accepted by them. It was based on advice that changes could not be introduced mid-financial year, so we had devised a system that would allow the changes to be made as quickly as possible.

I told the Parliament that the option would have an annual running cost of about £2 million to £2.5 million. David Davidson MSP, who was then the Conservative finance spokesperson, asked the second question following the statement, which was to ask why we would not scrap all preparation, because no one would ever use the power. In response, I said that it was a matter of democracy. I said:

“We will keep a basic infrastructure in place. That is right because it is democratic.”—[*Official Report*, 24 June 1999; c 811, 815.]

That is where the matter was left that day. Following that day, over a long period there seemed to be a cross-party consensus that we had done the right thing. I do not think that there were ever any votes in Parliament or challenges on the issue.

**Andy Kerr (East Kilbride) (Lab):** My evidence will be brief. I refer members to the note of 7 July 2003 from Richard Dennis. Following the election in that year, I had a straightforward role, which was to make a decision based on the advice that I had been given. In his note, Richard Dennis talked about maintaining the 10-month state of readiness and said:

“The question now is whether to renew this contract for a further four years to leave the next Executive with the same option.”

He went on to say that we had negotiated a better deal with regard to the cost of maintaining the system, and under the heading, “Recommendation or Conclusion”, he asked:

“Are you content for us to continue to maintain the SVR infrastructure at the current state of readiness? You will need to inform Parliament of your decision, probably via an inspired PQ ... we will offer a draft and Press Q and A nearer the time.”

In my view, I had a simple and straightforward decision to make, which was to maintain the state of readiness and allow future Governments to make their own decisions on the matter. That was important, as Lord McConnell said. In a response to Richard Dennis from Julie McIlroy, my assistant private secretary, the approach that the civil servants had recommended was endorsed. I considered that the right thing for a right-thinking finance minister to do was to continue the power, so that future Administrations could take their own decisions.

**Tom McCabe (Hamilton South) (Lab):** Good afternoon, everyone. Papers on the Scottish variable rate that the former finance ministers who are present today have requested and papers that the Scottish Government has released show that the Scottish variable rate was always in a state of readiness from 1999 until the current Administration took over. First, that was because the Scottish Executive was obliged to maintain that state and to inform Parliament how that would be done. As the record shows and as Lord McConnell has outlined, that is exactly what was done. Secondly, it was because 10 months is the minimum statutory period in which any incoming Scottish Government could implement the SVR.

Papers that have been released show that Scottish Government officials were in discussions with HM Revenue and Customs officials in March

and April 2007. The papers clearly show that officials believed that those discussions had not reached a stage at which they could or would brief ministers. As members know, I was the Minister for Finance and Public Service Reform at that time, when I was aware that the discussions were on-going. I inquired whether an incoming Administration would be able to implement the SVR at the first opportunity, to which the answer was yes, with at least 90 per cent collection in the first year and full collection in subsequent years. In common with most United Kingdom citizens, I am aware of HMRC's powers to recover unpaid tax in subsequent years.

In 2007, Mr Swinney took a decision that prevented the SVR from being implemented in 2008 and subsequent years. He compounded that by denying Parliament information, which had previously been provided. Even worse for him, he sought to blame others for the unfortunate situation. That regrettable situation was further compounded by his telling Parliament that he considered using the SVR in the financial year 2011-12 when he knew that he had taken decisions just two months earlier that made implementation before 2013-14 well nigh impossible.

Those events, which are revealed in the documentation, have brought us to today's position. I stress that I have significant regard for the Cabinet Secretary for Finance and Sustainable Growth politically and personally. However, the way in which he decided to approach the situation was unworthy and disappointing.

It is more in sorrow than in anger that I present my evidence. I repeat that there is no connection between the situation that was presented to Mr Swinney on 14 May 2007 and the situation in which he now finds himself.

**The Convener:** The cabinet secretary will have the opportunity to respond when he appears before the committee.

HM Revenue and Customs told the committee that it could

"put the SVR into live running within 10 months of a Scottish election".—[*Official Report, Finance Committee*, 11 January 2011; c 2913.]

To alter the SVR for the start of the tax year following the election, HMRC would have to be given notice by June. Two practical questions arise from that. I presume that any decision on whether to alter the SVR would inform, and be informed by, consideration of that year's draft budget. However, draft budgets are usually published in September, and sometimes as late as November. In making arrangements with HMRC, what account has been, or should be, taken of the Scottish Parliament's budget scrutiny cycle?

**Jack McConnell:** I should probably answer that question, given that I presented to Parliament the bill to establish the budget cycle back in 1999, as you will remember. The budget cycles in Scotland are similar to those in the UK, although our procedures differ. Provision is made for an annual budget and annual expenditure decisions. However, in the past year, the new UK Government had an emergency budget shortly after the election—outwith the normal budget cycle—to implement decisions that were in the coalition parties' manifestos for the election campaign that had just concluded.

13:45

I was clear back in 1999—and I was supportive of the finance ministers who continued with the decision while I was First Minister—that there had to be the option for an incoming Administration after a Scottish election to have what would be the equivalent of an emergency budget in which it might make a decision to alter the SVR. I was clear that it should not be tied to having to wait until the end of the year and making the decision for what would then become two years into the four-year cycle, rather than just one year. It seemed to me to be important that the infrastructure was in place to allow for a decision in late May or early June that could then be implemented the following April, and particularly that that could be done in those years that immediately followed the elections in 1999, 2003 or 2007.

**Tom McCabe:** I am sure that the committee understands the chronology, but it is probably important to clarify it. An incoming Administration may announce its intentions in May. Those intentions will then shape the draft budget that it presents later in the year. That is the right order of events.

**Andy Kerr:** I have a fairly simple point to add. If a party campaigns to either increase or decrease taxation in Scotland, it will present a budget in some form that would achieve that objective. I think that your question is based on a technical premise, but the politics would dictate that an alternative mechanism would be deployed, such as an emergency budget.

**Jack McConnell:** I am sorry to come back in again, convener, but it is important to remember—I have always been keen to ensure that we are clear about this—that it is possible for parties to campaign on a reduction of income tax in Scotland and not just on an increase. Given the opinion polls at one point in 1998-99, there was a very real possibility that the party that became the largest party in 1999 would be one that advocated using the power to increase tax, but there is always the possibility that a party with a commitment to

decrease it might win a Scottish election, and if it wanted to do that, it would want to act as quickly as possible. We were therefore keen to have the infrastructure not just for tax increases but for tax decreases, and that is why it was important to have the possibility of immediate decision making leading to immediate implementation the following April.

**The Convener:** Given the evidence that we heard from HMRC, it still bothers me that, time-wise, the bits do not quite fit.

Given that it is for the Scottish Parliament to decide whether to alter the SVR, what arrangements should be put in place to ensure that the Scottish Parliament is always able to exercise that power?

**Jack McConnell:** The arrangements comprise the following: the creation of the legislation, which happens in the cycle every autumn, as you say; the possibility or—in my view—the duty to make parliamentary statements on the matter and announce the decision properly to the Parliament; and the ability within 12 months to implement the decision that has been made. In 1999, 2003 and 2007, that opportunity was available to the incoming Administrations.

**The Convener:** I throw the questioning open to members.

**Joe FitzPatrick (Dundee West) (SNP):** I am looking back to 1999, so I think that my question is for Lord McConnell, but if I have got that wrong, the other former finance ministers might want to answer.

It is clear that a considerable amount of money was invested in the system and paid to HMRC. When that was approved, was there any indication that the system might be suitable only for a number of years and that more money might be required for infrastructure? That is a separate thing from the annual money for maintaining the database, which I understand is different. Was there any indication from HMRC that the quite sizeable amount of money that was paid for the infrastructure might not be enough and that it might be coming back asking for more money at the drop of a hat?

**Jack McConnell:** I will comment on what happened in the year before the Scottish election in May 1999. I do not have access to the papers on that, because the Parliament had not been created at the time—the minister responsible, I think, would be Henry McLeish—but my memory from the discussions back then is that Henry McLeish, as the minister for devolution, approved the creation of the infrastructure at some time around mid-1998 or autumn 1998. The infrastructure was then put in place, and obviously there was a cost for that.

The decision that I faced in May and June 1999 was whether to continue with the full-blown infrastructure, which included all kinds of things, such as a call centre to deal with inquiries, or whether to save on the annual running costs of that infrastructure, which amounted to about £20 million—subsequently, we reallocated that to other things—and maintain the database on the system, the annual running costs for which were about £2 million to £2.5 million. To be fair, I think that a cheaper option was put to me at the time, but that would have involved a two-year delay for an incoming Administration. We wanted to make the variable rate available within a 12-month period.

With all decisions that involve some investment in technology, you are aware that, at some point, that technology will require to be updated. I do not recall—partly because I was not involved in the original decision in 1998—being told whether an update would be required in three, five, eight or 10 years' time, but we would have assumed that the computer system would be updated on the normal cycle of things and probably within a decade.

**Joe FitzPatrick:** I want to widen the question and ask about the other money. I think that we reckoned that, over the piece, £25 million was spent on the SVR. When that money was allocated, was anyone else made aware that maintaining the system might well involve receiving a very large bill and that we were paying for something that would not be usable in the future without further investment?

**Andy Kerr:** We should bear in mind what Lord McConnell said in response to your previous question about predicting the cost of information technology systems, which is a difficult thing to do. Costs can come down as well as go up. The note from Richard Dennis of 7 July 2003 indicates that the cost of maintaining the system that was payable to HMRC had come down to £200,000 across the lifetime of the Parliament—some £50,000 per annum—as opposed to the £10 million that, according to my note from 2003, it would have cost to reintroduce the scheme, had the decision been taken to cancel it. That would have been rather strange, given that the financial wherewithal to reintroduce it might have been lacking.

I argue—in contrast to what you are suggesting—that in spending moneys in that way to maintain a system that would have allowed a democratic decision of the Parliament to be implemented, we invested wisely. I would rather spend £200,000 over four years than £10 million in one year to implement a democratic decision of the Parliament.

**Tom McCabe:** As I said, I was aware that discussions were on-going. I was never under any



illusion that if there was to be a substantial overhaul of the infrastructure for collecting tax throughout the United Kingdom, a cost would be attached to that. I have enough experience in Government to know that any time an IT system is substantially overhauled, significant costs are incurred.

**Joe FitzPatrick:** That deals with the issue as far as the capital is concerned. At the end of the day, we had no assurances.

As far as readiness is concerned, Sarah Walker told us that in 2007, when the new Scottish Government took over, the SVR could not reach a state of full readiness within 10 months. Looking back, are you confident that in the period when you were finance ministers, there was 10-month readiness?

**Jack McConnell:** Who is Sarah Walker?

**Joe FitzPatrick:** She is from HMRC—she gave evidence two weeks ago.

**Jack McConnell:** That is different from what the convener said. The convener said that HMRC's evidence was that if a decision had been made in May or June 2007, it would have been possible to implement the variable rate in the following April.

**Tom McCabe:** I might be able to clarify that. As I said, the position was that the discussions were on-going. Officials were not in a position in which they felt that they could brief ministers on the stage that the discussions had reached. It was always clear that there was time for an incoming Administration to take a decision to implement the SVR. I was told that if that were done before 7 June 2007, it could be collected at a rate of at least 90 per cent. As I said, everyone is aware that substantial powers are available to HMRC to collect unpaid taxes in subsequent years. On that basis, it was acknowledged that an incoming Administration, if it wished to, could implement the SVR and achieve a collection rate of 90 per cent, and that the missing money could be recouped by HMRC. There was never any question about the ability of the SVR to be fully implemented in subsequent years, had the decision to do that been taken before 7 June 2007.

**The Convener:** Let me clarify something. Tom McCabe said to Sarah Walker:

"But it was possible to implement the system in 2008—you could have done it."

Sarah Walker replied:

"Yes, but not with full functionality."—[*Official Report, Finance Committee*, 11 January 2011; c 2918.]

It's computing, Jim, but not as we know it.

**Tom McCabe:** If that is what she said, convener, she may have been confused. Her reply contradicts the ministerial briefing note that was

given to incoming ministers on 14 May 2007, which specifically said that full functionality would be available in financial year 2009-10.

**The Convener:** That will be noted in the *Official Report*.

**Joe FitzPatrick:** I think that we are taking off, because that was not the point that I was trying to make. My question was whether given Sarah Walker's evidence to the committee that there was not full functionality—Mr McCabe has said it was 90 per cent—all the ministers are confident that there was 10-month functionality in each of the years that they were making payments to HMRC.

**Jack McConnell:** Yes.

**Andy Kerr:** Yes.

**Tom McCabe:** Yes.

**Joe FitzPatrick:** That is useful. What checks did the ministers make over the years when they were making payments to HMRC to ensure that there was 10-month functionality, given that we know that there was not full functionality at the end of the period in 2007?

**Tom McCabe:** There was a memorandum of understanding, and the basis of the payment was that there would be functionality. The difference in 2007 was that the organisation that collects tax in the United Kingdom decided to overhaul its entire IT system—that was the material difference in 2007. It had not made such a decision in previous years, so the understanding and agreements between the Scottish Executive and HMRC were obviously always in place.

**Joe FitzPatrick:** My question was specifically on what checks were made to ensure the state of readiness. It was maybe just convenient that the changes did not happen two years before.

**Andy Kerr:** What checks were made? We had an agreement with HMRC to undertake the work and, if any substantive change required us to be notified, that would have been done. There was certainly an assumption, and reality, that we would expect the service to be delivered because nobody told us otherwise. It was not as if there was some secret arrangement between Governments: it was a clear arrangement that was high up the agenda and, if there had been any difficulty, we would have been advised of it.

**Tom McCabe:** I must say that never at any time during my tenure was there an indication of anything other than a 10-month state of readiness. I would have fully expected senior civil servants to inform us if anything other than that had been the case—and they never did.

**Jack McConnell:** I can add to that. I do not recall, in any discussions that I was involved in back in 1999 or subsequently, the decisions on

principle being affected by whether collection rates would be 90, 95, 98 or 100 per cent. From the beginning—this is true of the initial decision to make the investment in 1998, before any of us was an MSP, never mind a minister—and subsequently, the decision was one of principle. It was based on securing agreement with the then Inland Revenue and on the potential for a political change in Scotland to lead to a tax change, should the electorate and the elected MSPs want that to happen. Although the technicalities and practicalities are obviously an on-going and important matter, the one fundamental thing that did not change over the eight-year period was the democratic principle that the power should be available for quick implementation.

**The Convener:** Computers were essential to the working of the system, and computer programmes are notorious for delays whenever we try to change or patch them. Was there no hint that you should be checking up on the issue? You had the agreement, but surely somebody should have been alerted that it was fundamental to the whole system.

**Tom McCabe:** They did check and they did know the current state. As I said, officials were in discussion with HMRC in March and April 2007. As a result of those discussions, they presented a ministerial briefing note on 14 May 2007 to incoming ministers that told them that there was 90 per cent functionality for 2008-09 and 100 per cent functionality for subsequent years. Those were the checks that were made. As a result of the on-going discussions between the Scottish Executive, Scottish Executive civil servants and HMRC, civil servants produced a note to new ministers to inform them of the up-to-date situation.

**The Convener:** What was delivered?

**Tom McCabe:** Not very much, because of the decision that the incoming finance minister subsequently took.

14:00

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** I will come back to what the incoming Government would have been briefed about and the direct relationship with the outgoing Government, but I will first touch on a more general point. What level of information on this issue was brought to each of you as finance minister? What level of information would you expect officials to bring to you? On the policy area, what would you expect to know and what would you believe should be done simply at official level without it being necessary to bring it to ministers?

**Jack McConnell:** As I indicated in my statement, two issues were raised with me

immediately that I became finance minister. One was the need to prepare legislation and present it to Parliament quickly to establish the financial procedures in advance of the first budget of the new Parliament in the winter of 1999-2000. The second was what to do with the infrastructure that had been put in place.

Donald Dewar as First Minister had made it clear immediately following the election in the first programme for government that we would not use the new tax power over that four-year period, so the officials were rightly raising with me the issue of what we should do with the infrastructure and, in particular, the fact that a substantial saving could be made. The UK Labour Government had made a decision in 1998 to create the full infrastructure in readiness for the election and continuing with it would have cost—if I remember rightly—about £20 million to £25 million a year. We reduced that to £2 million or so and therefore made a substantial saving. One of the decisions to make was what to do with that money, which was a nice decision for the new finance minister to have to make.

There was never any question then about anything other than that decision being implemented. In my view, ministers make decisions and the system gets on and implements them. We made a decision, the system implemented it and, rightly, four years later the same decision was presented to the finance minister following the 2003 election.

**Andy Kerr:** To answer the question directly, I was quite happy not just with the written information that I received, which is contained in the note of 7 July, but with the discussions that I had with officials regarding the whole mechanism. I recall having a meeting with officials regarding this matter. Also, due to HMRC's significant presence in my home town and constituency—East Kilbride—I took up the opportunity to visit it, not just to discuss this matter but to discuss the economic impact of having a big public sector organisation such as HMRC in East Kilbride.

**Tom McCabe:** Similar to my colleagues, I was obviously aware of the agreements that were in place and the approach that had been taken. I was a member of the first Cabinet when Lord McConnell as finance minister brought the proposals forward and subsequently took them to Parliament. I was also a minister before I took on the finance minister's role.

I do not think that there has ever been or ever will be a finance minister who checks on every invoice, but we employ senior officials to ensure that, any time public money is spent, the goods and services that it is supposed to buy are delivered or able to be delivered. That was certainly my expectation. I always knew in each

year that we were paying the £50,000 to maintain the system and no one ever suggested at any time that we were paying it for nothing.

**Jeremy Purvis:** As you will have seen in the papers, there were times when the Cabinet Secretary for Finance and Sustainable Growth and his special adviser were in discussion on the matter.

When the cabinet secretary came to the chamber on the matter, you may recall that he said:

"I could have come to Parliament in 2007 to explain the position then. I chose not to do so, as I had no intention of using the Scottish variable rate and I had asked my officials to remedy the problems that I had inherited. If I had come to Parliament at that time, I am sure that some members would have criticised me for using parliamentary time to highlight the woeful record of my predecessors".—[*Official Report*, 24 November 2010; c 30729.]

What are the problems to which he referred? What is your view of what he said about the need to "remedy the problems" that he had inherited?

**Tom McCabe:** The cabinet secretary is trying to throw red herrings into the situation. I would have had a lot more respect for him if he had simply come to Parliament and acknowledged the decision that he had made. Like my colleagues, I have personal awareness of the post. It is one where decisions—at times, serious decisions—are often required. Just because someone has been made a finance minister does not mean that they are suddenly endowed with the wisdom of Solomon. They will get most of the decisions right, but they will also get some of them wrong. The cabinet secretary making an error in his decision making at the time was not a capital offence. A simple and sincere acknowledgement of the error would have been enough for the Parliament.

Mr Swinney seems to have adopted the approach of throwing red herrings around to try to obscure the facts that he decided not to inform Parliament at the time and that, in November 2010, he indicated to Parliament that he had been seriously considering the use of the power when in fact he knew that there was no possibility that it could be used.

**Jack McConnell:** This question goes to the heart of the matter. I refer the committee to the statement that I made to the Parliament on 24 June 1999. I opened the statement, which I think was welcomed by all parties at the time, by saying:

"As Minister for Finance, I want to develop an open and constructive dialogue with the new Parliament and its committees."

In their questions following the statement, Opposition spokespeople welcomed that approach. I also said:

"In that relationship"—

which would be based on the Public Finance and Accountability (Scotland) Act 2000 that was passed the following year—

"we want the Parliament to be constructive, but we also want our decisions as an Executive to be transparent and sure of Parliament's support."—[*Official Report*, 24 June 1999; c 808.]

Those were the underlying principles of the relationship between ministers and the Parliament on financial issues. I refer not only to individual spending decisions but the management of our finances. Whatever Mr Swinney's decision in May or June 2007, it is at least regrettable that it was not communicated to the Parliament. He did not need to take up Parliament's time to do that. It was a busy time for the new Administration, but a written answer to a parliamentary question would have allowed the committee to question him on the on-going process of discussions with HM Revenue and Customs. That would have been the right way to handle this.

The original principles that I set out are very important. They are important to all parties in the Parliament and they were important to me in the eight years that I was involved as a minister. In the committee's deliberations on the issue, I thought that you should be made aware of what is almost a founding financial statement for the Parliament.

**Jeremy Purvis:** The Scottish Government has used the term "mothballed" about the power. In looking through all the documentation, it is interesting to note that there are only a couple of references to the term. In terms of readiness, was the provision mothballed by the time you left office?

**Jack McConnell:** Before those who, as finance ministers, dealt directly with the matter come in, I will give some political background. Much of the comment on the decisions that were taken in 2007 are based on whether a new Administration would have considered using the power. It is clear that, following the 2007 election, neither of the two main parties proposed to use the tax power. That might be what lies behind some secret decision to mothball the power. However, in the winter of 2006-07, when I was First Minister and preparing for an election campaign in May 2007, I was acutely aware of the possibility that one or more of the parties might propose a tax cut at the last minute in the election campaign. We were in a time of relatively high public spending in Scotland rather than relatively low, which was the case back in 1999. Therefore, there was a possibility that one of the parties, either for reasons of principle or to seek political advantage, would propose a tax cut. That was why the idea of mothballing the power would never have been considered. We had to be ready for proposals to increase tax not just from very small parties, but from one of the four main

parties that might be involved in coalition negotiations after the election.

**Jeremy Purvis:** I am looking at the note from 2 December 2010 about a teleconference meeting between HMRC and the Scottish Government to discuss the SVR. Paragraph 4 is all about mothballing. Referring to the SVR system, it says that HMRC

“confirmed that it was mothballed in 2000.”

That is not the case, as far as you are concerned.

**Andy Kerr:** That is loose language that does not describe the situation in any way. I would like to question those individuals who used that language. I would not have signed away £200,000-worth of Scottish taxpayers' money for a mothballed system, but I would have signed money away for a system that would allow the tax-varying power to be used within 10 months. If you are suggesting that the term “mothballed” means that we were incapable of doing anything, that was not the case. The system was in a state of readiness and the word “mothballed” was not used in any items of correspondence available to me when I took the decision. If it had been, I would certainly have investigated and removed it because it does not describe accurately the facility, which is about the system being in a state of readiness, contingency planning and allowing others to take decisions in the future. In my view, underpinning in that way the democratic decision that was made by Scots in a referendum and parliamentarians in this building is money well spent. It is not mothballing; it is having a system available so that we can make our democratic decision happen within 10 months of the button being pressed. If that is a description of mothballing, it is not one that I understand.

**The Convener:** I suggest that we write to HMRC for clarification of exactly what it meant.

**Tom McCabe:** Mr Kerr summed it up when he spoke about loose language, which was being used to try to obscure the situation. When I was growing up, we used a mothball to preserve something that we regarded as precious. The term could be seen in a positive sense as well as in a negative one.

**The Convener:** Clarification would be useful.

**Jeremy Purvis:** I want to ask about “Funding the Scottish Parliament, Welsh Assembly Government and Northern Ireland Assembly: Statement of Funding Policy”, about which I asked the Secretary of State for Scotland last week. The Scottish Government has a dispute with the UK Government about that statement. I was reading the briefing note that the Cabinet Secretary for Finance and Sustainable Growth would have

received on coming into office. Did any of you see it, as part of an incoming Government?

**Jack McConnell:** No.

**Jeremy Purvis:** What advice were you given by officials on the statement of funding policy? The briefing to John Swinney of 14 May 2007 says at paragraph 5:

“Establishing the basic infrastructure cost around £12m. The Scottish Executive and former Scottish Office reimbursed HMRC and DWP for this work, and will also have to meet the costs associated with use of the power. The Statement of Funding Policy ‘Funding the Scottish Parliament, National Assembly of Wales and Northern Ireland Assembly’ states that:

‘where decisions taken by any of the devolved administrations ... have financial implications for departments or agencies of the UK Government ... the body whose decision leads to the additional cost will meet that cost.’”

Was that the advice that you received and was that your consistent position while you were all in office?

**Jack McConnell:** I was responsible for the negotiation of the statement of funding policy in 1999. The statement of funding policy is clear. However, the difficulty with it is that, as with all forms of words, different interpretations can be made of responsibility in specific situations. I can remember a number of occasions over the eight years in which I was in various ministerial positions when discussions took place about the origins of a decision. A highly publicised example is the introduction of free personal care for the elderly. There were also challenging negotiations on the cost of security at the Gleneagles G8 summit. The statement of funding policy is clear that those responsible for a financial cost to the public purse are responsible for meeting that cost. If there were discussions, they were usually about when the decision had been taken that had led to that cost in the first place.

14:15

**Jeremy Purvis:** I am wondering whether the briefing to John Swinney in May 2007 is identical to the service level agreement that preceded the Government. You will have read the briefing that he received. I am not sure whether the advice that he was given is consistent with the advice that you were given immediately prior to taking office.

**Tom McCabe:** It is entirely consistent.

**David Whitton (Strathkelvin and Bearsden) (Lab):** I suspect that most of my questions will be for Mr McCabe, because I will focus on issues relating to February and March 2007.

As Mr McCabe is a member of the committee, he has access to the same papers as the rest of us. On 23 February 2007, at the request of HMRC,

there was a meeting between officials of the Scottish Executive, the Department for Work and Pensions and HMRC, here in Scotland. As you were the finance minister at the time, I assume that you would have been aware that a meeting was taking place, although you were not involved in the meeting.

**Tom McCabe:** I could not be precise about dates but I knew that discussions were under way.

**David Whitton:** The notes are quite interesting. Each side gave its own little spiel before the start of the meeting. HMRC's perspective was that

"political interest in invoking SVR (or a Scottish Local Income Tax) has never been greater."

There was clearly a lot of interest in the system at the time.

The notes go on to talk about the key features of the memorandum of understanding, one of which was

"maintenance of existing SVR infrastructure".

The notes say that at a meeting of viability stakeholders the previous day, 22 February, it was confirmed that

"no showstoppers had yet been identified"—

showstoppers meaning anything that might affect the SVR—

"and that the confidence level is very high that the 10 month commitment could be met."

The notes helpfully go on to point out:

"Election Purdah commences on 28 March".

It was suggested at the end of the meeting that there should be a further meeting before purdah started, I suppose because ministers might have to be involved.

By way of background, the notes point out that, in July 2003, the minister for finance, who would have been Mr Kerr at the time,

"agreed that the Scottish Executive's contract with Inland Revenue to maintain the infrastructure for the SVR in the current ten-months' state of readiness should be renewed",

and the notes state that a service level agreement was in place with a lifecycle of 1 July 2003 to 31 July 2007.

Paragraph 4 on page 8 of the notes says:

"The Scottish political parties ... appear to recognise that if it was decided to invoke the SVR ... there would need to be a long lead in time and that any introduction before April 2009 would be extremely difficult to achieve."

The notes go on to say that the Executive's finance group

"consider that any decision to invoke the SVR would have to be taken in the context of the SR07 settlement"—

it was waiting for the comprehensive spending review—

"and planned access to drawdown EYF"—

end-year flexibility—

"balances at HM Treasury. Such considerations are likely to militate against an early decision to invoke the SVR."

Finally, the notes say:

"The SE Finance Group proposes to advise incoming Ministers in June/July 2007 about their options concerning the SVR".

That was all at the February meeting. Was none of that conveyed to you?

**Tom McCabe:** No, there was nothing in that detail. As I said, I knew that discussions were ongoing. As I said earlier, I did not inquire about the position for any incoming Administration. I was given the assurance that there would be operability of at least 90 per cent of the SVR but that discussions had not concluded. Every indication that I had was that a decision would be required—you mentioned June or July, but it was never indicated to me that a decision could be taken as late as that; it was always indicated to me that it would need to be before June.

**David Whitton:** Helpfully, we have a minute of the next meeting of this group. It looks as if the same people were in attendance, with apologies from the same people, strangely enough. The meeting was held on 23 March, and there were updates on the state of readiness. The "SS" in the minute refers to Sandra Stewart from the Scottish Executive, who advised that

"the Scottish Executive (SE) Finance had considered the Viability Proposal and costs for SVR from HMRC's IT partners ... and decided that it would be inappropriate to ask current Ministers, who agreed not to invoke the SVR during the lifespan of the present government, to commit to significant costs in order to guarantee the introduction of SVR from April 2008. Therefore the Scottish Executive is not prepared to underwrite costs covering the period 2 April until the date incoming Ministers made a decision on SVR."

Again, it clearly says there that they were not going to refer that decision to you, Mr McCabe. I assume that they did not.

**Tom McCabe:** No, there was no formal minute. However, as I said, I was aware that discussions were taking place.

**David Whitton:** What is your response to Mr Swinney saying that he inherited a system that was not fit for the purpose of introducing the SVR?

**Tom McCabe:** My assumption is that, because he could not collect 100 per cent of the tax, Mr Swinney determined that he had not inherited a functional system. Perhaps it would have been more accurate if he had inserted the word "fully", but he did not.

**Derek Brownlee (South of Scotland) (Con):**

The Scottish Government has released quite a large amount of documentation, which I presume the panel members have seen. Some of your answers have indicated that you were aware of it without necessarily following it in your respective times as finance minister. As far as you are aware, is that documentation complete? I appreciate that you cannot necessarily be definitive on that.

**Jack McConnell:** I have two concerns about that that I wish to put on record at this meeting. The first is that the Scottish Government circulated to me in advance of circulating it to the committee and in advance—I think—of publishing it on the web site, the documentation that it said related to my time as finance minister, which covered a period of 18 months in 1999 and 2000. I was provided with maybe seven or eight documents, almost all of which relate to the call centre that had provisionally been established in East Kilbride in 1998 by the UK Government and to the discussions that took place with South Lanarkshire Council about the possible use of that call centre. The Scottish Government has provided me with no papers in relation to the decisions that were made in June 1999.

I am referring back to that period from memory, but there was definitely a meeting between me and Donald Dewar—I think that Jim Wallace was also there—and there was definitely a Cabinet paper that signed off the decision. However, I do not have those papers, so I assume that they are not in the file. The papers that I got on the call centre seem to me to lead to a kind of open-ended discussion taking place in September 1999, without it ever being recorded in the file what the final decision was. I therefore asked the Scottish Government to put a note on its website saying that its file was incomplete. I notified the committee clerk as well that I had that concern.

From 1999 onwards, I expressed to successive permanent secretaries and others the concern that sometimes the record keeping and archiving of files by the Scottish Government civil service might not be 100 per cent robust. I constantly asked that that be checked, because in the first year I was concerned that the system was being swamped with the work of the new devolved settlement and that some of civil servants' routine tasks might not be being attended to as scrupulously as they should be.

**Andy Kerr:** The substantive documents relating to my involvement—the minute that I received and my response—have been produced. All that is missing are the arrangements for the visit to East Kilbride, which I expected to see. I cannot remember when I made the visit, but I was definitely there and there may have been some

correspondence to that effect. It is not there, but it is not substantive to the issue.

**Tom McCabe:** There is a slight difficulty in answering the question. I have no reason to suspect that any papers have been deliberately omitted, but finance ministers receive an enormous volume of paper, not all of it 100 per cent necessary. It would be near impossible for any human being to say with 100 per cent certainty that every piece of paper is there.

**Derek Brownlee:** David Whitton referred to the service level agreement, which lapsed at the end of July 2007. It may not be central to what we are looking at just now, but one thing that puzzles me is why that agreement, which spanned the second session, was not signed until March 2007. HMRC was unable to answer that question when it gave evidence to us. Are you able to shed any light on the matter?

**Tom McCabe:** It may have been a simple oversight—the agreement was in operation, but at some point someone may have discovered that there was no signature on it. There was always clarity that the agreement was in operation.

**Derek Brownlee:** At the debate on the SVR in November last year, the cabinet secretary made the point—I paraphrase—that, regardless of decisions by the Scottish Government, the power to vary the basic rate of income tax remains under the Scotland Act 1998, so the power has not lapsed. If a service level agreement were not in place and the Scottish Parliament voted for a Government resolution to vary the basic rate of income tax under the 1998 act, which is still there, presumably the rate would be varied, but what would happen? Presumably, HMRC would have to collect the tax, because the measure would have the authority of a Scottish Government resolution, under the terms of the 1998 act. Would we then face the sort of issues to which Mr McCabe referred, to do with the percentage that was collected, and disputes about how much had to be handed over to HMRC to finance that?

**Tom McCabe:** At no point did I understand that HMRC was unwilling to collect the tax. From a purely practical point of view, it always made clear that the infrastructure to allow accurate collection would need to be in place.

**Jack McConnell:** I refer back to my first statement this afternoon and my first statement back in June 1999. I have not been provided with the papers from the period concerned, so I speak from memory, but I am pretty clear about the fact that, in my first discussion as the Minister for Finance with the First Minister and the Deputy First Minister in early June 1999, there were four options on the table. One was to maintain the full infrastructure, and one was to abandon all the

infrastructure. Our discussion focused on the two options in the middle. One was to have 10-month readiness, and the other was to have 18-month readiness. The second of those options would have been cheaper, but we decided to go for 10-month readiness, on the basis that we were tied into a four-year electoral cycle and not having the power available in the first full financial year following an election would severely constrain the work of an incoming new Administration. We could have saved another £1 million a year, perhaps, but we chose to go for what we thought was the more democratic option, at a cost of about £2 million to £2.5 million.

14:30

**Derek Brownlee:** Members have seen various versions of the statement of funding policy, but you have the advantage of having experienced how it works in practice. We can understand the principle behind the devolved Administration bearing the cost. If the Scottish Government says, "Right, we want to exercise the SVR," the costs that are attributable to the exercise flow back to the Scottish Government. That is fairly straightforward. However, if HMRC says that it is changing its computer systems, should the cost of that not pass back to HMRC? The Scottish Government has not asked for the change.

**Jack McConnell:** If I had been involved in a discussion on the topic in advance of or following the election in 2007, I think that I would have said to our civil servants, "Your starting point in the negotiations is that it is the UK Government's responsibility. Let's see where we end up." That would have been a reasonable starting point.

A reasonable outcome in such a situation might have been a decision to share the costs, as we shared the security costs of the G8 meeting in 2005. There was a legitimate argument from the UK Government that the devolved Administration was responsible for security in Scotland and therefore should meet the costs, but we argued that the UK Government's decision to locate the G8 meeting in Scotland led to increased costs and therefore it should meet the cost. The then Chancellor of the Exchequer and I had robust discussions on the matter and we reached a compromise, because the respective officials had not been able to reach agreement.

Business was conducted on that basis on a number of issues over the years. The statement of funding policy is clear on the principles, but it is sometimes hard to match up principles and interpretation when it comes to discussing hard cash.

**Andy Kerr:** Such discussions happened fairly regularly, for example in relation to national

negotiations. We would have an input into the negotiations and state our position.

If I had ever concluded that Scottish taxpayers were not getting their fair shake, the first place that I would have stopped on my journey would have been the Scottish Parliament, to inform members about the negotiations and ensure that I had the Parliament's support. That is not the preferred route, because one always wants to resolve such matters through the usual channels—that is a horrible phrase. I was surprised to hear that line being used, because the current Scottish Government has regularly gone into bat against the UK Government on issues that are not as important as the one that we are considering.

**Tom McCabe:** I concur with what has been said about negotiations at different times. The G8 meeting is a good example. It is fair to say that discussions on the matter were pretty robust. In a negotiation we play our hand as far as we can. If we reach a point at which we think that the hand that we are playing will negate a power that is available to the Parliament, we have a call to make. If we had played our hand in a way that could have brought the G8 summit to a halt, we would have had a call to make, because big issues were involved. In a negotiation, we need to know when to fight and when to run.

**Linda Fabiani (Central Scotland) (SNP):** Jack McConnell said that there are papers that, for whatever reason, nobody has been able to put their hands on. However, will you try to fill in some blanks from memory? At the end of June 1999 there was a £2 million call centre in East Kilbride, which we had paid for, but it is clear from the documents that by 2001

"there is no separate SVR Call Centre."

We know that in the meantime there had been discussions about finding an alternative use for the call centre. I think that Mr McCabe was involved at the time, because he was leader of South Lanarkshire Council—

**Tom McCabe:** No. I was minuted in as Minister for Parliament. That is part of the minuting process when such matters are discussed in Government. However, I was outwith the process—

**Linda Fabiani:** So people did not mean it when they said that you were an innovative and inspiring leader of South Lanarkshire Council.

**Tom McCabe:** Oh, they meant that—I think I wrote that. [*Laughter.*]

**Jack McConnell:** I have seen some of the paperwork on this. I have not seen some of the early paperwork relating to decisions that Mr McLeish made before the election in 1999, and the final decisions that were made do not seem to be on the file, but some of the papers are available,

and they record the discussion that took place in the summer of 1999 about what to do with the facility. As I recall, the Labour Government had established the call centre as part of—

**Linda Fabiani:** The UK Labour Government?

**Jack McConnell:** Yes. It established the call centre before the election in May 1999 in order to provide a facility so that, if the new Scottish Government that was elected decided to use the tax-varying power, the call centre would be available to answer inquiries from members of the public and businesses about how they would be affected. That was obviously sensible preparation for all eventualities.

Given that we were not going to use the tax power, there was no need for the Scottish Government or the Inland Revenue to have the call centre operational. The Scottish Government had no use for it in June 1999, but there was an indication of interest from South Lanarkshire Council that it might, perhaps in partnership with us, be interested in using the facility as some kind of call centre for its council services. That sort of thing is now more routine in local authorities, but it would have been seen as very imaginative back in 1999.

Discussions went on during that summer. The paperwork that I have seen goes as far as September. To be honest, I do not remember what the final decision was and it does not seem to be in the file. I think that we continued the discussions, and perhaps we tried a pilot at one point, but there were also subsequent discussions when Mr Kerr was the finance minister, and he might want to mention those.

**Andy Kerr:** First, I know from the minutes that I have seen that we reduced the cost of the capacity to call down the system and put it into use within the 10-month notice period. Secondly, HMRC, or the Inland Revenue as it was, was taking its own efficiency measures at the time—although it could still guarantee us the capacity, which was the key issue—and that also reduced our costs. I was fairly happy with that.

I will draw an analogy. In St Andrew's house, there is a place down below called the resilience rooms, which contain computers, desks, charts, IT and support, and infrastructure. Inclement weather is one reason why we might need to call on those facilities, and terrorist attacks and pandemic flu are others. I liken the need to maintain capacity, whether it is physical or IT-based, to that. It is a simple, essential element of the Government's ability to respond to situations. Whether it is responding to a pandemic flu outbreak or to a decision of the Parliament to use its tax-varying powers, it needs to have the capacity to do that.

All that we sought to do as finance ministers was to maintain that.

I know from my visit that it is quite an odd thing to experience a room that nobody works in but which contains the capacity. I physically saw that with my own eyes. We were always seeking innovative ways to encourage partnership working and efficiency, but we did so while maintaining capacity, such as the resilience rooms and, indeed, the SVR capacity. That is a worthwhile venture for a Government.

**Linda Fabiani:** Has the call centre been maintained, albeit that it might be mothballed? I use that term in the positive sense in which Tom McCabe used it. He said that it can be a good thing. Is it still there?

**Andy Kerr:** To be honest, I am not sure whether that part of the Inland Revenue offices is still there, but there was a physical space to allow the call centre to be used.

**Linda Fabiani:** Right. That would be before—

**The Convener:** Sorry, but may I ask a question about that? Capacity is one thing, but would there have been compatibility with HMRC's system and with other computer systems? That is essential.

**Andy Kerr:** It was HMRC's system that we were paying for, convener. It had capacity, because the system emanated not from the Scottish Government but from the Inland Revenue, which is now HMRC.

**Jack McConnell:** That is why it was in East Kilbride rather than in Edinburgh.

**Linda Fabiani:** Mr Kerr, you would have visited before February 2001, when it was clearly stated:

"there is no separate SVR Call Centre".

**Andy Kerr:** Sorry?

**Linda Fabiani:** A letter from the Inland Revenue to the Scottish Executive in February 2001 said:

"there is no separate SVR Call Centre",

so something happened after your visit—

**Andy Kerr:** I did not see a traditional call centre.

**Linda Fabiani:** Okay.

**Andy Kerr:** I did not see a room with desks, headphones and computers. I saw a space that a call centre would occupy, should it be required.

**Linda Fabiani:** That cost us £2 million.

**Andy Kerr:** No, it cost us £50,000 per annum, which was £200,000 over the lifetime of a Government. That was a price worth paying to support the principles of the referendum decision in 1997.



**Linda Fabiani:** HMRC confirmed that the facility cost £2 million as part of the £12 million infrastructure cost.

**Andy Kerr:** I am referring to what I know.

**Linda Fabiani:** That is fair.

**Andy Kerr:** The note from Richard Dennis of 7 July 2003 said:

“maintaining the infrastructure at the ten-months’ state will be ... £200,000 across the life of the Parliament”,

which was a substantial reduction.

**Linda Fabiani:** Before infrastructure can be maintained, it must be supplied. Perhaps HMRC was talking about the capital cost rather than maintenance.

**Jack McConnell:** It is possible that setting up the centre might have cost £2 million before 1999, but I do not know where that number has come from.

**Andy Kerr:** An important point is that if I had not decided to spend £50,000 per annum, retrofitting to allow the SVR to be used would have cost us £10 million. The decision was good financial management and judgment.

**Linda Fabiani:** I admit to becoming a bit confused. I am sorry, but there has been much information to take in. Is the £50,000 a year that Mr Kerr talks about not the £50,000 a year for database maintenance that we have heard about before?

**Andy Kerr:** Yes, it is. We paid to maintain a state of readiness, whether that capacity involved IT people, resources or database maintenance. The £50,000 cost allowed us to introduce the variable rate.

**Linda Fabiani:** That included the use of the appropriate call centre.

**Andy Kerr:** Yes.

**Linda Fabiani:** I am sorry, convener; I know that we are running out of time. I will ask my final question. Mr McCabe said that ministers were not necessarily informed of discussions with civil servants at HMRC or the Inland Revenue. An e-mail from HMRC to the Scottish Government last year said:

“Last time around we held ... Project Board meetings very close to the elections”—

which has been confirmed here—

“and this prevented approval being given for any action that might have been needed to ensure that the power could have been available to the new administration.”

I read that as HMRC saying fairly recently that the powers were not available to the new Administration after the 2007 election because no

decisions were made. Has HMRC got that wrong, as we have heard already today?

**Tom McCabe:** According to the briefing note to incoming ministers on 14 May 2007, the answer is yes, because that note directly contradicts the view that you have described. Ministers were told of 90 per cent functionality in 2008-09 and 100 per cent functionality in subsequent years. You have seen that note, as have I.

To be fair to HMRC, the passage of time might have had an influence—that e-mail was written three years after the ministerial briefing note was issued.

**The Convener:** We have a time problem, because Mr McConnell must go. Malcolm Chisholm has questions—

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** No—I am okay.

**Linda Fabiani:** I must have asked all Malcolm Chisholm’s questions for him.

**The Convener:** Do our witnesses have any final statements to make?

**Jack McConnell:** No.

**Andy Kerr:** It has been a pleasure.

**The Convener:** I thank the witnesses for their presence and their evidence.

14:44

*Meeting suspended.*

14:47

*On resuming—*

**The Convener:** I welcome our second and final panel of witnesses. John Swinney MSP, Cabinet Secretary for Finance and Sustainable Growth, is accompanied by Richard Dennis, head of the civil law division in the Scottish Government. Mr Swinney, do you wish to make an opening statement?

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** If I may, convener. Thank you for the opportunity to give evidence to the committee today. As the committee is aware, on 24 November, I set out to Parliament a detailed account of the key events involved in this issue. In support of that statement and to assist the committee inquiry, I have ensured that all relevant documents have been published on the Scottish Government website.

As I stated to Parliament in November, in taking decisions on the practical management of the Scottish variable rate and the maintenance of the associated state of readiness, I made a number of

judgments. Those judgments were made in good faith, but in retrospect it was clear that I should have come to Parliament to set out the position and for that I apologised to Parliament in November.

The Scottish variable rate remains a power in statute, albeit one that is likely to be revoked by the forthcoming Scotland Bill. I have sought to obtain details of the steps and costs associated with reintroducing a state of readiness to deploy the SVR should Parliament choose to do so. I hope to be able to report more to Parliament shortly.

We are all understandably keen to reach a common understanding of how we have got to where we are today. I have read with interest the reports of the evidence given at the committee's earlier sessions on this subject. I watched the evidence being given by my predecessors and it might help if I set out what I think is now common ground on events as they have happened.

When the Parliament was established in 1999, the Scottish Executive paid around £12 million to create information technology systems for the SVR. When the Scottish Government ruled out use of the power for the life of the first session of Parliament, the system was mothballed in a state where it could have been introduced on 1 April 2004 had the winners of the 2003 election decided immediately to implement the power. When they instead again ruled out the use of the power for the life of that session of Parliament, the then Inland Revenue agreed to maintain the same state of readiness for £50,000 a year. That agreement ended in 2007.

In May 2007, in one of the first briefings that I received, I was presented with three options. Option 1 said that if the Scottish variable rate were applied from April 2008, implementation would be sub-optimal. Yield to Scotland from the SVR would be between £10 million and £26 million short and we would be required to pay further IT costs of £3.4 million to upgrade the system.

Option 2 stated that if the Scottish variable rate were applied from April 2009—the first reliable date for implementation—we would be asked to meet IT costs of £2.9 million for system upgrades.

Option 3—the option that I asked my officials to pursue with Her Majesty's Revenue and Customs—recognised that if the SVR were not applied during this parliamentary session, IT costs of £1.2 million would be incurred to ensure a 10-month state of readiness thereafter. Given that the Government, like all the main parties that are represented in the Parliament, had made a commitment not to invoke the tax powers, we considered that the work could be undertaken over

the lifetime of this parliamentary session, enabling political choices to be made in the next session.

Scottish Government officials undertook to work with HMRC to ensure that the upgrades could be made. In early 2009, there were further discussions about the option that I wished to pursue—that of paying £1.2 million to achieve a working system for the next parliamentary session. Officials sought clarity from HMRC on costs and timescales for making the necessary changes. On 28 May 2008, HMRC advised Scottish Government officials that the process was progressing, but more slowly than had been expected. That sparked a prolonged period of communication by my officials to obtain answers. As HMRC officials explained to the committee, they were busy during much of the time implementing a major upgrade to the pay-as-you-earn systems.

Finally, on 28 July 2010, HMRC set out a proposition for further IT work at an indicative cost of £7 million to enable the SVR to be exercised by the beginning of 2012-13. Were we not to agree to that approach, the earliest that the SVR arrangements would be available to us would be the following year—2013-14. My officials wrote back on 20 August to say that we could not commit to the investment without further details, and we heard nothing further until the letter from the Secretary of State for Scotland to the First Minister on 18 November.

I have tried to keep the outline that I have given to the facts. I hope that it has been helpful, and I will be happy to answer any questions that committee members have.

**The Convener:** In evidence to us, the secretary of state, Michael Moore, has said that, in effect, power to use the SVR is lost for one year after the election. Given that it is for Parliament to decide whether to use the SVR, what arrangements should be put in place to ensure that the Scottish Parliament can always exercise the power?

**John Swinney:** The key consideration is that there has to be a practical and operable IT system that can be used to collect the Scottish variable rate, should Parliament decide to use it. After an election, unless an Administration wishes to act outwith the budget cycle, the earliest that an announcement could be made of a decision to use the SVR would be, in the normal course of events, the September of the given financial year. Given that the SVR has only ever operated on the basis of 10-month readiness—it was founded on that proposition—it would take effect in the financial year after the one for which an immediate budget was set, unless, as I say, a decision was taken outwith the budget cycle.

In ordinary course, therefore, it would probably take approximately two years after an election before the Scottish variable rate could be exercised, which is the position that we are now in and the position in which I found myself when I came to office in May 2007—at that time, the first reliable date that officials could give me for the utilisation of the Scottish variable rate was April 2009.

**Derek Brownlee:** In your speech in the debate in November, you made the point that the Scottish variable rate remains on the statute book under the Scotland Act 1998. In your opening statement today, which in large part replicated that speech, you made the point that in July last year HMRC asked for additional money to maintain the ability to use the SVR in practice. What basis could it have for asking for that money, given that the Scotland Act 1998 is still in force and the Scottish Government and Scottish Parliament could still decide to exercise the SVR?

**John Swinney:** HMRC asked for more money in the summer of 2010, but it had already asked for more money in the spring of 2007. As I recounted to Parliament, I faced three financial options in May 2007. If I had wished to utilise the Scottish variable rate in April 2008, I would have had to pay an additional IT cost of £3.4 million. If I had wished to use it in April 2009, the figure that I was asked for was £2.9 million. If I had wanted the work to be undertaken during the parliamentary session so that a 10-month state of readiness could be maintained, the cost of that would have been £1.2 million. The request for money in the summer of 2010 was not new; it had been on the stocks since the spring of 2007.

The second part of Mr Brownlee's question was about the basis on which that money could be asked for, which is a very good question. The Scottish Executive paid £12 million to establish the IT system. Additional money was sought to ensure compatibility of the SVR system with HMRC's systems, which had changed as a consequence of HMRC decision making. That raises a number of questions about the basis on which additional costs were sought, which is why, at all times, my officials tried to interrogate those costs to determine exactly what they were and why the Scottish Government should be liable to pay them, given that the Executive had paid £12 million in 1999 and thereafter to create the SVR system.

**Derek Brownlee:** In November, you said that you could not agree to that and that if you did not agree to the £7 million demand that had been made in July 2010, the earliest that the SVR arrangements would be available to us would be the following year—2013-14. You said:

"After dialogue lasting three years, HMRC required an answer within three weeks."—[*Official Report*, 24 November 2010; c 30727.]

From what you have said, it is clear that you do not think that there was any real basis for HMRC to demand that money or any mechanism for establishing whether the demand was fair. Given that, should you not have just sent HMRC away with a sharp rebuke and reminded it that the Scotland Act 1998 remained in force?

**John Swinney:** My officials raised the cost issue with HMRC in August 2009. In her message to Ron Powell of 7 August 2009, Sandra Stewart said:

"I am working on the assumption that since the Scottish Government originally invested some £12m to establish the infrastructure to deliver the SVR and until July 2007 paid an annual fee to ensure the maintenance of this infrastructure that there will be minimal cost (if any) to the SG as a result of HMRC migrating successfully to a new IT platform."

Therefore, the issue was raised. The practical point here is that the Government had to engage with HMRC to find a practical way of operating the system. We in the Scottish Government cannot operate the system on our own; we are entirely dependent on HMRC systems and technology. That is why we had to come to an agreement with HMRC about the operation of the SVR system, which is precisely what we were trying to do. We wanted to maintain its operability.

**Derek Brownlee:** I appreciate that it was sensible to try to reach an agreement with HMRC, but the Scotland Act 1998 does not say that the basic rate can be varied if HMRC agrees. It is a decision for the Scottish Government and the Scottish Parliament to take.

15:00

**John Swinney:** I think that members can see from the correspondence that we have had to go to considerable lengths to make progress with HMRC on securing the operability of the system. Maintenance of the Scottish variable rate system is not exactly top of HMRC's list of priorities, so the development of a positive working relationship in trying to make progress to determine these points was important. In my first days in office, the question weighed heavily on me whether it was appropriate, in one of my first acts as a minister, to agree a demand for £3.4 million. We need to bear in mind the fact that £12 million had been expended in establishing the system.

**Derek Brownlee:** In your speech in November, and in what you have just said, you have been pretty robust in saying that the basis on which HMRC asked for additional money was—to put it politely—not well founded. Why, then, are you using HMRC's request for additional finance as a justification for not progressing the matter? If,

under the provisions of the statement of funding policy, your case is sufficiently sound, surely you could have escalated the matter to a dispute between the Scottish Government and HMRC.

**John Swinney:** There was no mechanism that was in any way functional for the resolution of disputes between Administrations until the change of UK Government in 2010. As a matter of process, the dispute resolution procedure has been put in place only in the past few months.

My point is a practical one. If I had said to HMRC, "Look, I'm not paying the money under any circumstances—just you get on with doing the upgrade," I suspect that it would have said, "We are not taking this forward."

**Derek Brownlee:** On what basis would it have the authority to say that to you?

**John Swinney:** That question is not for me but for HMRC. That is my assessment of how HMRC would have handled the issue.

**Derek Brownlee:** The core Scottish Government argument is therefore that you have been unable to reach agreement with HMRC on how much money—if any—you must hand over to ensure that its system can cope following changes that it initiated. That is why the SVR will not be available in the early years of the next session of Parliament.

**John Swinney:** My core argument is that, when I came to office, I did not inherit a system that could operate without payment of further capital investment that HMRC was requesting.

**Derek Brownlee:** If HMRC makes a request, you do not need to accede to it.

**John Swinney:** I need HMRC to operate the system and to undertake the IT development. We do not control the system; it is controlled by HMRC. HMRC had made it clear that, through the viability assessments that it had carried out, the system was not functional without further capital investment. That opened up the question of how the system was to be delivered. That is the question with which I was confronted when I came into office.

**Derek Brownlee:** So HMRC and not the Scottish Parliament decides whether the SVR is implemented.

**John Swinney:** What I am saying is that we are dependent, as we always have been, on HMRC to operate the system.

**The Convener:** Even if the computers were compatible and capable of handling the work, what would be the consequences of the UK budget cycle being out of synchronisation with the Scottish Parliament budget timetable?

**John Swinney:** I think that that would not necessarily have any effect. The key issue is having a workable revenue collection system. There is also the question whether the Scottish variable rate element of the system is functional.

My point is that, when I came into office, the proposition from HMRC was that the 10-month state of readiness could not be delivered without additional capital investment. I did not have an option in front of me that said, "You can spend no money and the system will operate." When I came into office, I had three options: £1.2 million; £2.9 million; and £3.4 million. The requirement was for capital investment. That is the internal compatibility issue between the Scottish variable rate and the UK tax system.

You asked about timing. UK budgets are habitually in March, whereas our budget cycle starts in September and concludes in February, so there is a difference. However, we must take our decisions in the context of the issues that we confront.

**The Convener:** Thank you for that clarification.

**Jeremy Purvis:** I come back to 2007. In your statement to the Parliament, you said that you wanted to progress on the basis of keeping the state of readiness. However, the information that has been provided to the committee indicates that, after you received the briefing, you made no response to HMRC with regard to the Scottish Government's position.

In an e-mail of 31 January 2008 to Sandra Stewart of the Scottish Government, HMRC states,

"I can't believe that it is almost 9 months since we last corresponded",

and asks what "loose ends" need to be tied up. The e-mail goes on to say:

"I have been reviewing SVR and there are a couple of loose ends that I would be grateful for your views on please:

1. The Service Level Agreement that we had, lapsed in July. Do you wish to renew it?

2. Alternatively, do you wish to go down the route outlined at para 12g",

namely, that

"If the decision is not to invoke SVR during the life of the Scottish Parliament it is recommended that the work associated with 2 phases, at a total cost of £1.2m, should be undertaken to maintain the current 10 month state of readiness."

You have said on a number of occasions that you decided to take that route. Where did the Scottish Government state to HMRC that that was your policy position?

**John Swinney:** The e-mail trail that was started by Sandra Stewart, and of which the e-mail that you cite is part, goes on to demonstrate that the Scottish Government wished to pursue the £1.2 million option; we have published all the details. That is where the response comes from. We had taken a decision not to use the SVR during this session. We pursued the issue within the context of the discussions that took place by e-mail.

**Jeremy Purvis:** With respect, the e-mails do not address the matter. There is a lot of e-mail correspondence in which questions are asked, but I can find nothing stating that a ministerial decision had been taken. As you know, in February 2008 there were further questions from Sandra Stewart, who asked:

“Did we receive a formal reply on this and in particular to the recommendation in para 12g?”

Was a formal reply concerning the advice that you were given in May 2007 ever sent to HMRC?

**John Swinney:** The e-mail trail of correspondence goes through all the detail of our pursuing the £1.2 million option. The whole subsequent e-mail trail is about our trying to explore what the £1.2 million was all about. I go back to an issue that Mr Brownlee raised. At the time, the question why, we were being asked for £1.2 million when we had already paid £12 million, was in my officials’ minds.

**Jeremy Purvis:** Cabinet secretary, I asked a very specific question, and I would appreciate a specific answer. Was a formal reply given to HMRC by Scottish ministers about the recommendation that you received in May 2007 on maintaining the state of readiness?

**John Swinney:** My answer to that is that my officials were pursuing my direction, which was to—

**Jeremy Purvis:** I know what the officials were doing, cabinet secretary. I am asking—

**John Swinney:** Yes—and I am answering the question. My officials were pursuing my direction to secure further detail on the £1.2 million as the preferred option that ministers wished to pursue out of the three that I was faced with when I came to office.

**Jeremy Purvis:** Cabinet secretary, was a formal reply given to HMRC on the view of ministers?

**John Swinney:** I have answered the question: the issue was taken forward on behalf of ministers by officials.

**Jeremy Purvis:** Where in the notes does it say that?

**John Swinney:** Officials habitually take forward many questions on behalf of ministers at all times.

**Jeremy Purvis:** I am asking in the tone that I am using because the communications were internal to the Government. I do not know whether you have the e-mails in front of you, but there is one dated 4 February 2008, addressed to “John/Fiona”. I think that “Fiona” is the private secretary in your office. It mentions

“Ron Powell’s minute below about the briefing note sent to Ministers in May 2007 about the SVR. Did we receive a formal reply on this and in particular to the recommendation in para 12g? I presume a SLA will cost the SG £1.2m - has this money been set aside? I have replied to Ron saying that I will get back to him as soon as I can.”

It is your evidence to the committee that no formal reply was given by you. It was only civil servants, or officials, who asked a number of questions. There was no formal reply.

**John Swinney:** My point is that I gave direction as a minister and my officials took forward my priorities, which I had asked them to pursue.

**Jeremy Purvis:** Where in any of the minutes is your request for officials to do that?

**John Swinney:** That request would have been conveyed to the director of finance in response to the original briefing that I was given in May 2007.

**Jeremy Purvis:** If that was conveyed by you orally, I presume, to officials in May 2007 and there is no written record of the ministerial decision on the tax varying power, which is odd in itself—okay; you gave an oral request to explore it—why was the first reference to it after that in January 2008 from HMRC, asking what the Scottish Government’s position was?

**John Swinney:** That is explained by two factors. One is that the Scottish Government had decided that it was not going to utilise the Scottish variable rate for the four years of the session of Parliament, so there was no necessity for us to take a decision or to take particular steps as an immediate priority. The question that I was asked was whether I wanted to make an investment, or to pay a fee, by early June 2007, if I recall correctly. I obviously was not going to take that decision, so there was no necessity to communicate that to the Inland Revenue. The second factor is essentially about the priorities of my officials, who worked over that entire summer and into the next spring on the comprehensive spending review that the Government undertook when it came into office, and on the formulation of the budget bill and the pursuing of that bill, which of course concluded in February 2008.

**The Convener:** I suggest that this has been taken as far as it can go, but if the minister has

any further information that he wishes to add in writing—

**John Swinney:** I have nothing to add, convener.

**Jeremy Purvis:** As we know, the service level agreement lapsed in July. Did the Scottish Government or you ask for the work to begin on renewing the service level agreement?

**John Swinney:** That is what my request about the £1.2 million option was all about. I came in to office and was faced with three options, which I have rehearsed with the committee. What would we write a service level agreement about: the £1.2 million option, the £2.9 million option or the £3.4 million option? We could not write a service level agreement until we had some concept of what the service that would be delivered was going to be about. So, there was no service level agreement because it would inevitably follow the route that we decided to take as a consequence of the decisions that were arrived at. That is the subject of the file of correspondence that the committee has in front of it.

15:15

**Jeremy Purvis:** Let us move on to a separate issue. In some of the e-mails, I saw reference to officials' requests before they met the Treasury to discuss local income tax in the context of the SVR. Why was the Scottish Government discussing with the Treasury local income tax in the context of the SVR?

**John Swinney:** The only reason for that would be to establish whether there were any systems and information technology foundations for the Scottish variable rate that could be utilised for collection of local income tax.

**Jeremy Purvis:** What was the Scottish Government's conclusion?

**John Swinney:** Those were difficult discussions to undertake, as HMRC officials were—if I can put it this way—not enthusiastic about having a discussion on that question. I do not think that they were encouraged to have the discussion; in fact, I think that they were actively discouraged from having the discussion by ministers in the United Kingdom Government at the time.

**Jeremy Purvis:** That e-mail was dated 22 July 2008, but there was a separate e-mail on 17 February 2009 that had nothing to do with the UK Government—it was all about the Scottish Government. It related to part of a process whereby the finance officials wanted to get a response to use as to how they were to take forward their discussions with HMRC. As you know, Alyson Stafford wanted to write to HMRC, but you never gave authority for her to write to

HMRC to clarify the situation. That e-mail from 17 February says:

"I know that there has been a recent Ministerial announcement about local income tax so I should be grateful if you would let me know if Mr Swinney wishes the Director of Finance to write to HMRC officials to clarify the position."

Why was the Scottish Government continuing to consider local income tax with regard to the SVR?

**John Swinney:** The timescale is important, regarding the substance of what the Government was doing at that particular time—the draft proposal that starts off that e-mail trail. I do not have that immediately to hand, but I will get it if the committee will give me a second. The substance of that correspondence was, essentially, the Scottish variable rate. Mr Purvis is perhaps linking the fact that we were having discussions with HMRC about the implementation of the Scottish variable rate—which is addressed in the note to me of 13 November from the director of finance—to the fact that, quite separately, we were pursuing a dialogue with HMRC about local income tax. I suspect that I am being asked whether, as a consequence of our decision on local income tax, other steps could have been taken on the SVR to escalate consideration of the issues because at that time, and officials were becoming concerned that it was taking too long to come to a conclusion.

**Jeremy Purvis:** I have a further question relating to what you told the Finance Committee about how the budget papers are presented. You appeared before the Finance Committee on 23 November 2010, when Malcolm Chisholm asked:

"would it not have been more accurate to say that the Government cannot use the power?"

You answered:

"I come back to the point that I have just made: the wording in this document"—

we were discussing the draft budget for 2011-12—

"is the wording that has been used since 2005-06. I have simply maintained the convention of giving Parliament clarity on whether the Government will be using the power or not."—[*Official Report, Finance Committee, 23 November 2010; c 2774.*]

The wording is not, however, the same, is it? When you took office, the draft budget simply stated:

"In accordance with the agreement between the Scottish Government and the Parliament's Finance Committee on the budget process, the Scottish Government confirms that it will not use the existing tax-varying powers in 2008-09."

That was from your first budget. However, the budget for 2005-06 that you referred to has the same wording on the SVR. It says:

"In order to avoid pre-empting decisions on this issue by any subsequent administration, the Executive has agreed with the Inland Revenue that the infrastructure necessary to

use the tax-varying powers will be kept in a condition where, after a May election, the powers could be introduced from the start of the new financial year the next April. Following the initial investment made during the last Parliament to bring the infrastructure to this condition, the cost of maintaining this state of readiness is £50,000 a year."

That wording was used in the 2006-07 budget, but it was not used again after you took office. Did you knowingly change the language in the presentation of budget documents? You stated to the Finance Committee in November that you used the same wording that was used in 2005-06 when clearly you did not.

**John Swinney:** I do not have in front of me the budget document for 2005-06, but my understanding of the convention between the Finance Committee and the Government is that the Government is required to confirm as part of the budget process whether it will use the tax-varying powers. That is precisely what I confirmed.

**Jeremy Purvis:** You gave the impression, however, that you used the same language as was used in the previous parliamentary session. It was clearly not the same language.

**John Swinney:** Perhaps I did not use exactly the same words, but I confirmed the same point, which is the one that I made in November. If that has created confusion in the minds of the committee, that was not my intention. I was simply confirming the point that a convention exists between the Finance Committee and the Government that requires the Government to confirm whether it will use the tax-varying powers.

**The Convener:** Given Tom McCabe's input to the earlier part of the proceedings, he has exempted himself from asking questions in this part of the meeting. It is useful to put that on the record, and I thank Tom McCabe.

**David Whitton:** In your statement to Parliament, cabinet secretary, you said that you did not inherit a functional IT system that was capable of delivering the tax power at 10 months' notice. That is not true, is it?

**John Swinney:** It is true, Mr Whitton.

**David Whitton:** How do you justify saying that it is true when the documents show that if you had paid out the money, you could have had a system in place by April 2008, albeit that it would not be a full system?

**John Swinney:** That rather makes my point. The document said that I inherited a system that could not function without further capital investment.

**David Whitton:** No—that is not what the document says at all. What it says means that the system was functional, albeit that it was not

operating at 100 per cent. The system was functional.

**John Swinney:** No, that is not the case. The advice that I got—

**David Whitton:** So, as far as you were concerned, the system did not work at all.

**John Swinney:** In 2008, the advice that I was given was that the system would require IT investment in order for it to go live. If it had been able to go live right away, surely it would not have needed that IT investment and, if it needed the IT investment, it could not have worked.

**David Whitton:** It did not need to go live right away; it needed to be able to go live within 10 months of the date that you would introduce it.

**John Swinney:** The advice that I got in May 2007 was:

"Provided HMRC are notified no later than 5 June 2007 SVR could be introduced in April 2008 but to do so in such a tight timescale would increase delivery risks and costs. Changes to HMRC's existing IT systems would require to be made progressively in 4 phases at a total IT cost of £3.4m".

Therefore, I could not say, "Right. Let's use the system." If I had said that, I would have been told, "You'll have to pay £3.4 million." That means that the system was not functioning.

**David Whitton:** No, not at all.

**The Convener:** We have all found out to our cost that taking shortcuts and installing computer systems do not make good companions.

**David Whitton:** Fair enough. Was that what you meant when, later on in your statement to the Parliament on 24 November, you referred to the "woeful record" of your predecessors?

**John Swinney:** Yes.

**David Whitton:** You can correct me if I am wrong, but I think that you took part in the yes, yes campaign—yes for devolution and yes for tax-varying powers. For all I know, you voted yes, yes. As finance minister, were you not outraged to find out that the system did not exist?

**John Swinney:** For the record, in case anyone thinks that I am dodging the issue, I voted yes, yes; I participated in the campaign and I am delighted that I did so.

In relation to the question, the news that I received in the briefing note, which the committee has, was news that I did not expect.

**David Whitton:** I am told that life is full of surprises for a minister.

**John Swinney:** There are many surprises, Mr Whitton, but I did not expect to get that particular piece of news. Was I outraged by it? I was not,

because the Government was committed to not using the Scottish variable rate, so the fact that the system could not operate did not pose a threat or impediment to anything that the Government wanted to do. The actions that I took were designed to remedy and rectify that issue.

**The Convener:** I am surprised that you are not telling us that as a new minister you found an envelope from the previous minister on your desk.

**John Swinney:** He never writes; he never phones.

**David Whitton:** Do not worry—we will make up for that.

It was your party's position to introduce local income tax. Did the IT system or the tax system require to be functioning in order for you to be able to go ahead with your proposals for local income tax?

**John Swinney:** In my estimate, we would have needed an IT system separate from that for the Scottish variable rate in order to implement local income tax.

**David Whitton:** So that would have been even more millions in the system.

**John Swinney:** There would have been a cost to that, yes.

**David Whitton:** Was that one of the reasons why you were not prepared to commit to spending on the SVR system?

**John Swinney:** No. The two issues were not in any way related.

**David Whitton:** Okey-doke.

**Linda Fabiani:** You are stuck.

**David Whitton:** Not at all. I have hundreds of questions here. I could go on all day if I wanted to, but I dare say that the convener would not let me.

**The Convener:** We are not that much at your mercy.

**David Whitton:** I do not have many more questions.

There were a number of occasions between 2007 and when you were, let us say, brought to book by the Parliament on which you had the opportunity to say that the single variable rate was not operable and that discussions with HMRC were on-going. For example, there was an occasion in May 2010, at the Equal Opportunities Committee, in response to a question from my colleague Marlyn Glen. I remember well another occasion, in September, in response to a question from my colleague Lord Foulkes. Why did you not take any of those opportunities to say that the single variable rate system was not operable?

**John Swinney:** The first thing that I should say is that I clearly made a mistake in not communicating that to the Parliament. I have accepted that unreservedly. I cannot unravel that particular mistake. I should have communicated that information to the Parliament. I heard one of my predecessors—Mr Kerr, or perhaps Mr McCabe—helpfully suggest that I should have used an inspired PQ. They are right. That is one action that I got wrong.

**David Whitton:** Do you accept, then, that the person with the woeful record in this is your good self?

**John Swinney:** I made a mistake, Mr Whitton. I have put my hands up to that and I have accepted it in front of my colleagues in the Parliament, which is where I should do it.

On the substance of the matter, I believe firmly that I have taken the correct decisions to remedy a problem that I inherited. I did not inherit a functioning IT system. All the documentation that has been published demonstrates that to be the case and my officials worked to try to restore the position. With regard to the substance of the issue, I have, in my view, taken all the correct decisions; my mistake was in not communicating them to the Parliament.

15:30

**David Whitton:** I might take issue with that comment. Your mistake was not that you did not communicate your decision to the Parliament, but that you did not let the Parliament take the decision along with you. I do not think that the decision was yours to take as minister; it is a decision of the Scottish Parliament and a decision taken by the Scottish people in a referendum.

**John Swinney:** This is where we have to be careful about our terminology. The decision that I took was about restoring a system that I inherited and which could not work. That is the problem and the nub of the issue.

**David Whitton:** But it could work if you were prepared to put the investment in.

**John Swinney:** There is my point—

**David Whitton:** —and you have just said that you were not prepared to do so.

**The Convener:** This is becoming a conversation. Please let the cabinet secretary finish his response, Mr Whitton.

**John Swinney:** The point that I am making, convener, is that when I came to office, I did not expect to get news that I would have to make significant capital investment to make the SVR system operable. I did not inherit a functioning IT system. My decision was not to stop the power,



but to start it and ensure that it could be exercised in future. That is the issue of substance and why I took the decisions that I did.

**Malcolm Chisholm:** On reflection, do you think that you overstated your criticism of your predecessors? In the earlier evidence session, which you might have seen, David Whitton read out a civil servant's note indicating that no advice had been put to ministers and no reply sought on the £3.4 million option. Is it not a bit unfair to blame your predecessor ministers for what you inherited?

**John Swinney:** I inherited a system that could not function without further capital investment. What I have said on that matter is crystal clear. The thing for which I am being criticised, and which the secretary of state decided merited his intervention in the debate with such grace, is not having a system that could be operable 10 months after an election. That is precisely the position in which I found myself in 2007.

**Malcolm Chisholm:** The committee will obviously have to come to a view on whether you should be criticised for that. Are you still levelling criticism at your predecessors for what you inherited or is it, as the evidence suggests, that it was a fairly recent intervention from HMRC that indicated that extra investment was required, that that was still being discussed between HMRC and officials, and that that had not been put by Scottish Government officials to the minister at the time?

**John Swinney:** My predecessors, who addressed the committee before me, said that they felt that they were taking actions to maintain the system's operability. When I came to office, I did not inherit an operable system. I do not think that there is any doubt that that is at the heart of the issue and that that is crystal clear from the information that is now in the public domain. I did not inherit a system that was operable and the circumstances that gave rise to that situation happened when I was not a minister.

**The Convener:** We will finish with two short questions from Jeremy Purvis and Linda Fabiani.

**Jeremy Purvis:** Coming right up to 2010, I was interested in an e-mail from Sandra Stewart on 3 August 2010 providing an update on the SVR and giving a brief background on the position. The second bullet point in the section headed "Brief background" says:

"We had proposed (at one time officially!) to question why the SG should be asked to fund further costs since we had already paid £12m. However the fact that Ministers decided not to implement the SVR until May 2011 it was agreed that we shouldn't pursue this point."

Is that correct?

**John Swinney:** The point that I raised in my answer to Mr Brownlee was that in August 2009 Sandra Stewart questioned that point entirely.

**Jeremy Purvis:** I beg your pardon?

**John Swinney:** In Sandra Stewart's e-mail of 7 August 2009, she questioned the point about what liability, if any, there should be to meet any of those costs.

**Jeremy Purvis:** So it is correct that a letter was proposed and your permission was sought to ask for more information from the Treasury, and that you did not give permission for that letter to be sent.

**John Swinney:** The letter that is referred to, if it is the letter that I think it is, is the draft letter that Alyson Stafford put to me. I do not actually see—

**The Convener:** Can we get a reference?

**Jeremy Purvis:** It is in the papers.

**John Swinney:** It would be the letter to which I referred earlier in my evidence to Mr Purvis, which it was proposed to send to HMRC. I advised officials to continue the dialogue with HMRC to try to make some progress on the question.

**Jeremy Purvis:** Instead of sending a formal letter.

**John Swinney:** Yes.

**Jeremy Purvis:** The next bullet point relates to the deadline for committing. It states:

"It appears that it will cost £7m (only an estimate which could change depending on the risks/assumptions made by HMRC) to fund the IT infrastructure to deliver the SVR for 6 April 2012. HMRC need a reply by 20/8 if we are to commit to this."

When were you first aware of the date that HMRC had set as a deadline if the power was to be available for use by an incoming Government after the 2011 election?

**John Swinney:** My recollection is that Alistair Brown discussed that with me on—I think, if I have my dates right—either 4 or 5 August.

**Jeremy Purvis:** What was your response to that?

**John Swinney:** My response was that we should find out some more information, because I was not committing to £7 million without more detail about how it had suddenly become £7 million.

**Jeremy Purvis:** But you were fully aware at the beginning of August that HMRC needed a reply by 20 August and that Scottish Government officials had known for a considerably longer period that HMRC had to have sufficient time for that before the elections in May 2011. You were fully aware of

the consequence if that deadline was not met. Is that correct?

**John Swinney:** The first time the figure of £7 million was mentioned was, I think, on 28 July. The e-mail is from 3 August and Alistair Brown raised the matter with me on 5 August.

**Jeremy Purvis:** Did you not consider it to be an issue on which you may have wished to speak to other ministers in a UK department? Or were you perfectly content that it would be handled by officials?

**John Swinney:** A range of issues are handled by officials. Sometimes, ministers will delegate particular issues and, in other examples, ministers will be involved in all the discussions. It varies from issue to issue depending on the questions that are involved.

**Jeremy Purvis:** If the Parliament voted to utilise the tax-varying power, when is the earliest availability for it to be implemented?

**John Swinney:** The earliest availability will be in 2013-14.

**Jeremy Purvis:** And is there a time by which a decision would have to be made for it to be implemented at that stage?

**John Swinney:** The committee has had released to it the notes of teleconferences that took place on 2 and 9 December on taking forward some of those questions. I am sure that there will be further work to ensure the operability of the system. As part of that discussion, we have pressed for clarity at the earliest possible opportunity. The Parliament must obviously consider whether that work should be undertaken if it results in a cost, given the UK Government's proposals to abolish the Scottish variable rate as part of the Scotland Bill.

**Jeremy Purvis:** But it would be impossible to get the power back to a 10-month state of readiness by May 2011.

**John Swinney:** That is my view, based on the information available to me.

**Jeremy Purvis:** And the last discussions relevant to the—

**John Swinney:** On that point, the position that I inherited and the advice that was given to me in May 2007 meant that the reliable date for the operability of the SVR system would have been 2009-10, which was two years after the Government was elected.

**Jeremy Purvis:** The briefing that you had in 2007 went into detail in two paragraphs about an April 2008 start. Mr Whitton was discussing that.

**The Convener:** These are very specific questions. I suggest that, if the minister wants to add anything further in writing—

**John Swinney:** No, I have nothing to add.

**Jeremy Purvis:** I am asking because paragraph 15 of the note from the teleconference on 2 December says,

"A further meeting would be held once HMRC had considered the implications of the question about returning the SVR systems to a 10-month state of readiness by May 2011",

but you are ruling that out now.

**John Swinney:** I am saying that, on the information available to me—

**Jeremy Purvis:** What information is that?

**John Swinney:** I have had a further response on many of these questions from the Exchequer Secretary to the Treasury, Mr David Gauke MP, and he essentially makes that point to me. I am happy to provide the committee with a copy of that letter.

**Jeremy Purvis:** Why have we not already been provided with that?

**John Swinney:** I am here today and I am happy to make it available to the committee.

**The Convener:** That would be helpful.

**Jeremy Purvis:** Convener, I thought that the Scottish Government had said that all relevant material had been provided to the committee.

**John Swinney:** In relation to the circumstances of the issue about which I have been asked to inquire, that is the case.

**Jeremy Purvis:** How much more information and how many more papers exist that we do not know about?

**John Swinney:** All the information that the Scottish Government holds about the issue has been made available.

**Jeremy Purvis:** Up to when?

**John Swinney:** Up to 9 December. The letter from Mr Gauke is from 21 December.

**Jeremy Purvis:** Right. Thank you.

**The Convener:** Linda Fabiani will finish off.

**Linda Fabiani:** I will be quick, unlike Mr Purvis. Earlier we heard Mr Purvis's questions about the successive budgets that were introduced by the previous Labour-Lib Dem Administration and the statement about the SVR that was contained therein. He finished by talking about the budget for 2006-07. The draft budget that the coalition prepared for 2007-08 had the statement about the 10-month state of readiness of the SVR in it.

Cabinet secretary, in retrospect, do you think that that was misleading?

**John Swinney:** It certainly was not what I inherited.

**Linda Fabiani:** Do you know about the mothballed call centre in East Kilbride? I can tell by your face that you do not.

**John Swinney:** I do not know anything about a call centre in East Kilbride.

**Linda Fabiani:** Convener, could the committee write to HMRC to find out about the current state of play in relation to that, and ask for further confirmation about who paid the £2 million in that regard? Understandably, there is a bit of confusion because some of the papers are missing.

**The Convener:** If it helps the committee to clarify the situation, I am happy to do that.

There are no further questions. Do you have any final comments?

**John Swinney:** I have no additional comments to make.

**The Convener:** Thank you, minister.

*Meeting closed at 15:44.*



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