The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

FINANCE COMMITTEE

Wednesday 29 May 2013

Session 4

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FINANCE COMMITTEE
16th 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:

Stephen Sadler (Scottish Government)
John Swinney (Cabinet Secretary for Finance, Employment and Sustainable Growth)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Committee Room 5

Scottish Parliament

Finance Committee

Wednesday 29 May 2013

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

Decision on Taking Business in Private

The Convener (Kenneth Gibson): Good morning and welcome to the Finance Committee's 16th meeting in 2013. I remind everyone present to turn off any mobile phones or other electronic devices. We have received apologies from Michael McMahon.

Agenda item 1 is a decision on whether to take item 4 in private. Is that agreed?

Members *indicated agreement.*

Scottish Independence Referendum Bill: Financial Memorandum

09:30

The Convener: Under item 2, we will take evidence from the Scottish Government bill team as part of our scrutiny of the Scottish Independence Referendum Bill's financial memorandum. I welcome to the meeting Steve Sadler and Louise Unwin. Good morning to you. I invite one of you to make a short opening statement.

Stephen Sadler (Scottish Government): The financial memorandum accompanying the Scottish Independence Referendum Bill sets out estimates of the administrative, oversight and other costs arising from the bill's provisions. The costs are separated into four broad categories: the costs of running the referendum; the costs of funding the Electoral Commission to oversee and regulate the referendum campaigns and report on the conduct of the referendum; the publicity costs incurred by the commission in fulfilling its duty to provide information to voters about the referendum; and the costs of allowing the two campaign organisations a free mailshot to every voter or household in Scotland.

The conduct of the poll and the announcement of the result will reflect the arrangements for local and parliamentary elections in Scotland, and they will be consistent with Scotland's electoral management structure. The poll and the count will be managed in the same way as those elections by local returning officers who are designated as counting officers for the referendum, directed by a chief counting officer who will be the convener of the Electoral Management Board for Scotland.

The Electoral Commission will be responsible for a range of regulatory and information tasks consistent with those that it would carry out under a Political Parties, Elections and Referendums Act 2000-based referendum. In its role of regulating the campaign and campaign spending, the commission will report to the Scottish Parliament.

The Edinburgh agreement, which was signed in October last year, allows

"the designated campaign organisations to send out one mail-shot free of charge to every elector or household and for the Royal Mail to recover the cost of postage from the ... Scottish Consolidated Fund".

The estimated costs of the provisions in the bill, in line with those arrangements, have been compiled with the assistance of stakeholders, in particular the Electoral Management Board, the Electoral Commission and the Royal Mail. I am grateful to

them for their help. The financial memorandum explains the details behind the totals for running, regulating and reporting on the referendum and providing mailshots to campaign organisations.

We are happy to answer any questions.

The Convener: Thank you. As is normally the case, I will start with a few questions; other committee members will then come in.

With regard to the chief counting officer, I notice that the financial memorandum says:

"It is not possible to give precise cost figures at this stage due to the fact that it is not yet known how the CCO will decide to deliver this work, but for the purposes of estimating the cost of the referendum, the CCO's costs have been estimated to be in the region of around £300,000."

Can you give us more detail on how that figure was arrived at?

Stephen Sadler: The bill provides that the chief counting officer will be the convener of the Electoral Management Board; that is Mary Pitcaithly, who is the chief executive of Falkirk Council. We spoke to Mary and to the secretary of the Electoral Management Board and showed them the draft provisions of the bill as outlined in the consultation document before the bill and the accompanying financial documents were published. We asked them to set out how they felt the role of chief counting officer would be funded, based on those indicative proposals. We received documents from the secretary of the Electoral Management Board, which set out various proposals. The estimate was based on information received from the board.

The Convener: The Electoral Management Board's submission states:

"The Financial Memorandum recognises the need for additional detailed consultation around the terms of the Fees and Charges Order. This is vital."

What is happening in that regard?

Stephen Sadler: The next meeting of the Electoral Management Board is this Friday afternoon. I go along to that as an adviser to the board. The fees and charges order is an agenda item for that meeting. We intend to set out a timetable to develop the proposals for the fees and charges order.

The bill gives Scottish ministers the order-making power, but I have told the Electoral Management Board and other electoral administrators that we will work with them over the summer to develop the contents of the order, based on comparable figures for Scottish Parliament elections. Electoral administrators will identify a range of costs as being necessary for the Government to fund, and we will work to put those in a draft order.

The Convener: On the comparison of the costs of the referendum with other elections and referenda, the financial memorandum states:

"The closest comparator to help determine the likely cost of running the referendum is the PVS referendum".

However, the parliamentary voting system referendum was held on the same day as the Scottish Parliament elections. Is that really a good comparison?

Stephen Sadler: The Electoral Commission's detailed report on the costs associated with that referendum gave us some valuable background information, but, as you say, it was held on the same day as another event. In that report, the Electoral Commission also carried out a calculation, based on the costs that were identified as actually having been incurred in the referendum, to estimate the costs of a stand-alone referendum in Scotland, and that is the figure that we have used in our financial memorandum. We used some of the detail from the alternative vote referendum report, but we also used the Electoral Commission's extrapolation to say what a stand-alone referendum in Scotland would cost. That is the figure on which we based a lot of our work in the memorandum.

The Convener: Last year, the police and crime commissioner elections were held in England and Wales. They were not particularly high profile, the turnout was a fairly dismal 15.1 per cent, and the cost was somewhere in the region of £75 million, or about £14 for every vote cast. Have any lessons been learned from what happened south of the border last year, as well as from the referendum here in Scotland in 2011?

Stephen Sadler: We have had some discussions with the Electoral Commission, which advised on the running of those elections, largely about public awareness and publicity. The Electoral Commission would be the first to admit that a referendum on independence is likely to have a substantially higher public profile than the elections for police commissioners, so that is one thing to bear in mind. Working with the commission, we will look to pick up ideas about public awareness, so as to encourage, as best we can, a high turnout.

The Convener: Aberdeen City Council's submission is a good one. It states:

"It cannot be guaranteed that all members of a household who are eligible to vote will see a household circulation, particularly if one member has strong views and chooses to suppress opposing material",

and that

"provision should be made for an individually addressed communication to be sent to each voter."

Do you feel that that should be the case? There are significant cost differentials of about £1.3 million.

Stephen Sadler: There are significant cost differentials. What we have said in the financial memorandum, and what the legislation will provide, is that it will be for the designated organisations to choose which of the two methods of sending out material they prefer, whether they go for household or individually addressed communications. Aberdeen City Council's submission points out what others have also told us—that it may well be cheaper, but that there is a risk of one communication not being passed around the household. The memorandum and the bill provide a choice, which is why there is a range of costs.

The Convener: Would the Scottish Government fully support whichever choice is made?

Stephen Sadler: Indeed, yes.

The Convener: I would be surprised if that were not the case.

Aberdeen City Council's submission also states:

"Timing is critical: a genuine nationwide sweep would presumably have to be conducted sufficiently early in the day to allow delivery to the other end of the country,"—

it is talking about a sweep of postal votes—

"yet this would effectively only pick up those votes which would be delivered by normal post on polling day and do nothing in respect of those posted later that day or on polling day."

That emerges as a recurrent theme in many submissions.

What is your view on that? I know that there is an issue about holding the sweep early, but in doing that—if it is held the day before—we do not catch everything. Would it not be better to have it on the polling day, as has been suggested, or later on the day before?

Stephen Sadler: Yes, it would: you are right. In the past couple of days, we have looked at the wording in the financial memorandum. In one paragraph we say that it is the day before and then also on the day of the poll, so I apologise for that. The intention is that the sweep will take place on the morning of polling; that is what has happened in previous elections. The details of that would be for the chief counting officer, once they are in post.

The Convener: Thank you.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I will pick up on the convener's line of questioning and ask about the options for individual campaigns. The choice of whether electoral communications are addressed individually or per household is no different from current practice in any other election. Is that the case?

Stephen Sadler: That is right; that picks up on one of the main points in the bill. In running and regulating the referendum, we have tried to stay as close as possible to normal election practice.

Jamie Hepburn: That is helpful. Can you give me a general sense of what the reaction of stakeholders and other interested parties has been to the estimates that are set out in the memorandum?

Stephen Sadler: On the whole, the reaction has been supportive. For example, the Electoral Management Board recognised that we have taken on the rough quantum of its estimates. The reaction has been that the memorandum provides a reasonable estimate of the likely cost this far out, given that we have over a year to go before we get to the referendum, and that continuing discussions with us about the detail would be welcomed. We are pleased that most people have welcomed the fact that we held constructive and early discussions and have taken on board their comments.

Jamie Hepburn: You referred to the likelihood that the referendum turnout will be significantly higher than that for the police commissioner elections. I agree with that perspective. Indeed, West Dunbartonshire Council suggested that it expects the turnout to be higher than for any election that is normally held in Scotland, which could introduce requirements for additional polling stations and staff. Has that possibility been factored into your thinking?

Stephen Sadler: In our discussions with the Electoral Management Board and with bodies such as the Society of Local Authority Lawyers and Administrators in Scotland, people have been very helpful in going through the detail of the referendum proposals and the costs in the memorandum. We have spoken to them about the practicalities that are involved. When Gordon Blair gave evidence to the Scottish Independence Referendum Bill Committee earlier this month, he said that returning officers tend to plan for a normal election on the basis of a 70 to 80 per cent turnout, so we have used those figures to produce estimates of costs.

Jamie Hepburn: The thinking is that, in terms of turnout, it will not be that different from planning for a normal election.

Stephen Sadler: I suspect that electoral administrators would say that the working assumption is that the figures will be at the higher end of that scale. That seems to be what academic commentators estimate for the referendum turnout.

Jamie Hepburn: What will happen if a need is identified for additional polling stations, for example? When we are out campaigning, we find that people get used to their polling stations. If people might have to use different polling stations because additional ones have been provided, will that be factored in? Will we ensure that people are aware of the change?

Stephen Sadler: Yes, that would be factored in. The location of polling stations and the allocation of voters to particular polling stations will be for local counting officers to decide. When we discuss the fees and charges order with returning officers and their representatives, we will ensure that the order gives sufficient flexibility to give effect to their operational judgment, if you like, nearer the time of the referendum on the amount of resource that they might need, whether that is for polling station ballot boxes or whatever.

Jamie Hepburn: Is it not so that, although the number of polling stations might increase, the number of polling places is unlikely to change?

Stephen Sadler: Yes, that is so.

Gavin Brown (Lothian) (Con): The Royal Mail's written submission to the committee states that it will provide its best estimate based on what it knows. However, it also states:

"We were not asked to provide potential costs for:

- Delivery of Poll cards
- Ballot pack mailing".

Have those costs been factored in elsewhere or will they have to be added to the financial memorandum? If so, is there any idea of what they might be?

09:45

Stephen Sadler: Those costs have been factored into the costs of local counting officers, because counting officers—or returning officers for elections—are responsible for that task. The costs will be in with the returning officers' costs.

Gavin Brown: The convener asked about the assumption of costs from the United Kingdom 2011 referendum. The Electoral Management Board stated in its submission:

"There has been some concern expressed that such an extrapolation is not appropriate. While it may give a general overall cost it may underestimate in some classes of cost and in some areas and the only appropriate model would be one in which costs are built up from first principles."

Is it your view that any underestimates will be at the margins and that the overall cost will be broadly similar, or is there a risk of possible big underestimates?

Stephen Sadler: It is our view that the estimates in the financial memorandum will be of a rough order of the final costs; we are not expecting huge swathes either up or down from the estimates. We used the detail of the 2011 referendum costs, but we also used the Electoral Commission's calculation about what a stand-alone referendum would involve.

The Electoral Management Board said that some concern had been raised about the issue and you have seen evidence from a couple of councils, but I think that the general view of the board, which represents all 32 returning officers, is that we have provided a good estimate.

Gavin Brown: Thank you.

John Mason (Glasgow Shettleston) (SNP): It is interesting that the Electoral Commission took a different angle from the council responses. The Electoral Commission stressed that it expected to be reimbursed only for its marginal expenditure, which would

"include the costs of temporary ... staff",

but that it did

"not intend to seek reimbursement in respect of those existing staff who are working on the referendum",

whereas the councils seem to want every penny that is in any way related to running the referendum, even though some of that involves existing staff salaries. Which is right—or are the Electoral Commission and the councils both right?

Stephen Sadler: I work with them both, so I will say that they are both right.

The Electoral Commission has taken the view that it has resource in its Scotland office, which normally provides advice to the Government and others on the running of elections and will continue to do so on the referendum. It has said to me that it will not look to apportion any part of the salaries of existing staff or office costs to the referendum. The commission says that it will need to be reimbursed for the money that it spends on the public awareness campaign and for the specific guidance that is produced for counting officers or whoever. Those are what it calls marginal costs, over and above normal costs.

Our discussions with the returning officers or counting officers will identify the specific actions that they need to take to prepare for and run the referendum. We will put those in the fees and charges order and then expect them to show how much they have spent against those particular headings as and when it comes to reimbursing them.

John Mason: Am I right in saying that in some cases there are some quite well-paid officers who

get paid extra for running any election or referendum?

Stephen Sadler: Returning officers receive a fee in recognition of the personal contribution that they make and the personal responsibility that they take for running the referendum.

John Mason: That contrasts with the Electoral Management Board, which, as I understand it, has no resources of its own, so whatever its costs are they absolutely have to be covered. Is there therefore more of a risk that if it overspends or anything, the Government would have to carry the can?

Stephen Sadler: Sorry, do you mean the costs for the management board itself?

John Mason: Yes.

Stephen Sadler: The board was set up a couple of years ago, largely as a co-ordinating body. It brings together representatives of returning officers. The Scottish Government provides some relatively minor funding for the running of the board as a co-ordination role—that is where we are at the moment.

Obviously, we realise that the board will need resources in order to carry out its role of supporting the chief counting officer for the referendum. For example, it will need to take on a project manager and a communications officer or whatever, and those posts are factored into the chief counting officer costs. We have had discussions with Mary Pitcaithly, and I hope that she is comfortable with our assurances that we will come to an agreement about what she and the board need to do and that we will provide the funding for that.

John Mason: I think that we accept that there will be extra people voting, although, if I understand the situation correctly, the fact that 16 and 17-year-olds are voting will make little difference. Am I correct in thinking that voter turnout will be the more important issue?

Stephen Sadler: Yes. The estimate is that between 100,000 and 120,000 younger voters will go on the register. That is a couple of per cent of the overall total.

John Mason: Earlier, the idea of having extra polling stations was raised. Sadly, in Glasgow, we have lots of polling stations that are quiet all day, and the poor polling officers just sit there pulling their hair out. Presumably, in that situation, there will be no extra costs, as the turnout could double or treble and the polling stations would still not be busy. Will there be some supervision to determine whether there will be extra costs for every council or whether some of them could operate within the normal costs?

Stephen Sadler: Yes. The fees and charges order will produce a menu of costs that returning officers can claim, based on the number of polling places and the amount of printing that they need to do. Once we have agreed the order, we will have to have discussions through the Electoral Management Board with individual returning officers. One of the things that we will consider is experience of turnout in various areas. If, as you say, a set of polling places has had a low turnout historically, we will say that people could manage a significantly higher turnout within their present resources.

John Mason: Royal Mail commented that some of its costs were not predictable. I found that a little hard to understand, because the electoral addresses that it delivers are pretty much always the same size and weight. Do you know why it said that the costs were not predictable?

Stephen Sadler: In its evidence, Royal Mail said that it would have preferred to provide us with a specific quotation based on definite specifications. The discussions that Louise Unwin, in particular, has had with Royal Mail have centred on the proposals in the bill and what is likely to happen. We have said that we will have more concrete discussions with Royal Mail as the bill goes through Parliament—possibly as soon as the bill is approved at stage 1.

In a traditional financial memorandum, we provide the best possible estimates of the costs around an event. That approach is different from the one that we are taking with Royal Mail, in which we are saying that, if we were to have a contract, we would have certain specifications and that we would arrive at a cost through discussions. When Royal Mail says that it would like some of the costs to be more certain, it is that difference in approach that is at issue rather than anything else.

John Mason: Can you explain more about the sweep that Royal Mail carries out? Does that happen because it has dropped pieces of mail behind a cabinet or something and it has to go and look for them? What is it doing that it does not normally do?

Stephen Sadler: Polling day will be on a Thursday. Any post that comes in after the post has left that day would normally be delivered on the Friday. However, it is no use delivering postal votes to the returning officer on the Friday. Therefore, as I understand it, sorting offices will carry out a sweep after the final pick-up on Thursday to see what else has come in. I do not think that huge numbers will be involved but, obviously, it is important to get as many votes as possible delivered and counted.

John Mason: I am not an expert on the postal service but it seems to me that, if there are

hundreds of thousands of pieces of mail sitting there, it will be hard to pull out the one or two postal votes that might be in the pile.

The Convener: They could use nice coloured envelopes.

Stephen Sadler: I am sure that it will be hard, but I am told that it happens on every election day. Returning officers will talk to their local post offices about doing that on the day of the referendum.

John Mason: Would that include somewhere like Carlisle, where Scottish people might post mail?

Stephen Sadler: To be honest, I am not sure. I assume that it will mostly be in Scottish postal sorting offices, but we would need to find out about that. We can let you know, but I am afraid that I do not know the exact detail.

Jean Urquhart (Highlands and Islands) (Ind): I presume that the cost of printing the ballot papers is wrapped up in the cost of polling station stationery. Is that right?

Stephen Sadler: Yes.

Jean Urquhart: Has consideration been given to printing the ballot paper in Scots and Gaelic as well as English?

Stephen Sadler: The bill provides for the ballot paper to be produced only in English.

Jean Urquhart: Would there not be little extra cost from printing it in two other languages?

Stephen Sadler: The cost might not be significant, but we have had comments from returning officers and the Electoral Commission about other complications that could result. Returning officers and the Electoral Commission will produce explanatory material in Gaelic and other languages for polling stations and polling places, and in advance of the poll.

Jean Urquhart: Do you know what those complications were?

Stephen Sadler: I do not know that offhand.

Jean Urquhart: What were the disadvantages?

Stephen Sadler: The Electoral Commission said that it had tested the ballot paper only in English, so that was one complication. Returning officers said that such a measure would add complications to the counting process. I am afraid that I do not have the material that they gave me on that, but the decision was made partly on the basis of advice from returning officers and others.

The Convener: That appears to have completed the questions from the committee. Apologies—I see that Malcolm Chisholm has a question.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Most of the issues have been covered, but I was particularly struck by the issues to which other members have referred about the financial memorandum's statement that the closest comparator is the parliamentary voting system referendum. Gavin Brown quoted what I think is a strong critique of that from the Electoral Management Board. To what extent has that comparator been influential? I would have concerns if it was, because that approach seems to have been widely criticised by many local authorities. In fact, it seems to be the most common source of criticism in the responses.

Stephen Sadler: I am not sure that it was widely criticised; it was criticised by a number of people who responded to the committee, although I am not sure how many. The Electoral Management Board, which helped us to compile our estimates in the memorandum, represents all 32 returning officers. Broadly, the board told us that the detail of the PVS information from the Electoral Commission provides useful headings, but we took another step by looking at the Electoral Commission's prediction of a stand-alone cost. That is the basis of our figures; they are not necessarily based on the joint holding of a referendum on the date of an election.

I emphasise that, as the Electoral Management Board has picked up, we are using that as a decent estimate of the cost now. We are committed to holding discussions on the detail of the fees and charges order to develop specific costs, with local variations if necessary, which some of the people who have responded to the committee have pointed out might be the case. The board has accepted that approach and is happy with the discussions that we have vowed to have.

Malcolm Chisholm: One similarity with the parliamentary voting system referendum is that orders can be placed far in advance, because we do not need to wait for nominations. However, as Aberdeen City Council said, that is all well and good, but the ballot papers will have to be warehoused in secure conditions for weeks or months. The council wonders whether the costs of that have been factored in.

Stephen Sadler: We did not factor in the costs of warehousing ballot papers. We worked on the basis of existing practice. I understand that the Electoral Management Board will consider whether, under the auspices of the chief counting officer, it could order ballot papers centrally and well in advance. The board will consider that, picking up on the view of individual counting officers, and I imagine that it will discuss with us the funds that we provide for that.

10:00

The Convener: Aberdeen City Council said that printing ballot papers in advance would

"necessitate the papers being warehoused in secure conditions for a period of weeks or months."

I take it that, if that were to happen, the ballot papers would be stored centrally and issued to local authorities much closer to the polling date.

Stephen Sadler: I would have thought so. In last year's local government elections, some of the various electoral documents that were produced were produced in advance, but they were stored centrally and issued more locally shortly before the election.

It is difficult to envisage how this might happen, but I suspect that if a central contract were let for supplying the ballot papers a long time in advance, part of that might well involve the secure storage of the papers until returning officers were ready to take receipt of them.

The Convener: What kind of savings would we be talking about? Would they be of a significant margin?

Stephen Sadler: I doubt that they would be hugely significant. In addition, I have picked up a feeling among returning officers that they are happier using their local printers because they have developed a relationship with them and they know that they can trust them. Not surprisingly, they would be anxious about getting things on time—after all, it is no good getting ballot papers the day after polling day. Many returning officers to whom I have spoken have said that there might be the potential for savings, but they would have to weigh that against their relationship with, and their trust and confidence in, local providers.

The Convener: In its submission, Comhairle nan Eilean Siar said:

"The Outer Hebrides would require specific financial support with the organisation of the Election Count if, for example, there were to be an insistence on the Count being held overnight, which would require use of a helicopter to carry ballot boxes from Uist and Barra to Lewis, the only alternative being two separate Count centres."

My constituency would be similarly affected, as would others such as Argyll and Bute; those of Shetland Islands and Orkney Islands also come to mind. Has a decision been made on that issue as yet?

Stephen Sadler: Do you mean the issue of overnight counting?

The Convener: Yes.

Stephen Sadler: My understanding is that the intention is to count overnight. That will be a matter for the chief counting officer, once she is in post, but the discussions that we have had with returning officers suggest that, at this early stage, they are planning for an overnight count. To strengthen that, I have had discussions with Mary Pitcaithly about what central support or otherwise might be needed for certain constituencies or areas to ensure that they could cope with that. Depending on local circumstances, helicopters or multiple count centres might be needed. The Electoral Management Board is looking at that, and I expect to have discussions with it over the next few months.

The Convener: Okay. Are there any estimates of how much it might cost to service rural areas?

Stephen Sadler: As part of that process, the board will ask the 32 returning officers for an assessment of whether they would feel comfortable counting overnight and whether, if they were to count overnight, that would require any additional expense over and above what they would spend for a normal election. As I understand it, the board is going through that evidence-gathering process. We will need to have discussions with it about that.

The Convener: When will that be concluded?

Stephen Sadler: I imagine that it will be raised at this Friday's meeting, but it will not be concluded then. The board in general and the chief counting officer designate are looking to have a project manager in place for the electoral administration side of things at some time over the summer, and I imagine that one of that person's first tasks will be to look at arrangements for overnight counting.

The Convener: The proposal is to increase postal voting checks to 100 per cent. Is that correct?

Stephen Sadler: Yes.

The Convener: South Lanarkshire Council said that

"the likely introduction of 100% check of Personal Identifiers will ... increase costs".

What level of additional costs are we talking about across Scotland?

Stephen Sadler: Until now, the legislation has provided for checks of less than 100 per cent, but registration officers have carried out 100 per cent checks whenever that has been possible. The Electoral Commission recommends that they should be doing that, so most registration officers do that already.

The Convener: Do we know what the average is? If we know what the average is now, that will make it possible to look at the level of additional costs that might have to be met.

Stephen Sadler: I do not have those figures with me, but it is my understanding that one of the Electoral Commission's performance indicators for returning officers is that they should aim for 100 per cent.

The Convener: Okay. Thank you very much.

That appears to be all the questions that the committee has for our witnesses. I thank you both very much for your attendance and your responses to our questions.

10:05

Meeting suspended.

10:18

On resuming—

Land and Buildings Transaction Tax (Scotland) Bill: Stage 2

The Convener: Item 3 is stage 2 consideration of the Land and Buildings Transaction Tax (Scotland) Bill. We are joined by the Cabinet Secretary for Finance, Employment and Sustainable Growth, whom I welcome to the meeting, and Scottish Government officials Neil Ferguson, John St Clair and Mark Lynch. Members should note that because officials cannot speak on the record at stage 2, all questions should be directed to the cabinet secretary.

Members should have the marshalled list of amendments and the groupings. I will give some information before we start, so that everyone knows the ground rules. There will be one debate on each group of amendments, and I will call the member who lodged the lead amendment in that group to speak to and move that amendment and to speak to the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the normal fashion. If the cabinet secretary has not spoken in the debate on a group, I will invite him to contribute before I move to the winding-up speech. The debate on the group will conclude when I invite the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will ask whether the member who moved the lead amendment in that group wishes to press it to a vote or withdraw it. If they wish to press their amendment I will put the question on it. If they wish to withdraw their amendment after they have moved it, they must seek the committee's agreement to do so. If any committee member objects, the committee will immediately move to a vote on the amendment.

If any member does not want to move their amendment when it is called, they should say "not moved". Please note that any other MSP may move that amendment. If no one moves the amendment, I will call the next amendment on the marshalled list.

Let us press ahead.

Section 1—The tax

The Convener: Group 1 is on collection and management of the tax. Amendment 1, in the name of the cabinet secretary, is the only amendment in the group.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Amendment 1 is a minor and technical amendment to section 1(3) to change the reference to "care and management" of land and buildings transaction tax to "collection and management". The two terms have the same meaning in law, but the term "collection and management" appears in the Scotland Act 2012 and the Landfill Tax (Scotland) Bill, and will appear in the tax management (Scotland) bill in due course. The purpose of amendment 1 is to provide consistency only.

I move amendment 1.

Amendment 1 agreed to.

Section 1, as amended, agreed to.

Sections 2 and 3 agreed to.

Section 4—Chargeable interest

The Convener: Amendment 2, in the name of the cabinet secretary, is grouped with amendment 3.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Amendment 2 will replace the reference in section 4(2)(a) to "an interest, right or power" with the term

"a real right or other interest".

That will align the definition better with terminology in Scots law. It is not intended to change what is or is not a challengeable interest in Scotland.

Amendment 3 is consequential on amendment 2 and will replace the words "interest, right or power" in section 4(2)(b) with "right or interest". I thank Professor Ken Reid of the University of Edinburgh and Alan Barr of the Law Society of Scotland for working with officials to ensure that the bill reflects Scots property law as effectively as it can.

I move amendment 2.

Gavin Brown: The addition of the phrase "real right" in amendment 2 is to be welcomed as it represents Scots law. Getting rid of the phrase "interest, right or power" is the right thing to do.

I have a simple question about the term "other interest". Can the cabinet secretary define that term when he winds up? It is not one that I recognise. Is the Government willing to speak to experts after stage 2 to see whether there is a way of getting a slightly sharper definition? Some practitioners have described the term "other interest" to me as amorphous. The wording in the amendment is better than what it will replace, but I wonder whether there is a way to get something even better for stage 3.

John Swinney: We want to put in place terminology that will enable an application to be determined within the scope of "chargeable interests". The term "other interest" is not being inserted to create any form of catch-all provision; its purpose is purely and simply to provide some further definition within the context of the definition of "chargeable interest" for the purposes for section 4. I assure Gavin Brown that the terminology is not being used in any way to create a catch-all provision and that it is entirely within the parameters of "chargeable interest".

Amendment 2 agreed to.

Amendment 3 moved—[John Swinney]—and agreed to.

Section 4, as amended, agreed to.

Sections 5 to 16 agreed to.

Schedule 1—Exempt transactions

The Convener: Amendment 4, in the name of the cabinet secretary, is grouped with amendments 5, 6, 30 and 32.

John Swinney: The bill provides that all licences to occupy non-residential property should be included in the scope of the tax. We have reflected on the evidence that the committee heard at stage 1, and the amendments in this group seek to limit the taxation of licences, by means of a delegated power in the bill.

Amendment 4 will amend schedule 1 so that all transactions that relate to licences, except non-residential licences prescribed under the new section that will be added by amendment 30, will be exempt transactions. Amendment 30 provides for a power to specify, by means of subordinate legislation, particular types of licence that are land transactions and will therefore be subject to the tax. The power will give the flexibility that is needed to provide more easily for additional exceptions at a later date, should that prove necessary.

Amendment 32 will make provision in section 67 for proposed regulations about prescribed non-residential licences to be subject to the affirmative procedure, to allow for full parliamentary scrutiny of the regulations. Amendments 5 and 6 are consequential amendments to schedule 1.

In its written evidence to the committee, the Law Society of Scotland said that its committees

"broadly support the proposal for licences not to be treated as exempt interests, so that LBTT will be payable if there is consideration for the grant of the licence."

However, it went on to say:

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

For various reasons, the occupation of certain types of retail property is made under licence rather than by means of a lease. Such property might include retail units in airports and retail space in larger shops such as department stores and supermarkets. Based on value, such licences are the most likely to incur LBTT and are the main types of licence that I have in mind for including in regulations as being within the scope of the tax.

I move amendment 4.

Gavin Brown: The committee thought that licences broadly should not be included. I am grateful to the cabinet secretary for taking on board much of what we said.

Amendment 30 will allow the Government to set out by regulation which licences will be caught by the bill. In paragraph 6 of its written response to the committee's stage 1 report, the Government said:

"The Scottish Government has carefully considered the evidence presented to the Committee by a range of witnesses and intends to bring forward an amendment at Stage 2 that will set out which licences are within scope of the tax."

Will the cabinet secretary say where the Government has got to in that regard? Do we have an idea of which licences will be in the scope of the tax? Will that be made clear at stage 3 or after stage 3?

John Swinney: I think—

Sorry, convener.

The Convener: It is okay. No other member wants to speak, so I was about to say that you may wind up.

John Swinney: Thank you. On Mr Brown's point, I think that during the passage of the bill we will not define the type of licence that will be considered for LBTT; we will do that separately, through secondary legislation, as is provided for in amendment 30.

I talked about categories that I have in mind. The committee raised with me the Law Society's supplementary evidence, which set out a variety of possibilities that could be considered as relevant in the context of LBTT. I have gone through the list and although I cannot absolutely say that this is my definitive position, I think that the most likely candidates will be retail units in airports and shops within shops. However, I want to reserve my position on the exact definition until regulations are made.

We decided to go for a position in which everything is opted out but certain licences can subsequently be opted in, as opposed to a position in which everything is opted in and we would have to opt many things out, as is the case in the bill as introduced. The proposed approach is clearer and will be more administratively efficient. Of course, there will be consultation around and consideration of the secondary legislation that emerges on the issue.

Amendment 4 agreed to.

Amendments 5 and 6 moved—[John Swinney]—and agreed to.

Schedule 1, as amended, agreed to.

Section 17 agreed to.

Schedule 2—Chargeable consideration

10:30

The Convener: Amendment 7, in the name of the cabinet secretary, is grouped with amendments 8 to 11.

John Swinney: Amendments 8, 10 and 11 set out a revised approach to calculating the chargeable consideration for exchanges of property. Amendment 8 clarifies that the chargeable consideration should be the greater of the market value of the property and what the chargeable consideration would be in the absence of the rules for exchanges. That would include VAT where applicable. The amendments bring the bill into line with the way in which chargeable consideration for exchanges of property is calculated under stamp duty land tax, reflecting changes that paragraphs 4 and 5 of schedule 21 to the Finance Act 2011 made to schedule 4 to the Finance Act 2003.

Amendments 7 and 9 correct a minor drafting error. In two places in schedule 2—paragraphs 5(3)(a) and 5(3)(b)—the terms "relevant transaction" and "relevant transactions" have been used instead of, respectively, "relevant acquisition" and "relevant acquisitions". Amendments 7 and 9 resolve the issue.

I move amendment 7.

Amendment 7 agreed to.

Amendments 8 to 11 moved—[John Swinney]—and agreed to.

Schedule 2, as amended, agreed to.

Sections 18 to 27 agreed to.

Schedules 3 to 7 agreed to.

Schedule 8—Relief for alternative finance investment bonds

The Convener: Amendment 12, in the name of the cabinet secretary, is grouped with amendments 24, 25 and 31.

John Swinney: In considering the need for these amendments, my objective is to provide a similar tax outcome in relation to land and buildings transaction tax for alternative finance investment bonds as for their equivalent conventional finance product. Land and buildings transaction tax is a charge on the acquisition of a chargeable interest in land or property situated in Scotland. Issuing a conventional bond secured on a building does not give rise to any land and buildings transaction tax liability. The investor does not have a direct ownership share in the underlying asset, but merely has an interest-bearing certificate. Under an alternative finance investment bond, however, the investor owns part of the underlying asset, and interests in land and property in Scotland may be used as that asset.

Amendment 12 therefore provides a replacement for schedule 8 that provides that no tax will be charged when the land is sold to the issuer of the alternative property investment bonds, nor on the sale back of the land to the originator at the end of the bond term, and no LBTT will arise on the issue, transfer or redemption of the alternative property investment bonds. The new schedule 8 substantially replicates schedule 61 to the Finance Act 2009, in so far as it relates to stamp duty land tax.

Amendments 24, 25 and 31 are consequential technical amendments that adjust the bill to fit in better with the style and approach of the new schedule 8.

I move amendment 12.

Gavin Brown: Paragraph 5 of schedule 8 as it stands, under the heading "Interpretation", states:

"In this schedule, 'alternative finance investment bond' means arrangements to which section 564G of Income Tax Act 2007 ... or section 151N of the Taxation of Chargeable Gains Act 1992 ... applies."

In the proposed new schedule 8, which the cabinet secretary's amendment 12 introduces, paragraph 2 provides a new definition of "Alternative finance investment bond". It is similar to the previous definition, except that it no longer seems to include section 151N of the Taxation of Chargeable Gains Act 1992. I would be grateful if the cabinet secretary, in his summing up, could explain the implications of no longer having that reference in schedule 8.

John Swinney: The definition is the same in both the provisions referred to. For the sake of efficiency, we have referred to the one provision, which essentially conveys the definition in the original proposition. It is the same in both provisions.

Amendment 12 agreed to.

Schedule 8, as amended, agreed to.

Schedules 9 to 12 agreed to.

Schedule 13—Charities relief

The Convener: Amendment 13, in the name of the cabinet secretary, is in a group on its own.

John Swinney: The Scottish Government's response to the Finance Committee's stage 1 report advised:

"The Scottish Government is actively working with OSCR and Revenue Scotland to consider the best approach to take as regards the charities relief qualifying requirements for the small number of organisations who buy (but do not occupy) property in Scotland purely as an investment and who use the profits from this investment for charitable purposes."

As a result of that constructive dialogue with the Office of the Scottish Charity Regulator and revenue Scotland, I am pleased to speak to amendment 13 today.

The amendment means that a body can claim charity relief if it is registered as a charity with the Scottish charity regulator, or if it is

"a body which is ... established under the law of a relevant territory"

and is

"managed or controlled wholly or mainly outwith Scotland",

subject to certain conditions. Those conditions are that, where the relevant territory has a charity regulatory regime, the body is registered with the charity regulator; or, if the body is not so registered, its purposes must be exclusively charitable.

To protect the tax base, charity relief will be restricted, in the case of bodies that are not entered in the Scottish charity register, to a "relevant territory". Such territories are:

"England and Wales ... Northern Ireland ... a Member State of the European Union other than the United Kingdom, or ... a territory specified in regulations made by the Scottish Ministers."

I move amendment 13.

Jamie Hepburn: I suppose that this was not expected to be a big issue, but we took a considerable amount of evidence on it at stage 1. Two things were identified that may be felt to be somewhat in competition with each other. There was a need for simplicity—a desire to avoid placing an onerous requirement on charities—and a need to ensure the bona fides or charitable credentials of organisations based outwith Scotland. I suppose that the relief is effectively a subsidy from the taxpayer in Scotland to the organisations concerned.

I accept that there will not be many such cases, but we must get the provisions right. I think that amendment 13 broadly does that, so I

congratulate the Government on coming up with a sensible provision, which I hope we can support.

Malcolm Chisholm: I, too, welcome amendment 13. It is an effective way of dealing with the problems with the original provisions that were highlighted.

I have a couple of questions. First, who will judge the conditions? Will that be a role for OSCR, or will it be something that the Scottish Government decides?

Secondly, I am intrigued by the reference to

"a territory specified in regulations made by the Scottish Ministers."

I suppose that, at the moment, you cannot really say which those territories might be, but I was wondering what the Government might have in mind as regards how that paragraph could be applied in future.

John Swinney: I welcome Mr Hepburn's comments on the Government's attempts to resolve the issue, and also Mr Chisholm's questions.

The role of determining whether an organisation has satisfied the test in the bill will be exercised by revenue Scotland, which will determine whether there is a tax liability to be applied. I do not foresee that being determined by OSCR, which makes judgments about charities in Scotland in fulfilment of its priorities. We will look to revenue Scotland to apply the legislation with regard to the judgment around eligibility for tax.

Mr Chisholm's second point was about the meaning of

"a territory specified in regulations made by the Scottish Ministers."

We have in mind countries on the periphery of the European Union—most likely Norway and Iceland. Obviously, there is a requirement for the regulations to be scrutinised when they are introduced.

Amendment 13 agreed to.

Schedule 13, as amended, agreed to.

Schedule 14—Relief for compulsory purchase facilitating development

The Convener: Amendment 14, in the name of the cabinet secretary, is grouped with amendments 15 to 18.

John Swinney: This group of amendments widens the availability of compulsory purchase order relief to local authorities in accordance with the intentions set out in the bill's policy memorandum. Amendment 17 is the most substantive of the five amendments in the group, so I will speak to it before turning my attention to amendments 14 to 16 and 18.

The bill as introduced reflects the current approach to stamp duty land tax whereby the local authority does not pay tax if it purchases land or property through a compulsory purchase order with the intention of transferring it to a third party to facilitate development. Amendment 17 changes the qualifying condition for the relief in paragraph 3 of schedule 14 to ensure that the relief is available to a local authority when it exercises its compulsory purchase order powers for any of the purposes stated in section 189 of the Town and Country Planning (Scotland) Act 1997. The purposes are the "development, redevelopment or improvement" of land, or any other purpose

"which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated."

Amendments 14 to 16 restrict the availability of relief to local authorities, on the basis that acquisitions by the Scottish ministers or a minister of the Crown are already exempt under paragraph 2 of schedule 1. Amendment 18 is consequential on amendment 17 and deletes the definition of "development" in paragraph 5 of schedule 14.

I move amendment 14.

Gavin Brown: I support all the amendments in the group. The cabinet secretary's explanation of amendment 17 was helpful. However, prior to hearing it, I read the amendment, then read in detail section 189 of the 1997 act, and I wondered whether there was potential for confusion, given the breadth and depth of section 189. Would the cabinet secretary be willing to look at that section again to see whether a slightly sharper or clearer definition for people looking at the legislation is possible?

John Swinney: I happily undertake to look at that before stage 3 to determine whether the reference to the provision is too broad and whether the language that I used earlier—"the development, redevelopment or improvement" of land, or any other purpose

"which it is necessary to achieve"

and so on—could be amended to specify matters more helpfully in the bill. We will certainly reflect on that issue in advance of stage 3.

Amendment 14 agreed to.

Amendments 15 to 18 moved—[John Swinney]—and agreed to.

Schedule 14, as amended, agreed to.

Schedules 15 and 16 agreed to.

After section 27

10:45

The Convener: Amendment 33, in the name of Malcolm Chisholm, is grouped with amendment 34.

Malcolm Chisholm: Everyone in the Parliament is strongly committed to achieving the climate change targets. The two greatest emitters are transport and housing, and we all recognise that urgent action is required in both those areas. I do not present amendments 33 and 34 as a panacea, but I believe that they would make a useful contribution in relation to homes, and particularly existing homes, where we have the biggest problem of poor energy efficiency.

For those who think that my amendments would be a novel approach to taxation, I invoke an example from transport that was enacted fairly recently, when the UK Government legislated for a variation in vehicle excise duty based on the amount of CO_2 that an engine emits. The problem that the UK Government is running into is that the legislation has been too effective—the Government is losing tax, because the measure is incentivising drivers to have lower CO_2 engines. However, my amendments would address that particular worry. I concede that the cabinet secretary's main worry on the issue might be loss of revenue, so the idea of tax neutrality is built into amendment 34. In other words, there would be winners and losers, based on the energy efficiency of homes at the point of sale.

I will try to be a bit more concrete and illustrate exactly what I have in mind. Currently, when a house is sold, an energy performance certificate is issued, with a score out of 100. For the sake of argument, let us say that the median SAP—standard assessment procedure—point, as I think it would be called, is 60, although obviously it will change as homes improve their energy efficiency. The buyer of a house with an SAP point that was one above 60 would get perhaps a 0.5 per cent reduction in LBTT. Equally, the buyer of a house that was one point below the median of 60 might get a 0.5 per cent increase in the tax.

Those are merely illustrative examples and do not show what would necessarily happen, because my amendments point towards regulations, where the details could be filled in. However, the point is that the system would be pretty easy to implement, because we already have a score on the energy performance certificate, so the adjusted LBTT could be calculated in seconds, or probably instantaneously, by a computer. I believe that there would be no practical difficulties in establishing the adjusted LBTT.

To achieve tax neutrality, we would have to change the median point from year to year. Another benefit of using regulations is that that could be done whenever it was required to achieve tax neutrality, so that those who gained would be netted off by those who lost. I think that the system would be easy to implement and would make a significant contribution by making people far more conscious of the energy efficiency of their homes. Clearly, higher energy efficiency is in people's interests because, self-evidently, it will reduce their fuel bills. That potentially makes housing a lot easier to deal with than transport, but we know that it is not uppermost in people's minds when they buy a house at present.

The amendments would help to move people in the direction of being more aware of energy efficiency and taking it more seriously. The buyer of a house with a high energy performance rating would not only get a discount on their LBTT but have the benefit of lower energy bills when they bought the house. The seller might well get more for their house, because it would be more attractive to buyers. They might well sell it more quickly, because, obviously, it would have an advantage in the market over houses with lower energy efficiency and higher LBTT. The approach would not be a panacea, as I said, but it would make a significant contribution to changing people's mindset on the energy efficiency of homes.

I do not think that people think that energy efficiency is not important. However, people might think that it is not the most important issue when they are buying a house, although from the point of view of climate change, it probably is the most important issue. Amendments 33 and 34 are climate change amendments—let us be honest about that. We are committed to the targets and objectives in the Climate Change (Scotland) Act 2009 and we must take a range of measures to ensure that we meet the targets.

When we discussed the matter before, the cabinet secretary referred to the discount on council tax and said that he preferred such an approach. The two approaches are not mutually exclusive; we need to do both. If people are asking why the discount on council tax does not work better, we should explore the issue and perhaps take action to make the approach more effective. However, we need a range of measures, including financial incentives, to ensure that the energy efficiency of the housing stock is increased.

Because the detail is left to regulations, different approaches could be taken. I gave an example of how reductions might work. A further variant, which could easily be included in regulations, would be to give people an opportunity to get a rebate within the first 12 months of buying a

house, if they do the energy efficiency work. Such an approach would have an effect on the neutrality point—in the sense of there being gainers and losers—in that things would be pushed in a certain direction if more people were penalised for having homes with low energy efficiency. The variant is attractive to some people. It would not have to be adopted, but it would offer another incentive for people to improve the energy efficiency of their homes.

The sustainable housing strategy will be published imminently, and I am told that one of the main outcomes in the draft version is that there should be a market premium on warm, high-quality, low-carbon homes. I hope that the cabinet secretary will not delete that outcome from the draft. What I propose would make an important contribution to placing a market premium on warm, high-quality, low-carbon homes, and I hope that the cabinet secretary will give the idea serious consideration.

I move amendment 33.

The Convener: A few members want to comment—and I welcome Michael McMahon to the meeting.

Michael McMahon (Uddingston and Bellshill) (Lab): I apologise for being late; I had car trouble this morning.

John Mason: I will speak against amendments 33 and 34. We all sympathise with Malcolm Chisholm's aim, which is to make all houses more energy efficient—I simply think that he is going about it in the wrong way. He talked about overall neutrality, but it is clear that there would be winners and losers. Some people might pay £1,000 more; others would pay less tax. There would still be expenditure in the context of the people to whom we would give £1,000.

I question whether that is the best way of using £1,000. If someone is buying a house for £200,000, an extra £1,000 is immaterial, whereas if someone is thinking about insulating their home or taking another such measure, £1,000 is a material sum, because it is a larger proportion of the expenditure that they are thinking about incurring. Malcolm Chisholm talked about a reduction of 0.5 per cent—on a £200,000 house that is £1,000, which is major in the context of a small investment but quite small in the context of buying a house. The approach would be a blunt instrument and it would be better to use council tax or direct grants, as we have done in the past.

I also think that the approach would be regressive. I assume that some people at the bottom will not pay LBTT at all, so there would be no help whatever for those people. I represent a poorer constituency, where quite a lot of the houses are of lower value, and I strongly resent the idea that richer people with bigger houses should get a subsidy that poorer people in smaller houses would not get.

On top of that, there are the practicalities—if a house does not change hands, there is no LBTT and no benefit and no change, so again, we would be missing a lot of houses that need to be helped. The evidence that we had at committee was that a similar provision for stamp duty land tax had been very ineffective.

This is the first tax that we are going for in the Scottish Parliament. Simplicity has been one of the key things that the cabinet secretary has argued for and I strongly believe in it myself. Although they might be well intentioned, by bringing in these tiny little variations here and there we lose the bigger picture—we lose the simplicity that we are aiming for.

Jamie Hepburn: I began the process of considering the bill feeling somewhat sympathetic to the notion that there could be some form of energy efficiency relief and I agree entirely with Malcolm Chisholm's perspective that the commitment to tackle climate change is shared across the board. However, I am somewhat unconvinced by the amendments. I am not sure that they represent an effective measure. Malcolm himself referred to the evidence that energy efficiency is not a big issue for buyers. Notwithstanding his other comments, it is not clear to me how the amendments would change that attitude.

We had evidence that the scheme that has been in place—which this one does not necessarily replicate but would be a successor to—has not been particularly successful. It is not clear that we have evidence that these measures would be successful or what a scheme might look like. One of my other concerns about the amendments is that there is no meat on the bones. We do not know exactly what is being proposed.

I am not clear about the efficacy of such a measure if the seller who has invested in energy efficiency does not benefit and the person who benefits is the buyer. A retrospective application, as was suggested by Malcolm Chisholm, with a buyer putting in measures and then seeking to apply for a discount, is pretty complicated and I am not clear how revenue neutrality could be achieved in that case.

No prescriptive measure is set out. I am concerned about passing an amendment that does not really set out what the measures would be. Malcolm Chisholm said that we need to be concrete about what the amendments mean, but we cannot be because, essentially, they pass the job to the Scottish Government. It is not a concrete measure in that sense, so I thank him for lodging

the amendments—it is useful to have this debate—but I am not persuaded by them.

Jean Urquhart: My points have been made. I, too, was sympathetic to the idea. In particular, I was slightly frustrated by some of the evidence that we got, which could have been sharper, clearer and better. I want energy efficiency measures to happen, but I agree that this is just the wrong place for them. Land and buildings transaction tax is just not a phrase that is on everybody's lips and if we are to really appeal to people and raise their awareness of climate change, house insulation, better building and so on, this is not the place to do it. It is not really about the detail of it—I would just much rather see the issue debated in the context of council tax and in other places that will mean something to everybody in the street, not just those who happen to be buying or selling a house.

Michael McMahon: There is a lot of validity in the arguments that have been made counter to the amendments, because a very technical thing is being introduced but it seems to be in a very simple form. However, having heard the evidence about incentivising people to think about energy efficiency in their homes, I think that in principle this is the right thing to try to do because, in the absence of anything in any other legislation, this is the vehicle that is available.

It is worth considering the amendments on the basis that they might not be perfect but, if they are agreed to just now, the bill could be further amended to address colleagues' concerns, because I do not see any other vehicle coming forward in the near future that would address all the points that colleagues have made. This is worth considering to try to get us to a place where, when people consider house purchases, energy efficiency becomes much more high profile than it currently is according to the evidence that we heard.

11:00

John Swinney: I thank Mr Chisholm for lodging amendments 33 and 34, both of which seek to introduce into the bill a regulation-making power to vary the amount of LBTT to be paid on residential property transactions on the basis of how an individual property compares with the average energy efficiency rating for housing in Scotland. The proposal has been advanced by the existing homes alliance Scotland and my officials have met the proposers to consider the issues.

The Government is entirely supportive of the importance of taking steps to improve the housing stock's energy efficiency, as highlighted by not only Mr Chisholm but a number of committee members, and indeed has taken a number of steps in that respect. Although it is important to examine all legislative instruments to determine whether any measures can be taken forward, it is vital that we assess the impact of any proposed measures. In this bill, a balance must be struck between the need for a simple, certain and efficient tax system and the likely improvements to energy efficiency that would flow from the change proposed to calculating the tax liability on the sale of residential property. Far from providing more simplicity and certainty, amendments 33 and 34 would, in fact, add complexity and uncertainty to the tax. No house buyer would know at the outset how much tax would be payable on a house of a particular value, and additional information would be required to calculate the liability. Moreover, that information would change over time and for every house sale would have to be verified carefully to ensure that the tax was calculated accurately.

Apart from the administrative complexity, the proposal would, as Mr Mason pointed out, have no effect whatever on housing in the nil rate band of the tax. In 2011, there were 1.9 million privately owned dwellings in Scotland and 70,000 sales—in other words, 3.7 per cent of the market. The land and buildings transaction tax consultation paper set out two scenarios to illustrate how a progressive tax might operate in the residential property market. In scenario 1, 70 per cent of the market would be excluded from the tax because of the threshold. That would mean that, in any given year, the tax would apply to only 1.1 per cent of the existing housing stock or 21,000 properties. Even if those figures were doubled to reflect more active market conditions, LBTT does not appear to me to represent an effective mechanism for influencing the energy efficiency of the whole of the housing stock, which is the comparison to be made with council tax and other such vehicles.

The proposal would also have a number of disproportionate effects on the housing market. For example, flat owners often find it very difficult to secure other owners' agreement to undertake any repairs and improvements that would be material to the flats in question securing a better SAP rating in the energy assessment. In my view, it would be unfair to penalise the owners or buyers of flats and listed buildings who would like to increase their EPC rating but find that they cannot do so because of a lack of agreement. I also note that flats comprise about four in 10 of Scotland's housing stock and 74 per cent of the housing stock in the city of Glasgow.

The proposed scheme is intended to apply to every subsequent transaction on the same house, which means that tax benefit would continue to accrue on houses whose owners had made no investment in energy efficiency measures. Another owner might have implemented a number of improvements costing, for example, £5,000 to

achieve a SAP rating of, say, 60 but more tax would still be due on that property than if the scheme did not exist. Furthermore, a SAP rating of 60 can be very challenging to achieve for certain fuels such as liquefied petroleum gas.

A more fundamental point is that it is not clear whether the proposal underpinning amendments 33 and 34 would have a direct positive impact on the energy efficiency of Scotland's housing stock. As the seller of the house might undertake energy efficiency measures while the buyer of the house would incur the tax benefit on the transaction, the proposal would provide no direct incentive for energy efficiency measures to be introduced into Scotland's housing stock by the people who actually occupy the properties.

Although I am entirely sympathetic to the desire to improve the energy efficiency of Scotland's housing stock and I reaffirm the Government's intention to find additional ways to do that, I do not believe that amendments 33 and 34 contain the correct approach to achieve that aim.

Malcolm Chisholm: I thank people for their contributions. I think that a lot of the responses are in the general territory of, "Well, it's not going to solve the whole problem," but I was keen to emphasise on more than one occasion that the proposal is not a panacea. It would be only one of a whole range of measures.

John Mason spoke first and he said that he prefers direct grants. I am not sure whether the cabinet secretary would agree. We have lots of schemes at the moment and some are based on loans, but in effect John Mason was proposing extra expenditure rather than the revenue-neutral proposal that I have made. Having said that, I would not, of course, object to direct grants to deal with the issue of people in homes that are exempt from LBTT. I do not accept the argument that the proposal is regressive. There would have to be a cap on how much people could benefit from it in larger homes, but the fact is that it is larger homes that emit the most CO_2, and it is there that action is most urgent.

I think that the argument about simplicity was used by all the speakers. I think that the proposal would be fairly simple to implement, on the basis that all homes have an energy performance certificate. I said that the adjusted LBTT could be calculated almost instantaneously by a computer as long as we know the EPC score, so I do not accept the argument about administrative complexity.

Jamie Hepburn used the argument that I anticipated about the energy efficiency of homes not being a big issue for buyers, but part of the purpose of the proposal is to make it a bigger issue for buyers by making people financially aware of the consequences of the energy performance of buildings. The psychological effect is important as well as the other effects of the proposal.

Jamie Hepburn also objected to the fact that there is

"no meat on the bones."

If the proposal is introduced again at the next stage, it may well be that I can work up—or somebody can help me to work up—a more detailed amendment with all the details in it, but in a sense I prefer the simple version because it allows the Government of the day a lot more flexibility to change the detail. That is the usual argument that the Government uses for proposing that detail is put in regulations. However, the issue can certainly be addressed when the proposal is debated at the next stage. I tried to put some meat on the bones with my illustrative examples, but more of that could be provided if that would help Jamie Hepburn and others at the next stage.

The cabinet secretary also used some of the arguments that his colleagues had used in relation to simplicity and the absence of an effect on housing in the nil rate band. I do not want to complicate things too much, but I add that we could, in regulations, also offer an incentive for those homes within the system. Clearly, that would mean that those with larger homes with low energy efficiency would have to pay even more, but potentially and theoretically there is no reason why we could not include those homes in the system if we wanted to do so.

John Swinney raised the issue of flats. I am certainly conscious of that given the constituency that I represent, not to mention the fact that I have lived in a flat all my life. In general, tenements have better energy efficiency ratings than stand-alone homes. I take the point about securing the agreement of owners, but the fact is that, in order to achieve our climate change targets, we are going to have to do something about tenements, just as we have to do something about the housing stock as a whole.

The cabinet secretary concluded with the idea that there would be no incentive for sellers. I dispute that because, apart from the obvious incentive that anyone has to reduce their fuel bills, under the proposal, the seller would be in a better position—the words "market premium" spring to mind again—when he or she was selling the house, because they would have an advantage over other homes with lower energy efficiency ratings and they might well both sell more quickly and achieve a higher price, so I do not believe that there is an absence of incentive for the seller of a home.

I think that the measure that is proposed in amendments 33 and 34 is useful. To be honest, when it was first proposed to me a few weeks ago, I shared some of the concerns and, indeed, scepticism that people have voiced today. However, the more I have thought about it, the more I have believed that it could make a useful contribution.

Of course, what I propose will not deal with all the issues. Jean Urquhart said that she would rather see the issue dealt with through the council tax. We have a council tax measure—that is good, but we should find out why it is not working more effectively. However, the two things are not mutually exclusive. Jean Urquhart said that LBTT was not a term on everyone's lips—at least not yet, because most people do not even know what it stands for—but the reality is that it will be on the lips of anyone who buys or sells a house. I believe that it is appropriate and useful to introduce energy efficiency measures in this bill.

I will press amendments 33 and 34.

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)

Against
Brown, Gavin (Lothian) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 33 disagreed to.

After schedule 16

Amendment 34 moved—[Malcolm Chisholm].

The Convener: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)

Against
Brown, Gavin (Lothian) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 34 disagreed to.

Sections 28 and 29 agreed to.

Section 30—Notifiable transactions

The Convener: Amendment 19, in the name of the cabinet secretary, is grouped with amendments 20 to 23.

John Swinney: This group of five amendments sets out the position with regard to when a land transaction that involves a non-residential lease should be notified to the tax authority. Amendment 20 is the substantive amendment in the group. It is couched in the negative and provides for four situations that involve non-residential leases that are not notifiable land transactions. By implication, all other non-residential leases would be notifiable. Amendment 19 and amendments 21 to 23 are consequential technical amendments that will adjust the bill to fit better with the style and approach of the new provisions that are brought forward by amendment 20.

I move amendment 19.

Amendment 19 agreed to.

Amendments 20 to 23 moved—[John Swinney]—and agreed to.

Section 30, as amended, agreed to.

Sections 31 and 32 agreed to.

Section 33—Further return where relief withdrawn

Amendments 24 and 25 moved—[John Swinney]—and agreed to.

Section 33, as amended, agreed to.

Sections 34 to 39 agreed to.

Section 40—Payment of tax

The Convener: Amendment 26, in the name of the cabinet secretary, is grouped with amendments 27 to 29.

11:15

John Swinney: To ensure prompt payment and deliver administrative efficiencies, the bill requires tax agents to submit a complete tax return and pay any tax due before any application to Registers of Scotland in respect of a land register or books of council and session can be accepted. During the consultation on the proposals for land and buildings transaction tax, certain stakeholders raised concerns in relation to that proposal, based on the fact that in Scotland a buyer or tenant cannot obtain a real right over land or buildings

until registration has taken place. Some stakeholders were concerned that that could create an unnecessary risk for buyers and that it might have unintended knock-on effects on third parties such as lenders.

Following further discussions with the Law Society of Scotland, the Scottish Government believes that the

"arrangements satisfactory to the Tax Authority"

wording in section 40(4), coupled with the introduction of advance notices under the Land Registration etc (Scotland) Act 2012, will address those concerns. However, as it is drafted, the bill could be interpreted in such a way that someone who makes arrangements satisfactory to the tax authority could escape liability to pay tax if those arrangements fall through. This group of four technical amendments will ensure that the fact that the tax authority can accept a return on the basis of arrangements being in place to pay any tax due or that Registers of Scotland can record a disposition on the same basis will not affect the overall liability to pay. The effect of these amendments will be to ensure that no tax avoidance activity will be able to take place by relying on section 40(4).

I move amendment 26.

Amendment 26 agreed to.

Amendments 27 and 28 moved—[John Swinney]—and agreed to.

Section 40, as amended, agreed to.

Sections 41 and 42 agreed to.

Section 43—Return to be made and tax paid before application for registration

Amendment 29 moved—[John Swinney]—and agreed to.

Section 43, as amended, agreed to.

The Convener: That ends stage 2 consideration of the bill for today. I thank the cabinet secretary and his officials for their attendance. Stage 2 proceedings will continue at the committee's next meeting on 5 June.

11:17

Meeting continued in private until 11:20.

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e-format first available
ISBN 978-1-78351-158-7

Revised e-format available
ISBN 978-1-78351-177-8

Printed in Scotland by APS Group Scotland