



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SCOTLAND BILL COMMITTEE

Tuesday 14 December 2010

Session 3

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**SCOTLAND BILL COMMITTEE**  
**2<sup>nd</sup> Meeting 2010, Session 3**

**CONVENER**

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

**DEPUTY CONVENER**

\*Brian Adam (Aberdeen North) (SNP)

**COMMITTEE MEMBERS**

\*Robert Brown (Glasgow) (LD)

\*Tricia Marwick (Central Fife) (SNP)

\*David McLetchie (Edinburgh Pentlands) (Con)

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

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

Paul Doyle (HM Treasury)

Mr David Gauke MP (Exchequer Secretary to the Treasury)

Robin Haynes (Scotland Office)

Jim Logie (Office of the Solicitor to the Advocate General for Scotland)

Alisdair McIntosh (Scotland Office)

Michael Moore MP (Secretary of State for Scotland)

David Mundell MP (Parliamentary Under-Secretary of State for Scotland)

Lord Wallace of Tankerness (Advocate General for Scotland)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

Committee Room 2



## Scottish Parliament

### Scotland Bill Committee

*Tuesday 14 December 2010*

[The Convener *opened the meeting at 10:34*]

### Scotland Bill

**The Convener (Ms Wendy Alexander):** I welcome people to the second meeting of the Scotland Bill Committee. Before we start, I will deal with the usual housekeeping and invite everybody present in whatever capacity to turn off their mobile phones and pagers.

I am delighted to start formal evidence taking on the Scotland Bill and the relevant legislative consent memoranda. I am particularly pleased to welcome the panel of United Kingdom Government ministers and officials who are here. I am grateful to both the Scotland Office and the Treasury for undertaking to make themselves available at incredibly short notice. As you will know, it is more usual in this place to invite ministers to give evidence towards the end of consideration of a bill, but we thought that it was important to hear from both the UK and the Scottish Governments right at the outset, although the downside for those coping with planes and travel arrangements is that we might invite at least some of you back towards the very end of our evidence taking, because we will have enjoyed it so much.

I stress that because people have tight travel arrangements, we have slightly under two hours today to try to cover all the business, which will be a challenge for us all. We helpfully agreed in advance that we would try to break up the evidence into four main areas. First, we will invite the Secretary of State for Scotland to talk about the big picture and set the scene for the bill. We will then invite the Treasury, in the person of the Exchequer Secretary, David Gauke, to talk about the financial and borrowing provisions. We will then invite the Parliamentary Under-Secretary of State, David Mundell, who is familiar to many of us in this place, to talk about the non-financial parts of the bill. Finally, we will ask another familiar face, Jim Wallace, to talk about some of his proposals relating to the Supreme Court and international obligations that did not feature in the Calman report.

I understand that because of travel arrangements, we might switch the order of evidence taking from Jim Wallace and David Mundell to let Jim get away, given that David has a little more time, but we will see how we are doing.

I invite those who are joining us today to introduce themselves and I invite the Secretary of State to make a few brief opening remarks. We will then move straight to questions. Welcome, Michael.

**Michael Moore MP (Secretary of State for Scotland):** Thank you, convener. It is a very great honour to be here.

**Robin Haynes (Scotland Office):** I am a senior economist at the Scotland Office.

**Alisdair McIntosh (Scotland Office):** I am the director of the Scotland Office.

**Mr David Gauke MP (Exchequer Secretary to the Treasury):** I am the Exchequer Secretary to the Treasury.

**Paul Doyle (HM Treasury):** I am head of the devolved countries unit at the Treasury.

**Lord Wallace of Tankerness (Advocate General for Scotland):** I am the Advocate General for Scotland.

**Jim Logie (Office of the Solicitor to the Advocate General for Scotland):** I am from the Office of the Solicitor to the Advocate General for Scotland.

**David Mundell MP (Parliamentary Under-Secretary of State for Scotland):** I am minister at the Scotland Office.

**Mr Moore:** I will do my very best to keep to your strictures to keep my comments brief. If I see you nodding off half way through I will realise that I have overstepped the mark. It is very helpful to be given the opportunity to set the context for our consideration.

As you are aware, we introduced the Scotland Bill on St Andrew's day, a fortnight ago, and in doing so we delivered a key item of our coalition programme for Government. Beyond that, we recognise the support that had been expressed for the Commission on Scottish Devolution by a number of political parties: the Labour Party, the Liberal Democrats and the Conservatives. Within six months of taking office the Government has introduced the bill that will take forward the commission's recommendations in order to ensure that its consideration can happen in this Scottish parliamentary session. It is significant that the first detailed scrutiny of the bill is taking place in the Scottish Parliament, rather than at Westminster, and I am delighted that the legislative consent motion committee has been established so quickly, as that will give the maximum time for the Parliament to consider, debate and scrutinise our proposals.

We believe that, taken together, the bill and the command paper—"Strengthening Scotland's Future"—will significantly strengthen Scotland's

future. The Scotland Bill marks the second phase of devolution, one in which the Parliament will be further empowered, its accountability will be increased and its stability will be assured within a strong and effective United Kingdom.

As you will be aware, the bill covers a wide range of powers. In particular, it signifies the largest transfer of fiscal powers from central Government at UK level since the creation of the UK. The most significant measure in the bill is the creation of the Scottish rate of income tax, combined with substantial new borrowing powers and responsibility for two specific taxes: stamp duty land tax and landfill tax. We are ensuring that the Scottish Government and the Parliament have responsibility for raising revenue as well as spending it.

In addition, new powers in relation to air weapons, setting the drink-drive limit and the national speed limit, and drugs licensing will be devolved to the Scottish Parliament and Government. Two provisions in the bill deliver the commission's recommendations to return power to Westminster in relation to the regulation of health professions and corporate insolvency. Those changes are based on the experience of 10 years of devolution and are designed to ensure more effective delivery of services across the country. The bill also updates the operation of the Scottish Parliament and some technical aspects of the operation of the Scotland Act 1998.

The ministerial team is, as has been indicated, happy to take questions on the bill and the command paper. We will of course be happy to support the evidence that we give today with further submissions or appearances, as you see fit.

**The Convener:** Thank you. That is very helpful, as is the offer to write to us about issues that we may not have time to deal with directly today. We move now to questions.

**Brian Adam (Aberdeen North) (SNP):** Our role is to scrutinise the bill, and we hope to strengthen it by doing so. Can you reassure the committee that, if it recommends changes to the bill and the Parliament agrees to them in a legislative consent motion, the UK Government will implement the changes?

**Mr Moore:** It would be a poor process if we did not reflect on the decisions taken by this committee and the Parliament. I look forward to the committee's consideration of the bill and to studying its findings and discussing them with colleagues.

**Brian Adam:** In particular, I acknowledge that any proposed changes on the financial side would involve significant technical issues but, if we wished to recommend including in the bill enabling

clauses that would allow changes to be made following a recommendation by a majority in the Parliament, would you be willing to consider that?

**Mr Moore:** First, I welcome your acknowledgement that the financial powers are significant. It is important that we put them in their proper context. The tax-raising responsibilities and powers and the capital and current borrowing powers that will come to the Parliament and the Scottish ministers are significant changes. It is right that we scrutinise them properly.

We are already engaged in considering the detail of our proposals in the bill. The Scottish Government, its officials and our officials are working closely on that process and we are committed to ensuring that it continues. We will, of course, reflect on any proposed amendments and any suggestions that emerge on the back of the officials' work, or as a result of separate work from this committee or broader consideration in the Parliament. It is in our interests as much as, we hope, in the interests of the Scottish Parliament to get the provisions right and suitable for the purposes that are set out.

**Robert Brown (Glasgow) (LD):** The devolution settlement has often been described as a process not an event and here we are in the second phase, moving towards a structure that, with the possibility of new taxes and so forth, is capable of some development. Does the UK Government have a view as to whether the framework that will result from the Scotland Bill being passed will be a long-term settlement? Do you envisage a further constitutional review in the future? How do you see the thing in overall constitutional terms? I accept that this is a bit of navel gazing, but it is important that we know where we stand.

**Mr Moore:** As I am the minister responsible for introducing the bill, you will of course expect me to say that I expect that what it proposes will last for a very long time indeed. We introduced our proposals after a lot of consideration. People around this room and elsewhere in Scotland have been very influential in setting out the proposals. I am happy to repeat the way in which I have characterised this before, which is that I believe that the proposals are right for this moment in time and that they will pass the test of time. Aside from our view as a Government and our commitment to the bill, the debate about Scotland's direction will never finish; wishing that it were otherwise would be a bit daft. I am confident in the case that we make through the bill for a strong Scotland within the United Kingdom and confident that the bill has the right balance of powers for now and the future.

10:45

**Robert Brown:** There has been much discussion about the need to grow the Scottish economy and to give the Scottish Parliament the proper basket of powers to do that. That discussion has focused to some extent on corporation tax. There has been discussion in Northern Ireland about whether corporation tax should be a devolved power and there are recommendations in Wales to that effect. Although the issue was not included in the Calman report, can you indicate why the Government does not support the devolution of corporation tax, given the background of the potential to grow the Scottish economy?

**Mr Moore:** Different individuals have proposed the devolution of corporation tax but, as you rightly point out, we have ruled it out. The main reason for that is that we believe that it is important that we provide the Scottish Parliament with enhanced responsibility and accountability, which is the primary purpose of the bill, while maintaining Scotland's place within the United Kingdom and the stability of the UK.

On the economic side of things we judge that it would not be appropriate to have different corporation taxes north and south of the border, not least because of the risks of tax arbitrage and other associated issues. We are talking about the balance between the on-going fundamentals of the block grant allocation and the changes that will be brought forward through income tax; we think that that strikes the right balance of accountability and maintaining Scotland's spending power on our important public services.

The issues raised in Northern Ireland take account of the very different situation whereby it shares a border with a different country, which is not the case for Scotland. I should also highlight that the proposals are for consultation, rather than being firm proposals.

**Robert Brown:** Can I press you slightly on that and ask you to identify, if you can, the downside of devolving corporation tax?

**Mr Moore:** We need to take a balanced view of the way in which the UK economy as a whole will perform as a result of any of the changes and look at how tax receipts fluctuate; they can be volatile. We also need to look at decisions on where people base their tax headquarters. Corporations are much more mobile than the income tax base, which is the primary base that our tax proposals are looking at.

**Tricia Marwick (Central Fife) (SNP):** Secretary of State, you have said repeatedly that the bill is based on the Calman recommendations. Can you tell me how many of Calman's recommendations are not included in the bill?

**Mr Moore:** No. I cannot give you a quick notation off the top of my head, for which I hope that you will forgive me. If you have not already had the chance to do so, you can study the annex to the command paper, in which we have included all the Calman recommendations. We have gone through each recommendation and, where we have decided not to proceed with it, we have made it clear how we intend to do things differently.

My judgment over the piece—this is the way in which I expect this to be judged by the outside world, too—is that we have more than delivered on the central points of Calman in terms of financial accountability and giving Scotland new powers. Certain of the Calman recommendations are, of course, not to do with the Government; they are the responsibility of the Parliaments and those discussions will continue separately from the bill process.

I think that we have gone beyond Calman, particularly with the borrowing powers. We therefore have a package that measures up to Calman and the spirit of it, and goes beyond in some crucial aspects.

**Tricia Marwick:** Thank you for your invitation to compare the Calman recommendations with the bill, but I have done that and I think that I probably have a better idea than you do, Secretary of State, of how many of the recommendations are not included in the bill. I ask in particular about the Calman recommendations on air passenger duty. Surely there is no argument about tax competition in that regard, so why not devolve the duty and let Holyrood review it, rather than Westminster?

**Mr Moore:** The command paper is specific on that point—it says that the issue is subject to a review by the United Kingdom Government. We have judged that, until we see the shape of that for the future, now is not the right time to make that change. Similarly, with the aggregates levy, there is a court case in Europe at present that affects those provisions. As we have said on both those taxes, which were in the Calman report, we want to wait until the issue is resolved. We then intend to devolve appropriately in due course.

**Tricia Marwick:** The EU case on the aggregates levy has been going on for a long time, so why not just devolve the levy to Scotland and let us worry about the outcome?

**Mr Moore:** We take the view—rightly, I believe—that the United Kingdom should see that particular court case through. As I understand it, there is to be an oral session before the court at some point in the new year. We hope that the case will come to a resolution before too long. We might take different views about when to make the changes and how and where the risks should be

borne, but the important point is that, for both those taxes, we have taken a particular view because of the unique circumstances, but with the clear intent to devolve in due course.

**Tricia Marwick:** Are you suggesting that, if the EU case is settled in the near future and if you are still in power, you will devolve the aggregates levy to Scotland?

**Mr Moore:** I am not going to prejudge the outcome of the court case. That is why we have been waiting. Let us see what the outcome is. If it is fine, it will be relatively straightforward to proceed. If it changes the basis on which the levy is made, we will have to reflect on that. We are committed to following the proper process, which is before the courts. We will deal with that and then return to the devolution.

**Brian Adam:** Your intention is to devolve in due course, but how will you do it? That goes back to my earlier question on enabling clauses. What mechanism will exist in the bill for that? Once you have made your decision on the two taxes, how will you put it into play?

**Mr Moore:** If a decision comes through during the passage of the bill, there will be an opportunity to update and amend the bill as it goes through Westminster. However, we are introducing a new power in relation to additional taxes for Scotland that will provide a route to allow taxes that have not been devolved to be devolved, with the agreement of the Scottish Parliament and Westminster. That would be one such area that we would be able to explore.

**David McLetchie (Edinburgh Pentlands) (Con):** Before I ask a question of the secretary of state, I point out that I have to leave the meeting for 25 minutes at about 11.25. I am not going off in the huff, no discourtesy is intended and I hope to see you all again before the evidence session is concluded.

One key element in the proposals on funding is the trade-off involved in giving the Scottish Parliament an income tax-raising power in return for a reduction in the block grant. That element underpins the financial proposals, so the estimation of its impact is significant. Historically, in the past 10 or 11 years, what has been the relationship between the growth in the Scottish budget—which we have therefore had to spend on devolved services—and the growth over the same period in tax revenues arising in Scotland?

**Mr Moore:** Because of the period that we were in, public spending grew significantly more than income tax receipts. Clearly, there have been issues in the past two or three years because of the recession, which was the most fearsome that we have had in peacetime. That would have an impact on the issue if we were simply making a

judgment on the adjustment to the block grant at this moment in time. Obviously, we envisage that that will be done at a point in the future when we are beyond the consolidation that we are undertaking at present.

**David McLetchie:** I want to get this clear. The point of the new system is supposed to be to have a zero balance, is it not? The block grant reduction and the income tax-raising power are supposed to be in balance, and decisions that are taken thereafter will impact on the adjustments that are made. We are trying to get to a zero sum game as the starting point, with a level playing field, and we will move on from there. That is the intention, is it?

**Mr Moore:** I will start the answer to that and I might then bring in Robin Haynes to give you a little bit more on the background. As we have set out in a great deal of detail in the command paper, beyond the introduction of the income tax proposals that are available to be used from 2016, there will be a period of transition. The Parliament will be able to make a judgment on the level at which it wishes to set the new Scottish income tax rate, and an adjustment will be made to the grant from Westminster based on the corresponding forecast tax receipts. After a period of transition, of one, two or three years, we will make a judgment about the permanent reduction in the block grant, based on an averaging of the tax receipts over that period.

That judgment will be balanced, and we believe that it will ensure that we get the right kind of adjustment, rather than picking one year arbitrarily out of a five-year, 10-year or 15-year period. The judgment will be based on an average, and that will give us a fair, sustainable basis for making the adjustment.

**David McLetchie:** Like us, you will have heard from the First Minister about the alleged £8 billion deficit that would have arisen had the mechanism been in place over the past 10 years. Whether that is right or wrong, to what extent does that historical calculation have any relationship to what might happen in future, should there be a zero sum starting point, as you have described?

**Mr Moore:** You are right to highlight that; it is completely irrelevant. I understand that the Scottish Government is now making the basis of its calculations available to the Parliament, and we will look at that carefully. We do not believe that that figure is accurate.

That is the Scottish Government's take on what happens with income tax receipts and on the reduction that happened in the course of the recession. As I understand it, that does not take account of the reductions in other Scottish taxes that, under the model of full fiscal autonomy, would be required to form part of the equation.



That is the past, however. Our figures relating to that period differ from the Scottish Government's figures, you will not be surprised to know, and I would be happy to supply the details of that to the committee.

The important decision that we will take about the adjustment to the Scottish block will be based on future years, for which we do not have accurate forecast data, but it will be taken in the future using an average for a certain period of years. It will be based on a transparent and clear methodology that can be scrutinised not just here, but anywhere else in the country.

**David McLetchie:** Would it be possible, to assist our deliberations and those of the House of Commons when it comes to consider the bill, to have the Government's projections and assessment of the changes in the grant relative to the tax regime on a going-forward basis, with various assumptions about the receipts coming in and about what the grant might have been and so on? Is it your intention to produce such models so that people can consider the variables in the system as it goes forward?

**Mr Moore:** Yes, it is. We have done some early work on that, which we are happy to share with you.

**Mr Gauke:** There is a great deal of uncertainty, in that it will depend on the relationship between tax receipts and public spending. As you have drawn out in your questions, any historical analysis shows that such things depend on what is happening at any particular time. If public spending is racing ahead of tax receipts, that moves things in one direction. If that is reversed, things move in another direction. The point is that we start off on a zero base and, if the policies that are pursued by the Scottish Government are successful in increasing tax receipts at a faster rate than public spending increases, that is likely, over time, to work to Scotland's advantage.

11:00

**The Convener:** Tricia Marwick, do you have a question?

**Tricia Marwick:** I will come back to Mr Gauke later.

**The Convener:** I will try to wind up and clarify where we are. The UK Government has been refining its proposals and discussing them with the Scottish Government since the Calman report was published more than a year ago. The committee now finds itself in a slightly odd position, in that it does not have estimates from the UK Government about modelling the tax power proposals, nor do we have anything from the Scottish Government. Last week, the Scottish Government told the

committee that it had had 16 meetings with the Scotland Office and the Treasury at which it presented an alternative model of full fiscal autonomy, but there are no numbers of any kind. We are in the strange position that the Scottish Government wants to model its assumptions about Calman against what has happened and, so far, has been unwilling to make available to the committee any estimate of the full fiscal autonomy model, about which, as I said, it has had 16 meetings.

Our invitation to both Governments is that we would like to see modelling of the UK Government's proposal and the estimate of the alternative. That would help our deliberations.

**Mr Moore:** As I said, we can provide you with some comparisons that we have worked through. We looked at an example in which the average of Scottish income tax receipts as a percentage of the Scottish Government budget from 1999-2000 to 2010-11 equates to 17.25 per cent. We then used that as the adjustment to the Scottish block for the years from 1999-2000 to 2010-11. Over that period our estimate is that the total reduction would be £691 million. However, extending the model through to 2014-15 results in a cumulative gain to the Scottish budget of £397 million. That might illustrate that there is some difference between our figures and the Scottish Government's.

We are happy to share with the committee immediately the methodology and the assumptions that are fundamental to all this, along with the charts that go with them. We can then follow up on any further questions that you might have.

**The Convener:** Thank you; that would be valuable.

I have a further question on the big picture for those who might be less interested in the very fine detail. Can you give us a sense of how much the Scottish budget has grown since devolution and how much all Scottish tax receipts have grown? That would give us a ballpark figure to use as a counterfactual for the model that was promoted at those 16 meetings. That would be helpful.

**Robin Haynes:** We are lucky, because the publication called "Government Expenditure and Revenue Scotland" produces, as far as we know, extremely accurate estimates of the receipts of all taxes in Scotland. The latest publication covers 2008-09 and shows that tax receipts in that period have risen by 47 per cent from what they were at devolution in 1999-2000. During the same period, the Scottish budget increased by something like 94 per cent, from £14 billion to £27.5 billion.

**The Convener:** Thank you. That is very helpful.

**Robert Brown:** That is the general picture, but in the past two years, we have had the recession and seen a significant fall in Government revenues. What is the extent of the fall in income tax as it relates to the Scottish Parliament and the Calman proposals? What was the across-the-board fall in the Scottish share of Government revenues more generally, not least with regard to North Sea oil revenues? Have you any figures that can give us a picture of that?

**Robin Haynes:** Unfortunately, we cannot provide accurate estimates of Scottish tax receipts for the years that covered the downturn, but if we look at the UK situation, it is reasonable to infer that tax receipts in Scotland would have reduced by something in the order of 6 or 7 per cent during that period.

As regards North Sea oil receipts, 2008 was a bumper year, when the price of oil was about \$140 a barrel. Subsequently, the price fell rather dramatically. During one year, the reduction in total UK oil and gas taxation receipts was in the order of £6.5 billion or £7 billion.

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

**Brian Adam:** You pointed out that during the early period of devolution tax receipts increased by only 47 per cent, whereas expenditure increased by 97 per cent. How was that difference funded? Is it just a reflection of the move from direct taxes, such as income tax, to indirect taxes?

**Robin Haynes:** No. The tax receipts figure that I cited covered not just income tax, but all taxes that were levied by HM Revenue and Customs in Scotland. It would be fair to say that the process that was observed during that period is the opposite of the one of fiscal consolidation that we are about to enter, whereby tax receipts will rise by more than Government expenditure.

**Peter Peacock (Highlands and Islands) (Lab):** Following Wendy Alexander's line of questioning, there is one thing that I would like the secretary of state to pin down so that I understand it fully. The First Minister stressed that he had had 16 meetings with your officials and, no doubt, ministers. He said that, as part of that, he tried to make the case for fiscal autonomy as an alternative to the Calman proposals. He hoped that you would adopt it, but you have not done so, for the reasons that you have set out. In those discussions, did the Scottish Government—from which we have yet to take evidence—reveal to you that it had modelled the impact of fiscal autonomy on budget and expenditure?

**Mr Moore:** I am just checking. That might have happened at meetings involving officials, but it certainly did not take place in any of the discussions that we have had.

**Peter Peacock:** So, no model has been given to you on what the impact of fiscal autonomy might be.

**Mr Moore:** No, and we have not had an analysis of the £8 billion figure until today—I understand that one has now been put in the public domain.

**Peter Peacock:** That is fine. Thank you.

In his first question, Robert Brown picked up on the point that devolution is a process. Our debate in Parliament last week revealed that people think that.

Although every minister hopes that their bill will be perfect, that seldom proves to be the case. The thing about the Scotland Bill is that it tries to provide for change in the future through the reverse Sewel procedure and the provision of order-making powers. I want to ask about what is on the face of the bill and what is not. Provisions on income tax are on the face of the bill, as are provisions on the landfill tax and stamp duty; it will be possible to make changes to the landfill tax and stamp duty by order. As Tricia Marwick discussed with you earlier, if responsibility for air passenger duty and the aggregates tax were to be devolved, that would be done by order, after agreement. Any new taxes would be implemented by order, too.

However, it appears that any future change to income tax could not be made by order. Is that entirely purposeful? I imagine that it is and I would be interested in hearing your rationale for that. In the event that the debate moved on and attitudes changed a bit, would not you want it to be possible for any agreed change to income tax to be made by order, rather than by having to revert to primary legislation?

**Mr Moore:** First of all, I am pleased that you acknowledge the flexibility that is built into the bill and how it will, as well as applying to new taxes that it will be for the Parliament and others to debate and introduce, enable us to make changes—should we need to—to the taxes that are not currently part of the package, but which we have indicated we might wish to change at the appropriate moment.

Peter Peacock's broader point goes to the heart of the bill. Income tax is a fundamental part of the UK taxation system. Through the bill and Government policy more broadly we are committed to maintaining the overall structure of UK income tax and its place within the tax system. For that reason, we are not devolving decisions over bandings, allowances, reliefs and the like. It is entirely appropriate that that is recognised through its fundamental place in the bill, and that it is not simply able to be tweaked in the future, as you put it.

**Peter Peacock:** So, the judgment is that any future change to income tax would be of such moment—it would be so big—that it would deserve primary legislation rather than secondary legislation.

**Mr Moore:** If we were to alter the proportion of income tax or what was devolved, that would be a major moment. However, I should point out, and I have no doubt that the committee will take further evidence on the issue, that if the United Kingdom Government made changes to tax reliefs, allowances or standing points—bands and so on—they would be reflected in additional adjustments to the block grant. We have set out the mechanism for that in the command paper.

**Peter Peacock:** That is helpful. I wanted simply to clarify the technical point.

You have touched on a block-grant reduction, which it is clear would be a hugely important moment in time. Whatever is concluded on that will remain material for a long time to come, so much attention will be paid to the matter. The command paper says that the reduction will be achieved through a process of negotiation, whereas Calman made a specific proposition on the reduction. What is your rationale for arguing for a process of negotiation?

**Mr Moore:** Calman did not specify what the mechanism should be; the commission left it to us to consider that. Our judgment, which I believe to be right, is that the best way to proceed is to make an adjustment that is based on the figures for several years, rather than betting all or nothing on one year.

Given the spirit in which we are dealing with the bill and the maturity of the relationships between the Scottish Government and the UK Government and between the Parliaments, it would be totally inappropriate for us to hand down from on high the methodology and the decision without consultation and discussion or negotiation—whatever one wishes to say. You cited the figure that the Scottish Government has given for the number of meetings that have taken place to get us this far in shaping the package. By the time the process is finished, I expect the number of discussions and meetings to be into three figures or higher. For a decision of such moment—for the big adjustment that will be required—to be made by the Treasury or UK ministers without reference to Scotland would be a difficult sell and would not be right.

**Peter Peacock:** That is helpful. The Calman commission set out its thinking on the issue, as did the Holtham commission in Wales, which went into greater depth in setting out clearly approaches to the negotiation process and its conclusion. Has the Government considered whether that work

could inform the Scottish negotiations or has that yet to be addressed?

**Mr Moore:** We welcomed the process that the Holtham commission undertook. Its report contains interesting work, which Treasury colleagues have studied carefully. It relates primarily to the situation in Wales.

We want a mechanism for the adjustment that has the broad support of the Scottish Government, the Scottish Parliament, the Treasury and ministers in Westminster. We want the engagement process to start early—we are already talking. Once the bill becomes an act, we will be able to get down to much of the detail of how that will be done and we will look to different sources for information and advice on how the adjustment can be done. The bottom line is that we will have a fair and transparent adjustment that all sides accept.

**Peter Peacock:** I will pick up on something that you have said. What is the UK Government's objective? What balance is it trying to find? Is its primary objective to achieve stability in the financing of Scotland? Is it to optimise the risk to Scotland in the transfer of taxation and the consequent grant reduction in order to increase accountability? Do you have a view on that or is that all part of the discussion?

**Mr Moore:** "Optimise the risk"? That is an interesting concept.

**Peter Peacock:** To be honest, I could not think of a better way of putting it.

11:15

**Mr Moore:** We want a fair balance that ensures that the adjustment, which will be based on an average of the tax receipts over a period of years, is seen as a fair reflection of the Scottish economy and its capacity to generate income tax receipts. I do not know whether there could ever be a typical period of public spending, but the period on which the adjustment will be assessed will be broadly accepted as being a reasonable basis for that assessment.

Given our interest in ensuring that we hand to the Parliament enhanced responsibility and accountability, an element of risk will attach to the setting of the income tax level each year and, therefore, the receipts that come from it, so we have put in place borrowing powers and the Scottish cash reserve to help with the process. Fundamentally, however, we are underpinning the stability of Scotland's finances through continuation of the block grant, which will still represent two thirds of spending in the country.

**Peter Peacock:** In the 16 meetings that the convener referred to, has the Scottish Government

ever set out to you its negotiating stance on the block-grant reduction? Has any detail emerged in that respect?

**Mr Moore:** No.

**The Convener:** I am very mindful of the time and, although the secretary of state has, in the latter part of the questioning, done rather well in mastering matters that would more normally fall within a Treasury brief, I really think that those questions should have been asked of the Treasury. As a result, I thank the secretary of state for his evidence and move to his colleague David Gauke, the Exchequer Secretary to the Treasury, who will be well used to questions on the minutiae of financial matters.

**David McLetchie:** It has been mooted that corporation tax should have been devolved in the Scotland Bill. As I understand it, Her Majesty's Government's policy is to progressively reduce the rate of corporation tax over the next few years. Are you able to outline the policy proposition and the impact that your modelling has suggested the proposition might have on UK corporation tax receipts? We might then move to the Scottish dimension, in that context.

**Mr Gauke:** In the June budget, we announced that we will reduce the main rate of corporation tax, which stands at 28 per cent, by 1 per cent per year until it reaches 24 per cent. At the same time, we reduced the small profits rate of corporation tax from 21 to 20 per cent. The forecast is that there will be a cost of reducing the rates, although some of that has been accounted for in our reform of capital allowances.

We believe that corporation tax rates are a very important symbol, if you like, of the fact that the UK is open for business, and that in setting out these longer-term plans we are sending a message to businesses that are deciding where they want to invest. Moreover, over the past week or so, we have announced plans to reform control of foreign companies, which has been a considerable issue for multinational businesses and, indeed, has resulted in some businesses relocating and redomiciling outside the UK.

Corporation tax is important. It is right that we are competitive in that area and it is very much at the forefront of what we are looking at on a UK basis.

**David McLetchie:** If we assume that HM Government sticks to that policy objective over that period of time, I would have thought that, if corporation tax were ever to be devolved to the Scottish Parliament and Government—and given, of course, that almost everyone who recommends such a move thinks that it should be reduced as a stimulus to economic growth in Scotland—then it would have to be reduced below the level of the

progressive reductions that are already planned in HM Government's budget forecasts.

**Mr Gauke:** Indeed. If that is the policy objective, the main rate will need to be reduced below 24 per cent for there to be a differential from the rest of the UK.

**David McLetchie:** Exactly. What impact do you expect the reduction that you wish to implement to have on UK corporation tax receipts? Will it lead to a reduction in receipts, will it have some dynamic effects so that the impact is relatively neutral, or will it have even greater dynamic effects so that a lower rate of tax will generate more receipts from greater economic activity?

**Mr Gauke:** The Treasury has carried out its modelling on the assumption that there would be a loss to the Exchequer from each reduction. In broad terms, each reduction by a penny, by one percentage point, would result in UK receipts falling by around £800 million.

**David McLetchie:** So, that is your model. If the same policy was advocated for a devolved corporation tax in Scotland at a rate that was even lower than the 24 per cent that you want to reach, would any normal model that a Government produced work on the basis that that would lead to lower tax receipts going into the pot?

**Mr Gauke:** It would do. It is fair to say that the modelling would include some indirect benefits, but if we take everything into account, it would suggest—certainly the Treasury model would, and there is no particular reason why any other entity looking at the subject would come up with something radically different—that there would be a revenue cost in doing that. Of course, there are arguments about whether it might in the long term have a dynamic effect that outweighs that impact, but a cautious assumption must be that cuts would have a revenue implication.

**David McLetchie:** Any dynamic effect would take longer to emerge; it may help, but it would take longer.

**Mr Gauke:** That is important. I was pleased that we were able to reduce the rate of corporation tax in very difficult times for the public finances, because it is a positive thing for us as a United Kingdom to do, but a lot of the benefits may emerge over a long period of time.

**Brian Adam:** It is an interesting argument. Obviously the argument is not to cut corporation tax in order to stimulate the economy, except possibly in the very long term. What taxes do you consider to be key to long-term economic growth? Do you think that the proposals in the Scotland Bill will help economic growth in Scotland?

**Mr Gauke:** As the secretary of state pointed out earlier, a lot of what is driving the bill and the

policy behind it is a wish to improve democratic accountability. Although corporation tax scores quite highly on economic impact, it does not score quite so highly on accountability. In my experience, it is a subject that is not raised on the doorstep as often as income tax is, for example. Of course, it is worth making the point that income tax is important for the overall competitiveness of any country.

**Brian Adam:** If a cut in corporation tax is not a stimulus to the economy, why are you proposing to do that for the UK as a whole, which will obviously have an impact in Scotland?

**Mr Gauke:** My point is that if we consider the range of taxes that we have, there is a strong argument for saying that corporation tax is inefficient and causes more economic harm than most other taxes in relation to the revenue that it raises.

The level of corporation tax is an important symbol for a country. We have ambitions to ensure that the UK has the most competitive tax system in the G20, and our falling and very competitive rate of corporation tax is very good for the UK economy. I stand by that.

In response to Mr McLetchie's question about whether there is a revenue cost—at least in the short term—from any cuts, the answer is yes.

**Brian Adam:** If the UK Treasury had only the financial powers that were contained in the Scotland Bill, what specific steps would you take to grow the Scottish economy?

**Mr Gauke:** It is not for me as a UK minister to tell the Scottish Government what steps it should take for the benefit of Scotland. The point is that we are providing a set of powers to the Scottish Government that will improve its capability to determine the tax policies that it thinks are right for Scotland and which will consequently improve its level of accountability to the Scottish electorate.

**Brian Adam:** Given your answers to me and, indeed, that of the secretary of state, it seems to me that you are more interested in strengthening Scotland's place in the union than you are in strengthening Scotland's economy. Nothing that you or the secretary of state have said to us suggests that the Scotland Bill will deliver the tools to make the economy grow.

**Mr Gauke:** I do not accept that at all. The bill will provide considerable powers. We are talking about a dramatic increase in the powers that are available to the Scottish Government.

**Brian Adam:** How will the bill help the economy to grow?

**Mr Gauke:** I would argue that corporation tax is important for growth in the UK, but a host of

practical issues would arise if responsibility for it were devolved to Scotland, which the secretary of state set out. There are concerns about businesses brass plating and there would be a compliance cost as businesses pretended to be located principally in Scotland as opposed to the rest of the UK, with the intention of benefiting from a different rate of corporation tax.

**Brian Adam:** That is certainly not the view that is taken by the head of Clyde Blowers, which is a significant Scottish company that operates all over the world. It is quite capable of dealing with different tax rates in different places. If you are suggesting that in the long term—we must take a long-term view, as well—it makes the UK competitive to have a competitive corporation tax rate, why would that not work for Scotland?

**Mr Gauke:** We provide a competitive corporation tax rate. I return to some of the practicalities of policing the proposed arrangement. How would profits be allocated between Scotland and England? The fact that Scotland has a land border with the rest of the UK makes it somewhat more difficult. The case for Northern Ireland to have control over its rate is different, because of its geographical situation.

It seems to me that the administrative difficulties, from the point of view of taxpayers and of HMRC, are likely to be pretty considerable, which is why I think that Calman did not recommend Scotland having control of corporation tax.

**Brian Adam:** Corporation tax is not the only business tax that is available. We also have non-domestic business rates. In addition, different levels of council tax apply in different areas. People may make choices about where they are located on such bases. What is so different about corporation tax? Why does the Irish Sea make the situation in Northern Ireland unique?

**Mr Gauke:** It is clear that it is easier to allocate powers over taxes that are based on property to particular locations. I repeat the secretary of state's point about the mobility of businesses in such circumstances. A likely consequence is that there would be a lot of churn and movement of businesses, some of which would claim to be in one country and not the other. It would place a considerable administrative burden on businesses to require them to allocate their profits to different parts of the UK. The administrative challenge of such an arrangement would be considerable. It is fair to ask whether the benefit that could be gained would outweigh the overall cost to the UK as a whole.

**Brian Adam:** But your aim in having a competitive rate of corporation tax in the UK is to draw business into the UK. By reducing

corporation tax in the UK, you create churn elsewhere in the world and cause precisely those administrative difficulties for multinationals.

**Mr Gauke:** That is not the case, because there are already different tax regimes in existence. There is a UK tax regime and there are different tax regimes in other jurisdictions. Our becoming more competitive on corporation tax does not change the fundamental fact that there are different regimes. If we created a new regime for Scotland—particularly with a land border and when lots of businesses would straddle Scotland and the rest of the United Kingdom—the burdens that are placed on businesses would be likely to increase significantly and the compliance demands on HMRC might increase.

11:30

**The Convener:** We move on to substantial questioning on borrowing, which we have not touched on. We might return to HMRC and the details of income tax towards the end of the meeting.

**Peter Peacock:** I will dig into the welcome new borrowing powers that are proposed. I suspect that they will play into the economic growth question by allowing income fluctuations to be managed by drawing down capital to stimulate capital building and so on, but I will put that to one side.

The powers have two parts. One part relates to revenue, on which I understand that your policy objective is to allow the Scottish Government to manage any short-term reductions in taxation income by borrowing in the short term to allow spending to continue, if it so chooses—equally, it could choose to reduce spending and not to incur borrowing. You have limited that borrowing to £200 million a year and to an overall limit of £500 million. Any initial borrowing is to be repaid over a four-year cycle. What is the logic for the parameters of £200 million, £500 million and the four-year cycle that you have picked?

**Mr Gauke:** Those measures will be sufficient to deal with any deviations between forecast and outturn. The evidence suggests that, particularly given that the Scottish Government will absorb the first 0.5 per cent of any deviation.

We are trying to achieve a balance between protecting the United Kingdom's overall fiscal position and giving the Scottish Government greater flexibility. The numbers that we have set out will do that—they will get the balance right. Of course, that is a question of judgment but, in most circumstances that we can envisage, we think that the numbers should be sufficient to provide the flexibility that the Scottish Government will need under the new regime.

**Peter Peacock:** We are beginning to receive briefings and some evidence—although it is not yet formally on the record—that the limit of £200 million per year is at the lower end of what might be expected in typical fluctuations in taxation income and is certainly well below what would have been required in the past three years. It could be argued that the past three years were very untypical, but they nonetheless happened and could theoretically happen again. How open are you to flexibilities to manage significant short-term fluctuations from the norm? How open are you to adjusting the £200 million limit marginally to take us within the band of what experience seems to show might be necessary?

**Mr Gauke:** You make a fair point. We hope that what has happened in the past few years will not happen again. If tax receipts dropped off as they did a couple of years or so ago, the case for greater flexibility would be clear. The bill allows flexibility. Limits can be moved upwards and downwards, but not below the existing thresholds.

Any UK Government would be sympathetic to flexibility if the circumstances were similar to those of two or three years ago. You are right to highlight the need for flexibility, with which we agree.

**Peter Peacock:** That is helpful.

I move on to capital borrowing. I accept that, as a matter of principle, the UK Government must have some borrowing limits—it applies limits to itself and it is subject to EU limits, although they have been set aside in the past few years, which I hope will not happen too often, either. The bill sets a capital borrowing limit of £2.2 billion. The new Forth bridge is coming along, which I suspect is one reason for the provision. Who knows what the bridge will cost, but current estimates are that it will certainly cost more than £2 billion. The limit that you propose might be difficult to manage in the reality of a short-term situation. What is the logic for the limit? How open is the UK Government to thinking again about that, on the basis of evidence?

**Mr Gauke:** As you rightly say, it is about striking a balance between, on the one hand, what the UK needs to do and the overall position—obviously we are particularly conscious of that position at the moment—and, on the other hand, providing greater flexibility for the Scottish Government. We think that that figure should be sufficient to give Scotland greater accountability and flexibility without imperilling the position of the United Kingdom and our ability to ensure that our debt position is manageable.

**Brian Adam:** Why is the borrowing over only 10 years? Mr Peacock rightly pointed out the issues around the Forth bridge. It seems odd to borrow money for major projects such as that, if we can

get it in that kind of timeframe, over such a short period. Typically, elsewhere, borrowing would be for 30 years or perhaps even more—for council housing stock, borrowing was over 50 or 60 years. Ten years seems to be a very short period. Are you open to suggestions on the period over which the borrowing might be repaid?

**Mr Gauke:** There is flexibility on the timeframe for particular projects, if a different timeframe better reflects the associated aspects of the circumstances. Again, by and large, it is about getting the balance right; 10 years is a reasonable length of time, but you are right that the timeframe may well need to be longer in some circumstances. We will be prepared to negotiate on that on a case-by-case basis.

**Mr Moore:** That is specifically recognised in the command paper.

**Peter Peacock:** You have ruled out the possibility of the Scottish Government issuing bonds. I am interested to know the reason for that. On the face of it, having that possibility would be an additional bit of flexibility and it is intrinsically not much different from other forms of borrowing. Why do you rule out the Scottish Government issuing bonds, per se?

**Mr Gauke:** The position is that Scottish local authorities are able to issue bonds. We have a concern that, if the Scottish Government was also able to issue bonds, there would be risks to do with confusion in the gilts market. We would rather avoid that risk, because we do not want to create any unnecessary uncertainty that may damage the UK's overall position. I note your remarks, but I think that if we were to permit further bonds in this area, that would be an unnecessary complication in the system.

**Peter Peacock:** It might be helpful to get your insights into how much issuing of bonds has been done by organisations such as local authorities and perhaps transport agencies in the south, which have the power to issue bonds. Even though they have had the power, I suspect that they may have made much less use of it than might, on the face of it, appear to be the case. It may be helpful to get information about that, even if it is not today.

**Mr Gauke:** We will certainly provide what we can.

**Peter Peacock:** The structure of the Scotland Bill focuses on the basic rate of income tax and the sharing of that income tax base with the UK Government. Arguments have therefore been deployed that, in a growth situation—other than the fact that the number of people in employment, and therefore the tax take, would increase—there would be no particular benefit to the Scottish economy as people moved up the income scale

into the higher rates of taxation, because we would have neither powers over a fixed share of the higher income tax rates beyond the basic rate share nor, indeed, the ability to vary those rates. Can you explain the policy thinking behind the limitation of sticking to basic rate sharing?

**Mr Gauke:** Allowing the Scottish Government to have a variable level running from 10p on the basic rate, and on the higher and additional rates, satisfies the requirement for greater financial accountability, which, as I said, is very important. It is worth making the point that the tax take from the higher and additional rates is quite volatile. The risks, if you like, from the perspective of the Scottish Government, if dependence upon those areas was too great, would increase the uncertainty that you would face. It is right that we get the balance right between providing stability for Scotland and greater accountability and flexibility. The Calman proposal of 10p for every tax band will do that and it will provide greater accountability, while protecting Scotland from the volatility that can occur with higher tax rates.

**Peter Peacock:** So, in essence, it is a question of risk management in the policy objective. If I understand the volatility point correctly, you are saying that when income receipts rise, Scottish expenditure might grow on the back of them—we can argue about that, but some might say that it is a good thing—but come a recession, income receipts fall more dramatically because the rates are higher. Do you have any modelling that shows the extent to which the higher income tax rate receipts are more volatile than the more stable basic income tax rate receipts? If you do not have that information to hand, it might be helpful if you could get it for us.

**Mr Gauke:** I am sure that we can provide some more information on that; we would be happy to do so.

**The Convener:** On that latter point, the most interesting departure of the Calman proposals is the move towards a shared tax base for income tax. We have not seen such a departure in UK revenue-raising and the Treasury is to be congratulated on seeing the virtue of shared tax bases as one of its principal raisers of revenue.

The particular form of that shared taxation base that Calman advocates is more remote from the more typical forms of tax sharing that we might see in the Canadian example on which Calman draws. I am aware that the Treasury took receipt of the Holtham proposals in the past year. They say that it is right to share an income tax base, but they seek to do it on a slightly different basis. They are keen to keep allowances common, but they want to share taxation across all the income tax bands more equitably and to allow individual variation. I take it that you will not look favourably

on the Holtham proposals, given that you have said that the reason for sticking to the basic tax rate is to protect us all from volatility.

**Mr Gauke:** You are tempting me into an interesting area, but the Holtham proposals are for a future debate. Our thinking is that, as we have set out, the Calman proposals meet our policy objectives with minimum disruption and maximum stability. That is the right way to proceed.

**Brian Adam:** Is stability another word for continued Treasury control? In almost all the variations, the Treasury will retain control over income tax and a range of variations. Ultimately, it will control what will be borrowed and its permission will have to be sought on this, that and the other thing. Is it not the truth that the Treasury had to be dragged kicking and screaming to grant any devolution of power, and that it has sought mechanisms to allow it to continue to retain control throughout?

**Mr Gauke:** No; I do not accept that at all. Thirty-five per cent of current spending will be funded from taxes that are raised in Scotland. My point about stability is that the more that we factor in the various local factors, the more volatility there is likely to be and the greater the likely risk to Scotland. When we talk about stability, we are trying to ensure that Scotland is not faced with undue volatility that would make it difficult for the Scottish Government and people.

One of the things that unites the coalition parties is the belief in localism. We are keen to increase fiscal accountability in Scotland, but we need to balance that with protecting Scotland from some of the possible volatility. I think that we will achieve that through this bill.

11:45

**Peter Peacock:** I have one small question to finish off the line of questioning that I was pursuing. I am interested in the emphasis that you put on risk management and volatility. To what extent has tax competition at the higher-level bands been an issue? Or is that secondary to the volatility question that you have raised? If Scotland had the powers and cut the higher rates, becoming more of a tax haven for people, that clearly would not be an issue for you in the same way.

**Mr Gauke:** Not particularly. We think that, because of the redistributive nature of our tax system in the United Kingdom, it is right that it applies on a UK basis. However, we must bear in mind the volatility that exists with those higher rates. It becomes very dependent on where we are in the economic cycle. That would be an additional difficulty for the Scottish Government to

manage, which would have a knock-on effect for the whole United Kingdom.

**Tricia Marwick:** Mr Gauke, it is obvious from your response to Brian Adam's question that you are all heart. You really just want to save poor Scotland from itself, so you need to exercise control.

Let us turn to the cost of implementing the tax changes in Scotland. The cost of implementing the Scotland Bill is expected to be about £45 million, with a cost of £4 million a year for maintaining the charges. Given that Scotland already pays its share of UK taxation and that we share a tax base, who will be responsible for meeting the costs of the Scotland Bill?

**Mr Gauke:** The additional administration cost will be for the Scottish Government to pay. That principle has been behind devolution and was reaffirmed at the time of the spending review in October. The changes are being made for the benefit of Scotland with the consent—we assume, although we wait to see—of the Scottish Parliament, and the costs will be paid by the Scottish taxpayer.

**Tricia Marwick:** That is interesting, because "Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: Statement of Funding Policy" clearly states:

"where decisions taken by any of the devolved administrations or bodies under their jurisdiction have financial implications for departments or agencies of the United Kingdom Government ... the body whose decision leads to the additional cost will meet that cost."

You have said repeatedly that the bill is Westminster legislation. If it is Westminster legislation, why is Westminster not meeting the cost of implementation?

**Mr Gauke:** Again, I refer you to the statement of funding policy, which was published at the time of the spending review in October. It states:

"the devolved administrations will meet all the operational and capital costs associated with devolution from within their allocated budgets".

This is clearly a cost of devolution and it is something that we will proceed with only if the bill obtains legislative consent from the Scottish Parliament.

**Tricia Marwick:** But it is still a Westminster bill that is being introduced by the Westminster Government, and the Westminster Government has decided the type of tax that there is going to be. Why have you moved away from your own funding policy for the devolved bodies, which states that the body that is responsible for the legislation is responsible for meeting the cost? I do not understand that.



**Mr Moore:** The point about the administration cost is distinct from the no-detriment policy that you are quoting. When one Government or Administration takes a decision that affects the cost base of another, the other Government or Administration should be compensated for that. That principle is strongly established in the command paper—there are half a dozen references to it—in relation to the adjustments that will be made to future tax allowances, tax bands and the like, to which I referred earlier. If a direct decision of UK policy has an impact on the tax receipts base in Scotland, a compensating adjustment will be made through the block grant mechanism.

The decision on the cost of administration is clearly set out. The original Scotland Act 1998 allows for the Scottish Government to pay such costs, and paragraph 3.2.6 of the statement of funding policy clearly states:

“the devolved administrations will meet all the operational and capital costs associated with devolution from within their allocated budgets”.

That point is clearly distinct from the no-detriment policy, which is what you are quoting.

**Tricia Marwick:** We will disagree for now, but I am sure that I will come back to the point.

Does the Treasury envisage that Scotland will also pick up the cost of implementing the devolved version of the landfill tax and stamp duty?

**Mr Gauke:** Yes.

**Tricia Marwick:** You expect us to do that, too. Thank you.

**Robert Brown:** I want to develop one or two points of principle and policy. I will go back to the question on bonds because, if I may say so with respect, I did not find Mr Gauke's answer on it terribly satisfactory.

I am not an economist, so I want to get the context of the potential for bonds. In your view, does the Scottish Government having the power to issue bonds have advantages to the Scottish Government—or downsides for the UK Government?

**Mr Gauke:** The downside comes back to the point about potential confusion in the gilts market and the potential concern that there would be additional administration costs for the debt management office. Given that local authorities already have the power to issue bonds and given the overall level of borrowing that we think is appropriate, we think that the position as set out is reasonable.

**Robert Brown:** That is exactly the point. If local authorities, Transport for London and other bodies have such a power, I fail to see how adding

another body with the power would make the situation more complicated or difficult to understand. As you will allow the Scottish Government to borrow on the private market as well as through the Public Works Loan Board, I am anxious to understand why this form of private borrowing—bonds—causes the UK Government a particular problem.

**Mr Gauke:** There is always a question of another body or entity and at what point we increase the level of confusion. Some might argue that, as it is, there are already too many bodies that can issue bonds. I do not want to get into that argument, but we are where we are and a line has been drawn. There could be implications for the UK credit rating if we expand the number of entities that can issue bonds.

**Robert Brown:** I want to develop the point about the advantage, or otherwise, to the Scottish Government. Can you give us any guidance on whether the Scottish Government would be able to issue bonds at a better rate of interest than investors could get from the UK Government? Where might such bonds stand in the overall attractiveness of borrowing rates?

**Mr Gauke:** I will bring in Paul Doyle on that question.

**Paul Doyle:** We have not looked at that particular issue to date.

**Robert Brown:** Could you come back to us on that? It is not unimportant for us to know whether there are advantages. Clearly, if the Scottish Government could borrow at a lower rate of interest on bonds—although it seems unlikely—that would be interesting to us. Equally, if it was likely to cost us more given the experience of local authorities and others, that would be interesting to know, too. Can you give us some information on that?

**Paul Doyle:** We can come back to you on that.

**Robert Brown:** I will move on to the question of new taxes. One of the interesting powers recommended by Calman and carried forward in the bill is the ability with the consent of the UK Government for further taxes to be devolved. We have heard that you might use that power for the two taxes that are held in limbo for the moment. Can you give us any guidance about the principles that will apply? What sort of taxes might be suitable for consideration for further devolution? What would the restrictions be on them? What golden rules would apply?

**Mr Gauke:** It is largely for the Scottish Parliament to come up with proposals for new taxes that it would like to introduce. It will be expected to provide evidence that the new tax complies with particular criteria: it must not impose

a disproportionate negative impact on the UK macroeconomic policy and it must not impede the single UK market to any degree. Those points are very important.

We would also consider the potential for the new tax to create incentives or economic distortions and arbitrage in the UK, the potential that the new tax might be used to create tax avoidance across the UK, the impact of the proposed tax on compliance burdens across the UK, and its compatibility with EU legislation, such as legislation covering state aid—which can be sensitive—the single market and human rights. Those are some of the restrictions that would apply, but we would look to the Scottish Government to come forward with its proposals.

**Robert Brown:** Do you see a role for further development and a fleshing out of that system? I understand from the command paper that you will chair the intergovernmental bilateral committee on fiscal devolution—we will have to get a better title than that as time goes forward. The paper talks about discussion between the devolved Governments—Scotland in particular—and the UK Government on the shared interest in taxation and in macroeconomic policy. That clearly envisages a more dynamic discussion than has taken place in the past. Do you envisage that as being the body that would flesh out the practical meaning of the system?

**Mr Gauke:** There is a real opportunity for that body—I will refer to it as “that body” rather than give its full title—to discuss ideas and, on a friendly and collaborative basis, do exactly what you say: flesh out the opportunities and bring together assessments of the impact of a proposal and whether it raises any of the concerns that I listed a moment ago about distortions, tax avoidance opportunities and so on. I certainly hope that we could work in a co-operative way, share information as much as possible and give honest assessments of where things are going and how a new tax would work in the framework that I have set out.

**Robert Brown:** In the context of both new taxes and difficult negotiations on the implications on the grant of Barnett as revised, how do you envisage the hard politics of disagreements being resolved? There have been one or two disagreements in the existing set-up following the introduction of free personal care and the possible introduction of local income tax. Will principles be developed on, for example, the implications on the no-detriment policy? Do you foresee an equality of arms between the Scottish and UK Governments? In short, how do you see disputes being resolved?

**Mr Gauke:** If we are looking specifically at new taxes, it will be for the Scottish Parliament to present its proposals and for the UK Government

to make an assessment of whether the criteria are met. We have various procedures in place; indeed, at various levels I have been involved in ministerial meetings, meetings of officials and, ultimately, the Prime Minister being in a position to arbitrate. There are procedures in place, and the UK Government's position is certainly to engage constructively and positively. That is how we will work.

**Robert Brown:** I have a final question. Does that extend to the question of HMRC commissioners? The Calman commission made a fairly modest proposal to allow the Scottish ministers to be consulted on the appointment of HMRC commissioners, but that has not been taken forward in the bill. Why was that not agreed? In effect, HMRC will be a tax-collection body for both the UK and Scottish Governments—and in due course, I dare say, for the other devolved Administrations, too.

**Mr Gauke:** HMRC will remain the tax-collecting agency for the whole of the United Kingdom. We think that it is right that we reflect that, and we are saying that there will be an additional accounting officer in HMRC who will have particular responsibility for addressing Scottish taxation matters and who will be held accountable in that way. However, we are not persuaded by the case for changing the appointment process and, for example, giving the Scottish Government a veto on the appointment of the HMRC commissioners.

12:00

**Robert Brown:** Is there not a risk of a UK-centric approach, which will need to be counterbalanced? The power of the Treasury in these matters is pretty notorious, is it not?

**Mr Gauke:** I do not think that there is too much risk of that. I cannot help but point out that the current chief executive of HMRC is Scottish and brings a lot of experience of working in Scotland. I think that the position is reasonable. There will be an accounting officer. It is worth pointing out that it is Her Majesty's Revenue and Customs and that, technically, the Queen makes all these appointments. We do not want to disrupt that arrangement.

**Tricia Marwick:** To whom will the accounting officer be accountable? Will it be to HMRC or to the Scottish Parliament?

**Mr Gauke:** They will be accountable within HMRC. However, I am sure that committees such as this one will have the opportunity to call the accounting officer to give evidence to them, in much the same way as the UK Parliament's select committees are able to do so. It is worth pointing out that HMRC is a non-ministerial department, for good operational reasons. Understandably, people

do not want politicians to be able to interfere in individuals' tax affairs. The level of accountability in HMRC has always been unique.

**The Convener:** I have one or two wrap-up questions that we would like to get on record. The command paper indicates that you have no plans to change the Barnett formula during the period of fiscal consolidation that is covered by the present spending review. Does that mean that you have plans to change it in the future?

**Mr Gauke:** Our position on the Barnett formula is that our priority is to address the fiscal crisis through consolidation. We are conscious of the fact that there is no consensus view on how we should move forward on the formula. Currently, there are no plans to change it. It is reasonable for us to look only at the period ahead, without making statements about what will happen in the medium to long term.

**The Convener:** I return to two matters on which the committee has touched, to give you an indication that the committee may want to look at them further in the next couple of months and to put them on your radar.

In your response to a question from Peter Peacock, you dealt with the rationale for having an overall cap on borrowing. Although there is widespread appreciation for that, and the early operation of the borrowing facility is welcome, there is a little more concern about the rationale for the £230 million cap in any one year, especially during the early stages of the facility's operation, given the obligations that we must fulfil in respect of the Forth road bridge, in particular. Even were there to be a different Administration, that project is not susceptible to any different forms of procurement, given the stage in the process that has been reached. I invite you to comment on the issue at this stage and I indicate that it will probably attract our attention. Although we have no issues with the overall cap, the £230 million annual cap may entail too much micromanagement of projects.

**Mr Gauke:** I note your comments. We are trying to get the balance right. There is flexibility, but I look forward to receiving further representations on the point.

**The Convener:** Thank you for your gracious observations on the issue.

In the financial package as a whole, you have looked to provide considerable flexibility in negotiation around the grant reduction mechanism, which must be right. It is also the case that taxation powers must be more firmly rooted in primary legislation. However, I am mindful of the secretary of state's desire not to come back to the bill every two minutes, once it

has been enacted, and of our desire potentially to get alignment across different parts of the UK.

Understandably, you have said that you do not want to be drawn on the Holtham proposals, but it is likely that there will be change in Wales and Northern Ireland within a time horizon that is rather shorter than the little while for which the secretary of state envisages the bill lasting. We may want to come back to you on the issue. We do not want Scotland to be in the position of playing catch-up to Wales and Northern Ireland on any provisions. We should think through what is appropriate for primary legislation and what is appropriate for secondary legislation, not for this moment but to allow evolution in Scotland to be in alignment with what is happening in the rest of the UK. That is likely to be a Treasury concern and will feature in our deliberations over the next couple of months.

I think that that is it. Jim Wallace is looking anxious—I know that his taxi is coming soon.

**Lord Wallace:** No, not at all.

**The Convener:** I thank Michael Moore and David Gauke for their very helpful evidence.

I invite Jim Wallace to introduce an issue that did not feature in the original Calman proposals but which has become pressing. It is considered that the Scotland Bill is the right legislation to resolve it.

**Lord Wallace:** I am happy to do so. I am not that anxious to leave; any time up to a quarter to 1 is fine.

Given that Scotland Bills do not come along all that often, we are taking the opportunity to tidy up issues that have emerged. I would not say that they are trivial—we are far from using such bills for trivial matters—but, for example, I am not quite sure how those of us in the House of Commons back in 1998 allowed the Boundary Commission for Scotland rules on constituency boundaries to have regard to councils that were established under the Local Government (Scotland) Act 1973, when by the time we were legislating there had been the Local Government etc (Scotland) Act 1994. One just assumes that the Boundary Commission got on with it anyway. That seems to be a minor point, but it is important, and there are a number of such issues.

In fairness, some of the issues are more substantial. It is well known that the previous Administration and our current Administration at Westminster have sought some legislative opportunity to implement the most recent international obligations in relation to Antarctica. That has raised the question whether issues relating to Antarctica—unlike those relating to outer space—were devolved. There is a serious point, because, for example, a Scottish academic

institution might wish to undertake research in Antarctica, and there would be a question over where the licence would have to be granted. Given the restrictions on the Scottish Parliament's competence under section 29(2)(a) of the 1998 act, it is not clear just how far that could be taken. It is not satisfactory that there should be any uncertainty, so we want to address that issue.

I will refer to two legal issues, and allow the committee to ask about any more. At present, the law officers—myself, the Lord Advocate and the Attorney General—have four weeks following the passage of a bill by the Scottish Parliament to determine whether we wish the bill to be referred to the Supreme Court, or previously to the Judicial Committee of the Privy Council, on issues of competence. It has for a long time seemed to me that we are using a sledgehammer to crack a nut. In a bill covering many matters—such as the recent Criminal Justice and Licensing (Scotland) Bill; I use that just as an example, not for any particular reason—there might be issues with two or three sections. It would not be appropriate to place the whole bill in suspension when just two or three sections needed to be referred, so we have taken steps to address that.

There has been some controversy around section 57(2) of the Scotland Act 1998 for a long time. As “acts of Scottish Ministers” include acts of the Lord Advocate, an act of the Lord Advocate that is contrary to—or is thought to be challengeable under—the Human Rights Act 1998 can, in the middle of a criminal case, be taken and appealed all the way to the Supreme Court. That is interesting because, as the committee will be well aware, section 48(5) of the Scotland Act 1998 provides that

“Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him”

—as he was at the time—

“independently of any other person.”

We now have a position in which a retained function is the subject of a devolution issue, and there are issues around that.

The Calman commission received representations—a letter from the judiciary of the Court of Session—to highlight that issue. The commission took the view that the issue was substantial, and not one that it felt able to take on board.

I took the view that as we were drafting a bill, it was an important issue to consider. I established an expert group for the purpose of an informal consultation. It was chaired by Sir David Edward, who had been a member of the Calman commission and was a distinguished former UK judge in the European Court of Justice, and it

included the former Lord Advocate Lord Boyd, two very experienced and eminent Queen's counsel—Paul McBride and Frances McMenamin—and the distinguished academic Professor Tom Mullen from the University of Glasgow. They received a range of high-quality responses from the Faculty of Advocates, the Law Society of Scotland, the Scottish Human Rights Commission, the judiciary, the Lord Advocate, the Cabinet Secretary for Justice, a number of individuals practising in this area and, indeed, academics.

I make no bones about it that we wanted to have published the outcome of that group's work. However, although I have received the report, we must now determine policy within Government. I will ensure that when the report is published along with the recommendations and what we propose to do, it will be made instantly available to this committee. Obviously, we can exchange any questions on that. I know that the committee has a heavy schedule, but if you wish to ask me further questions in person, I will agree to that. We can perhaps develop that in questions.

The other issue that I understand has generated some interest relates to the proposal to share competence on the implementation of international obligations. Currently, under section 57(1) of the Scotland Act 1998, there can be shared competence with regard to implementing obligations under European Community law, but international obligations do not fall under that.

The reason for the proposal is, once again, to ensure certainty. When I was a justice minister, I was probably responsible for implementing a number of international obligations that did not necessarily rise to the top of the pile of Scottish Parliament and Scottish Government priorities, for example those under schedule 1 to the International Organisations Act 1968, which is used to implement international obligations relating to immunities and privileges that are extended to members of staff or office holders of international organisations.

I can give a number of recent examples. The European Union Military Staff (Immunities and Privileges) Order 2009 was made for England and Wales on 8 April 2009, and the European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) Order 2009 was made regarding England and Wales on 8 July 2009. However, the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 was not made until 11 May this year—just over a year after one order and just under a year after the other.

The titles of those orders perhaps emphasise the fact that they are not necessarily high on the agenda for the Scottish Parliament. Nevertheless, it is important for the United Kingdom to fulfil our

international obligations, and it is not right that there is a separate regime for immunities north and south of the border. The change in that regard will not take any powers away from the Scottish ministers; rather, it will restore a power to UK ministers. I am sure that between the two Administrations we will work out the best way of doing that timeously.

**The Convener:** I thank Lord Wallace for that race round the houses of the tidying-up aspects of the Scotland Bill. I think that I can safely predict that there was little there, even including Antarctica, that will detain the committee and press its schedule, with the possible exception of your expert group—it is hard to imagine a more eminent expert group—on which we may just take a question or so just now. We are a little constrained until the group's report is published, so we may have to invite you to return at a later stage. We will certainly talk to your office about the one or two areas on which and the individuals and organisations from which we might want to take expert evidence, notwithstanding the fact that I do not think that we wish to rerun all the issues to which the expert group devoted itself. With that one caveat, do members have any questions?

**Brian Adam:** On the exercise of the power under section 57A—

**Lord Wallace:** You mean section 57(2).

**Brian Adam:** I stand corrected.

**Lord Wallace:** It is just that I mentioned the other power under section 57.

**Brian Adam:** In essence, I am asking whether the power will be exercised only with the agreement of the Scottish Government, if there are implications for it. Do you envisage that the Parliament will have a role? Normally, when there are changes to be made, the Scottish Government has to put them before the Parliament. Although the Government-to-Government relationship obviously is important, the Parliament also has a place. Do you envisage re-reserving powers in relation to international treaty obligations, or do you intend to proceed with the agreement of Parliament, at the initiation of the Scottish Government?

12:15

**Lord Wallace:** It is not a re-reservation in the strict sense, as we are not taking powers away from the Scottish ministers. We are restoring to UK ministers functions that they exercised previously. On devolution in 1999, those functions were given to the Scottish ministers.

I do not know whether a formal mechanism exists, but I see this as a matter for good, practical common sense between two Administrations.

Given the nature of the immunities orders that I mentioned, I do not imagine that they will command much time. For the sake of sheer efficiency, it does not make sense to duplicate exactly for Scotland an order that is being made for England and Wales, so one would expect there to be proper dialogue.

However, there may be occasions when different situations arise in Scotland for certain reasons. If there are specific circumstances that relate to Scotland and it is not a case just of printing out the order and Scottifying it, it will be appropriate for the Scottish ministers, rather than UK ministers, to make the order. This is a matter for sensible, pragmatic, co-operative relationships between two Administrations that do not wish to add to the administrative burden on either of them.

**David McLetchie:** You have probably answered this question by implication, but what timescale do you envisage for the publication of the report of the expert group, the decision that will be taken on it and the publication of a draft clause for the bill, bearing in mind that we are meant to conclude our deliberations by the end of February? By implication, can we assume that all of that work will be in train by then?

**Lord Wallace:** I would love to be able to say that it will be done before Christmas, but I am realistic enough to acknowledge that the number of sitting days between now and the Christmas recess probably will not allow for that. By implication, I hope that we will be in the position that David McLetchie describes early in the new year.

The process will have two stages. The first is the publication of the expert group's report and the Government's proposals in relation to it—assuming that we do not retain the status quo, which is still to be determined. The second is the publication of the draft clause, if any, that will be produced. I hope and am reasonably confident that we will be able to publish the draft clause in short order following the publication of the report, as I want the committee to be able to consider it. Because the clause will have to be tabled at committee stage in the Commons, which is scheduled to take place after this committee has reported, it will not be in the bill, but the amendment that we propose to move at committee stage will be available.

**Robert Brown:** I have a linked question. I may have misunderstood totally the basis of the issue, but I want to be clear about what we are talking about. The background note that we have received indicates that the Cadder case arose from a challenge to the Lord Advocate's ministerial powers, as you have described. I thought that it had more to do with the fact that the European convention on human rights had been

incorporated in the depths of the Scotland Act 1998, which meant that broader ECHR challenges—in the Cadder case, to investigation procedures—could be brought as devolution issues, by virtue of an application to the Supreme Court. Are such challenges restricted to the Lord Advocate's role or could wider police powers, duties and so on be challenged under more general ECHR principles?

**Lord Wallace:** We are talking about challenges to “acts of Scottish Ministers”, which, because the Scottish ministers include the Lord Advocate, includes acts of the Lord Advocate. In earlier case law, “acts of Scottish Ministers” has been interpreted as including an act that is done by or on behalf of the Lord Advocate in a case. Therefore, if, during a case, the Lord Advocate led evidence on a statement that someone made during a detention of six hours without a solicitor being present, that would be an act of the Lord Advocate. Because that would be a devolution issue under the Scotland Act 1998, the matter could be taken for determination by the Supreme Court. You are right: the reason why that was taken to be justiciable was that it was argued—and indeed the Supreme Court held—that the detention was contrary to article 6 of the European convention on human rights.

That crystallises what the expert group considered: the procedure and process that led to the Lord Advocate's actions being challengeable in that way, unlike the actions of any other prosecutor in the United Kingdom. Theoretically, every such act could be struck down. In the case that you mention, there was limited retrospective effect because of the legislation that the Scottish Parliament passed, and indeed because of what the justices in the Supreme Court said, but in other circumstances there could have been considerable retrospective effect.

There have been representations that, like people in other parts of the United Kingdom, people in Scotland should have the right for the Supreme Court to determine their rights under the European convention on human rights. Those issues emerged in the responses to the consultation.

**Robert Brown:** I suppose that what I am getting at is this: if we stopped the Lord Advocate from being a minister or used some mechanism to take them out of that role, would it still be possible to take to the Supreme Court ECHR challenges against, say, police action or other people's actions during the course of a criminal prosecution?

**Lord Wallace:** You have put your finger on the issue. The issue is that the Lord Advocate, being a public authority under the Human Rights Act 1998, is subject to that act and therefore could be

challenged under it rather than under the Scotland Act 1998.

There have been representations on both sides as to whether there should still be a route to the Supreme Court. The argument for that route is that there should be a standard or uniform interpretation of such rights throughout the United Kingdom. The contrary argument is that criminal trials and criminal appeals in Scotland never went to the House of Lords in times past, so why should we have a system where the Supreme Court—which succeeded the House of Lords, or in this case succeeded the Judicial Committee of the Privy Council—has a locus in what are essentially criminal cases?

The issue is complex. There are important issues of principle on both sides. The expert group, which the convener indicated was of considerable eminence, wrestled with the issue, and in turn I am having to wrestle with its report.

**Robert Brown:** Yes. It sounds pretty complex. I just wonder whether it is appropriate to deal with the issue by way of an amendment halfway through the Scotland Bill, which in a sense is not focused on such issues.

**Lord Wallace:** First, it will not be done halfway through the Scotland Bill; it will be done at a very early stage. Indeed, as I indicated to Mr McLetchie, my intention is that the committee will have ample opportunity to consider the matter. Secondly, it does arise from Calman, in as much as the Court of Session judges raised the issue with the Calman commission. Notwithstanding that, the issue has been raised in the academic literature and practitioners have debated and discussed it for some time. The Scotland Bill appears to be an appropriate opportunity to deal with the matter, and if there is an issue, we should take the opportunity to determine it.

Albeit that there was a relatively short period of consultation, the range of responses reflected the views of the people who are best able to make observations from their experience and from the position of their organisations. The eminent group that deliberated on the matter included people with experience on the defence side of criminal cases and a former Lord Advocate on the prosecution side, so the group was well balanced, and its report does justice to the issues.

**The Convener:** I thank the Advocate General. We now move on to the Parliamentary Under-Secretary of State for Scotland, David Mundell, who will talk to us about all the other non-financial aspects of the bill. I am aware that some witnesses will stay and others may have to go. Those who have to leave should feel free to do so.

David, are you happy to take the first couple of questions from your rather angular sedentary position?

**Mr Mundell:** I will change round to Jim Wallace's seat.

**The Convener:** Fine. Let us suspend for a moment to allow David Mundell to move centre stage.

12:25

*Meeting suspended.*

12:26

*On resuming—*

**The Convener:** Our intention here is to examine some of the individual areas—airguns, speed limits, the Crown Estate and the BBC. We will also consider housing benefit and council tax benefit and then, at the end, the vexed question of Scottish elections. We begin with the couple of re-reservations.

**Brian Adam:** Perhaps you might give us the justification for re-reserving anything, Mr Mundell. Given the issues on some professions allied to medicine, will you spell out why you feel it is necessary to re-reserve the regulation of health professions? Only representatives of the medical profession have made representations in that regard, not the professionals who are directly involved. What consultation took place with the people who are directly affected?

If you will deal with that first, I will ask about insolvency thereafter.

**Mr Mundell:** The first important point to make is that the Calman commission concluded that the balance between reserved and devolved powers was about right. It came to that conclusion after doing extensive work and taking evidence around Scotland. It concluded that some additional powers, which we will discuss, should come to the Parliament and that, to tidy things up, one or two powers would be better exercised at a UK level, of which the regulation of health professionals is one. I think that we would all accept that, in 1998, it was not possible to produce a list that set out every possible health profession. The purpose of the change that the commission recommended is to make it clear that new professions that have emerged or may emerge will be regulated on a UK-wide basis.

That is clearly to the benefit of people in Scotland. It does not seem to me that we would want our dental technicians in Scotland to be regulated differently from those in other parts of the United Kingdom. Therefore, there is a logic to having a common form of regulation. As you

alluded to in the question, that was the view of the Royal College of Surgeons of Edinburgh, the Royal College of Physicians and Surgeons of Glasgow and the Royal College of Physicians of Edinburgh.

12:30

**Brian Adam:** Given that none of the people who made the recommendation to you is directly affected by it, a stronger evidence base is needed to justify the change. You said that the commission felt that the balance of powers was right. What evidence is there of practical difficulties as a consequence of devolved regulation? Health itself is a fully devolved matter.

No one has suggested that the regulation of the medical profession or the dental profession, to which you referred, should be devolved, but there is no demand from the emerging health professions that regulation should go to London; only other professions have suggested that. There has been no significant consultation on the matter, nor is there evidence of practical difficulties with the existing arrangements. The proposal is almost tokenism—if there has to be a flow of powers, it should not be in just one direction. The proposal does not have a strong evidence base and it has not been sought by the professionals concerned. Is that fair comment?

**Mr Mundell:** I do not think that it is; if I might say so, it is a comment from a certain perspective. In the devolution settlement under the original Scotland Act 1998, it was clear that the regulation of health professionals should be a reserved matter. I do not think that there is any evidence to support your argument that that has created any difficulty in Scotland for those health professionals whose regulation is set out in the Scotland Act 1998 as reserved. In fact, it is to the benefit of people in Scotland that we have a uniform system of regulation across the United Kingdom. However, in 1998 it was not possible to anticipate—nor is it possible to anticipate now—all the health professions that will emerge. The proposal is sensible because it means that we know that health professionals will be regulated on a United Kingdom basis in the future.

**Brian Adam:** Given that no practical difficulties have been identified, it strikes me that making a legislative change is somewhat unnecessary. However, we might agree to differ on that point.

Re-reserving powers over insolvency will have an impact on housing associations. Why are you re-reserving those powers and what consideration did you give to the impact on housing associations in making that decision?

**Mr Mundell:** We followed the recommendation of the commission that there was confusion about

responsibilities in relation to insolvency matters. Business interests in Scotland expressed the view that the appropriate way to resolve that confusion was to make it clear that the responsibilities rested at the UK level.

We considered the housing associations issue, but we would get into a complicated legal area if some legal entities were to be excluded from the provisions or treated differently from others. That is why there is no specific proposal to exclude housing associations from the provisions.

**Brian Adam:** Again, you rely on the Calman commission proposals. I understand why you are doing that, but is there any evidence from insolvency practitioners in Scotland that there are practical difficulties with the present arrangements? I would have thought that we should be practical and pragmatic in dealing with such matters. I am concerned that the proposal is as much about making a political statement that powers can flow in both directions as it is about addressing the practical realities of how we deal with the situation. The consequence of the measures would be some negative practical realities, particularly for housing associations.

**Mr Mundell:** With due respect, Mr Adam, I could suggest the same about your question. I respect what I think your viewpoint is: that nothing should be re-reserved. You are perfectly entitled to that viewpoint, but the reality is that, in its deliberations on a sensible arrangement for dealing with insolvency in Scotland, the commission, which took evidence on the matter and consulted throughout Scotland, came to the view that a re-reservation of a limited number of powers was a practical solution to deal with any confusions that exist in the current arrangements for insolvency. Some people in Scotland chose not to participate in the commission's activities, and they had the right to do that. However, the Government agrees that that solution is the best way forward.

The issue of housing associations has been identified. Again it is a matter of not creating significant additional complexity. Housing associations are a legal entity in relation to insolvency considerations, and to exclude them would create greater complications.

**Peter Peacock:** I will pick up on issues relating to the BBC and the Crown Estate. You have suggested changes in the appointment processes for the BBC trustee and the Crown Estate commissioner, but you have not fully followed what Calman suggested in either case. Can you give us some background on that?

**Mr Mundell:** We have followed the spirit of what Calman suggested. Indeed, we are doing that now, even before the measures are progressed,

because, as I think members will be aware, a new BBC trustee for Scotland appointment process is currently under way. Although there is no obligation to involve the Scottish Government, we have sought to do that in order that it will have an input on who will be the new BBC trustee for Scotland. We very much accept the spirit of Calman's suggested process for that. Our view was that the BBC trust is a United Kingdom body and therefore appointments to it need to be made on a United Kingdom basis. However, in effect, the Scottish ministers will have a significant input into the appointment process.

We do not accept that we have produced a watered-down proposal for the Crown Estate commissioner; in fact, we think that we have produced a significant proposal that is based on the Calman recommendation of a distinct Scottish commissioner. The Secretary of State for Scotland has taken the issue forward significantly over the past six months, with a large degree of engagement with the Crown Estate. We want to work with the Crown Estate to see it playing a much more proactive and responsive role in Scotland.

**Peter Peacock:** It is helpful to get that explanation on the record. Of course, there is a difference between what you propose for the BBC trustee and what you propose for the Crown Estate commissioner. You want UK ministers to obtain the agreement of the Scottish ministers for the BBC trustee appointment, whereas the Scottish ministers would be formally consulted on the appointment of the Crown Estate commissioner. On the face of it, and viewed externally, those organisations are not hugely different, although they have very different functions. Could you not do the same for the Crown Estate commissioner as you are doing for the BBC trustee? Should at least the agreement of the Scottish ministers have to be obtained for the Crown Estate commissioner appointment?

**Mr Mundell:** I think that it is very unlikely that a Crown Estate commissioner for Scotland would be appointed without the agreement of the Scottish ministers. We are clear on that. As you will appreciate, the BBC trust is a very different legal entity from the Crown Estate commissioners. My colleague David Gauke referred to HMRC commissioners. Ultimately, the appointment of Crown Estate commissioners is a matter for Her Majesty the Queen on the basis of recommendations that have been received.

**Peter Peacock:** I guess that some would think that this is small beer in comparison with other things. Nonetheless, having consulted the Scottish ministers in relation to the Crown Estate commissioner appointment and listened to their views, surely you could do the same for the BBC



trustee appointment, and vice versa. Why not be done with it and make the provisions similar?

**Mr Mundell:** Because they are separate entities with different historical backgrounds as to where they are in the process.

**Peter Peacock:** Okay. I will leave it at that. We take a different view of things. No doubt we will return to the matter.

I have one further question on the Crown Estate. The UK Treasury Select Committee reported on the Crown Estate just before the UK general election and suggested how the division of responsibility between the UK and Scotland could be shifted permanently. There has been wide debate on the subject for a long time. Indeed, I regret slightly that Lord Wallace is no longer here. Like me, he has made some pretty trenchant comments about the Crown Estate in the past.

I want to be clear. Is it the case that the Government did not consider other options for the Crown Estate and confined itself purely to what Calman recommended?

**Mr Mundell:** Yes. The Scotland Bill is about taking forward the Calman recommendations. The Calman commission looked at various proposals on the Crown Estate. It is clear that the Scotland Office and the UK Government want to see a new relationship with the Crown Estate. The Secretary of State for Scotland in particular has been working to achieve that. The Scotland Bill is about taking forward the Calman recommendations.

**Peter Peacock:** Okay. Thank you.

**Tricia Marwick:** Mr Mundell, the bill commits to devolving power over airguns. Many of us have campaigned for that for a long time, and I welcome it. However, will you explain why airguns that are “specially dangerous” are excluded from the bill? Indeed, can you tell me what a “specially dangerous” airgun is?

**Mr Mundell:** Yes. A “specially dangerous” airgun is

“an air rifle, air gun or air pistol capable of discharging a missile so that the missile has on being discharged from the muzzle of the weapon, kinetic energy in excess, in the case of an air pistol, of 6 ft lb or, in the case of an air weapon other than an air pistol, of 12 ft lb.”

These are weapons that have been the subject of particular licensing regimes or, in the case of air pistols, banned from use. They are a category of weapon that the Home Secretary has determined is particularly dangerous and which is already the subject of significant regulation or, indeed, a ban across the UK.

The Calman proposal was to devolve competence to the Scottish Parliament in relation to air weapons other than those particularly

dangerous ones so that, in theory, the Scottish Parliament could make provision for airguns because of specific concerns that had been raised here in Scotland. The proposal was to give an additional power to the Scottish Parliament on airguns to meet a legitimate concern that you and others have raised about issues in Scotland that might not be addressed on a United Kingdom basis.

12:45

**Tricia Marwick:** I welcome that explanation. I am now much clearer about your reasoning, but I simply do not agree with it. If the most dangerous weapons are already banned—as you say—I do not understand why on earth the power is still not devolved to the Scottish Parliament. Why cannot we look after all airguns? Do you really think that the Scottish Parliament would overturn a ban on something that is so dangerous when we look to regulate all airguns?

**Mr Mundell:** The additional power that is proposed will give the Scottish Parliament the opportunity to legislate, if it so chooses, on airguns of the type that has caused significant concern. The Parliament does not currently have that power.

The power in relation to specially dangerous weapons should be exercised across the whole United Kingdom. Those weapons are so dangerous that they should be banned or regulated across the whole United Kingdom. The Scotland Bill proposes to give the Scottish Parliament the power to regulate weapons that are not in that category but which have caused significant concern in Scotland.

If someone uses a banned air pistol, they are subject to significant penalties. If they use an airgun that is not in the specially dangerous category, they are not subject to those significant penalties. The Scottish Parliament will have the opportunity to deal with airguns that are not subject to significant restrictions.

**The Convener:** I suspect that a meeting of minds will not occur, but I am keen to get on the table the UK Government's policy intent on airguns and the three remaining items. The witnesses have been generous with their time, so in that spirit, we want a sense of the policy intent. The committee will consider the issues in more detail. Robert Brown will ask about housing benefit and so on.

**Robert Brown:** Calman noted the interconnection between the welfare system, housing benefit and council tax benefit, which are also cyclical phenomena—claims rise in recessions and fall in better times. In any event, you will not implement Calman's proposal, but will

do something slightly different. Will you explain exactly what? The interrelation appears to be complex and relates to welfare benefit reform.

**Mr Mundell:** The coalition Government is introducing the most significant welfare reform of recent times. The two principal aims are to simplify the system, which has a myriad of benefits and arrangements for claiming benefits, and to promote the underlying philosophy of making work pay. A white paper on the reforms has been published and it is proposed that a bill be introduced next year.

The Government's view was that several of Calman's proposals had been overtaken by events and by the proposals that are mooted in the white paper and are likely to be the subject of a forthcoming bill. However, several Calman proposals accord with the principle of our proposed bill. For example, we want to move council tax benefit closer to the control of local authorities and we want to proceed on the same basis here in Scotland by working with Scottish local authorities in relation to council tax benefit. The Convention of Scottish Local Authorities is represented on the bodies that are considering those matters.

In relation to the social fund, the areas that will continue to operate separately and will be devolved to local government in England will also be devolved to the Scottish Government for administration. We are working closely with the Scottish Government and are committed to continuing to do so on various elements of the implementation of our work programme.

You mentioned housing benefit specifically: it will be part of the new universal credit. The arrangements for housing benefit should not, therefore, be devolved.

**Robert Brown:** Will the no-detriment policy apply to any changes to those policies? For example, with council tax benefit, if the Scottish Government comes forward with different ideas for financing local government, as it has done before, will that be subject to the no-detriment policy?

**Mr Mundell:** We would want to engage with the Scottish Government on that. Other parts of the Scotland Bill will allow the Scottish Government to look at different tax arrangements and we want to engage on such matters. Our view is that such issues should be debated in the Scottish Parliament and not, as might have happened in the past, with the UK Government seeing its role as being in opposition to the Scottish Government. We do not want to operate in that way because engagement is consistent with a range of non-legislative recommendations that are in Calman. If such a proposal was made, we would approach it with an open mind.

**Robert Brown:** I am not just talking about the no-detriment policy. If the Scottish Government made policy decisions that saved the Exchequer money in the welfare and benefits bill, would that be a legitimate part of discussions about the grant formula and the other mechanisms that support the financing of the Parliament?

**Brian Adam:** Like attendance allowance.

**Robert Brown:** Good point.

**Mr Mundell:** That is not a specific item in the Scotland Bill. As I say, however, we want to follow the spirit of what the Calman report says about intergovernmental and interparliamentary relations. We are therefore happy to enter a dialogue with the Scottish Government on any such issue.

**The Convener:** I have the penultimate question. I will use some characteristic understatement and suggest that the idea of having different speed limits in Scotland might be quite confusing. Is the policy intention that new Scottish speed limits will not apply to lorries?

**Mr Mundell:** The Calman commission identified the national speed limit as an area that should be devolved to the Scottish Parliament. The national speed limit is generally characterised by a white circle with a black line across it when the road leaves an area that has a specific speed limit. The national speed limit is 60mph on non-dual carriageways and 70mph on dual carriageways. The commission said that it would be appropriate to devolve the setting of that limit to the Scottish Parliament.

As the convener indicated, various vehicles have specific speed limits. When one leaves one speed limit, one does not normally see a list of speed limit signs for lorries, caravans, trailers, trucks and vans of a certain size. There is a range of speed limits for specific vehicles. It is not the intention to devolve specific speed limits, partly on the basis that it is incumbent on those who drive those vehicles to know the speed limit for that vehicle, and that it is more straightforward to have those limits consistent throughout the United Kingdom. However, the speed limit for cars—which make up the vast majority of vehicles in Scotland and the UK—is a national speed limit. That is the speed limit that was to be devolved.

**The Convener:** Fascinating. As an ex-transport minister—although no one should own up to being an ex-transport minister this week—I must say that I had no idea that there were so many speed limits. However, we will not detain you any longer on that subject today.

**David McLetchie:** Calman did not suggest that the Scottish Parliament should have responsibility for determining the electoral system for this

Parliament or that it should be reformed. However, the command paper draws attention to the fact that, in 2006, the Arbuthnott commission said that there should be a review of the system of elections to the Scottish Parliament after the 2011 elections, and that

“the Government will consider this recommendation, taking into account the views of the new Scottish Parliament, following the May 2011 elections.”

Are we to take it from that that the Government will initiate consideration of that recommendation and invite the Scottish Parliament's view, or is the ball in the court of the new Scottish Parliament, which should say that it would like the electoral system to be changed and invite Westminster to consider the matter?

**Mr Mundell:** The former is the case. The Arbuthnott commission—on which, I believe, a current member of the Scottish Government sat—was set up to review the plethora of voting and electoral systems that we now have in Scotland, and to examine how they relate to each other and to issues such as local government boundaries. It came to the view that time should be allowed to enable the various systems to settle down in relation to each other, and that the period following the 2011 Scottish Parliament elections would be an appropriate time to revisit the issue. Obviously, next May we are also to have a referendum on whether there should be a change to the UK voting system. That is an appropriate context in which to revisit the Arbuthnott report. The Government does not intend proactively to introduce any proposals to change the voting system for the Scottish Parliament.

**David McLetchie:** The powers relating to administration of the elections are to be devolved to Scottish ministers. Will the structure of those changes enable the Scottish Parliament elections to be overseen by the electoral management board that we are setting up for local elections in Scotland, following the Gould report's recommendations?

**Mr Mundell:** Yes, that opportunity would arise. The order on provisions that will govern next year's Scottish Parliament elections has recently been debated in the House of Commons and the House of Lords, and that specific issue was raised. I am shortly to meet Mary Pitcaithly, the chair of the electoral management board, and that is one of the issues that will be on the agenda for discussion.

**David McLetchie:** The Scotland Office currently pays for the Scottish Parliament elections. Once all the administrative responsibility has been transferred, can we assume that a cheque will follow it, outwith the Barnett formula?

**Mr Mundell:** The money comes out of one pot. As you have more funds, we have less.

**The Convener:** On that note, I thank our remaining witnesses for their time and their interesting, informative and helpful evidence. We might be back in touch, but not for many weeks yet.

13:00

*Meeting suspended.*

13:02

*On resuming—*

## Correspondence

**The Convener:** The final item on our agenda is correspondence from Fiona Hyslop. Members will remember that it is in response to questions that were asked when she made her original statement. First, there was a question from Pauline McNeill about whether the chief economic adviser would give us evidence, which has now happened. Secondly, there was a request from me about the willingness of Scottish Government officials to provide advice to the committee on technical matters—some of which we have touched on today—such as modelling various approaches to grant reduction and the various other income tax proposals that have been made.

The deputy convener has suggested to me that the way to approach that is to reiterate some of the issues in our questioning of Scottish Government ministers next week, and then to take a couple of minutes at the end of the meeting next week to decide whether we feel that the assurances that we are looking for have been given. If they have not, we could write, at that stage. The discussion would take five minutes at the end of our meeting next week, when I intend in any case to discuss the work programme.

I see that Peter Peacock is preparing to leave. By 1 o'clock, I hate being in a committee meeting, so I just want to say to members—this might as well be on the record—that we have ministers before us next week and the intention is to meet earlier than our usual 2.30 slot on a Tuesday, in order to accommodate John Swinney's and Fiona Hyslop's attending Cabinet. Following that evidence session, we will have a private session to identify any follow-up information that we need and also to discuss our work programme, because I have asked the clerks to prepare a work programme that will ensure that we cover everything, including any responses to the calls for evidence, by the time we go into recess in February. That will allow us, in the period after recess, to look at the terms of our report. If our advisers have been approved, they could be part of that discussion. It looks as though the committee will meet in private from 1 o'clock, in public from 1.30 until about 3.30, and then in private again from 3.30 to 4.15 to discuss our future work programme, to have a formal introduction to our advisers and to identify any information that we want to request formally from the Governments. Does that make sense as a way to proceed?

**Members** *indicated agreement.*

**The Convener:** Thank you very much. I will see you next week.

*Meeting closed at 13:05.*

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