The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

FINANCE COMMITTEE

Wednesday 23 January 2013

Session 4

Wednesday 23 January 2013

CONTENTS

FINANCE COMMITTEE
3rd Meeting 2013, Session 4

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*Gavin Brown (Lothian) (Con)
*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)
*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)
*Michael McMahon (Uddingston and Bellshill) (Lab)
*Jean Urquhart (Highlands and Islands) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alistair Brown (Scottish Government)
Stephen Coleclough (Chartered Institute of Taxation)
Isobel d'Inverno (Law Society of Scotland)
Iain Doran (Law Society of Scotland)
Neil Ferguson (Scottish Government)
Carol Sibbald (Scottish Government)
John St Clair (Scottish Government)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Committee Room 1

Scottish Parliament

Finance Committee

Wednesday 23 January 2013

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Kenneth Gibson): Good morning and welcome to the third meeting in 2013 of the Finance Committee of the Scottish Parliament. I remind all those who are present to please turn off any BlackBerrys, mobile phones, tablets or other electronic devices.

Our first item of business is to decide whether to take items 3 and 4 in private. Do members agree to do that?

Members *indicated agreement.*

Land and Buildings Transaction Tax (Scotland) Bill: Stage 1

10:00

The Convener: Item 2 is to take oral evidence from the Scottish Government bill team as part of our stage 1 scrutiny of the Land and Buildings Transaction Tax (Scotland) Bill. I welcome to the meeting Alistair Brown, Neil Ferguson, Carol Sibbald and John St Clair.

I invite the witnesses to make a short introductory statement, which will be followed by questions.

Alistair Brown (Scottish Government): Thank you for inviting us to speak to the committee.

Under the terms of the Scotland Act 2012, two United Kingdom-wide taxes—stamp duty land tax and landfill tax—will be withdrawn in Scotland. The UK Government has stated its intention that that should happen with effect from April 2015. The Land and Buildings Transaction Tax (Scotland) Bill is the first in a package of three bills that the Scottish Government is introducing to replace the two taxes. The Government intends during 2012-13 to introduce, alongside this bill, a bill that will set out the rules and structure of a replacement for landfill tax. It also intends to introduce in 2013-14 a tax management bill, which will set out the underpinning arrangements that are required to support a Scottish tax system. The target is to introduce that bill in the autumn. The proposals for the tax management bill are the subject of a public consultation that was launched on 10 December last year and will close on 12 April.

The bill provides for a land and buildings transaction tax that will impose a charge on anyone who buys, leases, licenses or takes other rights, for example options to buy, over land and property in Scotland. As well as covering residential transactions, the tax will cover non-residential transactions, including those that relate to commercial and agricultural property.

In developing the bill, the Scottish Government has worked closely with stakeholders, notably the Law Society of Scotland, and in doing so has had two particular purposes in mind: to align the legislation better with Scots law and practices, and to simplify the legislation, wherever possible, to make it easier to understand and easier to apply.

We published the consultation paper, "Taking forward a Scottish Land and Buildings Transaction Tax", on 7 June last year. We received 56 responses from a wide range of individuals and representative bodies, and we held public meetings in Aberdeen, Edinburgh, Glasgow and Perth during the summer of 2012, which involved

a range of practitioners and interested parties. We published an independent analysis of the consultation responses on our website on 1 November last year. I record our thanks to consultees for their continuing input and for the help that they have given us in developing the bill.

As the committee is aware, the bill's purpose is to introduce a tax that is modern, efficient and progressive, and which does not impede or distort legitimate commercial or housing market activities, but instead seeks to provide an appropriate level of revenue to support Scotland's public finances. The measures that are described in the bill will, in the interests of simplicity, reduce the number of tax reliefs that are available under stamp duty land tax. The bill will establish LBTT as a progressive tax rather than a slab tax. The intention is to remove the distortions in transaction prices that are caused by the slab nature of SDLT. The bill also provides for LBTT to include a number of targeted anti-avoidance rules to help to minimise the risk of tax avoidance. In addition, it will replace English law definitions in SDLT legislation with appropriate definitions from Scots law.

A lot of work has gone into preparing the bill, and we very much look forward to discussing its provisions with the committee today and over the next few months.

The Convener: Thank you. I will ask a few questions to set the scene before I bring in other members. I do not think that you will be subjected to 14 consecutive questions from Michael McMahon or 12 from Gavin Brown, as Barry White was last week, but we will see how things go. I do not intend to restrict members' questions on the issue.

Will you say more about the targeted anti-avoidance rules that you plan to introduce?

Alistair Brown: I will comment and then invite Neil Ferguson to comment. Mr Swinney set out in his statement to Parliament on 7 June last year the approach that the Government intends to take to tackling tax avoidance. He said that the Government wants to take a vigorous approach. We have sought to reflect that in the bill with several targeted anti-avoidance rules. In addition—as the committee knows—in the consultation on tax management, which was launched at the beginning of December, there is a proposal to introduce a general anti-avoidance rule.

Neil Ferguson (Scottish Government): There are quite a few examples of targeted anti-avoidance rules in the bill. In a sense, the whole concept of linked transactions is a targeted anti-avoidance rule. The bill provides that if, for example, a husband wanted to buy a house and the wife wanted to buy the garden in separate transactions in order to reduce the price of each transaction and thereby achieve a lower tax band, the two transactions will be linked as if they were one, so the price of the whole property will be considered and the appropriate tax band will apply.

I will pick out a couple of other examples. Paragraph 8 of schedule 10 contains provisions that expressly exclude transactions that purport to be entitled to group relief but are designed to avoid land and buildings transaction tax.

Similarly, in relation to relief for incorporation of limited liability partnerships, paragraph 2(d)(ii) of schedule 12 provides that arrangements that result in differences in the proportion of interest that is transferred within a partnership that would give rise to the relief will not attract the relief, if the arrangement was made simply to avoid land and buildings transaction tax.

It is fairly clear that if a transaction is designed to avoid the tax and gain the relief, it will not be eligible for relief. An awful lot of the tax avoidance activity that Alistair Brown talked about centres on use of and exemptions from reliefs, so we have carefully considered the reliefs that are in the bill, in order to try to minimise tax avoidance.

The Convener: How much do such avoidance measures cost Scotland? We should try to gauge the impact of the anti-avoidance measures, should the bill be passed.

Neil Ferguson: It is difficult to do that. Because tax is avoided, there is no record of it—

The Convener: I appreciate that, but how much do you expect to raise through the anti-avoidance measures? That is another way of putting it.

Neil Ferguson: In a sense, that is a bit of an unknown. The issue is not as much about raising revenue as it is about overcoming avoidance. We know from HM Revenue and Customs figures that some of the avoidance activity on stamp duty land tax has cost in the region of £480 million over the past two or three years—I am not quite sure of the timescale, because HMRC did not tell me that. According to the most recent analysis, avoidance schemes put an estimated £238 million of stamp duty land tax at risk in any one year—that is a United Kingdom-wide figure. I suppose that, if we took a percentage of that for Scotland, it might be around 8 per cent of the £238 million although, to be honest, we cannot really make that generalisation. The figure for Scotland would be a proportion of the £238 million.

The Convener: The excellent Scottish Parliament information centre briefing on the bill mentions areas on which consultation is on-going, which Alistair Brown touched on briefly. Those areas involve complex legal issues that have not

yet been fully resolved because of the need to align the bill with Scots law and practices, as Alistair Brown said. It is proposed that amendments will be lodged at stage 2 to reflect the outcomes of that on-going consultation.

The Institute of Chartered Accountants of Scotland has commented on the need for further consultation; I am sure that members will be interested to hear how you plan to consult further on measures that are to be introduced at stage 2. Will you also say a little more about the complex legal areas?

Alistair Brown: I will begin on that and then pass to Neil Ferguson and, if necessary, John St Clair.

The key areas in which further work is being done are the treatment of commercial or non-residential leases for taxation purposes, the taxation of residential property holding companies, and the treatment of trusts and partnerships. Those are the three biggest, most important and most complicated areas that we are continuing to consider, and in connection with which we hope to lodge amendments at stage 2.

The taxation of non-residential leases under stamp duty land tax has been a significant issue in Scotland for a number of years; several of the written submissions to the committee refer to that. We have engaged with, and are continuing to engage with, the Law Society of Scotland and other stakeholders to discuss those complexities and to seek to resolve them as far as is possible, so that we can lodge amendments that will introduce provisions in the bill that will provide a more satisfactory basis for taxation of non-residential leases.

I invite Neil Ferguson to provide the committee with more detail.

Neil Ferguson: We are aware that non-residential leases are an area of particular complexity. It would have been difficult to resolve all the issues before the introduction of the bill in November. From comments by the Law Society and others, we are aware that a range of provisions in the stamp duty land tax legislation do not work particularly well in the context of Scots law or practice. It would have taken quite a while to go through them and to consider how best such leases might be taxed, given the stakeholders' concerns.

Therefore, prior to Christmas, we established a non-residential leases working group, which met for the first time on, I think, 21 December to set out its remit and to consider various aspects of non-residential leases. The group includes members from the Law Society, ICAS, the Chartered Institute of Taxation and the Scottish Property Federation, and a range of other stakeholders is being copied into all the papers for the group's meetings.

The working group will examine two key areas. First, it will look at the various options for taxing non-residential leases. The Law Society's consultation response in the summer of 2012 set out four alternative options for taxing such leases, and we are looking at each of them against a number of criteria. We are also looking broadly at the way in which the current approach taxes such leases. The first thing is to examine the way in which the tax is calculated. The aim of that is primarily to inform ministers about the impact of changing from the existing approach to a different one, which will help to inform stage 2 amendments.

Secondly, in essence, the working group is looking at the rules that are associated with taxation of non-residential leases. As I said, the legislation does not work quite so well in the Scottish context. We hope to simplify some of that legislation, tidy it up and get it working better for Scotland. We are working closely with stakeholders. The working group had a subsequent meeting in early January to take the work further forward and we are meeting tomorrow to examine again how to go about taxing those leases.

10:15

As Alistair Brown said in his opening statement, we are grateful for the input of stakeholders, because this is complicated and technical stuff for us. I am pleased to say that we are making good progress.

The Convener: The bill is pretty complicated for committee members, as well. Of course, the issue with lodging amendments at stage 2 is that although you will be consulting before that and will be working with a number of people in the working group, as is discussed in detail in the report, the process does not really give the committee an opportunity to interrogate suggested amendments effectively with any third parties. Although we can question the minister at the debating stage, that is not particularly satisfactory, to be perfectly honest.

Alistair Brown: We accept that it is not the ideal way of presenting draft legislation to the committee for scrutiny. We hope for approval in due course. In the particular circumstances that we were—and are—in considering land and buildings transaction taxation, we were limited in the amount of time that we had to prepare the bill for the committee's review following passage of the Scotland Act 2012, which received royal assent on 1 May last year.

We moved as quickly as we could towards consultation—as the committee knows, we issued

our consultation document on 7 June last year. In parallel with that, work was done in developing instructions to parliamentary draftsmen and then in developing the bill.

We believe—nothing has happened to make us change this view—that if we had consulted in detail on all the technical measures that we have mentioned, the foremost of those being taxation of commercial leases, we would not have been able to develop a full bill for introduction on 29 November, as we did. Such consultation would have jeopardised our overall timescales and could have put at risk our target of introducing the new land and buildings transaction tax successfully on 1 April 2015, to coincide with the switching off of stamp duty.

Given those circumstances, we felt that we should come forward with the bulk of the bill and clearly signal to the committee what we are doing in terms of investigating and exploring further the technical areas that everybody agrees need more work. That is a bit of an explanation for why we are where we are, as it were.

Clearly it will be possible to make the committee's job of scrutinising the stage 2 amendments as satisfactory as possible—we will provide as much information as we can formally in support of the stage 2 amendments. There may be other ways in which we can offer the committee information—through informal briefings, for example. I am sure that other stakeholders—Neil Ferguson mentioned those who are working with us on the commercial leases working group—would be prepared, if to do so would be appropriate, to provide the committee with informal briefings on the amendments, particularly in relation to taxation of commercial leases, which is the foremost area in which there are technical issues.

There are other such areas—for example, the treatment of partnerships and trusts, which is already in the bill. We propose to offer simplification of the provisions on partnerships and trusts; we think that further simplification is possible. However, our proposals will not substantially change the policy intention behind the measures on partnerships and trusts.

The third area of substance that is covered by your original question, convener, is to do with taxation of residential property holding companies. Section 47 deliberately contains a fair bit of detail about our intentions to give the committee the opportunity to interrogate us and other witnesses on these issues. However, I can say that we propose to bring forward further measures on taxation of residential property holding companies.

The Convener: Gavin Brown has a supplementary on that.

Gavin Brown (Lothian) (Con): The offer of detailed explanations of amendments is clearly welcome. However, I wonder whether the Government might consider lodging all its stage 2 amendments on the new areas—as it were—on day 1 or day 2 of the stage 2 process. Strictly, it has until five days before the committee's consideration to do so. If you cannot give a commitment to lodge amendments at the beginning of the process, can you at least give a commitment to consider doing so in order to give us perhaps a few weeks to examine and absorb them?

Alistair Brown: Mr Brown has made a helpful suggestion. I can certainly commit to our lodging any such amendments as soon as we possibly can. Obviously, we have to go through an internal process with our lawyers and the parliamentary draftsmen before legislation is in any state to be presented, but we will lodge the amendments for the committee as soon as we can and we will certainly consider Mr Brown's specific suggestion. If it is not possible to lodge all the amendments at the beginning of stage 2—it might well not be, given the scale and complexity of the issues—we should be able to lodge at least some at that time.

I should ask my colleague Mr St Clair whether that comment was wise. I believe that it is.

John St Clair (Scottish Government): That commitment is fine. We will certainly try to meet the request to lodge the amendments at the start of the stage 2, and it might also be possible to share drafts of some of the amendments with the committee before that.

The Convener: If we get the amendments early enough, we might even be able to hold an evidence-taking session with your team and perhaps others before stage 2.

The bill proposes to extend access to relief to local authorities that purchase land or property through compulsory purchase orders. The Convention of Scottish Local Authorities is very supportive of such a move, and has said that it

"would undoubtedly make the additional powers due in April 2013 to bring long term empty properties back into use more attractive for Local Government".

However, the Law Society of Scotland and the Institute of Chartered Accountants of Scotland have argued that CPO relief should be extended beyond local authorities to other bodies that have compulsory purchase order powers. Why is that not being done?

Alistair Brown: Before I ask my colleague Carol Sibbald to respond to that question, I draw the committee's attention to schedule 14, which is the relevant part of the bill. It will restrict the provision's operation to

"a local authority ... the Scottish Ministers, or ... a Minister of the Crown."

Carol Sibbald (Scottish Government): The SDLT system contains about 30 reliefs, which creates layers of complexity. Given the receipts that will come in from the land and buildings transaction tax, we think it important to introduce and stabilise the tax before we consider extending existing reliefs, adding new reliefs or adding exemptions. That was the main thinking behind the decision not to extend that provision.

The Convener: You said that there are 30 reliefs in the SDLT system, but it does not seem as though that many have been removed—although I note that the new zero-carbon homes relief has been, because, according to the Scottish Parliament information centre,

"There is little evidence to suggest that this relief achieved its stated objectives of helping to kick-start the market for zero-carbon homes, encourage microgeneration technologies, and raise public awareness of the benefits of living in zero-carbon homes."

I am not aware that there has been much effort to raise awareness of such benefits. Might that decision be reconsidered? After all, as we move forward and carbon reduction increases in importance, some of us might not want that relief to be removed.

Alistair Brown: As the committee is aware and as is recorded in the accompanying documents to the bill, the zero-carbon relief existed for stamp duty land tax. The UK Government has removed it now, but there is no record of its having been applied for successfully in Scotland since it was introduced, so it was of no practical use. Therefore, we have not proposed it as a relief for LBTT.

As the convener said, the overall objective of reducing carbon emissions is important to the Scottish Government. There are a number of policy initiatives in place and in contemplation to help to achieve that.

Neil Ferguson will amplify what I have said.

Neil Ferguson: The difficulty with stamp duty land tax relief for zero-carbon homes was that it was defined narrowly and the eligibility criteria were onerous. As a result, over a year, three transactions in the entire UK applied for the relief, of which only two were successful and none was in Scotland.

We felt that we could not replicate the relief—it would become a nonsense relief in that nobody would be eligible for it. Indeed, as Alistair Brown said, the UK Government withdrew it on 30 September last year and has not replaced it with another similar relief. Therefore, as things stand, it no longer applies to stamp duty land tax.

We have considered whether it would be possible to introduce an alternative—perhaps a low-carbon relief along similar lines, but with less onerous criteria for eligibility. However, we are finding that to be quite tricky. Two options immediately come to mind. One would be sustainability labelling, whereby new properties would be assessed for sustainability in the round and in which carbon emissions would be one element. Each house that is built would be labelled for sustainability purposes as being bronze, silver, gold or platinum—if it were that good—standard. However, that would be a wider measure.

At the moment, a good way to apply the tax relief would be to make houses that got a gold standard in sustainability labelling eligible for the relief. The difficulty that we have come across is that the building standards are about to be upgraded to the point at which the gold standard will become the norm for all new build houses, which would then mean that every new build house would be eligible for the tax relief. That is not really what the relief should be about. If it is available, it should be for houses that have gone even further than normal building standards. That is part of the difficulty. The tax will be introduced in 2015 but, all the time, building standards are being upgraded and amended. Therefore, that approach would not be effective.

The second approach that has been mooted in some of the written evidence to the committee from stakeholders relates to use of energy performance certificates, which already exist through home reports, and are available for all types of property. The difficulty with that approach is that energy performance certificates are based on an inspection of the property and an examination of its construction. After that, data are fed into a computer model that spills out the energy rating for that property. However, there are an awful lot of assumptions in that computer model.

The energy performance certificates regime was never intended to be used for tax purposes. It is fine as far as it goes in providing an assessment of a property's energy rating, but it is probably not sufficiently robust to be used for tax purposes. We are still exploring whether there is an alternative mechanism that will ensure that the right claims are made, that there is a sufficiently rigorous test of the relief and that it is not open to abuse.

One of the other things that we have noted is that "Tax by Design: The Mirrlees Review", which was published in 2011, included a statement that,

"Not every tax needs to be 'greened' to tackle climate change as long as the system as a whole does so."

It is therefore not essential that we have green tax relief within the tax system, although it might be

desirable to have that if we could find a sufficiently robust mechanism.

We will take that into account and will reflect on the evidence that the committee has received, as I am sure the committee will want to do as well, and we will see how we get on. It is tricky, though, to find a mechanism that works for that type of relief.

10:30

The Convener: Thank you for that comprehensive answer. Colleagues are champing at the bit to ask questions, so I will ask just one more.

The intention is that rates and bands will be set annually through a statutory instrument as part of the budget process. I wonder whether the thinking behind that is to have some stability in the revenue stream. As we know, the amount of money raised through the SDLT has varied from £565 million to £275 million over the past five years. The Office for Budget Responsibility predicts somewhat optimistically that if that were to continue, the sum raised would increase from £275 million to £515 million in 2017-18. What is the thinking behind the intention to set rates and bands annually?

Alistair Brown: As you rightly said, rates and thresholds are not dealt with in the bill, although the framework for setting rates and thresholds is provided in the bill. The draft primary legislation mandates a progressive structure of rates and thresholds, but it does not set them. As you said, the proposal is that ministers would prepare statutory instruments for the approval of Parliament to set the rates and thresholds.

The considerations that ministers will take into account will include the expected amount of revenue to be raised. The issue of the volatility of receipts from stamp duty land tax in Scotland over the past few years will be a factor in ministers' consideration of how to set rates and thresholds. That volatility seems to me to be an inevitable consequence of the nature of the tax, because it depends on the level of activity and on prices in the residential and non-residential property markets.

For many years, up until 2007, receipts were fairly predictable and were on a rising trend, and there was comparatively little volatility. Since 2008, both prices and activity have been very volatile. Not only are actual receipts volatile, as the convener pointed out, but the OBR's forecasts of tax receipts are volatile. For example, the December 2012 forecast was nearly 20 per cent below the forecast that the OBR had prepared at budget time in March 2012. We must therefore take all those issues into account, and ministers will clearly need to take them into account in that important area.

The Convener: Thank you. I open up the session to colleagues. The first question is from Malcolm Chisholm.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I was going to ask about reliefs and then about Registers of Scotland, but my first question has been pre-empted. The answer on zero-carbon homes relief was comprehensive, so I will not repeat that question.

I think that, in general, we and a lot of the submissions—the ones that I have read, anyway—are quite sympathetic to your general objective around simplifying reliefs. However, some concerns have been expressed about the abolition of a couple of other reliefs. The first is the sub-sale relief, about which I think that we will hear from the Law Society, so we can ask it questions on that. However, the Law Society suggests that a more targeted approach to the provision of sub-sale relief for commercial developments would be one way of sustaining investment in land and property while cutting down on avoidance.

I will not read out the detailed comments in the ICAS written submission, but it too thinks that sub-sale relief would be helpful and useful in commercial situations in which a developer

"buys a large parcel of land but has neither the finance or risk appetite to develop it",

and then sells it on in "smaller pieces".

I think that ICAS is saying that although it is sympathetic to your general objective, it feels that there is an issue as far as the wider economy is concerned. Do you accept ICAS's analysis of how the relief works in practice? Do you want to abolish it because you do not think that the objectives that ICAS describes are desirable, or do you want to get rid of it because you think that it is open to abuse?

Alistair Brown: We thought about the issue particularly hard in the lead-up to the introduction of the draft legislation. We concluded that we should not replicate the sub-sale relief provisions in stamp duty land tax for two reasons.

First, although we accept that a piece of land can be bought and sold twice on the same day for perfectly legitimate commercial reasons—the example that ICAS cited and to which Mr Chisholm referred is a perfectly commercially legitimate transaction—we were not persuaded that there was an obvious case for relieving one of the sets of transactions from tax. As I understand it, what happens in practice is that one party will purchase a large piece of land from a seller, split it up and sell some of it on; he may well make a profit on that deal. He will retain some of the land for his own use, or to develop commercially or for

residential property. We were not persuaded that, in such a situation, the first purchase—the purchase of the block of land—should be exempt from the transaction tax.

If that is carried through into law, a set of commercial transactions of that kind in Scotland would face a higher tax burden than an identical set of commercial transactions in some other part of the UK, such as south of the border, would face. ICAS and, I think, the Law Society pointed that out in their submissions. We accept that that is factually correct. The question is whether that is such a powerful consideration that we should set aside our present view that it is quite legitimate for both sets of transactions to be taxed. That is the first part of my answer to your question.

The second reason why we have not replicated sub-sale relief in the LBTT provisions is that we are aware—and it is generally accepted—that sub-sale relief has become an avenue for avoidance of quite substantial amounts of stamp duty land tax across the UK. We were anxious to limit opportunities for tax avoidance. The proposed measure seemed to us to be a legitimate and appropriate step to take. Our second reason was to reduce the scope for tax avoidance.

We are reading carefully the submissions that the committee receives, and we will ensure that Mr Swinney is aware of the arguments that are put. In addition, Mr Swinney will hear the views of the committee on this important area. I understand both sets of arguments and I hope that I have spelled out reasonably clearly for the committee why the Government is taking the position that it is on sub-sale relief.

Malcolm Chisholm: That was very helpful. I am sure that we will pursue the matter further, perhaps with the Law Society, from which we will hear later on.

The other issue that I wanted to raise with you, which was raised by the Law Society and the Chartered Institute of Taxation—from which we will also hear soon—was that of charity relief. Both those organisations were concerned about the fact that certain UK charities would not be able to gain that relief. In fact, the Chartered Institute of Taxation went as far as to say that what was proposed was

"in clear breach of EC law".

Did you give serious thought to that, or was it easy for you to decide to exempt certain UK charities?

Alistair Brown: I will begin the answer to Mr Chisholm's question and then invite John St Clair to comment on the legal aspects.

Perhaps I can explain things in layman's terms. Quite valuable reliefs are available to charities through LBTT; basically, a charity does not pay the tax if it purchases a property that is above the threshold. That relief is important and we must ensure that it is claimed only by bona fide charities. We have the Charities and Trustee Investment (Scotland) Act 2005 and the Office of the Scottish Charity Regulator, both of which—the law and the institution—exist to ensure that appropriate high standards are applied in the regulation of charities in Scotland. Moreover, it seemed appropriate in policy terms to limit the availability of charities' relief under LBTT to charities that were registered with OSCR. Obviously, we made inquiries with OSCR before coming forward with the proposition before the committee and we and it are content that it will operate satisfactorily.

In practice, we have also satisfied ourselves that a charity based outside Scotland elsewhere in the UK, Europe or the world could, if it chose and if it wished to avail itself of charitable relief in Scotland through LBTT, arrange to register with OSCR. That would involve some work, but it would not be onerous and no fee would have to be paid. It is possible for charities based outside Scotland to register themselves.

John St Clair: There is very little that I can add, but it might help to run through how we reached the present situation. When stamp duty land tax was first introduced, it was confined to UK companies. However, under pressure from Brussels and developing jurisprudence, it was decided that such a provision discriminated against companies and charities in the member states of the European Community. In 1910, therefore—

Alistair Brown: I think that you mean 2010.

John St Clair: I am sorry—2010. To avoid discriminating against EC charities, the Finance Act 2010 extended relief to EC charities and indeed to Norway and Iceland. That is the current position with stamp duty land tax.

When we approached the issue, we realised that, although EC charities were no longer being discriminated against, another bit of discrimination had emerged with American and Commonwealth charities being put at a disadvantage, and we looked at a way of extending relief to all charities. Having examined the law, we felt that the best way was to require everyone—Scottish charities, foreign charities, EC charities and so on—to register with OSCR. We have checked with OSCR and our reading of the law is that no charity, whether or not it has assets or real estate in Scotland, should have difficulty in registering. Indeed, it can be done quite quickly and, as Mr Brown has pointed out, without a fee being charged.

We need some means of vetting things to ensure that foreign charities, for example, are bona fide. After all, there are bogus charities out there and we thought that registering with OSCR would be a very small and non-onerous requirement that would nevertheless cut down on exploitation of the system and on the number of people getting tax relief that they were not really entitled to and which Parliament did not intend for them to get.

Malcolm Chisholm: But can a charity that buys property in Scotland for investment purposes register with OSCR?

John St Clair: Our understanding is set out in paragraph 3 of schedule 13, which sets out the qualifying charitable purposes with reference to

"the furtherance of the charitable purposes"

or

"an investment from which the profits are applied to the charitable purposes of the buyer".

We read that as entitling a charity to buy real estate for investment purposes in Scotland. However, having consulted OSCR, we found that the number of charities that buy real estate directly are few. They are usually involved in portfolio investment; they usually only receive legacies or collect money in the street. OSCR could not think of any cases in Scotland in which foreign charities had bought real estate for investment purposes, but it will write to us about that.

10:45

Malcolm Chisholm: Okay. I will not pursue that, because the 2005 charities act was my legislation and you obviously know a lot more about it than I do. I move on swiftly to Registers of Scotland.

The Chartered Institute of Taxation had a basic concern, in that it was worried about the availability of resources to Registers of Scotland. You may want to comment on that, given its extra workload. The more substantive point relates to the concerns about the new system, which are acknowledged in paragraph 33 of the policy memorandum:

"the Scottish Government is aware of some stakeholders concern".

Paragraph 33 concludes:

"Following further discussions with the Law Society of Scotland, the Scottish Government believes that the 'arrangements satisfactory to the Tax Authority' wording mentioned above ... will address these concerns."

It was not at all clear to me what that was about. I think that the concern basically is that if people have to pay before they register that could create a problem, although my understanding is that, even under the current system, a person must submit a return to the revenue before they register. I found that all a little bit confusing, but you seem to be acknowledging some concerns; I would find it useful if you could clarify the issue, because the role of Registers of Scotland is quite an interesting and significant change.

Alistair Brown: First, I will pick up Mr Chisholm's point on resources. As he said, the Chartered Institute of Taxation flagged up in its written submission the importance of revenue Scotland being adequately resourced—it is not the only party that has given evidence to that effect. I agree; clearly, the Government's intention would be to adequately resource the activities of revenue Scotland so that it can provide a fully satisfactory service to Scottish taxpayers once it is up and running.

I respectfully suggest to the committee that there will be an opportunity, when it takes evidence in February from my colleague Eleanor Emberson, the head of revenue Scotland, and from Sheenagh Adams, the keeper of the registers, who leads Registers of Scotland, to probe further on resourcing should you wish to. Resourcing is important and we are giving it a lot of thought.

Malcolm Chisholm raised the issue of systems and referred in particular to paragraph 33 of the policy memorandum. I will split that question into two halves. I will say something about systems in general, then I will ask Neil Ferguson to comment on payment systems, because paragraph 33 is in a section that deals with payment.

On systems in general, we are very aware that tax administration will either live or die by the quality of the information technology systems that support it. The responsibility for co-ordinating, managing and driving forward the development of systems to support the devolved taxes lies with revenue Scotland, so Eleanor Emberson has a clear view of that. Individual systems will be developed within Registers of Scotland and, in connection with the landfill tax, within the Scottish Environment Protection Agency.

We are conscious of the need to ensure that the systems work well, bearing in mind that the IT systems will support not simply the activities of administrative workers within revenue Scotland but, particularly in the case of the land and buildings transaction tax, the work of literally thousands of staff in lawyers' offices across Scotland who will use the electronic system to help calculate tax and to submit tax returns. I was interested to see in the submissions from the Law Society and others an emphasis on the importance of testing the electronic systems thoroughly, with the end users, before they are brought into use.

I apologise for going on about this, but the area is extremely important. The point that you focused on concerned the payment systems. I invite Neil Ferguson to comment on that.

Neil Ferguson: This is a question of process as much as of anything to do with how the tax is paid. At the moment, under stamp duty land tax, the taxpayer has 30 days in which to provide a tax return and a payment of tax. Following a change in 2007, those two actions do not have to be done simultaneously, so, for example, a tax return can be returned on day 3 of those 30 days and the tax payment submitted on day 28. That means that HM Revenue and Customs has to reconcile the payment that it received on day 28 with the tax return that it received on day 3.

In the interests of ensuring prompt payment of tax and the minimisation of the cost to the tax authorities, we want to have a system whereby the tax payment and the tax return will come in together. To ensure prompt payment, the bill proposes that the land and buildings transaction tax must be paid before an application to register title can take place. It is not that registration itself cannot happen until the tax is paid and everything is dealt with, but we are clear that we would like to have the tax return and payment simultaneously, prior to an application for title coming into Registers of Scotland.

That approach was challenged by the Law Society in its consultation response in the summer of 2012, in which it stated that it was concerned that the registration of title might be delayed by the need for cleared funds from the payment. However, I think that the Law Society has since agreed—I hope that it will confirm that this is the case—that its concerns have been addressed by means of a provision in the bill for an arrangement for payment to be in place. That might be a direct debit mandate that could be taken on, say, day 5, if that is when the payment and return came in. That could be taken as cleared funds, even though the direct debit payment would go through a few days later. That opens the door to registration.

In reality, Registers of Scotland proposes to have an online system that would allow for the payment and return of tax and the registration of title to take place simultaneously through one portal, effectively. That would enable tax practitioners to go online, pay the tax, submit the return and then submit the application for registration. Part of the beauty of that would be that there would be less data input from the tax practitioner because all the data about the buyer, the seller, the property and so on would be input just once for the purposes of both processes, which would save time. From the tax authorities' perspective, it means that all the information comes in simultaneously and there is no need for a manual reconciliation of the payment that comes in later and the return that came in at the outset.

I hope that the Law Society will confirm to you later that it is content with the approach that is now in the bill.

Alistair Brown: To confirm what Neil Ferguson said, I point out that paragraphs 29 and 30 of the Law Society's helpful written evidence that was sent to the committee in the past week or two say that the Law Society welcomes the proposal that Mr Chisholm described and believes that, although there have been concerns about payment, they have been resolved. I think that that represents accurately the view of the Law Society, but it will be able to confirm that for the committee.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): Mr Ferguson, you confirmed that the Government cannot quantify the amount of taxation that is lost through avoidance. Has there been any attempt to assess the number of instances of avoidance in each of the areas in which you are tightening the rules, or is the answer to that question the same?

Neil Ferguson: It is pretty much the same. We are not the tax authority for stamp duty land tax, so the data that we have are pretty limited. However, HMRC does not really have data on tax avoidance because, by its very nature, the tax is avoided.

Jamie Hepburn: If you cannot quantify the scale of tax avoidance in terms of either the number of instances or the taxation lost, that begets a question about what has formed the basis for each of the areas that you are looking at. You gave the example that a husband might buy the house while his wife buys the garden of the same property. Have you received anecdotal evidence that that happens and that certain areas need to be tightened up?

Neil Ferguson: The written evidence from various stakeholders acknowledges that tax avoidance activity goes on—it is also a hot topic in the media—but it is really our discussions with HMRC that have highlighted to us where tax avoidance takes place within the stamp duty land tax regime.

Most notably, tax avoidance takes place through the sub-sale relief for stamp duty land tax. That relief is described quite mechanistically, in that it refers to parties A and B where B buys a property from A and then C ultimately buys the property from B. The relief is described as a mechanism. The way that tax avoidance activity seems to take place is that transactions that would never otherwise have been set up in that way are designed to fit that mechanism in order to gain the relief. HMRC has given us a range of different ways in which that type of activity can take place. I

know that HMRC is trying to tighten up the provisions on the sub-sale relief that is available for stamp duty land tax. It has been described to us that there are probably eight different ways in which a party C can be created for the purposes of tax avoidance in order to fit that mechanism.

To some extent, I guess that we are unclear about the extent of tax avoidance in Scotland, both in financial and in absolute terms, because the data are not available. However, we have tried to craft legislation that addresses the possibility of tax avoidance by having clear legislation that is easy to understand. We are also trying to address that possibility in a range of other ways.

The move to progressive rates is, I guess, quite a big example. Because stamp duty land tax currently works on a slab nature, there is a big difficulty around the thresholds when a property gets to the £250,000 mark. A property worth £249,000 is taxed at 1 per cent on the whole purchase price, which would be about £2,500 worth of tax. As soon as the property goes above the £250,000 threshold, the 3 per cent tax band applies so the charge on the house would be £7,500, which is an enormous step jump—hence the slab nature, as it is described, of stamp duty land tax. By moving to a more progressive tax structure, we aim to take away that sort of cliff-face at the threshold, so the incentive to reduce the property price to a figure just below the threshold will be largely removed. Instead of seeing huge spikes of transactions at just below the threshold, we should start to see a much more even distribution of sales.

The Council of Mortgage Lenders and many others have been critical of the slab nature of stamp duty land tax for many years, so the CML very much welcomes the approach to a more progressive tax structure. The reason that the CML is so keen to get rid of the slab nature is its distortive effect. As Alistair Brown said in his opening statement, a good tax should not impede or distort market activities, but we currently see transactions moving to prices in a way that would never happen otherwise. Indeed, in our consultation in summer 2012, Homes for Scotland suggested that house builders are reluctant to build houses worth £250,000 to £270,000—that is how distortive the slab nature of the stamp duty land tax is—because they cannot sell those houses. Therefore, house builders do not build in the price bracket just above the threshold. We are keen to get rid of that market distortion, as are many stakeholders, most notably the Council of Mortgage Lenders. That will address some of that tax avoidance as well.

11:00

Jamie Hepburn: The Law Society welcomes that in its briefing. It also mentions market distortion.

You referred to parties A, B and C. I presume that, even if different people are involved, they will be the same type of person. Avoidance is not illegal per se, and people will still potentially seek to avoid paying tax. The set of rules that you have put in place is designed to minimise avoidance, and you are quite confident about that. However, I presume that the rules will be subject to constant revision. If you find a loophole, the rules will be examined again down the line.

Alistair Brown: Yes, indeed. As you rightly say, tax avoidance is legal. By its nature, it shifts or morphs all the time, as individuals who are seeking to minimise their tax liability adopt new approaches. The tax authority, whether it is HMRC or, in due course, revenue Scotland, needs to be on its toes.

Our intention is that the general anti-avoidance or anti-abuse rule, on which we are consulting through the tax management bill consultation, would provide a mechanism for combating a range of avoidance activity, essentially through established administrative means, rather than through a need to keep changing the law. One of the results of tax authorities tackling tax avoidance is that there are successive complicated layers of changes to the law; in itself, that approach can open up opportunities for avoidance.

Jamie Hepburn: You are saying that there is no need to have recourse to either primary or secondary legislation, and that tweaks would be made without the provisions coming back to Parliament.

Alistair Brown: As regards the operation of a general anti-abuse or anti-avoidance rule, if the tax authority became aware of a situation where it believed that taxpayers had used artificial means to reduce or avoid their tax liability, it would pursue them—if necessary, through the courts. The court would adjudicate on the interpretation that the tax authority had placed on the general anti-abuse rule and would decide whether the situation was caught or not.

Jamie Hepburn: That would be done using the means of legal precedent, rather than changing the law.

Alistair Brown: Yes.

Jamie Hepburn: But surely that would be an interpretation by the tax authority of evasion, not avoidance.

Alistair Brown: We are getting into an issue that is central to the tax management bill

consultation. We are happy to discuss that further, but the questions that are asked in that consultation are about a piece of future legislation that is a concept at the moment, but it will proceed to become a draft bill and will come before the committee. If it were enacted, that legislation would say that, if the taxpayer constructs a highly artificial arrangement that the court believes is either wholly or largely to do with minimising or avoiding tax, that arrangement would not stand. The tax authority would be allowed to examine the matter and tax the person as though the arrangement was not there. We would have to give a taxpayer who was not satisfied with that the right to take the matter further; he would have the right eventually to appeal to the court. The court would decide whether the tax authority's interpretation of the general anti-avoidance rule was appropriate.

Jamie Hepburn: It sounds as if the process to ensure that people do not avoid or evade paying tax could be fairly intensive. Are we confident that the resources will be in place to allow for that?

Alistair Brown: The resource plans for revenue Scotland are still at a fairly early stage, but we believe that we have made adequate allowance in those plans for what we have called compliance activity, rather than anti-avoidance activity, although the two are closely related. With respect, I suggest that the committee might wish to question Eleanor Emberson further on that point.

My only other general point is that any tax authority that is up to scratch will keep its resourcing under careful review, because there is a trade-off between the resources employed to combat tax avoidance and gaining extra revenue, and putting further resources into combating such avoidance might prove an appropriate investment.

John Mason (Glasgow Shettleston) (SNP): Some submissions have suggested that it would be good to have more of an idea of the rates, given the uncertainty that might arise. Are you able to clarify how far ahead the UK Government sets the current stamp duty rate? As I understand it, that happens annually.

Alistair Brown: Colleagues will correct me if I answer Mr Mason's question inaccurately, but my understanding is that if the UK Government is not changing the rate of stamp duty from one year to the next it does not need to do anything. It is not like income tax, which is basically refreshed year by year in the UK's annual finance act. Once set, the stamp duty rate continues in place unless and until the UK Government brings forward subordinate legislation to change it.

On the question of the notice that the UK Government typically gives, the answer is, I think, that although it is not required to give any particular term of notice it has in practice done so. For example, last March, the UK chancellor announced his approach to combating the practice of enveloping high-value homes in company structures and then selling the shares in the companies, which basically means that tax is paid on the transfer of shares at 0.5 per cent instead of on the value of the home at 4 per cent. Mr Osborne's scheme included the introduction of a 15 per cent rate of stamp duty land tax when what was called a non-natural person—in other words, a company—bought a high-value home. Those provisions were announced quite a long way in advance; indeed, they are now in the 2013 finance bill and will come into effect something like 15 months after Mr Osborne first described them in the 2012 budget.

I am sorry to have been so long-winded, but the answer to Mr Mason's question is that, although the UK Government does not need to give any particular period of notice for a change in the rate, a recent example shows that it has in effect given 15 months' notice. There might well be cases in the past when stamp duty increased from midnight on the day the chancellor reads out his budget speech.

John Mason: That helpful response confirms my view that there is no more certainty in the approach taken in the UK than there would be in Scotland.

We have not yet touched on the issue of exemptions. Can you comment on the list of exemptions rather than the various reliefs? Why do the exemptions include, for example,

"property transactions where no money or other contribution that has a monetary value changes hands ... ; land or property which is transferred under succession law when the previous owner dies; and acquisitions by the Crown"?

Alistair Brown: I will begin and then ask Carol Sibbald and John St Clair to come in.

As Mr Mason indicated, an exemption is a right not to pay the tax at all; it is not the same as having to claim a relief and the tax authority judging whether the claim is valid and, if it is valid, deciding whether some of or all the tax should be relieved. In general, but with some adjustments, the exemptions have been carried forward from the stamp duty land tax regime.

If appropriate, I will ask Carol Sibbald to elaborate.

Carol Sibbald: I do not have a great deal to add. As Alistair Brown has made clear, the exemptions have been carried forward from the stamp duty land tax legislation. When we issued our consultation document in June last year, we said that we proposed to maintain the exemptions. About 80 per cent of consultees who responded

were content with that. Some comments were made that it would be helpful to have the same situation in Scotland and England, as people were familiar with that position. Others felt that adding in any additional exemptions could have unintended consequences. That was the thinking behind our course of action.

John Mason: I understand that. However, we are at the start of a new tax, so we need to consider the matter seriously. The provisions on transfer under succession law mean that if an ordinary person works really hard and buys a big house, stamp duty has to be paid, but somebody who comes from a rich family gets their parents' big house without paying stamp duty. There is a certain unfairness there.

Alistair Brown: What Mr Mason describes is accurate. In cases where a home is sold and the value is distributed, or where the home itself is contained in the estate of someone who has died and is passed to their heir, no stamp duty is payable at the moment and, under the proposals before the committee, no LBTT would be payable. Let me check with John St Clair whether I am right in saying that, if a house that is part of an estate is sold and the proceeds are distributed, it is the purchaser who is liable to pay LBTT—therefore, they would indeed pay LBTT—but the amount available to the estate is not reduced by a payment of LBTT. The exemption applies to somebody who is inheriting a whole house, as Mr Mason says. His description is accurate.

John Mason: What about the Crown? Is it just that the Crown never pays tax? Is that the logic?

John St Clair: The logic is that the Crown is the tax-gathering authority, and it would be gathering money from itself. That is the classical idea—the King does not take money to pay himself. The other exemptions are largely involuntary, including the break-up of marriages. The case that is not really analogous is the one that you have identified: gifts, and the extension of gifts, if you like—inheritance—which are exempt. The Government has not decided to go down the route of bringing such cases into the tax base, but Mr Mason is right that there is no reason in principle why gifts could not be brought into the tax base.

John Mason: I am wondering about the logic concerning the Crown. Now that we have a separate tax jurisdiction in Scotland, it makes a difference in practice, as the money would be available to the Scottish taxpayer.

John St Clair: By "the Crown", I mean the Scottish Government and its extensions.

John Mason: I see—so we are not specifically referring to—

John St Clair: We are not referring to the royal family, no.

John Mason: Fair enough. The other area that I wish to touch on is that of HMRC. It seems that it always wins, no matter what happens. Apparently, when it stops doing stamp duty there is a cost, and we pay for that. If it starts doing something else there is a cost, and we pay for that as well. I accept that the issue might not be part of the bill, but I find that a slightly strange arrangement. Why will there be costs when we stop stamp duty?

Alistair Brown: HMRC has not yet provided us with an estimate of the costs associated with stopping stamp duty. We are pressing it to do so. It does not expect that the sum will be large. However, costs will arise as a result of modifications to HMRC's computer systems to ensure that if, for example, a taxpayer mistakenly attempts to pay stamp duty land tax in Scotland after April 2015, HMRC's systems will reject that and not allow it to happen. That requires some modifications to an IT system, which would have a cost. Other cost elements may arise for HMRC in winding down and ceasing its stamp duty land tax operation in Scotland. It has promised to send us the bills.

11:15

Jamie Hepburn: Something has occurred to me regarding the definition of the Crown. Mr St Clair is essentially saying that the Crown is analogous with the Scottish Government. Is that correct? Given that "the Scottish Government" is now a legal term, by virtue of the Scotland Act 2012, why do we not use the term "the Scottish Government"?

John St Clair: We are allowed to use the term "the Scottish Government", but the Crown covers more than the Scottish Government.

Jamie Hepburn: That is why I asked the question. So, it is not analogous with "the Scottish Government". What else does it cover?

John St Clair: It covers other ministers of the Crown operating in Scotland.

Jamie Hepburn: So, it is the Scottish Government and the United Kingdom Government, and it extends no further than that.

John St Clair: Essentially, yes.

Jamie Hepburn: Essentially—it extends no further than that.

John St Clair: Yes.

Jamie Hepburn: Okay—that is helpful.

John Mason: My final point is still to do with HMRC, but relates to the question of certainty. The point has been made that there should be

clear guidance about all taxes, and specifically about the one that we are discussing. We can also take up that issue with revenue Scotland in due course. The suggestion was made, correctly, that some tax authorities, specifically HMRC, do not just interpret the law but try to push the law forward. Would there be the same ethos in revenue Scotland, or would revenue Scotland be stricter about sticking to the law?

Alistair Brown: Mr Mason is asking us to cast our minds forward to a post-April 2015 event. One point that is relevant to the question is that, in drafting the proposed legislation that is before the committee and in drafting the landfill tax bill and the tax management bill in due course, the intention will be to minimise the scope for a range of interpretations of the statute by making it as clear as possible. If we are successful in that, the scope for different interpretations should be reduced.

Beyond that, I respectfully suggest that that question could be put to Ms Emberson when she gives evidence in February. We will ensure that she is aware of the question.

Gavin Brown: I wish to return to the question of sub-sale relief. You gave a comprehensive answer in response to Mr Chisholm's question as to why you did not replicate the existing provisions in stamp duty land tax. Even those who called for some sub-sale relief in their submissions broadly agree. Nobody said that the provisions should be replicated. A number of organisations pointed out that sub-sale relief could be targeted, so that genuine transactions, if I can use that term loosely, would still benefit, whereas those that were set up purely for tax avoidance would not. What consideration has the Government given to having more targeted sub-sale relief, as has been suggested?

Alistair Brown: The Government has given some consideration to the whole issue of sub-sale relief, as I described earlier. Our position is that we are not persuaded that the genuine commercial transactions of the kind that Mr Brown alludes to should not be taxed. In addition, and as I explained in responding to Mr Chisholm, we were concerned about the scope for tax avoidance. Without wanting to go any further than the minister's position, we are reading, and will continue to read carefully, the written submissions from witnesses, and we will pay very careful attention to the committee's comments on the issue.

My understanding is that it would be perfectly normal commercial practice for a developer, for example, to buy a large parcel of land—more than he needs—from a seller and to sell on part of that parcel to one or more developers. In the process, he might well make a profit. That is an example of the kind of thinking that we went through internally in persuading ourselves that it was not obvious why stamp duty should not be paid on both levels of transaction. It is not an open-and-shut case or argument, and different views can be taken on it, but our present position is that we are not persuaded that the relief should be introduced.

Gavin Brown: For clarification, can you say whether the Government is still partially open to listening to the idea of having a targeted sub-sale relief, or is its mind closed? Has a full and final decision been made?

Alistair Brown: I think that the Government will listen to the evidence and, in particular, to the views of the committee.

Gavin Brown: In response to previous questions on the rates of LBTT, you explained clearly why the rates are not part of the bill due to issues with volatility and the need to get clarity on what exactly is likely to be collected. I understand all of that. However, does the Government have a view on the point at which it will provide clarity on the rates and on the number of different rates or thresholds that will be introduced? Is there a plan for when that will be announced?

Alistair Brown: What I can put before the committee is the observation that Mr Swinney has said—this is obviously a matter for him—that he would expect to bring forward the Government's proposals on rates and thresholds at the time of the relevant draft budget. The relevant draft budget would be the draft budget for 2015-16, which should be brought to the Finance Committee in draft in September 2014. His publicly stated position is that that is when he will bring forward proposals. With respect, the committee may want to ask questions on that when it takes evidence from the cabinet secretary at the end of February.

Gavin Brown: That is helpful, thank you.

On reliefs, on which there have been a couple of questions this morning, the figures presented in the Scottish Parliament information centre briefing—I do not know whether you have the document in front of you, but its figures come from HMRC—suggest that, for 2011-12, the value of reliefs is estimated to have been just over £114 million for "Non-residential/mixed" and about £17 million for "Residential". Several organisations have given the Scottish Government credit for seeking to reduce the number of reliefs and simplify things, but will the value of the reliefs that will be proposed be financially neutral? Is this a tidying-up exercise, or will the value of the reliefs probably reduce as well?

Alistair Brown: I will answer that question in two halves. First, on the value of reliefs, which I am sure is quoted accurately in the SPICe

document, the outstanding figure is the £100 million that is attributable to group relief that was claimed in Scotland in 2011-12. As the committee may be aware, we too were greatly struck by that figure and made inquiries into that. HMRC has told us—rightly, I am sure—that it is not possible to give us a detailed breakdown of that because that would risk breaching taxpayer confidentiality, which HMRC rightly takes very seriously. Our observation or thought about that is that the figure must relate to either one large commercial transaction or a very small number of such transactions involving a restructuring of property within a corporate group, which is what group relief is restricted to. The corporation undertaking the restructuring must have applied for and successfully obtained group relief. Now, £100 million of relief on a tax that is charged at 4 per cent indicates a very high capital value or assumed selling price of the property, so the restructuring—or one or two restructurings—involved has been very major.

Secondly, in response to the burden of your question on what we expect to be the revenue consequences of the tidying up of reliefs in LBTT as compared with stamp duty land tax, we have not been able to prepare very accurate estimates of that. The reason for that is the nature of the tax, which is a tax on discrete transactions, so we cannot really forecast either the number or value of transactions accurately in advance. My assumption or estimate would be that the variation in LBTT revenues as a result of the change in reliefs from SDLT to LBTT will not be material in the context of a tax that ought to yield about £300 million a year.

John St Clair: On a point that was raised by the committee previously, it may be worth adding that there is not a direct link between the level of reliefs claimed and the revenue forgone. The wildcard is the one that Alistair Brown identified, which is group relief. Many of the transactions on which group relief is claimed, such as shovelling stuff around a corporation, would not take place but for the group relief. That big spike does not mean that the revenue lost a lot of money. The restructuring would probably not have taken place without the relief.

Carol Sibbald: Further to that point, other reliefs are available under stamp duty land tax, such as the alternative finance property relief and alternative finance investment bonds relief. The alternative finance property relief is more about ensuring parity with conventional financial products; otherwise, the way in which the mortgage product is structured would mean that the property involved would be subject to a number of stamp duty land tax charges. All that the relief does is put people on a level playing field with anyone buying a house with a conventional mortgage, who would pay the tax just once. As John St Clair has said, it is not the case that the amount given through the relief could be added on to the revenue, as it does not quite work like that.

Gavin Brown: Finally, are there big differences between the group relief that currently exists under SDLT and what is proposed under LBTT, or will they be the same?

John St Clair: They will be more or less the same. That was a policy decision.

Neil Ferguson: In terms of monetary value, probably the top five reliefs for stamp duty land tax will be broadly replicated within the land and buildings transaction tax. To answer the initial question on the expected value of reliefs going forward, as Alistair Brown said it is likely to be roughly on a par. We do not anticipate a great change.

The only difference will be around the whole issue of sub sales. However, sub sales are not classed as a relief by HMRC at the moment, so there are no data on how much revenue might be forgone through sub-sale relief because the data are not collected. Sub-sale relief is not in the overall totals for stamp duty land tax at the moment, so that will not make any material difference either to the overall figures.

Michael McMahon (Uddingston and Bellshill) (Lab): In his earlier comments, Neil Ferguson said that there had been good communication and that many of the issues that had arisen had started to be worked through with all the stakeholders. In response to an earlier question, Alistair Brown said that a specific issue that the Law Society raised had been worked through to a satisfactory outcome. The Chartered Institute of Taxation, the Law Society and ICAS all raised concerns about the transitional arrangements, on which they said that we must not make the same mistakes as were made in 2003. For clarity, can you tell us whether those issues have been worked through and whether satisfactory outcomes are being achieved through the discussions with stakeholders?

Alistair Brown: I think that I can give Mr McMahon some reassurance on that. The responsibility for transitional arrangements lies with the UK Government. Under the Scotland Act 2012, the Treasury has the power to make orders setting out transitional arrangements. We have noted those comments in the written evidence and we are opening up discussions—we have begun discussions—with HMRC about appropriate transitional arrangements.

Let me just put a little bit of colour on that. We do not expect the transitional arrangements to provide any difficulties in relation to purchases. Clearly, a purchase has a specific date, so we expect that purchasers will pay stamp duty land

tax up until 1 April 2015 and LBTT beyond that. The difficulty tends to arise in relation to the taxation of leases, which is an issue that we are pursuing. As Mr McMahon suggests, our aim is to arrive at a position where we have effectively learned the lessons so that there are no difficulties going forward.

Michael McMahon: I have no further questions. Convener, I think that that brings my average number of questions down a bit.

11:30

Jean Urquhart (Highlands and Islands) (Ind): I have a small supplementary to John Mason's earlier question—I have obviously not learned how to communicate so that I could ask it at the time—about exemptions to SDLT for residential property that is inherited. That will apply to residential property under LBTT, but what about commercial property in those circumstances?

Alistair Brown: I will begin and then invite John St Clair to respond.

Technically speaking, the exemptions are dealt with in schedule 1 to the bill, which sets out the classes of exemption over several paragraphs. As far as I am aware, the exemptions are specified in relation to the tax payable rather than in relation to any particular class of property. That being the case, an exemption would apply both to residential property and to commercial or industrial property. In the unlikely event of an individual dying and leaving a piece of commercial or industrial property to his heir, my understanding is that no land and buildings transaction tax would be payable on that inheritance.

John St Clair may be able to confirm that.

John St Clair: That is right.

The Convener: I thank colleagues for those questions and I thank the bill team for their very detailed responses. I call a five-minute natural break for colleagues and to allow a changeover of witnesses.

11:31

Meeting suspended.

11:37

On resuming—

The Convener: I welcome the second panel to give evidence on the bill: Iain Doran and Isobel d'Inverno, from the Law Society of Scotland; and Stephen Coleclough and Caroline James, from the Chartered Institute of Taxation—it is not that I cannot pronounce your names; I have broken my glasses and am having difficulty reading my brief. I invite the witnesses to make brief introductory remarks before we proceed to questions.

Isobel d'Inverno (Law Society of Scotland): We are delighted to be here to give evidence on the Land and Buildings Transaction Tax (Scotland) Bill. I am convener of the tax law committee of the Law Society of Scotland. Our members are solicitors who are responsible for completing stamp duty land tax returns as part of their daily work, and it is likely that solicitors will continue to complete returns under LBTT.

We have suffered from the many difficulties of SDLT in the nine years since it was introduced and we have had to paper over many cracks to make it work in Scotland, so we are glad that there is the opportunity to develop a new tax that is more in tune with Scots law and works in relation to our practices. We also welcome the opportunity to try to set up the new arrangements with simpler legislation, which will mean that it is easier for the Scottish Government to police the system and stamp out the avoidance that has been rife in relation to SDLT, as your previous witnesses said.

We are involved in the further discussions on leases and we hope to be able to help in relation to partnerships. I hope that we can help the committee by answering members' questions.

The Convener: Thank you—that was good. Do the witnesses from the Chartered Institute of Taxation want to say anything?

Stephen Coleclough (Chartered Institute of Taxation): I am the deputy president of the Chartered Institute of Taxation and I am here with colleagues from the Scottish branch. I am representing the CIOT not because I am deputy president, but because since 1998 I have headed up the stamp taxes practice at PricewaterhouseCoopers—so the issue is very much in my sweet spot, if you like.

The CIOT is an educational charity. We are therefore apolitical, and one of our touchstones—indeed, it is our motto—is fairness and justice between the citizen and the state. When it comes to drafting legislation, we always try to square the triangle—if that can be done—between simplicity, certainty and fairness. We have found that the more one tries to be fair, the more complex and uncertain things become and that if we have simplicity we do not necessarily have certainty. The dream is to have a system that is simple, certain and fair, of course.

I echo the comments of Isobel d'Inverno. The Parliament has a fantastic opportunity, such as has not been seen in Europe since the break-up of the Soviet Union and the creation of new countries there, to start with a clean sheet and create a brand new tax. Although I am qualified as an English lawyer, not a Scottish lawyer, I sympathise

tremendously with the difficulties that have been encountered in Scotland as people tried to paper over the cracks and apply laws that were basically written for English property law to Scottish property transactions. This is therefore a tremendous opportunity. You do not need to follow the Westminster or UK rules; you can design a tax that fits the Scottish rules and property law. I urge you to take the opportunity.

The Convener: Thank you both for those positive introductory remarks. I welcome the comments on avoidance.

We had quite a lengthy session with officials this morning and I want to maximise the opportunity for members to ask questions, so I will not ask many questions. An issue that came up a couple of times was sub-sale relief. In paragraph 17 of its submission, the Law Society of Scotland said:

"there is a case for a targeted sub-sale relief which could be available in genuine commercial developments, as otherwise the LBTT payable in relation to developments in Scotland would be twice as much as the SDLT which would be payable on a similar transaction in the rest of the UK."

The Scottish Government said in its policy memorandum:

"There is ... strong evidence to suggest that the sub-sale rules act as a gateway to a significant amount of avoidance activity."

The Law Society talked about targeted relief. How do we square the circle and ensure that relief is targeted on the right people while preventing the kind of avoidance that we all want to prevent?

Isobel d'Inverno: The starting point is to draft the legislation in a manner that makes it obvious what the relief is aimed at. The SDLT sub-sale rules were brought in at short notice and include ridiculous wording about "other" transactions, with no definition of what other transactions are. On the back of that, lots of tax schemes have driven a coach and horses through what was probably the intention of Parliament.

The first point in targeting a relief is therefore to ensure that the legislation is very clear but, if we roll back a step, it is about identifying the transactions that need to be given relief, some of which have been mentioned today. A category that we think is quite important is in relation to forward funding, which is a way of funding developments that is particularly important at the moment, when bank funding is so difficult to get. Iain Doran will quickly explain how forward funding works and why it needs a relief.

Iain Doran (Law Society of Scotland): A forward funding arrangement is typically one that is entered into by an institutional investor—the Standard Lifes of this world and so on—which buys an undeveloped site from a developer who has concluded a deal to buy it and acquires the land before the building is constructed. The institutional investor then makes available to the developer the finance to put the building up on the bare land.

When the building is completed, the developer—who, in an ideal world, will already have lined up a tenant—will tell the tenant, "The building's complete. You move in and start paying rent." The land is already owned by the institution and the institution gets what it wants, which is an investment that produces income. It is forward funding because the institution buys the land before the building is there and provides the funds to the developer to put the building up.

11:45

The crucial thing for the developer is that he manages to complete the building before the funds run out. The balance between the amount of money that the fund provides to put the building up and its total commitment is the developer's profit. As Isobel d'Inverno says, the reason why that is very important is that there is a lack of bank funding around at the moment. To my knowledge, developments such as the Collegelands site in Glasgow and the new car park next to the Hydro, which is the new national arena at the Scottish exhibition and conference centre, were funded on that basis.

It is crucial to that—this is where it links back in to sub-sale relief—that the developer is able to transfer the land to the institution providing the finance without having to pay additional tax. If we abolish sub-sale relief, the developer will have to pay tax on the acquisition from the landowner and the fund will have to pay tax on the acquisition from the developer. At present, there is only one set of tax, and we would be very concerned if the tax were, in effect, doubled. That would be inimical to this form of funding.

The Convener: What would be the revenue consequences of that?

Iain Doran: If we permit that particular form of funding, there will be no revenue consequences because it would simply mirror what happens at present. The situation would remain exactly the same as it is now.

The Convener: I take Stephen Coleclough's comments that we can design our own new system and do not have to look to Westminster. However, if it was not to mirror what is happening south of the border, what would be the revenue accruals? Looking at it from another point of view, what would happen if we were to progress the bill without those targeted reliefs?

Isobel d'Inverno: It is difficult to say how many forward funding arrangements there are and how

much tax is involved. There are quite a few such arrangements—they are not a rare occurrence. It is becoming a common way of setting up projects. However, I would not have thought that it would be a massive number. Part of the problem is that it would be different here from the position in the rest of the UK if we did not have sub-sale relief in these forward funding situations.

Iain Doran: Although I wholly agree with Isobel d'Inverno that there is not a massive number, where this sort of arrangement tends to be used is in what you might call trophy buildings, which are big, commercial buildings that are often in prime city-centre locations. Those major investments are likely to be most affected if sub-sale relief is withdrawn. As a result, the forward funding market will either dry up completely or be substantially reduced.

Stephen Coleclough: In my view, the problem is not with sub-sale relief. The avoidance has come around because sub-sale relief has been combined with another relief or exemption. The sub-sale schemes started off using group relief, which was very swiftly closed, but there have been sub-sale schemes using distribution exemption, alternative finance relief, the partnership rules, and annuities options. The problem is not sub-sale relief, but the way in which the sub-sale relief provisions are drafted in the SDLT legislation ambiguously allowed it to be combined with another relief. It was that other relief that made all the SDLT disappear. The issue is not sub-sale relief per se; it is permitting sub-sale relief to be used in conjunction with another relief. That is what has caused the problem.

In theory, that was addressed by a targeted anti-avoidance rule known as 75A that was introduced in December 2006. That has yet to be tested in court or tribunal. My view is that that provision is effective. We are, in the UK tax system, introducing a general anti-avoidance rule, which will also apply to stamp duty land tax and will address that issue. If you keep sub-sale relief, you must ensure that it cannot be combined with other reliefs, because that is how the avoidance worked—not through sub-sale relief on its own. You may also wish to consider some targeted anti-avoidance rules, which is what we are looking at in the UK.

John Mason: I want to unpack Mr Doran's example. Are you suggesting that the developer buys the land, sits on it for quite a while and then sells it on to the institution?

Iain Doran: No. Typically, the developer will conclude a contract to buy the land, and that contract will be conditional on such matters as investigating ground conditions and whether it is contaminated and, chiefly, obtaining planning permission for the development. Those factors will typically take many months, sometimes even years, but the developer has not bought the land at that stage—he has agreed to buy it, subject to the conditions being satisfied. While he is going through that process—typically the planning permission process—he is also scurrying around seeking two partners, as it were, to make his development work. The first partner is a tenant because the whole point of the property investment market is that it creates—

John Mason: I am asking why the institution cannot buy the land directly. Why does the developer have to own it at all?

Iain Doran: The developer does not own the land; the developer has concluded a contract to buy it, but has not completed that contract.

John Mason: That is enough for stamp duty to apply.

Iain Doran: Yes.

John Mason: Without the developer owning the land.

Iain Doran: Without the developer owning it.

John Mason: Would the price that is passed on be the same as the price that the developer got it for?

Iain Doran: Yes. Typically, it would be the same as the price he got it for.

John Mason: Even though planning permission has been added.

Iain Doran: Yes, because the arrangement would be such that the developer's profit comes out of the total amount that the fund will pay. An example may help. If a developer contracts to buy some bare land for £1 million, and manages to get planning permission and a tenant to occupy the building when it is completed, typically, he will sell the building on for £1 million and arrange to get, for example, £9 million from the fund.

John Mason: You have clarified my point. Thank you.

The Convener: Paragraph 14 of your submission states:

"Further consideration needs to be given to whether certain categories of licences do merit exemption from LBTT."

Can you highlight some of the categories that you are thinking about?

Iain Doran: That is one for me, too, I am afraid.

The Convener: That is fine.

Iain Doran: Licences are vast and varied beasts. In the property world, we tend to think of licences as an arrangement under which, for example, a barrow or kiosk in a shopping mall, will

be granted. We are talking about small property that will very often be moved around, of short duration and of comparatively low value. That is fine; there is no great problem with that. However, licences are in fact much wider than that and they involve other things that we do not normally think of as property transactions.

An example is hotel management agreements: hotels are often not leased, but managed. Another example is the conference industry. At both the SECC and the Edinburgh international conference centre, organisations or bodies come to occupy the conference centre. If you start to tax licences, the conference industry could be included in the scope of the tax because a licence to occupy is what people get when they rent the SECC or the Edinburgh international conference centre.

In addition, licences could apply to sports events. For example, I talked to the SECC's finance director, who pointed out that the arrangements for the Commonwealth games in 2014 would involve tax being paid, were LBTT introduced at that point. The arrangements for the SECC to host the world gymnastics event in 2015 will involve tax being paid. Also, large international conferences could be affected; ditto, large rock concerts and other things like that.

Although we might take the point about the occupation of shop units at an airport, for example, which are typically the subject of concession or licence agreements, one might argue why they should be any different from the same shop on the high street. If Boots the chemist pays tax on its high street lease, why should it not pay tax on its airport shop? Such a view might be reasonable, but our concern is that bringing in all the other examples that I have tried to list might give rise to unintended consequences that might prove prejudicial to the Scottish economy as a whole.

The Convener: Malcolm Chisholm asked the previous panel a number of questions about charities. No doubt he will want to ask you more, so I will try not to steal all his thunder. [*Laughter*.]

You do not think that the restriction of making a non-Scottish charity register with OSCR is appropriate. However, as we heard earlier, it will not cost anything and will keep out the rogues and scoundrels. Given that it seems to be quite a nice safety net, why do you feel so strongly about the issue?

Stephen Coleclough: We all feel strongly about it. My firm and, indeed, my institute have been going through the tax legislation and, because of our membership of the EU, have had to replace many of the references to "the UK" with "the EU" and sometimes with "the EEA".

Any requirement to comply with a commitment to, say, register as a Scottish charity is a burden, an imposition and a breach of the freedom of establishment and freedom of movement of goods, peoples and services. Looking at past decisions by the European courts, I suggest that the restriction that a charity be registered as Scottish in order to get tax relief is clearly unlawful under European law. It also represents unlawful state aid to Scottish charities, unless you have obtained state aid clearance from Brussels, which I do not believe you have.

I am also concerned about the trust provisions, which do not seem to cover English trusts. They cover Scottish trusts and trusts governed by laws outwith the UK, which suggests that England, Wales and Northern Ireland are excluded. I think that that, too, is in breach of European law, and I urge you not to do it.

I also point out that the UK tax law on charities has had to be amended, because it used to make a distinction between UK charities and non-UK charities; it now draws a distinction between EU charities and non-EU charities. It is all about whether you get a tax deduction for making a payment to a charity, whether the charity benefits from a tax exemption on its income or whether it benefits from VAT reliefs. The rule is very clear and, as I have said, draws a distinction between EU and non-EU. If non-EU countries want to join, they can, like Norway and Iceland, ask the UK Government to be added to the list but they must show that their charity regulatory regimes are at least comparable to the UK regime.

I urge an EU-compliant approach with regard to charities. If a charity is compliant under EU charity law, it should benefit from that relief.

The Convener: I am sure that colleagues will want to explore the issue further.

I have one final question before I open up the session to members. Is the financial memorandum's assumption that 90 per cent of LBTT will be processed online realistic?

Isobel d'Inverno: Yes. Given the importance of registering property, most people who deal with SDLT returns use the online system, because it is the quickest method. Indeed, very few people up here insist on making paper returns.

The Convener: Should 100 per cent of the processing be carried out online, or are you happy for both methods to be retained?

Isobel d'Inverno: If we could guarantee fully operational glitch-free broadband in all parts of Scotland, we could go to 100 per cent online processing. In practical terms, pretty much everyone processes their returns online if they possibly can, but making it mandatory could cause difficulties for some and there needs to be an alternative.

12:00

Stephen Coleclough: I agree that we should move to online filing. However, I want to highlight a caveat. The Chartered Institute of Taxation's low incomes tax reform group has carried out a lot of work on what we call the digitally excluded that is available on our website and which we can share with the committee. The point is that, because of handicap, lack of access to the internet or various other reasons, not everyone can access online filing and provision needs to be made for them. Whether that will be a big issue in LBTT, which is all about buying or leasing property, one cannot say, but one has to bear it in mind that not everyone can access online filing. Of course, that brings me back to my point that, with this kind of clean-sheet, green-field opportunity that you have, that should be the focus of your intention.

However, things can go wrong. At a very early stage, the people building the SDLT online filing system asked, "You can't have zero in the consideration, can you?" and were told, "No, you can't—it's always got to be a number". After the system was built, someone introduced a market-value charge on certain things that can be zero. However, the inability to put in zero is hardwired into the system. Defining and agreeing the principles should be a fairly urgent matter and when you design your online system you should ensure that not too many things are hardwired into it. Because of the current SDLT system, I now have HMRC telling me that I have to tell my clients to deliberately file a false return just to get it online—but obviously I cannot do that because doing so carries a criminal penalty.

In short, therefore, you should move everything online, but you need to get your principles sorted first and then ensure that you do not hardwire too much into the system. If you do, it will hamper your ability to move forward.

Isobel d'Inverno: The system definitely needs to be flexible and to respond quickly. The SDLT online system goes down for long periods of time, cannot be accessed and so on. We cannot have that kind of system in Scotland; instead, we must ensure that it is flexible, responsive and up and running. I am sure that solicitors will do all they can to join in with testing the system and whatever else is needed to ensure that it works.

Malcolm Chisholm: Most of what I was going to ask about reliefs has been covered, but I have a supplementary question on charities.

I thought that the Chartered Institute of Taxation's point about the EU was rather persuasive and we will no doubt discuss it further in due course. However, instead of taking an EU perspective, the Law Society of Scotland says in its submission that

"UK charities which invest in property in Scotland are not"

required to register with OSCR

"and such charities would therefore be denied LBTT charities relief."

That sounds like a slightly different concern to me. I do not know whether you were here when the legal officer from the Scottish Government suggested that charities could register. You have said that they are not required to register, but do you think that they could register and, notwithstanding the EU issue, would benefit from this relief? Is there a point of difference between you and the Scottish Government legal officer on that?

Isobel d'Inverno: Certainly the requirement to register is only on charities that occupy property and carry out charitable activities up here. Investors could register, but they would need to meet the Scottish charities test, which is not necessarily an instantaneous process and would require some effort, an examination of their constitutional documents and all the rest of it.

However, one way around this might be for OSCR to keep a separate supplementary register of foreign charities. After all, the difficulty for the revenue body is to police charities from different parts of the world, find out whether they are bona fide and so on. Some way of facilitating this would need to be explored with OSCR but, as things stand, there is some concern about the wording in the bill.

Malcolm Chisholm: I have seen a quotation from the Law Society about the registers, although I cannot find it in its submission—

Isobel d'Inverno: I think that it is the last paragraph.

Malcolm Chisholm: The bit that I am looking at states:

"The committees will be keen to consider the proposed arrangements and guidance in more detail to ensure that the system will not cause any practical difficulties for solicitors or their clients".

Can you say a bit more about that? Are you entirely satisfied, or are you saying that you are cautiously satisfied and that you want us to look at the issue more carefully?

Isobel d'Inverno: I think that we are cautiously satisfied to the extent that we can be at the minute, because this is very much a process-driven matter and we cannot really form the view that the arrangements will work until we know in more detail how they will work. One of the problems that we had when SDLT came in was that we did not have enough lead-time on the arrangements to know whether they would work in Scotland, so we had real difficulties.

The discussions that we have had so far with the bill team and, to a lesser extent, with Registers of Scotland have indicated that it will be possible to make the system work. However, solicitors obviously need to feel confident when they complete a property transaction that they will be able to do whatever is necessary to get the property on to the register, so the LBTT arrangements must not get in the way of that. We need to see more detail, though, on how the system will work.

I think that the devil is in the detail a bit, but I do not think that it is appropriate to spell out in the bill exactly how it will work, because some of it is intensely practical. For example, transactions can involve a purchaser, a seller, a funder, joint venture parties perhaps and different firms of lawyers all making undertakings to each other to ensure that things will hang together so that the transaction will be completed.

We are confident that it will be possible to make the system work, but we need to keep a watching brief on what exactly will be satisfactory arrangements for the tax authority.

Malcolm Chisholm: Thank you. I have a question for the Chartered Institute of Taxation. I was slightly surprised, as was a committee colleague, by your view that the lack of certainty around the rates and banding will have an adverse impact on inward investment through the purchase of Scottish properties. I feel that you are overstating your case. Is what you indicate not just the normal situation with the existing stamp duty?

Stephen Coleclough: No, because, as you heard earlier, the rates for the existing stamp duty will stay in place until the Government decides to change them in a budget or something like that.

We have seen some good recent evidence on this point with regard to high-value residential properties. Wherever there is uncertainty, investors will keep their hands in pockets. For example, with regard to high-value residential properties and stamp duty land tax, George Osborne made an announcement in March about a new annual charge—the annual residential property tax, which will come into effect all over the UK from April this year—and some capital gains tax changes, which we still have not seen. The uncertainty in that regard has killed the market. It is not that people do not want to pay the taxes; it is just that they do not know what the taxes are going to be. If people know what the taxes and rates are going to be, they can put that into their financial projections, work out what the return on their investment is going to be, make plans and get appropriate funding.

It is uncertainty that causes the economic damage, rather than the tax itself. For example, if we knew that the top rate in the UK was 4 per cent but Scotland would have a top rate of 5 per cent on commercial property, that would kill the uncertainty. People would know where they stood and what the cost would be if they wanted to buy, say, a new Government building in Scotland, so they could plan and budget for that, and work out a price and the return on the investment.

Malcolm Chisholm: I am sure that we will explore that a bit further.

I have a final question for the Law Society. You indicated that extending the relief for compulsory purchase orders to bodies other than local authorities would be desirable. Can you give examples of such bodies? Would what you propose involve a small change or would it have substantial implications?

Isobel d'Inverno: I do not think that it would have substantial implications; it is just that there are other bodies with compulsory purchase powers and it seems odd that they will not all benefit from the relief, because often those powers are used to facilitate a development, for example by making the land move to a developer. The desire is really just to see the two things aligned more closely, but I do not think that that would affect huge numbers of transactions.

Jamie Hepburn: I have a question for the Chartered Institute of Taxation, following Malcolm Chisholm's exchange with Mr Coleclough—I pronounced his name correctly, so I got it right, convener, and you got it wrong, but there we go.

The Convener: You had more time to think about it.

Jamie Hepburn: Indeed.

Mr Coleclough's observation on the uncertainty and volatility of taxation is not an issue about this tax specifically or about Scotland specifically. I presume that it is just a general observation about taxation more generally.

Stephen Coleclough: It is, yes.

Jamie Hepburn: That is useful.

I want to follow up with all the witnesses on the issue of how charities interact with the taxation, because I get the sense that there is a concern, but I am not clear what the nature of the concern is. On the one hand, it seems to be that an onerous burden is being placed on charities furth of Scotland, but I am not clear that that is the case. To clarify, is that one of the concerns?

Isobel d'Inverno: We do not envisage hordes of foreign charities trying to buy land in Scotland, but we would like to be sure that the LBTT bill does not include provisions that do not sit properly with the EU concerns that the CIOT has outlined.

Jamie Hepburn: I will come back to the CIOT in a minute, because my understanding of the evidence that we heard earlier was that the trajectory on the issue is to deal with those concerns. However, on the idea that the provision is a burden, is that a concern?

Isobel d'Inverno: It would not really be appropriate to ask a charity to register with OSCR, even though that would be voluntary. The regulation of charities in Scotland has been discussed, there is legislation and a regime has been set up under which only charities that do charitable things in Scotland have to register. It seems a bit disproportionate to say that, to get the charities relief from LBTT, charities from outside Scotland would have to register with OSCR, too, on a voluntary basis. That is not just a question of filling in a form and sending it in; there is on-going compliance and consideration of activities. The tests are different in different parts of the UK.

Jamie Hepburn: Is it your perspective that, although Scottish charities should have to register with OSCR, foreign charities—primarily those from within the EU, as the issue is about competition law, although we heard from the Scottish Government that the provision will also apply to charities furth of the EU—should not have to register, but should still benefit from the relief?

Isobel d'Inverno: If foreign charities are registered in their jurisdictions, that should be sufficient and they should not also have to register with OSCR.

Jamie Hepburn: What if the burden of registration in another country is not as burdensome as it is here? That will bring me on to the issues of state aid and fair competition.

Isobel d'Inverno: In the overall scheme of things, this perhaps is not the biggest point—

Jamie Hepburn: No, but we are exploring it and we discussed it earlier.

Isobel d'Inverno: —given the numbers of charities involved.

Jamie Hepburn: I am aware that that point was made.

Mr Coleclough, how do you substantiate your point that the provision might be viewed as state aid to Scottish charities? I presume that, by the nature of requiring everyone to register, it cannot be argued that it is state aid to Scottish charities, because all charities, once they are registered, will benefit.

Stephen Coleclough: I have a number of points on that. The first is that a non-Scottish charity will have to comply with the requirements of the laws under which it is established. Let us not forget that, for the purpose of the bill, the term "foreign" includes English charities. For example, the Chartered Institute of Taxation is a foreign charity for those purposes.

Jamie Hepburn: So you are not registered with OSCR.

12:15

Stephen Coleclough: No, we are registered with the Charity Commission. Under the bill, if we wanted to use or invest in premises in Scotland, we would have to register with OSCR. That is a burden and obstacle to free movement, and burdens and obstacles to free movement that discriminate against another European body are, prima facie, unlawful in European law.

On the state aid point, I remind everyone about the disadvantaged land relief. The UK Government had to take great care to meet the objective criteria that need to be met in order to use Government money to subsidise a particular activity or sector. It spent a lot of time pulling together statistics on deprivation, social deprivation, crime and average wages in districts to justify giving disadvantaged areas relief to certain parts of the UK for stamp duty and then stamp duty land tax. Anything else would have been unlawful state aid, as it would have been a diversion of Government resources to support activities that were not ascertained on objective criteria. That provision went slightly wrong because the statistics on social deprivation and so on tend to be about five years out of date, which is how the Canary Wharf development managed to benefit from disadvantaged areas relief, even though it was far from disadvantaged—the statistics came from a time when it was an undeveloped area of Tower Hamlets.

Unless you can set out objective reasons why only certain people can get the relief, it will be seen as state aid. Just saying that a charity has to register with OSCR is not, in my view, a sufficiently objective criterion for the diversion of Government funds for that purpose.

Jamie Hepburn: Clearly, this discussion does not form the main basis of the issue, but it is quite interesting and we might need to explore it a little further.

The Scottish Government spoke extensively of its positive engagement with the Law Society in relation to the formulation of the tax. Iain Doran, can you speak about that? Was the engagement positive and has it been worth while?

Iain Doran: Yes. I wanted to make the point that some of us who have been on the tax law committee for many years have the feeling that Westminster's consultation is not completely extensive, whereas we have been extremely

impressed by the efforts of the Scottish Government bill team and the Government in general to consult and engage with our organisation and many others, with a view to getting our input. It has been refreshing.

The team deserves credit for having worked so hard and so speedily. It is difficult to construct a new tax, relevant legislation, computer programmes, a new body—revenue Scotland—and everything else that is required in a short length of time, but the progress that has been made is impressive.

Jamie Hepburn: I am sure that all members of this committee are heartened by those comments.

Isobel d'Inverno: One of the most important things has been the involvement not just of the bill team but of lawyers from the legal directorate and people from Registers of Scotland. That joined-up attitude is helping, as things can be a bit fragmented in Westminster, with not all of those who need to be at the table being there. We have been heartened by the amount that has been achieved in a relatively short time.

Jamie Hepburn: That is useful to know.

Gavin Brown: I want to return to the issue of rates and when they will be indicated. Paragraph 9 of the submission from the Chartered Institute of Taxation says:

"We are disappointed to note that no indication of intended rates has been given to date."

When I asked the bill team when rates would be indicated, I was told that the indication would be given in September 2014, with the tax coming into force in April 2015. Obviously, as you say, investors would want rates yesterday. However, what date for the clear indication of rates are you calling for? Objectively, what do you think is fair and reasonable?

Stephen Coleclough: Looking at the timetables for the decisions that investors make, I would say that 12 months' notice is reasonable.

Many funds operate on a calendar year basis. Companies such as Standard Life and Scottish Widows have money coming in all the time from policyholders and know that they will get £X million that their investors have told them they want to invest in property. If they know that, during the year, they will get in £150 million that the policyholders want to invest in property, they will have to sit down at the beginning of the year and ask themselves where to put it.

Let us assume that the policyholders have all said that they want to invest in UK property. If the companies invest it in commercial property in London or anywhere else in England, they know—subject to future Government change—that the tax rate will be 4 per cent. However, if they invest it in Scotland, they do not know what the rate will be. That will affect the yield, the return and the amount that they will spend. That is the uncertainty.

If we are talking about people planning their budgets for the financial year starting 1 January 2015, they would need to know probably by September 2014, although that might be leaving it a bit late.

The uncertainty affects not only buildings that are up and ready now. To go back to the earlier forward-funding debate, there are projects kicking off now that will complete post that 2015 horizon. If somebody asked Scottish Widows or a similar company whether they wanted to come in on a fantastic development that was due for completion in June 2015, they would say, "Great, but will I be paying 3, 4, 5 or 6 per cent on LBTT?" They would have to plan and say that they were prepared to commit a certain amount but, if the tax came out at 6 per cent, it would not be viable and they could not make that decision for their policyholders.

For developments that have already been built, September 2014 is probably cutting it a bit fine. However, for projects that are trying to get off the ground now—particularly those that are forward funded—we probably need to know now.

Isobel d'Inverno: We are advising now on transactions that will complete in LBTT time, so it would be helpful if we could give an indication of the rates. That is probably an issue for commercial property rather than residential property. The residential rates are not quite so important, but the forward timescale is important for commercial property.

Curiously enough, people seem to make an enormous distinction. They say that SDLT is 4 per cent now and so probably will be 4 per cent in the future but, because there is a question mark over LBTT, they think that the risk and uncertainty are very different. They are not, really—as has been pointed out, SDLT could change—but it is more a question of putting something in. If there was some indication that the LBTT rate would not be more than a certain figure, people could use that as a benchmark.

Gavin Brown: That is helpful.

Jean Urquhart: Surely, for a development that is happening in two years' time, there must be other, much bigger uncertainties in the development costs.

Iain Doran: Yes, there are, but, generally speaking, an appraisal is prepared at the outset to work out whether a development is viable. Although that will build in contingencies, the practice is that the contingencies might be for increasing building costs—at the moment, those

are going the other way. The problem is that, if a developer has to leave a total blank for the land tax in the list of expenditure, they might not know whether their development will be viable or not. They can forecast the other entries—such as building costs or professional fees—because they have experience of what they are. They know what those are because they have been forecasting them for years. The problem with LBTT is that nobody has a clue. We have no experience and no indication from past practice as to what it will be.

Jean Urquhart: But surely you agree that nobody would leave a blank; nobody would put a zero in there.

Iain Doran: Absolutely, but what figure does the person put in? Do they put in 4 per cent, which is the current UK rate, as we all know—the market just assumes that the rate will be 4 per cent in future, as Stephen Coleclough said—or do they put in some other figure? We just do not know what the figure should be.

Stephen Coleclough: With stamp duty land tax, the tradition has been that, once the contract has been signed, it is protected even if the rate changes unless the contract is varied or assigned. If someone signs a contract today, in SDLT land, they know that the rate is going to be 4 per cent. I do not know what it will be in LBTT land.

Gavin Brown: I come back to the issue of sub-sale relief, which we heard a number of things about. I think that the position of both groups that are giving evidence today is that, although the Westminster provisions on sub-sale relief should not be replicated exactly, it ought to be done in a targeted way. We heard one concrete example of the type of transaction that ought to be given the relief, which was described as forward funding.

If we think about the issue from the Scottish Government's perspective, is there a way of drafting the legislation so that we have a clear number of discrete reliefs that exclude everything else but capture the cases that legitimately merit it, or is that a difficult thing to do in practice? Are there are five or six cases for sub-sale relief that you would propose, including forward funding?

Stephen Coleclough: There was not much wrong with the original section 45. What it did not make clear was, in a sale from A to B to C, the relationship of B to C in the second part of the transaction. However, that can be tidied up, and it was tidied up in respect of the group relief.

The other thing that I would do is to say that people can use either sub-sale relief or another relief, but not both, because that is where the avoidance opportunity came in. If someone wants to try to manage the tax cost, they can do it by changing the transaction and not paying for things in a particular way, but if you are selling and I am buying, I need your agreement to that. The attraction of sub-sale relief was that you did not know that I was doing that. I bought the property from you, and you thought that I was a good guy, but I immediately sold it to Caroline James, who is my mate, and we did something that qualified for the second relief.

I would not stray too far from the existing legislation, although it does need a tweak. The thing that opened up the opportunity was the fact that I could combine sub-sale relief with another relief and all the tax disappeared.

Gavin Brown: Therefore, one approach would be to say that people cannot combine sub-sale relief with other reliefs, but if that approach was not taken and we had to define set ways in which the relief could be used, could that be easily done, or are there dozens of ways in which it could be used, such that we could not simply list them?

Iain Doran: I fear that there are dozens of ways and dozens of circumstances in which perfectly legitimate sub-sales are achieved, and to try to list them would be fruitless.

Stephen Coleclough: I would struggle to recommend the current UK Government proposals to amend the sub-sale provisions, which are extraordinarily complex.

Iain Doran: One other thought occurs to me. Although the general anti-avoidance rule that we have heard mentioned is not part of this tax, the Law Society, certainly, and maybe the CIOT are in favour of that approach. It is a good thing because it targets general avoidance, whereas the targeted anti-avoidance rules, bizarrely, can actually encourage more avoidance because, as soon as someone gets within the loophole of the targeted rule, by definition they are clean. That is a bizarre situation.

A general, blanket rule will be far better. As someone who advises on property tax deals, I think that, with such a rule, it will very difficult for tax advisers who are inclined to recommend tax avoidance schemes to say to their clients, "This will work, because we've manhandled the transaction in such a way that it falls within a loophole." If there is a general rule that says that if the principal motive for structuring a deal in a certain way is tax avoidance, it does not work—people will see straight through it—we believe that that will be highly effective. We would recommend the GAAR for the purposes of LBTT and generally.

12:30

Stephen Coleclough: I add that whether a rule is a targeted rule or a general rule, it must be seen to be used. There is a targeted rule on stamp duty

land tax that came in on 6 December 2006 under which not a single such case has yet been taken to court. That is more than six years ago, and it does not take that long to get a case to court. A targeted rule under which there has not been a single case starts to fall into disrepute. With such a rule, it is necessary to commit to challenging contraventions of it, and to do that publicly, so that everyone knows that the rule is not just there to deal with a situation that might arise but is something real and tangible that the tax authority will use.

Isobel d'Inverno: The same can be said about sub-sale relief. If the revenue had clamped down on the many schemes that have been done much earlier and had a real go at them, some of them would have been stamped out at a far earlier stage and taxpayers would not have been quite so sanguine about entering into them. It is possible to find out about such schemes on stampdutylandtaxavoidance.com on the internet, for example. Therefore, the tax authority needs to be proactive in looking at avoidance.

If there is to be sub-sale relief, whether it is general or targeted, the starting point is to identify the transactions that are deserving of the forward funding that we have mentioned. It may be that it is decided that not everything deserves sub-sale relief. A developer who just flips on land at a profit might not deserve sub-sale relief, whereas it might be deserved in cases involving other, more complex arrangements.

Stephen Coleclough: I would like to pick up on what Isobel d'Inverno said about clamping down. If you were to ask HMRC about that, it would say, "We issued a spotlight on stamp duty land tax avoidance on 7 June 2010, in which we said that we think that these schemes do not work." The spotlights are things that HMRC sticks on the website, which only people like me read, and it is clear that I am not the target audience. Such a response is wholly inadequate. It is necessary to be more public and to get the message through to the wider public rather than to stamp tax specialists like me.

John Mason: I come back to some issues that I raised earlier about exemptions. I realise that there is a technical side and a policy side to the exemptions. I do not expect you to comment on the policy side, but I am interested in the technical side. Is there a reason for exempting property transactions in which no money is paid and no other contribution is made? What about transfer under succession law and acquisitions by the Crown? Are those purely policy areas?

Stephen Coleclough: They are both technical and policy areas. Before I started my career, there was stamp duty—at market value—on land transactions that were gifts: if someone gifted land, it attracted stamp duty at market value. From a technical perspective, the problem with that is that it is necessary to agree a market value, and it would be possible to spend seven or 10 years arguing with the district valuer what the market value is for stamp duty purposes.

On all such transactions there is that technical issue: if you have a market value charge, someone has to agree the market value. In cases such as death and divorce, there is not a ready market value, because the property is not actually marketed. That is a first technical perspective.

The other reliefs that you mentioned are all cases in which cash does not actually change hands. The person is not borrowing or raising money to buy the property; the property is simply moving from one person to another person—it could be a commercial property on inheritance or large house on inheritance. The person does not have the cash to pay the tax, and if they paid the tax they would have to sell the property, borrow the money or find it from other cash reserves. That is the policy issue.

Your question about the Crown, which is defined as not just the Scottish Government but relevant departments of the UK Government, goes to another policy issue: what is the point of getting one part of the Government to pay tax to another part of the Government, when it is all the Government? Someone in the earlier evidence session today said, quite rightly, "Yes, but we are not all in the same boat. We are Scotland, and then there is the rest of the United Kingdom, and if we tax a Westminster Government department on land and buildings transactions tax the revenue will come into the Scottish Government's coffers and not the Westminster Government's coffers."

That is a legitimate area for debate. You can tax transmission on death, but you will have to think about where people will get the money from. You can tax UK Government departments, but how you carve up the kitty afterwards is between you and Westminster.

Iain Doran: I make a small point in relation to inheritance. If the estate is large enough, inheritance tax will be paid. If, perchance, some of the estate consists of land or buildings, one might therefore ask why, given that the estate has already been subject to inheritance tax, stamp duty or LBTT should be paid in addition.

John Mason: The witnesses' comments have been helpful. On Mr Doran's point, if a property is gifted to someone to avoid inheritance tax, I suppose that the argument for applying LBTT is strengthened.

Iain Doran: That is true, but there are already clawbacks in relation to gifts that are made within a certain period before death.

John Mason: Yes, the person has to stay alive for seven years.

Isobel d'Inverno: On the point about valuation, it is probably worth adding that valuations of gifts are needed for other taxes on death and transmission and so on. What you do is a policy issue, really.

John Mason: I take your point. As Mr Coleclough was speaking I was thinking that for business rates and council tax we value properties without there being a transaction. We will probably come back to the issue.

The other point that I want to ask about is—

The Convener: Hold on. Before we move on, Jamie Hepburn has a supplementary question.

Jamie Hepburn: The question occurred to me too late to put it to the Scottish Government officials. It might be unfair to put it to the witnesses, because you might not know the answer, but at least I will get the question on the record. Are you aware of taxes that are levied by the UK Government from which the Scottish Government is exempt?

Stephen Coleclough: All the exemptions that apply to the Crown.

Jamie Hepburn: So it is a reciprocal thing.

Stephen Coleclough: It is, but do not forget that all the revenue goes to the UK Government.

Jamie Hepburn: Yes indeed, as happens with inheritance tax.

John Mason: I think that we will debate the issue later.

In its submission, under the heading "Certainty"—something that I asked the bill team about—the Chartered Institute of Taxation said, of guidance notes:

> "But such material should be explanations, assistance and guidance, not a way for the tax authority to interpret (or even worse, change) the law to how it thinks it should operate. Citizens should be taxed by law, not by guidance; nor untaxed by concession."

That suggests to me that someone thinks that there is a problem with the current system and we need a slightly different system in future.

Stephen Coleclough: We do. What we said about citizens being taxed by law and not untaxed by concession is a theme that the CIOT has been running with for 20 years. There is a perennial problem of a Government making decisions but those decisions being amended or changed by the executive—the tax administration—without any parliamentary supervision.

There are quite a lot of technical issues that we struggle with in the bill. We will feed in our concerns separately, but the main one is that it is far too English and does not seem to address Scottish property law. It will mean more papering over the cracks that we have had in the past. This is not a case in which we should be doing that; it is a case in which we should get it right first time and get it right in the law. That is what we are very keen should happen.

Something that we have discussed on our side—I have not shared it with my colleagues from the Law Society, although I am sure that they will find favour with it—is an idea that has been experimented with in the UK tax legislation, which is outsourcing the writing of materials to third parties, in this case mainly law firms. The suggestion is to invite law firms to tender to write the guidance notes because they understand how the Scottish property rules work.

John Mason: Who writes the guidance at the moment? Is it HMRC generally?

Stephen Coleclough: It is HMRC generally. There are different layers of guidance: sometimes the guidance can have the force of law, if the primary legislation permits that, but otherwise it is just guidance. It goes out to extensive consultation. The guidance on partnerships—an area of law that is a particular nightmare—took literally years to write because it was so complex. As I said earlier, I have been doing this work for more than 20 years and I still have to take two Nurofen before I read the partnership provisions. They are that horrible.

John Mason: Is the answer to get better legislation so that there is not so much room for manoeuvre in the guidance? Or is the issue the way in which the institution—revenue Scotland or HMRC—operates?

Stephen Coleclough: I would say that the answer is better legislation—make it simple, clear and as certain as possible. I think that we all accept that you will not cover every single situation, but if you can make the legislation clearer, more certain and more tailored to what actually happens in Scotland, it will stand you in good stead. I cannot stress enough how important it is that you have sound building blocks in the law first and that you are clear what you are trying to do.

A lot of things in this bill have been purely replicated from the SDLT legislation, in which there are quite severe known problems. My preference would not be to repeat those problems and end up with guidance. There are certain areas—for example, on what a company is and how the partnership rules work—in which people get different answers to the same question from HMRC. The answer depends on why they want to know. It cannot be right to get different answers to

the same question purely at the whim of the revenue officer.

Isobel d'Inverno: It is fair to say that the SDLT guidance is a complete mess—there are lots of problems with it. On the issue of how you fix this, I believe that it would be to have simpler legislation, to know what you are trying to legislate about and to take the trouble to find out how these things work in the first place.

The zero-carbon homes exemption is a good example of how not to proceed because it was a relief that applied to houses that were not being built by anybody. If you start by trying to apply the legislation to how things happen in the real world, you have a much better chance of making it work.

Stephen Coleclough: I can give you an example. There is a provision in the bill that has been copied from the British SDLT legislation. It is in connection with part-built developments and what value to take when someone part-builds a development.

When the SDLT legislation was introduced in 2003, the Financial Secretary to the Treasury said that it would repeal and reverse the Prudential Assurance case. We all read it and it does not—it does exactly the opposite. The Revenue had to admit that it had got it completely wrong and that the legislation has the reverse effect.

That legislation is still on the statute book, and it is replicated in this bill. My question to you is: do you intend to reverse the Prudential Assurance case, which is what the Financial Secretary to the Treasury said he was doing, or do you intend to have the provision that is in the bill now? I do not think that you know the answer to that question.

12:45

Isobel d'Inverno: Many points of detail need to be looked at and perhaps tweaks need to be made to some of the wording to get there. However, we are mindful of the short timescale in which the bill had to be introduced to Parliament. The drafters would have had to be superhuman to have got absolutely everything right in that timescale. Although it would be great if all the provisions were absolutely fine just now, I hope that the committee will be sympathetic to the challenge that the bill presented.

John Mason: I think that that answers my question for just now.

The Convener: I think that Malcolm Chisholm has a supplementary question.

Malcolm Chisholm: Can Stephen Coleclough just refer us to the provision in the bill that he was talking about?

Stephen Coleclough: I was referring to paragraph 11 in schedule 2.

Michael McMahon: As Mrs d'Inverno has possibly just referred to, there has been a lot of talk about how well the bill team is consulting with stakeholders and how progress is being made. It was recognised early on that amendments would be required at stage 2 because more consultation is needed on non-residential leases, companies, trusts and partnerships. Earlier this morning, the bill team told us that it will do its best to lodge the stage 2 amendments as quickly as possible. Does that give you any concern? Would you rather that the consultation went on for a bit more time, or do you think that the amendments will be ready because you will have worked them through?

Isobel d'Inverno: It is important that the necessary work is done on developing LBTT's new approach to leases. We have been campaigning about the need for a better approach to leases since SDLT came in. We will do all that we can to ensure that the amendments can be brought to the committee at the start of stage 2. We think that it should be possible to do that—obviously, we are in control only of our input into the process—so we do not see that as a concern. We have been living and breathing the problems for a long time, so we have quite well developed ideas about how to solve many of them. Does that answer your question?

Michael McMahon: It does. As I said, the bill team gave us that commitment because it suits us for our purposes to have more time to discuss the amendments. However, that may put pressure on your end to get the work done to ensure that the amendments are ready. As Mr Coleclough said, we need to get the bill right so that we have the clarity that everyone looks for. Would it be better to take the time than to look for the amendments being lodged slightly earlier?

Isobel d'Inverno: If it was helpful to the committee, we would be more than happy to provide any additional briefing on our views of the amendments in relation to leases and so on. If that could be fitted in, we could definitely offer to do that.

The Convener: Yes, that may be helpful. That was alluded to in the previous evidence session as well.

Folks, we are almost out of time. I think that our questions have been—

Jean Urquhart: Convener, you should always remember—

The Convener: You should let me know before I am winding up that you want to ask a question. What would you like to ask?

Jean Urquhart: I would just like to ask about the Scottish trusts issue that is mentioned in paragraph 16 of the Chartered Institute of Taxation submission. Is the issue one of semantics? What kind of trusts are we talking about? If the bill is introducing a Scottish tax, is it not right that it should refer to trusts outwith Scotland? Paragraph 16 of the submission states:

"As the Bill is currently drafted the LBTT will apply to Scottish trusts and to trusts operating under laws of a country outwith the UK."

Stephen Coleclough: England is not outwith the UK and it is not Scotland, so English trusts are not covered by those provisions, whereas every other trust in the world is. That strikes me as bizarre.

Jean Urquhart: On the issue of language, is a Scottish trust something that is quite particular to Scotland?

Stephen Coleclough: A Scottish trust is established under the laws of Scotland, yes.

Iain Doran: It is a linguistic point. The bill currently copies the UK legislation using English terminology, which is strange.

Jean Urquhart: Should it really just say "outside Scotland"?

Stephen Coleclough: That would be perfect. You have the job.

The Convener: This lot would try the patience of a saint. [*Laughter*.]

John Mason: Which the convener is not.

The Convener: I thank the witnesses for their very helpful evidence today. No doubt we will see a lot more of each other in the weeks ahead.

At the start of the meeting, the committee agreed to take the next two items in private, so I now close the public part of the meeting.

12:50

Meeting continued in private until 12:56.

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

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

e-format first available
ISBN 978-1-78307-199-9

Revised e-format available
ISBN 978-1-78307-215-6

Printed in Scotland by APS Group Scotland